

September 26, 2006

AMERICAN BANKRUPTCY INSTITUTE UPDATE

In This Issue

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- Supreme Court to Hear Credit Report Notification Appeal
- Medical Debt-Buying Market Grows
- And more...

Today's *ABI Update* is sponsored by BankruptcyData.com.

Highlights

LEGISLATION UPDATE

Judicial Payraise Clears House

H.R. 5454, sponsored by House Judiciary Committee Chairman Rep. James Sensenbrenner (R-Wis.) authorizing a cost-of-living salary adjustment for Justices and judges of the United States for FY2007, passed the House of Representatives yesterday on a voice vote. The bill now moves to the Senate, where its prospects for consideration are uncertain. [Click here](#) for the current text of the legislation.

What's New

- [Fourth Circuit Update \(Sept-15-06\)](#)
- **What's New at GlobalINSOLvency.com:**

[Bill C-55: An Overview of Certain Key Changes](#)

[Case Study: The Social Responsibility of Insolvency Professionals](#)

- **Weekly Quick Poll**
[Click here](#) to vote on this week's Quick Poll.

SUPREME COURT TO HEAR CREDIT REPORT NOTIFICATION APPEAL

The Supreme Court agreed today to hear arguments in a case that could make it easier for consumers to hold insurers, banks and other businesses liable for failing to notify them about adverse information in their credit reports, the Associated Press reported today. The Fair Credit Reporting Act requires companies to notify consumers about rate increases based on information in their consumer credit reports. In most federal courts, consumers alleging business violations of the disclosure requirements must show that businesses knew that a failure to notify violated the law. In a class action lawsuit involving insurance companies, the Ninth U.S. Circuit Court of Appeals said that consumers do not need to demonstrate knowledge on the part of the companies, only to prove that companies exhibited reckless disregard of the law's requirements. Four large insurance companies argued that notification is not required when applicants are asked to pay more on an initial insurance policy based on adverse

Question: *Congress' intent in BAPCPA's anti-cramdown amendment was to protect creditors with purchase money security interests and therefore does not extend protection to non-purchase money security interests.*

Welcome New ABI Members

Please welcome the following new members from Sept 21-24:

- John Ayres (Latham & Watkins LLP; Chicago)
- Christopher B. Brokmeier (Conway MacKenzie & Dunleavy; Chicago)
- Jessica Amber Drew (Champaign, Ill.)
- Hon. Jerry A. Funk (U.S. Bankruptcy Court; Jacksonville, Fla.)
- Kristopher M. Hansen (Stroock &

information from a credit report. Offering a substandard rate when buying a policy does not qualify as an "increase" under the law unless a lower rate had been offered previously, the companies say. The cases are *Geico v. Ajene Edo*, 06-100, and *Safeco v. Charles Burr*, 06-84. [Click here](#) to read the full story.

- Stroock & Lavan LLP; New York)
- Corrinne Hill (Eugene, Ore.)
- Daniel Patrick Hunt (Diamond, Burt & Akh Kashian, LLP; Los Angeles)
- Donna Lieberman (Halperin Battaglia Raicht, LLP; New York)
- Michelle A. Pierce (U.S. Bankruptcy Court, W.D.N.Y.; Buffalo, N.Y.)
- Lisa M. Pisano (San Diego)

MEDICAL DEBT-BUYING MARKET GROWS

As hospitals try to figure out whether and when they should sell delinquent accounts, the competition among debt buyers, as well as the amount of medical debt, is increasing, according to the October edition of *Collections and Credit Risk Magazine*. **Every year, the U.S.'s 6,000 hospitals generate roughly \$129 billion in bad debt, and \$42.6 billion of that debt is placed or sold every year, according to Kaulkin Ginsberg, a Bethesda, Md.-based research firm.** Part of the reason hospitals consider selling medical debt is due to the increasing number of patients, both insured and uninsured, who are responsible for a greater portion of their bills. So-called self-pay accounts have lower collection rates than third-party payers, such as the government or insurance companies. As hospitals struggle to collect this money, experts predict that medical debt-selling will become more attractive.

