



THE DISCLOSURE STATEMENT

Spring 2018

The Newsletter of the South Carolina Bankruptcy Law Association

In Memory of James Steven “Steve” Huggins - Eric Reed



It was New Year's Eve, 1998, and my new bride, Jennifer, and I had just made the drive from Columbia to Charleston. We were going to meet my two best friends from law school to celebrate the new year. As was often the case when we visited Steve Huggins and Jason Moss,

our first stop was to their small law office in West Ashley. Earlier that year Jason and I had graduated law school from the University of South Carolina. Steve, being the overachiever that he was, had somehow figured out how to graduate a semester before us. I was working at a law firm in Columbia but Steve and Jason had decided to hang out their own shingle in Charleston.

Huggins & Moss, LLC was just in the beginning stages, and they were focusing on building a debtor-oriented bankruptcy practice. Their office was a source of comedy for me, as I enjoyed poking fun at the size (no more than 500 square feet probably) and the obvious low budget they had for furniture and equipment. What I probably found most amusing was walking in and seeing those two guys trying to make copies of a 50-page-plus set of bankruptcy schedules on a desktop copier that did not have an auto-feed function. Watching their two-man assembly line of placing one sheet of paper at a time on the glass while I sipped on a Bud Light was priceless. Little did I know that this scene would soon become a three-man operation.

As my weekend visit rolled on, at some point conversations began about starting up a Columbia office of Huggins & Moss. As ludicrous as it seemed, with them having only one employee and so little to show off in the office, Steve and Jason were actually turning a profit and already had visions of getting bigger. The truth is that my memory cannot pinpoint the exact moment in time that this happened, but somewhere along the way they asked me if I wanted to join them and help them get the Columbia office rolling. What had been a source of amusement for me was now turning into a life-changing decision. Should I stay in the safe job I already had or should I take a chance on my two school buddies?

Steve was always a special type of individual. We met in law school and quickly became friends. Being one of the very few first-year law students that actually had a job outside of school, I did not make very many new friends during that year. I mostly showed up for class and left the building immediately thereafter, not having the time to do much socializing. But as hard as it was to make many new

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South Carolina Bankruptcy Law Association, 1 Windsor Cove, Suite 305, Columbia, SC 29223

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friends during that first year, it was somehow easy with Steve.

It's not that Steve was what I would call an overly outgoing person. What I mean by that is that Steve was not one of those aggressive, loud people who were always trying to be the center of attention. Much the opposite, Steve was the guy who was laid back, happy, and always smiling. In other words, he was approachable. Everybody loved him. Personally, I think what I liked about Steve so much was that nothing was ever a problem for him. He was so stress-free that it made me stress-free just to be around him. For those of us who have been to law school, we know that most law students sit around and tediously talk about one thing—the law. Steve and I never talked very much about classes or cases we were reading or exams coming up. We talked about life, sports, friends, music and so on—fun stuff.

It was through Steve that I ended up meeting most of the people who would end up being my law school friends, and it was Steve that got me active in that community. We played just about every intramural sport we could find—basketball, flag football, softball and so on. We hung out at nights and on weekends. By my third year, Jason, Steve and I were almost inseparable, including taking Professor Burke's bankruptcy clinic together. It wasn't until that class that I even knew what a bankruptcy was, let alone considered it something I would be interested in doing the rest of my life.

So now that I was in Charleston, visiting their little office, making fun of their copier, but all of the sudden faced with an invitation to quit my perfectly good job to create Huggins, Moss & Reed—what would I do? Certainly I was excited about the possibility of doing something new and being my own boss. Jennifer immediately said I should go for it, having more faith in me than I had in myself. But did I have enough belief in these two guys to take the plunge? There was no question that Jason was a go-getter, sort of the "idea man" I guess you could say. But looking back on it now, I see something in Steve that I'm sure I felt sub-consciously but maybe didn't completely realize at the time. Steve was the stabilizing force that I needed to be assured that I could take this leap of faith. When you were around Steve, you sort of just felt like everything was going to be alright. He had a way of having fun, not taking life too seriously, but still getting the job done. So long story short, I took the chance and, as they say, the rest is history.

