STATE BAR of TEXAS

BANKRUPTCY LAW Section Newsletter

April 2019 — SPECIAL EDITION

IN THIS ISSUE

2019 BENCH BAR SPECIAL EDITION!

Welcome to a special edition of the Bankruptcy Law Section newsletter. Please make plans to join your fellow insolvency professionals at the 2019 Bench Bar Conference, April 17-19 at [SOLD OUT] Austin. More information is available in this newsletter and at our website, **statebaroftexasbankruptcy.com**.

Please also turn to Josiah Daniel's review of Stacey Jernigan's new novel, *He Watches All My Paths*.

We are grateful for three articles from judicial externs who have worked with Judge Jernigan and Judge Hale. Professional and student articles do not reflect any position on the part of the Section; however, they are welcome editions to our newsletters, and we hope our readers will gain insight from the work of these authors.

A MESSAGE FROM THE CHAIR

Layla Milligan

One of my favorite benefits of being involved with the State Bar of Texas Bankruptcy Law Section is the opportunity it provides me to meet and get to know attorneys and judges from across Texas and beyond who I would never have the chance to meet otherwise. While I do enjoy the opportunity to interact with many fantastic consumer bankruptcy practitioners and judges in the Austin area, I would normally not have the opportunity to get to know a corporate bankruptcy attorney in Dallas, a creditor's attorney in Laredo, a bankruptcy judge in Tyler, a restructuring advisor in Houston, or a trustee from El Paso.

The best opportunity for this type of interaction is coming up quickly – our statewide Bench Bar Conference is taking place at the Fairmont Austin, a beautiful hotel located in downtown Austin, from Wednesday, April 17th through Friday, April 19th. Attorneys, judges, and non-attorney professionals from across Texas will come together not only to enjoy a diverse array of bankruptcy CLE topics, but also to network and relax with nine holes of golf, luxury spa treatments, and several social events. The opening reception, to be held Wednesday evening at Rules & Regs on the 7th floor of the Fairmont, will be spectacular at sunset, and the YLC-sponsored party on Thursday evening at Antone's, one of Austin's legendary music venues, should not be missed.

In addition to all of these great opportunities, there will be a chance on Thursday afternoon for groups that don't normally have the ability to easily gather to meet during the conference – including a presentation for the Woman's Initiative by Monica Blacker, and a meeting of Inns of Court from across the State.

I personally hope you can join us at this fantastic conference. Please consider becoming more involved with the Section as well. We will keep you posted as to other events being held this year, including pro bono opportunities, webinars, and other upcoming projects, through the Section's website. And we look forward to continuing the support of bankruptcy attorneys and professionals through the Section's work.

Join us!

Layla Milligan

A Review of Stacy G.C. Jernigan, *He Watches All My Paths* (2019)

(available from Amazon Books)

by Josiah M. Daniel, III
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The field of "Law and Literature" is the subdivision of legal studies that looks beyond statutes, formal rules, and reported cases to assess how fiction and other works of literature reveal popular perceptions of doctrines, practices, and legal institutions at certain times; how fiction represents and illustrates law at work; and how it can show or reflect on legal thought, legal methods, or legal ways of understanding and explaining life.[1] *Exhibit A* for a law school class or a MCLE presentation in Law and Literature should be the just-published, first novel by Stacy Jernigan entitled *He Watches All My Paths*.

The author is well known to bankruptcy lawyers around the country as one of the Bankruptcy Judges for the Northern District of Texas, an office she has held since 2006 after a distinguished career in a "Big Law" firm.[2] Appropriately, the protagonist and narrator of her novel is . . . a bankruptcy judge! Readers of Judge Jernigan's legal decisions know how clearly and forcefully she writes, and those expository abilities have well prepared her for the telling of the story here. The author begins by situating the fictional judge, named "Avery Lassiter," within well recognizable details of modern life, including fitness trackers, high school sports, good food and wine, family celebrations, and friendships—but, unsettlingly, also death threats and bombs.

The novel moves quickly but covers events over the space of a year. The delivery of an anonymous threat on the protagonist's life triggers everything that happens, dominating the judge's and her family's lives during that time, including the experience of intensive, close protection by the U.S. Marshals, who literally move into her backyard and who save her life more than once. As repeated threats with cryptic clues continue to arrive, the tension mounts, affecting everyone—including lawyers and litigants in her court who might inadvertently make sudden movements, to which the security personnel immediately react. Moreover, in the course of the plot the clues steadily reify as acts of violence.

Judge Jernigan is a fine storyteller,[3] and she provides a good snapshot of the collegial chambers of a busy judge. Particularly resonant and valuable passages of the novel for bankruptcy lawyers are the author's reflections about the task of judging in bankruptcy cases:

> Avery always said that her dockets were a regular reminder that everyone is just one day away from a disaster. . . . People are riding high one day, and then tragedy hits. People lose their jobs. A spouse cheats and an ugly divorce ensues. Someone gets diagnosed with cancer or has a stroke. A hurricane or other natural disaster destroys a lifetime of achievements, possessions, and memories. Someone gets chased through a VA parking lot by a woman carrying an ice pick. A mother trying to raise kids in a blighted neighborhood gets her car door shot up and cannot get to work. This was the drama over which Avery presided every day. . . . It is very difficult to hear people's sad stories laid bare before the bench and then be faced with determining how to apply the law and fix the broken places.[4]

Additionally, the narrator muses about the adversary system of justice, recalling that in one case during her career as a bankruptcy lawyer, she

> was ultimately successful in obtaining a take-nothing verdict for her client in the dram shop liability [adversary proceeding]. Her client felt absolutely vindicated. Avery had been brilliant in defending the casino. . . . the new billionaire owner of the hotel and casino was ecstatic that Avery had saved him potentially millions of dollars in connection with his new investment . . . . But, deep down, Avery felt

Continued on page 4.

> a little sick about it all. She still remembered the plaintiff-mother with her three young boys standing in the courtroom after it was all over, just pitifully staring at her.[5]

Happily, Avery Lassiter and her family survive the year. The antagonist, along with a number of unfortunate bankruptcy lawyers who happened to be attending an annual bankruptcy-law conference in Austin, do not (fictionally, of course). Throughout the story the author pays tribute to the U.S. Marshals for their devotion, professionalism, and individualistic personalities. The Marshals Service was, she points out, the first federal law enforcement agency and, in addition to a primary role of keeping all federal judges safe, performs many anti-crime functions.

