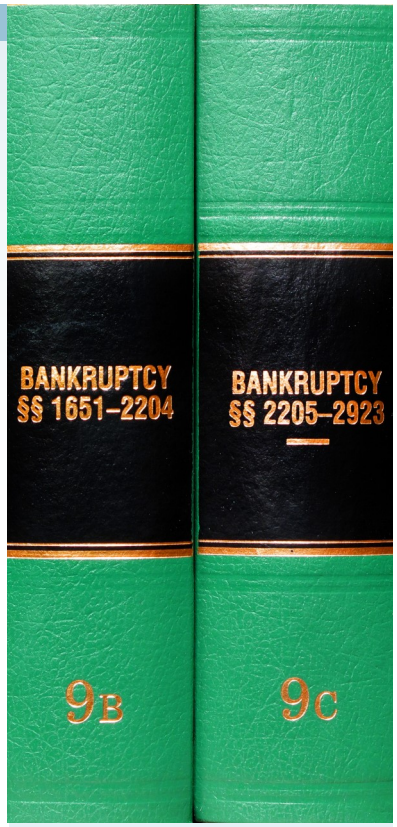
Spring 2019

Bankruptcy Court Liaison Committee Newsletter



Bankruptcy Liaison Questionnaire

By Michael A. Brandess | Sugar Felsenthal Grais & Helsinger LLP

Earlier this year, the Bankruptcy Liaison Committee circulated a questionnaire to practitioners in the District. The questionnaire included 20 questions on the following topics: (a) general questions; (b) inquiries into the local rules; (c) proposed changes to the local rules; and (d) proposed changes to bankruptcy practice in the District. Following many of the inquiries, the questionnaire sought applicable comments from respondents to provide color to their answers. In total, 95 practitioners responded to the questionnaire.

General Questions

The questionnaire posed four questions concerning practitioners' reliance on local bankruptcy resources, including: (a) how often they check the local rules; (b) how often they check internal operating procedures; (c) how frequently they check the court's website; and (d) how effective they find *(continued on page 2)*

When is an Entity an "Instrumentality" of the State for Chapter 11 Eligibility?

By John B. Hutton III, Kevin D. Finger, Nancy A. Peterman, Mark D. Bloom | Greenberg Traurig, LLP

Editor's Note: This article was originally published in the November 5, 2018, issue of The Bond Buyer.

It is often said that you cannot always judge a book by its cover. This is particularly true when determining whether an entity, that is related to a municipality, is an "instrumentality" of the state for purposes of determining eligibility for Chapter 11 relief. Simply put, if an entity is an "instrumentality" of the state, it falls under the definition of "municipality," and is thus a "governmental unit" that is not a "person" eligible for Chapter 11 relief. Governmental units may file bankruptcy only under Chapter 9 of the Bankruptcy Code, and in many states such filings are not permitted, or are restricted, by state law. *(continued on page 3)*

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Co-Editors

David D. Cleary | Greenberg Traurig, LLP
Ainat Margalit | Legal Assistance Foundation of Metropolitan Chicago

Bankruptcy Liaison Questionnaire *(Continued)*

the website in conveying useful information. Responders indicated that they review the Bankruptcy Court's local rules and internal operating procedures with great frequency and find the Court's website to provide useful information.

Local Rules

The questionnaire then asked responders seven questions concerning the local rules. These questions fell into three general categories: (a) Local Rule 9013-9 (motions granted without a hearing); (b) the rule concerning negative notice; and (c) compliance and enforcement of local rules.

Responders indicated that they were overwhelmingly in favor of Local Rule 9013-9 concerning motions granted without a hearing. There was less confidence in the compliance and enforcement of the rule by practitioners and the Court, respectively. Responders were less consistent in their assessment of the negative notice rule. They were divided on whether to adopt a negative notice procedure with 54% in favor and 46% opposed.

