AMERICAN BANKRUPTCY INSTITUTE

Central States Bankruptcy Workshop

Post-Confirmation/Post-Sale Jurisdiction

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CONCURRENT SESSION

2024

Outline for ABI Program on Post-Confirmation/Post-Sale Jurisdiction

I. Sale Orders

A. Limited Jurisdiction

Bankruptcy courts are courts of limited jurisdiction. "[B]ankruptcy court jurisdiction 'must be confined within appropriate limits ....' " *Binder v. Price Waterhouse & Co., LLP* (*In re Resorts Int'l, Inc.*), 372 F.3d 154, 164 (3d Cir. 2004) (footnote omitted) (citation omitted)

In re Lightning Techs., Inc., 647 B.R. 76, 90 (Bankr. E.D. Mich. 2022)

B. Retention of Jurisdiction Provisions

1. Parties may not waive a lack of subject matter jurisdiction:

> "[F]ederal courts are courts of limited jurisdiction and have a continuing obligation to examine their subject matter jurisdiction throughout the pendency of every matter before them. Parties can neither waive nor consent to subject matter jurisdiction [.]" *Michigan Employment Sec. Comm'n v. Wolverine Radio Co., Inc.*, 930 F.2d 1132, 1137–38 (6th Cir.1991) (citation and footnote omitted); *see also Spierer v. Federated Dept. Stores, Inc.* (*In re Federated Dept. Stores, Inc.*), 328 F.3d 829, 833 (6th Cir.2003)(" 'parties may not waive ... or consent to subject matter jurisdiction which a federal court does not properly have.' ")(quoting *Universal Consol. Cos. v. Bank of China*, 35 F.3d 243, 247 (6th Cir.1994)). Rather, "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed.R.Civ.P. 12(h)(3).

Allard v. Coenen (In re Trans-Indus., Inc.), 419 B.R. 21, 28–29 (Bankr. E.D. Mich. 2009) (footnote omitted).

2. Retention of Jurisdiction Provisions in Sale Orders Cannot Confer Jurisdiction Where it is Otherwise Lacking

> Parties cannot create subject matter jurisdiction in this Court by mere agreement or consent, when otherwise there is no jurisdiction. *See, e.g.*, [*Binder v.*] *Price Waterhouse & Co., LLP*, 372 F.3d [154,] 161 [(3d Cir. 2004)] (citations omitted) ("[N]either the bankruptcy court nor the parties can write their own jurisdictional ticket. Subject matter jurisdiction 'cannot be conferred by consent' of the parties. Where a court lacks subject matter jurisdiction over a dispute, the parties cannot create it by agreement even in a plan of reorganization."); *Thickstun Bros. Equip. Co., Inc.,* [*v. Encompass Servs. Corp.* (*In re Thickstun Bros. Equip. Co., Inc.*),] 344 B.R. [515,] 521-22 [(B.A.P. 6th Cir. 2006)] (same).

In re St. James Nursing & Physical Rehabilitation Ctr., Inc., No. 16-42333, 645 B.R. 220, 251 (Bankr. E.D. Mich., Oct. 14, 2022); *see also In re Nu-Cast Step & Supply, Inc.*, 639 B.R. 440, 449 (Bankr. E.D. Mich. 2021) (internal quotation marks and citation omitted).

In re Lightning Techs., Inc., 647 B.R. 76, 90 (Bankr. E.D. Mich. 2022)

C. Types of Subject Matter Jurisdiction Under 28 U.S.C. § 1334(b)

1. "all cases under title 11"

A "case under title 11" refers "merely to the bankruptcy petition itself, filed pursuant to 11 U.S.C. §§ 301, 302, or 303." *Michigan Employment Sec. Comm'n v. Wolverine Radio Co., Inc.*, 930 F.2d 1132, 1140 (6th Cir.1991).

2. "arising under"

"The phrase 'arising under title 11' describes those proceedings that involve a cause of action created or determined by a statutory provision of title 11, and *Bliss Technologies, Inc. v. HMI Indus., Inc*. (*In re Bliss Technologies, Inc.*), 307 B.R. 598, 602 (Bankr.E.D.Mich.2004) (quoting *Wolverine Radio*, 930 F.2d at 1144).

3. "arising in" and

Arising in proceedings are those that, by their very nature, could arise only in bankruptcy cases."

Arising under and arising in proceedings are "core" proceedings within the meaning of 28 U.S.C. §§ 157(b)(1) and 157(b)(2). *Id.* The bankruptcy court can enter final orders and judgments in all "core" proceedings. 28 U.S.C. § 157(b)(1).

4. "related to"

In the Sixth Circuit, the test for determining "related to" jurisdiction is "'whether the outcome of that proceeding could conceivably have any effect on the estate being administered in the bankruptcy.'" *Lindsey v. O'Brien, Tanski, Tanzer & Young Health Care Providers of Conn.* (*In re Dow Corning Corp.),* 86 F.3d 482, 489 (6th Cir. 1996) (quoting *Pacor, Inc. v. Higgins,* 743 F.2d 984, 994 (3d Cir. 1984)).