Steve Huggins died on Christmas Day, 2017, at the age of 49. He left behind a beautiful family—his wife of 15 years, Debbie, and his two girls, Sophia and Isabella. While he was taken from us much too early, Steve lived an extraordinary and happy life. He served in the Army before graduating from the University of South Carolina with both a B.A. and J.D. He not only enjoyed a successful career in law but, more importantly, he was a devoted father and husband. He was also a great friend. Since his passing, there has been one consistent theme with everyone I have spoken to—Steve was, simply put, a super nice guy. On a personal note, it is safe to say that I would not have become a bankruptcy lawyer if not for Steve. I owe my career to him. He will not only be forever missed by me, but also by anyone who knew him.

P.S. If anyone wishes to make a donation to support Steve's children, a GoFundMe page has been created, which can be found [here](#).

Letter from the President - Christine Loftis

I am excited to be a part of the return of The Disclosure Statement. As many of us do not have a practice that takes us beyond one division, it will be good to hear news of colleagues from around the state that we may not often see or talk to. Many thanks to Andrew Powell for the suggestion that we resume our newsletter, and for all of the work he has put into making its return a reality.

It is hard to believe that my term as SCBLA's president is about to close. This past year has flown by. Of course, time generally seems to pass faster each year. As children, we spend our time wishing we were older, wishing we could drive or drink or stay out all night. If only we knew as kids that while getting older may mean all those things, it also means being responsible for yourself (and possibly others), paying bills, and working. And as professionals, we tend to put working at the top of the list. Work, work, and more work. To the exclusion of almost all else. Yes, this is sometimes necessary. We have deadlines to meet, and people we represent who rely on us to ensure their rights are protected, and that they are not taken advantage of. And we want those we work with to know that we work hard, and are good at what we do.

But we owe it to our families, and ourselves, to sometimes take a step back, and put our families and ourselves

first. We are not guaranteed a set amount of time on this earth. Let's take advantage of the time we are here, and use it not only to be a rock for those we help professionally, but also for ourselves, our families, and our friends. Work is temporary, but the love and attention we provide to our family and friends will last well beyond our brief time on earth. Let's all make some time each month and put our focus on our family, ourselves, and our friends.

Fourth Circuit Case Summaries

Below are short summaries of the bankruptcy-related opinions issued by the Court of Appeals for the Fourth Circuit that were included in the Federal Reporter the last few months:

***Janvey v. Romero*, 883 F.3d 406 (4th Cir. Feb. 21, 2018)**

A chapter 7 debtor was found liable for a Ponzi scheme pre-petition. The receiver in the litigation of the Ponzi scheme brought a motion to dismiss debtor's case under § 707(a) on the grounds that the debtor abused the bankruptcy process. The bankruptcy court denied the motion, and the district court affirmed. On appeal, the Receiver argued that the debtor acted in bad faith because (1) he was primarily attempting to discharge a large single debt (the judgment related to the Ponzi scheme), (2) the debtor used the possibility of filing bankruptcy as a negotiation tactic in attempting to settle the Ponzi scheme litigation, and (3) the debtor had too much money to avoid paying the Ponzi scheme judgement.

The Fourth Circuit Court of Appeals affirmed. The Court noted that bad faith may be "cause" for dismissal under § 707(a), but that the bar for dismissal should be a high one, and dismissal should be reserved for cases of real misconduct. As to the Receiver's first ground, the Court of Appeals noted that many bankruptcy cases are filed due to a creditor pursuing a single debt, and that in such cases, the moving party must show additional evidence of fraud and misconduct beyond the mere fact that it was filed in response to a single debt. As to the second ground, the Court noted that the failure to settle litigation does not deprive a debtor a right to file bankruptcy. Finally, the Court noted that while the debtor had significant assets that may be able to pay the judgment, those assets were exempt, and to require the debtor to use those funds would undermine the entire exemption scheme created by Congress.

***Burkhart v. Grigsby*, 886 F.3d 434 (4th Cir. Mar. 29, 2018)**

The Fourth Circuit Court of Appeals overturned the decisions of the bankruptcy court and district court. The lower courts found that a chapter 13 debtor could not strip off a valueless mortgage lien when the creditor fails to file a proof of claim because § 506(d) only provides for a stripping of an "allowed secured claim." These lower courts stated that the lien was not an "allowed secured claim" because the creditor never filed a proof of claim and was not part of the claim allowance process.

