



# Agricultural Law & Bankruptcy Law Virtual Seminar

Wednesday, June 3, 2020

Sponsored by the State Bar Association of North Dakota

**Wednesday, June 3, 2020**

*Approved for 6.50 CLE Credits (ND and MN)*

## **AGENDA**

*\*Agenda subject to change\**

**8:30 – 8:50 Registration**

**8:50 – 9:00 Welcome and Introduction to the Turnaround Management Association and its Chief Executive, Scott Stuart, and its April 2019 Journal and the American Bankruptcy Institute.**  
*Roger Minch (Moderator)*

**9:00 – 9:30 Miscellaneous NDCC Sections affecting Ag and Ag BKY cases and Ag generally (.50 CLE Credits)**  
*Roger Minch*

Among many other things; this session will cover crop liens, the joint check statute, trespass and the Ag limited liability statute, spray drift claims, special Ag BKY exemptions, elevator insolvencies, the ND Dept. of Ag jurisdiction over elevator insolvencies and the Woods Farmers' Elevator cases.

**9:30 – 10:15 Does this Tractor Run-Fuel it, Fix it or Sell it (.75 CLE Credits)**  
*James Cullen & Jim Lodoen*

This session will address agriculture price trends and forecasts along with business factors and structure considerations in determining whether to continue operating, downsize or liquidate a farming or agribusiness operation.

**10:15 – 10:30 Break**

**10:30 – 11:00 Consumer Ch 7 and 13 Debtor Cases (.50 CLE Credits)**  
*Cheryl Bergian*

This session will cover, among other things, issues that arise when making the decision to file a consumer case, determining which Chapter to use, tips on completing the petition and related items, completing the meeting of creditors and obtaining a discharge in a Ch 7 case and obtaining a discharge by plan confirmation and consummation in a Ch 13 case.

**11:00 – 11:30 Agricultural and Bankruptcy Lien Priority Issues (.50 CLE Credits)**  
*Adam Ballinger*

Statutory liens in the agriculture industry create unique legal risks for producers of farm products, buyers of farm products, and the lenders that finance them. Policing these liens involves not only legal issues but includes careful monitoring by management including internal control processes when extending credit, communication with a potentially competing lender, and harvest time policies and procedures for repayment.

**11:30 – 12:00 Agricultural Loan Workout Agreements (.50 CLE Credits)**  
*Roger Minch*

Actual redacted workout agreements will be the basis of this presentation.

**12:00 – 1:00 Lunch (on your own)**

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CLE credit will be applied for in MN**

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**1:00 – 1:15 Ch 7 & 13 Trustee Issues (.25 CLE Credits)**

*Pat Sinner*

Discussion of best practices for filing Chapter 7 and Chapter 13 bankruptcies from the trustee's perspective, with an emphasis on common problems noticed by trustees in ND and MN filings.

**1:15 – 1:45 Recent Commercial and Agriculture-Related Chapter 11 Cases in North Dakota (.50 CLE Credits)**

*Jon Brakke & Caren Stanley*

A discussion of recent Chapter 11 commercial and agriculture-related cases in North Dakota with a focus on the key differences of a Chapter 11 case from Chapters 7, 12, and 13 and some potential issues that might arise. In other words, the "Top Five Things I Wish I Knew Before Filing a Chapter 11 Case."

**1:45 – 2:45 Chapter 12 for Family Farmers from the Perspectives of Debtor's Counsel and the Chapter 12 Trustee (1.00 CLE Credits)**

*Sara Diaz & Mike Gieseke*

For both new and seasoned practitioners in Chapter 12, topics include attorney application requirements, seasonal timing issues, use of cash collateral and incurring debt, amortization/interest terms, notice issues, plan filing & confirmation hearing time limits, and negotiation strategies for debtors and creditors.

**2:45 – 3:30 Case Law Update (.75 CLE Credits)**

*Karl Johnson, Kesha Tanabe & Alex Beeby*

The panel will discuss the key takeaway points from new 8th Circuit bankruptcy cases from the past year (and give you the best bankruptcy-related cartoons we could find.)

**3:30 – 3:45 Break**

**3:45 – 4:30 Small Business Reorganization (.75 CLE Credits)**

*Karl Johnson, Kesha Tanabe & Alex Beeby*

The new sub-Chapter V of chapter 11, created by the Small Business Reorganization Act of 2019 (the "SBRA"), streamlines reorganization by removing procedural burdens and costs. Learn who qualifies to use subchapter V, the new role of subchapter V Trustees, and the pros and cons of proceeding under the new scheme.

**4:30 – 5:00 War Stories (from presenters still present and standing) (.50 CLE Credits)**

This will be a lively discussion of some of the most interesting debtors and situations the panelists have encountered during their careers and 5:00 pm will come too soon!

