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CALIFORNIA BANKRUPTCY FORUM

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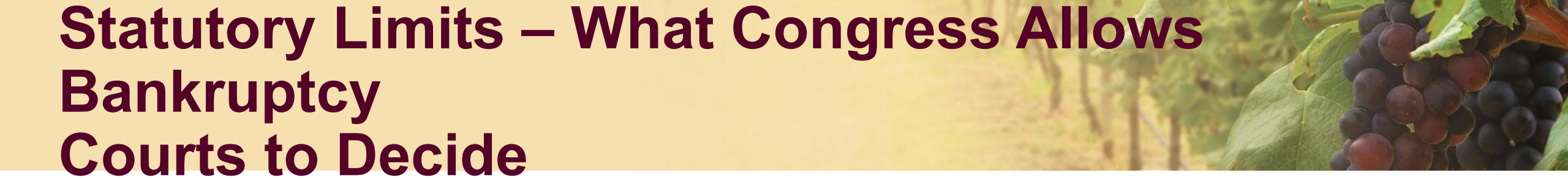
To Decide or Decline: Bankruptcy Court Jurisdiction: Where Does It Start –And Where Does It End?

Overview

- Bankruptcy courts' determination of whether to decide, or decline to decide, a given matter usually involves a threshold assessment of one or more of the following:
  - Subject-matter jurisdiction
  - Statutory and constitutional limits
  - Mandatory and permissive abstention
  - Equitable remand
  - Other doctrines of restraint
- These guiding principles shape and protect the legitimacy of bankruptcy courts' role and inform litigation strategy in bankruptcy cases. They impact where parties litigate, how they structure their claims, and how they preserve issues for appeal.

Statutory Limits – What Congress Allows Bankruptcy Courts to Decide

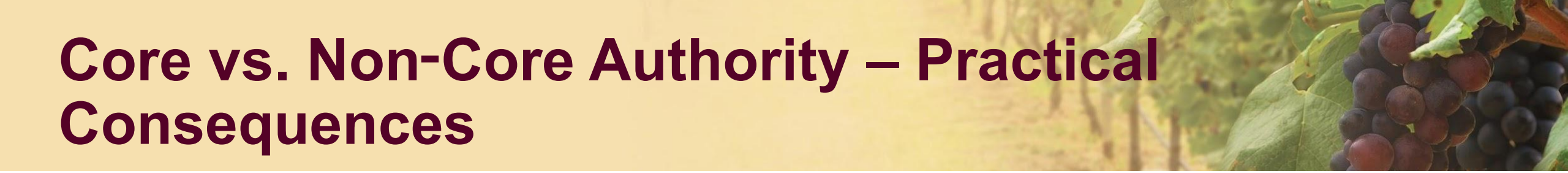


- Even when the Constitution permits adjudication, Congress controls **bankruptcy jurisdiction**. A bankruptcy court must decline to decide when a proceeding falls outside **28 U.S.C. § 1334**.
- Section 1334 of title 28 of the United States Code recognizes three types of civil proceedings:
  - **Arising under** title 11 — claims created by the Bankruptcy Code itself (e.g., avoidance actions, turnover, dischargeability). These are **core**, and bankruptcy courts may enter final orders.
  - **Arising in** a bankruptcy case — matters that can arise only in bankruptcy, such as claims allowance or estate administration. These too are **core**.
  - **Related to** a bankruptcy case — disputes that could affect the estate. These are generally **non-core** and subject to § 157(c)'s limitations.
- When a dispute is **outside all three categories**, the bankruptcy court must decline jurisdiction entirely.
- The Supreme Court's decision in ***Celotex v. Edwards*, 514 U.S. 300 (1995)** explains that "related to" jurisdiction, though broad, is **not unlimited**. If any effect on the estate is too remote or speculative, the court lacks statutory authority and must step aside.

The *Pacor* Test – Defining "Related To"

- In ***Pacor v. Higgins*, 743 F.2d 984 (3d Cir. 1984)**, the Third Circuit articulated the standard still widely applied: a proceeding is "related to" a bankruptcy case if its outcome **could conceivably have any effect** on the estate. But if the effect would require the outcome of a separate lawsuit—such as non-automatic indemnification—jurisdiction fails. In those cases, the court must decline to decide.

