Top Legal Cases

Debt vs. equity standard of review
The Circuits are split on the proper standard of review for a decision on the recharacterization of debt as equity. As it now stands, three Circuits say it’s a question of fact; two Circuits say it’s a question of law.

Credit bids are not bifurcated
Section 506(a) and Section 363(k) both refer to “allowed claims.” But while Section 506(a) provides for claims to be bifurcated into secured and unsecured portions, that concept does not apply to credit bids under Section 363(k).

Secular law determines estate property
The First Amendment does not deprive bankruptcy courts of subject matter jurisdiction to determine if property is estate property in a Chapter 11 case filed by an archdiocese.

Cover Story

Do you need a blog?

Blogs, or “blawgs” as they’re known when they involve law, are cropping up all over the place. From single attorneys to entire practice groups, the bankruptcy law community is slowly taking a step toward the next generation of Internet-driven client communication, marketing and self-fulfillment.

“I don’t know of any faster way to establish a reputation for an attorney than to be a good source of a blog in a narrowly defined area,” said Mark Pruner, president of Web Counsel LLC.

And there’s certainly room for more bloggers out there. A recent survey by the American Bar Association Section of Litigation found that 57 percent of respondents read blogs on a regular basis, while only 19 percent maintain a law-related blog.

But what are the risks? What does it involve? How do you begin? And more important, who has time for another thing to do every day? You’ll be surprised. Find out on pages 4 and 5.

Highlights

Sam Goody finances skip under iPod pressure
Big box stores and increase in music downloading lead the entertainment retail giant to file Chapter 11.

Funds from false-advertising debtor go to good cause
Texas’ attorney general found an appropriate way to spend money received in a settlement with a debtor accused of scamming customers.

IRS strips credit counselors’ tax-exempt status
The IRS has revoked the tax-exempt status of more than 30 credit-counseling agencies.

Northwest finance exec: Reduce labor costs or bust
Airline has started the fight to reject its collective bargaining agreements with pilots and flight attendants unions.

Mecham retires; search for replacement is on
After 20 years and two attempts, the director of the Administrative Office of the U.S. Courts, Leonidas Ralph Mecham, announces his retirement.

Cases reported
Supreme Court Docket, page 10; New Judicial Decisions, pages 11-18.
Benefits of blogs range from economical to emotional

Why are firms like Sheppard Mullin and Stark and Stark adding blogs to their Web sites?

It’s simple. Experts say blogs work.

Not only are they an effective marketing tool, but bloggers often get a tremendous sense of fulfillment out of keeping a blog. And despite what you may think, blogs are neither time-consuming nor complicated to set up and maintain.

Blogs are Web sites that allow you to publish anything to the Web instantly. Most “blawgs” provide informal commentary on legal developments. Others offer links and case summaries. Some blogs allow others to comment on the musings and host ongoing discussions. In short, blogs have become an effective way for individuals to let the world know how they think.

And, as it turns out, potential clients want to know how you think.

Practical reasons for starting a blog

While the reasons to blog are as diverse as blogs and bloggers themselves, marketing professionals are convinced that the use of blogs as a marketing tool will only grow as potential clients increasingly turn to the Internet to find the help they need.

Unfortunately, the bio blurb on your firm’s Web site may not adequately represent you to the online world.

Blogs heighten your status with search engines, experts say. Search engines rate blogs highly because of their frequently updated content. Google even has a dedicated search engine for blogs, meaning that if a potential client types “bankruptcy” into the blog search engine, your blog would likely be one of the first results of the search.

Francis G.X. Pileggi, a litigation partner with the Wilmington, Del., office of Fox Rothschild LLP and founder of a blog that reports on Delaware corporate litigation decisions (www.delawarelitigation.com), says that the marketing aspect is one reason he got into blogging. “I realized that more and more people are finding out about lawyers and making decisions about which lawyer to hire based on Internet searches, and I think a blog is the best way to make yourself visible on the Internet,” he said. “If all you’re relying on is your little bio on your firm’s Web page, the chances of you coming up in a search are slim.”

