



# The Cramdown

Newsletter for the Tampa Bay Bankruptcy Bar Association

Editor-in-Chief, Daniel R. Fogarty  
Stichter, Riedel, Blain, Postler, P.A.  
dfogarty@srbp.com

Spring 2025



## PRESIDENT'S MESSAGE

by Nicole Noel  
Kass Shuler, P.A.

Dear Colleagues,

In preparing for another issue of *The Cramdown*, I was feeling a bit nostalgic and was perusing our website when I ran across Judge McEwen's Fall 2002 *Cramdown* article titled "*Founding Fathers' Vision Met, Exceeded.*" The article details the early days of the Tampa Bay Bankruptcy Bar Association and the local practitioners who founded it.<sup>1</sup> You can find this on the history tab of our website.<sup>2</sup> While the entire article is quote worthy, it is the last line on which I want to focus: "Better yet, in addition to thanking them, let them know you appreciate their spadework by volunteering to become an active participant in one or more of our committees."

The TBBBA has eight committees, and one special committee, all of which provide valuable services to our membership and the community. I am highlighting a few below with the hope that our members will consider volunteering for a committee or lending your skills at our Pro Se Assistance Clinic.

**CLE Programs:** The CLE Committee is responsible for planning and presenting continuing legal education programs throughout the year for the benefit of our members. There are many opportunities for members to participate in this committee, including developing program ideas, acting as a chair or co-chair for a particular program, participating in a program as a speaker or panel member and even working behind the scenes to support one or more programs. Both presenters and attendees can earn CLE credits for these programs.

**Consumer CLE:** The TBBBA Consumer CLEs are usually presented on the first Tuesday of every month from September through May (excluding December) during lunch hour. Topics focus on issues affecting consumer debtor and creditor attorneys and are presented by bankruptcy judges and practitioners. Anyone is welcome. There is no cost to attend but registration is required. If you can earn CLE for no charge while you are eating your lunch, well, there is not a better deal in town!

**Community Service/Pro Se Assistance Clinic:** The Community Service/Pro Se Assistance Clinic Committee coordinates staffing and operates the [Pro Se Assistance Clinic](#). TBBBA encourages all members to get involved in Pro Bono! There are many ways to give back - find the one that is a good fit for you.

**CARE Program:** Credit Abuse Resistance Education (CARE) provides opportunities for volunteers to address middle school, high school and college age students about the best practices and pitfalls regarding their credit in an attempt to start them off on the right path.

**Cramdown:** *The Cramdown* is a Quarterly publication designed to be informative and useful for the TBBBA membership. It is intended to be a fusion of scholarly articles, fun facts, pictures and announcements. Articles are solicited from volunteers including Judges, lawyers, the Clerk's Office, and United States Trustee's Office.

Your time and expertise can make a difference! Over the years, we have achieved significant milestones together. Expanding educational programs, hosting insightful CLE events, enhancing our advocacy efforts, and fostering stronger member connections should make the entire TBBBA community proud. These accomplishments would not have been possible without your support, participation, and dedication.

<sup>1</sup> Leonard Gilbert, Don Stichter, Harley Riedel, Doug McClurg, Bill Zewadski, Bob Glenn, and Dick Prosser.

<sup>2</sup> [www.tbba.com/history/](http://www.tbba.com/history/)

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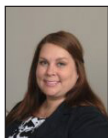
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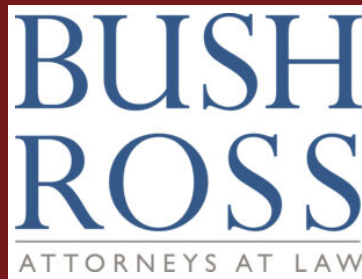
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# Upcoming Dates

For more information, including dates, details, and registration, visit the TBBBA's website at <https://www.tbbba.com/calendar/#!calendar> or click [here](#).

## April Consumer Lunch

Chapter 13 Pitfalls: Potential Problems for Yourself & Your Client:

April 1, 2025

Consumer Brown Bag Lunch Webinar, Presented by Chapter 13 Trustee Kelly Remick

Registration is free, via Zoom. Registration available through the TBBBA Website.

## April CLE Luncheon

ESI Discovery Issues

April 8, 2025

CLE Luncheon, presented by Mike Friedman, Taylor Petrie, Brad Drewett, and Josh Branthorn

University Club of Tampa: Networking starting at 11:45 am, presentation starting at 12:00 pm

Please join us on April 8, 2025, for our April CLE lunch, as Mike Friedman, Taylor Petrie, Brad Drewett, and Josh Branthorn provide a thoughtful presentation on ESI Discovery Issues. The management of electronically stored information (ESI) in bankruptcy cases presents a significant challenge to insolvency professionals. Slim budgets and short deadlines require strategies and technologies to allow practitioners to review stockpiles of information quickly, accurately, and efficiently. This presentation will review the legal framework that practitioners must be mindful of when engaged in discovery involving ESI, and will identify modern practices and technologies that can make dealing with ESI more manageable and cost effective.

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The Cramdown is published two to four times a year.  
Advertising rates are as follows:

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## Upcoming Dates, cont.

**April 11, 2025**, 2025 HON. PAUL M. GLENN Memorial Golf Tournament, Rocky Point Golf Course

### May Consumer Lunch

Consumer Lunch presented by Judge Caryl E. Delano

“Everything You Ever Wanted to Know about Exhibits but Were Afraid to Ask!”