Core vs. Non-Core Authority – Practical Consequences



- Once we determine whether a matter is arising under, arising in, or related to the bankruptcy case, **28 U.S.C. § 157** dictates what the bankruptcy court may do:
  - **Core**: bankruptcy court may enter a **final judgment**.
  - **Non-core (related to)**: bankruptcy court may **hear**, but must issue **proposed findings**, unless parties **consent**.
  - ***Stern***: certain "core" matters still constitutionally require proposed findings.
- Thus, the court may decline to decide not because it lacks jurisdiction to hear the dispute, but because it lacks the **authority to finally decide** it.

Restrictions under Article III

- **Article III** of the United States Constitution limits federal judicial power to "Cases" and "Controversies," and to courts with lifetime tenure and salary protection.
  - The United States Supreme Court, federal courts of appeals and federal district courts are established under Article III of the United States Constitution. Bankruptcy courts are established by Congress as "units" of the district courts under Article I of the United States Constitution—they are not Article III courts.
  - District courts have original jurisdiction over bankruptcy cases and proceedings (**28 U.S.C. § 1334**) and refer them (typically on an automatic basis pursuant to a general order of reference and/or local rules) to bankruptcy courts (**28 U.S.C. § 157(a)**).
- Article III places **constitutional limits** on Congress' ability to assign adjudicative functions to non-Article III courts, as noted in ***Northern Pipeline Construction Company v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982)** and reaffirmed in ***Stern v. Marshall*, 564 U.S. 462 (2011)** and related cases.

Stern v. Marshall

- United States Supreme Court held that bankruptcy court lacked **constitutional authority** to enter final judgment on state-law counterclaim for tortious interference that was not resolved in process of ruling on creditor's proof of claim, **despite fact that bankruptcy court had statutory jurisdiction to adjudicate counterclaim as "core" proceeding under § 157(b)(2)(C)**. Court explained:
  - Non-Article III judges lack constitutional authority to finally resolve common-law claims against entities not otherwise part of bankruptcy proceedings, with exception of certain "public rights" matters (i.e., matters "in which the claim at issue derives from a federal regulatory scheme, or in which resolution of the claim by an expert government agency is deemed essential to a limited regulatory objective within the agency's authority").
  - Even where creditor in question filed proof of claim, bankruptcy court lacks constitutional authority to enter final judgments against creditor unless matter at issue: (i) "stems from the bankruptcy itself" (i.e., rights of actions created under federal bankruptcy law, such as preference actions under 11 U.S.C. § 547); or (ii) "would necessarily be resolved in the claims allowance process."
  - Because counterclaim (as state-law dispute involving private parties and property rights) did not fall within "public rights" exception and involved factual and legal determinations beyond those necessary to adjudicate creditor's proof of claim, bankruptcy court lacked constitutional authority to finally adjudicate it.

Constitutional Constraints after *Stern*

- The United States Supreme Court has since elaborated on constitutional restraints for "*Stern* claims" (i.e., claims that are statutorily core but for which the bankruptcy court cannot constitutionally enter final judgment):
  - ***Executive Benefits Insurance Agency v. Arkison*, 573 U.S. 25 (2014)** (bankruptcy court may still hear *Stern* claims and submit proposed findings of fact and conclusions of law to the district court for *de novo* review; lack of constitutional authority may be cured by *de novo* review by Article III court even if bankruptcy court purported to enter final judgment on *Stern* claims)
  - ***Wellness International Network, Ltd. v. Sharif*, 575 U.S. 665 (2015)** (bankruptcy court may enter final judgment on *Stern* claims if the parties knowingly and voluntarily consent—either expressly or impliedly)

Mandatory Abstention – *Can* the Bankruptcy Court Decide?

- **28 U.S.C. § 1334(c)(2)** directs courts to consider the following factors when considering whether mandatory abstention applies:
  - Is there a **timely motion** for abstention by a party?
  - Is the proceeding based **purely upon a state law claim** or cause of action?
  - Is the proceeding **non-core** in nature?
  - Is the case one that **could not have been brought in federal court absent a petition under Title 11**?
  - Has **the action been commenced in a state court**?
  - Can the state court action be **timely adjudicated**?
  - Does a **state forum of appropriate jurisdiction** exist?
- As elucidated by the Ninth Circuit in ***Piombo Corp. v. Castlerock Properties (In re Castlerock Properties)*, 781 F.2d 159, 162 (9th Cir. 1986)**, section 1334(c)(2) indicates "a clear congressional policy ... to give **state law claimants a right to have claims heard in state court.**"

Permissive Abstention – *Should* the Bankruptcy Court Decide?