Proposed Changes to Local Rules

The questionnaire sought feedback concerning proposed changes to the local rules, specifically rules pertaining to claim objections and discovery responses.

The first set of questions asked responders if they were aware of the proposed rule requiring claims to be attached to claim objections and whether they supported such a rule. Responders indicated that they were moderately aware of the proposed change, but that there is support in favor of the rule change. In addition to the responses, 51 participants provided comments that can be largely categorized as follows: (a) should be limited to substantive objections; (b) would increase efficiency; (c) unnecessary because claims are readily available on the claims register; and (d) would decrease potential creditor confusion.

The second set of questions inquired whether responders were aware of the proposed rule requiring that a motion to compel discovery response include the request and response. Responders were largely unaware of the proposed change to local rule 7037-1, but overwhelmingly in support of it.

Proposed Changes to Bankruptcy Practice

Finally, the questionnaire sought feedback concerning proposed changes to bankruptcy practice in the District.

The first question asked whether responders thought that local rules should be amended to provide for a default briefing schedule on motions. Responders were almost uniformly against a default briefing schedule.

The questionnaire next asked, to the extent that responders practice includes corporate bankruptcy cases with multiple venue options, how often did they recommend filing a chapter 11 in the District. Responses were largely divided with 38% indicating that they consistently recommend filing in the District and 47% stating that they rarely recommend filing here.

Next, responders were asked if there are local practices not currently utilized in this District that should be implemented. Seventeen participants provided substantive responses, such as a request to simplify the pro hac vice process (such as in Delaware) and the suggestion that only certain judges preside over chapter 11 cases or complex chapter 11 cases (such as in Houston).

Conversely, the questionnaire asked if there were any local rules that should be abolished or amended. Responses pertained to fee issues and court approved retention agreements.

The last question inquired if there were any rules that participants would like to see adopted. Comments were largely disparate in their suggestions, such as the request that the District establish standardized rules for motions to obtain credit in chapter 13 cases and replacing local rule 7056-1 with its district court equivalent. ❖

When is an Entity an "Instrumentality" of the State for Chapter 11 Eligibility? *(Continued)*

By definition, an "*instrumentality* of a State" is a "municipality" under Section 101(40); a municipality in turn is a "governmental unit" under Section 101(27) of the Bankruptcy Code. The issue that is often disputed is what constitutes an "instrumentality" of a state. When an entity that has some attributes of a governmental unit files bankruptcy under Chapter 11, creditors often litigate whether that entity is eligible for Chapter 11, particularly if the bankruptcy is filed in a state that restricts or does not offer access to Chapter 9.

Courts have determined that each of the following entities *was not* an "instrumentality" of a state, and therefore *was eligible* for Chapter 11 bankruptcy relief:

- a non-profit public facilities corporation that owns and operates a hotel and convention center (deemed to be an "instrumentality" of the state for federal tax purposes). *In re Lombard Public Facilities Corporation*, 579 B.R. 493 (Bankr. N.D. Ill. 2017);
- an entity that owns and operates the monorail system in Las Vegas (designated in tax documents as "an instrumentality of the State of Nevada . . . controlled by the Governor"). *In re Las Vegas Monorail Co.*, 429 B.R. 770 (Bankr. D. Nev. 2010); and
- a non-profit provider of community health services. *Kentucky Employees Retirement System v. Seven Counties Services, Inc*., 901 F.3d 718 (6th Cir. 2018).

On the other hand, courts have determined that the each of the following entities *was* an instrumentality of a state, and thus *ineligible* for Chapter 11 relief:

- a public retirement fund formed and funded by the government. *In re Northern Mariana Islands Retirement Fund*, No. 12-00003, 2012 WL 8654317, at *3 (D. N. MR. I. June 13, 2012);
- a hospital authority founded under Georgia law that authorized its creation and operation. *United States* Trustee *v. Hospital Authority of Charlton County (In re Hospital Authority of Charlton County*), No. 50305, 2012 WL 2905796 (S.D. Ga. July 3, 2012); and
- a public benefit corporation operating a pari-mutual betting system. *In re N.Y.C. Off-Track Betting Corp.*, 427 B.R. 256 (Bankr. S.D.N.Y. 2010).

