



# Proceedings

A monthly newsletter from McGraw-Hill Education



April 2021 Volume 12, Issue 9

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## *Dear Professor,*

Congratulations on having successfully “sprung forward,” and welcome to the “hopeful world” of Daylight Savings Time! Welcome to McGraw-Hill Education’s April 2021 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 12, Issue 9 of Proceedings incorporates “hot topics” in business law, video suggestions, an ethical dilemma, teaching tips, and a “chapter key” cross-referencing the April 2021 newsletter topics with the various McGraw-Hill Education business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. Whether government-issued stimulus checks are subject to debt collection;
2. The arrest of a mother and daughter after they allegedly cast hundreds of fraudulent homecoming court votes;
3. California’s lawsuit against a major United States nursing home operator over its ratings;
4. Videos related to a) the Purdue Pharma opioid lawsuit settlement; and b) a bankruptcy filing by one of the energy companies involved in the recent Texas storm scandal;
5. An “ethical dilemma” related to a “wealth tax” being contemplated by the Biden administration; and
6. “Teaching tips” related to Article 3 (“California Sues Major U.S. Nursing Home Operator over Ratings”) and the Ethical Dilemma (“Biden Not Ruling Out a Wealth Tax and Believes the Rich Aren’t Paying Enough, White House Says”) of the newsletter.

I wish everyone a joyous spring season!

Jeffrey D. Penley, J.D.  
Senior Professor and Student Advocate  
School of Workforce Development and the Arts  
Catawba Valley Community College  
Hickory, North Carolina



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## Of Special Interest

This section of the newsletter covers three (3) topics:

- 1) Whether government-issued stimulus checks are subject to debt collection;
- 2) The arrest of a mother and daughter after they allegedly cast hundreds of fraudulent homecoming court votes; and
- 3) California's lawsuit against a major United States nursing home operator over its ratings.

## Hot Topics in Business Law

### Article 1: "Debt Collectors Can Seize the New Stimulus Checks. Lawmakers Are Trying to Fix That"

<https://www.cnn.com/2021/03/16/politics/stimulus-checks-debt-collectors-wyden/index.html>

According to the article, the latest round of stimulus payments that started going out recently are open to being seized by private debt collectors -- a problem lawmakers are rushing to fix.

Recipients with unpaid credit card or medical bills for which a company has obtained a judgment against the debtor could see the fresh infusion taken from their bank accounts, potentially preventing those in need from getting the emergency cash.

Senator Ron Wyden, a Democrat from Oregon, plans to introduce a fix that would shield the payments from garnishment as early this week, according to a spokeswoman.

But for now, it's possible collectors could seize the money, worth up to \$1,400 per person, that the federal government is directly depositing into people's bank accounts.

"We really wish this could have passed before the money started going out. The protection would have been far more effective if the payment was coded in a way so that banks would automatically know to protect the money," said National Consumer Law Center associate director Lauren Saunders.

Lawmakers shielded the \$600 payments that were approved as part of the December stimulus, but the latest Covid relief bill did not include that protection because of the procedural rules Democrats used to push the bill through the Senate, where no Republicans signed on.

The relief bill passed last March, known as the CARES Act, also failed to include language protecting the first round of stimulus payments, worth up to \$1,200, from private debt collectors. A standalone Senate bill that would have shielded the payments was passed by unanimous consent a few months later but was not taken up by the House.



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A coalition of advocacy groups, ranging from the National Consumer Law Center to the American Bankers Association, are urging lawmakers to make the fix.

"Otherwise, the families that most need this money, those struggling with debt and whose entire bank accounts may be frozen by garnishment orders, will be not be able to access their funds," the group wrote in a letter sent to Congressional leaders.

If the creditor has sued over the debt and there's a court order in place for garnishment, a bank must turn over the money by law, unless Wyden's proposed bill passes.

The third round of payments is expected to reach about 85% of families, according to the White House. Those whose bank information is on file with the Internal Revenue Service will likely get the money first, because it will be directly deposited into their accounts. Others may receive paper checks or prepaid debit cards in the mail.

Direct deposits started going out this weekend and additional batches of payments will go out over the coming weeks.

Families will receive an additional \$1,400 per dependent, so a couple with two children could receive up to \$5,600. Unlike prior rounds, families will now receive the additional money for adult dependents over the age of 17.

The full amount goes to individuals earning less than \$75,000 of adjusted gross income, heads of households (like single parents) earning less than \$112,500 and married couples earning less than \$150,000. But then the payments gradually phase out as income goes up.

Lawmakers narrowed the scope of the payments this time so that not everyone who received a previous check will be sent one now. It cuts off individuals who earn at least \$80,000 a year of adjusted gross income, heads of households who earn at least \$120,000 and married couples who earn at least \$160,000 -- regardless of how many children they have.

The law protects the stimulus payments from garnishment for other outstanding federal debts, like student loan or tax debt.

For the \$1,200 payments authorized by the CARES Act last year, the payment was protected from all debts except delinquent child support. Congress expanded the exclusion for the second round of payments, worth up to \$600, making sure the money would not be offset even for owed child support.

But there's another hurdle for people who were eligible but missed out on getting the earlier payments. An estimated 8 million households that didn't get the money sent directly to them, most commonly because the Internal Revenue Service (IRS) didn't have their correct information on file. Very low-income people are not normally required to file taxes.