- Pursuant to **28 U.S.C. § 1334(c)(1)**, the bankruptcy court has the **discretion** to abstain from hearing both core and non-core proceedings (i) in the **interest of justice**; or (ii) in the **interest of comity** with state courts or **respect for state law**.
- In ***Christensen v. Tucson Estates (In re Tucson Estates, Inc*.), 912 F.2d 1162 (9th Cir. 1990)**, the Ninth Circuit summarized the factors courts should consider when deciding whether to permit a proceeding to proceed in another forum. Those factors are set forth on the following slide.
- ***Tucson Estates*** clarifies that "section 1334 supports the duality of allowing a claim to be adjudicated to final judgment in state court while preserving the issues of the status and enforceability of the claim to the bankruptcy court."

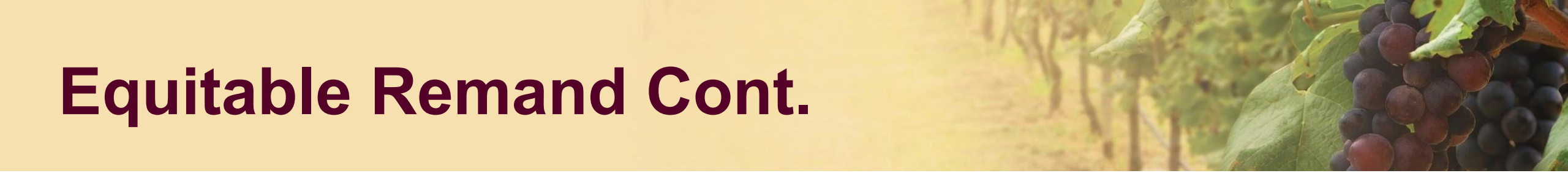
Permissive Abstention Cont. Factors

Factor 1: The effect or lack thereof on the **efficient administration of the estate** should the court abstain
Factor 2: Whether and to what extent **state law issues predominate over bankruptcy issues**
Factor 3: The **difficulty** or **unsettled nature of applicable law**
Factor 4: The **existence of a related proceeding** commenced in state court or other non-bankruptcy court
Factor 5: The **lack of a federal jurisdictional basis other than bankruptcy** jurisdiction;
Factor 6: The degree of **relatedness or remoteness** of the proceeding to the **main bankruptcy case**;
Factor 7: The **substance** rather than form of an asserted **core** proceeding;
Factor 8: The **feasibility of severing state law claims from core bankruptcy matters** to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
Factor 9: The **burden of the bankruptcy court's docket**;
Factor 10: The likelihood that the commencement of the proceeding in bankruptcy court involves **forum shopping by one of the parties**;
Factor 11: The existence of a **right to a jury trial**; and
Factor 12: The presence in the proceeding of **non-debtor parties**.

Equitable Remand – Within the Bankruptcy Court's Broad Discretion

- Bankruptcy courts have broad discretion to **remand cases** over which they otherwise have jurisdiction on **any equitable ground**. **28 U.S.C. § 1452(b).**
- As discussed in ***Citigroup, Inc. v. Pacific Investment Management Co. (In re Enron Corp.)*, 296 B.R. 505 (C.D. Cal. 2003)**, courts generally consider up to fourteen factors in deciding whether to remand a case to state court.
  - The first 12 of these factors are found in ***Tucson Estates***, applying them to permissive abstention.
  - The additional two factors applicable to the equitable remand analysis are:
    - **Comity**; and
    - The **possibility of prejudice to other parties** in the action.

Equitable Remand Cont.



- The court is not required to consider all fourteen factors. The court may consider up to fourteen factors under 28 U.S.C. § 1452(b). *See In re Richards*, 2023 Bankr. LEXIS 1422 (9th Cir. BAP 2023) (BAP affirmed bankruptcy court's order remanding all family law issues to state court, finding, among other things, that bankruptcy court was not required to consider all fourteen factors).
- Under the law of the Ninth Circuit, **neither mandatory nor permissive abstention applies where no parallel state court proceeding exists**. ***See, e.g., Security Farms v. International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1009-10 (9th Cir. 1997)**. Thus, where the only pending state court proceeding has been removed and is sought to be remanded, equitable remand, rather than mandatory or permissive abstention, is the governing standard.

Standing

- The constitutional minimum for **standing** requires three elements:
  - **injury in fact**—a concrete and particularized harm that is actual or imminent;
  - **causation**—a fairly traceable connection between the injury and the defendant's conduct; and
  - **redressability**—a likelihood that a favorable decision will remedy the harm.