May 5, 2025 at 12:00 p.m. Sam M. Gibbons United States Courthouse’s 5th Floor Training Room

**Special Note – this Consumer Lunch will be presented LIVE and with food – attorneys and staff members are specially encouraged to attend**

### May CLE Luncheon

MEDIATION: The GOOD, The BAD and The VERY UGLY

May 13, 2025

CLE Luncheon Presented by Roy Kobert, Mediator and Judge Jason Burgess (Jacksonville)

University Club of Tampa: Networking starting at 11:45 am, presentation starting at 12:00 pm

### Annual TBBBA Clay Shoot

May 16, 205 (Tentative Date, subject to change)

### Annual Installation and Awards Dinner

June 4, 2025 at Palma Ceia Golf and Country Club

Cocktails starting at 6:00 p.m.

The TBBBA offers a variety of CLE programs, including monthly consumer brown bag luncheons presented by Zoom, and monthly luncheons at the University Club of Tampa, 201 N. Franklin Street, #3800 in downtown Tampa. For the monthly luncheons, open networking starts at 11:45 a.m. and the presentations themselves start at 12:00 noon and generally end around 1:15 p.m. Please save the date for the upcoming events and you can see the calendar and register for events at <https://www.tbbba.com/calendar/#!calendar>:



## Annual Holiday Party

The TBBBA held its annual holiday party at Spain Restaurant on December 12, 2024. The Cramdown appreciates those who showed their holiday spirit.



## USTP Updates Section 341 Meeting of Creditors Webpage

The U.S. Trustee Program (USTP) has revamped its Section 341 Meeting of Creditors webpage and released a series of videos to help consumer debtors and their attorneys navigate the § 341 meeting of creditors, a required step in every bankruptcy case. The meeting is conducted by the case trustee — almost always virtually, by Zoom videoconference — to question the debtor under oath about the debtor's bankruptcy paperwork. The trustee may also ask about the debtor's property, debts, income and expenses. Creditors may join the meeting and ask questions, too. [Visit the USTP's new Section 341 Meeting of Creditors webpage for more information.](#)

## Multiple Congratulations to Dana!

Dana Robbins-Boehner was elevated to partner at Burr & Forman effective January 1, 2025, where she is a member of the firm's Creditors' Rights & Bankruptcy practice group, where she represents a diverse array of clients, including banking institutions, municipalities, real estate developers, title insurance groups, and retail shopping centers in commercial bankruptcy cases.

Dana was also named to the *American Bankruptcy Institute's* (ABI) "40 Under 40" emerging leaders in insolvency practice. The national list recognizes individuals selected by a panel of seasoned insolvency professionals who exemplify exceptional skill, leadership, and achievements in the bankruptcy and insolvency field through their professional successes and contributions. The honorees were celebrated at a special ceremony on December 13, 2024, during ABI's Winter Leadership Conference. Dana joins a number of other TBBBA Members who have been honored as part of that list, and was joined on this year's list by Jodi Dubose of Stichter Riedel Blain & Postler, P.A. (Pensacola, Fla.)

## Congratulations to Stephanie Lieb on her induction as a Fellow of the American College of Bankruptcy.

Stephanie will be inducted as a Fellow of the American College of Bankruptcy during its Annual Meeting in March 2025 as a member of the prestigious organization's 36th class.

The American College of Bankruptcy is an honorary public service association of insolvency professionals invited to join based on a proven record of the highest standards of expertise, leadership, integrity, professionalism, scholarship, and service to the insolvency practice and to their communities.

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# Problems in the Code

BY MICHAEL C. MARKHAM

## Removal of the Subchapter V DIP: A Road to Nowhere?



**Michael C. Markham**  
Johnson, Pope, Bokor,  
Ruppel & Burns, LLP  
Tampa, Fla.

Michael Markham  
is a partner with  
Johnson, Pope,  
Bokor, Ruppel  
& Burns, LLP in  
Tampa, Fla., and is a  
subchapter V trustee  
in the Middle District  
of Florida.

Section 1183 of the Bankruptcy Code, enacted through the Small Business Reorganization Act of 2019 (SBRA), sets forth the duties of a subchapter V trustee, in part by referencing §§ 704(a) and 1106(a). In every subchapter V case, the trustee shall perform the following duties: (1) be accountable for all property received;<sup>1</sup> (2) examine proofs of claim and object, if appropriate;<sup>2</sup> (3) oppose the discharge, if appropriate;<sup>3</sup> (4) furnish information as requested;<sup>4</sup> (5) make a final report;<sup>5</sup> (6) appear and be heard in the case;<sup>6</sup> (7) ensure that the debtor commences plan payments;<sup>7</sup> and (8) facilitate the development of a consensual plan.<sup>8</sup>

In certain cases, if ordered by the court “for cause,” the trustee shall also (1) investigate the debtor’s acts, conduct, assets, liabilities and financial condition;<sup>9</sup> (2) file a statement of any investigation;<sup>10</sup> and (3) file post-confirmation reports.<sup>11</sup> If the subchapter V trustee’s powers are expanded to include an investigation of the debtor, such investigation includes “any other matter relevant to the case or to the formulation of a plan.”<sup>12</sup>

### The Subchapter V Trustee Cannot File a Plan

Notwithstanding this provision expressly relating to the formulation of a plan, as set forth

herein, the Code does not permit the subchapter V trustee to file a plan. If the debtor ceases to be a debtor in possession (DIP) as a result of an order under § 1185 of the Bankruptcy Code, the subchapter V trustee is granted the following additional duties: (1) if operating a business, file certain periodic reports;<sup>13</sup> (2) provide notice relating to a claim for a domestic-support obligation;<sup>14</sup> (3) serve as administrator under an Employee Retirement Income Security Act plan;<sup>15</sup> (4) transfer patients of a health care business;<sup>16</sup> (5) file schedules;<sup>17</sup> (6) file tax returns;<sup>18</sup> and (7) operate the debtor’s business.<sup>19</sup>

Significantly, the Code never grants the subchapter V trustee the duty (or authority) to collect and reduce to money property of the estate under § 704(a)(1), or to file a plan under § 1106(a)(5).<sup>20</sup> In addition, § 1189(a) clearly states that “only the debtor may file a plan under this subchapter.”<sup>21</sup> As currently drafted, the Code is clear: The subchapter V trustee may never file a plan.