As indicated by these examples, the determination of whether an entity is an "instrumentality" of a state is not always readily apparent and requires a detailed analysis of the facts of each situation. In addition, courts have found that an entity is not an instrumentality of a state even where the entity is deemed an instrumentality of the state for purpose of the federal tax code.

Without a definition in the Bankruptcy Code for the term "instrumentality," courts have struggled to develop a test to make that determination. While each case is based upon its unique facts, certain factors have been given considerable weight:

- Does the entity have the typical governmental powers – the ability to assess taxes, the power of eminent domain, and sovereign immunity?
- Was the entity created by special legislative enactment (as opposed to being just a non-profit corporation)?
- Does the government control the day-to-day operations of the entity, beyond just regulation or board appointments?
- Does the state government have financial responsibility for losses or liabilities of the entity?
- Does the state consistently and clearly designate and treat the entity as an instrumentality of the state in its legislation?

Although there are a number of other factors to consider, a negative answer to some or all of the above questions make it more likely that the entity will not be treated as an "instrumentality" of the state, and thus be eligible for Chapter 11 relief.

The Sixth Circuit recently rendered the first-ever Circuit Court decision on the "instrumentality" issue, which illustrates the application of the factors. In *Kentucky Employees Retirement System v. Seven Counties Services, Inc*., 901 F.3d 718 (6th Cir. 2018), a 2-1 majority of the Sixth Circuit panel decided that Seven Counties Services, Inc. ("Seven Counties"), a nonprofit provider of mental health services, was *not* an "instrumentality" of the State of Kentucky, and thus was *eligible* for Chapter 11 relief, affirming the decisions made by the bankruptcy court and the district court. Seven Counties had filed Chapter 11 in order to terminate its relationship with the Kentucky public pension plan (the "KERS"), as employer contribution rates skyrocketed up to 24% in 2013, and Seven Counties could no longer sustain operations at that contribution level. KERS sought dismissal of the Chapter 11 filing, asserting that Seven Counties was an "instrumentality" of the *(continued on page 4)*

When is an Entity an "Instrumentality" of the State for Chapter 11 Eligibility? *(Continued)*

State of Kentucky, and thus ineligible for Chapter 11 relief.

The Sixth Circuit placed primary emphasis on governmental control and noted that the disagreement with the dissent was on the extent of control required. While stating that day-to-day control would be sufficient to deem an entity a governmental instrumentality, the Court held that such a "granular level of control is not necessary." *Id.* at 727. Instead, the Sixth Circuit applied the following control factors: (1) whether the government created the entity, (2) whether the government appoints the entity's leadership, (3) whether an enabling statute guides or otherwise circumscribes the entity's actions, (4) whether and how the entity receives government funding, and (5) whether the government can destroy the entity. *Id*. While noting that Seven Counties is "an unusual entity" with some features that belong to a state agency and others that do not, the Sixth Circuit determined that there were not sufficient indicia of government control to conclude that Seven Counties was an instrumentality of the State. *Id*. at 729. Applying the control factors, the Sixth Circuit concluded: "The Commonwealth of Kentucky did not create Seven Counties, does not in the normal course of events choose its leadership, does not govern its operations through an enabling statute, does not fund it through a mechanism that is normally reserved for public entities, and cannot unilaterally destroy it." *Id*.