Judge Jernigan's novel might be termed, as a literary critic once said of certain Tolstoy short stories, "really autobiography mingled with fiction."[6] Like Judge Lassiter, the real judge has endured threats; accordingly, each page of the book, while fictional, bears strong hallmarks of veritas. But *He Watches All My Paths* is well worth reading simply as fictional literature. Non-lawyers will enjoy the fast pace, the suspenseful unfolding of the plot, and the cinematographic descriptions of the Marshals' feats of protecting the judge from imminent death on two occasions. Furthermore, the reader unfamiliar with bankruptcy will learn a great deal about how this system of the law works. Best of all, *bankruptcy lawyers* will savor the book with its rich details of the life and work of a bankruptcy judge as she decides cases and as she lives her life, while dealing with the fears and frustrations resulting from the threats of one who seeks to harm her and to strike a blow against the system of bankruptcy law that we know and hold dear.

ENDNOTES

1 Simon Stern, *Literary Analysis of Law*, Ch. 4 in Marcus D. Dubber & Christopher Tomlins, Eds., The Oxford Handbook of Legal History 63-64 (2018).

2 Amy Elizabeth Stewart, *Judicial Profile: Honorable Stacey G.C. Jernigan*, in Dallas Bar Ass'n, Headnotes (Mar. 16, 2017), available at https://www.dallasbar.org/bookpage/judicial-profile-honorable-stacey-gc-jernigan)

3 "There is but a short step from a story-telling litigator [or judge] to a novelist. Both writers and novelists require skills of observation, the ability to make some sense of experiences, and the discipline to write those observations." Hale Freeland, Fertile Soil: Why Mississippi Lawyers Write, 44 Miss. Law. 11 (1997).

4 Stacy G.C. Jernigan, *He Watches All My Paths* at 146-47 (2019). Cf. Teresa A. Sullivan, Elizabeth Warren, Jay Lawrence Westbrook, The fragile Middle Class : Americans in Debt (2000).

5 *He Watches All My Paths* at 182.

6 Ernest Albert Baker, *A Guide to the Best Fiction in English* 629 (1913).

2019 Elliott Cup Moot Court Competition

By: Jordan Fowler*

The 2019 Elliott Cup Moot Court Competition took place on February 15-16 in Dallas, Texas. The competition, named in honor of Judge Joe Elliott, prepares law students in the Fifth Circuit to compete at the annual Duberstein Moot Court Competition in New York. This year's moot court problem, *Vin Sant v. Weinberg* (*In re Backstreets Plowing, Inc.*), involved a chapter 11 case that was subsequently converted to chapter 7. The two issues were (1) whether 11 U.S.C. § 362(a)(3) is violated when a secured creditor passively retains possession of collateral that it lawfully repossessed from the debtor prior to the petition date, and (2) whether 11 U.S.C. § 503(b) permits a court to grant an administrative expense for a substantial contribution in a case under chapter 7 of the Bankruptcy Code.

The competition was organized by Jessica Lewis of Ross & Smith and Emma Persson, law clerk to Judge Harlin D. Hale. With codebooks in hand, teams from Texas, Louisiana, and Mississippi impressed the judges with their bankruptcy knowledge. In the end, Baylor and Ole Miss faced off for first place in the final round. The final round was judged by Judge Harlin D. Hale (N.D. Tex.), Judge Edward L. Morris (N.D. Tex.), and Judge Brenda T. Rhoades (E.D. Tex.). The Baylor team of Kevin Miller and Madeline Tansey received first place. The team was coached by Deborah M. Perry of Munsch Hardt Kopf & Harr, P.C. Andrew Cicero, Nathan Simpson, and Jack Shultz of Ole Miss took second place. The Baylor team of Christina Rosendahl and Hallie Hicks and the University of Texas team of Cameron Kelly and Lauren Hutton-Work tied for third place. The Elliott Cup continues to successfully prepare students for the Duberstein competition. At the Duberstein, several Fifth Circuit teams, Baylor, Ole Miss, SMU, and UT advanced throughout the competition. UT and Ole Miss tied for third place, and the SMU team of Michael Creme, Gina Mills, and Austin Brakebill won the National Championship.

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2019 Bench-Bar Bankruptcy Conference

Sponsored by the State Bar of Texas Bankruptcy Law Section

Fairmont Austin

April 17-19, 2019

Join the State Bar of Texas Bankruptcy Law Section for the 2019 Bench Bar Conference, scheduled for April 17-19, 2019, at the beautiful Fairmont Austin hotel in the heart of downtown Austin.

Highlights include:

- Welcome reception at the Fairmont (Wednesday evening)
- YLC Committee-sponsored reception at Antone's (Thursday evening)
- Run with the Judges fun run along Lady Bird Lake
- 9.0 hours of CLE
- Networking and more networking

Details online at statebaroftexasbankruptcy.com

Fifth Circuit Declines to Expand Application of the Equitable Mootness Doctrine in *In re Sneed Shipbuilding*

By: Grace Porter[1]

In *In re Sneed Shipbuilding, Inc.*,[2] the U.S. Court of Appeals for the Fifth Circuit declined to expand its application of the equitable mootness doctrine to an approved settlement agreement where 1) the agreement was not sufficiently complex as to warrant an expansion of the doctrine's applicability from reorganization plans; and 2) the appeal was already statutorily moot under § 363(m) of the Bankruptcy Code.[3]

In 2016, Sneed Shipbuilding (the "Debtor") filed for Chapter 11 bankruptcy. After reorganization proved difficult, the bankruptcy court appointed a trustee. The trustee filed a complaint against the Debtor's principal, Martin Sneed ("Mr. Sneed") for "attempting to fraudulently transfer ownership" of one of the company's assets, a shipyard in Channelview, to himself.[4] The trustee asked the court to rule that the Debtor, not Mr. Sneed, was the titleholder of the Channelview shipyard.[5] Before the court could resolve the issue, however, the trustee and Mr. Sneed's probate estate came to a settlement agreement so that the shipyard could be sold to a third-party buyer with clear title.

The settlement and sale agreements were executed together under the following terms: (1) the buyer paid the Debtor $15 million for the shipyard, which the trustee used to ensure title to the property was free of all encumbrances;[6] (2) Mr. Sneed's probate estate agreed to forego any claim to the Channelview shipyard and all other claims in the bankruptcy estate in return for an $8 million and an agreement from the trustee to drop any outstanding avoidance actions.

