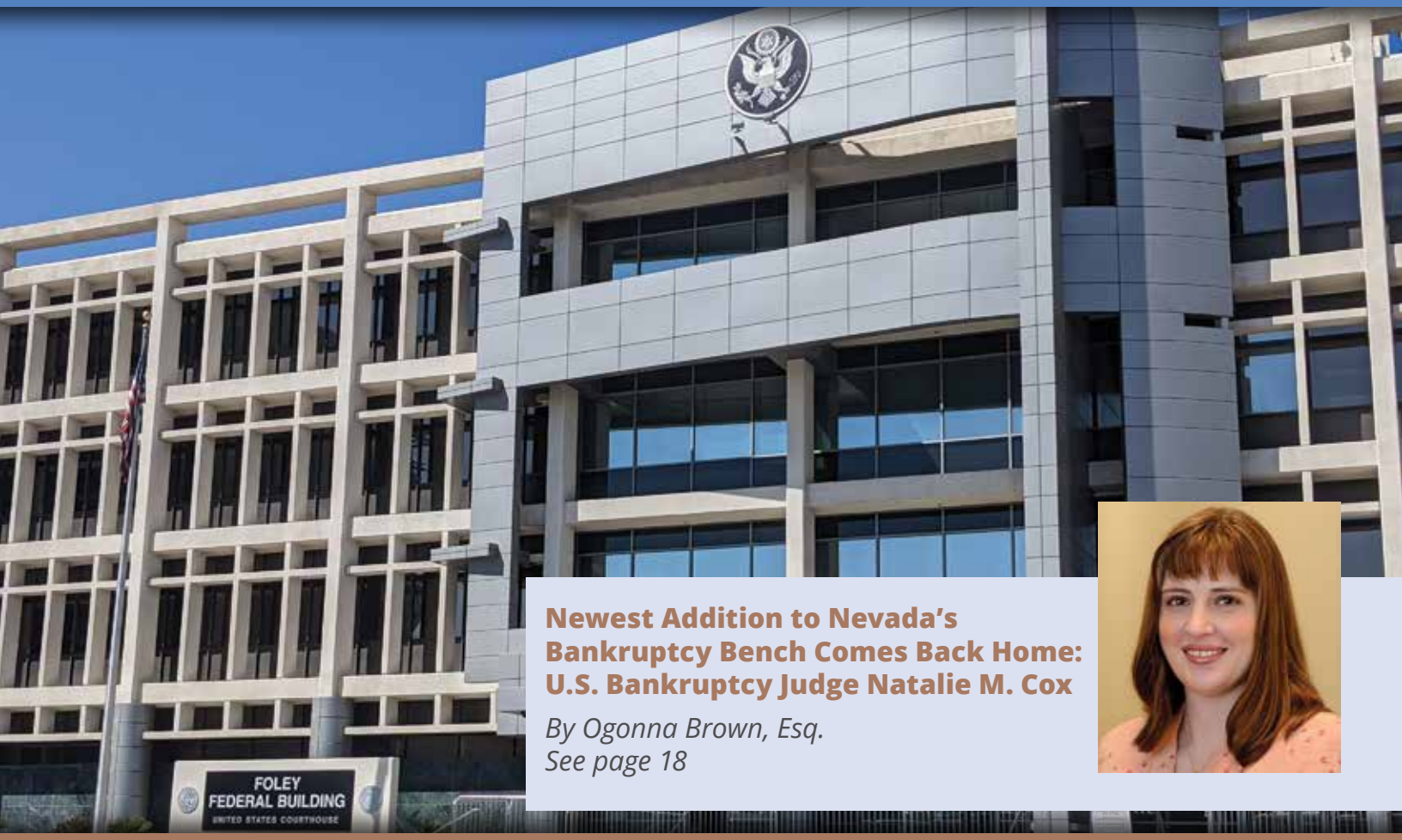
Bankruptcy Nuts & Bolts CLE—*Free for CCBA members!*
See page 6

COMMUNIQUÉ

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

The Bankruptcy Issue APRIL 2021



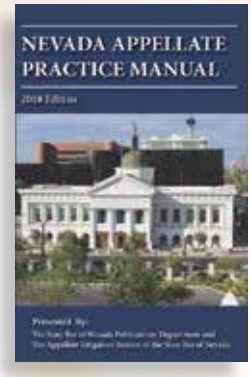
Newest Addition to Nevada's Bankruptcy Bench Comes Back Home: U.S. Bankruptcy Judge Natalie M. Cox

By Ogonna Brown, Esq.
See page 18

Featured inside

BOOKS FROM THE BAR

The State Bar of Nevada has several reference publications available to meet the needs of Nevada attorneys, from comprehensive guides to compilations of templates in a variety of practice areas.



Nevada Appellate Practice Manual – 2018 EDITION

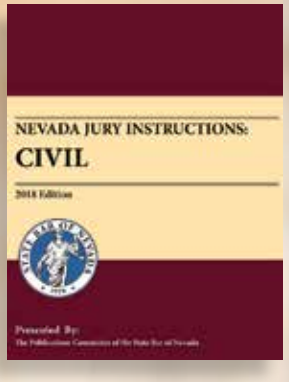
The 2018 edition has been painstakingly edited by experts in appellate practice and reflects all recent changes in the law as well as the most up-to-date procedures for practicing in Nevada's appellate courts. Some topics covered include: initiating an appeal, jurisdiction, settlement, criminal appeals, fast-track child custody, oral arguments and record preparation...in addition to many others.

Nevada Gaming Law Practice and Procedure Manual

Written by attorneys with decades of experience in the practice of gaming law, this reference manual includes 18 chapters covering topics such as licensing, financing, gaming devices, race and sports books, compliance reporting requirements, interactive gaming and much more.

Contract Templates for Nevada Attorneys

This publication provides lawyers with a large selection of form contracts drafted for a wide variety of transactions, with specific regard to the laws of Nevada. The customizable forms are designed as a starting point for practitioners to craft custom agreements for use in commercial and residential purchases and leases, employment, intellectual property, deeds and cyber law...to name a few.



Nevada Jury Instructions: Civil - 2018 EDITION

Nevada Jury Instructions: Civil provides attorneys participating in civil jury trials in Nevada with downloadable sample jury instructions in an easy-to-use format. The language in each template has been adapted from documents actually used in trial with an eye to being as party-neutral as possible. The book includes subjects such as: contractual relationships, employment law, evidence, experts, intentional torts, fiduciary relationships, personal injury damages, eminent domain and more!

We've Got More!

The state bar's online store includes additional titles of interest to attorneys practicing in Nevada, such as Nevada Business Entities, Succession Planning in Nevada and the Guide to the Tribal Courts of the Inter-Tribal Council of Nevada.

To see all of the current titles available, visit:
www.nvbar.org > Publications > State Bar Publications

Clark County Bar Association

COMMUNIQUÉ

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

Table of Contents

The Bankruptcy Issue

Columns

Departments

On the Cover

U.S. Bankruptcy Court Judge Natalie M. Cox and the Foley Federal Building, home to the U.S. Bankruptcy Court, in Las Vegas, Nevada. Photo of Foley Federal Building courtesy of Stephanie Abbott.

Features

Highlights

Builder or Wrecker?

By James E. Harper, Esq.

This month's issue includes six excellent articles related to bankruptcy. I am grateful for the authors who contributed to the issue. I am especially grateful for Judge Natalie M. Cox making time in her schedule for an interview by Ogonna Brown (see page 18).

The CCBA continues to be fiscally sound and operate within the revenue it receives from generous sponsors, membership dues, advertising income, and income generated from CLE events and CCBA functions—even in the midst of a global pandemic that has stifled the traditional annual income producing functions like the *40-Year Club Luncheon* and *Meet Your Judges*. I am grateful for the prudence exercised by past CCBA presidents and executive board members who set and adhered to annual budgets.

