

AMERICAN COLLEGE OF BANKRUPTCY

2008 Circuit Review and Best Practices Reports

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The **2008 Circuit Review** (Corinne Ball and Lloyd Palans co-chairs) is a circuit-by-circuit survey of bankruptcy law issues on which there are disagreements among the federal circuit courts of appeals, and which affect venue selection. It cogently describes the differences among the various circuits on the most critical bankruptcy issues of the day—helping you to determine where filing will best serve your client, or, if filing has already occurred, to anticipate how the court will rule on matters before it.

Best Practices Report—Selling Assets Outside a Chapter 11 Plan under Section 363 was prepared by Marcia L. Goldstein. This report, new to the 2008 edition, provides a context for section 363 sales, describing various advantages and disadvantages and setting forth guidelines on (1) determining whether to sell assets outside or pursuant to a chapter 11 plan, (2) fiduciary duties of directors and management, (3) sales free and clear of liens, claims, and encumbrances, (4) appellate review and the requirement of “good faith,” (5) proper notice, (6) adequate protection, (7) rights of purchasers outside a chapter 11 plan, and (8) the avoidance of collusive bidding.

Best Practices Report—Reporting of Financial Information by Public Companies During a Chapter 11 Case was prepared by Thomas Moers Mayer (chair), Stephen H. Case, Evan D. Flaschen, David S. Kurtz, Richard B. Levin, and Lynn M. LoPucki and is new to the 2008 edition. Following a preamble and statement of purpose, this report comprises three Principles with attendant Corollaries and Observations, all of which were not unanimously supported by the authors. Differences among the authors are reported.

Best Practices Report—Debtor Employee Retention and Incentive Compensation Programs in Light of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was prepared by the Executive Compensation Committee. New Code section 503(c) has presented perplexing problems, and the report offers a detailed description of the section's provisions along with best practices guidelines on the following: determining the need for, and propriety of, a compensation program; determining which employees should participate in the compliance program; developing compensation programs and structuring compensation programs for insiders as well as non-insiders.

Best Federal Income Tax Practices in Corporate Reorganizations was prepared by Carl M. Jinks. This report considers pre-filing practices, first-day order practices, post-filing tax compliance practices, tax refund practices, practices involving tax claims against the debtor, disclosure statement practices, and post-confirmation tax practices.

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