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NEIMAN MARCUS AND THE FIDUCIARY DUTIES OF CREDITORS' COMMITTEE MEMBERS (A/K/A "WHAT NOT TO DO")

Creditors who are members of an official committee of unsecured creditors in a bankruptcy owe fiduciary duties to other unsecured creditors and to other committee members. In this article on the Neiman Marcus bankruptcy, the authors first provide an overview of fiduciary duties in the context of committee membership. They then turn to the facts of Neiman Marcus's bankruptcy and the disastrous conduct of a committee member. They close with some lessons from the case that serve as a cautionary tale of how not to behave as a member of a committee.

By Matthew Warren, Stephen M. Blank and Jake Jumbeck *

In the chapter 11 case of Neiman Marcus, the actions taken by a member of the Official Committee of Unsecured Creditors (the "Committee") appointed in the case, Marble Ridge Capital LP, through its managing partner and principal, Daniel Kamensky, was a clear violation of the fiduciary duties that Marble Ridge voluntarily undertook, and owed, to other general unsecured creditors, as a member of the Committee. Using Marble Ridge (and Kamensky) as a cautionary tale, this article explores the intersection, and balancing, of Committee membership and fiduciary duties. Part I of this article provides an overview of fiduciary duties in the context of committee membership, Part II details the facts and circumstances of Neiman Marcus's bankruptcy cases and Marble Ridge's actions, and Part III highlights lessons and considerations.

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I. FIDUCIARY DUTIES OF COMMITTEE MEMBERS

A committee of unsecured creditors is a fiduciary body appointed by the United States trustee in accordance with section 1102 of title 11 of the United States Code.¹ Such committees are designed to represent a cross-section of the applicable, unsecured creditor body and service on a committee is entirely voluntary.²

¹ Section 1102 provides, in relevant part, that the U.S. Trustee shall appoint a committee "as soon as practicable." 11 U.S.C. § 1102(a)(1).

² 3 THE UNITED STATES TRUSTEE PROGRAM POLICY AND PRACTICES MANUAL, ¶ 3-4.2.1, at 38.

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