Equally or perhaps more important than the CCBA's financial wellbeing, however, is the association's members' moral wellbeing. Are we avoiding the pitfalls of moral bankruptcy, i.e, amorality? (Not to be confused with *immorality*, which refers to doing or thinking something known or believed to be wrong.) Amorality is an absence of, indifference towards, disregard, or incapacity for morality. Does a self-inventory reveal deficiencies of any particular qualities or values? Are we honoring the qualities and values set forth in the Lawyer's Pledge of Professionalism adopted by the founding members of the CCBA?

Equally or perhaps more important than the CCBA's financial wellbeing, however, is the association's members' moral wellbeing.

A reflection on my moral solvency brought to mind the poem by Charles Franklin Benvegar, "A Builder Or a Wrecker."

As I watched them tear a building down
A gang of men in a busy town
With a ho-heave-ho, and a lusty yell
They swung a beam and the side wall fell

I asked the foreman, "Are these men skilled,
And the men you'd hire if you wanted to build?"
He gave a laugh and said, "No, indeed,
Just common labor is all I need."

"I can easily wreck in a day or two,
What builders have taken years to do."
And I thought to myself, as I went my way
Which of these roles have I tried to play'

James E. Harper, Esq. is the founding member of Harper Selim, PLLC, a civil and commercial litigation firm. James's practice is focused on insurance matters, including coverage and bad faith, and appellate matters. James is president of the CCBA through December 2021.

Am I a builder who works with care
Measuring life by rule and square?
Am I shaping my work to a well-made plan
Patiently doing the best I can'

Or am I a wrecker who walks to town
Content with the labor of tearing down?
"O Lord let my life and my labors be
That which will build for eternity!"

As advocates, it easy to confuse courtesy and civility with weakness and defeat. But we must not wreck when we can build. Just as annual budgeting and accountability aids the CCBA to avoid insolvency and continue to flourish financially, regularly reviewing the qualities and values that we pledged to uphold as members of the association will enable us to avoid morally bankrupting what our predecessors started building in 1934.

We are not common laborers that wreck. We are an association of Clark County lawyers who build. **C**

Marjorie Guymon to Speak on Bankruptcy Nuts & Bolts During Clark County Bar Luncheon on April 22

By Stephanie Abbott

On Thursday, April 22, 2021, Marjorie A. Guymon of Goldsmith & Guymon, PC, will make a special presentation on "Bankruptcy Nuts & Bolts" during the Clark County Bar Luncheon sponsored by Bank of Nevada, Dillon Health, and Prominence Health Plan.

Marjorie Guymon is the managing partner of Goldsmith & Guymon, PC, a boutique law firm in southern Nevada. She has practiced law in the Las Vegas area in excess of 20 years. Marjorie practices primarily in bankruptcy, business law, estate planning, family law, guardianship, probate, and trust administration. Marjorie is licensed in Nevada and Utah, and admitted to practice in both state and federal courts in both jurisdictions. She is also admitted to practice before the 9th Circuit Court of Appeals and the U.S. Supreme Court. Over the years, Marjorie has written articles and made presentations on the topic of bankruptcy for her colleagues.

Marjorie will present "Bankruptcy Nuts & Bolts" for the Clark County Bar during the lunch time event. The presentation will offer 1.0 CLE credit to CCBA members only. Pricing of the event and the CLE is included with the 2021 CCBA membership.

The Clark County Bar Luncheon will be held via video conference. The planned agenda will be as follows:

- Introductions & Bar Business: 12:00 to 12:10 pm
- Speaker CLE Presentation: 12:10 to 1:10 pm
- Questions & Closing: 1:10 to 1:15 pm

This event is for CCBA members only. CCBA membership will be verified upon RSVP. During the event, attendance will be taken and only those members in attendance will have their attendance reported to the NV CLE Board.

For more information and to RSVP for this event, contact Donna Wiessner at Donnaw@clarkcountybar.org, (702) 387-6011.

Luncheon sponsors

Clark County Bar Association

BANK OF NEVADA
A division of Western Alliance Bank. Member FDIC.

DILLON HEALTH

Prominence Health Plan

Stephanie Abbott is the communications manager for the Clark County Bar Association. Stephanie produces the bar's journal Communiqué, website ClarkCountyBar.org, and social media channels.

Your banker should say what they'll do and do what they say.

BANK OF NEVADA®

Not one time, but every time.

It's not about making promises, it's about keeping them.
That's the kind of accountability you'll get from Bank of Nevada.

Bank on Accountability®

Meet Your Local Banking Expert:
Jeffery Miracle
Vice President, Commercial Banking
jmiracle@bankofnevada.com
(702) 252-6127

bankofnevada.com

One of Forbes' Best Banks in America Year After Year

COMMUNIQUÉ

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

Communiqué is published eleven times per year with an issue published monthly except for July by the Clark County Bar Association, P.O. Box 657, Las Vegas, NV 89125-0657. Phone: (702) 387-6011. *Communiqué* is mailed to all paid members of CCBA, with subscriptions available to non-members for $75.00 per year.

Communiqué accepts advertisements from numerous sources and makes no independent investigation or verification of any claim or statement made in the advertisement. All articles, letters, and advertisements contained in this publication represent the views of the authors and do not necessarily reflect the opinions of the Clark County Bar Association. All legal and other issues discussed are not for the purpose of answering specific legal questions. Attorneys and others are strongly advised to independently research all issues.

For more information about our publication's editorial calendar, deadlines, editorial policy, author guidelines, ad rates, ad specifications, and deadlines, contact the publisher at Clark County Bar Association, 717 S. 8th Street, Las Vegas, Nevada, 89101. Phone: (702) 387-6011.

Editorial Calendar

Issue topic
Cover date

Five Things
January 2021

Racial Justice
February 2021

Health Care Law
March 2021

Bankruptcy Law
April 2021

Law Practice Management
May 2021

Ethics*
June/July 2021

Torts
August 2021

Real Estate Law
September 2021

Family Law
October 2021

Estate Planning Law
November 2021

Pro Bono Matters
December 2021

*The June/July issue is published in June. There is no publication released in July. The editorial calendar may change without notice at any time.

CCBA Staff

Donna S. Wiessner
Executive Director

Stephanie Abbott
Communications Manager
Communiqué production

Advertiser Index

Advertisers, sponsors

Bar services

Advertising info

Space is available for select businesses to showcase their professional services and products in an advertisement in upcoming issues of *Communiqué*. Contact: StephanieAbbott@clarkcountybar.org, 702-387-6011.

Communiqué Content

Editors Accepting Proposals for Upcoming Issues

Members of the CCBA are encouraged to contribute articles and other content for publication in *Communiqué*. Content proposals should include the following information:

- Topic and summary paragraph providing the focus and scope for the article (including relevant rules/statutes/procedures, etc.)
- Author(s) name(s), Nevada bar number(s), short biographical statement
- Proposed issue for publication; see *Communiqué* editorial calendar listed on page 8.

Proposals should be submitted to the Editor-in-Chief c/o editor@clarkcountybar.org.

Corrections

Corrections to "Patients v. Profits" Article

The printed edition of the Health Care Law issue of *Communiqué* (Mar. 2021) included an error in the title of the article, "Patients v. Profits: Balancing Competing Interests in Physician Non-compete Agreements" written by Matthew T. Dushoff, Esq. and Bridget Kelly, Esq. The error was limited to the print edition as it was corrected before the online edition was posted at https://clarkcountybar.org/about/member-benefits/communique-2021/communique-march-2021/. The CCBA staff and publications committee regret this error and apologize for any confusion the error may have caused.