**REGISTER ONLINE** at [www.sband.org](http://www.sband.org)

Attendance is mandatory to receive credit.

Approved for 6.5 CLE Credit Hours (ND and MN)

### **DEADLINE**

All registrations must be received by Monday, June 1, 2020.

## PRESENTERS

**ROGER MINCH** (program moderator) is a member of the Serkland Law Firm in Fargo, where he specializes in the areas of banking, loan documentation, commercial collections, workouts, bankruptcy, commercial litigation, and foreclosure. He is a graduate of NDSU and earned his law degree from the UND School of Law in 1978. Minch is a frequent lecturer in the areas of bankruptcy and commercial litigation. He is one of only two creditors' rights specialists in North Dakota, certified by the American Board of Certification, the nation's premier legal certification organization in Business Bankruptcy, Consumer Bankruptcy and Creditors' Rights Law. Mr. Minch was inducted on March 8, 2018 in Washington DC as the first career practicing attorney in ND or SD to become a fellow in the American College of Bankruptcy.

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**ADAM BALLINGER'S** practice includes working in the areas of fraud and insolvency with an emphasis on Ponzi scheme-type frauds. Adam represents debtors, creditors, trustees, and court-appointed receivers in all matters both in bankruptcy proceedings and outside of bankruptcy proceedings including state and federal courts, mediation, and arbitration. Adam also represents both buyers and sellers of agricultural products in agricultural and food products litigation in both court and arbitration, including the National Grain and Feed Association.

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**ALEX BEEBY** is an attorney in the business litigation department at Larkin Hoffman. Alex is a litigator who helps business owners and managers resolve disputes regarding bankruptcy, employment, and other areas of their businesses. Alex focuses on complex bankruptcy matters, including adversary cases and Chapter 11 reorganization, and bankruptcy-related matters, including complex post-judgment collections, fraudulent transfers, and receiverships. Alex is a contributor to the annual Bankruptcy Exemption Manual and is Co-Editor-in-Chief of the Minnesota State Bar Association's Bankruptcy Bulletin. Alex is a graduate of Augsburg University and Mitchell Hamline School of Law.

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**CHERYL BERGIAN** graduated from the UND School of Law in 1988 and has been practicing in North Dakota and Minnesota since then. Her practice consists primarily of Chapter 7 or Chapter 13 bankruptcies for debtors in southeast North Dakota and northwest Minnesota. She has been an Adjunct Professor for the Paralegal Program at Minnesota State University Moorhead, teaching the Debtor/Creditor/Bankruptcy course. She is a member of the National Association of Consumer Bankruptcy Attorneys (NACBA). Ms. Bergian is a former Chapter 7 Panel Trustee.

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**JON BRAKKE** joined the firm in 1979 after earning a bachelor of arts degree from Northwestern University and graduating cum laude from the Law School of the University of Minnesota.

He practices mainly in commercial, secured transactions, business, debtor/creditor and bankruptcy law. Jon is licensed to practice in the state and federal courts of Minnesota and North Dakota, the Eighth Circuit Court of Appeals and the United States Supreme Court.

When not in the office, Jon can frequently be found working on (or under) his 1999 Mazda Miata, which he races throughout the Midwest in the Sports Car Club of America's EP class.

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**JAMES CULLEN** is the Managing Partner of Steeplechase Advisors LLC a Minneapolis and Boston based Restructuring Firm. He has extensive experience advising agricultural operations going through workouts, reorganizations, transactions and asset monetization. He has served as a chief restructuring officer, transaction advisor, federal court appointed receiver, liquidating agent and assignee for benefit of creditors. He has managed and led multiple 363 bankruptcy sale processes, article 9 foreclosures and has served as an expert witness. He has also advised financial institutions on bank regulatory issues, portfolio management, loan loss reserves, credit quality and work out strategies.

His agricultural restructuring and transaction representations include large scale: Crop farms and Aquaculture facilities, Cattle and Livestock operations, Equestrian operations

Mr. Cullen graduated from Trinity College Dublin, Ireland. His recent presentations on agricultural restructurings and transactions include the 2019 Minnesota Bankruptcy Institute, the 2019 Midwest Bankruptcy Institute and Secured Finance Network. He owns a horse farm in the Twin Cities and is an ex Master of Foxhounds of the Long Lake Hounds in MN.

