

Subcommittee on Creditors' Rights

Shannon Lowry Nagle, Chair, and Elizabeth M. Bohn, Vice Chair

The Creditors' Rights Subcommittee met jointly with Bankruptcy Litigation at the ABA Annual Meeting on August 9, 2009, in New York. Glenn Siegel and Iva Uroic from Dechert LLP shared their article recently published in Bloomberg Law Reports on new developments in Delaware law on breach of fiduciary duty by officers and directors and damage claims for deepening insolvency. The program focused on the current status of Delaware law following the decision of Judge Mary Walrath in *In re Brown Schools (Miller v. McCown De Leeuw & Co.)*, wherein the court refused to dismiss a Chapter 7 trustee's breach of fiduciary duty claims against the former directors of a debtor corporation in which some of the damages claimed were for the "deepening insolvency" of the debtor allegedly caused by the defendants' breaches of their duties of loyalty to the corporation and its creditors. This decision distinguished *Trenwick Am. Litig. Trust v. Billett*, 2007 Del. LEXIS 357 (Del. 2007), where the Delaware Supreme Court held that Delaware does not recognize a cause of action for deepening insolvency. The discussion during the meeting focused not only on the *Brown Schools* decision, but a more recent decision, *Bridgeport Holdings*, and provided an overview of the current standards under Delaware law for breach of fiduciary duty. If you would like to listen to the podcast of our Subcommittee's meeting, it is available [here](#).