Accordingly, even if the debtor is removed as a DIP “for cause” pursuant to § 1185, and the subchapter V trustee is authorized to investigate matters relevant to plan formulation and operate the debtor’s business under § 1183(b)(5)(B), the subchapter V trustee cannot file, or confirm, a plan — the preferred resolution of a subchapter V

1 11 U.S.C. § 704(a)(2).

2 11 U.S.C. § 704(a)(5).

3 11 U.S.C. § 704(a)(6).

4 11 U.S.C. § 704(a)(7).

5 11 U.S.C. § 704(a)(9).

6 11 U.S.C. § 1183(b)(3).

7 11 U.S.C. § 1183(b)(4).

8 11 U.S.C. § 1183(b)(7).

9 11 U.S.C. § 1106(a)(3).

10 11 U.S.C. § 1106(a)(4).

11 11 U.S.C. § 1106(a)(7).

12 11 U.S.C. § 1106(a)(3).

13 11 U.S.C. § 704(a)(8).

14 11 U.S.C. § 704(a)(10) via 11 U.S.C. § 1106(a)(1).

15 11 U.S.C. § 704(a)(11) via 11 U.S.C. § 1106(a)(1).

16 11 U.S.C. § 704(a)(12) via 11 U.S.C. § 1106(a)(1).

17 11 U.S.C. § 1106(a)(2).

18 11 U.S.C. § 1106(a)(6).

19 11 U.S.C. § 1183(b)(5)(B).

20 See *In re Body Transit Inc.*, 613 B.R. 400 (Bankr. E.D. Pa. 2020) (noting that § 1106(a)(5) does not apply to subchapter V trustees).

21 See *In re Online King LLC*, 629 B.R. 340 (Bankr. E.D.N.Y. 2021) (subchapter V trustee is not permitted to file plan); *In re Coepris Equity Fund LLC*, 2024 WL 1155450 (9th Cir. 2024) (only debtor may file subchapter V plan); *In re Young*, 2021 WL 1191621 (Bankr. D.N.M. 2021) (same).

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case.<sup>22</sup> This invites the following question: Who better to file a plan in a chapter 11 case than the person who is operating the business?

Instead, the subchapter V trustee and bankruptcy court are left with a proverbial “road to nowhere,” with the only remaining choices being dismissal or conversion of the case to chapter 7.<sup>23</sup> In a case where the DIP’s removal is warranted, conversion to chapter 7 is ultimately the only viable option, as dismissal would essentially place the debtor back into possession. While a chapter 7 liquidation can solve some problems, the expeditious liquidation of a small business will not preserve jobs and goodwill.

This is a problem in subchapter V, as many of those cases need a confirmed plan to be truly successful. As a subchapter V trustee, there have been cases where I wished that I had the right to file a plan, or at least request the court for the authority to do so. In regular chapter 11 cases, the debtor’s exclusive right to file a plan can be terminated in appropriate circumstances,<sup>24</sup> and the threat of that happening increases the likelihood of a confirmed, consensual plan.

Curiously and in comparison, although the subchapter V trustee is never expressly granted the power to collect and reduce to money property of the estate under § 704(a)(1), subchapter V trustees with expanded powers often collect and reduce property of the estate to money through the sale or liquidation of assets. At least one reported decision has held that the subchapter V trustee may move for relief under § 363(b) of the Bankruptcy Code, which governs the sale or use of property of the estate outside the ordinary course of business.<sup>25</sup> As subchapter V trustee, I have sold property under § 363 in some cases.<sup>26</sup>

## A Possible Solution

How can this “road to nowhere” in the Code be solved so that the subchapter V trustee can file a plan? The most direct solution would be to amend § 1183(b)(5)(A) to expressly include the right to file a plan under “paragraph 5 of section 1106(a) of this title.” In addition, § 1189(a) — limiting the authority to file a plan to only the debtor — would need to be amended to state “except when the debtor ceases to be a [DIP].” With these legislative amendments, a subchapter V trustee who is substituted for the DIP could file a plan in appropriate cases.

Alternatively, § 1183(b) could be amended to expressly include the subchapter V trustee’s right to file a plan under § 1106(a)(5) of the Bankruptcy Code “if the court, for cause and on request of a party-in-interest, the trustee,” or the

U.S. Trustee expands the subchapter V trustee’s powers, or in essence terminates exclusivity in the trustee’s favor. This alternative solution would permit the subchapter V trustee to file a plan, perhaps a competing plan, while the debtor was still in possession. It seems that a competing plan dynamic would create leverage that could help lead to a global consensual plan that would also include the debtor’s consent.

## Conclusion

It is a fact that the subchapter V trustee has a statutory responsibility to participate in the plan process. If the subchapter V trustee’s participation cannot result in the formulation of a consensual plan, then the bankruptcy court should have the power to authorize the subchapter V trustee to file a plan. If the bankruptcy court had such discretionary power, the likelihood of a confirmed plan would be increased.

