

## Conflict Of Interest is the 300 Pound Gorilla which eats away at every Bankruptcy Lawyer's Opportunity for Easy Riches

The potential for a **Conflict Of Interest** exists whenever an entity (or person) holds some form of decision making power on behalf of another entity. Selfish interests on the part of the decision maker could corruptly influence the decisions to benefit the decision maker to the detriment of the entity which is represented.

The business of law in the United States has been constructed upon the assumption that lawyers will consistently ignore their self interests and instead loyally pursue the interests of their client. Not surprisingly, it is lawyers that established this peculiar construct of American Society, and it is also lawyers who can immensely profit from this absurd assumption when the forces of greed compell lawyers, and law firms, to succumb to self interest when their sworn duties to their client is in conflict with their self interest.

An example of a lawyer with a client that is in conflict with his self interest: The client can be beneficiaries, such as creditors and stockholders of a bankrupt company, and the decision maker is the debtor's counsel or trustee. These trustees are torn between their nominal oaths to fight for their client(s), and the obvious instinct to bill the "Headless Fee Pot" *to the max*.

The simplest form of Conflict of Interest is when the decision maker must choose between outcomes that directly benefit himself over his beneficiary, and this type of direct conflict includes what is known as [Agency Conflict](#) . Direct personal conflicts are generally prohibited in most legal situations. Furthermore, they are easy to spot and difficult to hide. Thus, ***when corrupt decision makers seek to benefit themselves at the expense of their beneficiaries, they usually do so indirectly***

. For example, if a lawyer of a bankruptcy estate corruptly sold the primary asset of a debtor, such as a home or a building, to himself at an artificially low price it would be easy to spot and is explicitly prohibited. On the other hand, it would be much easier for a corrupt decision maker to sell a valuable asset at a reduced price to an associate. The associate would pay some form of bribe to the corrupt decision maker as

[quid pro quo](#)  
for getting the asset(s) at a price lower than the beneficiaries would otherwise receive.

Given the great difficulty in policing the myriad methods that corrupt decision makers could employ to enrich their associates, and thus themselves, at the expense of their beneficiaries, **C**

ongress long ago decided to remove the possibility that any particular decision maker would act corruptly in detriment to his beneficiaries by prohibiting any lawyer from working for a bankruptcy estate when the lawyer was associated with any of the parties to the bankruptcy case

In effect, this law prohibits lawyers who would have been honest in the face of the Conflict of Interest as well as those lawyers who might act corruptly. Similar laws prohibit members of congress from certain conduct, such as acting as a lobbyist for certain companies which they had been regulating. The purpose of the laws was to remove as much incentive for corruption as possible. The law essentially converts the ethical dilemma associated with conflict of interest and converts it into a crime if a lawyer falsely swears to a bankruptcy court denying any association between any member of a law firm and every party to a bankruptcy proceeding. The law requires the law firm to swear under oath each time the law firm seeks to get paid.

Why is **Conflict Of Interest** such an important issue?

Conflict of Interest is perhaps the single most important issue within the domains of **Bankruptcy Misconduct**

and

**Bankruptcy Fraud**

. Congress knew about the dangers of corruption and deceit inherit in the courts and in dealing with bankruptcies in particular. Thus they included some specific and exceedingly clear laws with the intent to greatly reduce the risk of corruption by the simple step of prohibiting lawyers from operating in bankruptcy courts when they are burdened by any conflict of interest.

Nearly every instance of bankruptcy misconduct has some form of ***conflict of interest*** at its core. Countless cases of prohibited conflicts exist in the largest bankruptcy cases. Sadly, our Bankruptcy Judges often look the other way and make excuses for lawyers guilty of bankruptcy fraud when they write false declarations about their true conflicts. The prosecution of Conflict Of Interest in every instance as was done against

**John Gellene**

would go a long way towards eliminating the pervasive corruption in our bankruptcy courts.

**The Mechanism of Bankruptcy Involves the Risk of Corruption**

The problems that we face if we allow the game of bankruptcy to be played, are as old as the practices of trading horses and changing money. Congress has known about these types of problems, and passed a number of laws specifically designed to combat the various corrupting influences.

The idea of having a bankruptcy code is not a bad one, per se. Giving individuals and huge corporations the ability to reorganize and then start again on a clean footing is arguably a good idea. The problem is that creditors, and especially stockholders in the case of corporations, are likely to get left with less than they otherwise deserve whenever a debtor is allowed to avoid debts, and still retain some assets. And a bigger risk is that corruption would enable some parties to either receive more or keep more than they otherwise would deserve.