Lance Hendron to Present a DUI CLE Program

Criminal defense lawyer Lance J. Hendron, Esq. of Hendron Law Group, LLC will be featured in a CLE program produced by the CCBA's CLE Committee. "Gazed and Confused: Brief Overview of Administrative Procedures & Clues of DUI SFSTs: HGN, WAT, and OLS" will include relevant information for Nevada lawyers regarding the National Highway Traffic Safety Administration, Standardized Field Sobriety Test, Horizontal Gaze Nystagmus Test, Walk and Turn Test, and the One Leg Stand Test.

Lance recorded the program in March with the recording to be made available to order from the CCBA's website this month. CCBA's recorded CLE programs may be streamed from a computer browser or mobile device. For more info, see https://clarkcountybar.org/marketplace/recorded-cle-programs/ or contact Donna at Donnaw@clarkcountybar.org, (702) 387-6011.

CCBA's CLE programming is sponsored by Bank of Nevada and Las Vegas Legal Video.

CCBA Volunteers for The Just One Project Event

The CCBA's Community Service Committee invites bar members to volunteer to distribute groceries to people served by The Just One Project, Nevada's largest food market.

Bar members and their families can pitch in and help during a Pop Up & Give event at Hyde Park Middle School on Saturday, May, 22, 2021, from 7:00 a.m. to 10:00 a.m. Masks are required. Space will be limited. For more info and to RSVP, contact Stephanie at StephanieAbbott@clarkcountybar.org, (702) 387-6011.

CCBA Members Invited to Participate in Suicide Awareness Walk

The CCBA's Community Service Committee invites members of the bar to participate in the suicide awareness walk, Out of the Darkness Las Vegas Experience on Saturday, April 17, 2021.

CCBA has joined a community of people from hundreds of cities across the country in support of the American Foundation for Suicide Prevention's mission to save lives and bring hope to those affected by suicide.

Please help the CCBA reach our fundraising goal by donating to a team member. All donations are 100 percent tax deductible and will help bring AFSP one step closer to achieving their bold goal to reduce the suicide rate 20% by 2025. You can also support us by registering to join our team. Learn more, donate, and join our team at https://afsp.donordrive.com/team/clarkcountybar/.

Thank you!

For more info and to RSVP, contact Stephanie at StephanieAbbott@clarkcountybar.org, (702) 387-6011.

Association Health Plans for Clark County Bar Association

Don't Wait for Your Renewal to Get a Quote!
Rolling enrollment effective now, plans renew October 2021

Clark County Bar Association members with 2 (unrelated) to 50 full-time employees can now offer insurance coverage for their employees and their families with a high-quality, affordable Association Health Plan medical plan from Prominence.

Not an Association member? Enroll at www.clarkcountybar.org

Large Group Benefits for Small Employer Groups

- A range of coinsurance options
- Copays for widely used benefits like PCP visits, specialists and lab services
- Statewide HMO open access
- National Cigna PPO network access

Employers Have Options… and Flexibility

- Choose from six health plan options, including HSA-qualified – see reverse
- Affordable monthly premiums

PARTICIPATING AREAS INCLUDE:

Clark County Nye County

PROMINENCE ASSOCIATION HEALTH PLANS

Our Association Health Plans allow small employers to join as one entity to purchase the type of coverage that is traditionally available to large group employers. This results in less expensive and richer health plan options that can then be passed along to the employee.

PLAN HIGHLIGHTS YOU DON'T WANT TO MISS!

- **Cigna National Network** - Prominence has partnered with Cigna to create a national network for use outside of Nevada for those members enrolled in either a POS or PPO health plan.
- **Teladoc** - 24/7 member care via telephone or video from licensed physicians, psychiatrists, clinical social workers and counselors for a $0 cost share. Note, High Deductible Health Plans are subject to deductible first and benefits will be rendered at the contractual rate based upon type of service.
- **Comprehensive Provider Network** - Includes many notable and board certified physicians throughout the state, offering members excellent access to quality medical services.

Contact your broker or PHP-GroupQuotes@uhsinc.com for more information

Clark County Bar Association

Prominence® Health Plan

Picture Day Scheduled

CCBA members are invited to sit for a professional portrait at this event:

- **What:** CCBA Picture Day
- **When:** Tuesday, April 27, 2021, 9:30 a.m. to 2 p.m. only
- **Where:** Clark County Bar, 717 S. 8th Street, Las Vegas

Special offers

- No sitting fee!
- CCBA members will get a discount on the price to purchase their portrait for personal or business use!

Please

- Dress for success
- Wear a mask inside our office. Remove your mask for your portrait session
- Practice social distancing while in the office
- Set an appointment time (between 9:30 a.m. and 2 p.m.) in advance

For more information or to schedule an appointment, contact StephanieAbbott@clarkcountybar.org.

Opportunity for Nevada Lawyers to Be Placed on List of Eligible Providers of Indigent Defense Services

The Temporary Regulations of the Nevada Board of Indigent Defense Services became effective on March 5, 2021.

The regulations require attorneys that are providing contract or appointed indigent defense services in Nevada's rural counties to apply with the Department of Indigent Defense Services. The Department will review the application to ensure that the attorney's ability, training, and experience match the complexity of the case. Qualified attorneys will be placed on a list of eligible providers that rural counties will use in the creation of their plan for the provision of indigent defense services. The initial plans will be due September 3, 2021. Attorneys are encouraged to apply immediately for inclusion on the list.

If an attorney is interested in being placed on the list of eligible providers, please fill out the web form at https://hal.nv.gov/form/DIDs/Application_with_the_Department_of_Indigent_Defense_Services.

More information can be found at https://dids.nv.gov/.

Eighth Judicial District Court Civil Bench Bar Meeting

Members of the bar who practice before the Eighth Judicial District Court ("EJDC") are invited to attend the Civil Bench Bar Meetings. See below for information on the next meeting.

- When: Tuesday, May 11, 2021, Noon to 1:00 PM
- Where: Online via Zoom
- What: Learn what's happening at the court and discuss any modifications of processes in the civil department.

For more info, send inquiries to EJDCBenchBar@gmail.com.

Eighth Judicial District Court Order Suspends Certain Rules Effective March 1, 2021

On February 24, 2021, Eighth Judicial District Court Judge Linda Marie Bell signed an administrative order in the matter of suspending certain district court rules to conform to the statewide rules of criminal practice. Administrative Order 21-02 becomes effective March 1, 2021. For details, see Administrative Order 21-02.

Eighth Judicial District Court Order Provides Update on Court Response to COVID-19

On March 12, 2021, Eighth Judicial District Court Judge Linda Marie Bell and Nevada Supreme Court Chief Justice James W. Hardesty filed an administrative order in the matter regarding all court operations in response to COVID-19.

Administrative Order 21-03 continues the EJDC's response to the COVID-19 pandemic. For purposes of clarity and to avoid confusion, this order supersedes AO 20-21 through 2013, 20-16, 20-17, 20-22, 20-23, 20-24, and 21-01. Any portions of those orders that remain in effect are included in Order 21-03. AO 20-14 (the process for electronic processing of search warrants) remains in effect. Except where otherwise noted, this order takes effect upon filing. The 29-page order provides direction on a variety of concerns for court operations and procedures. For details, see See Administrative Order 21-03. C

Writing a Hopeful Book About the Courts

By Chief Justice Hardesty

I'd like to begin by offering a sincere, heartfelt thank you to the clients, lawyers, judiciary, and court staff in our community for your patience, dedication, commitment, innovation, and suggestions to the Nevada Appellate Courts in 2020. Against the head winds of the pandemic, you persevered and helped us find ways to continue our service to the citizens of Nevada. Like you, we have operated in a "remote" environment. Nonetheless, we were able to conduct oral arguments in cases where warranted, publish 91 opinions on Nevada law, and reduce our year-end pending cases to 1,442. The total of pending cases (many of which were not yet ready for disposition because they were pending briefing, motion practice, or the settlement program) is the lowest in nearly 35 years.

Brad Paisley once said "Tomorrow is the first blank page of a 365 page book. Write a good one!" I am hopeful for the book we write this year. While challenges and uncertainties lie ahead, the Nevada Appellate Courts are presented with many opportunities for 2021.