This is directly consistent with subchapter V’s primary goal. There is no clear policy reason why the subchapter V trustee should be prohibited from filing a plan. The subchapter V trustee is there to assist the parties in reaching consensus, but if the trustee cannot do that, the next-best result is plan confirmation.

As a subchapter V trustee, I certainly understand that the trustee is not generally adversarial with the debtor, but under appropriate circumstances, the subchapter V trustee is permitted, and perhaps encouraged, to become adversarial, (*e.g.*, to file a motion to remove the DIP). A request for authority to file a plan is a less-adversarial move than a motion for removal of the DIP, and it would improve the process. **abi**

**Editor’s Note:** ABI’s Subchapter V Task Force released its Final Report and recommendations to Congress in April 2024, which is accessible at [subvtaskforce.abi.org](https://subvtaskforce.abi.org).

*Reprinted with permission from the ABI Journal, Vol. XLIII, No. 10, October 2024.*

<sup>22</sup> The stated SBRA’s legislative purpose was to provide a fast track for small businesses to confirm a consensual plan with the assistance of a subchapter V trustee. See *Handbook for Small Business Chapter 11 Subchapter V Trustees*, Chapter 1 (February 2020).

<sup>23</sup> However, at least one court has solved the problem by revoking the debtor’s designation under subchapter V and appointing a chapter 11 trustee. See *In re Nat’l Small Bus. Alliance Inc.*, 642 B.R. 345 (Bankr. D.D.C. 2022). But see *In re Free Speech Sys. LLC*, 649 B.R. 729 (Bankr. S.D. Tex. 2023) (questioning bankruptcy court’s authority to revoke designation).

<sup>24</sup> 11 U.S.C. § 1121(c).

<sup>25</sup> *In re Roe*, 2024 WL 206678 at \*1 (Bankr. D. Ore. 2024) (“The Subchapter V Trustee is a trustee under the Bankruptcy Code and may move for relief under section 363(b).”). In *Roe*, the bankruptcy court held that the power to use or sell property was not “exclusive” to the debtor suggesting that a subchapter V trustee could sell property of the estate even without having expanded powers. But see *In re Turkey Leg Hut & Co. LLC*, 2024 WL 2797455 (Bank. S.D. Tex. 2024) (holding as matter of first impression that subchapter V trustee lacks standing to seek injunctive relief in debtor’s favor).

<sup>26</sup> See *In re H2O Inv. Props. LLC*, Case No. 2:23-bk-00373-FMD, Doc. No. 176 (Bankr. M.D. Fla. April 30, 2024).



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**2024**



**The 49th Annual Alexander L. Paskay Memorial Bankruptcy Seminar**, a memorial CLE program honoring the lifetime achievements of the late Bankruptcy Judge Alexander L. Paskay, was presented on February 27-28. Put on by The American Bankruptcy Institute and the Stetson University College of Law, this year's Judicial Co-Chairs, the Honorable Caryl E. Delano and the Honorable Corali Lopez-Castro, along with Program Chair Luis E. Rivera of GrayRobinson and the Advisory Board, put together a great program of speakers and panelists with programs appealing to both business and consumer issues, featuring prominent regional and national speakers and bankruptcy judges. Among the topics covered were: evidence issues, practices post-Purdue Pharma, generative AI in marketing and ethics, tips from trustees, and a judicial roundtable discussion with an unmistakable and topical theme (complete with costuming).





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**W**ow! The landscape surrounding federal student loans could not be more confusing and uncertain. Every day something new is announced or something else is halted and we don't know exactly what that means.

As I'm writing this, the Department of Education ("ED") announced a \$25,000 buyout option to most of its employees a few days ago which expires at midnight tonight. Talk is rampant about dismantling ED.

Student loan borrowers should be counseled to plan for worst case scenarios. Anyone with pending forgiveness opportunities should not plan on making it through those goalposts. That includes anyone with pending IDR Recount time toward forgiveness, anyone in forbearance pending the SAVE outcome, anyone in ICR or PAYE awaiting forgiveness, anyone awaiting buyback of PSLF time, or trying a double consolidation to avoid a high ICR payment. In other words, have a Plan B if Plan A doesn't work out as planned.

While we are not seeing forgiveness already granted being reversed, clawbacks under discontinued program interpretations are not entirely off the table. There may be serious reliance defenses available though for those who consolidated or took action to obtain benefits that may be removed down the road. I am hopeful that those in existing programs will be grandfathered in even though substantial limits may be placed on loan forgiveness going forward for new applicants or borrowers.

## **The big questions are what is still working at the Department of Education and what might we expect going forward?**

The Secretary of Education is required by the Higher Education Act to do certain things. Those things will continue – at least until a new law is passed. Things that are 'laws' will likely continue in some fashion where mere 'rules', 'interpretation' or 'guidance' likely will not continue as-is.

Regulatory action by ED over the past few years to create new areas of forgiveness or expansion to existing congressional action will almost certainly be rolled back. That is likely to include double consolidation, elimination of post-discharge income monitoring under the Total and

Permanent Disability discharge program, elimination of the buy-back provisions under the PSLF etc.

Of course, this may present more opportunities in bankruptcy to show an undue hardship and obtain a court order of discharge that could withstand political shifts.

What is a "law"? The Income Based Repayment plan ("IBR") was congressionally passed and signed into law in 2009. Nothing in the present judicial injunctions over SAVE and various regulations stops IBR implementation or forgiveness.

Public Service Loan Forgiveness ("PSLF") is also a law. Both IBR and PSLF are expected to continue. Yet, IBR and PSLF may look very different going forward and it can be problematic getting forgiveness under either at the moment due to the online systems being halted, employee turnover, servicer misdirection etc. Some expansion of these programs through agency decisions may be rolled back – we are already seeing that with the buyback provisions of PSLF no longer functioning, the SAVE injunction and now PAYE and ICR injunctions.