The bankruptcy court approved the sale and settlement agreement together, declaring them "non-severable and mutually dependent."[7] New Industries, an unsecured creditor of the Debtor, objected, taking specific issue with the provision authorizing the $8 million deposit to the probate estate. The court overruled the objection, and New Industries did not request a stay of the court's approval.

When New Industries appealed, the trustee asked the district court to dismiss the case on the grounds of both equitable mootness and statutory mootness under 11 U.S.C.§ 363(m). The district court granted the dismissal, but failed to indicate whether the dismissal was proper under either equitable or statutory mootness.

On appeal, the Fifth Circuit held that while equitable mootness was not applicable in this case, 11 U.S.C. § 363(m)[8] rendered New Industries' appeal moot because the bankruptcy court's approval of the sale was not stayed.

The Fifth Circuit first addressed the trustee's argument that the equitable mootness doctrine applied. Equitable mootness is a judicial abstention doctrine that appellate courts use to decline review of certain plan confirmation orders in favor of letting a bankruptcy court's decision stand. It gives courts discretion to determine when a confirmed plan is so complicated, reversal or amendment of the plan would be immensely difficult or inequitable to implement.[9] The Fifth Circuit is, self-admittedly, more reluctant to apply equitable mootness than its sister circuits.[10] Quoting the standard articulated in In re Hilal,[11] the Fifth

1 Judicial Extern to the Honorable Stacey G.C. Jernigan; SMU Dedman School of Law, May 2020.

2 No. 18-40350, 2019 WL 895687 (5th Cir. Feb. 5, 2019).

3 *Id.* at *1; 11 U.S.C. § 363(m) (West).

4 *Matter of Sneed Shipbuilding*, 2019 WL 895687, at *1.

5 The trustee sought an avoidance action as to the alleged fraudulent transfers. *Id.*

6 These encumbrances included liens of a secured creditor, the debtor in possession's lender, and property taxes. *See id.*

7 *Id.*

8 Section 363(m) moots review of a sale of estate property where the lower court's action was not stayed pending appeal. *See id.*

9 "[T]he concern of equitable mootness is that an appellate reversal might undermine the plan and the parties' reliance on it." *Id.* (citing *In re SI Restructuring, Inc.*, 542 F.3d 131, 135-36 (5th Cir. 2008)).

10 "We are more hesitant to invoke equitable mootness than many circuits, treating it as a 'scalpel rather than an axe.'" *Id.* at *2. (quoting *In re Pacific Lumber Co.*, 584 F.3d 229, 240 (5th Cir. 2009)).

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Circuit explained that equitable mootness is properly applied when a reorganization plan has been "so substantially consummated" that a court could not grant meaningful relief, even if there are still outstanding conflicts.[12]

Applying this standard to the case at bar, the Court determined that equitable mootness did not bar review because this was an appeal of a settlement agreement, not a confirmation plan. While other circuits have applied the equitable mootness doctrine in settlement agreement cases, these cases involved particularly complex transactions. Contrasting the case at hand with In re Tribune Media Co.,[13] the sale and settlement agreements involved in this case were relatively simple and only involved a handful of parties, all of whom were directly involved with the case.[14] The Fifth Circuit found the transaction in this case insufficiently complex to warrant an expansion of the doctrine.

Conversely, the Court did agree that New Industries' appeal was moot under § 363(m) of the Bankruptcy Code.[15] Mootness under § 363(m) exists to "encourage parties to bid for estate property" by allowing buyers to rely on the validity of the transaction.[16] In effect, the statute limits the review of a sale of an estate's property to the judgement of the bankruptcy court, unless a stay preventing the sale is issued before the case is reviewed. Despite New Industries' argument that it was not appealing the sale, only the distribution of funds to the probate estate, the two agreements were inseverable from one another. The sale of the shipyard was contingent upon the probate estate relinquishing all claims to the property, which would not have occurred but for the payment to the probate estate. Since the sale agreement and the settlement agreement were interdependent, the Court could not review one without also reviewing the other. Therefore, § 363(m) prevented appellate review of the settlement agreement.

The Fifth Circuit's holding in this case illustrates the Court's reluctance to deviate from the status quo absent exigent circumstances. In acknowledging the willingness of other circuits to more readily apply equitable mootness, the Court demonstrates a self-awareness of its own narrow view of the doctrine. However, its discussion and comparison of this case with more complex cases where courts applied equitable mootness outside of the confirmation plan context, suggests that the Court may be open to expanding its view of this doctrine should the right case arise. It is also worth bearing in mind that the Court was able to deny appellate review of the sale agreement here without deviating from its own precedent. Under a different set of facts, it is possible that the Court may have ruled differently on the equitable mootness argument to achieve an equitable result.

11 534 F.3d 498 (5th Cir. 2008).

12 *Matter of Sneed Shipbuilding*, 2019 WL 895687, at *1 (quoting *In re Hilal*, 534 F.3d 498, 500 (5th Cir. 2008)).

13 799 F.3d 272 (3rd Cir. 2015) (in which the Third Circuit applied equitable mootness to an appeal of a multi-billion dollar reorganization plan which affected several hundred classes of creditors)).

14 "Our ability to produce a single graphic to illustrate the Channelview transaction demonstrates that this case does not rise to that level of complexity." *Matter of Sneed Shipbuilding*, 2019 WL 895687, at *3.

15 *Id.* at *3 (citing 11 U.S.C. § 363(m)).

16 *Id.* (citing *In re Bleaufontaine, Inc.*, 634 F.2d 1383, 1389 n.10 (5th Cir. 1981) ("If deference were not paid to the policy of speedy and final bankruptcy sales, potential buyers would not even consider purchasing any bankrupt's property.")).

Fifth Circuit Rules the Seven Seas: Court Reaffirms Distinction Between Direct and Derivative Injuries

***By: Stoker Burt*[1]**

In *Meridian Capital Fund v. Burton* (*In re Buccaneer Res., L.L.C.*),[2] the Fifth Circuit affirmed the decisions of the district court and bankruptcy court in holding that a tortious interference claim alleging a direct injury to a creditor was not property of the estate, and thus the creditor could pursue the claim in state court.[3] The Fifth Circuit's holding provides guidance to judges and attorneys on the distinction between direct and derivative injuries, an issue which arises frequently in litigation in bankruptcy courts.