First and foremost, it was and remains critical that we secure a priority position for the entire legal community to become vaccinated against this terrible disease. Working closely with the Governor's Office, we were able to secure a prioritization lane for the legal system by January 11, 2021, submitting the names of over 2,100 members of the judiciary and court staff on January 12 and over 9,500 names of members of the legal community and their staff by January 21 to the Bureau Chief of the State Covid-19 Vaccination Program. I trust many of you have secured vaccinations by now, if you have chosen to do so.

While challenges and uncertainties lie ahead, the Nevada Appellate Courts are presented with many opportunities for 2021.

Second, we need to safely open our courts, understand the devastating impact caused by the pandemic on our caseloads, and begin to increase access to jury trials. To this end, we are working closely with the judicial districts to calculate how many cases are pending, the number of cases in need of a jury trial, and the courtrooms and facilities needed to move forward.

Writing *continued on page 16*

Chief Justice Hardesty has been a Justice on the Supreme Court of Nevada since 2005. He previously served as Chief Justice in 2009 and 2015.

Nevada Neutrals

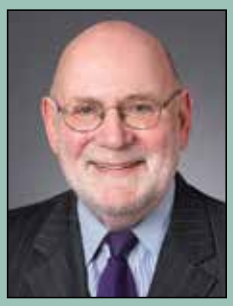
Mediators. Arbitrators. Neutral Evaluators. *Problem Solvers.*

Hon. Stewart L. Bell (Ret.)

Bruce A. Edwards, Esq.

Hon. Mark Gibbons (Ret.)

Kenneth C. Gibbs, Esq.



Hon. Stephen E. Haberfeld (Ret.)

Floyd A. Hale, Esq.

Hon. Carl W. Hoffman (Ret.)

Eleissa Lavelle, Esq.

David S. Lee, Esq.

Hon. Peggy A. Leen (Ret.)

Hon. Philip M. Pro (Ret.)

Hon. David Wall (Ret.)

To schedule an in-person, virtual or hybrid mediation or arbitration, visit jamsadr.com/lasvegas or call 702.457.5267.

Local Solutions. Global Reach.

Writing *continued from page 14*

This review is not limited to cases in which the parties seek jury trials. The backlog of cases applies to all case types including family law, probate, guardianship, juvenile, etc. As of this writing, it is clear that the number of pending cases is daunting. Access to justice has been and continues to be impaired by the number of outstanding cases in our courts. So a plan for all areas will be vital to bring timely justice to those accessing the public judicial system.

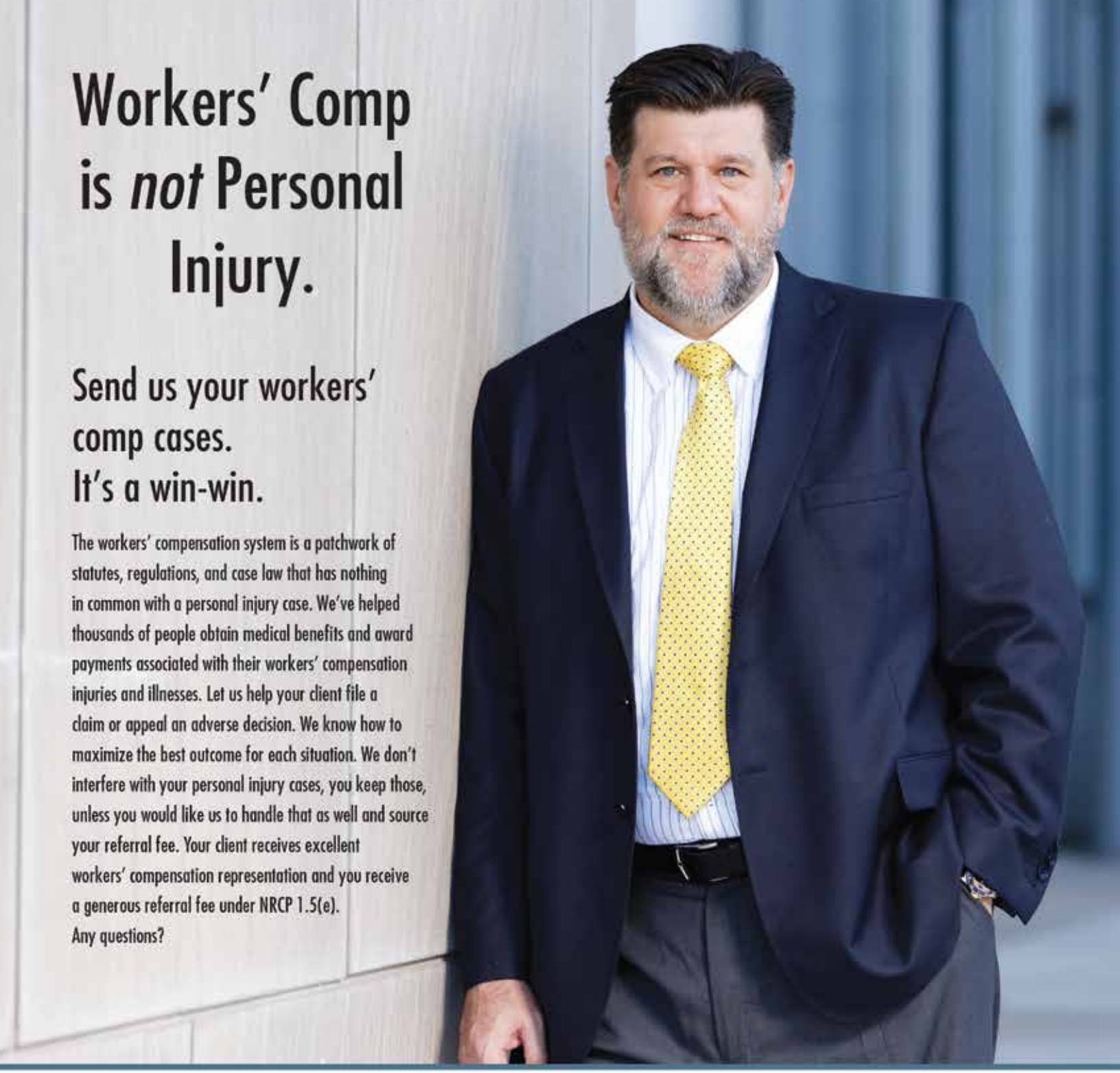
Third, the judiciary needs to develop, adopt, and monitor a strategic plan to advance its mission in the future. Strategic plans focus the judiciary on core values; anticipate the future for the judiciary's accessibility, timeliness, and efficiency; and, set the agenda and action steps to achieve adopted goals and objectives. Although it will require great innovation and dedication, the benefits from planning now for the future ahead cannot be understated. By way of example, the Supreme Court of Nevada is considering a process to study so-called Water Courts in Nevada. As one of the nation's most arid states, it is critical when adjudicating stream and water rights that the judiciary is trained, educated, and prepared to make timely judicial decisions impacting such a vital resource to our state.

We value your opinions and I am confident that, working together, we will write a book for 2021 that will be as productive, imaginative, and historic as the one written for 2020.

There is much, much more on our agenda in the coming months. So, I have an "ask"—your input and suggestions for improvements to your court system. We value your opinions and I am confident that, working together, we will write a book for 2021 that will be as productive, imaginative, and historic as the one written for 2020.

Respectfully, Chief Justice James W. Hardesty

Workers' Comp is *not* Personal Injury.



Send us your workers' comp cases. It's a win-win.

The workers' compensation system is a patchwork of statutes, regulations, and case law that has nothing in common with a personal injury case. We've helped thousands of people obtain medical benefits and award payments associated with their workers' compensation injuries and illnesses. Let us help your client file a claim or appeal an adverse decision. We know how to maximize the best outcome for each situation. We don't interfere with your personal injury cases, you keep those, unless you would like us to handle that as well and source your referral fee. Your client receives excellent workers' compensation representation and you receive a generous referral fee under NRCP 1.5(e).
Any questions?