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Those people are allowed to claim the payment as a credit on their 2020 tax return. But the none of the three Covid relief bills shield those tax credits from back debts -- even federal ones.

An IRS spokesman recently said that the agency is reviewing what might be possible to address the problem. Yet people who have filed their 2020 tax returns could already have lost out on the cash and won't have any way to get it back.

## Discussion Questions

1. Define garnishment.

*Garnishment is a court order directing that money or property of a third party (usually wages paid by an employer) be seized to satisfy a debt owed by a debtor to a plaintiff creditor. Garnishment of Covid-related stimulus payments is unusual, since Covid is a "once-in-a-lifetime" pandemic, and since Covid-related stimulus payments do not constitute wages (nor do they constitute taxable income).*

2. The article references the National Consumer Law Center (NCLC) and its associate director, Lauren Sanders. What is the NCLC, and what is its purpose?

*According to information available at the National Consumer Law Center's website (<https://www.nclc.org/about-us/our-story.html>):*

*The National Consumer Law Center (NCLC) proudly traces its roots to President Lyndon Johnson's declaration of a "War on Poverty." Beginning in 1965, the federal Office of Economic Opportunity began funding legal services offices with two main goals: improving the access of poor people to the legal system and enabling advocates to seek justice wherever justice for the poor is needed. Reforming a system that was stacked against low-income families eventually became the top priority of the new Legal Services Program. Several national support centers were founded, the National Consumer Law Center among them.*

*Robert F. Drinan, dean of Boston College Law School, received a letter in January of 1969 inviting the school to apply for federal funds to establish a "Center for Consumer Affairs." He eagerly accepted. Boston College Law School's grant application outlined the goals of a proposed "National Consumer Law Center" and described the unique qualifications of BC Law to be its home.*

*The grant application was successful and the National Consumer Law Center began operations in June of 1969. Although working from a college campus, NCLC's founders were determined not to operate from an ivory tower. From the beginning they were in close communication with legal aid lawyers working on the front line as advocates for low-income families.*



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*By 1972 NCLC was ready to operate independently of Boston College Law School and moved to offices in downtown Boston. In 1980 a Washington, D.C. office was established so that NCLC could provide a strong pro-consumer voice in the regulatory environment of the nation's capital.*

*Today, NCLC continues to fight for the rights of low-income families and provides many resources to hard working civil legal aid and private attorneys representing low-income consumers. The talented lawyers of the National Consumer Law Center provide policy analysis, advocacy, litigation, expert witness services, and training for consumer advocates throughout the United States. NCLC also works with federal and state policymakers and participates in major litigation across the nation.*

*Along the way NCLC has inspired and helped to create two separate, independent consumer justice organizations: The National Association of Consumer Advocates and Americans for Fairness in Lending. NCLC has also developed its own initiatives on behalf of student loan borrowers and older consumers. Additionally, NCLC publishes a comprehensive set of legal treatises, considered by many to be the preeminent source on consumer law. The treatises are widely cited in judicial opinions by courts across the United States, including the United States Supreme Court.*

*Although begun with federal funds in 1969, today the National Consumer Law Center is sustained by the support of a diverse network of private foundations, corporate sponsors, and individuals.*

*For more information regarding the NCLC and its purpose, please refer to the organization's web site, [www.nclc.org](http://www.nclc.org).*

3. In your reasoned opinion, should the United States Congress enact legislation protecting the latest round of stimulus payments from garnishment for outstanding debts? Why or why not?

*This is an opinion question, so student responses may vary. In your author's opinion, one must examine the underlying purpose of Covid stimulus payments to properly determine whether the U.S. Congress should enact legislation protecting the latest round of stimulus payments from garnishment for outstanding debts. That underlying purpose is to provide immediate, in many instances desperately-needed, relief to Americans to hopefully "ride the storm out" on a national crisis unprecedented in our lifetimes.*

*In your author's opinion, allowing stimulus payments to be subject to garnishment by creditors would defeat the underlying purpose of the relief.*



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## Article 2: “Mother and Daughter Arrested after Allegedly Casting Hundreds of Fraudulent Homecoming Court Votes”

<https://abcnews.go.com/US/mother-daughter-arrested-allegedly-casting-hundreds-fraudulent-homecoming/story?id=76484142>

*Note: In addition to the article, please see the accompanying video included at the above-referenced internet address.*

According to the article, an assistant principal and her daughter have been arrested after authorities say they were responsible for fraudulently casting hundreds of votes for the high school’s Homecoming Court.

According to the Florida Department of Law Enforcement (FDLE), the investigation into Laura Rose Carroll, 50, and her 17-year-old daughter, who was announced as Tate High School's Homecoming queen last October, began when the Escambia County School District in Florida contacted the FDLE to report unauthorized access into hundreds of student accounts after discovering that 117 votes for Tate High School’s Homecoming Court were allegedly originating from the same IP address in a very short period of time.

“The investigation found that Carroll, an assistant principal at Bellview Elementary School, and her daughter, a student at Tate High School, had accessed student FOCUS accounts,” the FDLE said in a statement.

Court documents said that “FOCUS allows students, teachers and parents to log into their account to view grades, medical history, test scores, attendance, disciplinary actions, personal information, student picture and student identification number.”

