

# Suggested Reading

REVIEWED BY JOHN H. MADDOCK III

## Navigating Banking in Bankruptcy: A Guidebook

Written by Lisa Bittle Tancredi and Mark A. Gittelman and edited by Nicholas R. Kennedy (ABI 2019).



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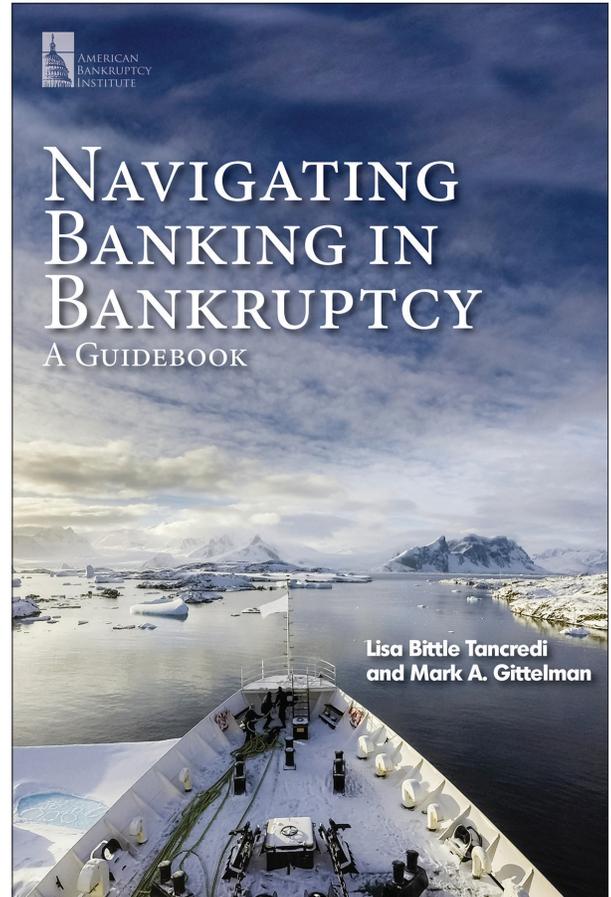
John Maddock III is a restructuring attorney with McGuireWoods LLP in Richmond, Va. He assists clients with insolvency and creditors' rights issues, including bankruptcy, commercial litigation, foreclosure and state law remedies. He has represented corporate clients in some of the largest business chapter 11 cases filed in Virginia, as well as managed and coordinated high-volume litigation for financial and other institutions in consumer bankruptcy and foreclosure cases.

Issues relating to the rights of creditors and debtors with respect to bank accounts, cash management, cash collateral and debtor-in-possession (DIP) financing can be some of the trickier and more difficult ones to resolve in bankruptcy cases. The problems that can arise if one lacks an accurate understanding of the law governing these issues cannot be understated.

Lawyers and other professionals faced with these and similar issues arising from the intersection of banking and bankruptcy law will now be able to turn to a comprehensive, coherent source to not only better their understanding of the issues with which they are contending, but will now have a guide to help formulate a strategy and find workable solutions. Published by ABI, *Navigating Banking in Bankruptcy: A Guidebook* — written by **Lisa Bittle Tancredi** (Gebhardt & Smith LLP; Baltimore) and **Mark A. Gittelman** (PNC Bank, NA; Philadelphia) and edited by **Nicholas R. Kennedy** (Citizens Bank, NA; Boston) — is a thorough, well-organized practical resource that is useful to both consumer and business bankruptcy practitioners, as well as banking professionals.

The book's strongest attributes are its practicality and ease of use. In addition to providing substantive information on various topics, the authors provide practice tips and prebankruptcy planning strategies throughout, often using hypotheticals and real-life examples as a backdrop. These practice pointers cover the spectrum from the mundane (how a bankruptcy trustee opens a bank account) to the more complex (tax implications associated with a bankruptcy estate, a trustee's duty with regard to employee-benefit plans, customer-privacy issues, and strategies for deposit banks to avoid possible preference liability associated with prepetition overdrafts, to name a few). The use of hypotheticals and illustrations throughout the book helps to bridge the gap between abstract legal concepts and real-life implications.

Perhaps the best example of this is in Chapter 2, which is devoted to cash management. The chapter describes a typical cash-management system employed by affiliated entities, and the negative impact that a bankruptcy filing by one or more affli-



ates can have on that system, and concludes with advance-planning recommendations that can be taken pre-petition to avoid such negative consequences.

The book is well-organized beginning with a chapter on bankruptcy and banking basics, which provides an overview of the different sections of the Bankruptcy Code, the various players involved in bankruptcy cases, and basic bankruptcy concepts relative to banking such as the automatic stay, the importance of pre- vs. post-petition transactions and the use of cash collateral. The initial chapter also discusses a number of banking basics such as various account types, cash-management products and loan types. This initial chapter is a helpful, easy-to-read starting point that provides the necessary groundwork for understanding the more complex issues that follow.

The remaining chapters each concern a discreet subject area. Each chapter begins with an informative background section introducing the topic. For example, the chapter on accounts

begins with a discussion of the debtor/creditor relationship that is formed when a depositor deposits funds into an account, before diving into issues involving setoff, turnover, administrative freezes and DIP accounts. Similarly, the chapter on credit cards begins with a general description of credit card processing services before discussing the more complex aspects of merchant service agreements and credit card issuance. Other chapters are introduced by way of example, including the chapter on swap agreements, which begins with a description of a “plain vanilla” interest-rate swap agreement complete with helpful illustrations to acquaint the reader with the calculations that underlie interest-rate swaps. Regardless of the method employed, the authors make the necessary effort to carefully introduce each chapter so that the reader has the basic building blocks to tackle the comprehensive substantive information that follows.

As mentioned, *Navigating Banking in Bankruptcy: A Guidebook* is a useful resource to both consumer and business bankruptcy practitioners alike. Business bankruptcy practitioners will find the chapters on cash collateral and DIP-financing and cash-management orders especially useful. The chapter on cash collateral and DIP-financing orders walks the reader through various common provisions of cash collateral and DIP-financing orders, discusses their impact on a debtor’s deposit bank, and provides strategies for avoiding the various traps and pitfalls that can be contained in such orders.

The chapter on cash-management orders discusses no less than 19 common provisions found in most cash-management orders, providing not only samples of such provisions, but also describing the purpose and intent behind each provision. Other chapters that business bankruptcy practitioners will find handy

concern ACH transactions, credit card processing, letters of credit, sweeps, compliance with § 345 of the Bankruptcy Code, and the aforementioned chapter on swap agreements.

The book also contains a great deal of information and provides practice pointers relative to consumer bankruptcy cases. Perhaps most useful in this regard is the chapter dedicated to garnishment of bank accounts. The authors do an excellent job of describing the rather chaotic state of the law concerning the obligations of a deposit/garnishee bank and the garnishor when the garnishment debtor files a bankruptcy case during the pendency of the state law garnishment proceeding. As with almost all subjects discussed in the book, the chapter ends with a recommendation as to best practices for how the parties involved in the garnishment proceeding can protect themselves in light of the uncertain garnishment-law landscape.

The book concludes with two must-have checklists and a glossary of common bank terms and banking products. The first checklist is a pre-chapter 11 filing checklist devoted to banking issues and should be included in any chapter 11 debtor professional’s toolbox. The second checklist is aimed at banking professionals and practitioners who advise banks and provides a list of actions to consider when a bank learns that a customer is in financial distress.

In short, *Navigating Banking in Bankruptcy: A Guidebook* should be the first source consulted by any practitioner with a question regarding a banking issue in a bankruptcy case. **abi**

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