Upcoming ABI Events

- [New Pension Law Webinar](#)
Oct. 3, 2006
- [Views from the Bench](#)
Oct. 6, 2006
Washington, D.C.
- [BAPCPA One-Year Anniversary Program](#)
Oct. 16, 2006
Washington, D.C.
- [Winter Leadership Conference](#)
Nov. 30 - Dec. 2, 2006
Scottsdale, Ariz.
- [Rocky Mountain Bankruptcy Conference](#)
Jan. 25-27, 2007
Denver, Colo.

While the past summer experienced a heavy volume of medical debt deals, it's largely an unformed market, especially with regard to pricing. Medical debt tends to vary more in price than other debt because hospital portfolios vary depending on demographics and other factors. In addition, hospitals do not write off their uncollected accounts for 180 days, at which point the accounts are sent to at least one agency. Experts believe that the next few years will prove crucial for establishing rules for the market and should help solve some of the debates over whether medical debt sales will mean less work for third-party contingency agencies.

SURVEY: MOST SMALL BUSINESSES PAYING BILLS ON TIME

Most small business owners say they have been paying their bills on time, although that number dipped slightly in the past month, according to results of the September Discover Small Business Watch sponsored by Discover Financial Services, Collections and Credit Risk.com reported yesterday. Of 1,000 small-business owners polled, 57 percent said that they have not encountered any temporary cash flow problems over the past 90 days that caused them to hold off paying some bills. The vast majority, 77 percent, said they plan no new hiring in the coming months, and 38 percent said they would decrease spending on business-development activities over the next six months. [Click here](#) to read the full article.

SPONSORSHIP OPPORTUNITY AVAILABLE FOR ABI'S 2006-07 MEMBERSHIP DIRECTORY CD-ROM!

ABI's 2006-07 Directory CD-Rom is coming! As the sole Sponsor, you can include a one-minute demo of your product, which will automatically launch when the CD is initially used. Additional benefits include:

- Company name/logo on the CD-Rom;
- Company logo on the home page of the CD-Rom (on ABIWorld Web site) with hyperlink and "Sponsored By" credit;
- Vertical banner ad in the Membership section of the ABIWorld Web site;
- Mention in several ABI publications, including *ABI Journal* and *ABI Update*;
- Horizontal banner ad at the bottom of every page of the Online Directory;
- Company name promoted in all HTML announcements for the CD-Rom Directory;
- One-time use of ABI Membership list including all names, addresses, phone, fax and e-mail information.

Don't miss this opportunity to reach out to 11,500 insolvency professionals! For more information, please contact Sharisa Sloan, ABI Marketing Director, at (703) 739-0800 or ssloan@abiworld.org.

UPDATE YOUR CONTACT INFORMATION BY OCT. 8 FOR THE 2006-07 ABI MEMBERSHIP DIRECTORY

Information for the 2006-07 ABI Membership Directory is now being collected. As you click on the link to the online questionnaire below, the information ABI currently has for your record will be displayed on the questionnaire. **Please make sure all of your information is correct and fill in any missing or incomplete data.** This information will be used for the ABI online and CD-Rom membership directories. Note that you may purchase additional city listings by following the instructions in the "Additional City Listings" section at the end of the questionnaire.

In order to include your changes in the directory, we must receive your updated information no later than **Sunday, October 8, 2006**. To update your information, you will be required to log in with your membership number. This can be found on the address portion of your *ABI Journal*, a recent brochure or any mail you receive from us.

[Click here](#) to access the online ABI membership questionnaire. Please contact the ABI with any questions concerning the questionnaire at (703) 739-0800 or membership@abiworld.org.

"NEW PENSION LAW FOR BANKRUPTCY ATTORNEYS AND TURNAROUND MANAGERS" WEBINAR SCHEDULED FOR OCT. 3

Don't miss the "[New Pension Law for Bankruptcy Attorneys and Turnaround Managers](#)" webinar on Oct. 3 from 3-4:30 p.m. ET. This program will focus on the most important aspects of the Pension Protection Act of 2006 (Public Law 109-280) for bankruptcy attorneys and turnaround specialists. The distinguished panel of speakers includes **John Hanley**, the Pension Benefits Guaranty Corp.'s director of Legislative and Regulatory Affairs (Washington, D.C.); **Carol Connor Flowe** of Arent Fox PLLC (Washington, D.C.); **Michael B. Cox**, managing director of the Seabury Group/Seabury Transportation (New York); and **John Tittle, Jr.**, director of LECG, LLC (Dallas). In this interactive webinar format, you will be able to listen to speakers on your phone while simultaneously accessing program materials on the Web. The speakers will also be available to answer questions by phone during the program.

