Highlights to the 2025-2026 Edition

This year's update addresses a wide variety of issues that are of import in the bankruptcy litigation context. A sampling of some of the cases and issues discussed in the chapters include:

- On the jurisdiction front, sovereign immunity issues, including analysis of the latest Supreme Court case to address the subject; cases further refining standing requirements; strategies to enhance prospects of discretionary abstention; and limitations on determinations emanating from withdrawal of reference rulings.
- On venue, sanction awards for filing in an incorrect venue; considerations involving the enforcement of forum selection clauses; and pre-trial bankruptcy court retention of jurisdiction over personal injury suits.
- On service of process and personal jurisdiction, minimum contact considerations that give rise to personal jurisdiction, including activities of foreign entities in the United States; utilizing state law as a means of effectuating service; service by email; and cases addressing successful challenges to attempted service.
- On discovery, cases addressing limitations on discovery, discovery challenges, and failure to fully and properly respond to discovery requests; service requirements in connection with Bankruptcy Rule 2004 examinations; discovery of examiners; application of state law privilege rules; prefatory steps needed when asserting a common interest privilege; and evidentiary burden to be met when asserting the work product privilege.
- In adversary proceedings, cases voiding rulings where the disputes were not brought via a complaint; exceptions to adversary pleading requirements when equitable relief is sought; limitations on bankruptcy judge's authority arising from the exclusion of Fed. R. Civ. P. 2 from the Bankruptcy Rules; the impact of Bankruptcy Rule 9006 on statutory deadlines; utilization of orders in contested matters to foreclose claims; utilization of a plan of reorganization to implement a tolling agreement; trustee immunity issues; determination of prejudgment interest rates; requirements for pursuing claims derivatively; evidentiary showings needed for

approval of Bankruptcy Rule 9019 compromises; and enforceability of injunctive relief provisions in connection with a Bankruptcy Rule 9019 compromise.

- In matters involving injunctive relief, a discussion of cases following the Supreme Court's decision in *Harrington v. Purdue Pharma, L.P.*, dealing with issues involving the propriety of preliminary injunctive relief, the enforceability of exculpation provisions, and injunctive relief via a compromise motion; showings needed to satisfy irreparable injury requirements; and bonding requirements.
- For trials, the admissibility of information gathered in mediation; disqualification motions; and Daubert challenges.
- For appeals, challenges to conventional prudential standing requirements; equitable mootness issues; notice of appeal requirements; stay requests; and recovery of sanctions.
- In proof of claim litigation, the effect of avoidance actions on the assertion of administrative claims; notice issues pertaining to bar dates; obligations of a debtor to identify potentially known creditors; leave to file claims after the bar date; determinations of prima facie validity of a claim; the right to amend a proof of claim; procedural defects in omnibus claim objections; bankruptcy court authority to preside over pretrial proceedings involving personal injury claims; limitations on grounds for claim objections; determination of applicable statute of limitations as impacted by the bankruptcy filing; the effect of plan provisions on indemnity claims; and the effect of contractual subordination provisions on the right to assert equitable subordination claims.
- For involuntary petitions, the enforceability of prepetition injunctions on the filing of an involuntary petition; petitioning creditors right to use bona fide dispute standards to disqualify claims from the creditor count; inclusion of creditors in creditor count notwithstanding the potential avoidance of their claims; timing requirements for joinder; evidentiary considerations involving bona fide dispute issues; retention of jurisdiction requirements for damage awards following dismissal of proceeding; and sovereign immunity defenses assertable by unsuccessful petitioning creditors.
- In stay relief litigation, procedures for non-debtors seeking stay protection; scope of acts that debtor's

competitor can engage in that implicate stay violations; authority for stay extensions after expiration of statutory periods; waiver of stay requirements following an order for relief; the application of arbitration provisions to stay relief requests; the res judicata effect of a stay relief ruling; and punitive damage awards for willful violation of the stay.

● In dischargeability litigation, the propriety of asserting alter ego claims as a basis for liability; the scope of the student loan discharge and hardship issues; the right to recover attorney's fees; and the preclusive effect of a default judgment.

● In discharge litigation, exposure for prepayment of tax obligations; the materiality of errors in a debtor's schedules; and liability for failure to comply with court orders.

● For Committee issues, the propriety of removal of Committee members; the effect of substantive consolidation on avoidance claims; and procedures for asserting substantive consolidation claims.

● In preference litigation, overcoming presumptions involving ordinary course payments; conflicting standards when determining due dates of ordinary course payments; determinations of industry standards to be applied when assessing ordinary course issues; pleading requirements; and the sale of avoidance claims and acquiror standing issues.

● In fraudulent transfer litigation, pleading requirements; presumptions regarding reasonably equivalent value; valuing contingent claims when assessing insolvency; determining appropriate valuation date for transferred property; safe harbor defenses under section 546(e); Ponzi scheme issues; and joint and several liability issues.