

Subcommittee on Loan Workouts

Steven B. Soll, Chair, Cathy L. Reece, Vice Chair

The Loan Workouts Subcommittee of the Commercial Finance Committee, in conjunction with the Lender Liability Subcommittee, jointly presented a panel at the Business Law Section Fall Meeting in San Francisco, California entitled: ***Nightmare on Main Street - What Keeps Lenders Up at Night?*** The panel was moderated by Steven B. Soll, a Member of the Firm of Otterbourg, Steindler, Houston & Rosen, P.C., and included presentations by Cathy L. Reece, Esq., a Member of the Firm of Fennemore Craig, P.C., Harvey I. Forman, Esq., Partner, Blank Rome LLP, Mr. Howard Bailey, Senior Vice President of the Western U.S. for its Restructuring team, GE Commercial Finance, and Mr. Rocky Ho, Senior Managing Director in FTI Consulting's Corporate Finance practice. The panel addressed a number of legal issues relating to lender liability and bankruptcy that impact lenders. The issues addressed by the panel included matters pertaining to: (i) efforts by third parties to interfere with secured party remedy enforcement, (ii) possible trends toward fraudulent conveyance challenges to secured lenders' liens based upon various transaction structures, (iii) potential lender liability arising from improper disclosure of information, (iv) selected lender liability issues relating to "failure to fund" cases and the assertion of such claims as a defense to the obligations of a guarantor, (v) bankruptcy issues pertaining to "cram down", recharacterization and equitable subordination of secured claims, and (vi) the current cost and lack of capital and how it impacts credit decisions, new deals and restructuring of existing indebtedness. The panel distributed written materials in advance of the meeting. The presentation included a robust interactive discussion with attendees on the various topics.

Based upon popular demand, the panel will repeat the program as a CLE teleconference on March 25, 2009.