While PLSF is a law, its purpose was to encourage government service – something not valued by a Trump administration attempting to downsize the federal government. We particularly don't know what to expect going forward for PSLF.

Functions performed by ED will likely be moved to other federal or even state agencies, or discontinued altogether. This will cause ED's work to be diminished but ED is not expected to be disbanded entirely as it relates to student loans.

IBR paper applications appear to be eligible for processing, although we are hearing mixed results. Even if there is a delay in processing an IBR application, at least the app would be in the queue. It is possible that a borrower may be told that IDRs are not being processed right now and they will be given the options of a Standard or Extended payment. A borrower would be left with forbearance options, perhaps a Borrower Defense to Repayment

The Dept. of Ed.'s regulatory actions, including forgiveness expansions, are likely to be rolled back, affecting programs like PSLF and IBR, although discharge guidance remains in place for now.

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## Student Loan Sidebar

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application forbearance, bankruptcy or other means to avoid an eventual default in 270 days if the Standard or Extended payment is too much.

**What has been halted?** Too much to name here, but the biggies are: the IDR recount, SAVE, processing of all IDR plans which includes recertification of income, TPD and many new regulations scheduled to go into effect July 1, 2024. We do not believe we will see any Borrower Defense approvals even possibly for those post-class Sweet v. Cardona plaintiffs. Post-class members have three years for adjudication, not necessarily approval.

I believe double consolidation for those with Parent Plus loans remains in doubt. Section 685.209(c)(5)(iii) was implemented by ED in July 2023 to provide that a Direct Consolidation loan made on or after July 1, 2025, that repaid a Parent Plus loan or repaid a consolidation loan that paid off a Parent Plus loan is not eligible for

any IDR plan except ICR. I believe this created a “safe harbor” for anyone to avoid the more expensive ICR payment and a way to get into one of the other IDR plans such as SAVE, PAYE or IBR. However, Congress specially provided that those with Parent Plus loans would only be eligible for ICR, and not any of the less expensive income driven plans. As an expansive agency action, we believe that anyone trying to use the double consolidation loophole and not already in an Income Driven Plan, and even those in a plan other than ICR may have their forgiveness options removed.

Bottom line, I would not want to wait around to see what the SAVE litigation will allow. I would try to get into IBR and hope that by keeping my head down, remaining in IBR that I would eventually obtain the forgiveness that IBR allows. There may of course be other options as well, but it is pretty clear that remaining in a SAVE forbearance is likely not a good long term solution.

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## Student Loan Sidebar

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**How does ED make sense going forward?** It needs to make money for the country. Certain programs may cease to exist. Parent Plus loans for instance look very profitable on paper with its higher interest rates. But its high rate of default makes it unprofitable. I would not be surprised if Parent Plus go away entirely.

ED is presently the largest bank in the United States. It is ill equipped for that unintended role. Perhaps privatizing student loans, while capping the interest rates and limiting bankruptcy discharge opportunities to only those with an undue hardship, will save the government money but still allow for reasonably priced adequate education funding.

Expansion of various Income Driven Plans through ICR, PAYE, REPAYE and SAVE is already being rolled back. Other government agency rules are expected to hit the chopping block shortly. Hopefully those who needed the benefits provided by ED obtained them over the past few years.





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Mike Dal Lago, Esq.  
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Jennifer Duffy, Esq.

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Simplification of the entire system has been needed for years. Perhaps something as simple as a national interest rate of 3%, non-compounding, would go a long way toward eliminating high balances while avoiding the politically charged forgiveness environment.

### **Discharging student loans via a bankruptcy adversary.**

This policy change effective November 22, 2022 was not an amendment to a statute or rule, but merely the Department of Justice's and ED's guidelines for interpreting "undue hardship" found at 11 U.S.C. Section 523(a)(8) for purposes of discharge. It specifically reads "it is not intended to and does not create any rights, substantive, or procedural, enforceable at law by any party in any manner." See Footnote 22 of the Guidance. Normally, I would expect for such Guidance to be rolled back, but as of a couple days ago, following a brief pause, the DOJ and ED are back in the game to review the attestation forms for partial or full discharge.

### **The Total and Permanent Disability Program is supposedly restarting in March 2025.**

A new TPD application is now available on studentaid.gov reflecting the 2023 regulatory changes. Importantly, it states that loan amounts discharged due to TPD are not considered taxable income by the IRS for federal tax purposes. Now rather than using Nelnet as its TPD servicer, the TPD applications should be sent directly to ED at TPD Servicing, P.O. Box 300010, Greenville TX 75403. Hopefully, this program will survive and only the recent expansions to the types of physicians who can certify a disability and the removal of the income monitoring post discharge will be rolled back.

Hang in there, student debt relief is still available, but it will likely take much more effort to find the best path forward!

*The information provided in this Sidebar does not, and is not intended to, constitute legal advice. For a 1-on-1 consultation, please email [info@christiearkovich.com](mailto:info@christiearkovich.com) or call (813) 258-2808.*

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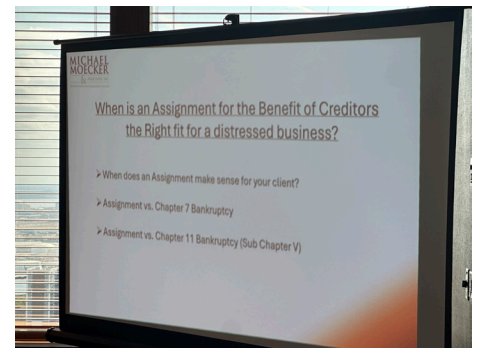
On **December 3, 2024**, Judge McEwen presented the Consumer Brown Bag lunch webinar entitled *Ex-ot-i-ca ig-'zä-ti-kə* : things excitingly different or unusual.