The Underlying Dispute

Curtis Burton ("Burton") was the CEO of Buccaneer Resources L.L.C. (the "Debtor"), an oil exploration and production company, until his termination in 2014.[4] The Debtor's business began to falter and in January 2014, Meridian Capital CIS Fund ("Meridian") purchased all of the Debtor's senior debt.[5] While the aid from Meridian prevented the Debtor from immediate failure, the Debtor subsequently filed for Chapter 11 in May 2014.[6] Prior to its bankruptcy filing in May 2014, the Debtor fired Burton.[7] Burton alleged that the termination violated the terms of his employment contract and that Meridian was involved in the Debtor's decision.[8] Burton filed a claim in the bankruptcy case but later withdrew it.[9] Ultimately, the Debtor and Meridian reached a settlement in which the Debtor agreed to release Meridian from any potential claims for up to $10 million.[10] The agreement was incorporated into the Debtor's bankruptcy plan.[11]

Burton instituted a suit against Meridian in state court alleging tortious interference with contract.[12] Meridian sought to remove the case to the bankruptcy court, arguing that the claims alleged by Burton belonged to the Debtor's estate and were thus released by the agreement between Meridian and the Debtor.[13] The bankruptcy court disagreed with Meridian and concluded that the tortious interference claim belonged to Burton and should be litigated in state court.[14] The district court agreed with the bankruptcy court and remanded all of Burton's claims to state court. An appeal to the Fifth Circuit followed.[15]

At the Appeals Court

The dispute about jurisdiction centered on whether the tortious interference claim belonged to Burton or to the Debtor.[16] If it belonged to Burton, the claim should be heard in state court because the claim would belong to him, not the estate.[17] If it belonged to the Debtor, the bankruptcy court would be the proper forum because the claim would be property of the estate.[18]

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1 Judicial extern to the Honorable Harlin D. Hale. Texas A&M University School of Law, May 2019. Contact: stokerburt@gmail.com.

2 912 F.3d 291, 292 (5th Cir. 2019).

3 *Id.*

4 *Id.*

5 *Id.* at 293.

6 *Id.*

7 *Id.*

8 *Burton*, 912 F.3d at 293.

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 *Burton*, 912 F.3d at 293.

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*; *see also* 11 U.S.C. § 541(a)(1).

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Fifth Circuit Rules the Seven Seas
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The Fifth Circuit relied on its decision in *In re Seven Seas* in its analysis of the issue.[19] In *In re Seven Seas*, the Fifth Circuit held that when determining whether the bankruptcy estate or a creditor can pursue a claim against third parties, the court must focus on whether the creditor has suffered a direct injury or one that is derivative of an injury to the debtor.[20]

For claims belonging to a particular creditor or group of creditors, if the claim does not involve any harm to the debtor, the claim is a direct injury and cannot be part of the estate.[21] The Court used In re Seven Seas as an example of a direct injury.[22] In that case, unsecured bondholders had relied on false oil reserve estimates when deciding to invest in the debtor.[23] There, the Court held that the induced reliance did not injure the debtor, only the bondholders, so the injury was direct and belonged to the creditors.[24]

If the harm to the creditor comes about only due to harm to the debtor, then its injury is derivative, and the claim is property of the estate.[25] In its analysis of derivative injuries, the Court provided numerous cases where the injury was a derivative one.[26]

Here, the Fifth Circuit concluded that the harm to Burton from his termination without severance did not depend on any harm to the Debtor.[27] The Court reasoned that the injury to Burton flowed through the Debtor's action, namely, the request of Meridian to terminate Burton in attempt to save the Debtor money, but not because of an injury to the Debtor.[28] Simply put, the injury suffered by Burton was not due to injury suffered by the Debtor. The Court went on to find that there is no reason why the estate should recover for a third party's tortious conduct when it did not injure the bankrupt company.[29] The Court concluded that the injury to Burton was a direct one and thus, it belonged to him.[30]

Meridian argued that Burton's tortious interference cause of action was really one for lender liability in disguise.[31] Meridian asserted that the injury was its improper control of the Debtor and that the improper control led to Burton's termination, making it the derivative harm.[32] The Court was not persuaded by Meridian's argument and again noted that Burton's termination did not depend on the Debtor suffering an injury.[33]

Takeaway

Jurisdiction can often be a complicated issue in bankruptcy cases and proceedings. The holding in *Burton* reiterates the Fifth Circuit's *In re Seven Seas* framework, while providing guidance as to how the Fifth Circuit distinguishes direct and derivative injuries.

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19 *Burton*, 912 F.3d at 293-94; *see also In re Seven Seas Petroleum, Inc.*, 522 F.3d 575 (5th Cir. 2008).

20 *Burton*, 912 F.3d at 294.

21 *Id.* at 293.

22 *Id.* at 293-94.

23 *Id.* at 294.

24 *Id.*

25 *Id.*

26 *See Burton*, 912 F.3d at 294 (citing *In re Lothian Oil, Inc.*, 531 F. App'x 428, 439-40 (5th Cir. 2013) ("The creditors' injury (reduced bankruptcy recovery) derived from injury to the debtor (the loss of estate assets), so only the estate could sue the third parties."); *see also In re Schimmelpenninck*, 183 F.3d 347, 358 (5th Cir. 1999) ("[A]n alter ego suit that attempted to pierce the corporate veil and recover assets improperly moved through the corporate structure belonged only to the estate."); *In re R.E. Loans*, 2013 WL 1265205, at *5 (N.D. Tex. Mar. 28, 2013) ("[T]he plaintiff's injury of a reduced bankruptcy recovery derived from harm to the debtor—that caused by the liens—so the estate owned the claim.")).

27 *Id*. at 294.

28 *Id.*

29 *Id*. (citing *In re Zale Corp.*, 62 F.3d 746, 755 (5th Cir. 1995) (holding that the bankruptcy court did not have jurisdiction over bad-faith claims third parties brought against a debtor's insurer because "the claims are not property of the estate and they have no effect on the estate"); *Steinberg v. Buczynski*, 40 F.3d 890, 893 (7th Cir. 1994) ("When a third party has injured not the bankrupt corporation itself but a creditor of that corporation, the trustee in bankruptcy cannot bring suit against the third party.")).

30 *Id.* at 295.

31 *Id*.

32 *Burton*, 912 F.3d at 295.

33 *Id.*

"I Did Not Know!" The Ultimate Defense: the Supreme Court's Decision in *Taggart* Will Bring Uniformity in Bankruptcy Courts

By: Julian Jones[1]

While grants of certiorari have no precedential significance, they do present a possibility that the law will change.[2] One case that received a grant of certiorari by the Supreme Court could offer a new defense in bankruptcy court involving civil contempt sanctions in the Fifth Circuit.[3] And if the high court chooses to rule expansively, the holding may go beyond injuries in bankruptcy court.

