



AMERICAN
BANKRUPTCY
INSTITUTE

Winter Leadership Conference

The “F” Word, from the False Claims Act to Ponzi Schemes: Practical Tips for Identifying and Efficiently Addressing Fraud in Bankruptcy Cases (and Beyond)

*Hosted by Bankruptcy Litigation
& Real Estate Committees*

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IS IT FRAUD?

Good old-fashioned fraud

- Embezzlement
- Cash larceny
- Skimming
- Lapping
- Billing fraud
- Financial statement fraud

Common fraud schemes in bankruptcy

- Ponzi schemes
- Real Estate Fraud
- Offshore fraudulent schemes
- False Claims Act
- Fraudulent Transfers



WHEN FRAUD MEETS BANKRUPTCY

How do fraudulent schemes end up in bankruptcy court?

- Involuntary bankruptcy
- Voluntary bankruptcy (with a denial)
- Voluntary bankruptcy (with an admission)
- Chapter 11 Trustees



WHEN FRAUD MEETS BANKRUPTCY

How does the fraud come to light?

- Schedules and statements
- Section 341 meeting
- Trustee/committee investigation
- Discovery
 - i. Rule 2004
 - ii. Section 1521
 - iii. 28 U.S.C. 1782



WHEN FRAUD MEETS BANKRUPTCY

Ponzi Schemes

- Fraudulent financial investment scheme
- Perpetrator uses later-acquired funds to pay promised returns to earlier investors
- No to little legitimate business operations
- No real profits generated to pay promised returns

In Charles Ponzi's words: "Each satisfied customer became a self-appointed salesman. It was their combined salesmanship, and not my own, that put the thing over. I admit that I started a small snowball downhill. But it developed into an avalanche by itself."

Ponzi's Scheme: The True Story of a Financial Legend



WHEN FRAUD MEETS BANKRUPTCY

Real Estate Schemes

- Valuation/appraisal
- Forgery
- Hidden or fake liens

Offshore Schemes

- Investment/financial



QUESTIONS?

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Faculty

Prof. Laura N. Coordes is professor of law at Arizona State University's Sandra Day O'Connor College of Law in Phoenix. Her research focuses on bankruptcy and financial distress and includes commercial law, large corporate reorganizations, and local government finance and policy. She teaches chapter 11 bankruptcy, advanced bankruptcy, secured transactions (in person and online) and contracts. Since 2022, she has also taught a contracts course at Université Paris Cité in France. Prof. Coordes is an active ABI member and was a 2020 honoree of ABI's "40 Under 40" program. She served on the board of the *American Bankruptcy Law Journal* from 2019-22 and is an Honorary Master of the Arizona Bankruptcy American Inn of Court. Prof. Coordes is currently serving as the Reporter for the Uniform Law Commission's Drafting Committee on Assignments for the Benefit of Creditors. She co-authored *The Law of Bankruptcy* (6th ed.), and she authored *Municipalities in Financial Distress: An ESG Critique* (Edward Elgar, forthcoming). In addition, she is a contributor to the SLoGLaw Blog and a contributing editor for *Bankruptcy Law Letter*. Prof. Coordes is a co-founder/principal investigator of the Research Network on Public Authorities and Financial Distress, a global network examining the implications of local entity financial distress. Before coming to the College of Law, she practiced in the Business, Finance and Restructuring Department at Weil, Gotshal & Manges in New York. Prof. Coordes received her J.D. with honors from The University of Chicago Law School, where she was a Bradley Fellow and served on *The University of Chicago Law Review*, after which she completed a legal fellowship at the Student Press Law Center.

Patrick E. Fitzmaurice is a partner with Pillsbury Winthrop Shaw Pittman LLP in New York, where his practice focuses on litigation in domestic and cross-border insolvency matters in which he regularly represents clients in fraudulent transfer and other types of avoidance litigation. He also is frequently involved in advising creditors in foreclosure and other types of enforcement actions involving real estate and UCC collateral. Mr. Fitzmaurice regularly represents insolvency officeholders in asset recovery investigation and enforcement matters. He received his B.A. in 1996 from Georgetown University and his J.D. cum laude in 2001 from Brooklyn Law School.

Kevin G. Hroblak is an office managing partner at Ice Miller LLP in Baltimore and has more than 25 years of experience advising clients on a broad array of business litigation and governance matters. He has represented companies, trustees, creditors, special committees, and directors and officers in connection with investigations and litigation involving director and officer liability claims, mismanagement and business fraud, government and corporate investigations, professional liability insurance claims, auditing and accounting malpractice, and other business-related litigation. Mr. Hroblak also represents companies, creditors and trustees in financial restructurings, bankruptcy proceedings and related litigation. He litigates and handles appeals in state and federal courts across the country. Mr. Hroblak is admitted to practice in the District of Columbia, Maryland and New York, before the U.S. District Courts for the Districts of Columbia and Maryland, before the U.S. Courts of Appeals for the Fourth, Ninth and Federal Circuits, and before the U.S. Supreme Court. He is a member of the Maryland State Bar Association, Maryland Bankruptcy Bar Association, American Bar Association, ABI, National Association of Bankruptcy Trustees, National Association of Corporate Directors, American Bar Association Corporate Governance Task Force, Trial Law Institute and the Diversity

Law Institute. Mr. Hroblak received his B.S. *magna cum laude* in 1995 from Salisbury State University and his J.D. *magna cum laude* in 1998 from the University of Baltimore School of Law.

Kathy Bazoian Phelps is a partner at Raines Feldman Littrell LLP in Los Angeles and has more than 30 years of practice in the areas of insolvency law, fiduciary representation and fraud litigation. Her practice includes representing federal equity and state court receivers and bankruptcy trustees, as well as serving as a fiduciary herself. Ms. Phelps frequently serves as special litigation counsel for fiduciaries and interested parties in fraud-related litigation or cases arising out of receivership and bankruptcy cases. She is particularly knowledgeable about the administration of Ponzi scheme cases and has litigation experience in claims arising in these types of cases. Ms. Phelps has lectured widely and written on bankruptcy and receivership matters, with a focus on Ponzi schemes. Her book *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes*, co-authored with retired Bankruptcy Judge Steven Rhodes, has garnered national and international attention as the authoritative work on Ponzi scheme law. She also is author of *Ponzi-Proof Your Investments: An Investor's Guide to Avoiding Ponzi Schemes and Other Fraudulent Scams* (IRR Publishing 2013), a co-author of *Fraud and Forensics: Piercing Through the Deception in a Commercial Fraud Case* (American Bankruptcy Institute 2015) and *The Depths of Deepening Insolvency: Damage Exposure For Officers, Directors and Others* (American Bankruptcy Institute 2013), and author of The Ponzi Scheme Blog at www.theponziscHEMEblog.com. In addition to her roles as lawyer, speaker and author, Ms. Phelps has served as a mediator and is currently on the mediation and arbitration rosters for the Financial Industry Regulatory Authority, as well as the Bankruptcy Mediation Panel for the Central District of California and the Bankruptcy Mediation Panel for the District of Arizona. She received her B.A. in international relations from Pomona College and her J.D. from University of California, Los Angeles in 1991.