

**NINETEENTH ANNUAL
NORTHEAST SURETY AND FIDELITY
CLAIMS CONFERENCE**

SEPTEMBER 18th and 19th, 2008

**BANKRUPTCY 101: THE DEBTOR'S BANKRUPTCY CASE
- AN OVERVIEW**

PRESENTED BY:

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PROGRAM OUTLINE

Thursday Morning, September 18, 2008

I. BANKRUPTCY 101: THE DEBTOR'S BANKRUPTCY CASE - WHY INDIVIDUALS AND ENTITIES FILE BANKRUPTCY CASES.

- A. Breathing Space and Time.
 - 1. The automatic stay (section 362).
 - 2. The possible stay of actions against co-debtors [section 105 (power of the court to issue certain injunctions) and section 1301(chapter 13 stay of action against a co-debtor in an individual's bankruptcy case)].
- B. Sharing of the Distribution of the Debtor's Property.
 - 1. The property of the debtor's estate (section 541 and, in a chapter 13, section 1306).
 - 2. The collection and liquidation of the debtor's property.
 - a. Schedules (section 521).
 - b. Exemptions (section 522).
 - c. The trustee's powers [turnover (sections 542 and 543); rights as lien creditor (section 544); lien avoidance (section 545); preferences (section 547); fraudulent transfers (section 548); postpetition transactions (section 549); and setoffs (section 553)].
 - 3. The distribution of the property of the debtor's estate.
 - a. Chapter 7 (section 726).
 - b. Chapter 11 [pursuant to a confirmed plan of reorganization (see sections 1121-1129) and post-confirmation actions (see sections 1141-1143)].
 - c. Chapter 13 [pursuant to a confirmed plan (see sections 1321 - 1330)].

- C. Forgiveness of Debt (the “Fresh Start” Discharge).
 - 1. Exemptions (section 522).
 - a. Assets and amounts.
 - b. Objections (timing and grounds).
 - 2. Effect of Discharge (section 524).
 - a. Chapter 7 discharge (section 727).
 - b. Chapter 11 discharge (the effect of plan confirmation of section 1141).
 - c. Chapter 13 discharge (section 1328).
 - 3. Discharge Issues (see Section III. C.).
 - a. Denial of discharge [section 727(a)].
 - b. Non-dischargeable debts (the exceptions to discharge of section 523).

II. BANKRUPTCY 101 (CONTINUED): THE BEGINNING OF THE DEBTOR’S BANKRUPTCY CASE.

- A. The Filing.
 - 1. Voluntary case (section 301).
 - 2. Involuntary case (section 303).
 - a. Reasons and strategy.
 - b. Issues and pitfalls.
- B. The Automatic Stay (section 362).
- C. The Filing of a Creditor’s Notice of Appearance and Request for Papers.
 - 1. Rule - when and how (Rule 2002).
 - 2. Reasons - why.

- D. The Rights, Powers and Duties of the Debtor.
 - 1. Chapter 7 (no rights or powers, only duties under section 521).
 - 2. Chapter 11 (sections 1107 and 1108).
 - 3. Chapter 13 (sections 1303 and 1304).

- E. The Trustee.
 - 1. Generally.
 - a. Eligibility to serve as the trustee (section 321).
 - b. Qualification of the trustee (section 322).
 - c. Role and capacity of the trustee (section 323).
 - d. Compensation of the trustee (section 326).
 - e. Employment (section 327) and compensation (section 328) of professional persons.
 - 2. Chapter 7.
 - a. Appointment - interim trustee (section 701).
 - b. Election of trustee (section 702).
 - c. Duties of the trustee (section 704).
 - 3. Chapter 11 - appointment of a trustee or examiner (section 1004) and their duties (section 1106).
 - 4. Chapter 13 (section 1302).

- F. Creditor's Committees.
 - 1. Establishment, powers and duties.
 - a. Chapter 7 (section 705).
 - b. Chapter 11 (sections 1102 and 1003).
 - 2. The role of the surety or fidelity carrier.

III. THE COMMON ISSUES FOR THE SURETY AND THE FIDELITY INSURER.

A. *Avoid Getting Caught in a Web: Obtaining Information From the Debtor.*

1. Maria del Carmen Ramos, Shumaker, Loop & Kendrick, LLP, Tampa, Florida.
2. Constantine Toscidis, Bond Claim Counsel, The Westfield Group, Westfield Center, Ohio.

B. *The Surety's Proof of Claim - Obtaining Reimbursement for the Loss.*

1. George J. Bachrach, Whiteford, Taylor & Preston, LLP, Baltimore, Maryland.
2. Frank M. Lanak, Senior Vice President of Claims, HCC Surety Group, Los Angeles, California.

C. *The Fight Over Discharge and Dischargeability - Why it Matters.*

1. Karen L. Gilman, Wolff & Samson, PC, West Orange, New Jersey.
2. Bruce L. Corriveau, Regional Claim Officer, Travelers Bond & Financial Products, Hunt Valley, Maryland.