Workers' Comp Benefits Include:

- Compensation Benefits
- Medical Benefits
- Vocational Rehabilitation Benefits
- Death Benefits
- Police/Firefighter Benefits

JASON D. MILLS

GGRM

(702) 822-4444
2770 S Maryland Pkw, #100
Las Vegas, NV 89109

GGRMLawFirm.com

Newest Addition to Nevada's Bankruptcy Bench Comes Back Home: U.S. Bankruptcy Judge Natalie M. Cox

By Ogonna Brown, Esq.

Judge Natalie M. Cox became an excellent addition to the bench when she took her oath on January 27, 2020, as the newest bankruptcy judge appointed to the United States Bankruptcy Court for the District of Nevada. She exhibits empathy, efficiency, and a practical approach in running her courtroom while presiding over complex bankruptcy cases.

Originally from Kodiak, Alaska, the Judge considers Nevada home, where she lived for 18 years. Prior to her return to Nevada, she spent five years practicing in Delaware and Tennessee in prestigious positions that provided valuable training for her appointment to the bench.

A basketball scholarship led Judge Cox to Austin Peay State University in Clarksville, Tennessee where she played on the Lady Gov's first women's team to appear in the NCAA tournament, as well as the women's softball team. She graduated in 1997 with a Bachelor of Arts degree, summa cum laude. In 2001, Judge Cox earned her juris doctorate, cum laude, as part of the charter class at the University of Nevada, William S. Boyd School of Law.

Judge Cox started her legal career in Las Vegas in 2001 on the other side of the bench where she served in private practice in various forums. In 2001, Judge Cox began her career as a commercial litigation and bankruptcy attorney at what was then, Jolley, Urga, Wirth & Woodbury. As her skills sharpened, she became a partner at Kolesar & Leatham, Chtd., a position she held for seven years.

From June 2015 until she joined the bankruptcy bench, Judge Cox served as a trial attorney in both the Wilmington, Delaware, and Nashville, Tennessee offic-

Ogonna Brown, Esq. is a partner in the Litigation and Bankruptcy practice groups of Lewis Roca. Her practice focuses on creditors' rights, secured party representation, commercial litigation, and bankruptcy litigation.

es of the U.S. Trustee. As Assistant U.S. Trustee in the Nashville office, she supervised the administration of bankruptcy cases and private trustees while promoting the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders, which included debtors, creditors, and the public.

With one year under her belt and with the backdrop of the COVID-19 pandemic, Judge Cox's time on the bench has been very different from what she anticipated. She has yet to hold a hearing in her courtroom. Most of her hearings have been held either telephonically or via Zoom from either her home office or in chambers. She looks forward to the day when she can see the attorneys and parties in person.

With telephonic and Zoom hearings, it is inevitable that the parties will talk over each other or even the judge, and oftentimes counsel will respond out of turn or without recognition from the court. Judge Cox credits the attorneys with being very professional and flexible at those awkward times. Soon, the long pauses and accidentally muted arguments of counsel will hopefully be a thing of the past. Until then, Judge Cox encourages the parties appearing virtually to maintain decorum by presenting in a virtual courtroom, at a virtual podium, and wait for the judge to call on them to keep order in the proceedings.

When asked about developments in bankruptcy and what is trending, Judge Cox explained that the court is preparing for a wave of new bankruptcy filings after the eviction and mortgage moratoriums are lifted. The surge will likely be coupled with an increase in pro se bankruptcy filings. Judge Cox noted that she is currently presiding over three Subchapter 5 cases.

Now that she has had some experience on the bench, Judge Cox says that she has received requests asking her to share her pet peeves. She pointed out that she has been impressed with counsel who have appeared before her and is appreciative of their patience as she gets settled. When pushed to list her pet peeves, Judge Cox reluctantly shared that she is most aggravated when the parties do not follow the local rules, do not support their arguments with admissible evidence and pertinent points and authorities, seek ex parte relief when notice and a hearing are required, and do not provide proposed dates for a request for an expedited hearing. Judge Cox's advice is to put yourself in the shoes of the judge and consider the facts and law the judge needs to consider for ruling in your favor.

Without hesitation, Judge Cox revealed that what she enjoys the most about being a judge is the intellectual side of the bench, unraveling the hard cases, and researching interesting issues. She is looking forward to penning an opinion to offer guidance to practitioners. Judge Cox remarked that she has been assigned interesting cases; many involve multifaceted areas of the law, such as property law, multiple bankruptcy proceedings, and divorce proceedings--it is like living a law school exam every day. Bankruptcy cases have the best facts!

Judge Cox recounts a number of mentors in her career, namely former Nevada Bankruptcy Judge Bruce A. Markell, her previous law school professor, and attorney William Urga. Her gratitude includes the other Nevada judges who also have graciously mentored her as well as a fellow Alaskan, Chief Judge Gary Spraker.

While Judge Cox has not yet had a formal investiture, the Nevada bankruptcy practitioners have welcomed her and look forward to an in-person investiture to extend a sincere welcome home to Judge Cox.

When a Superior Force Meets an Immovable Object

By Connor H. Shea, Esq.

By now, it is evident that the effects of COVID-19 will continue to impact businesses in unforeseeable ways for the foreseeable future. As a result, some businesses may be forced to raise equitable defenses against alleged breaches, including raising defenses rooted in force majeure concepts. Second-level consequences of the global pandemic will also force countless businesses to file for bankruptcy protection. While "unprecedented" may be the most overused word of the pandemic era, until recently, the interplay of force majeure concepts and the Bankruptcy Code was just that—unprecedented.

I. COVID-19 bankruptcies

The onset of the COVID-19 pandemic was accompanied by concomitant health concerns, government mandates, and volatile financial markets that continue to affect all sides of nearly every business relationship. In 2020, commercial Chapter 11 bankruptcy filings reached their highest levels in recent memory. Although government stimulus funds remain available in certain circumstances, the depletion of these funds may lead to more defaults and bankruptcy filings. Pandemic-related defaults and bankruptcies forced businesses, legal professionals, and bankruptcy courts to contemplate novel issues that seemed unimaginable only a short while ago.

II. Force majeure collides with bankruptcy

By way of example, distressed companies are invoking force majeure clauses as they seek to excuse alleged defaults of the obligations imposed under their commercial agreements. As many readers may recall from first-year contracts class in law school, force majeure (French for "superior force") is a concept often contained in commercial contracts that seeks to shift the responsibility in a contract for an unforeseen event that might occur in the future, thereby relieving one party of responsibility under the contract. Critically, however, the concept of force majeure is not codified in the Bankruptcy Code. With bankruptcy filings on the rise, an increasing number of business leads and practitioners are left to ponder how bankruptcy courts approach force majeure issues when raised in the bankruptcy context.

In a matter of first impression, one court recently analyzed whether governmental orders and/or the financial consequences of the pandemic support the suspension of rental payment obligations. *See In re Hitz*

Connor H. Shea, Esq., is an attorney at Brownstein Hyatt Farber Schreck, LLP where he represents a wide array of clients in complex commercial litigation and bankruptcy matters. Mr. Shea serves as the secretary of the Bankruptcy Law Section of the State Bar of Nevada. He may be contacted at cshea@bhfs.com.