Ripeness

- This doctrine of restraint ensures that federal courts do not issue advisory opinions or adjudicate disputes that have not yet fully materialized and/or become “**ripe.**”
- The ripeness doctrine involves both constitutional (Article III) and prudential considerations.

Mootness

- This doctrine of restraint asks whether there remains a live controversy to adjudicate.
- In the context of bankruptcy, the doctrine of **equitable mootness** is usually applicable when a chapter 11 plan has been substantially consummated and the relief sought would unwind complex transactions and harm innocent third parties (i.e., creditors and vendors).

Comity

The definition of **comity** is “an association of nations for their mutual benefit.” In the doctrine-of-restraint context, it is a doctrine that provides mutual respect, deference, and courtesy among different and independent legal systems (i.e., international courts, or federal versus state court, etc.).

Rooker-Feldman Doctrine

- In ***Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923)** and ***District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983)**, the United States Supreme Court established the "***Rooker-Feldman* doctrine**," which essentially bars lower federal courts from exercising *de facto* appellate review over state court judgments.
- *Rooker-Feldman* applies where a federal plaintiff brings a "de facto appeal" of a state court judgment, meaning that the claim would effectively "reverse or modify" the state court judgment.
- In *In re Albert-Sheridan*, the bankruptcy court determined that even though subject matter jurisdiction existed under section 1334(b), the bankruptcy court was jurisdictionally barred from considering the Debtor's request to alter or invalidate the California Supreme Court's disciplinary rulings under the *Rooker-Feldman* doctrine. *Albert-Sheridan v. Farfan (In re Albert-Sheridan)*, 2025 Bankr. LEXIS 2882 (Bankr. C.D. Cal. 2025).

Younger Doctrine

- Derived from ***Younger v. Harris*, 401 U.S. 37 (1971)**, the "***Younger* doctrine**" is rooted in principles of equity, comity, and federalism, and generally forbids federal courts to stay or enjoin pending state court proceedings except under special circumstances (i.e., bad faith, harassment, or any other unusual circumstance that would call for equitable relief).
- The doctrine is based on a "strong federal policy against federal court interference with pending state judicial proceedings," and on the recognition that "[c]ourts have long had discretion not to exercise equity jurisdiction when alternatives are available."
- Although *Younger* involved a criminal proceeding, courts have recognized that *Younger* abstention is appropriate where the state proceedings:
  - are **ongoing**;
  - are **quasi-criminal enforcement actions** or **involve a state's interest in enforcing the orders and judgments of its courts**;
  - implicate **an important state interest**; **and**
  - **allow litigants to raise federal challenges**.

Younger Exceptions

- The exceptions to *Younger* are narrow.
- Exception 1: Bad Faith: In the "*Younger* abstention context, bad faith generally means that a prosecution has been brought without a reasonable expectation of obtaining a valid conviction. Such bad faith might be shown by repeated harassment, bias, or when the proceeding is brought with no legitimate purpose. Mere allegation[s] of bad faith or unconstitutionality is not a get-out-of-abstention-free card." ***Stockton v. Brown,* 152 F.4th 1124 (9th Cir. 2025), *petition for cert. filed* (U.S. Nov. 20, 2025) (No. 25-606).**

Younger Exceptions Cont.

- Exception 2: Harassment: Enjoining state court proceedings could be appropriate if the Court finds that the state proceeding is motivated by a desire to harass. And harassment indicative of bad faith could include filing state court litigation in retaliation for the exercise of constitutionally protected rights. But the "retaliatory motive or harassment [needs to be] sufficiently severe or pervasive to legitimize the [courts] halt of state court proceedings in which these same constitutional objections could be raised." ***Stockton v. Brown*, 152 F.4th 1124 (9th Cir. 2025).**

Younger Exceptions Cont.