In situations in which Chapter 9 access was not available, the trend in the courts seems to be in favor of granting access to Chapter 11, by finding that entities are not "instrumentalities" of the state. This is particularly important in states that do not permit access to Chapter 9, as the determination that an entity in such states is an "instrumentality" of the state would preclude access to bankruptcy (unless the state subsequently grants its municipal entities access to Chapter 9). As a result, those involved with financing such entities need to go beyond labels, and fully understand the facts that impact eligibility:

Bondholders and Investors. Parties who invest on the assumption that the borrowing entity will not have recourse to bankruptcy, or that recourse will be limited based upon state restrictions or conditions on filing for Chapter 9 relief, need to carefully scrutinize the facts. Statements in the offering documents that an entity is an "instrumentality" of the state are not controlling, and the courts will consider all relevant facts, as highlighted above. An entity that is able to file under Chapter 11 does not need to meet the eligibility requirements that apply to a Chapter 9, such as insolvency and good faith negotiations with creditors. Issuers and Underwriters: Parties preparing the offering memoranda should ensure that they describe the remedies and bankruptcy options correctly. If an entity is not an instrumentality of the state, a description of Chapter 9 requirements and any applicable state authorizations required in such circumstances could cause confusion in the event of a subsequent Chapter 11 filing, and provide some unintended bondholder leverage. Bondholders and other creditors can raise the eligibility issue in the context of a Chapter 11 filing as leverage to obtain better terms; as a result, it is important for issuers to be clear about Chapter 11 eligibility in all offering documents, and be prepared to contest the eligibility issue if Chapter 11 becomes necessary to implement a deal.

Rating Agencies: In evaluating the potential for default risk and payment risk, rating agencies will want to scrutinize carefully the entity's eligibility for Chapter 9 or 11, as an entity having recourse to either Chapter of the Bankruptcy Code creates leverage for the borrower, which is more likely to default and seek the protection of the automatic stay in bankruptcy.

State Governments: State governments that are involved with quasi-governmental entities will want to scrutinize the structure, particularly if the state has financial obligations with regard to the entity (a factor that also makes it more likely that the entity will be considered an instrumentality of the state). If the entity has access to bankruptcy under either Chapter, the filing would stay creditors from taking action gainst the entity, but not against the state with respect to any independent financial obligation the state may have. ❖

Committee Recommends No Change in Judicial Resources

By Alex Brougham | Adelman & Gettleman, Ltd.

A committee formed by the U.S. Judicial Conference has concluded that no additional bankruptcy judgeships are needed in the Northern District of Illinois. The committee's report, published late last year, comes as a departure from past findings of the Judicial Conference, which in both 2011 and 2013 recommended the addition of one permanent bankruptcy judgeship to the district.

A federal statute tasks the Judicial Conference with submitting recommendations to Congress regarding the need for bankruptcy judges in the country's 90 bankruptcy courts. The Judicial Conference delegates to its Committee on the Administration of the Bankruptcy System (the "Committee") the responsibility of conducting surveys to determine whether changes in judicial resources are warranted. The Committee reports its findings and recommendations to the Judicial Conference, which in turn determines whether to make a recommendation to Congress.

This year, the U.S. Bankruptcy Court for the Northern District of Illinois was singled out by the Committee for an on-site survey, and in March 2018 hosted a survey team composed of Delaware bankruptcy judge Hon. Brendan Shannon and a senior economist and senior attorney from the Judicial Services office of the Administrative Office of the U.S. Courts. The survey team interviewed bankruptcy judges, courtroom staff, and representatives of the clerk's office, as well as chapter 13 standing trustees, chapter 7 trustees, and other members of the consumer and business bankruptcy bar. The survey team also reviewed economic data, court statistics, and local court procedures.

The survey team's work resulted in a seventeen-page report, a copy of which can be accessed in the News & Announcements section of the bankruptcy court's website. In it, the Committee recommended that the court's present judicial resources—ten permanent judges and two retired judges serving on recall—be maintained for the time being.

According to the Committee, the most important factor in its decision was the court's "weighted caseload," which currently stands at 1,225 filings per authorized judgeship, less than the 1,500 filings typically considered to justify the addition of a permanent judge. The Committee also cited a decline in the overall number of bankruptcy filings in the district; while chapter 13 filings have increased by 7% since 2013, chapter 7 filings have decreased by 48% and chapter 11 filings have decreased by more than half.