Restaurant Group, 616 B.R. 374 (Bankr. N.D. Ill. 2020). In *Hitz*, a landlord sought to enforce Hitz Restaurant Group's (the "Debtor") obligation to pay post-petition rent under Section 365(d)(3) of the Bankruptcy Code, which requires a debtor to timely perform obligations under a lease of nonresidential real property that arise after commencement of the bankruptcy case. *Id*. at 376. The Debtor, on the other hand, argued that the force majeure clause in the parties' lease agreement excused its performance when the governor of Illinois issued an order prohibiting in-restaurant dining (although take-out service was permitted). *Id*. The United States Bankruptcy Court for the Northern District of Illinois concluded that the force majeure clause excused at least a portion of the rental payments due to the landlord. *Id*. at 379. As a result, the court abated the Debtor's rent obligation in proportion to its reduced ability to generate revenue due to the governmental order. *Id*.

While the *Hitz* opinion relieved a Chapter 11 debtor from timely paying post-petition rent, force majeure litigation is fact-specific—requiring courts to interpret each unique force majeure clause, the circumstances that allegedly triggered the clause, and the scope of the specific force majeure clause at issue, among numerous other considerations. Moreover, while *Hitz* involved a lease provision's impact on post-petition rent suspensions, it remains to be seen whether other courts will follow the same legal principles in determining force majeure disputes in other commercial contexts.

III. Conclusion

As government stimulus efforts taper off and the lasting commercial effects of the pandemic become clearer, this year may be marred by contractual defaults and increased bankruptcy filings. Defaulting and/or insolvent businesses have sought relief from various sources as of late, including invoking force majeure defenses and declaring bankruptcy. Even though the Bankruptcy Code expressly protects landlords' interests by requiring debtors to timely pay post-petition rent, at least one court granted partial debt relief to a debtor based on principles of force majeure. Only time will tell in which ways the concepts of force majeure and bankruptcy litigation may collide next.

The Great Bankruptcy Flood of 2021: A Surge or the Start of a Steady Stream?

By Nedda Ghandi, Esq.

Many bankruptcy practitioners are predicting that the COVID-19-blasted economy will bring in a tidal wave of bankruptcy filings in 2021. While 2020 saw a surge in Chapter 11 filings for larger companies in energy, retail, and consumer services, individual bankruptcies and total bankruptcy filings trailed the 2019 figures. While COVID-19 has caused some businesses and individuals to turn to bankruptcy in order to keep their creditors at bay, many others have delayed filing as they wait to see how deep the holes that they are in will continue to get. Many individuals and businesses have been able to take advantage of pandemic relief options made available through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) such as stimulus checks, pandemic unemployment benefits, as well as the ability to defer mortgage and student loan payments, and eviction moratoriums. Throughout 2020, we have repeatedly advised clients to hold on for as long as they can in light of the uncertainty regarding how long this pandemic will go on and to preserve exempt assets in the interim.

There are at least two schools of thought about what 2021 and future years hold in regard to the anticipated increase in bankruptcy filings. On one hand, some predict that there will be a bankruptcy surge in 2021 that will yield record level filings shortly after the end of the moratoriums on evictions and the forbearances on mortgages conclude. On the other hand, there is an equally significant group that predicts a moderate and gradual increase in bankruptcies over the next two to four years. Either way, there is little debate that the flood is coming. Those practicing bankruptcy have certainly seen sharp and short-term increases in filings in the past, notably the historical peak in bankruptcy filings in 2005 just prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act. While it may seem possible that the COVID-wrought economy could bring about another peak that may match or exceed the 2005 annual total of nearly 2.1 million filings, most would

There are at least two schools of thought about what 2021 and future years hold in regard to the anticipated increase in bankruptcy filings.

Nedda Ghandi, Esq. is an attorney with Ghandi Deeter Blackham Law Office. Nedda's primary practice area involves bankruptcy for both individual and business debtors.

agree that the current trends suggest that this "peak" is more likely to be a steady build and high, sustained plateau.

That said, it is predicted that the future increase will be notably different in one significant aspect – the client. Specifically, the clients are projected to be responsible people who had steady jobs and paid bills reliably until COVID-19 cast them into unemployment or reduced income. The pandemic and associated shutdowns have gone well beyond what most families plan for in savings and financial planning. As stimulus checks, unemployment assistance, student loan deference, moratoriums on evictions, and other temporary financial reliefs expire, the likelihood of increased Chapter 7 or Chapter 13 filings for individuals is expected to soar.

Small business owners are feeling the pressure as well. Restaurants and retailers closed for months by government mandates—and now only able to serve limited numbers of customers due to social distancing requirements thereby significantly reducing the business' margins—have been especially hard hit. More and more small businesses will realize that they simply cannot carry on in this restrictive COVID world and they will have to close. If restrictions remain in place and people continue to limit their consumer spending, these businesses may not have an option and will eventually seek bankruptcy counsel. Those small businesses lucky enough to receive PPP loans may seek either traditional Chapter 11 or Subchapter V reorganizations after PPP loans expire and some businesses cannot fulfill the conditions needed to obtain loan forgiveness.

2020 was an unusual year for bankruptcy filings, which can be directly attributed to the effects of the pandemic and the federal and state governments' stimulus response. As aid runs out, those holding off on bankruptcy decisions will soon start running out of options. Clients should be encouraged to meet with reputable bankruptcy counsel sooner rather than later so that they can plan properly for how to escape the hole created by this pandemic. **C**

Small Business Reorganization Act Provides a Smoother Path to Chapter 11 Reorganization

By Candace Carlyon, Esq.

On February 19, 2020, small businesses became eligible to file a streamlined chapter 11 bankruptcy under the newly enacted "Subchapter V." The Small Business Reorganization Act ("SBRE") arose from Congressional recognition of both the importance and vulnerability of America's small businesses.

> Small businesses—typically family-owned businesses, startups, and other entrepreneurial ventures—"form the backbone of the American economy." By their very nature, however, the longevity of these businesses is limited. According to the Small Business Administration Office of Advocacy, approximately ***20 percent of small businesses do not survive the first year, but by the five-year mark only 50 percent are still in business and by the ten-year mark only one-third survive***. Notwithstanding the 2005 Amendments, small business chapter 11 cases continue to encounter difficulty in successfully reorganizing...the legislation allows these debtors "to file bankruptcy in a timely, cost-effective manner, and hopefully allows them to remain in business" which "not only benefits the owners, but employees, suppliers, customers, and others who rely on that business."

In re Ventura, 2020 WL 1867898 (Bankr. E.D.N.Y. Apr. 10, 2020) (quoting the Unofficial Transcript of Oversight of Bankruptcy Law and Legislative Proposals: Hearing Before the Subcomm. on Antitrust, Commercial, & Admin. Law of the H. Comm. on the Judiciary, 116th Cong. 27 (2019)) (Emphasis Added). The risks faced by such businesses, which employ over 47 percent of the U.S. workforce, increased exponentially with the spread of COVID-19 just weeks after the enactment of the SBRE.

In response, Congress widened the path to eligibility for Subchapter V relief, currently available to individuals or entities who meet the following qualifications:

- Engaged in commercial business activities.
- Aggregate liquidated (sum certain) noncontingent (liability is not contingent on some future event, such as guaranty where guarantied obligation is not in default) debt of no more than

Candace Carlyon, Esq. has been a certified Commercial Bankruptcy Specialist since 1994, has been recognized in Best Lawyers in America since 1996, and has held an A-V rating since 1989.

$7,500,000 owed to non-affiliates/insiders (this increased liability amount is due to sunset March 27, 2021 unless extended again).

- $7,500,000 applies to total of affiliated entities.
- At least half of the debt must be related to commercial or business activities.

However, if the business is comprised only of owning and/or operating a single real property or project (known as "single asset real estate" and defined in Bankruptcy Code section 101(51B)), or if the business or its affiliates are SEC reporting entities, Subchapter V relief is not available.

Information is provided to creditors in the form of the schedules of assets and liabilities and statement of financial affairs required in all bankruptcies. In addition, the debtor attaches to the petition copies of its most recent balance sheet, cash flow statement, and tax return. A monthly operating report must be filed, but it is a highly abbreviated form of the report required in traditional Chapter 11 cases. Like other cases, the SBRE debtor appears at a meeting of creditors and answers questions.

