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BURR FORMAN

BANKING & FINANCIAL SERVICES E-NOTE

September 30, 2013

BANKRUPTCY

Split Continues Over the Interpretation of the Absolute Priority Rule as Applied to Individual Chapter 11 Debtors

The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") was enacted almost ten years ago, but the effect of these bankruptcy amendments is still being decided, particularly in the realm of individual Chapter 11 bankruptcy cases. Financially distressed, higher net worth individuals who are precluded from filing bankruptcy under Chapter 13 (as they may have debt in excess of the statutory limits for Chapter 13 debtors) are having to seek protection under Chapter 11 of the Bankruptcy Code. While Chapter 11 is typically associated with big business bankruptcies, a reorganization under this Chapter is equally available to (and may be the only realistic choice for), a debtor with a more complex portfolio.

Click here to read the full article. For more information, contact Jay Haithcock at (205) 458-5277 or jhaithcock@burr.com.

American Bankruptcy Institute Journal: 341 Transcripts: The Hearsay Rule and Limits on Their Use as Substantive Evidence

Christy Nash and Michael Nardella's article "341 Transcripts: The Hearsay Rule and Limits on Their Use as Substantive Evidence" was recently published in the *American Bankruptcy Institute Journal*.

Click here to read the article.

FIRM NEWS

Burr Welcomes 14 New Fall Associates

Burr & Forman LLP is pleased to announce the addition of 14 new associates who join the firm across six Southeastern offices, enhancing the firm's business and litigation practice areas.

Seth Muse from Southern Methodist University Dedman School of Law joins Burr's Financial Services Litigation practice group in the firm's Birmingham, Alabama office.

Courtney Oakes from Florida State University College of Law, Eric Pendergraft from Florida State University College of Law, and Joshua Plager from the University of Miami College of Law join Burr's Financial Services Litigation practice group in the firm's Fort Lauderdale, Florida office.

Daniel French from Georgia State University College of Law joins Burr's Banking and Real Estate and Creditors' Rights and Bankruptcy practice groups in the firm's Atlanta, Georgia office.

Hanna Lahr from Indiana University Maurer School of Law joins Burr's Creditors' Rights and Bankruptcy practice group in the firm's Birmingham, Alabama office.

Laura Murphy from the University of Alabama School of Law joins Burr's Banking and Real Estate practice group in the firm's Birmingham, Alabama office.

Steven Ferrell from Florida State University College of Law joins Burr's General Commercial Litigation, Creditors' Rights and Bankruptcy, and Financial Services Litigation practice groups in the firm's Orlando, Florida office.

Click here for the full list of 2013 associates, along with their respective law schools.

Burr's Ricardo Woods Selected as Mobile City Attorney

Burr & Forman LLP is pleased to announce that Ricardo A. Woods has been selected by Mobile, Alabama Mayor-Elect Sandy Stimpson to serve as City Attorney effective November 4, 2013. In this position, Woods will provide legal counsel on critical issues that impact the City of Mobile.

Click here to read the full announcement.

Burr's Ashby Kent Fox Selected for Inclusion in "Women Worth Watching" List by *Profiles in Diversity Journal*

Burr & Forman LLP is pleased to announce that Atlanta-based partner Ashby Kent Fox has been selected by *Profiles in Diversity Journal* for inclusion in the 12th Annual "Women Worth Watching issue."

The Women Worth Watching issue honors today's female leaders and the corporations, organizations and institutions that recognize, employ and promote women in the workforce.

Fox is profiled in the *Profiles in Diversity Journal's* 2013 September/October issue here.

Headlines

- NCUA Drafts Rule Subjecting Big Credit Unions to Stress Tests

For more information, please contact Christy at (813) 367-5751 or cnash@burr.com, and Michael at (407) 540-6620 or mnardella@burr.com.

LITIGATION

Dodd-Frank Act Newsletter September 2013 Edition

Click here to read the September 2013 Dodd-Frank Act Newsletter - an update of recent case law, news, and developments related to The Dodd-Frank Wall Street Reform and Consumer Protection Act.

For more information, please contact the editors: David Elliott at (205) 458-5324 or delliott@burr.com, Rachel Cash at (205) 458-5483 or rcash@burr.com, Kristen Peters Watson at (205) 458-5169 or kwatson@burr.com, and Jordan Teague at (205) 458-5488 or jteague@burr.com.