The FDLE said that their agents were able to uncover evidence of unauthorized access to the FOCUS website linked to Carroll’s cell phone, to computers in Carroll and her daughter's home, and to a total of 246 votes cast for the Homecoming Court -- which Carroll's daughter eventually won.

Witness statements in the court documents allege that Carroll's daughter had actually bragged about accessing individual student’s private information for several years.

“I have known that [Carroll's daughter] logs into her mom’s school account in order to access grades and test scores since freshman year when we became friends,” said one witness. “She looks up our group of friends grades and makes comments about how she can find out our test scores all the time.”

A second witness included in the court document said, “I recall times when [Carroll's daughter] logged onto her mom’s focus account and openly shared information, grades, schedules, etc. with others. She did not seem like logging in was a big deal and was very comfortable doing so.”



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The investigation also found that Carroll's FOCUS account had accessed a total of 372 high school records since August 2019, with 339 of those being records of Tate High School students.

"The district isn't able to divulge any additional information outside of what FDLE shared because of the nature of the investigation," Escambia County School District Superintendent Dr. Timothy Smith said, adding that Carroll is currently suspended from her job.

"Carroll was arrested today (March 15) and booked into the Escambia County Jail, with a bond set at \$8500. Her daughter was taken into custody and transferred to the Escambia Regional Juvenile Detention Center," the FDLE said in a statement.

Carroll and he daughter now face third degree felony counts of offenses against users of computers, computer systems, computer networks, and electronic devices, unlawful use of a two-way communications device, and criminal use of personally identifiable information. They will also face a first degree misdemeanor count of conspiracy to commit these offenses.

## Discussion Questions

1. As indicated in the article, Laura Rose Keller and her daughter have been arrested and now face felony counts of offenses against users of computers, computer systems, computer networks, and electronic devices, unlawful use of a two-way communications device, and criminal use of personally identifiable information. In your reasoned opinion, is this "much ado about nothing," particularly since the offenses relate to the daughter's nomination for Homecoming Court?

*Although this case may seem trivial at "first blush" (after all, it only relates to a Homecoming Court, right?!), this case actually involves a very serious matter; namely, an illegal (even criminal) invasion of privacy. In your author's opinion, although there has been a discernible trend toward erosion of privacy rights over at least the last twenty years, victims of privacy invasions and law enforcement officials must make a stand regarding privacy rights that are still protected. In this case, student grades and other personal information maintained by schools are still afforded privacy protection by law, as indicated by the criminal counts alleged against Laura Rose Keller and her daughter.*

2. As indicated in the article, Mrs. Keller and her daughter have also been charged with conspiracy to commit the referenced felony offenses. What is conspiracy?

*Conspiracy is an illegal agreement between two or more persons to commit an intended crime. Conspiracy is a separate crime—it is the illegal agreement itself that constitutes a crime. All conspirators can be charged and convicted of conspiracy (although one or more co-conspirators may strike a plea deal with the prosecution and "turn state's evidence" against the other co-conspirators). If the defendants succeed in committing the intended crime, the defendants can be convicted of both commission of the intended crime and conspiracy to commit the intended crime. If the defendants do not commit (or succeed in committing) the intended crime, they can still be*



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*convicted of conspiracy (assuming that the prosecution can prove beyond reasonable doubt in such a case that the defendants conspired).*

3. Can a defendant be convicted of both conspiracy and commission of the underlying offense(s)? Why or why not?

*As indicated in response to Article 2, Discussion Question 2 above:*

*Conspiracy is an illegal agreement between two or more persons to commit an intended crime. Conspiracy is a separate crime—it is the illegal agreement itself that constitutes a crime. All conspirators can be charged and convicted of conspiracy (although one or more co-conspirators may strike a plea deal with the prosecution and “turn state’s evidence” against the other co-conspirators). **If the defendants succeed in committing the intended crime, the defendants can be convicted of both commission of the intended crime and conspiracy to commit the intended crime (emphasis added).** If the defendants do not commit (or succeed in committing) the intended crime, they can still be convicted of conspiracy (assuming that the prosecution can prove beyond reasonable doubt in such a case that the defendants conspired).*

## Article 3: “California Sues Major U.S. Nursing Home Operator over Ratings”

[https://abcnews.go.com/Health/wireStory/california-sues-major-us-nursing-home-operator-ratings-76472560?cid=clicksource\\_4380645\\_9\\_heads\\_posts\\_headlines\\_hed](https://abcnews.go.com/Health/wireStory/california-sues-major-us-nursing-home-operator-ratings-76472560?cid=clicksource_4380645_9_heads_posts_headlines_hed)

According to the article, California's attorney general and local officials sued the nation's largest senior living home operator recently, alleging the company misled consumers on quality ratings and broke laws intended to protect patients when they are discharged from a facility.

The suit centers on Brookdale Senior Living Inc.'s 10 California-based skilled nursing facilities. The company endangered the health of “tens of thousands” of patients and forced families to hurriedly find them new homes by failing to give at least 30 days notice of transfers or discharges as required for skilled nursing facilities, the suit alleges. It says the company also failed to adequately prepare patients to be discharged or transferred.

One was an 80-year-old man with Alzheimer's disease, congestive heart failure and five other conditions who was released without proper notice or a discharge plan, the lawsuit says. Within a week, he was admitted to a hospital.