The question presented is: whether, under the Bankruptcy Code, a creditor's good-faith belief that the discharge injunction does not apply precludes a finding of civil contempt.[4] The current law in the Fifth Circuit holds that in order for there to be a finding of civil contempt, "the movant must establish by clear and convincing evidence: (1) that a court order was in effect, (2) that the order required certain conduct by the respondent, and (3) that the respondent failed to comply with the court's order."[5] The actions "need not be willful so long as the contemnor actually failed to comply with the court's order."[6]

Under the Bankruptcy Code, a creditor willfully violates a § 524(a)(2) injunction if it (1) knows the injunction has been entered and (2) intends the actions that violate it.[7] Intent to violate the discharge is irrelevant; rather, it is the intent to commit the act that violates the discharge that is important.[8] Further, the contemnor must have had knowledge of the order relating to the civil contempt charge.[9] However, the level of knowledge is not high, and intent or good faith is irrelevant.[10]

11 U.S.C. § 524 (a)(2) provides, "[a] discharge . . . operates as an injunction against the commencement or continuation of an action . . . or an act, to collect, recover or offset any such debt as a personal liability of the debtor. . . ."[11] A majority of U.S. courts—the First Circuit, Fourth Circuit, Eleventh Circuit, and other bankruptcy courts—interpret this statute to overcome a good faith belief defense.[12] However, the Ninth Circuit recently held in *Lorenzen v. Taggart*[13] a minority view that a discharge injunction based on subjective "good faith" intent precludes a civil contempt finding, even if the belief was unreasonable. This ruling conflicts with the decisions of the three courts of appeals mentioned, as well as with two bankruptcy appellate panels and dozens of lower courts.[14] *Lorenzen v. Taggart*,[15] could change the prevailing standard in the Fifth Circuit. The Fifth Circuit has held that a good faith belief is not a defense to civil contempt.[16] However, the Ninth Circuit's treatment of this issue says otherwise.

The dispute in *Taggart* involved a real estate developer, Bradley Taggart ("Taggart"), who owned a 25% interest in Sherwood Park Business Center, LLC ("SPBC").[17] The appellees, Terry Emmert ("Emmert") and Keith Jehnke ("Jennke"), also each owned

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1 Judicial Extern to the Honorable Harlin D. Hale. SMU Dedman School of Law, May 2019. Contact: julianj@smu.edu.

2 *See Gissendaner v. Ga. Dep't of Corr.*, 779 F.3d 1275, 1284 (11th Cir. 2015); *see also Howard v. Dretke*, 157 F. App'x 667 (5th Cir. 2005).

3 *Lorenzen v. Taggart* (*In re Taggart*), 888 F.3d 438, 440 (9th Cir. 2018), *petition for cert. granted*, (U.S. Jan. 4, 2019) (No. 18-489).

4 Brief for Petitioner at 1, *Lorenzen v. Taggart*, 888 F.3d 438 (9th Cir. 2018) (No. 18-489).

5 *Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 581 (5th Cir. 2000).

6 *Id.*

7 *Id.*

8 *In re Ritchety*, 512 B.R. 847, 848 (Bankr. S.D. Tex. 2014).

9 *In re Hughes*, Bankr. LEXIS 1328, at *13-14 (Bankr. N.D. Tex. 2007).

10 *Id.*

11 11 U.S.C. § 524 (a)(2).

12 *See, e.g., IRS v. Murphy*, 892 F.3d 29 (1st Cir. 2018); *In re Fina*, 550 F. App'x 150 (4th Cir. 2014) (per curiam); *In re Hardy*, 97 F.3d 1384 (11th Cir. 1996).

13 *Taggart*, 888 F.3d at 440.

14 *See supra note* 12 (listing cases).

15 *Taggart*, 888 F.3d at 440.

16 *Chao v. Transocean Offshore, Inc.*, 276 F.3d 725, 728 (5th Cir. 2002).

17 *Taggart*, 888 F.3d at 440.

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"I Did Not Know!" The Ultimate Defense
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a 25% interest in SPBC and sued Taggart for selling his interest to his attorney, John Martin Berman.[18] Emmert and Jehnke claimed that the transaction violated SPBC's Operating Agreement because Taggart did not give Emmert and Jehnke the first right of refusal to buy his interest.[19] Before the state court action commenced, Taggart filed for relief under Chapter 7 of the Bankruptcy Code.[20] He received a discharge on February 23, 2010.[21] Subsequently, Emmert and Jehnke continued with their state court claim after the stay lifted.[22]

At the close of the state court trial, Emmert and Jehnke's attorney, Stuart Brown ("Brown"), submitted a proposed judgment and Taggart provided testimony and argument at the hearing for entry of the judgment.[23] After the hearing, Brown filed a petition for attorneys' fees on behalf of SPBC, Emmert, and Jehnke.[24] Upon learning this, Taggart reopened his bankruptcy proceeding and moved to hold SPBC, Emmert, Brown, and Jehnke (collectively, the "Creditors") in contempt of court for violating the discharge injunction under 11 U.S.C. § 524(a).[25]

The state court granted SPBC's attorneys' fees, claiming that Taggart had "returned to the fray."[26] Determining that Taggart had "returned to the fray" was significant because if a debtor "returns to the fray" by participating in post-discharge litigation against creditors, the creditors are allowed to seek an attorneys' fees award if the litigation proceeding is not within the "fair contemplation of the parties" prior to the bankruptcy filing.[27] Taggart appealed the bankruptcy court's decision to the district court.[28] The district court reversed and found that Taggart had not "returned to the fray" and remanded to the bankruptcy court to determine whether the Creditors had "*knowingly* violated the discharge injunction by seeking attorneys' fees."[29] The bankruptcy court determined that the Creditors knowingly violated the injunction and awarded sanctions against the Creditors.[30] The Creditors then appealed the bankruptcy court's contempt ruling directly to the Bankruptcy Appellate Panel (BAP).[31] The BAP reasoned the Creditors did not "knowingly" violate the discharge injunction because they held a "good faith" belief that the discharge injunction did not apply to their attorneys' fees claim.[32] Taggart next appealed to the Ninth Circuit Court of Appeals.