[Click here](#) to register for the New Pension Law Webinar.

TOMORROW! CENTRAL STATES “BEST OF ABI” AUDIOCONFERENCE FEATURES “HEAVY METAL: LIENS ON AUTOMOBILES AND PERSONAL PROPERTY IN CHAPTER 7 AND 13 AFTER BAPCPA”

The “Best of ABI” live audioconference on Sept. 27 at 1 p.m. ET will feature “Heavy Metal: Liens on Automobiles and Personal Property in Chapters 7 and 13 after BAPCPA,” the top-rated program from ABI’s Central States Bankruptcy Workshop. Panelists for the session include Judge **Susan V. Kelley** (E.D. Wis.), **James M. Philbrick** of The Law Offices of James M. Philbrick PC (Mundelein, Ill.) and **Grant F. Shipley** of Shipley & Associates (Fort Wayne, Ind.).

[Click here](#) to register for “Best of Central States.”

ABI’S DISTANCE LEARNING LETS YOU EARN CLE CREDITS ACCORDING TO YOUR SCHEDULE

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NEW FROM ABI! AUTO SUPPLIER INSOLVENCIES & BANKRUPTCIES: ISSUES FOR SUPPLIERS AND CUSTOMERS OF FINANCIALLY TROUBLED AUTO SUPPLIERS

Written by the Creditors' Rights Department of Barnes & Thornburg LLP and edited by Prof. James J. White of the University of Michigan Law School, this manual on automotive supply insolvencies and bankruptcies provides timely strategies for buyers and sellers in the supply chain both prior and subsequent to a supplier's bankruptcy filing. The manual includes suggestions for legal strategies, including discussions of Article 2 of the Uniform Commercial Code as it relates to automotive suppliers and customers, accommodation agreements, access and security agreements, parts banks, and special tooling lien acts, both pre- and post-BAPCPA. Softbound, 270 pages. [Click here](#) to order your copy today! (To obtain the discounted member price, please log into the [ABIWorld Web site](#) first.)



SECOND EDITION OF BANKRUPTCY BUSINESS ACQUISITIONS AVAILABLE FOR PURCHASE

Edited by **Richard Tilton**, the Second Edition of *Bankruptcy Business Acquisitions* is the essential reference for anyone involved in buying or selling financially distressed companies. Newly revised by 55 of the nation's top bankruptcy experts, *Bankruptcy Business Acquisitions, Second Edition* covers the full spectrum of relevant topics from the Bankruptcy Code and court system to the specifics of pre-packaged plans, bidding incentives, selling assets in regulated industries, strategic roles of the investment banker, tax issues, pension and ERISA issues, due diligence, issuance of securities, trading claims, intellectual property transfers and more. This 1,542-page hardbound book includes 30 practice-tested forms.

[Click here](#) to order your copy today! (To obtain the discounted member price, please log into the [ABIWorld Web site](#) first.)

DON'T MISS ABI'S "BANKRUPTCY 2006: VIEWS FROM THE BENCH" CONFERENCE IN WASHINGTON, D.C.

Join ABI for "[Bankruptcy 2006: Views from the Bench](#)" on Oct. 6 at The Georgetown University Law Center. Attendees will have the opportunity to earn 7.0 CLE credits, including 1.0 hour of ethics.

Topics at the conference include:

- **First-Day Motions:** Including Critical Vendors; Stay Bonuses; Ordinary-Course Professionals; Abuse of DIP Financing; Sale Orders on Day One
- **Confirmation and Plan Issues:** Liquidating Trusts and Post-confirmation Jurisdiction; "Gift" Plans; Absolute Priority after *Armstrong*; Appeals; Unfair Discrimination
- **Creditors and Equity Committees:** Appointment, Disclosure Obligation; Sharing Information; Waiver of Attorney/Client Privilege; Hedge Funds on Committees
- **Substantive Consolidation:** Deemed Consolidation; Structured Finance; Pre-packaged Plans
- **Legal Ethics:** Conflicts Issues; Attorney Conflicts from Multiple Representation; Senior, Junior Lienholders
- **Corporate Governance:** Enjoining Shareholder Meetings and Proxy Fights; Derivative Suits and Releases

This year's program also features three break-out lunch sessions with judges and faculty to follow up on some of the topics in a small-group format. [Click here](#) to register for the "Views from the Bench" conference.

