

# 36<sup>th</sup> Annual Jay L. Westbrook Bankruptcy Conference

## November 16-17, 2017 • Four Seasons Hotel • Austin, TX

**Thursday Morning, Nov. 16, 2017**

**Presiding Officer:**

**Aaron Michael Kaufman**, Dykema Cox Smith - Dallas, TX

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7:30 am                               | <b>Registration Opens</b><br><br>Includes continental breakfast.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 8:35 am                               | <b>Welcoming Remarks</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 8:50 am<br>1.25 hrs<br>0.50 hr ethics | <b>Recent Developments</b><br><br>A tradition like none other! Explore the year's most important consumer and business cases.<br><br>Moderator:<br>Jay L. Westbrook, The University of Texas School of Law - Austin, TX<br>Panelists:<br>R. Byrn "Byrnie" Bass Jr., Attorney at Law - Lubbock, TX<br>Deborah B. Langehennig, Chapter 13 Trustee - Austin, TX<br>Bill Rochelle, American Bankruptcy Institute - New York, NY<br>Deborah D. Williamson, Dykema Cox Smith - San Antonio, TX<br>Materials By:<br>Brian T. Cumings, Graves, Dougherty, Hearon & Moody - Austin, TX                                                                              |
| 10:05 am<br>0.50 hr                   | <b>Jevic Follow Up—Structured Dismissals and Gifting Cases</b><br><br>In <i>Jevic</i> , the Supreme Court held that a settlement incorporated in a structured dismissal of a Chapter 11 case could not violate the priority rules of the bankruptcy code. Most structured dismissals that violate the bankruptcy code's priority rules, however, are approved on the theory that the priority-skipping payments are gifts. Explore whether practitioners are trying to avoid the code's priorities using gifting theories, notwithstanding <i>Jevic</i> , and are they having success?<br><br>Sally McDonald Henry, Texas Tech School of Law - Lubbock, TX |
| 10:35 am                              | <b>Break</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 10:50 am<br>0.75 hr                   | <b>SCOTUS Judicial Decision Making in Bankruptcy Cases</b><br><br>Since the adoption of the Bankruptcy Code 40 years ago, the Supreme Court's decisions interpreting the Code systematically have narrowed the Code's application, hampering the development of the comprehensive bankruptcy system Congress envisioned in its decade-long project to fashion the Code.<br><br>Ronald J. Mann, Columbia Law School - New York, NY                                                                                                                                                                                                                          |

|                     |                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11:35 am<br>0.50 hr | <b>Bankruptcy's Role in Alleviating Student Debt Burdens</b><br><br>Discuss bankruptcy's potential role in alleviating student debt burdens by exploring existing case law and practice experience surrounding the "undue hardship" determination.<br><br>Chrystin Ondersma, Rutgers Law - Newark, NJ<br>Charlie Shelton, Office of the Texas Attorney General - Austin, TX |
| 12:05 pm            | <b>Lunch on Your Own</b>                                                                                                                                                                                                                                                                                                                                                    |