A 78-year-old man who had heart and kidney disease, trouble walking, and was recovering from pneumonia also was released without proper notice or a plan, with a catheter used to administer drugs still in his body, the lawsuit says. His family wasn't told how to administer his medications or supplemental oxygen, it alleges.



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“Brookdale does this so it can fill its beds with residents who will bring in more money,” the suit alleges. It says the company will discharge patients when their Medicare coverage ends, “regardless of the care and treatment needs,” rather than keep them and receive lower levels of reimbursement.

The company said it is disappointed in the allegations and denied engaging in fraudulent conduct. “Brookdale is dedicated to providing quality care to our residents and patients, and we take our mission of enriching the lives of those we serve seriously,” it said in a statement.

The Tennessee-based company operates in 43 states. It says it has 726 independent living, assisted living, memory care and continuing care retirement communities capable of serving about 64,000 residents.

Brookdale also gave false information to the Centers for Medicare & Medicaid that it uses to award what are known as “star ratings” — a scale of one to five stars — which are intended to guide consumers in picking a quality facility, the suit alleges. Each facility gets an overall rating and ones for inspections, staffing and quality of care.

The company over-reported its nursing staffing hours and was given unwarranted four-and five-star ratings, the suit contends. It alleges the practice violated both the Unfair Competition Law and False Advertising Law.

“We are holding Brookdale accountable for artificially increasing its profits by cutting corners when transferring or discharging its patients,” said California Attorney General Xavier Becerra, who is awaiting Senate confirmation for secretary of health and human services in the Biden administration. “It lured individuals to its facilities through false promises about providing the highest quality care.”

The rating system was the subject of a lengthy, critical story recently by The New York Times. The newspaper said nursing home companies misled the star rating system in ways that hid long-running problems and were unprepared for the coronavirus pandemic that ran rampant through their vulnerable elderly and sick populations, killing more than 130,000 residents.

The rating system was particularly important to families during the pandemic, when they often couldn't visit facilities in person, the newspaper noted. It cites a lawsuit brought by a former resident of a Brookdale facility in Kentucky as one concern.

The company has or had California skilled nursing facilities in Bakersfield, Camarillo, Carlsbad, Northridge, Rancho Mirage, San Diego, San Dimas, San Juan Capistrano, Santa Rosa, and Yorba Linda.

The suit was led by Kern County District Attorney Cynthia Zimmer, who said in a statement that when nursing home companies break the rules, “they create environments that subject the most vulnerable among us to unnecessary victimization, stress, and even physical harm.”



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She was joined by the district attorneys of Alameda, San Diego and Santa Cruz counties, as well as Los Angeles City Attorney Mike Feuer. The suit seeks a permanent injunction requiring better practices as well as civil penalties of \$2,500 for each violation of the Business and Professions code that is proved at trial.

## Discussion Questions

1. What is the legal significance of misleading consumers on quality ratings?

*The legal significance of misleading consumers on quality ratings is that doing so constitutes fraud.*

*Fraud is defined by the following elements:*

- a. A false statement of fact;
- b. Made with knowledge of its falsity or reckless indifference as to its truth;
- c. Made with the intent that the listener rely on the false statement;
- d. The listener relies on the false statement; and
- e. The listener suffers damages as a result (economic, physical, or both).

*Fraud is one of the most egregious offenses to consumers, and much of consumer protection law is purposed to eradicate fraud and punish sellers who make fraudulent statements. Not only does fraud result in diminished trust (not just with respect to the fraudulent seller, but to the subject industry and business in general as well), but by definition, it results in damage to the affected consumers.*

2. What duty does a senior living home owe patients upon their discharge from its facility?

*The duty a senior living home owes patients upon their discharge from its facility is one of due care. Failing to satisfy this duty, which is heightened by the fact that involves the health (and even lives) of patients, constitutes negligence.*

*To establish a negligence cause of action, a plaintiff must prove, by the greater weight of the evidence, the following:*

- a. The defendant owed the plaintiff a duty of care;
- b. The defendant breached the duty of care;
- c. The defendant's breach of the duty of care cause the plaintiff harm; and
- d. The plaintiff experienced damages as a result of the defendant's breach of the duty of care.

*If California's attorney general and local officials can prove their case; i.e., that Brookdale Senior Living, Inc. endangered the health of "tens of thousands" of patients and forced families to hurriedly find them new homes by failing to give at least 30 days notice of transfers or discharges as required for skilled nursing facilities; and further, that the company also failed to adequately prepare patients*



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*to be discharged or transferred, liability based on negligence theory will be established, and the only other question for the court will be the extent (amount) of damages.*

3. Do you support the “for profit” model for senior living facilities? Why or why not?

*This is an opinion question, so student responses may vary. In your author’s opinion, answering this question depends on an individual’s perspective of whether health care (in this instance, senior living) should be based on principles of capitalism, or whether health care should instead be viewed as a right (and not a privilege) and therefore supported by the collective interests of “We, the People.”*



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## Video Suggestions

### **Video 1: "Purdue Pharma Pleads Guilty to Felony Charges, Will Pay \$8 Billion"**

[https://abcnews.go.com/US/sackler-family-pay-42-billion-opioid-lawsuit-settlement/story?id=76485141&cid=clicksource\\_4380645\\_3\\_heads\\_hero\\_live\\_headlines\\_hed](https://abcnews.go.com/US/sackler-family-pay-42-billion-opioid-lawsuit-settlement/story?id=76485141&cid=clicksource_4380645_3_heads_hero_live_headlines_hed)

*Note: In addition to the video, please see the following article included at the above-referenced internet address*

### **"Sackler Family to Pay \$4.2 Billion Towards Opioid Lawsuit Settlement, Documents Show"**

According to the article, the Sackler family boosted its contribution to the settlement of opioids lawsuits to \$4.2 billion under a restructuring plan filed overnight by Purdue Pharma with a federal bankruptcy court in White Plains, New York.