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On **December 9, 2024**, the TBBBA and the Tampa Bay Chapter of the Federal Bar Association hosted a joint CLE by Zoom. Featuring the friendly title *“Bankruptcy is not so Wicked: Demystifying Bankruptcy Practice for Federal Practitioners”* the event was moderated by Chief United States Bankruptcy Judge Caryl E. Delano, and featured a panel of Judge Grace E. Robson, Judge Tiffany Geyer, Judge Lori V. Vaughan, Judge Jacob A. Brown, Judge Jason A. Burgess. The event included a discussion of major issues that impact your federal practice, including the recent U.S. Supreme Court decision in Purdue Pharma, automatic stay, sanction violations, receiverships, turnover of property of the estate, preclusive doctrines, and how to get out of bankruptcy court.

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At the monthly CLE luncheon held on **December 10, 2024** at the University Club in Tampa, Mark Healy (Moecker & Associates), Matthew Hale (Stichter, Riedel) and Michael Shirinian (Moecker & Associates), moderated by Phil Birkhold (Moecker & Associates), spoke on *Navigating Assignments and Auctions in Florida: Best Practices for Attorneys and Asset Managers*. The panel brought together industry leaders to explore the intricacies of asset management, assignments and the auction process. Among the topics were what makes a good Assignment for the Benefit of Creditors (ABC) case (from both the assignor and assignee viewpoint), types of ABCs, monetizing an ABC, and the closing of an ABC case.

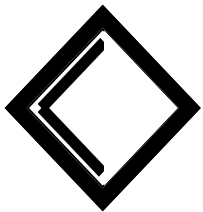




In a presentation entitled *Class Actions within Bankruptcies*, Al Gomez, Lynn Sherman and Nicole Noel discussed class actions in bankruptcy and the unique challenges and opportunities for creditors and debtors at the January CLE luncheon on **January 7, 2025**. These cases often involve balancing the collective interests of a class with the individualized considerations of bankruptcy law. Topics included determining the standing of class members, certifying classes within bankruptcy proceedings, and addressing the tension between bankruptcy's equitable distribution principles and class action remedies. This CLE provided practitioners with practical insights into litigating and resolving class claims in bankruptcy, analyzing case law trends, and exploring strategies for efficiently managing these multifaceted disputes.



The TBBBA's monthly consumer luncheon on **January 14, 2025** featured "Prosecution and Defense of Nondischargeability Proceedings under 11 U.S.C. § 523(a)" presented by Judge Roberta A. Colton.



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## TBBBA CLE Recaps *cont.*

The TBBBA's monthly consumer luncheon on **February 4, 2025** featured *"What to expect when the CH 7 Trustee is selling your real estate, Trustee Pet Peeves, and more!"* presented by Chapter 7 Trustees Christine L. Herendeen, Esq. and Richard Michael Dauval, Esq., featuring dos and don'ts from the chapter 7 trustee perspective.

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On **February 11, 2025**, the TBBBA's monthly CLE luncheon featured Chief Judge Delano's State of the District address to the Tampa bankruptcy bar. The presentation addressed the current makeup and activities of the bench, similarly the Clerk's office and court employees, important rule and form amendments, national and local filing statistics, pro bono recognition and more (including some breaking news).



On **March 4, 2025**, the Consumer Brown Bag Lunch Webinar, entitled "5 tips for a successful sale, from the vantage point of a title agent" was presented by Daniel Etlinger, Esq. of Underwood Murray, P.A. Dan presented five tips to help make a real estate sale through a bankruptcy case a success, looking at caselaw and other best practices.



## Case Blurbs

To begin, some decisions from the Eleventh Circuit Court of Appeals.

Engaging in business doesn't require a for-profit model. *In re Ellingsworth Residential Cmty. Ass'n, Inc.*, 125 F.4th 1365 (11th Cir. Jan. 13, 2025). Affirming a Judge Jenneman decision, in a matter of first impression, the Eleventh Circuit Court of Appeals held, among other things, that a not-for-profit corporation can be eligible to be a debtor under subchapter V of Chapter 11. To qualify for subchapter V, a debtor must be "engaged in commercial or business activities" but the statute does not include a requirement to pursue a profit. Because the debtor, an HOA, engaged in business-like operations on behalf of its members, it was eligible.

Contract right or Commercial Tort Claims? *Sunz Ins. Co. v. Internal Revenue Service (In re Payroll Mgmt., Inc.)*, 125 F.4th 1035 (11th Cir. Jan. 8, 2025). Is a mass tort claim for a business (here, a BP Horizon suit for purely economic damages) a commercial tort claim or a contract right, for purposes of Article 9 of the Florida UCC, where the debtor signed a settlement agreement waiving rights to sue and agreeing to participate in the claims review and resolution process? Because the contractual obligation to pay only applied once the review process was finished, the proper amount determined and payable, and a separate release signed, the court held that the claim remained a commercial tort claim at the time the IRS filed its tax lien. Because the existing secured creditor did not have a security agreement that specifically identified the commercial tort claim, the IRS had priority.

