Bankruptcy in LLCs, LPs and Partnerships

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LLC/Partnership as the Debtor

- How Does the LLC/Partnership Get into Bankruptcy Court?
- Can Bankruptcy Be Blocked?
- What is the Effect of Entity Bankruptcy Upon the Owners?

Bankruptcy Filing Predicate

- *Price v. Gurney* (1945)
- State governance rules – not federal law, controls authority to file voluntary petition
- Relatively easy to determine for corporations
- Contractual business entities less statutorily-driven
- Bankruptcy Code and rules now silent
  - Voluntary petitions by partnerships: state law and partnership agreement
  - Involuntary petitions: any general partner
  - LLCs: state law and operating agreement
- *Wyatt v. McAllister* case: 50/50 partnership, no authority to file



Remoteness Techniques

- Use of SPV/SPE
  - No other business. Why?
- Separate Class of Shares/Interests
- Supermajority voting requirement
- Unanimity requirement
  - *In re Orchard at Hansen Park, LLC*, 347 B.R. 822 (Bankr. N.D. Tex. 2006) (operating agreement required unanimous member consent for the filing of a voluntary bankruptcy case, court enforced)
  - *In re Houston Regional Sports Network, L.P.,* 2014 WL 554824 (Bankr. S.D. Tex. Feb. 12, 2014) (enforced unanimous director requirement)
- Disinterested Director/Manager
- Disinterested Member (no economic stake)
- Interested Director/Manager
- Interested Member



Rule Against Bankruptcy Waivers

- General understanding is that they violate public policy
- Inviolate right to bankruptcy? Constitutional?

In re Lake Michigan Beach (Bankr. N.D. Ill. 2016)

- Debtor defaulted
- Amendment to operating agreement admitted lender as "special member"
- No economic interest (no sharing)
- Special member vote requirement
- Disclaimer of statutory fiduciary duties invalid under Michigan law
- Court held to be an invalid bankruptcy waiver

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