## Thursday Afternoon, Nov. 16, 2017

### Business Track

#### Presiding Officer:

**Robin Russell**, Andrews Kurth - Houston, TX

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1:35 pm<br>0.75 hr                   | <b>Wanting a Seat at the Table: The Rise of Equity Committees</b><br><br>Existing equity holders of Chapter 11 debtors are increasingly requesting appointment of official committees of equity holders pursuant to section 1102 of the Bankruptcy Code. Examine the standard for appointment and role of equity committees, recent cases in which courts have granted and denied requests for appointment of an equity committee, and whether equity committees enhance shareholder recoveries in Chapter 11 cases.<br><br>Christopher Manuel Lopez, Weil, Gotshal & Manges LLP - Houston, TX<br>Kelli Norfleet, Haynes and Boone, LLP - Houston, TX |
| 2:20 pm<br>0.50 hr                   | <b>Planning on Staying?</b><br><br>Post-confirmation subject matter jurisdiction may well depend on how you draft your plan. Hear practice tips on how to avoid pitfalls.<br><br>Hon. Leif M. Clark (retired), Leif M. Clark Consulting, PLLC - San Antonio, TX                                                                                                                                                                                                                                                                                                                                                                                       |
| 2:50 pm<br>0.50 hr                   | <b>Chapter Five versus the Securities Markets—the Scope of Section 546(e)</b><br><br>Join counsel for the Respondent and the Petitioner respectively, as they discuss the briefing, arguments, and implications of the U.S. Supreme Court's consideration (and perhaps decision) of the scope of the Section 546(e) safe harbor in <i>Merit Management Group v. FTI Consulting</i> .<br><br>Jason J. DeJonker, Bryan Cave LLP - Chicago, IL<br>Gregory S. Schwegmann, Reid Collins & Tsai LLP - Austin, TX                                                                                                                                            |
| 3:20 pm                              | <b>Break</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 3:35 pm<br>0.75 hr<br>0.50 hr ethics | <b>Business Bankruptcy / Pre-Planning Pitfalls</b><br><br>What steps should a company take or not take prior to a bankruptcy filing? Discuss several topics around this question, including ethical considerations that often come into play.<br><br>Charles Braley, AlixPartners LLP - Chicago, IL<br>Vickie L. Driver, Husch Blackwell LLP - Dallas, TX<br>Sugi Hadiwijaya, CR3 Partners - Dallas, TX                                                                                                                                                                                                                                               |

|                    |                                                                                                                                                                                                                                                                                       |
|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4:20 pm<br>0.50 hr | <p><b>The Implications of <i>Jevic</i> on Business Bankruptcy Cases</b></p> <p>More on <i>Jevic</i> and structured dismissals. Why? Because when the Supreme Court speaks once, we need to listen twice.</p> <p>Louis M. Phillips, Kelly Hart &amp; Hallman LLP - Baton Rouge, LA</p> |
| 4:50 pm            | <b>Adjourn to Reception</b>                                                                                                                                                                                                                                                           |
|                    | <p><b>Jay L. Westbrook Bankruptcy Conference Reception</b></p> <p>Join program faculty and attendees for drinks and hors d'oeuvres.</p> <p>Thank You to Our Reception Sponsor<br/>AlixPartners LLP</p>                                                                                |

---

## Consumer Track

### Presiding Officer:

**Hon. John C. Akard**, U.S. Bankruptcy Judge, Retired - Houston, TX

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1:35 pm<br>0.75 hr                   | <p><b>Community Property, Divorce and Bankruptcy—What Could Possibly go Wrong?</b></p> <p>An irreconcilable approach to Texas Homestead Proceeds.</p> <p>Hon. Eduardo V. Rodriguez, U.S. Bankruptcy Court, Southern District of Texas - McAllen, TX<br/>Leigh Ann Tognetti, Marcos D. Oliva, PC - Brownsville, TX</p>                                                                                                                                                                                                                                                                                                                                     |
| 2:20 pm<br>1.00 hr<br>0.50 hr ethics | <p><b>How To Make the Trustee Happy and Keep Your Client Out of Trouble</b></p> <p>Gain insight on preparing the debtor(s) for the bankruptcy filing, forms and testimony at the 341 meeting and how to make the filing less stressful for you, your client(s) and the trustee.</p> <p>Michael V. Baumer, Law Office of Michael Baumer - Austin, TX<br/>Allison D. Byman, Hughes Watters Askanase, LLP - Houston, TX<br/>Randy W. Williams, Thompson &amp; Knight LLP - Houston, TX</p>                                                                                                                                                                   |
| 3:20 pm                              | <b>Break</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 3:35 pm<br>0.75 hr                   | <p><b><i>Espinosa</i> Update and Other Post-Confirmation Chapter 13 Matters</b></p> <p>Hear a review and discussion of post-<i>Espinosa</i> decisions. Also, since many unique issues often arise in Chapter 13 cases after confirmation of the Debtors' Chapter 13 Plan, participate in a discussion of various post-confirmation issues including: plan modification issues; post-confirmation duties and tasks of Debtors' and their attorneys; and post-confirmation requirements of lenders.</p> <p>Hon. Mark X. Mullin, U.S. Bankruptcy Court, Northern District of Texas - Fort Worth, TX<br/>David G. Peake, Chapter 13 Trustee - Houston, TX</p> |
| 4:20 pm<br>0.50 hr                   | <p><b>Tax Treatment</b></p> <p>Hear an overview of the dischargeability of taxes in Chapter 7 and 13 cases.</p> <p>John Akard Jr., Coplen &amp; Banks, P.C. - Houston, TX</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 4:50 pm                              | <b>Adjourn to Reception</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