Oversight is provided by a Subchapter V trustee, who does not (absent misconduct or other cause) take possession of assets. Instead, the trustee acts as a resource to assist the debtor and the creditors in formulating a consensual plan and reviews the financial and operating information provided by the debtor. The bankruptcy court also schedules status hearings (with a status report to be filed by the debtor) in order to monitor the progression of a small business case.

A Subchapter V is similar to a Chapter 13 for individuals with regular income. The debtor is required to devote three years of net operating income to plan payments, and creditors must receive no less than they would if the company were liquidated. While a plan is required, the basics of the plan are presented by completing official form 425A. Unlike traditional Chapter 11 cases, no disclosure statement is required to be prepared and approved by the court for circulation in connection with voting on the plan. Instead, the plan attaches a liquidation analysis and a cash flow projection.

Many of the confirmation requirements of Chapter 11 apply to Subchapter V plans. The plan separates obli-

Small business *continued on page 26*

Recorded CLE Program

Streamlined Bankruptcy Option for Small Business

Speakers:
Candace Carlyon, Esq. and Dawn Cica, Esq.
Carlyon Cica Chtd.

This program addresses the recent changes in law and procedure for small business bankruptcies. Includes discussion of the SMALL BUSINESS REORGANIZATION ACT OF 2019, CARES Act, eligibility, filing requirements, and more.

Take this course to learn about:

- Small business challenges
- CARES ACT
- Eligibility
- Business debt
- Can you convert an existing case
- Subchapter V
- Filing requirements
- Trustee with limited function
- Plan-secured creditors
- Plan remedies

Offers:

1.0 General CLE Credit

Order now at www.clarkcountybar.org or call (702) 387-6011.

Small business *continued from page 25*

gations into classes, makes payments to professionals, taxes, secured claims (limited to the amount due of the value of the collateral, whichever is less, with interest at the fair market rate, often prime plus one to two percent plus one to two percent), payments needed to cure leases or other contracts, with the balance (if any) divided among unsecured creditors. However, SBRE includes provisions which increase the ability to confirm a plan. First, the plan can be confirmed even if all classes vote no on the plan. Second, the ownership in the company may be retained even if unsecured creditors vote no on the plan, and no payment (or "new value") is required. Third, in a Subchapter V, the attorneys' fees and other expenses of the bankruptcy may be paid over time through the plan, whereas in a standard Chapter 11 matter those expenses must be paid when the plan becomes effective. In a Subchapter V case, no official committee of unsecured creditors is appointed. Creditor committees are the source of a large portion of the costs of a normal Chapter 11 since the Bankruptcy Code allows the committee to have its own counsel and financial advisors, and requires payments of those fees by the debtor. Another advantage of Subchapter V is that no fees have to be paid to the Office of the United States Trustee. U.S. Trustee fees in a traditional Chapter 11 range from $250 to $250,000 per quarter based on the distributions made by the debtor.

The Consolidated Appropriations Act of 2021 also extends certain benefits to bankruptcy debtors. The Act makes individuals in bankruptcy eligible for CARES Act assistance and opens the door to PPP funding eligibility for small businesses in bankruptcy. (Such eligibility will require SBA regulations, which have not yet been enacted.) The Act also gives small business debtors up to 120 days to cure lease defaults, and up to 210 days to decide whether to retain or reject leases. Landlords who accept late payments from insolvent tenants are also afforded protection from having to repay those amounts if the tenant subsequently files for bankruptcy protection.

The SBRE was one year old on February 18, 2021. Statistics gathered during that period indicate that 1,675 cases took advantage of the act, almost a quarter of the Chapter 11 filings during that year. **C**

Corporate Bankruptcies: Understanding your Fiduciary Duty as a Director

By Augusta Massey, Esq.

Globally, businesses have been impacted by the novel coronavirus (COVID-19) pandemic. Some businesses have been disrupted or disappeared altogether, while others are hanging on for dear life. In these precarious times, directors and officers are placed in the unenviable position of managing financially troubled corporations. The corporation's financial "temperature" will determine the fiduciary duty of a director and so it is important to pay attention to the numbers. A director must know when a corporation is approaching insolvency, also known as the "zone of insolvency," versus when the corporation is insolvent.

1. A director's fiduciary duty is to the shareholders when a corporation is approaching insolvency.

It is well established law, that a director's fiduciary duty is to the shareholders of the corporation. A director must manage a solvent corporation for the benefit of the shareholders. As a corporation approaches the zone of insolvency, the director's fiduciary duty does not change. In the seminal case of *North American Catholic Educational Programming v. Gheewalla*, 930 A.2d 92 (Del. Supr. 2007), the Supreme Court of Delaware stated that a director's fiduciary duty does not shift from the shareholders to the creditors when a corporation is approaching insolvency. The Court noted that directors must continue to operate a corporation according to their business judgment in the best interest of the corporation and for the benefit of the shareholders. The Court observed that when a corporation is solvent, or in the "vicinity" of insolvency, only shareholders have the standing to bring derivative actions on behalf of the corporation, not creditors.

2. A director's fiduciary duty is to the residual claimants when a corporation is insolvent.

When a corporation is insolvent, as determined by cash flow or the balance sheet, a director's fiduciary duty shifts from the shareholders to the residual claimants. The residual claimants of an insolvent corporation include both the creditors and the shareholders. At this juncture, a director must still make decisions in the best interests of the corporation but must now consider the interests of the creditors as well as the shareholders. In *Gheewalla*, the Supreme Court of Delaware stated that once a corporation is insolvent, creditors can bring derivative action claims against a director

Corporate *continued on page 28*

Augusta Massey, Esq. is the Managing Partner of Massey & Associates Law Firm, PLLC and serves as the President of the Las Vegas Chapter of the National Bar Association.

Corporate *continued from page 27*

for breach of fiduciary duty. This does not mean that a director needs to immediately shut down an insolvent corporation or start marshalling assets for dispersal to creditors – although in some instances, this may be the best option – but rather, that directors must exercise their best business judgment given the circumstances.

It may not always be clear whether a corporation is insolvent or not. Courts have not developed a bright-line test, but rather, they generally rely on one of three tests: the cash flow test, the small capital test, and/or the balance sheet test. Since there is no bright-line test, directors of corporations must closely monitor their company's finances to determine if a business is approaching insolvency or is insolvent. When making decisions, directors should always use their best judgment and take into account their fiduciary duties to the shareholders versus their fiduciary duty to residual claimants (shareholders and creditors). A creditor can only file a derivative claim against a director or officer post-insolvency. Keeping these associated risks in mind, it is imperative that directors or officers of corporations facing financial troubles immediately seek the counsel of an experienced bankruptcy attorney to guide them through these murky waters. **C**

Bar Services

Speaking Opportunities Available

The CCBA's CLE Committee seeks Nevada lawyers to volunteer to develop and/or present CLE programming for the benefit of the CCBA at events to be produced and marketed by the CCBA. The CCBA is an Accredited Provider with the Nevada Board of Continuing Legal Education.

Interested CCBA members are encourage to contact Donna Wiessner at donnaw@clarkcountybar.org, (702) 387-6011.

Recorded CLE Program

Practical Pre-Trial and Trial Tips

Speaker:
Phillip S. Aurbach, Esq.
Marquis Aurbach Coffing

Transitioning from law student to lawyer is no easy task. This presentation focuses on practical issues unique to civil trial attorneys including when to stand up, when to sit down, when to shut up, how to argue without notes, putting pictures in pleadings, how to deal with opposing counsel and many more.

Take this course to learn about:

- Taking new client calls
- Effective ways to listen
- What to do with the facts
- Drafting the complaint/lawsuit
- Legal writing, e.g., motions and briefs
- Courtroom trial tips

Offers:

1.0 General CLE Credit

Order now at www.clarkcountybar.org or call (702) 387-6011.