Still not convinced that blogs draw crowds? Steven Jakubowski, a partner at Chicago’s Robert F. Coleman & Associates and author of the firm’s Bankruptcy Litigation Blog (www.bankruptcylitigationblog.com), says that the blog averages 15,000 to 20,000 visits a month from 4,500 different sites.

But helping to draw Internet searchers to you is only part of the marketing benefit of blogging, experts say. People — potential clients — who visit your blog feel like they know you. “The best thing a typical firm Web site can do is to convey an extremely professional appearance,” said Ted Demopoulos, coauthor of Blogging for Business. “A blog, in comparison, can also convey professionalism, but they have the added bonus of educating the reader, breeding familiarity, and inspiring confidence in the author.”

Marketing, shmarketing — blogging is fun!

While professionals are quick to tout the marketing perks of a blog, that’s rarely the benefit cited first, or even second, by attorney bloggers. Bloggers are more likely to cite the passion they have for reaching out to the community and providing a service that people might otherwise have to pay for, or the professional enrichment they get from constantly analyzing decisions.

Jakubowski says that in many ways his blog is similar to a pro bono commitment. “I have gotten referrals and business from it, but for me the advantage is in providing the public service.”

Attorneys who start blogs are generally the kind of people who have long been inspired to write or share news links or other items with the community all along. Pileggi, for example, is a prolific writer for legal publications, and Jakubowski frequently e-mails blurbs and links about important cases or developments to his contact list.

Blogging has enhanced both attorneys’ hobbies. For Pileggi, the thrill of writing fresh analysis on a recent decision was dampened by the monthlong wait before the journal was distributed. Between writing and printing, other authors were posting their articles directly to the Web, or into online journals.

For Jakubowski, not only did he feel that the number of people he could reach with his e-mail was limited, but he also felt that e-mailing his contacts was an imposition. With his blog, he continues to help keep people informed, but now they elect to subscribe, and they decide when to tune in.

Jakubowski’s firm was also impressed by a similar feat of Internet efficiency. Blogs erupted with commentary and analysis after last term’s final Supreme Court opinions were released. “Within three days, bloggers had completely vetted MGM v. Grokster and Kelo v. New London. That’s unheard of. It used to be that you’d wait a year to get a law review that brings to bear some real analysis. Here you are getting it within days,” he said.
Beware: Practice-group blogs could lack passion, benefits

Experts say that there’s no better way for an attorney to build name recognition than through a blog. But when it comes to the benefit to law firms, the jury is still out.

“For firms, blogs mean lawyers are taking time away from their practice or doing postings after hours,” says Mark Pruner, president of Web Counsel LLC. “The result is that either the firm loses billable time, or the lawyer has to do it in their spare time, which means the lawyer has to be passionate about maintaining the blog.”

Further complicating the matter, he says, is that if the lawyer is passionate about the blog, then the blog will take on some of the aspects of the lawyer’s personality and be more easily identified with the lawyer than the firm. “This is good for the blog — they should be written with an attitude — but many blogs don’t result in much name recognition for the firm separate from the lawyer author,” he said.

Pruner says that without that one passionate person, the blog tends to have what he calls a skyrocket trajectory. “If you can get several attorneys to post to a firm blog, that’s great, but what tends to happen is the blogs take off with a blast and everyone is enthusiastic. But then, six months or a year later, a major case comes along, and ... the blog loses.”

Steven Jakubowski, founder and principal author of Robert F. Coleman & Associates’ Bankruptcy Litigation Blog, also cautions against starting a blog if no one is passionate about it. "If your essence is not to just write and talk and tell people what’s going on, and you look at this just as a marketing tool, you’ll never have the energy to keep it up. It requires constant attention.”

How hard is it to blog?

While your average computer user cannot update a Web site, anyone who can send an e-mail can blog, experts say.

Independent blogs are managed by online services such as www.blogger.com and www.typepad.com. These hosts provide templates for the creation of your blog, handle the posting of updates, and store the information contained in the blog for little or no cost.

Some lawyers use a company called Lexblog (www.lexblog.com), which provides lawyers with a turnkey blogging solution. You write the blog; Lexblog takes care of everything else. Many services also provide statistics on the number of visitors to the blog, as well as their IP address and whether they’re repeat or first-time visitors.

Alternatively, your firm can manage the blog locally by installing blogging software.