The Ninth Circuit employed a two-part test in analyzing the contempt sanction: "(1) whether the creditor knew the discharge injunction was applicable and (2) whether the creditor intended the actions which violated the injunction," and closely examined the first prong since that was the issue in this matter.[33] The Court reasoned that knowledge of the bankruptcy proceeding was insufficient to satisfy the first part of the test, rather knowledge of the proceeding's applicability must be proved as a matter of fact.[34] The Court went on to state that a contempt ruling is precluded even if the belief that the discharge injunction did not apply to the Creditors was unreasonable, as long as the belief was in good faith.[35] As a result, the Ninth Circuit affirmed the BAP's opinion despite the Creditors' incorrect belief that they could seek attorneys' fees because Taggart had "returned to the fray."[36]

18 *Id.*
19 *Id.*
20 *Id.* at 441.
21 *Id.*
22 *Id.*
23 *Taggart*, 888 F.3d at 441.
24 *Id.*
25 *Id.*
26 *Id.* at 441-42.
27 *See In re Castellino Villas*, A.K.F., LLC, 836 F.3d 1028, 1034 (9th Cir. 2016).
28 *Taggart*, 888 F.3d at 441-42.
29 *Id.*
30 *Id.*
31 *Id.*
32 *Id.* at 443.
33 *Id.*
34 *Taggart*, 888 F.3d at 443.
35 *Id.* at 444-45.
36 *Id.*

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"I Did Not Know!" The Ultimate Defense
Continued from page 11.

Conclusion

Taggart is a case to watch. Although the issues arise in the context of a discharge injunction in a bankruptcy case, the Court's holding could affect other injunctions in the federal system. The Ninth Circuit is currently the only circuit court to hold that a good faith belief precludes civil contempt sanctions for a violation of 11 U.S.C. § 524. Moreover, the Court seems to suggest the good faith defense is based upon a subjective standard, which could present a new set of issues. Critics claim that the Ninth Circuit's holding hurts the Bankruptcy Code's tool for ensuring the debtor is secured a fresh start because it "asks innocent debtors to absorb the costs of creditor mistakes, and it deprives debtors of the essential tool for ending discharge violations and recovering their losses."[37] The Fifth Circuit, following the majority view, holds that good faith is irrelevant. Since the Supreme Court granted certiorari to this case, change may be on the horizon.

37 Brief for Petitioner at 4, *Lorenzen v. Taggart*, 888 F.3d 438 (9th Cir. 2018) (No. 18-489).

Good Morning Vietnam; Good Night Saigon
(Judge's Travel Log)

By: Judge Stacey G.C. Jernigan
United States Bankruptcy Judge
Northern District of Texas

Introduction

In March 2019, a group of approximately 80 Texas lawyers, judges, former judges, and families embarked on a travel expedition to the country of Vietnam. Specifically, the trek was part of the 16th Annual International Bankruptcy Conference sponsored by the State Bar of Texas Bankruptcy Section. This annual conference combines serious bankruptcy CLE (yes, for real) with seriously fun travel adventures. Dallas lawyer Julianne Parker headed up the excursion, as she has most years. Here is my travel log.

First, a Bit of History . . .

My father was in the U.S. Navy in the 1950's, after he graduated from high school and before he went to college. He has told me stories about being at a port at "Tourane, French Indochina" (in the area now known as Da Nang, Vietnam) in the summer of 1954, sitting on his ship, The U.S.S. Consolation, for several weeks. The time frame was right around the end of the so-called "French Indochina War," and the dismantling of French Indochina was being negotiated at the Geneva Conference. At this time in history, the area where the three countries now known as Vietnam, Cambodia, and Laos are located were referred to as "French Indochina," because the French had mostly occupied the area since the mid-19th century. At the Geneva Conference, France agreed to leave Vietnam and surrounding areas. Also, at the Geneva Conference, it was agreed that Vietnam would provisionally be partitioned between the North and South and there would eventually be an election as to unification and who would rule. That election never occurred. Anyway, there was concern at the time about how this was all going to unfold, about the inevitable spread of Communism in this region, and the sailors on my dad's ship believed something like World War III might be erupting at any moment (likely involving China). Initially, my father's ship was sent to Tourane to evacuate the French. My dad's ship would take them home to France via the Suez Canal route, and everyone on the ship was feeling pretty happy about that sweet mission. But soon, their ship's mission changed. They needed to stay put, in case American military assets were needed there. So the sailors on The U.S.S. Consolation sat and waited for the unknown. My father says his happiest memory of that multi-week stint was when the Navy sent a ship containing 50,000 cases of beer into their area, and sailors could buy it for 5 cents per bottle. The sailors would cram their beer bottles into the legs of a spare pair of pants, and then lower the pants into the bay, to cool the beer off. Except the water in the bay was about 90 degrees, so that did not work very well. But they played flag football on the beach and jumped in the warm bay and savored every day, because they thought that World War III was coming, and they were going to be in the thick of it. World War III did not happen, and my dad's ship ultimately redeployed to various other parts in the South and East China Sea. Of course, things soon devolved into the Vietnam War (essentially a civil war, with the U.S. providing assistance to the democracy-desiring South against the Communist -controlled North). The rest, as they say, is history.

With this story in my brain, I headed to the country of Vietnam (or as my dad still calls it, "Indochina"), for several days of sightseeing and learning in Ho Chi Minh City (formerly known as Saigon), Halong Bay, and Hanoi.

Getting There

It's not very easy getting to Vietnam from the U.S. We first flew to Los Angeles, and then took a late night, 14.5 hour flight via China Airlines across the northern Pacific Ocean to Taipei, Taiwan. Then, after a short layover, we took an additional four-hour flight to Ho Chi Minh City, Vietnam. Since one "loses" 11 hours between the time zones of Los Angeles and Vietnam, basically you leave Friday night and arrive at your destination Sunday mid-morning. A bit like time travel. There have been plenty of times in my life when I have wanted to skip right past tomorrow and go straight onto the next day. Anyway, China Airlines is pleasant. It has a calm, quiet atmosphere. Their flight attendants don't seem to badger you quite as much as certain other airlines, with constant admonitions to straighten your seat back, stow your items, and buckle up, etc. Maybe it is only

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because they don't have to worry about getting sued like U.S. airlines, if you are injured or die in flight. I flew coach, and their 777 aircraft seems to have roomier, more comfortable seats in coach than most other airlines that I have flown. Maybe it helped that no one was in the middle seat in my row—which seemed like a gift from God.