### **Jay L. Westbrook Bankruptcy Conference Reception**

Join program faculty and attendees for drinks and hors d'oeuvres.

Thank You to Our Reception Sponsor  
AlixPartners LLP

## **Friday Morning, Nov. 17, 2017**

### **Presiding Officer:**

**Demetra L. Liggins**, Thompson & Knight LLP - Houston, TX

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7:30 am                               | <b>Conference Room Opens</b><br><br>Includes continental breakfast.                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 8:15 am<br>0.50 hr                    | <b>Distressed Real Estate Update: Signs of the Next Bubble?</b><br><br>Explore the current state of the real estate industry and the developing legal issues in real estate workouts and bankruptcy.<br><br>J. Frasher Murphy, Haynes and Boone, LLP - Dallas, TX<br>Mark Shapiro, GlassRatner Advisory & Capital Group - Dallas, TX                                                                                                                                                                                                |
| 8:45 am<br>0.75 hr                    | <b>The Paradigm Shift in Retail, 2017</b><br><br>Explore why the retail industry is experiencing what most would consider a “bloodbath” right now, and the available strategies that are, or can be, pursued in this environment.<br><br>Hon. Stacey G. C. Jernigan, U.S. Bankruptcy Court, Northern District of Texas - Dallas, TX<br>Adam Rosen, B. Riley Financial - New York, NY                                                                                                                                                |
| 9:30 am<br>0.75 hr                    | <b>To Profit or Not-To-Profit, That Is The Question</b><br><br>Join distinguished practitioners—a retired bankruptcy judge, a financial advisor and an assistant State attorney general—for an advanced discussion on the interplay between nonprofit organizational issues, and healthcare bankruptcy restructuring.<br><br>Hon. Melanie L. Cyganowski (retired), Otterbourg P.C. - New York, NY<br>Hal F. Morris, Office of the Attorney General - Austin, TX<br>Louis E. Robichaux IV, Ankura Consulting Group, LLC - Dallas, TX |
| 10:15 am                              | <b>Break</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 10:30 am<br>0.50 hr<br>0.25 hr ethics | <b>Artificial Intelligence and its Effect on the Legal Industry</b><br><br>AI is getting a lot of attention, creating fears and in many cases unrealistic expectations. Explore the reality of AI, how it practically can impact legal work flows, and how it can be a positive force that enables lawyers to do their jobs faster, cheaper and better for their clients.<br><br>Dan Jansen, Nextlaw Labs - Palo Alto, CA                                                                                                           |

|                                       |                                                                                                                                                                                                                                                                             |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11:00 am<br>0.50 hr<br>0.25 hr ethics | <b>Getting the Ball to the Goal</b><br><br>Explore the fundamentals of trial advocacy.<br><br>Hon. David R. Jones, U.S. Bankruptcy Court, Southern District of Texas - Houston, TX                                                                                          |
| 11:30 am<br>0.50 hr                   | <b>It's About Time: Value as a Temporal Construct</b><br><br>When collateral and enterprise value change over the life of a case, what are the statutes, rules and tools to maximize your client's position?<br><br>Patricia Baron Tomasco, Jackson Walker LLP - Austin, TX |
| 12:00 pm                              | <b>Pick Up Lunch</b><br><br>Included in registration.                                                                                                                                                                                                                       |