The Committee pointed out, however, that its findings were based on the court's current filing levels and workload, and that a substantial increase in the number of weighted filings per judgeship would likely cause the Committee to recommend additional judicial resources in the future. Additionally, the Committee observed that the court's workload "is manageable in large part due to the contributions of Judges Schmetterer and Altenberger," of whom the former carries a full caseload in Chicago and the latter assists this and three other bankruptcy courts in the Seventh Circuit. The Committee remarked that a change in the availability of these recall judges would "seriously hinder[]" the court's "ability to schedule and hear cases efficiently," and could therefore impact the consideration of additional judgeships.

As the Committee acknowledged, the Northern District of Illinois has the highest overall caseload of any bankruptcy court in the country, notwithstanding its recent declines in filings. The Committee lauded the work ethic of the district's bankruptcy judges and court personnel in handling this daunting workload, and also praised the "quality, relative stability, and cooperation" of the bankruptcy bar.

A favorable recommendation by the Judicial Conference is widely seen as a necessary, but not sufficient, condition to add bankruptcy judgeships to a district. The ultimate decision to add judgeships resides with Congress, which, despite repeated recommendations by the Judicial Conference to add bankruptcy judges to the Northern District of Illinois, has not done so since 1986. It is thus uncertain—perhaps even unlikely—that Congress would have added a judgeship even if the Judicial Conference had recommended one. But the results of the survey have all but foreclosed this possibility, at least for the immediate future. ❖

Chicago CARE

By Shara C. Cornell, McDonald Hopkins

Chicago CARE has had a great start to the 2018-2019 school year, providing 31 presentations and counting to the Chicago area. Among those presentations were lively discussions at the U.S. District Court's SOAR Program by William Barrett (Barack Ferrazzano) and Gretchen Silver (United States Trustee's Office). CARE volunteers Shara Cornell (McDonald Hopkins), David Engler (Upright Law), Bryan Jacobson (Chapman & Cutler), James Sullivan (Chapman & Cutler), Gene Volchek (TransUnion), and Joshua Poertner (student at Northwestern University School of Law) also presented at Niles North High School to high-functioning adult students with special needs on a variety of credit- and bankruptcy-related topics.

As a result of the enthusiasm of our volunteers and reception from Chicagoland schools and venues, Chicago CARE has received the coveted 2018 CARE Chapter of the Year Award. Our chapter won the award based upon its hard work, program success, and, most importantly, its community impact in the greater Chicago area.

Chicago CARE would like to thank Jill Nicholson and the Foley & Lardner bankruptcy group for hosting the CARE Fall 2018 Networking Happy Hour Reception. At the Reception, Chicago CARE presented its Volunteer Awards for the 2017-2018 School Year. Bryan Jacobson (Chapman & Cutler) won Volunteer of the Year, having presented 15 times over the past year – the most presentations of any volunteer during the entire 2017-2018 school year. CARE Hero Awards were presented to Mark Hebbeln (Foley & Lardner) and Tony Natale (Shepherd Partners) for their tremendous efforts and commitment and enthusiasm about our mission. The award for Company of Year was presented to TransUnion for its continued partnership with Chicago CARE. For the 2017-2018 school year alone, TransUnion provided 14 volunteers to staff 22 presentations. This dedication to our common goal – credit abuse education – has been incredible.