Judicial Immunity can step in where Barton may fall short. *Juravin v. Fla. Bankr. Tr.*, No. 22-11356, 2024 WL 4677417 (11th Cir. Nov. 5, 2024). A debtor failed to cooperate with a chapter 7 trustee, and the bankruptcy court entered a "Break

Order" allowing the trustee, his counsel, and the United States Marshals Service to enter the residence of the debtor and his non-debtor spouse to collect or photograph information and assets related to the bankruptcy estate. The non-debtor spouse sued, asserting that her personal documents and effects were seized improperly. The district court dismissed under the *Barton* doctrine. The Eleventh Circuit Court of Appeals affirmed, but for a different reason. First, the court found that the district court erred, because the plaintiff alleged around *Barton* through the "ultra vires" exception to the doctrine. But, the court affirmed the dismissal of the complaint, because the defendants had judicial immunity for actions with the scope of their court-authorized positions. Because the Break Order allowed them to take the actions they did, the trustee's team could not be sued.

Next, a lesson in preserving claims in the face of a chapter 11 confirmation.

*In re Daly*, 666 B.R. 810 (Bankr. S.D. Fla. Jan. 9, 2025) (Grossman, J.). An interesting read with a complicated

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# 2025 HON. PAUL M. GLENN MEMORIAL GOLF TOURNAMENT

Tampa Bay Bankruptcy Bar Association

**NOTE – New location and time**

**WHEN:** Friday, April 11, 2025  
8:00 a.m. check-in/breakfast  
**9:00 a.m. shotgun start**

**WHERE:** **Rocky Point Golf Course** 4151 Dana Shores Drive  
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procedural posture, with good lessons for practitioners about preserving or reserving rights for claims in a chapter 11 case. In essence, a creditor violated the discharge injunction in not dismissing pre-petition litigation where, notwithstanding reservations in connection with confirmation, a subchapter V chapter 11 plan was confirmed consensually. Even though the action was stayed pending appeal, the discharge injunction “requires more than just maintaining the status quo.” The court thus required that certain claims against the debtor be dismissed, but without prejudice.

Two homestead cases.

*In re Reyes*, No. 6:24-BK-03725-GER, 2025 WL 883013 (Bankr. M.D. Fla. Feb. 20, 2025) (Robson, J.). The debtor was a Venezuelan national who applied for asylum in 2017, resided in property for three years, and claimed as exempt homestead. The Trustee objected because the debtor did not hold a green card or reside at the property with a family member who had more permanent resident status. Looking to immigration law for the definition of “permanent” the court held that the debtor’s status of permanent residency under color of law (PRUCOL) was sufficient to allow for the requisite intent to “permanently reside in the property” for the homestead exemption.

*In re Scarberry*, No. 8:24-BK-03958-RCT, 2025 WL 262763 (Bankr. M.D. Fla. Jan. 21, 2025) (Colton, J.). The debtors, along with their adult children, resided on a 25 acre parcel outside a municipality. The property had a barn, land for farm animals, and an office building, which the debtors’ adult children used for their companies. Citing a number of Florida state court decisions, the court concluded that the partial business use of a homestead located outside a municipality did not disqualify the property from the homestead protection. In so ruling, the court followed a decision from Judge Williamson, and declined to follow a decision from the Southern District of Florida Bankruptcy Court.

And, a hanging paragraph case.

*In re Grass*, No. 8:24-BK-02036-RCT, 2025 WL 300798 (Bankr. M.D. Fla. Jan. 21, 2025) (Colton, J.). The debtor took out a car loan less than a year before the chapter 13 bankruptcy filing, and claimed that the motor vehicle was purchased for a non-personal use. The hanging paragraph of § 1325(a) provides that § 506 does not apply to claim secured by a purchase money security interest under certain circumstances. Those circumstances are “the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle ... acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing. Parsing through the statute that clear suffers from a lack of romanettes, Judge Colton joined Judge McEwen and adopted the minority view in interpreting the hanging paragraph to apply both to (i) motor vehicle[s] ... *acquired for the personal use of the debtor*, and (ii) “any other thing of value” including motor vehicles that are not acquired for a debtor's personal use.





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# Pro Bono Corner

## *Thank You* Volunteers

### November

Peter Zooberg  
Katelyn Vinson  
Amy Mayer  
Kristina Feher

### January

Katelyn Vinson  
Alma Torres  
Megan Klotz  
Peter Zooberg

### December

Peter Zooberg  
Alma Torres  
Katelyn Vinson  
Amy Mayer  
Dan Etlinger

### February

Peter Zooberg  
Katelyn Vinson  
Scott Stichter  
Alma Torres

### TBBBA Pro Se Assistance Clinic

The TBBBA's Pro Se Assistance Clinic is always in need of volunteers. We can't do it without you. The Clinic relies on volunteers to staff the hours every Wednesday between 2:00 pm and 4:00 pm.

The TBBBA offers an in-person Pro Se Assistance clinic in the 9th Floor Resource Room every Wednesday from 2:00 pm to 4:00 pm. Timeslots are available in one-hour increments, one at 2:00 p.m. and one at 3:00 p.m.

Available slots are posted and available here. Just click on the button to sign up. Please send any questions to Kristina Feher at [KFeher@FeherLaw.com](mailto:KFeher@FeherLaw.com). Thank you!

### CARE Corner

Credit Abuse Resistance Education (CARE) provides opportunities for volunteers to address middle school, high school and college age kids about the best practices and pitfalls regarding their credit in an attempt to start them off on the right path. It was created in 2002 by John C. Ninfo, II, retired bankruptcy judge, and now boasts approximately 55 nationwide chapters including 5 in Florida. The Tampa chapter in particular was launched in 2007 by Rodney May, retired bankruptcy judge, who has passed the torch to Judges Catherine Peek McEwen and Michael Hooi. If you have a connection with a school or youth organization who could benefit from a presentation (free and approximately 1 hour long), or, you would like to volunteer as a presenter please contact our Tampa Bay Bankruptcy Bar Association's Matthew Hale. You can also visit the chapter's website [here](#).