Eighth Circuit Holds Borrowers Required to File Suit to Exercise TILA Rescission

In *Hartman v. Smith*, the Court of Appeals for the Eight Circuit extended its prior holding and held that a borrower must file suit before foreclosure to exercise his or her right of rescission under the TILA.

Click here to read the full article on Burr's Consumer Finance Litigation Blog.

For more information, please contact David Elliott at (205) 458-5324 or delliott@burr.com and Kristen Peters Watson at (205) 458-5169 or kwatson@burr.com.

UPCOMING SPEAKING ENGAGEMENTS

Orlando-based partner Denise D. Dell-Powell will be speaking at the 2013 Trigild Fall Conference held October 16-18, 2013 in San Diego, California. Burr

Report Finds FDIC Has Filed as Least 32 D&O Lawsuits This Year
- CFPB Cracks Down on "Furnishers" Giving Credit Report Information
- CFPB Begins Writing Debt Collection Agency Regulations
- Cordray Says Mortgage Lenders Prepared for New Rules
- CFPB Says Employers Can't Require Workers to Use Payroll Cards

News Briefs

NCUA Drafts Rule Subjecting Big Credit Unions to Stress Tests

Big credit unions may soon join megabanks in undergoing annual examinations of their ability to survive a downturn, a step that could force financial cooperatives to raise fees or pay less in interest to their members. The National Credit Union Administration said it is drafting a rule to subject credit unions with more than $10 billion in assets to stress tests, which would determine whether the institutions have adequate capital to withstand economic shocks.

(Source: The Washington Post (free reg. req'd), 2013-09-18) Read More

Report Finds FDIC Has Filed as Least 32 D&O Lawsuits This Year

This year's Federal Deposit Insurance Corp. litigation over failed financial institutions is already exceeding that of the previous three years. According to a new report by Cornerstone Research -- Characteristics of FDIC Lawsuits against Directors and Officers of Failed Financial Institutions—September 2013 -- the FDIC has filed at least 32 directors and officers (D&O) lawsuits as of Aug. 8, 2013, compared with annual totals of 26 in 2012, 16 in 2011, and two in 2010.

(Source: Insurance Journal, 2013-09-17) Read More

CFPB Cracks Down on "Furnishers" Giving Credit Report Information

The Consumer Financial Protection Bureau is cracking down on companies that supply information to consumer reporting companies, and that should make it easier for consumers to get reporting errors resolved. The CFPB issued a notice that says these companies -- called "furnishers" -- are responsible for investigating consumer disputes forwarded by the consumer reporting companies.

(Source: TheStreet.com, 2013-09-10) Read More

CFPB Begins Writing Debt Collection Agency Regulations

The debt-collection business faces greater U.S. oversight as the Consumer Financial Protection Bureau begins writing the first regulations under a federal law governing the industry and probes for violations. The 2010 Dodd-Frank Act that created the bureau also authorized it to write regulations under the Fair Debt Collection Practices Act of 1977.

(Source: Bloomberg Businessweek, 2013-09-05) Read More

Cordray Says Mortgage Lenders Prepared for New Rules

Mortgage lenders will be ready to follow a new underwriting rule that takes effect in January, the director of the Consumer Financial Protection Bureau, Richard Cordray, said. "Most of the institutions have told us that they will be in compliance," Cordray said at a hearing of the House Financial Services Committee in Washington.

(Source: Bloomberg Businessweek, 2013-09-12) Read More

CFPB Says Employers Can't Require Workers to Use Payroll Cards

Workers take note: Your boss can't force you to accept wages on payroll cards. The Consumer Financial Protection Bureau sent out this reminder after hearing of reports that some businesses, especially retailers and fast-food restaurants, would only pay workers through a card. Workers complained that the cards came with all sorts of fees for ATMs, teller withdrawals or just to check the balance, the CFPB said.

(Source: The Baltimore Sun, 2013-09-13) Read More

& Forman is a sponsor of the conference.

For more information, please click here.

Ability to Repay and Qualified Mortgage Rules Under the Dodd-Frank Act

Birmingham-based partners David Elliott and Richard Keller will be presenting a Lorman webinar entitled, "Ability to Repay and Qualified Mortgage Rules Under the Dodd-Frank Act: What Every Lender Should Know" on November 12, 2013.

For more information, or to register, click here, or contact David at (205) 458-5324 or delliott@burr.com and Richard at (205) 458-5323 or rkeller@burr.com.

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