

The Common Interest Privilege in Bankruptcy: Recent Trends and Practical Guidance

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The common interest privilege (sometimes known as the community of interest privilege, joint defense privilege or common interest doctrine) is an important feature of civil litigation. The doctrine allows attorneys representing different clients with shared legal interests to exchange privileged information and work product with one another without waiving the attorney client privilege or work product protection associated with such material.

The common interest privilege has been applied with increasing frequency in major Chapter 11 cases in recent years as parties to complex disputes align with one another in the negotiation of plans of reorganization or resolution of contested matters.

Indeed, bankruptcy proceedings can make for strange bedfellows, and debtors, official and ad hoc committees, secured and unsecured creditors, and other parties-in-interest may be aligned with or adverse to one another at various points in the life of a Chapter 11 case.

Even greater complexities arise when parties are aligned on some issues, while remaining adverse with respect to others, but wish to coordinate with one another about the issues on which they are similarly situated.

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