The Socialist Republic of Vietnam

Vietnam has one controlling party: The Communist Party. Its population is 96 million people. The country was "unified" in 1975, after the Vietnam War ended, with the North prevailing. Our trip guide (from the South) indicated that there are still emotional scars that people in the South maintain regarding the North. Life was quite rough in the South, in particular, after the war, and there was not only a mass exodus of people out of the country in 1975 (the so-called "boat people"), but also two million people moved from the North to the South and seven hundred thousand people moved from the South to the North. The situation in the country started dramatically improving in 1990. The free market and capitalism erupted. Before that, there was widespread poverty and starvation. Now their free market coexists somehow with the Communist government, so that there is a bit of a hybrid system. The people in the South still believe that the North receives a disproportionate allocation of government resources and infrastructure. Additionally, there is a palpable sense of dislike and distrust of the Chinese (our tour guide said many Vietnamese people admire the way Trump stands up against China regarding its trade practices). About 60% of Vietnamese work in farming. The government owns the land and rents it out and people grow coffee, rice, cashews, and work rubber plantations. Most people learn English with the hope that they can climb the ladder if they learn it. The Vietnamese language uses a Latin alphabet. It was changed decades ago from Chinese characters by Spanish and French colonists who used Latin letters to reflect how the language sounded phonetically to them.

As far as religion, approximately 60% of the Vietnamese identify as being Buddhist, but they are generally not devout about it. They might go to a Buddhist temple or pagoda a couple of times per year. The government is becoming more flexible about people being religious.

The form of currency in Vietnam is the dong (and one U.S. dollar equals 23,000 dong). Every type of denomination of dong has the picture of the former Communist/nationalist leader Ho Chi Minh on it—who remains a bit of a folk hero in Vietnam ("Uncle Ho"). Some vendors accept U.S. dollars.

Ho Chi Minh City (Saigon)

We spent three days in Ho Chi Minh City in the South. The city changed its name from Saigon (the name of a river) in 1976, as a result of the Communist unification of the country after the Vietnam War. The people there consider it a political name and still prefer to call the city Saigon. In fact, usage of the name Saigon again is becoming more common. We stayed at the high rise, elegant Windsor Hotel. It had a multi-level market next door that was quite a scene to behold (mostly clothes, shoes, bags, and jewelry that were crammed into tiny spaces with hundreds of young workers, constantly bagging up bundles of merchandise for waiting messengers; we assumed they were selling their goods over the internet, in addition to walk-in customers).

It is always hot and humid in this city. It was 95 degrees and glaringly bright during the days we were there. The population is about 14 million people. A large number of people wear masks because of smog. There is thick smog in Ho Chi Minh City and all over Vietnam. And there is an abundance of motorbikes in Saigon in a proportion unlike any place I have ever been. Our tour guide said there are 8-10 million motorbikes in the city, compared to only about one million cars. There is no rail system yet (one is being built and is significantly behind in construction). Cars have a 200% tax imposed on the sale price, so they are insanely expensive to own. The city has almost no traffic lights or stop signs and, instead, mostly just uses traffic circles like France (due to the French colonization there for almost 100 years). Observing the traffic circles reminded me of watching the Tour de France bicycle race, only I was watching packed pelotons of motorbikes circling the roundabouts, instead of spandex-clad bicyclists. The motorbikes are often loaded with multiple people, sometimes small children with no helmets, and sometimes people are carrying large, heavy objects. We saw people carrying dogs, chickens, enormous packages, and even one guy with what looked like a dead water buffalo strapped onto the back of his bike. And the traffic is like "survival of the fittest"—the fastest or biggest vehicle has the right-of-way.

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Saigon feels a little third-worldly. Its infrastructure is a little dated. It's very crowded and chaotic. The streets are lined with closely situated stores that are "shop houses" (stores on the bottom level and living quarters above), and the stores always seem to have plastic tables and stools and people sitting and eating or cleaning out in front. But its people seem driven and are very polite. The women are often dressed beautifully. And the city has its share of architectural beauty, including a red brick copy of Paris's Notre Dame Cathedral that the French built while there, a magnificent postal office created by the architect Gustav Eiffel (of Eiffel Tower fame), and an ornate opera house—all situated next to the still-standing, gray, iconic U.S. CIA headquarters building, from which the last Americans (and some South Vietnamese) were famously evacuated by helicopter the night that Saigon fell during the Vietnam War. Saigon also has modern, glass and steel skyscrapers.

The Cu Chi Tunnels

One day we took a bus to the Cu Chi complex of tunnels which were built for war, starting in 1948, by the Viet Minh, and then were continued on by the Viet Cong (VC), sometimes referred to as the North Vietnamese Army (NMA). Specifically, the Viet Minh actually started the tunnels in connection with the country's resistance against the French, then the Viet Cong continued developing them during the Vietnam War. There are 150 miles of tunnels and they are three levels deep (rows 10 feet below, then a second row at 20 feet below, then a third row at 30 feet below). These tunnels enabled the North Vietnamese to conduct rather vicious guerrilla warfare, hiding and then popping in and out of escape hatches along the tunnels to ambush enemies. There were also trap doors on the ground in places, rigged with spikes, where an enemy might step, fall, and be impaled. The Viet Cong slept, cooked, had a school, hospital, made ammunition, and plotted warfare down in the tunnels. This was a somber but interesting excursion. We went down in a tunnel and it made me claustrophobic.

The Mekong Delta

Another day we traveled down to the Mekong Delta, which is known as Vietnam's "rice basket." The Mekong is one of the world's largest rivers, starting in China and flowing down into Vietnam. It separates into nine tributaries that they call the nine dragons. We first took a large river boat, out from the town of Ben Tre, down the main river, then visited a coconut farm and workshop. We also went to a village and saw local villagers weaving mats, making rice paper, and brooms. We were served a huge lunch of elephant ear fish and prawns and other delicacies. We road tuk tuks. Best of all, we took small row boats through small tributaries into the jungle. The tributary that we rowed down looked just like the dark, winding, palm-draped river that Martin Sheen floated down to capture the crazy, renegade Marlon Brando character (Colonel Kurtz) in the movie *Apocalypse Now* (minus The Rolling Stones and Doors background music).