As always, Chicago CARE would like to thank its dedicated volunteers for making 2018 a resounding success and we look forward to continuing our great work. Join us and show us that you CARE! As always, you can find us at www.CAREchicago.org. ❖

Matt Stockl (Foley & Lardner), Mark Hebbeln (Foley & Lardner), The Honorable Janet S. Baer (Bankr. N.D. Ill.), Jill Nicholson (Foley & Lardner), and Susan Poll-Klaessy (Foley & Lardner)

Award Recipients with Judge Baer

Real Estate Tax Sales and Bankruptcy

By David R. Doyle | Fox Rothschild LLP, Ltd.[1]

Unpaid real estate taxes can be dangerous for the unwary. The Illinois Property Tax Code allows tax buyers to "purchase" the unpaid taxes and, if they're not timely redeemed, obtain a tax deed to the underlying property. However, a recent opinion from the Northern District of Illinois, *In re Robinson,* may have made it easier for debtors to prevent tax buyers from obtaining tax deeds. *In re Robinson,* 577 B.R. 294 (Bankr. N.D. Ill. 2017). The opinion fundamentally changes the law governing tax buyers in bankruptcy in our district, and should be carefully considered by bankruptcy attorneys who have clients with unpaid real estate taxes .

Summary Overview of the Tax Buying Process

In Illinois, if a debtor owes delinquent real estate taxes, the county in which the property is located may offer the property taxes for sale at auction. *See* 35 ILCS 200/21-190 The winning bidder at the auction pays the county for the amounts owed, receives a certificate of purchase and assumes the county's position as lienholder. *See* 35 ILCS 200/21-75; 35 ILCS 200/21-250. The debtor is entitled to "redeem" the unpaid taxes for a period of time that varies according the type of property (two and a half years for residential property and, if extended by the tax buyers, up to three years) (the "Redemption Deadline"). 35 ILCS 200/21-385. Taxes are redeemed by paying the amount of the unpaid taxes, plus interest and fees, to the county clerk for the benefit of the tax buyer. If the debtor fails to redeem the taxes by the Redemption Deadline, the tax buyer may file an application with the circuit court requesting a tax deed to the property. 35 ILCS 200/22-30. When recorded, tax deeds create a new and independent chain of title, "free and clear" of all prior claims and interests in the property—including that of the debtor and any party holding a mortgage on the property. *See* 35 ILCS 200/22-55; *City of Bloomington v. John Allan Co.*, 18 Ill. App. 3d 569 (4th Dist. 1974).

Tax Buyers in Chapters 11 and 13

Prior to *Robinson,* the law was fairly well-settled as to the rights of tax buyers in bankruptcy, at least in chapter 11 and chapter 13. In short, the "blackline" rule was that a debtor had to file bankruptcy before the Redemption Deadline to save the property.

If a party commences a bankruptcy proceeding before expiration of the Redemption Deadline, the Seventh Circuit held that a tax buyer holds a secured claim in the amount of the unpaid taxes. *In re LaMont,* 740 F.3d 397, 408 (7th Cir. 2014). The debtor may satisfy the secured claim by providing in the chapter 11 or chapter 13 plan for the payment of the unpaid real estate in cash in full, plus interest at the statutory rate. *See id.* at 409.

Initiating a bankruptcy proceeding after the Redemption Deadline was held to be too late to pay off the tax claim in a chapter 11 or 13 plan. Most courts followed the reasoning of Judge Wedoff in *In re Bates*, which held that, if the bankruptcy proceeding was commenced after the Redemption Deadline, the tax buyer did not hold a "claim," but rather a property interest, and as such, the tax claim could not be paid off in a plan. *In re Bates,* 270 B.R. 455, 469 (Bankr. N.D. Ill. 2001) ("Under these circumstances, there is no 'claim' (or 'right to payment' under § 101(5) of the Bankruptcy Code) that can be treated in the bankruptcy case."). In that instance, "cause" would exist to terminate the automatic stay under § 362(d)(1) and permit the tax buyer to petition to obtain a tax deed in the state court. *Id.* at *470 .

In re Robinson

Robinson created new law. In that case, the debtor failed to pay her 2013 real estate taxes, and they were sold to a tax buyer. The debtor filed a chapter 13 bankruptcy case after the Redemption Deadline. The tax buyer moved for relief from the automatic stay, but the bankruptcy court denied the motion.