Purdue said the plan amounts to \$10 billion of value for claimants and communities affected by the opioid crisis that was fueled by the company's aggressive marketing of OxyContin, according to multiple lawsuits.

"Today marks an important step toward providing help to those who suffer from addiction, and we hope this proposed resolution will signal the beginning of a far-reaching effort to deliver assistance where it is needed," the Sackler family said in a statement.

Under the plan, the Sacklers would admit no wrongdoing and relinquish control of the company. Their contributions would be paid out over a decade through trusts established to disburse the proceeds of the as yet unnamed new company to emerge from bankruptcy.

"Purdue has delivered a historic plan that can have a profoundly positive impact on public health by directing critically-needed resources to communities and individuals nationwide who have been affected by the opioid crisis," said Steve Miller, chairman of Purdue's Board of Directors.

"The company has worked closely with a broad and diverse group of stakeholders to guarantee that billions of dollars will be used exclusively for abatement purposes and not diverted elsewhere."



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The \$4.2 billion of personal money offered by members of the Sackler family was a billion dollars more than offered last year but state attorneys general immediately rejected the plan.

"I am disappointed in this plan. While it contains improvements over the proposal that Purdue announced and we rejected in September 2019, it falls short of the accountability that families and survivors deserve," New York Attorney General Tish James said in a statement.

In separate plea deals with the Justice Department, in 2007 and in 2020, Purdue Pharma has twice admitted to illegally marketing OxyContin and other opioid medications.

The company would pay \$500 million up front and the rest of the money would be paid in installments over the next decade.

The Sacklers can retain control of their overseas pharmaceutical businesses for the next seven years before they are prohibited from the sale or manufacture of opioids.

The restructuring plan called for Purdue to be dissolved. All of its assets will be transferred to a newly established public benefit corporation that would, in addition to certain opioid medications, manufacture treatments for opioid dependence the antidote naloxone.

"Our teams of scientists are committed to developing and delivering medications and solutions to meaningfully address the opioid crisis," said Dr. Julie Ducharme, the company's chief scientific officer. "We have the capability and the passion to make a substantial difference right away, and for years to come."

## Discussion Questions

1. Regarding bankruptcy, what is a restructuring plan?

*A restructuring plan is the central feature of Chapter 11 business (and Chapter 13 individual) bankruptcy. Through a restructuring plan, which involves the reorganization of debts and rescheduling of payment terms, along with perhaps some debt forgiveness, the debtor hopes to stay in business while making its debt repayment more manageable.*

*A business hopes to come out of Chapter 11 bankruptcy with a "new lease" on corporate "life," but the realities of the marketplace, combined with remaining debt obligations, could make that difficult or impossible. If Chapter 11 business bankruptcy is not successful, the business may be forced to file for Chapter 7 liquidation bankruptcy, which is the "death knell" for a business.*

2. As the article indicates, the Sackler family admits no wrongdoing in settlement of the opioids lawsuits. Is the "no admission of wrongdoing" stipulation in settlement agreements a common occurrence? In your reasoned opinion, should the law allow such a stipulation? Why or why not?



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*The “no admission of wrongdoing” stipulation is a common clause in a settlement agreement.*

*Through such a stipulation, the plaintiff and the defendant agree that the payment of settlement funds does not constitute a legal admission of liability.*

*In your author’s opinion, the law should most certainly allow for such a stipulation. Such a clause incentivizes settlement, and each case settled results in one less case tried in an already-overburdened judicial system. Remember, a settlement agreement is just that—an agreement, based on the voluntary consent of all parties involved. Settlements are subject to the review of the court, but courts presumptively favor settlement agreements for the aforementioned reasons.*

3. As indicated in the article, the restructuring plan calls for Purdue Pharma to be dissolved. All its assets will be transferred to a newly established public benefit corporation that will, in addition to certain opioid medications, manufacture treatments for opioid dependence the antidote naloxone. In your reasoned opinion, is this a desirable part of the restructuring plan? Why or why not?