The Fourth Circuit disagreed, focusing on the debtor's powers under § 1322(b)(2), which permits a chapter 13 debtor to modify the rights of secured creditors through a chapter 13 plan. The Court noted its prior holdings that a debtor may modify the rights of junior lien holder on the debtor's primary residence for which there is no equity above the senior lien. The Court further noted that a chapter 13 plan and the bankruptcy process in general can modify the rights of parties that do not participate in the bankruptcy process. As a result, the Court held that a debtor's right to strip a valueless junior mortgage lien stemmed from § 1322(b)(2) and not from § 506(d). In reaching this holding, the Court noted that a contrary result would incentivize creditors holding valueless junior liens from participating in the bankruptcy process and discourage the filing of proofs of claim.

New Member Spotlight: Molly McDonald



Molly McDonald is an associate at Sowell Gray Robinson, where she focuses on commercial real estate and commercial transactions in addition to bankruptcy law. Molly graduated in 2015 from the Emory University School of Law, where she served as the Managing Editor of the *Emory Bankruptcy Developments Journal* and

externed with the Atlanta Office of the United States Trustee. After law school, she clerked for two years with Justice John Cannon Few, first at the SC Court of Appeals and later at the SC Supreme Court.

While Molly's bankruptcy practice is still new, having begun in August of last year, she has represented both creditors and debtors in commercial matters. She enjoys bankruptcy law because "you get the best of both worlds" as the work requires both transactional skills and litigation skills.

Molly originally hails from Anderson, South Carolina, but now resides in Columbia. In addition to her legal work, she enjoys tennis, reading, and hiking with her fiancé, Chase, and their dog.

Letter from the Editor

- Andrew Powell

Some of you may be wondering, what is the Disclosure Statement? Not to be mistaken with the bankruptcy pleading, the Disclosure Statement was the monthly newsletter of the Richland County Bankruptcy Law Section (the predecessor to SCBLA) from 1990 until the early 2000s. The Disclosure Statement included among other items, Legislative News, news from the U.S. Trustee, notes from the Clerk's office and case summaries. In addition, it included information that we now take for granted as being readily available on the internet, including the Court's scheduling calendars and Court's holiday closing dates.

My own discovery of the Disclosure Statement came from SCBLA's 25th Annual Conference, where as part of a retrospective presentation of SCBLA, Tim Stack presented some of the artifacts of the organization's history, including the first edition of the newsletter. During the presentation, Tim charged the younger members of the bar to take the initiative to improve the bankruptcy bar as they would soon inherit it. Perhaps I was feeling overly ambitious that day, but I took his words to heart and approached Christine Loftis about revitalizing the Disclosure Statement.

I have notice that there are few forums for legal topics that may not require an hour-long CLE presentation. In addition, we as a specialized bar do not have a place to make announcements such as firm changes, achievements

and other life events. I know on several occasions I have tried to contact an attorney just to find out they have switched to a new firm. The hope is that the Disclosure Statement will fill that void.

Please excuse the unpolished nature of this first issue. It was created with my very basic knowledge of Microsoft Word. This should improve with time (I hope). The ultimate goal of the Disclosure Statement is to provide you with valuable information, and not to become another email that piles up in your mailbox. While I will work hard to make the newsletter as informative and valuable as possible, the success of the Disclosure Statement will be dependent upon the contributions of the bar as a whole.

Therefore, I would request anyone who is interested in contributing to the Disclosure Statement to please contact me at Andrew.Powell@scb.uscourts.gov. It may be just the excuse you need to research an item you have been curious about but did not have a prior purpose to do so, or an easy way to bolster your résumé. Regardless, I am excited about hearing the ideas you have and the revitalization of the Disclosure Statement.

"Food from the Bar" Campaign

During the "Food from the Bar" campaign last fall, SCBLA donated \$1,350 as well as 72 pounds of non-perishable food items for our local shelters.

SCBLA was the Upstate and Overall winner of the 2017 Campaign.

Many thanks to our members for their efforts and generosity. Special thanks and congratulations to Jane Downey who won a free registration to the upcoming 2018 annual seminar for having the highest monetary donation.

Announcements

Congratulations to Dawn and Adam Hardesty on the birth of their son, Noah, on April 30, 2018.

Congratulations to Judge Waites on his recent induction as a Fellow of the American College of Bankruptcy.

Changed firms? Received an honor or achievement? Email Andrew.Powell@scb.uscourts.gov to be featured in an upcoming issue of the Disclosure Statement.

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