

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

Minutes

Meeting Date: October 17, 2018
Location: Bankruptcy Court (Brooklyn)
Attendees: See below

Chair Update and Approval of Minutes:

LAC Chair Thomas Slome ("Chair") opened the meeting and noted it was his last meeting as Chair. The Chair recognized each of the new members to the LAC: Sheryl Giugliano, Esq.; Holly Holecek, Esq.; Dawn Kirby, Esq.; Lori Schwartz, Esq.; and Andrew Thaler, Esq.

The Chair noted that the LAC was convening its fifteenth meeting and gave an overview of the accomplishments of the LAC, including the various subcommittee projects. The Chair invited new members to sign up for subcommittees.

The Chair thanked the Judges for the opportunity to serve as Chair of the LAC for the past four years, and thanked the members of the LAC for their work.

The minutes of the May 9, 2018 meeting were approved.

Board of Judges Update:

Chief Judge Craig thanked the Chair and Lori Lapin Jones, Vice Chair of the LAC, for their work and also thanked the members of the LAC. Judge Craig noted that the Judges have greatly benefitted from the work of the LAC. The incoming Chair is Michelle McGreal, Esq. and the incoming Vice Chair is Gerald Luckman, Esq. Both will begin their appointments at the close of the current meeting.

Judge Craig provided filing statistics on national and district levels, and observed the continuing and steady trend of the EDNY case filings being above the national average. Chapter 11 case filings in the district continue to rise. No mega cases have been filed recently in the district. Taxi medallion cases and real estate cases are common types of cases filed in the district, but even excluding those cases, the district is above the national average in filings. There also continues to be many pro se Chapter 11 petitions filed, and many of these are promptly dismissed.

Local Rules Project:

Judge Scarcella is overseeing the local rules project. LAC members Burton Weston, Esq., Assistant United States Trustee Christine Black, and Michelle McGreal, Esq. are members of the local rules committee. Ms. McGreal serves as Chair. Judge Scarcella reported that the committee has completed its review and comment process, and has passed on its recommendations to the Board of Judges. The committee and Judges aim to complete the process by the end of 2018. Following the Judges' review, comments may go back to the committee. After the Board of Judges adopts the proposed rule changes, public comment will be solicited over a 45-day period. Thereafter, the proposed new rules will be sent to the District Court for final approval.

Judge Craig thanked the local rules committee for its work.

Subcommittee Reports:

Large Chapter 11 Case Subcommittee:

Co-Chairs Fred Stevens and Robert Schmidt reported that the guidelines for cross-border cases (previously approved by the LAC) have been submitted to the Board of Judges for consideration. The Judges present noted there have not been any recent cross-border or Chapter 15 filings in the district, but that there have been cross-border filings in the district in the past. The LAC discussed whether the cross-border case guidelines should be adopted via a general order or as part of the local rules. It was noted that the process of amending the guidelines, if needed, is easier if the guidelines are adopted by use of a general order.

Small and Medium Chapter 11 Case Subcommittee:

Co-Chairs Bonnie Pollack and Gerald Luckman reported on the lawyer education seminars that were held in Brooklyn and Central Islip. Forty participants attended the Central Islip seminar and thirty-seven participants attended the seminar in Brooklyn. Positive feedback was received from seminar participants. Specific feedback included a recommendation for a greater focus on individual Chapter 11 filings and a preference for written materials to be distributed. The LAC discussed the pros and cons of disseminating written materials, and what materials might be appropriate to distribute. The Co-Chairs will set dates for the next seminars.

Co-Chair Bonnie Pollack addressed and distributed a recent decision from a bankruptcy judge outside the district sanctioning a lawyer who did not competently represent Chapter 11 debtors. The LAC discussed potential strategies for enhancing lawyer competence in small Chapter 11 cases in the district.

Mediation Subcommittee:

Co-Chair Leslie Berkoff reported that the subcommittee explored the prospect of uniformity of mediation referral orders and procedures among the Judges in the district. At this juncture, the Judges will maintain their own mediation forms of orders and protocols. The subcommittee recommends holding brown bag lunches to address how better to utilize mediation throughout a case. Co-Chair Leslie Berkoff led a discussion on the various ways that mediation could be used more often in the district, and the challenges that lawyers sometimes face in suggesting mediation to their clients and adversaries. These and similar issues could be addressed more fully in the proposed brown bag lunches.

Junior Lawyers Initiative Subcommittee

Co-Chairs Mickee Hennessey and Martin Bunin discussed the Junior Lawyer program which was recently held in Brooklyn and Central Islip. The subcommittee members selected thirty motions from Chapter 7, 13 and 11 cases that have been closed, or where the plan has been confirmed. The overall feedback from the lawyer participants and Judges was that the program was successful, and the participants found that it was a positive experience. The LAC discussed how best to inform more lawyers about this program, including disseminating the program information to law firms, local bar groups, and legal organizations. The LAC also discussed methods to minimize or avoid last-minute cancellations and no-shows by lawyers, including having subcommittee members follow up with participants in advance of the program.

The next Junior Lawyer program is November 27, 2018 in Brooklyn.

Discussion Topic

LAC member Sheryl Giugliano led a useful and insightful discussion on the United States Supreme Court's recent decision in Merit Management and distributed a recent article she authored on the decision.

Next Meeting:

The next meeting of the LAC will be January 16, 2019, at the Brooklyn Bankruptcy Court. It is anticipated that the May 2019 meeting will be held on Long Island.

Attendees

Thomas R. Slome, Esq.

Lori Lapin Jones, Esq.

Leslie Berkoff, Esq.

Christine Black, Esq.

Martin Bunin, Esq.

Sheryl P. Giugliano, Esq.

Mickee Hennessy, Esq. (by telephone)
Holly R. Holecek, Esq.
Dawn Kirby, Esq.
Gerald Luckman, Esq.
Michelle McGreal, Esq.
Frank Oswald, Esq.
Bonni Perlin, Esq.
Bonnie Pollack, Esq.
Robert Schmidt, Esq.
Lori Schwartz, Esq.
Fred Stevens, Esq.
Andrew M. Thaler, Esq.
Burton Weston, Esq.
Evan J. Zucker, Esq.
Hon. Carla E. Craig
Hon. Louis Scarcella (by video)
Hon. Elizabeth S. Stong
Hon. Alan Trust
Paul Dickson, Deputy Clerk of Court