

## Highlights to the 2026-2027 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, court of appeals rulings on whether subject matter jurisdiction is implicated absent a debtor having a sufficient degree of financial distress and where issues are raised concerning whether a bankruptcy filing was properly authorized; rulings on the scope of extraterritoriality in connection with avoidance claims; the authority of a bankruptcy court to award certain types of sanctions; and limitations on post confirmation jurisdiction.
- On venue, examination of proof requirements to support venue elections and burdens of proof where venue is contested; the impact of forum selection clauses on venue disputes.
- On service of process and personal jurisdiction, the impact of forum selection clauses with respect to the assertion of personal jurisdiction; pleading requirements for personal jurisdiction; the impact of a recent Supreme Court ruling on judgments where the underlying service was defective; and the degree of notice required to bar claims.
- On discovery, the impact of local rules on motions to compel discovery; the need to pay witness and mile fees where the examination is by Zoom; and the applicability of mileage restrictions where the examination is done remotely.
- In adversary proceedings, the proper procedural format when seeking sanctions under Bankruptcy Rule 9011; whether Bankruptcy Rule 9006(b) can be used to extend a statute of limitations and the split of authority on this issue; the enforceability of plan provisions which seek to limit or excuse liability; sanctions for improper use of AI; remote appearances of witnesses when faced with mileage restrictions to address witness testimony; failed attempts to use procedural rules to circumvent statutory restrictions; the Supreme Court's ruling on timing when relief is sought under

FRCP 60; the procedure to utilize when seeking enforcement of a sanction award; standing issues where Bankruptcy Rule 9019 settlements are contested; the enforceability of arbitration provisions where damages are sought for a stay violation; and proof requirements where derivative standing is sought.

- In matters involving injunctive relief, the enforceability of plan injunctions absent express consent; and the applicability of the Supreme Court's decision in *Harrington v. Purdue Pharma, L.P.*, with respect to releases in a Chapter 7 case.
- For trials, grounds for withdrawal of counsel; jury trial rights in contested matters; the need to file a motion to withdraw the reference where a jury trial is demanded; and a court's discretion when to allow expert testimony.
- For appeals, decisions on finality of orders; equitable mootness issues; statutory mootness issues; the split of authority on whether a magistrate can hear an appeal; raising new arguments on appeal; construing notices of appeal; the proper procedure for raising defects with respect to notices of appeal; excusable neglect for failure to timely file a notice of appeal; bonding requirements; and grounds for dismissal of an appeal due to procedural errors.
- In proof of claim litigation, the split of authority on sufficiency of notice where there are bar date issues; grounds required to justify application of section 502(j) where claims had been resolved in an adversary proceeding; the impact of claim allowance on dischargeability issues; the court's authority to recharacterize claims; and the right to seek subordination remedies notwithstanding repayment of an avoidance claim.
- For involuntary petitions, grounds for obtaining relief by default; grounds for dismissal of the petition under section 305; involuntary petition considerations where an assignment for the benefit of creditors is pending; the applicability of abstention motions; timing issues where a creditor seeks to join as a petitioner; and factors considered when dismissal of the petition is sought.
- In stay relief litigation, the effect of the stay on non-dischargeable debts; the effect of the stay on contract termination rights; insurance policy issues impacted by the automatic stay; the exercise of setoff rights; standing to seek stay relief; and obtaining comfort orders where applicability of the stay is at issue.

## HIGHLIGHTS

- In dischargeability litigation, the propriety of prepetition waivers with respect to the dischargeability of a claim; vicarious liability issues; setoff defenses where mutuality is involved; use of alternative filings in lieu of timely filing a complaint; timing issues with respect to dischargeability bar date notices; and the preclusive effect of prepetition findings.
- In discharge litigation, party in interest determinations for standing purposes; factors for cause for an extension of filing deadlines; and use of alternative filings in lieu of a timely filed complaint.
- For Committee issues, the effect of substantive consolidation on avoidance claims.
- In preference litigation, the scope of property of the estate when determining whether a transfer occurred; rebutting the presumption of insolvency; distinguishing statutory from judicial liens for avoidance purposes; and the questionable use of Bankruptcy Rule 9006 to extend limitations periods.
- In fraudulent transfer litigation, establishing fraudulent intent; tests for determining whether value was provided; demonstrating value provided in exchange for a guarantee; recovery limitations based upon single satisfaction provisions in section 550; safe harbor defenses under section 546(e); the use of the safe harbor defense in Chapter 15; pleading requirements where claims asserted solely against subsequent transferees; and the questionable use of Bankruptcy Rule 9006 to extend limitations periods.