

Chapter 11 Lawyers' Advisory Committee
for the United States Bankruptcy Court for the Eastern District of New York

Minutes

Meeting Date: February 27, 2020
Location: Brooklyn, New York
Attendees: See below

Chair Update and Approval of Minutes:

Chair Michelle McGreal asked for comments on the minutes of last meeting, there being none, a motion was made for approval of the minutes of the last meeting – the minutes were approved.

Board of Judges Update:

Chief Judge Craig provided an update on chapter 11 filings. End of year statistics are that Chapter 11 filings are up 2.6%. EDNY had 400 Chapter 11s in 2019, #3 nationwide (SDNY is #1, Delaware #2). The weighted caseload is approximately 1300 cases per Judge, EDNY is 9th nationwide. Judge Craig predicts that courts will be seeing the SBRA (Small Business Restructuring Act) will be a tool utilized for individual medallion guarantors. Right now, there is one issue raised in SDNY regarding conversion of a pending Chapter 11 case to an SBRA case. Brooklyn EDNY presently has two SBRA cases.

Local Rules Project Update:

Chief Judge Craig advised that the Amended Local Rules were approved. Amendments became effective December 13, 2019. Michelle McGreal reported that Judge Stong is reviewing local forms to see if some can be improved or should be removed. Discussion was raised concerning possible local forms relating to Subchapter V cases. Judges Craig and Scarcella indicated they were working on forms.

Subcommittee Reports:

Large Chapter 11 Case Subcommittee:

The Subcommittee, including Sheryl Giugliano and Fred Stevens, is presently discussing discovery guidelines regarding litigation financing.

Small and Medium Chapter 11 Case Subcommittee:

This Subcommittee is continuing to discuss a form of plan for small cases/ SBRA cases and training for SBRA. There is a Brooklyn Law School meeting on March 12 regarding SBRA.

Mediation Subcommittee:

The Subcommittee, including Leslie Berkoff and Andy Thaler, is discussing a mock mediation program, to highlight constructs in real time, they will follow up with dates.

Tom Slome referenced SDNY Chief Judge Morris's student loan mediation program, query whether that might be included in EDNY. Judge Craig noted that the program is more like loss mitigation rather than addressing discharge of the debt. Judges Craig and Lord also noted the existence of a forgiveness of tax debt v. discharge in bankruptcy issue. Judge Craig also noted the issue of inability to pay versus ability to pay but unduly burdensome to continue to pay as an additional nuance. These issues might be for the Consumer Chapter 7 Committees to consider. The U.S. Attorneys' office noted that they are expecting to see more student loan debt related cases/issues in light of Judge Morris's decision.

Junior Lawyers Initiative Subcommittee:

A Spring Doodle Poll will be circulated to determine possible upcoming dates. Judge Lord questioned whether some of the motions may be too easy, whether the assigned cases should be more balanced in difficulty. The Subcommittee members indicated they would investigate removing overly easy motions.

Discussion of Potential New Projects/Subcommittees:

Michelle McGreal opened the floor to consideration of any new Subcommittees, none were fixed at this meeting.

Discussion Topic:

Leslie Berkoff led a discussion of Arbitration Agreements in Bankruptcy Courts, discussing recent decisions considering the interplay between the FAA and the Bankruptcy Code.

Old Business:

None.

New Business:

SBRA – various issues were discussed.

Next Meeting Date:

Next meeting will be on Long Island, date TBD.

Attendees:

To come.