### Legal Assistance Program

The Middle District Bankruptcy Court has created a Legal Assistance Program for low income debtors and is requesting that members of the bankruptcy bar volunteer to be assigned cases under the program. The goal is for a sufficient number of attorneys to volunteer so that each attorney is assigned to a case every 3 or 4 years.

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The scope of representation is limited only to the following cases:

- Adversary proceedings relating to the debtor’s entitlement to a discharge and/or the non-dischargeability of a debt.
- Contested matters concerning the debtor’s claim to a homestead exemption and subsections 522(o)-(q) of the Bankruptcy Code.
- Representation of spouses and former spouses of debtors in connection with the dischargeability of obligations under marital settlement agreements or judgments for the dissolution of marriage.



**Middle District Virtual Pro Se Clinic**

The Middle District of Florida Bankruptcy Pro Se Clinic is in need of attorney volunteers to provide free 30 minute virtual or telephonic legal consultations to individuals representing themselves in the United States Bankruptcy Court for the Middle District of Florida. Attorney volunteers can schedule their availability, either on a one-time or recurring basis, though no long term commitment is needed. Volunteer attorneys should be available to answer questions, review filings, and address other matters that pro se debtors and creditors may encounter. To ensure volunteers are capable of answering questions at the clinic, the Clinic requires volunteers have at least three years of bankruptcy experience

and be admitted to practice in the Middle District of Florida. To sign up to volunteer, go to the Clinic’s website ([www.bankruptcyproseclinic.com](http://www.bankruptcyproseclinic.com)) and click on REGISTER UP TO VOLUNTEER. Once you are on the scheduling page you will be able to sign up for a particular day & time or set recurring availability.

Thank you to the following volunteers for holding virtual appointments in 2024, listed below:

**VIRTUAL PRO SE CLINIC HALF-HOUR APPOINTMENTS BY ATTORNEY**

**Pro Bono Appts Held**

Michael Barnett (Any)	94	Mike Dal Lago (Any)	6
Luis E. Rivera (Any)	84	Allison Moscato (Any)	5
Nina LaFleur (Any)	77	Shawn Yesner (Any)	5
Kathleen DiSanto (Any)	75	Jennifer Duffy (Any)	4
Alec Solomita (Any)	57	Lauren Stricker (Any)	3
Robert Branson (Any)	54	Lauren Box (Any)	3
Jonathan Sykes (Any)	34	Dana Robbins (Any)	2
Allan Wulbern (Any)	15	Matthew Hale	1
Michael Markham (Any)	14	Steven Berman (Any)	1
Samantha Kelley (Any)	12	Edward Jackson (Any)	1
Edmund Whitson III (Any)	10	Bill McDaniel (Any)	1
			688



# Northern District of Florida - Bankruptcy Pro Bono Clinic

**By Prof. Michael Markham**

*Florida State University College of Law*

There is a new Bankruptcy Pro Bono Clinic started at the Florida State University College of Law by Prof. Michael Markham. Early information is that the clinic is doing a fine job connecting law students with those in need of bankruptcy-related pro bono legal services. Below is a write up from the Clinic's website through the College of Law, also available here: <https://law.fsu.edu/academics/clinical-programs/bankruptcy-pro-bono-clinic>. Additional information is available on the Bankruptcy Court for the N.D. of Florida's website here: <https://www.flnb.uscourts.gov/Florida-state-university-college-law-bankruptcy-pro-bono-clinic>.

The Bankruptcy Pro Bono Clinic offers pro bono legal services to qualifying persons who are dealing with financial problems and may file bankruptcy. The College of Law offers the clinic as a one-semester, 3-credit elective course that pairs students with various mentor attorneys to represent actual clients but with additional credits available upon request and approval. Students will work with the mentor attorneys on client meetings, pleadings, and court hearings and will be required to attend a 2-hour class once a week. During the class, students will share their experiences with the class. Student benefits: Students will practice in federal bankruptcy court as advocates for clients and will network with members of the North Florida Bankruptcy Bar and other parts of Florida. The cases may be chapter 7s, small business cases, contested matters, or adversary proceedings relating to the discharge. The clinic provides amazing networking opportunities for students as they will work with top bankruptcy attorneys in North Florida and other parts of Florida. Clients will be referred by Legal Services of North Florida and bankruptcy professionals throughout the state.

Certified by The United States Bankruptcy Court, the Clinic is directed by Professor Michael Markham. Professor Markham has been a bankruptcy practitioner since graduating from FSU College of Law in 1988 and has represented numerous parties in bankruptcy cases all over the country, including debtors, creditors,

committees, and trustees. Professor Markham currently acts as a Subchapter V Trustee in the United States Bankruptcy Court for the Middle District of Florida.

## How to Apply

Law students interested in enrolling in the Bankruptcy Pro Bono Clinic should contact Professor Michael Markham (MikeM@jpfirm.com) to schedule an interview. There are no prerequisites for this clinic. The clinic is open to all students beginning the summer after their 1L year.



"Participating in the bankruptcy clinic has been a remarkable opportunity for me as a law student. It offers a unique chance to immerse myself in the courtroom experience, where I can represent clients during hearings and motions. I believe this clinic is invaluable for any law student seeking practical experience in bankruptcy law and the essential advocacy skills that are crucial in any area of legal practice."

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