Student Loan Review: A Brief Analysis of Two Recent Student Loan Litigation Cases

By John Schneringer, Esq.

The Second Circuit first articulated the test for "undue hardship" more than two decades ago in *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395 (2d Cir. 1987). Since that time, *Brunner* and the so-called Undue Hardship Test have been viewed as the only game in town regarding whether a student loan obligation was dischargeable in bankruptcy. However, there have been significant changes in both the Undue Hardship Test and the general legal regime regarding student loan debt that should inform the decision making of those seeking to discharge any student loan debt.

Undue hardship

Brunner and the Undue Hardship Test have become synonymous with harsh results and the notion that student loans are non-dischargeable to all but the most destitute student loan borrower. However, as discussed in the recent case *In re Rosenberg*, courts have shown a willingness to find the *Brunner* test has been applied in an unduly punitive way. 610 B.R. 454, 456 (Bankr. S.D.N.Y. 2020). In *Rosenberg*, the Debtor, Kevin Rosenberg, took out $116,000 in student loans which had subsequently grown to $221,000. Despite graduating from law school and being physically and mentally fit, Mr. Rosenberg never practiced law. The financial information he provided to the bankruptcy court showed that he was perpetually underwater in terms of his income versus his expenses. The court further found that, despite his financial troubles, Mr. Rosenberg had made sincere, good faith efforts to try to repay his student loans at various points. Bankruptcy Judge Cecilia Morris concluded that Mr. Rosenberg met the "undue hardship" standard and, therefore, was entitled to a bankruptcy discharge of his student loans. The judge specifically rejected the rigidity of the undue hardship standards established by prior courts, writing that this particular court would not "participate in perpetuating these myths" that it is impossible to discharge student debt in bankruptcy. *Rosenberg*, 610 B.R. 454, 459.

Eligibility of student loans

Outside of the Undue Hardship Test, there has been a growing trend of courts finding that private student loans fail to fall under the aegis of Section 523(a)(8) of the Bankruptcy Code. This trend is encapsulated in the recent Tenth Circuit case of *In re McDaniel*. No. 18-1445 (10th Cir. Aug. 31, 2020). While *McDaniel* is the most recent circuit court case to tackle this analysis, it is not the first. *See In re Crocker*, 941 F.3d 206 (5th Cir. 2019), as revised (Oct. 22, 2019).

In *McDaniel*, the Tenth Circuit tackled whether private educational loans are subject to discharge.

Student loan *continued on page 30*

John Schneringer, Esq. is an associate attorney at Goldsmith & Guymon, P.C. He practices in a variety of fields, including Bankruptcy, Estate Planning, and Trust and Estate Litigation.

Student loan *continued from page 29*

The Tenth Circuit emphasized that exceptions to discharge should be interpreted narrowly in favor of the debtor. The Tenth Circuit focused on use of the terms "educational loan" versus "obligation to repay funds received as an educational benefit" and concluded that these clearly mean separate things. The term "educational benefit" is more akin to the other terms in section 523(a)(8)(A)(ii) (scholarship and stipend) which "signify granting, not borrowing." In the Court's view, normal speakers of English use the term "benefits" in the context of things such as health benefits, unemployment benefits, or retirement benefits to imply a payment, gift, or service, not something that needs to be repaid. If section (A)(ii) included repaying private student loans as an "educational benefit," section (A)(i) would be redundant and contrary to the canon against surplusage. The Court concluded that "an obligation to repay funds received as an educational benefit" signifies a conditional grant of funding for education, akin to a stipend and scholarship, as opposed to a loan of funds for education. In other words, "[s]ubsection (A)(ii) was designed to except from discharge grants of money that are tied to service obligations – a category wholly distinct from loans." Therefore, the student loans were discharged as part of the McDaniels' bankruptcy case.

In layman's terms, the *McDaniels* case stands for the proposition that a private student loan that was funded directly to the student and could be used for any collateral expense incurred relative to obtaining an education should be treated as a typical loan in bankruptcy and not afforded the protections typically available to student loan debt.

Predictions

Attacking the eligibility of private student loans has become a popular trend in student loan litigation. The recent successes at the circuit court level will likely bolster this trend. Further, attacking the underlying eligibility of the student loan avoids the difficult and embarrassing analysis found in the Undue Hardship Test. In this author's opinion, attacking the underlying eligibility of a private student loans will continue to grow in popularity due to the recent circuit court successes.

A Memorable Pro Bono Engagement

By Michele LoBello, Esq.

Working with at-risk children who feel more secure and empowered by your help is rewarding. Legal Aid Center of Southern Nevada's ("LACSN") Children's Attorneys Project is an important resource for these kids, and every licensed attorney should take a CAP case. The "child's team" benefits from involvement of CAP attorneys and the children achieve finality much sooner. Importantly, each child benefits from knowing "You are *my* lawyer."

A most cherished CAP client is CK, who was eight when I met him. He and his siblings were removed from his mother's custody when he was just three years old. By the time I became his attorney, CK's father had relinquished parental rights and his mother had made little effort toward reunification. It was clear a priority needed to be ensuring CK maintained a relationship with his older siblings, since they were not placed together. I was able to work with the siblings' CAP attorneys so visitation was not a problem.

CK was a sweet, but slightly rambunctious, little boy with a multitude of mental health and educational special needs. During the three years I was CK's attorney, I visited him in four separate foster homes. The lack of stability was hard on CK. When I had the serious conversations with him, I could see he was sad and confused, notwithstanding his usual outward presentation of "I'm just fine, let's play!"

In 2019, DFS found a perfect match for CK. His foster father, DD, wanted to adopt. DD was an educator, active in his church and community, and had the resources to give CK the attention and structure he needed. The placement was such a good fit, the adoption process was seamless. CK was beaming with pride when he told me he was going to stay with his father, DD, *forever*. When I last saw CK, they were planning a trip to DD's home town so CK could meet his new extended family. CK was beside himself with anticipation, as this would be his first airplane ride. Watching this little boy find stability and healthy self-esteem was truly a high point in my legal career.

Michele LoBello is a partner in the law firm Jones & LoBello and has practiced family law for the past 26 years.

Office Space

Downtown Las Vegas Office Space Available Immediately. LawBank offers shared office space that caters to solo practitioners and small law firms in a plug and play environment. With business development opportunities that speak right to your bottom-line, our downtown Las Vegas office boasts parking options, three conference rooms, and a variety of furnished offices that are move-in ready. LawBank also encourages networking, cross-selling, and upselling among occupants. Schedule a tour at our Fourth Street location today by calling (725) 222-0025 or visit: https://law-bank.com/locations/lawbank-las-vegas/.

Services

JUDGMENTS & DEBTS COLLECTED: Experienced Collection Attorney-Nevada & California. Referral Fees Paid per NRPC 1.5. Joel Selik, NV Bar #402, 702-243-1930, Joel@SelikLaw.com.

LEGAL MALPRACTICE & ETHICS referrals of legal malpractice cases. Co-counsel California and Nevada. Joel Selik, NV Bar #402, 702-243-1930, Joel@SelikLaw.com.

Clark County Bar Association
717 S Eighth St
Las Vegas NV 89101

Please join us for this event!

CLARK COUNTY BAR LUNCHEON

Thursday, April 22, 2021 • 12:00-1:15 PM
Online via Zoom • For CCBA Members only

Featuring:

Marjorie A. Guymon, Esq.

Managing Partner
Goldsmith & Guymon, PC

CLE Presentation:

Bankruptcy Nuts & Bolts

Attend this event to earn
1.0 CLE credit

For more info, see page 6.

Sponsors

Clark County Bar Association

BANK OF NEVADA. A division of Western Alliance Bank, Member FDIC.

DILLON HEALTH

Prominence Health Plan

Follow CCBA: @clarkcountybar @ccbanv @ccbanv 702-387-6011