While having certain classes of interests get less than they deserve may part of what the bankruptcy code authorizes, there is still a fundamental requirement. All ***similarly situated*** creditors must get treated the same. Whenever you allow an entity to renege on their debts, yet keep something of value, you set up a perverse incentive. The dirtbag in every society will figure out:

*"Hey, I'll borrow a whole lot of money, file bankruptcy and wipe away my debts, and keep the money! "*

### **Lawyers *Pretending To Represent Their Client & Corruption***

The biggest problem in a bankruptcy case is that the professionals who run the case are corrupt, that they keep the money for themselves, that the Judge is also corrupt, that favoritism is played in the case for the benefit of relatives, relations in some way of the professionals. This is truly the greatest danger. The reality is that we have foxes guarding the hen houses.

It could be impossible to pass one set of laws to try to micromanage every single possible bankruptcy case to try to prohibit corruption. But Congress has long known of the existence of Bankruptcy Rings and sought to end the corrupt practice.

### **Conflict Of Interest Prohibitions - Our Sole Protection**

It would be impossible to write a set of laws that would prohibit each of the unlimited ways that a corrupt bankruptcy lawyer could either divert the assets of a debtor towards his partners in crime, or to allow his associates to unjustly renege on their debts. That is why Congress took the simple step of writing the clear and simple prohibition of any conflict of interest on the part of any professional working for a bankruptcy estate.

In fact, the sole protection for society from the corrupting influence of large sums of money on our Federal Bankruptcy Courts are the clear and explicit (unwaivable) prohibitions against any professional working for a Debtor's estate if they also have a connection to any other party in the case.

Sure, it is *theoretically* possible that a particular lawyer might be extremely honest in a particular case and not show favoritism towards a creditor who is also his client or cousin. Thankfully, Congress chose not to rest the foundation of our banking system upon the assumption that all attorneys would always operate as such a mythical creature - who will repel easy money in favor of honesty and honor.

**Instead, Congress mandated that there be no Conflict of Interest.**

The law just makes it easier. It's like having a speed limit on the highway. Sure, there are many, like professional race car drivers, who could drive down the Expressway at speeds over 100 MPH and not get in an accident, but the limitation is put in place to be safe. And since the roads, like the Courts, are a public good, limitations can be put in place.

### **BigLaw Struggles To Grow Ever Larger**

Greed exists in the legal profession. *Surprise!* One problem is that certain "businessmen" can't understand why the Corp Finance, Hedge Fund, and even Basketball stars make more money than they do. Some law firm partners realized that they would need to get "creative" if they wanted a chance to compete for the big money with the more talented people in the country. In the short, and in the absence of enforcement, the simple fact is that crime pays. Cheating a bankruptcy estate in favor of a client will undoubtedly bring you more business. The only

problem with this game, is that you can't hold a position of power over a debtors estate if one of the players is related to you by blood, marriage, or money. Nevertheless, many of these Biglaw bankruptcy firms have gotten slimier and cheezier as they have wittled away at the notion of conflict of interest, and many a Judge has tacitly, or explicitly approved. There are a number of cases where the conflict is so blatant, that we must sadly face the truth that our nation is no better than a banana republic when it comes to justice in the Federal Bankruptcy Courts.

### George Orwell Warned Us of DoubleSpeak

The media has been assisting the **Bankruptcy Rings** as they dutifully report what lawyers themselves have been calling a "**failure to disclose**

" when a conflict of interest crime surfaces. While failure might sound bad enough to some, the correct word is

**fraud**

. Congress anticipated the compelling financial incentive corrupt bankruptcy lawyers, so Title 11 U.S.C. 327(a) includes:

[T]he trustee, with the court's approval, may employ one or more attorneys, . . . that do **not** hold **or**

**represent**

an

**interest adverse to the estate**

, and that are

**disinterested persons**

Which essentially means you can't be a lawyer for the estate if you have any sort of financial interest in the outcome, either directly or through a client or business interest. And 11 U.S.C. 328(c) has similar language which limits lawyers for the committees.

Similar language appears at 11 U.S.C. 328(c) with respect to compensation of committee representatives. But this law becomes a sledgehammer because each time the lawyers try to get paid their fees, they must file a sworn statement under penalty of perjury and bankruptcy fraud, that they have no prohibited conflict of interest. The lawyer may not think to himself 'well this particular situation won't matter' and not disclose. The lawyer must disclose and let others determine if it matters.

Thus, each time we find a "*failure to disclose*" as the spin doctors like to call it, we really have a **fraud upon the court**

. An extremely serious crime. In fact, there is no statute of limitations on a fraud upon the court. The billions of dollars of legal fees that were paid to BigLaw organized crime can be confiscated by the Federal government under the RICO laws. Health care could be paid for everybody, including illegal immigrants.

### **#conflictOfInterest**

The stench grows unbearable  
shifting field of play tears at dark alliances  
old unspoken rules crumble  
as the grumbling masses awaken