## Friday Afternoon, Nov. 17, 2017

### Presiding Officer:

**Drew McManigle**, SierraConstellation Partners, LLC - Houston, TX

### LUNCHEON PRESENTATION

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12:20 pm<br>1.00 hr ethics           | <b>Professional Responsibility Rules and (Other) Barriers to Access to Civil Justice</b><br><br>The demand for affordable access to civil legal services is on the rise at the same time we face significant threats to sustainable public funding for legal services. This leaves many disadvantaged and financially challenged people who face civil legal issues to navigate the legal system without professional legal assistance. The good news is that we have begun to see the development of alternative legal services delivery models and the emergence of innovative solutions designed to address the access to justice crisis. Such innovative approaches are starting to lead to greater efficiencies in legal services delivery and improved self-help and assisted-self-help tools. This Ethics Presentation will discuss the ways in which the Rules of Professional Conduct both support and impede our efforts to address the removal of barriers to access to civil justice.<br><br>Lois R. Lupica, Maine Law Foundation Professor of Law, University of Maine School of Law - Portland, ME |
|                                      | <b>Thank You to Our Luncheon Sponsor</b><br><br>SierraConstellation Partners, LLC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 1:20 pm                              | <b>Break</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 1:35 pm<br>0.75 hr<br>0.25 hr ethics | <b>Beyond ASARCO: Fee Shifting and Recovery in Bankruptcy Litigation</b><br><br>Fees are recoverable for more than just representing debtors and committees. Explore the circumstances and mechanics under which fees may be pursued and recovered in discovery and bankruptcy-related litigation.<br><br>Michael P. Cooley, Bryan Cave LLP - Dallas, TX<br>Sean B. Davis, Winstead PC - Houston, TX                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

|                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2:20 pm<br>0.75 hr<br>0.25 hr ethics | <p><b>Formulating, Confirming and Implementing Complex Plans: Lessons From <i>Life Partners</i></b></p> <p>Using their experience in the <i>Life Partners</i> mega case, the panelists will discuss a variety of issues including competing plans, disclosure and solicitation problems as well as post confirmation transition and operational challenges.</p> <p>David M. Bennett, Thompson &amp; Knight LLP - Dallas, TX<br/> Michael D. Napoli, Dykema Cox Smith - Dallas, TX<br/> Joseph J. Wielebinski Jr., Munsch Hardt Kopf &amp; Harr, P.C. - Dallas, TX</p>                                                                                                                                                                                                                                                                                                                                                               |
| 3:05 pm<br>0.50 hr                   | <p><b>Lessons Learned During and After My Storm</b></p> <p>Discuss challenges and solutions experienced by the Eastern District of Louisiana in the wake of Hurricane Katrina. Explore how legal practices were restored, returning the courthouse to a functioning facility, and how the public and clients recovered. Learn what worked and more importantly, what did not to stabilize the areas hardest hit and rebuild.</p> <p>Hon. Elizabeth W. Magner, U.S. Bankruptcy Court, Eastern District of Louisiana - New Orleans, LA</p>                                                                                                                                                                                                                                                                                                                                                                                            |
| 3:35 pm<br>1.00 hr<br>0.25 hr ethics | <p><b>A Peek Under the Robes: Judicial Panel</b></p> <p>Witness a unique showdown between Bankruptcy Judges and their trusty Law Clerks, offering a glimpse into Chambers and how decisions are really made.</p> <p>Moderator:<br/> Hon. H. Christopher Mott, U.S. Bankruptcy Court, Western District of Texas - Austin, TX<br/> Panelists:<br/> Hon. Tony M. Davis, U.S. Bankruptcy Court, Western District of Texas - Austin, TX<br/> Hon. Mark X. Mullin, U.S. Bankruptcy Court, Northern District of Texas - Fort Worth, TX<br/> Hon. Brenda T. Rhoades, U.S. Bankruptcy Court, Eastern District of Texas - Plano, TX<br/> Scott Everett, Law Clerk, U.S. Bankruptcy Court, Northern District of Texas - Fort Worth, TX<br/> Leslie R. Masterson, Law Clerk, U.S. Bankruptcy Court, Eastern District of Texas - Plano, TX<br/> Sarah Darnell Wood, Law Clerk, U.S. Bankruptcy Court, Western District of Texas - Austin, TX</p> |
| 4:35 pm                              | <p><b>Adjourn</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |