

# Joe Wielebinski and Matthias Kleinsasser Publish Article in ICC FraudNet's Inaugural Global Report

02.25.21

Winstead PC attorneys [Joe Wielebinski](#) and [Matthias Kleinsasser](#) authored an article titled "Using Bankruptcy Proceedings to Investigate and Combat Fraud" for ICC FraudNet's inaugural Global Report. An excerpt is below:

## **"1. Introduction**

As Warren Buffett famously stated, "you only find out who is swimming naked when the tide goes out." Mr. Buffett's quotation is likely to prove prescient yet again in light of the global economic downturn caused by Covid-19, particularly with regard to industry sectors that are facing additional challenges beyond the pandemic. For professionals pursuing claims based on fraudulent conduct or attempting to recover fraudulently transferred assets, the U.S. bankruptcy laws and the attendant transparency of bankruptcy proceedings can prove to be a powerful tool. This article provides an overview of the bankruptcy process, including common discovery devices, causes of action, and other mechanisms available under American bankruptcy law for parties seeking to combat fraud.

## **2. Uncovering Fraud Using Bankruptcy Proceedings**

Transparency is an integral feature of U.S. bankruptcy proceedings. A debtor that wishes to obtain the benefits of bankruptcy—e.g., the breathing spell provided by the automatic stay and the exclusive right to propose and confirm a Chapter 11 plan—must provide creditors and the court with extensive information under penalty of perjury regarding its assets, liabilities, pre-bankruptcy transfers of property, and other critical issues. These disclosure requirements can often be used by creditors and other parties to uncover fraud.

(a) Schedules and Statements of Financial Affairs. The documents required to be filed in the initial stages of a bankruptcy provide substantial information about the financial state of the debtor. Promptly after the bankruptcy case is commenced, the debtor must file a schedule of all assets and liabilities ('Schedules'), a statement of financial affairs ('SOFA'), a list of creditors, and other documents disclosing important information regarding assets, liabilities, transfers, creditors, and other matters. For example, Schedules list all types of assets and separate creditors into categories (secured, priority unsecured, and general unsecured). The SOFA requires a debtor to disclose information such as revenue for the debtor's current fiscal year and two preceding fiscal years, transfers of money or property that could be potentially clawed back (e.g., transfers that benefitted insiders within one year of the petition date). These documents must be signed by a representative of the debtor under penalty of perjury. Courts have generally held that draft bankruptcy schedules and other documents intended for public filing are not protected by the attorney-client privilege or the work product doctrine, meaning that a party who suspects fraud on the part of the debtor may be able to obtain prior versions of these documents to compare to the filed version.

(b) Rule 2004 Examinations. One discovery device commonly used to learn more about the debtor's financial affairs is an examination under Rule 2004 of the Federal Rules of Bankruptcy

Procedure. The scope of Rule 2004 is broad: a bankruptcy court may order examination of any person or entity to investigate, among other things, the debtor's acts, conduct, liabilities, and financial condition. The examining party may request production of documents. Rule 2004 examination requests are rarely denied. Given their broad scope, they are often referred to as "fishing expeditions" and are routinely used by trustees, creditors, statutory committees (e.g., committees of unsecured creditors), and other parties-in-interest to investigate a debtor and related parties. If fraudulent conduct is suspected, a party should strongly consider applying for and conducting a Rule 2004 examination."

[Read the full article.](#)

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experience representing clients in both in-court bankruptcy proceedings and out-of-court restructurings across a wide range of industries. The firm regularly represents the major constituents, including creditors, debtors, and purchasers of distressed assets, in restructuring proceedings throughout the Southwest and the United States.

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