*Although student opinions may vary in response to this question, in your author’s opinion, the plan to dissolve Purdue Pharma and transfer its assets to a newly established public benefit corporation is a very desirable outcome to a tragic situation.*

*According to benefit corp.net, thirty-eight states currently permit the formation and operation of public benefit corporations (PBCs), a type of for-profit corporate entity similar to (but also distinguishable from) a C-corp. an S-corp. or a Limited Liability Company (LLC).*

*PBCs must include in their charter one or more specific public benefits as their statement of purpose, as oppose to the typical boilerplate “any lawful purpose” usually contained in most for-profit charters. This embeds a PBC’s mission into it founding documents and provides for a North Star by which a company can navigate critical business decisions.*

*Unlike standard corporations, where the Board generally must consider maximizing shareholder value as its prime directive, members of the Board of a PBC must also consider both the best interests of those materially affected by the company’s conduct, and the special public benefit in the company’s charter. In that sense, the PBC form of business is unique—stakeholder interest, rather than merely shareholder interest, is embedded in the corporate charter.*

*In your author’s opinion, Purdue Pharma’s reputation is irreversibly tarnished by the opioid epidemic. What better way to “rise like Phoenix from the ashes” than to emerge as a PBC, with the public’s best interest truly (and accountably) at heart?*



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## Video 2: “Very Shocking: Texas Man Receives Energy Bill for Nearly \$7,000”

<https://www.cnn.com/2021/03/15/us/griddy-texas-bankruptcy/index.html>

*Note: In addition to the video, please see the following article included at the above-referenced internet address:*

### **“Texas Energy Company That Charged Huge Electric Bills During Storm Files for Bankruptcy”**

According to the article, Griddy Energy, the Texas company that sent sky-high electricity bills to customers during the life-threatening winter storm in February, filed for Chapter 11 bankruptcy protection in the Southern District of Texas recently.

The company made the announcement on its website in a post that blamed the Electric Reliability Council of Texas (ERCOT), which operates the state's electric grid.

"The actions of ERCOT destroyed our business and caused financial harm to our customers," Griddy Chief Executive Officer Michael Fallquist said in a statement.

Griddy has \$1 million to \$10 million in estimated assets and \$10 million to \$50 million in estimated liabilities, the company said in the filing. Over \$29 million is owed to ERCOT, the filing says.

The bankruptcy filing stems from February's devastating winter storm, which shut down power for millions of Texans for days and led to shortages of heat, water, food and medicine. Chapter 11 is a form of bankruptcy that allows a company to restructure its debts and reorganize in order to pay creditors back over time.

Griddy was a feature of Texas' unusual, deregulated system for electric power. The vast majority of Texans -- and Americans -- pay a fixed rate for electric power and get predictable monthly bills. However, Griddy works by connecting customers to the wholesale market for electricity, which can change by the minute and is more volatile, for a monthly fee of \$9.99.

That setup can lead to savings sometimes, but also exposes customers to big risks.

During February's winter storm, power generators failed and demand for heating shot up. In response, ERCOT raised the price of electricity to the legal limit of \$9 per kilowatt hour and kept it there for several days. Griddy customers who didn't lose power were hit with massive electric bills that were auto-debited from their bank accounts.

For example, DeAndre Upshaw said the company charged him nearly \$7,000, and Katrina Tanner previously said that Griddy charged her \$6,225.



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"I felt almost guilty with these people not having electricity that I was complaining about my bill," Tanner said then. "At the same time, my complaint is: How am I gonna pay this?"

In early March, an independent monitor for the Public Utility Commission of Texas found that ERCOT kept prices too high for nearly two days during the storm, leading to \$16 billion in overcharges.

Griddy has faced increased scrutiny from the state in the wake of the storm. Last month, ERCOT revoked Griddy Energy's right to conduct activity in the state's electricity market for lack of payment.

Following ERCOT's decision, Griddy posted on their website saying they had "No choice but to power down."

"We have always been transparent and customer-centric at every step. We wanted to continue the fight for our members to get relief and that hasn't changed," the company said.

Two weeks ago, Texas' attorney general filed a lawsuit against Griddy Energy and Griddy Holdings for "false, misleading, and deceptive advertising and marketing practices." The lawsuit said Griddy misled customers and downplayed the incredible risk of its pricing scheme, which charges the most when customers are most vulnerable.

The AG's office said they received over 400 consumer complaints against Griddy in less than two weeks.

## Discussion Questions

1. What is Chapter 11 bankruptcy?

*As mentioned in response to Video 1, Question 1 above, Chapter 11 bankruptcy is reorganization/restructure bankruptcy.*

*A restructuring plan is the central feature of Chapter 11 business bankruptcy. Through a restructuring plan, which involves the reorganization of debts and rescheduling of payment terms, along with perhaps some debt forgiveness, the debtor hopes to stay in business while making its debt repayment more manageable. A business hopes to come out of Chapter 11 bankruptcy with a "new lease" on corporate "life," but the realities of the marketplace, combined with remaining debt obligations, could make that difficult or impossible. If Chapter 11 business bankruptcy is not successful, the business may be forced to file for Chapter 7 liquidation bankruptcy, which is the "death knell" for a business.*



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2. Do you favor a regulated or a deregulated system for electric power? What is the justification for the regulation of electric power? What is the justification for its deregulation? Explain your response.

*First, the “regulation” of business indicates some degree of government control over the way in which a business operates. In the context of the subject article, which involves electricity (a commodity essential to consumers), government regulation of business could involve controlling (i.e., limiting in some respect) the price consumers must pay for electricity.*

*Second, the “deregulation” of business involves loosening (or perhaps eliminating altogether) government control over the way in which a business operates. In the context of the subject article, which involves electricity (again, a commodity essential to consumers), government deregulation of business could involve leaving consumers exposed to the vagaries or whims of market-based pricing. Thus, the almost \$7,000 monthly electricity bill referenced in the article!*

3. In your reasoned opinion, should the market alone determine the price of electricity, or should the government play a role in determining the price? Explain your response.