In *Robinson,* Judge Barnes held that *Bates* was no longer good law. Although noting that *Bates* "surely rested on solid ground when it was issued," Judge Barnes held that three recent opinions by the Seventh Circuit—*Lamont*, *Smith v. SIPI, LLC (In re Smith),* 811 F.3d 228 (7th Cir. 2016), and *Smith v. SIPI, LLC (In re Smith)*, 614 F.3d 654 (7th Cir. 2010)—had changed the landscape of tax buyers' rights in bankruptcy. None of those opinions specifically addressed the impact of the prepetition expiration of the redemption period. Nevertheless, the *Robinson* court held that the Seventh

[1] The opinions expressed in this article are those of the author, not of Fox Rothschild LLP or any of its clients.

[2] What happens in a chapter 7 is less clear—there are conflicting decisions in Illinois—and the issue is beyond the scope of this article.

Real Estate Tax Sales and Bankruptcy *(Continued)*

Circuit's opinions dictated that "[t]he running of the redemption period is not meaningful as to a debtor's rights under 11 U.S.C. § 1322." It was only the "obtaining and recording of the tax deed" by the tax buyer that mattered.

Therefore, until the tax buyer has recorded its tax deed, § 1322(b)(8) and (9) of the Bankruptcy Code permit the debtor to "treat both its property and a tax purchaser's claim in his or her bankruptcy." In light of this holding, the *Robinson* court denied the tax buyer's stay relief motion. Even though the redemption period expired prepetition, the debtor could still treat the tax buyer's claim in a chapter 13 plan.

In one respect, however, the *Robinson* opinion may be helpful to tax buyers. Although a debtor can now treat an expired tax claim in bankruptcy, the *Robinson* court held that "the running of the redemption period prior to the commencement of a bankruptcy case may be meaningful to determining the tax purchaser's bankruptcy claim." Citing 11 U.S.C. § 502(b), the court noted that "claims in bankruptcy are assessed as of the date the bankruptcy case was filed." At the time of the bankruptcy filing, the tax buyer has a right to receive a tax deed to the property under Illinois law. *See* 35 ILCS 200/22-40(a). It follows that the "value" of the claim is equal to the value of the underlying property—not just the amount of the unpaid taxes. Under this reasoning, it is not just the amount of the unpaid taxes that must be paid to the tax buyer, but the fair market value of the underlying property, thus greatly increasing the amount of the tax buyer's secured claim that must be satisfied in accordance with a plan.

The court in *Robinson* did not formally decide the value of a tax buyer's claim post-redemption. Nevertheless, the issue will doubtless be resolved by Judge Barnes in the near future and provide greater clarity as to the rights of tax buyers post-*Robinson.* It remains to be seen whether other judges in the Northern District of Illinois will follow *Robinson.* ❖

Bankruptcy Court Rules Advisory Committee

Pursuant to General Order of the Bankruptcy Court for the Northern District of Illinois, the Bankruptcy Court Rules Advisory Committee was created for the purpose of recommending to the judges of the Bankruptcy Court potential modifications to the Bankruptcy Court's local rules and procedures. The Committee is comprised of nine members, including: 1) the Chief Judge of the Bankruptcy Court; 2) the Chair of the Court's Local Rules Committee; 3) the Clerk of the Bankruptcy Court; 4) the United States Trustee for the Region; 5) a law professor; and 6) four attorneys. The initial attorney members and law professor Committee members are: 1) David Cleary; 2) Ariane Holtschlag; 3) Nathan Delman; 4) Kinnera Bhoopal; and 5) Professor Bruce Markell. Ariane Holtschlag serves as the Chair of the Committee.