> An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate. The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of section 1334(b). Instead, there must be some nexus between the 'related' civil proceeding and the title 11 case.

Pappas v. Buchwald Capital Advisors, LLC (*In re Greektown Holdings, LLC),* 728 F.3d 567, 577 (6th Cir. 2013) (internal quotations, alteration, and citations omitted.). "Related to" jurisdiction is broad. If there is any conceivable effect a matter may have on the administration of a bankruptcy case, the court presiding over the bankruptcy case has jurisdiction over that matter.

D. Court's Jurisdiction to Enforce its Own Order

1. The *In re Motors Liquidation Co.*, 829 F.3d 135 (2d Cir. 2016) Court found "arising in" jurisdiction under § 1334(b) to enforce a sale order:

> "[T]he meaning of the statutory language 'arising in' may not be entirely clear." At a minimum, a bankruptcy court's "arising in" jurisdiction includes claims that "are not based on any right expressly created by [T]itle 11, but nevertheless, would have no existence outside of the bankruptcy."
>
> A bankruptcy court's decision to interpret and enforce a prior sale order falls under this formulation of 'arising in' jurisdiction. An order consummating a debtor's sale of property would not exist but for the [Bankruptcy] Code, *see* 11 U.S.C. § 363(b), and the Code charges the bankruptcy court with carrying out its orders, *see id.* § 105(a) (providing that bankruptcy court 'may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title'). Hence, a bankruptcy court "plainly ha[s] jurisdiction to interpret and enforce its own prior orders."

2. Other cases:

a. *In re Lightning Techs., Inc.,* 647 B.R. 76, 91–92 (Bankr. E.D. Mich. 2022) (agreeing with *Motors Liquidation*)

b. *Travelers Indem. Co. v. Bailey,* 557 U.S. 137, 151, 129 S.Ct. 2195, 174 L.Ed.2d 99 (2009) (citing *Local Loan Co. v. Hunt*, 292 U.S. 234, 239, 54 S.Ct. 695, 78 L.Ed. 1230 (1934)) (holding, without specifying which prong(s) of § 1334(b) applied, that "the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders"); ***92**

c. *Giese v. Lexington Coal Co.* (*In re HNRC Dissolution Co.*), 761 Fed. App'x 553, 560-61 (6th Cir. 2019) (holding that the bankruptcy court had at least "related to" subject matter jurisdiction over the parties' dispute because "[the plaintiff's] claims would involve legal issues concerning the interpretation, validity, and enforcement of the bankruptcy court's orders" and, in that case, the outcome "could conceivably affect the debtor's rights and liabilities");

d. *Tenet Healthsystem Philadelphia, Inc. v. Nat'l. Union of Hosp. and Health Care Emps., AFSCME, AFL-CIO, Dist. 1199C* (*In re Allegheny Health, Educ. and Rsch. Found.*), 383 F.3d 169, 176 (3d Cir. 2004) (holding, without specifying any prong of § 1334(b), that the adversary proceeding was a core proceeding over which the bankruptcy court had subject matter jurisdiction, "because it required the [bankruptcy] court to interpret and give effect to its previous sale orders" and that a "motion to enforce [a] bankruptcy sale order is a core proceeding[;]";

e. *In re Nu-Cast Step & Supply, Inc.*, 639 B.R. 440, 440, 448 (Bankr. E.D. Mich. 2021) (holding that the court had "arising in" jurisdiction to interpret and enforce the court's "stipulated order granting the [d]ebtor's motion to sell substantially all of its assets").

II. Abstention

A. Mandatory

1. 28 U.S.C. § 1334(c)(2):

> "Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction."

2. Parallel Proceeding Rule

3. Requirements

According to the Sixth Circuit, "[f]or mandatory abstention to apply, a proceeding must: (1) be based on a state law claim or cause of action; (2) lack a federal jurisdictional basis absent the bankruptcy; (3) be commenced in a state forum of appropriate jurisdiction; (4) be capable of timely adjudication; and (5) be a non-core proceeding." *Lowenbraun v. Canary* (*In re Lowenbraun),* 453 F.3d 314, 320 (6th Cir. 2006).

B. Permissive

1. 28 U.S.C. § 1334(c)(1):

> "Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11."

