Money Talks: UB Law Convocation Brings the Intricacies of Bankruptcy Law to Non-Specialists

UB Law Forum

Left to right: Jeffrey M. Freedman, Arthur J. Bronson '85, Garry M. Graber '78 and Gerald S. Lippes '64.

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When you talk bankruptcy, you're talking big numbers: a million bankruptcy cases were filed in the United States last year, 900,000 of those being individuals or couples abandoning their debts and starting over financially.

UB Law School's 17th Annual Alumni Convocation, held on March 6 at the Center for Tomorrow, attracted a full crowd of attorneys, faculty and students to discuss bankruptcy. The convocation brought the tenets of bankruptcy law to bear on all kinds of legal practices — corporate, matrimonial, negligence, environmental, real property — representing individual clients to cases involving huge corporations in bankruptcy. Fleet Bank was the major sponsor of the convocation, which was chaired by Catherine Wettlaufer, a partner in the Buffalo law firm Saperston & Day.

A dais of seven speakers — departing from the traditional one-at-a-time presentation — brought some lively exchanges to the program.

Buffalo attorney Jeffrey M. Freedman, who specializes in personal bankruptcy and Social Security disability, began by discussing major trends in bankruptcy. He noted that although, nationwide, 1992 was the seventh consecutive year of record filings, the numbers may be starting to level off. Even so, he said, 4,000 new bankruptcy cases are filed every business day, 90 percent of them consumer bankruptcies.

Why? Freedman cited uninsured medical expenses, divorce and unemployment as factors in many bankruptcies. He also said easy availability of credit is just too tempting for many consumers.

"I have clients who are prisoners at correctional facilities who have received pre-approved credit card applications. Perhaps the banks thought they had a sufficiently stable address," he said wryly.

As well, Freedman said, the character of bankruptcy filers is changing: "I used to see mostly blue-collar people filing, but now I'm getting white-collar, college-educated people coming to my office filing bankruptcy."

He detailed a "super-exemption" for filers who have substantial equity in their home. (Bankruptcy law provides that a couple can protect up to $20,000 in equity when filing a Chapter 7 bankruptcy.) The super-exemption factors in the hypothetical costs of selling the home, which courts have figured at 10 percent of its value; and the hypothetical capital gains tax from such a sale.

By including those figures, Freedman said, homeowners filing Chapter 7 can protect more equity. In some cases, he said, that can mean the difference between having to sell the home and keeping it.

On the subject of re-establishing credit, Freedman gave some practical tips for clients in bankruptcy: Review and monitor the credit report for accuracy; get a secured credit card, backed by money on deposit at a bank; save some money as evidence of financial security; find a co-signer if necessary. "I tell my clients that it took them a while to get into this mess, it will take them a while to get out of it," he said.

Another panelist, Bankruptcy Court Judge Beryl E. McGuire '59, argued against the idea of a co-signer. "One bank-

From left; Gerald S. Lippes '64, Hon. Beryl E. McGuire '59, Margaret Lillis Snajczuk '84 and William F. Savino '75.

ruptcy petitioner," he said, "aptly described a co-signer as 'a jerk with a fountain pen.'"

Margaret Lillis Snajczuk '84, an associate at the Buffalo law firm Saperston & Day, discussed the impact of a bankruptcy filing on a personal injury action. Specifically, if you're representing a plaintiff and the defendant files bankruptcy, are the insurance proceeds still reachable? In simple situations, she said, the answer is probably yes.

The sticking point is the automatic stay that goes into effect under Section 362 of the Bankruptcy Code. As soon as a petition is filed, Snajczuk said, the stay kicks in, and creditors are enjoined against even contacting the debtor.

That's true even if an attorney is unaware of the filing, she said. If a judgment is entered against the debtor, it would have to be vacated because it's in violation of the stay.

Garry M. Graber '78, of the Buffalo firm Hodgson, Russ, Andrews, Woods & Goodyear, then addressed the impact of bankruptcy in family law. How does a bankrupcy filing affect a divorce or separation proceeding?

Graber noted that actions seeking alimony, maintenance or support payments are not stayed by a bankruptcy filing, but only to the extent that they seek a share of future income. By contrast, actions seeking a share of a couple's joint estate are subject to the bankruptcy stay.

He noted the "180-Day Rule" under Section 541 of the Bankruptcy Code, which says a bankruptcy estate includes not only everything the filer owns at the date of filing, but also property obtained in a settlement with his spouse within 180 days. "Timing is crucial in these matters," he said.

Graber said the idea of "planning" for a bankruptcy is a gray area in the law. Some trustees have issued a ruling of fraud in cases where one spouse has transferred assets to the other's name, in order to shelter them from the bankruptcy action.

Damon & Morey attorney William F. Savino '75 then discussed the liability of corporate directors and officers in a company's bankruptcy filing. The basic rule, he said, continues to apply: Officers and directors have limited liability.

In situations where a firm is running out of money, Savino said it should take care to disburse certain obligations no matter what: employee contributions to FICA (this is a trust fund, so misuse is considered fraud), sales tax collected (ditto).

In addition, he said, directors of a bankrupt company face different duties: Since 1953, New York State law has said that when a corporation becomes insolvent, the fiduciary duty of its directors shifts from the shareholders to the creditors.

Arthur J. Bronson '85, of the Buffalo firm Phillips, Lytle, Hitchcock, Blaine & Huber, spoke on environmental issues, discussing whether a corporation's responsibility for cleaning up a contaminated site is dischargeable under a bankruptcy. The key issue, he said, is when the environmental claim arose.

The panel was moderated by Gerald S. Lippes '64, of Lippes, Silverstein, Mathias and Wexler. The convocation concluded with a luncheon and the awarding of the 1993 Jaeckle Award to practitioner and teacher Albert R. Mugel (see accompanying story). ■