*Although this is an opinion question and student responses may vary, in your author’s opinion, essential commodities merit some degree of government regulation to protect the consumer. Although price controls are arguably anathema to “free enterprise,” the provision of an essential commodity like electricity could literally mean the difference between life and death.*



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## Ethical Dilemma

### Of Special Interest

This section of the newsletter addresses a "wealth tax" being contemplated by the Biden administration

### **"Biden Not Ruling Out a Wealth Tax and Believes the Rich Aren't Paying Enough, White House Says"**

<https://www.usatoday.com/story/news/politics/2021/03/15/wealth-tax-biden-white-house-doesnt-rule-out-tax-on-wealthy/4705728001/>

According to the article, the Biden administration has not ruled out the idea of a wealth tax in recent days as progressive Democrats lean on the administration to adopt the policy into a tax reform package.

"There is a shared view that those at the top are not doing their part, that corporations could pay more in taxes," Psaki said of a wealth tax proposal Senator Elizabeth Warren, a Democrat from Massachusetts, introduced in Congress on March 1.

Warren, who campaigned for president on a platform including a wealth tax, introduced an "ultra-millionaire tax" in her legislation. The tax would impose a 2% annual tax on the net worth of households and trusts between \$50 million and \$1 billion and another 1% surtax on any wealth above \$1 billion.

"Her view is that middle-class families are paying more than their fair share and those at the top are not doing their part," Psaki said of Warren's economic philosophy, noting that Biden "has that shared objective."

Psaki cautioned, however, that Biden has already laid out his own tax proposals, which do not now include a wealth tax.

In contrast to income taxes, which are applied to a person's individual earnings or an entity's profits, a wealth tax charges an amount from the value of given assets. Progressive economists have long argued for a wealth tax as a means of combating wealth inequality and other ills.

Many countries have experimented with wealth taxes, though only five OECD countries, a group of high-income nations, still had their wealth taxes on the books in 2019. Most countries abandoned the policy because it is difficult to enforce, including in how to first determine people's actual net worth.

Recently, Treasury Secretary Janet Yellen said the administration was still exploring such a tax but stressed that no decision has yet been made.



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"He hasn't proposed a wealth tax, but he has proposed that corporations and wealthy individuals should pay more in order to meet the needs of the economy," Yellen said recently.

When pressed, Yellen said the policy was not "something that we haven't decided yet, and can look at" as a possibility.

Yellen also noted, however, that Biden already has "proposed a higher tax rate on corporations, on individuals and on payments, capital gains and dividend payments," arguing that such measures "are similar in their impact to a wealth tax."

During his presidential campaign, Biden promised to not raise taxes on any families that made less than \$400,000 in annual income. That figure, far above the average median household income in the United States, would likely focus the administration's tax policies on high-income and wealthy Americans.

A wealth tax would even more disproportionately target high-income and high-net-worth families and institutions.

The White House already has tinkered with the federal tax system. A provision in the American Rescue Plan, Democrats' \$1.9 trillion stimulus package, would expand the child tax credit to up to \$3,600 a child for children up to 6 and \$3,000 for children up to 17.

White House Chief of Staff Ron Klain said recently that the administration wants to make the tax benefits permanent, a move that would effectively establish a universal child allowance in the United States.

## Discussion Questions

1. After conducting some online research, what percentage of American families earn \$400,000 or more in annual income?

According to <https://www.cnbc.com/2020/10/06/biden-defines-400000-a-year-as-wealthy-how-far-it-goes-in-a-city-.html>, United States families making \$400,000 per year or more belong to a rarified group. They represent the top 1.8 percent of taxpayers, earning about 25 percent of the nation's income.

2. Teaching Tip 2 referenced later in this newsletter ["Historical Highest Marginal Income Tax Rates (in the United States)"] provides an internet link to a chart tracking the highest top marginal tax rates in the United States from 1913 through 2020. Comment on the data included in the chart, including your observations regarding discernible trends in the marginal tax rate in the United States.



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*Numerous observations and conclusions can be reached regarding the data contained in this chart. First, although the first highest marginal income tax rate indicated (in 1913) was 7 percent and the last one indicated (in 2020) was 37, quite a lot happened over the course of the many years in between!*

*The top marginal tax rate significantly increased in 1917, the year the United States first became involved in World War I, and remained high for several years to pay for the war effort. It then began to decrease during the “Roaring 20s” when the United States economy was doing well, and overall tax revenue was comparatively high. The top marginal rate again significantly increased after the Great Depression (to pay for New Deal social programs) and World War II (to pay for the war effort). The top marginal rate remained comparatively high for decades (notice that for thirteen years, from 1951 through 1963, the top marginal rate was no less than 91 percent!), until the late 1980s, when President Ronald Reagan led the effort to reduce taxes. As of 2020, the top marginal rate was at 37 percent, comparatively low by overall historical standards in the United States.*

*Two issues are worthy of note. First, understand that the top marginal tax rate only applies to income above a designated amount (for example, all income above \$400,000 in a given year)—The top marginal rate does not apply to all income earned (continuing with the example, it would not apply to income below \$400,000 in a given year—instead, a lower tax rate would apply). Second, the top marginal rate (for that matter, taxation in general) is ultimately a policy question—Specifically, do we as a nation want to generate sufficient revenue to pay for essential government programs (such as providing for the national defense and all costs associated with it, including war), or would we instead favor cutting essential government programs and/or paying for government programs with borrowed money (and thus contributing to annual federal budget deficits and the overall national debt?) Choices, choices, choices!*

3. In your reasoned opinion, is the proposed policy and law (to impose an additional tax on families making more than \$400,000 per year) simply “class warfare?” Explain your response.