The Committee welcomes recommendations from practitioners. Please provide suggestions for consideration to Ariane Holtschlag at aholtschlag@wfactorlaw.com. ❖

Serving the Internal Revenue Service in Northern District of Illinois Bankruptcy Cases

By Michael Kelly, U.S. Department of Justice

Adversary Proceedings and Contested Matters

Rule 7004(b)(5) requires that pleadings in adversary proceedings and contested matters (*see* Rule 9014(b)) may be served by "first class mail postage prepaid" upon the "the civil process clerk at the office of the United States attorney for the district in which the action is brought," "the Attorney General of the United States," and the applicable "officer or agency." Claim objections are contested matters, subject to the requirements of Rule 7004. For adversary proceedings or contested matters directed against the IRS in the Northern District of Illinois (both Eastern and Western Division), the addresses for the Rule 7004 recipients are as follows:

- Henry J. Riordan
  Assistant Chief, CTS-Northern
  Tax Division (DOJ)
  P.O. Box 55
  Ben Franklin Station
  Washington, DC 200441
- United States Attorney
  Civil Process Clerk
  219 South Dearborn Street, Room 500
  Chicago, Illinois 60604
- Internal Revenue Service
  P.O. Box 7346
  Philadelphia, Pennsylvania 19101

The address above to Henry J. Riordan, Assistant Chief, CTS-Northern, Tax Division (DOJ) constitutes service on the Attorney General for purposes of complying with Rule 7004(b). It is unnecessary to serve the Attorney General's direct address (U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530) if you have served the Tax Division (DOJ) address. The IRS encourages you to supply Tax Division (DOJ) with a courtesy copy of pleading via fax to (202) 514-5238, but cautions that a fax does not fulfill the applicable service requirements.

Notice Under Rule 2002

For documents required to be served on the IRS under Rule 2002, Rule 2002(g)(1) provides that notices should be addressed to the service address designated on the proof of claim or, if no proof of claim is filed, the address designated under Rule 5003(e). Further, Rule 2002(j) provides that notices in chapter 11 cases should be mailed to the IRS at its address designated under Rule 5003(e). The IRS's Rule 5003(e) address—which should be identical to the address listed on IRS proofs of claims—is:

- Internal Revenue Service
  P.O. Box 7346
  Philadelphia, Pennsylvania 19101

[1] Private delivery services cannot deliver correspondence to Post Office boxes. If you choose to send notice via private delivery service, please address to the street address for Tax Division (DOJ), which is: Henry J. Riordan, Assistant Chief, CTS-Northern, Tax Division (DOJ), Room 7804, JCB Building, 555 4th Street, N.W., Washington, D.C. 20001. Do not use this address for the delivery of mail by the United States Postal Service.

Mission Statement

The Bankruptcy Court Liaison Committee for the Northern District of Illinois was formed to assist the Bankruptcy Court and its practitioners to create a more efficient and collegial environment throughout the entire Northern District of Illinois. In addition to promoting communications, supporting educational programs, and sponsoring social events, Section 2.01 of the Committee's Bylaws provides that practitioners may relay issues, concerns, or complaints about Bankruptcy Judges or the Bankruptcy Court to the Committee – anonymously – through the Co-Chairs or any other Committee Member. The information will then be anonymously presented to the appropriate Bankruptcy Judge Committee Members for review and consideration under 28 U.S.C. § 154(b), which provides that the Chief Judge of the Bankruptcy Court "shall ensure that the business of the bankruptcy court is handled effectively and expeditiously."

Practitioners wishing to share any issues, concerns, or complaints with the Committee may contact any of its Members anonymously via, mail, email, phone, or on the Bankruptcy Court's website at the following link: http://www.ilnb.uscourts.gov/bankruptcy-court-liaison-committee

United States Bankruptcy Court, Northern District of Illinois

Judge Pamela S. Hollis, Chief Judge

Judge Janet S. Baer

Judge Timothy A. Barnes

Judge Donald R. Cassling

Judge Jacqueline P. Cox

Judge Carol A. Doyle

Judge A. Benjamin Goldgar

Judge LaShonda A. Hunt

Judge Thomas M. Lynch

Judge Jack B. Schmetterer

Judge Deborah L. Thorne

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