- Exception 3: Extraordinary Circumstances: "Federal courts will not abstain under *Younger* in 'extraordinary circumstances where irreparable injury can be shown.'" The exception has been found to apply in situations where the plaintiff's rights cannot be vindicated in due course in the state court—e.g., where a plaintiff could not later vindicate his right to be free from forcible medication. ***See Stockton v. Brown,* 152 F.4th 1124, 1138-40 (9th Cir. 2025); *see also Bean v. Matteucci*, 986 F.3d 1128, 1134-35 (9th Cir. 2021).**

Ethical Considerations

- **Gamesmanship**
  - Withholding *Stern* objections to hedge against an adverse ruling; raising Article III challenges only after losing on the merits
  - Manipulation of core/non-core classifications
  - Tactical use of doctrines of restraint for delay or leverage
- **Forum Manipulation**
  - Tactical use of doctrines of restraint and/or claim characterization (e.g., core/non-core) to secure a preferred adjudicator or standard of review
- **Client Counseling**
  - Ensuring informed client consent to final adjudication by a non-Article III court
  - Properly preserving appellate rights
- **Integrity**
  - Avoiding inconsistent positions on jurisdiction/constitutional authority across proceedings
  - Avoiding *ex parte* jurisdictional inquiries

Ethical Considerations- Ex Parte Jurisdictional Inquiries

- Rule 3.5 of the California Rules of Professional Conduct generally prohibits direct or indirect communications between a judge and a lawyer upon the merits of a contested matter pending before the judge. There are exceptions to this rule.
- Federal Rule of Bankruptcy Procedure 9003 provides that an examiner; a party in interest; a party in interest's attorney, accountant or employee; and the United States trustee and any of its assistants, agents or employees, must refrain from ex parte meetings and connections with the court about matters affecting a particular case or proceeding unless permitted by applicable law.

Judge Scott C. Clarkson

- Judge Scott C. Clarkson is a United States Bankruptcy Judge for the Central District of California, appointed by the Ninth Circuit Court of Appeals on January 20, 2011. Prior to his appointment, he was Chair of the Los Angeles County Bar Association's Commercial Law and Bankruptcy Section (2008-2009) and served on the Board of Directors of the Los Angeles Bankruptcy Forum and the Los Angeles Financial Lawyers Conference.
- He has previously served as the Judicial Chair of the California Bankruptcy Forum, several American Bankruptcy Institute's Battleground West Programs, and the Association of Insolvency and Restructuring Advisors' National Conference. He has served as co-chair of the Legislative Committee of the National Conference of Bankruptcy Judges, and he is currently a member of the ABI Task Force on Veterans and Servicemembers Affairs. He has also served on the Board of Directors of the Orange County Federal Bar Association and the Orange County Bankruptcy Forum.

Yosina M. Lissebeck, Partner

As a partner, at Dinsmore, Yosina is a highly accomplished professional known for her expertise in insolvency and restructuring cases, as well as commercial and business litigation matters. She is a trusted advisor who has offered invaluable insights and innovative strategies tailored to the unique circumstances of numerous trustees, debtors, companies, receivers, stakeholders, and creditors. Her exceptional problem-solving skills and meticulous attention to detail have led to successful resolutions of complex cases, preserving value for all parties involved. Yosina possesses a versatile skillset as an attorney and has established herself as a skilled litigator, representing clients in court for law and motion matters, evidentiary hearings and trials.

Education

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- San Diego Business Journal, Women of Influence in Law, 2025

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Monique Jewett-Brewster is the leader of Lathrop GPM's Financial Services practice group. She has over twenty years of experience advising creditor clients in every aspect of insolvency law, including without limitation, in the workout, restructuring and enforcement of commercial loans and in business bankruptcy cases nationwide. Monique's clients include financial institutions, credit unions, receivers, trustees, commercial landlords and tenants, and purchasers of assets out of bankruptcy.

Prior to private practice, Monique served as law clerk to the Honorable Meredith A. Jury (Ret.) in the U.S. Bankruptcy Court for the Central District of California. Monique also externed for the Hon. Alan M. Ahart (Ret.), Hon. Ellen Carroll (Ret.), and former judge Kathleen P. March, also in the U.S. Bankruptcy Court for the Central District of California.

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David A. Wood is a Partner at Marshack Hays Wood LLP. His practice areas include bankruptcy litigation, business and civil litigation, lender liability, and creditors' rights.

Mr. Wood's practice areas include Chapter 11 business reorganizations, representation of Chapter 11 debtors, official committee of unsecured creditors, secured creditors, Chapter 7 and 11 trustees, and related litigation. In 2017, Mr. Wood was selected as one of 40 young attorneys from across the nation to participate in the National Conference of Bankruptcy Judges' Next Generation Program. Prior to joining Marshack Hays Wood, Mr. Wood served a two-and-a-half year term as the judicial law clerk to the Honorable Erithe A. Smith of the United States Bankruptcy Court for the Central District of California, Santa Ana Division. Mr. Wood was an extern for the Honorable Theodor C. Albert of the United States Bankruptcy Court for the Central District of California, Santa Ana Division.

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