THE OFFICIAL NEWSLETTER OF THE BANKRUPTCY & COMMERCIAL LAW SECTION OF THE ALABAMA BAR FALL 2019

BANKRUPTCY AT THE BEACH: MAY 29-30, 2020

Stream of Commerce

Bankruptcy at the Beach, new location: The Henderson Beach Resort and Spa, Destin.

Please join your colleagues, speakers, and judges for a great CLE seminar, networking opportunity, live music, pool party, surf, and fun at The Henderson Beach Resort and Spa, Destin, May 29 and 30, 2020. Check out the amenities via www.hendersonbeachresort.com, put in on your calendar and make your reservations today.

Attorney Calendar All three Alabama bankruptcy districts provide a 30-day attorney calendar. This allows an attorney to see the cases pending in each district for the next 30 days. These calendars are not to be substituted for the official docket. ALMB and ALSB provide this link under the "Attorney" or "Attorney Resources" tab. This information is available as a pull down from the "Court Calendar" tab.

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A MESSAGE FROM THE CHAIR

"Thank you", to the entire Bankruptcy and Commercial Law Section of the Alabama State Bar! It has been a great year. Our 2019 Bankruptcy at the Beach seminar was a success and the Board has been hard at work planning 2020! As you know, "Bankruptcy at the Beach" is moving in 2020! (con't p.2)

Dec 1. Rule Changes There are five rule changes effective December 1. Bankr. Rule 4001(c)(4) makes the post-petition obtaining of credit provisions inapplicable to chapter 13 case. Bankr. Rule 6007(b) was amended to provide clarity as service of parties on a motion to abandon property. The amendment to Bankr. Rule 9036 permits electronic notice after written consent of the party to be served. Bankr. Rule 9037(h) provides a redaction procedure for personal identifiers filed. App. Pro. Rule 26.1(c) requires disclosure of all debtors not named in the caption and for a corporation, disclosure of the information required under App. Pro. Rule 26.1(a).

Two Northern District Judges Reappointed On October 22, 2019, the United States Court of Appeals for the Eleventh Circuit unanimously voted to reappoint Chief Judge James J. Robinson and Judge Tamara O. Mitchell. Congratulations to both.

A Message from the Chair (continued)

To ensure that the move goes smoothly, the Board has created "The Henderson Committee", which is comprised of Diane Murray, Evan Parrott and Reid Tolar. Each of these individuals represent a District and have volunteered to contribute their time and effort to assist the Board in making next year's seminar the best one yet!

We are excited to have all of our Alabama bankruptcy judges joining us again this year to present topics valuable to both consumer and commercial practitioners. We are thankful for their continued support, dedication and commitment to our Section and the annual seminar.

We are also thankful for our 2019 sponsors. Each year, without fail, our sponsors and members generously contribute to our annual seminar. Without this ongoing support, both in attendance and sponsorship, this annual event would not be possible.

Lastly, I would like to thank the Board and Committee members of the Bankruptcy and Commercial Law Section, without whom, none of this this would be possible. I am fortunate to serve alongside an extraordinary group of professionals and friends and I am thankful to play a small part in continuing this annual tradition that started 33 years ago. Much has changed, but one thing stays the same: the quality and collegiality of Alabama's bankruptcy lawyers and judges. We have much to be thankful for and to celebrate!

It is an honor to serve as chair of the Bankruptcy and Commercial Law Section this year and I look forward to catching up with all of you again at the beach! Jamie A. Wilson, 2019-2020 Chairman

Fifth Circuit Holds that Bankruptcy Courts Cannot Enforce Discharge Injunctions Issued in Other Districts, and that Certain Private Student Loans are Not Subject to § 523(a)(8)'s Exception to Discharge.

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In *Crocker*, the Fifth Circuit recently held that bankruptcy courts have no authority to enforce discharge injunctions entered in other districts and that certain education loans are not excepted from discharge under Bankruptcy Code § 523(a)(8).[1]

[1] *Crocker, et al. v. Navient Solutions, L.L.C. (In re Crocker)*, —— F.3d ——, 2019 WL 5304619 (5th Cir. Oct. 22, 2019). For a discussion of the treatment of student loan debts in bankruptcy, *see* Christian Pereyda, *Is Undue Hardship an Undue Burden? An Argument in Favor of Presumptive Non-Dischargeabililty for Federal, but Not Private, Student Loans in Bankruptcy*, 35 Am. Bankr. Inst. J. 40 (June 2016).

