INTRODUCTION TO 2026 UPDATE

Highlights of new developments:

- "[B]usiness judgment deference does not apply" relative to transactions with insiders, § 1:28, *In re SPAC Recovery Co.*, 676 B.R. 260 (Bankr. S.D.N.Y. 2026)
- The highest court of New York reiterated its adherence to the internal affairs doctrine by rejecting a litigant's attempt to displace the doctrine under other statutes, *Ezrasons, Inc. v. Rudd*, 275 N.E.3d 141 (N.Y. 2025) § 2:51.33
- The statute of limitations for breach of fiduciary duty depends on whether it is accompanied by fraud, *In re Endo Intl. Plc*, 674 B.R. 349 (Bankr. S.D.N.Y. 2025) § 3:17.50
- Sequestration of funds under the UFTA has been treated as a request for injunctive relief, § 3:17.50, *O'Malley as Tr. Under Tr. Agreement Dated January 1, 2006 v. Adams as Tr. of Almyra M. Prather Revocable Tr. Agreement Dated December 15, 1967*, 252 N.E.3d 355 (Ill. App. 5th Dist. 2024)
- Section 510(b) does not subordinate a claim based on an arrangement where investors would get their money back if the investment failed, because of, inter alia, the lack of a "recession." *In re Rhodium Encore LLC*, 675 B.R. 502 (Bankr. S.D. Tex. 2025), § 3:29
- Ninth Circuit Court of Appeals, in *In re Akhlaghpour*, 164 F.4th 1139 & n.1 (9th Cir. 2026) considered the interplay between the *Barton* doctrine and the *Rooker-Feldman* doctrine. § 4:36.84
- Relative to the Florida homestead exemption, one court held that it was unlimited even though the debtor claimed the exemption as a dollar amount, instead of "check[ing] the '100% of FMV' box,", *In re Pelucarte*, 675 B.R. 260 (Bankr. S.D. Fla. 2025), § 12:34
- The Fifth Circuit Court of Appeals revisited the division of authority relative to whether Rule 4004 is jurisdictional, *Matter of Langston*, 159 F.4th 346 (5th Cir. 2025), § 12:34
- Although in most cases the distribution from a retirement plan is taxable to account holder, in connection with criminal forfeiture it was not taxable because the "relation back' doctrine… treats the government as having '[a]ll right, title, and interest' in the property as of the time that the defendant committed the forfeiture-triggering crime,' " consequently, "the IRS—not [the taxpayer]—the owner of this IRA at the time of the [forfeiture] order," § 13:43, Hubbard v. Comm'r, 132 F.4th 437 (6th Cir. 2025)
- A change of beneficiary by the debtor/owner can constitute a fraudulent transfer relative to "any creditor who would

have had an interest in the proceeds but for the transfer." *In re Wolensky's Ltd. Partn.*, 163 B.R. 615 (Bankr. D.D.C. 1993), § 15:1

- *Torrington Tax Collector, LLC v. Riley*, 349 A.3d 551 (Conn. 2026) considered with issue preclusion extended to alternative grounds for reaching a judgement; it examined the "division of authority between Restatement (First), Judgments § 68, comment (n) – both grounds are entitled preclusive effect- and the Restatement (Second), Judgments § 27, reporter's note to comment (i), § 18:21
- *Harrington* did not apply to a situation where the plan was partial consummated, e.g., "the Debtors' interest in a senior living facility" was sold, "there [was] no evidence of pending litigation," and the third-party releases were consensual due to lack of objection in response to a valid opt-out provision, *Mercy Health Network, Inc. v. Mercy Hosp.*, 671 B.R. 499 (N.D. Iowa 2025), appeal filed, 8th Cir., April 2, 2025, § 18:22
- A Texas bankruptcy court, in *In re Container Store Group, Inc.*, 676 B.R. 356 (S.D. Tex. 2026) held that federal law, not state law, controlled whether silence relative to an opt-out provision, i.e., "consented" to third-party releases contained in a bankruptcy reorganization plan by not responding to the opportunity to object to the release; other cases have held that state law govern, see, e.g., *In re GOL Linhas Aereas Inteligentes S.A.*, 675 B.R. 125 (S.D.N.Y. 2025), appeal filed, 2d Cir. Jan. 2026 - NY "state contract laws generally 'do[ ] not recognize silence as consent to a contract,' " absent a duty to respond, citing Restatement (Second) of Contracts § 69, cmt. a (1981), § 18:22
- Many states have enacted laws that, to varying degrees, shield debtors from the consequences of medical debts, e.g., NJSA 56:11-56 through NJSA 56:11-63, Appendix A
- *Netter v. Netter*, 347 A.3d 882 (Conn. App. 2025), Appendix B, illustrates how the forum may bear on the outcome of the effectiveness of self-settled spendthrift trusts