North of the Seventeenth Parallel

After a few days we took a plane to Hanoi to visit the area north of the famous seventeenth parallel (the provisional military demarcation line between North and South during war times). From there we took a bus down back roads toward Halong Bay. At one point, police pulled over and detained our bus for a while for reasons that were never disclosed to us, but certain amongst us thought they were demanding a bribe. I thought the area north of the seventeenth parallel had a different vibe than the bustling South. We saw many more Vietnamese flags flying (red background with yellow star in center) and signs and billboards that had a nationalistic feel. We also saw lots of rice fields with farmers working, wearing the famous conical straw hats.

Halong Bay: Descending Dragon

The best part of the entire trip was taking a four-hour cruise through Halong Bay in northeast Vietnam, which is a UNESCO World Heritage Site. Halong means "descending dragon." The bay features a dramatic, eerie seascape of two thousand huge, dark limestone and forest-covered rocks that jut up into the air like mountains. It reminded me of two thousand "Rocks of Gibraltar" jutting up in one bay. It was eerie because thick fog (and smog) made the surrounding air gray. The local legend is that the gods sent dragons to assist the Vietnamese in attacks from invaders, and the dragons spit jewels into the sea to form this magical barrier to protect against invasions. Part of a *King Kong* movie (a helicopter battle) was filmed in Halong Bay. We got off of our boat at one rock and toured some incredible caves that had huge stalagmites and stalactites deep inside.

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Hanoi

After the Halong Bay trip, we took a bus back to Hanoi to explore this current-day capital of Vietnam. We stayed at the Army Hotel in Hanoi. Yes, the hotel is actually owned by the Vietnamese Army. It was quite spartan and had beds soft as bricks but was adequate (except for its restaurant). Hanoi seems nicer and cleaner than Saigon. The infrastructure seems more developed, and it actually has traffic lights (as well as wider streets), so the traffic (while still ten-times crazier than New York City) is somewhat more reasonable. The store fronts are tidier with more modern signage. There seem to be posher parts of the city. You see many regal yellow government buildings. Hanoi has a more militaristic vibe overall; you frequently see police or military personnel in the traditional army-green-with-red-trim uniforms. We almost never saw police in Saigon.

In Hanoi, we visited the Temple of Literature, which was dedicated to Confucius and was home for centuries of the elite "Imperial Academy," and also Ho Chi Minh's mausoleum. We also saw a lovely lake within the city (that happens to be the one that John McCain parachuted into and was dragged out of when shot down in the Vietnam War). The lake has extremely nice shopping and paths and other amenities nearby. We rode in a rickshaw (which felt like one of the more dangerous things that I have done in my life, surrounded by speeding motorbikes and cars and buses). We went to a Water Puppet Show Theater. Water puppets are a beautiful, colorful 10th century tradition.

Hoa Lo Prison: the Hanoi Hilton

We visited the infamous Hoa Lo Prison in Hanoi one morning. The term "Hoa Lo" means "fire place," but it earned the nickname "Hanoi Hilton" during the Vietnam War when American prisoners were held there, including the late Senator John McCain from 1967-1973. The prison was built by the French. There were many Vietnamese who were incarcerated, tortured, and killed there over many decades—not just Americans. There's nothing rosy about visiting a prison—seeing the tiny, dark, overcrowded rooms where prisoners lived, the guillotine, the hook on the ceiling where bodies were hanged, the sewage pipe where men infamously escaped, and the almond tree that prisoners took bark from to attempt to cure horrible diseases. But just like visiting concentration camps, it's good to see places like this, in the hope that we humans can reflect on ways to avoid repeating mistakes of history.

Summing it Up

Vietnam is not usually on one's top-10 list of favorite destinations. It is hard for Westerners to get there; it is hot; it is smoggy; it has a long rainy season that we missed (it starts in April); it does not have the creature comforts of a lot of places; and it has a history involving American military intervention that is painful for some to relive. But I am glad I went. Its food is tasty (pho noodles; fresh fish; sticky rice; exotic fruits) and you can get a really cheap, great massage (probably should stick with the ones offered at your hotel). In fact, things are generally very inexpensive there. And there are few things in nature that match the beautiful "dragon-scape" of Halong Bay.

Things to Do in the Taipei Airport When You are Bored

Finally, every traveler knows that not all airports are created equal. Some are horrible (Addis Ababa, Ethiopia comes to mind). Some are not too bad (Madrid). But a few are fabulous. The Taipei, Taiwan airport, which one typically passes through on the way to Vietnam, gets the "fabulous" rating. Here is a list of things that you can do there: hang out in one of the many posh lounges, without needing to be a member (you just pay a reasonable entrance fee for unlimited food, drink and access)—there is even a Hello Kitty-themed lounge; get a quality, inexpensive back massage from a blind masseuse at the Blind Massage Center; see a new-release movie at a movie theater; do luxury shopping; take a shower in a non-creepy place; sleep in a non-creepy place; workout; eat tasty food (for real); and see cultural exhibits. The airport is clean, roomy, and wonderful.

End of Judge's Travel Log.

In future issues . . .

- **Reports from the Conrad Duberstein National Bankruptcy Moot Court Competition, won by the SMU Dedman School of Law team, coached by Omar Alaniz.**
- **Reports from the 2019 Bench Bar Conference.**
- **Updates from the 2018-19 Supreme Court term.**
- **New Section officer information.**

More substantive articles and updates!

Troop Movement and Mergers

Tim Million has become senior counsel to Husch Blackwell in its Houston office.
New contact information:
direct dial: 713-525-6221
tim.million@huschblackwell.com

Stephanie Kaiser has joined Husch Blackwell, splitting time between its Austin and Dallas offices.
New contact information:
direct dial: 512-703-5746;
stephanie.kaiser@huschblackwell.com

Demetra Liggins (Thompson & Knight), **Angela Littwin** (University of Texas); and **Stephen Pezanowsky** (Haynes & Boone) have been admitted as Class 30 Fellows in the American College of Bankruptcy.

The Honorable Stacey Jernigan has authored a legal thriller, *He Watches All My Paths*. Judge Jernigan's novel is available on Amazon.com. See the review by Josiah Daniel elsewhere in this newsletter. See also Judge Hale's review in the April 2019 *American Bankruptcy Institute Journa*l.

Roger Cox has completed the third edition of *Texas Creditors' Rights Laws Annotated*. It is part of the Texas Annotated Code Series, published and distributed by Thomson Reuters.

Chris Lopez (Weil, Gotshal) has been named chair of the 2019 University of Texas Jay Westbrook Bankruptcy Conference. The planning committee's first meeting is May 2, 2019. The conference is scheduled for November 14-15, 2019, at the Four Seasons Hotel in Austin, Texas.