*Although this is an opinion question and student responses may vary as a result, in your author’s opinion, the term “class warfare” is a politically charged term that is quite an exaggeration. Comparatively, the top marginal tax rate in 2020, 37 percent, represents only about one-third of the top marginal rate in 1945, 94 percent, during the era of “The Greatest Generation.” Admittedly, “World War III” is not raging now (thankfully), but we do have many pressing matters to attend to (that cost money) that directly affect “We the People”—Overcoming the COVID-19 pandemic and the nation’s crumbling infrastructure (roads and bridges), just to name two.*



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## Of Special Interest

This section of the newsletter will assist you in addressing Article 3 (“California Sues Major U.S. Nursing Home Operator over Ratings”) and the Ethical Dilemma (“Biden Not Ruling Out a Wealth Tax and Believes the Rich Aren’t Paying Enough, White House Says”) of the newsletter.

## Teaching Tips

### **Teaching Tip 1 (Related to Article 3— “California Sues Major U.S. Nursing Home Operator over Ratings”): “California Legislative Information: Business and Professions Code (BPC)”**

The following is an internet link to the California Business and Professions Code (BPC) referenced in the article.

<https://leginfo.ca.gov/faces/codesTOCSelected.xhtml?tocCode=bpc>

### **Teaching Tip 2 (Related to the Ethical Dilemma— “Biden Not Ruling Out a Wealth Tax and Believes the Rich Aren’t Paying Enough, White House Says”): “Historical Highest Marginal Income Tax Rates (in the United States)”**

For an interesting chart tracking the highest top marginal tax rates in the United States from 1913 through 2020, please refer to the following internet link:

<https://www.taxpolicycenter.org/statistics/historical-highest-marginal-income-tax-rates>



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## Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
<b>Barnes et al., Law for Business</b>	Chapters 5, 6, and 46	Chapters 5 and 44	Chapter 3	Chapters 3 and 6
<b>Bennett-Alexander &amp; Hartman, Employment Law for Business</b>	N/A	N/A	N/A	N/A
<b>Kubasek et al., Dynamic Business Law</b>	Chapters 7, 8, and 45	Chapters 7 and 32	Chapter 2	Chapters 2 and 8
<b>Kubasek et al., Dynamic Business Law: The Essentials</b>	Chapters 6, 7, and 25	Chapters 6 and 19	Chapter 2	Chapters 2 and 7
<b>Liuzzo, Essentials of Business Law</b>	Chapters 3 and 4	Chapters 3 and 21	Chapter 2	Chapters 2 and 4
<b>Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment</b>	Chapters 5, 6, and 48	Chapters 5 and 30	Chapter 4	Chapters 4 and 6
<b>McAdams et al., Law, Business &amp; Society</b>	Chapters 4, 7, and 15	Chapters 4 and 15	Chapter 2	Chapters 2 and 7
<b>Melvin, et al., Business Law and Strategy</b>	Chapters 42, 44, and 45	Chapters 26 and 45	Chapter 2	Chapters 2 and 42
<b>Melvin, The Legal Environment of Business: A Managerial Approach</b>	Chapters 9, 21, and 22	Chapters 20 and 22	Chapter 5	Chapters 5 and 9
<b>Pagnattaro et al., The Legal and Regulatory Environment of Business</b>	Chapters 10, 13, and 18	Chapters 13 and 18	Chapter 2	Chapters 2 and 10
<b>Sukys, Business Law with UCC Applications</b>	Chapters 5, 6, and 15	Chapters 5 and 21	Chapter 1	Chapters 1 and 6



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## This Newsletter Supports the Following Business Law Texts:

Barnes et al., Law for Business, 14<sup>th</sup> Edition ©2021 (1260354660)

Bennett-Alexander et al., Employment Law for Business, 9<sup>th</sup> Edition ©2019 (1260031691)

Kubasek et al., Dynamic Business Law, 5<sup>th</sup> Edition ©2021 (1260354687)

Kubasek et al., Dynamic Business Law: The Essentials, 5<sup>th</sup> Edition ©2020 (1260354717)

Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17<sup>th</sup> Edition ©2019 (1260118827)

Liuzzo, Essentials of Business Law, 10<sup>th</sup> Edition ©2019 (1260118819)

McAdams et al., Law, Business, and Society, 12<sup>th</sup> Edition ©2018 (1260047687)

Melvin et al., Business Law and Strategy, 1<sup>st</sup> Edition ©2021 (0077614674)

Melvin et al., The Legal Environment of Business, A Managerial Approach: Theory to Practice, 4<sup>th</sup> edition ©2021 (1260354644)

Pagnattaro et al., The Legal and Regulatory Environment of Business, 18<sup>th</sup> Edition ©2019 (1260118835)

Sukys, Business Law with UCC Applications, 15<sup>th</sup> Edition ©2020 (1260204162)