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**SARA DIAZ** is a partner at Bulie Diaz Law Office. She operates out of the firm's Fargo, ND location but represents North Dakota clients statewide. She has exclusively focused her practice on assisting individuals, farms and businesses filing for protection under Chapters 7, 11, 12 and 13 of the Bankruptcy Code over the past 13 years, plus an additional 2 years as a law clerk for the firm. Sara is a member of the ND and MN State Bar Associations, the National Association of Consumer Bankruptcy Attorneys (NACBA) and the American Bankruptcy Institute (ABI). Sara graduated from the University of North Dakota School of Law in 2006 and is licensed in ND and MN State and Federal Courts.

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**MICHAEL GIESEKE** is the staff attorney for Chapter 12 & 13 Bankruptcy Trustee Kyle L. Carlson. Michael received his J.D. from William Mitchell College of Law in 2010. Michael joined Trustee Carlson's office in 2011.

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**KARL JOHNSON** is an attorney in the Bankruptcy and Restructuring practice group of Taft Stettinius & Hollister LLP's Minneapolis office (f/k/a Briggs and Morgan, P.A.). He has appeared as attorney of record in thousands of bankruptcy cases representing debtors, creditors, trustees, and other parties in interest in bankruptcy cases under chapters 7, 11, 12, and 13. Karl clerked for retired Chief Bankruptcy Judge Gregory F. Kishel from 2010 to 2012. Karl is the author of the "Real Estate in Bankruptcy" chapter in the Real Estate Law volume of the Minnesota Practice Series, among other articles and chapters. Since 2017, Karl has been Co-Editor-in-Chief of the Minnesota State Bar Association's Bankruptcy Bulletin.

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**JAMES LODOEN** is a partner at Ballard Spahr in Minneapolis. He represents lenders, debtors, committees, and buyers of assets in bankruptcy cases and workouts. Jim represented the Chapter 11 Trustee of Petters Company Inc. following the unveiling of the \$3.8 billion dollar Ponzi scheme, and he represented affiliated Polaroid in its Chapter 11 and 363 sale. Jim has counseled clients in restructurings, receiverships and bankruptcies in the real estate, manufacturing, health care, life sciences, retail, agribusiness, farm, and agriculture sectors. Jim is a Fellow in the American College of Bankruptcy. He is a graduate of NDSU and the UND School of Law, and served as a judicial clerk to the Honorable William A. Hill, U.S. Bankruptcy Judge for the District of North Dakota.

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**PAT SINNER** joined Kaler Doeling, PLLP, in 2015. Patrick graduated from St. John's University with a bachelor's degree in history in 2010 and from University of St. Thomas School of Law in 2014. While in law school, Patrick participated in the consumer bankruptcy clinic, the Minnesota Moot Court Competition, and clerked for the Fargo Public Defender Office.

Before joining Kaler Doeling, Patrick clerked for Judge Edward T. Wahl of the 4th Judicial District of Minnesota.

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**CAREN STANLEY** Caren's areas of concentration include business and commercial litigation; construction law and liens; bankruptcy; creditor, debtor and collection; foreclosures and evictions. She received her undergraduate degree in history and East Asian studies from Carleton College and graduated magna cum laude from Hamline University School of Law. Caren is licensed to practice in the state and federal courts of Minnesota, North Dakota and South Dakota and the Eighth Circuit Court of Appeals. Caren has been with the Vogel Law Firm in Fargo, ND since 2004.

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**KESHA TANABE** is a bankruptcy attorney licensed in North Dakota, Minnesota and New York. She started her career as an Assistant Attorney General in New York City. Prior to starting her own firm about five years ago, she was a partner at Maslon LLP and Faegre Baker Daniels in Minneapolis. She is also a professor of Bankruptcy Law at the University of St. Thomas Law School, a member of the Editorial Board of the MSBA's Bankruptcy Bulletin, a co-founder of the Minnesota Chapter of IWIRC, and a co-chair of the ABI Bankruptcy Litigation Committee. She was recently appointed to serve as a Subchapter V Trustee in Region 12.

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## Registration

Advance registrations must be received by Monday, June 1, 2020. Cancellations must be received in writing 72 hours in advance of seminar to receive a cash refund, otherwise materials will be sent.

**REGISTER ONLINE at [www.sband.org](http://www.sband.org)**

Please print

Attendee Name \_\_\_\_\_

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City \_\_\_\_\_ State \_\_\_\_\_

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### SEMINAR MATERIALS

Materials will be emailed to all registrants. You must be in attendance in order to receive CLE Credits.

### TO REGISTER

1. ONLINE  
[WWW.SBAND.ORG](http://WWW.SBAND.ORG)
2. SBAND will email everyone on Tuesday, June 2<sup>nd</sup>, 2020 a link to access the Zoom Webinar. You must register and pay on our SBAND website first in order to receive the link to attend the webinar.

### QUESTIONS

Call 1-800-472-2685 or 701-255-1404