REGISTER FOR ABI'S ONE-YEAR ANNIVERSARY PROGRAM ON BAPCPA TO BE HELD OCT. 16

[ABI's One-Year Anniversary Program](#) on the new law will be held on Oct. 16 at the Georgetown University Law Center in Washington, D.C. Plan to attend ABI's special program analyzing the effects of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Congress enacted the most sweeping reform of the federal bankruptcy laws last year. One year later, what has been the impact of the new law on debtors, creditors and the other players in the bankruptcy system? Is the Bankruptcy Code in better balance today as Congress intended? What conclusions can be drawn about what is working and what is not from the first year of reported opinions? What does the future hold?

This day-long conference brings together the leading experts and practitioners from the private and public sectors to assess the first-year experience from a variety of balanced perspectives. [Click here to register.](#)

REGISTER FOR ABI'S 18TH ANNUAL WINTER LEADERSHIP CONFERENCE

Join ABI for the 18th [Annual Winter Leadership Conference](#) at the beautiful Hyatt Regency at Gainey Ranch, in sunny Scottsdale, Ariz., Nov. 30 – Dec. 2! Explore the impact of BAPCPA in action. Panel topics include:

- Management vs. Labor: The Collision of Bankruptcy and Labor Law and Policy
- Thinking Outside the Box: Nonbankruptcy Options after BAPCPA
- Supply Contracts in Chapter 11 Cases: Executory Contracts, Forward Contracts

- The “New Lenders”: Second-Lien Financing, “Loan to Own,” DIPs to Sell
- BAPCPA’s Consumer Bankruptcy Provisions in Practice
- The Death of Retail Chapter 11? BAPCPA in Practice
- International: There Is a Chapter 15 in Your Future
- Which Sectors of the Economy Will Thrive (or Dive) in 2007?
- *Fibermark* and Beyond: Ethical Problems of Committees and Representation in a “Hedge-Fund World”
- Ethically Juggling the Multiple Roles of Consumer Counsel

Plus 21 ABI Committee Education Sessions featuring prominent ABI members and special guest speakers on hot topics. And don’t forget numerous networking opportunities, our exhibition hall and many optional events, including the annual Golf Tournament, Tennis Tournament and Final Night Dance featuring ABI’s own [Indubitable Equivalents!](#)

[Click here to register.](#)

REGISTRATION NOW OPEN FOR ABI’S 2007 ROCKY MOUNTAIN BANKRUPTCY CONFERENCE!

Registration is now open for ABI’s [12th Annual Rocky Mountain Bankruptcy Conference](#), to be held at the Hyatt Regency Denver at the Colorado Convention Center from Jan. 25-27, 2007.

Conference programming will feature a faculty of outstanding scholars, judges and practitioners from the region with up to 12 CLE credit hours available, including 3 hours of ethics. Timely topics include:

- Circuit Splits Not Yet Resolved in the 10th Circuit
- Protecting and Enforcing Second-Lien Positions
- State Court Collection and Protection Remedies and Methods
- The Intersection Between Domestic Relations, Probate and Bankruptcy
- Cleaning Up the Mess—Recovering from the Bad Guys and Their Advisors: Fraud, Breach of Duty, *Standing/ In Pari Delicto*, Aiding and Abetting
- Hot Topics under BAPCPA—New Published and Unpublished Decisions
- Real Estate and Single Asset-Cases: Is This the Next Wave?
- Four Consumer Workshops, Including Ethics

[Click here to register today and save \\$50!](#)

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LATEST JOB POSTINGS AT ABI CAREER CENTER

Check out the [ABI Career Center](#). The Center is a one-stop site for job seekers and employers in the insolvency community. Career Center resources are available free to both employers and job seekers. New positions are featured daily. The latest listings include:

- [Bankruptcy Partner](#) - Kansas City, MO
- [Financial Bankruptcy Associate](#) - Atlanta, GA

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