Crocker concerned two individual chapter 7 debtors who each borrowed from the same "for-profit, public corporation whose loans are not part of any governmental loan program." [2] One of the debtors borrowed $15,000 to study for his bar exam, and the other borrower $11,658.99 for technical school.[3] Each debtor later obtained a discharge under Bankruptcy Code § 727 from the U.S. Bankruptcy Court for the Southern District of Texas and from the U.S. Bankruptcy Court for the Eastern District of Virginia, respectively.[4]

The Texas debtor later commenced an adversary proceeding with the bankruptcy court that granted his discharge in the Southern District of Texas alleging that Navient,[5] who had acquired both loans from the original lender, violated his discharge injunction by demanding repayment.[6] Thereafter, the Virginia debtor joined the Texas debtor in an amended complaint seeking to certify a nationwide class comprised of individuals

who (1) obtained prepetition private education loans from Navient or related companies to cover expenses at an institution not accredited under Title IV; (2) later filed for bankruptcy and were issued discharge orders; (3) have never reaffirmed their prepetition private education loan debt; and (4) are being induced to pay their allegedly discharged private education loans.[7]

When Navient moved for summary judgment, the bankruptcy court denied the motion and later certified its order for direct appeal to the Fifth Circuit.

On appeal, the Fifth Circuit reversed in part, affirmed in part, and remanded for further proceedings.[8] In addressing the discharge injunction issue, the Fifth Circuit discussed relevant legislative history,[9] distinguished its prior precedent and looked to its sister circuits' opinions on bankruptcy courts' contempt power,[10] and distinguished the Supreme Court's recent opinion in *Taggart v. Lorenzen*. [11] Ultimately, the circuit court concluded that "[t]he bankruptcy court erred in holding that it could address contempt for violations of injunctions arising from discharges by bankruptcy courts in other districts."[12] Turning to § 523(a)(8), the court relied on "the *noscitur a sociis* doctrine, the need to avoid surplusage, Congressional ratification in 2005 of prior

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[2] *Crocker*, 2019 WL 5304619 at *1.
[3] *Id.*
[4] *Id.*
[5] Navient is an education loan management business whose operations include servicing and collecting student loans. Navient was formed in 2014 by the split of Sallie Mae into two distinct entities, Sallie Mae Bank and Navient. As of 2018, Navient services 25% of student loans in the United States.
[6] *Crocker*, 2019 WL 5304619 at *2.
[7] *Id.*
[8] *Id.* at *15
[9] *Id.* at *4–*6.
[10] *Id.* at *7–*8.
[11] *Id.* at *8 (discussing *Taggart v. Lorenzen*, —– U.S. ——, 139 S. Ct. 1795, 1801, 204 L.Ed.2d 129 (2019)).
[12] *Id.*

interpretations, and the command that discharge exceptions are interpreted narrowly in favor of debtors" to conclude that private student loans do not fall within Subsection 523(a)(8)(A)(ii) and, therefore, such loans are subject to discharge under § 727 unless they fall within another subsection of § 523(a)(8). [13]

Practitioners should take note of Crocker for two reasons: 1) because it clearly prohibits bankruptcy courts from enforcing discharge injunctions issued in other districts (and perhaps by other bankruptcy courts within the same district), and 2) because, under its reasoning, a private student loan that is not a "qualified education loan" will be subject to discharge in bankruptcy. Practitioners should also be cautious to extend the Fifth Circuit's holding to all private student loans, as the definition of a "qualified education loan" does not depend on the lender. Time will tell if the Fifth Circuit's sister circuits will be persuaded by its holding under § 523(a)(8) or if Congress will take action on the treatment of student loans in bankruptcy.

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The Board of the Bankruptcy and Commercial Section of the Alabama State Bar wish to thank the following sponsors for their generous support in making the 2019 Bankruptcy at the Beach such a success:

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[13] *Id.* at *15.