2. Applies in Core and Non-Core Matters

3. Factors

a. the effect or lack of effect on the efficient administration of the estate if a court abstains;

b. the extent to which state law issues predominate over bankruptcy issues;

c. the difficulty or unsettled nature of the applicable state law;

d. the presence of a related proceeding commenced in state court or other non-bankruptcy court;

e. the jurisdictional basis, if any, other than 28 U.S.C. § 1334;

f. the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;

g. the substance rather than form of an asserted "core" proceeding;

h. the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;

i. the burden of this court's docket;

j. the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;

k. the existence of a right to a jury trial;

l. the presence in the proceeding of nondebtor parties; and,

m. any unusual or other significant factors

In re Lightning Techs., Inc., 647 B.R. 76, 101 (Bankr. E.D. Mich. 2022)

Post-Confirmation Subject Matter Jurisdiction

1. Overview

   a. Read literally, the Bankruptcy Code, Rules, and Section 1334 suggest a much more limited jurisdictional reach of the Bankruptcy Courts ***post-plan confirmation***.

      i. 28 U.S.C. § 1334 requires a mater to be at least *related to* a case under Title 11, *i.e.* the outcome of the matter must conceivably ***have some effect on the estate being administered in the bankruptcy*** (*Lindsey v. O'Brien, Tanski, Tanzer & Young Health Care Providers of Conn. (In re Dow Corning Corp.),* 86 F.3d 482, 489 (6th Cir. 1996) (*quoting Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984))) or, said differently, alter the debtor's rights, liabilities, options, or freedom of action or impact the handling and administration of the bankrupt estate. Because many plans divest the Debtor of all property of the estate, transferring such property to a Reorganized Debtor, many plans would not allow for post-confirmation jurisdiction, if section 1334 and the controlling cases are interpreted at face value.

      ii. *11 U.S. Code § 1142* - Implementation of plan – "(b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is **necessary for the consummation of the plan**."

      iii. Fed. R. Bankr.P. 3020(d) provides that "[n]otwithstanding the entry of the order of confirmation, the court may issue any other order **necessary to administer the estate**."

   b. However, as we all know, plans often purport to give exclusive jurisdiction to bankruptcy courts far beyond the point of substantial consummation. *E.g.* the Rite Aid Plan:

      > "ARTICLE XIII - RETENTION OF JURISDICTION - Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date [defined in the Plan as the date on which substantial consummation occurs], on and after the Effective Date, the Bankruptcy Court shall retain ***exclusive*** jurisdiction . . . over" (emphasis added) 27 different categories or proceedings, including number 27: "***any other matter related to the Chapter 11 Cases and not inconsistent with the Bankruptcy Code.***"

2. Circuit Court Approaches to the "Close Nexus Test"

    a. Sixth Circuit

        i. In *In re Greektown Holdings, LLC*, 728 F.3d 567, 577 (6th Cir. 2013), the Sixth Circuit took the District Court and the parties to that litigation to school, identifying a fundamental subject matter jurisdictional issue that neither the lower court nor the parties addressed, and sent the case back down to the District Court for further adjudication, but not before explaining the issue as they saw it and also hinting at the right outcome.

        ii. Background

            1. UCC brought adversary proceeding against the owners of the Casino for pre-petition avoidable transfers.

            2. Post-plan confirmation the Litigation Trustee stepped in as plaintiff, and settled with some of the owners.

            3. The settling parties insisted that the Settlement Agreement bar the non-settling parties from bringing any claims against them. After the reference was withdrawn, the District Court approved the settlement agreement, which is referred to in the case as the "Bar Order"

            4. The non-settling parties appealed the Bar Order, on Rule 9019 grounds as being unfair, as unfairly allowing a "bar order" against a non-settling party, and as impermissibly enjoining a non-consenting creditor's claim against a non-debtor.

        iii. Ruling

            1. The Sixth Circuit sent the case back down to the District Court with instructions to resolve three issues before deciding to enter the bar order:

                a. Whether it has *jurisdiction* to enjoin the potential claims encompassed by the Bar Order

                    i. Starts with case law regarding "related to"

                    ii. Then points out that this case is different i.e. it is post-confirmation.

iii. Cites *Resorts* (see below) requiring a "close nexus" between the matter at hand and "the bankruptcy plan or proceeding"

iv. Cites on-point 11th Circuit case of *Munford v. Munford, Inc. (Matter of Munford, Inc.)*, 97 F.3d 449, 454 (11th Cir. 1996) which held that an adversary proceeding settlement "bar order" is necessarily "related to" the bankruptcy case, and then declined to follow that approach, finding that approach to amount to a prohibited "subject matter by consent", i.e. a party could put anything into a settlement agreement and bestow any issue with subject matter jurisdiction.

v. Sixth Circuit's approach is to ask

1. **whether the outcome of the *barred claims* would effect the estate**, citing *Lindsey v. O'Brien, Tanski, Tanzer and Young Health Care Providers of Conn. (In re Dow Corning Corp.)*, 86 F.3d 482, 489 (6th Cir.1996) (*quoting Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir.1984)), and

2. **whether there is a nexus between the bankruptcy case and the barred claims.** *Id.*

vi. With that standard in mind, the Sixth Circuit found the case of better approach was taken by the Fifth Circuit in *Feld v. Zale Corporation (Matter of Zale Corporation)*, 62 F.3d 746 (5th Cir.1995) in which the Fifth Circuit inquired simply **whether the outcome of the actions covered by the bar order would affect the bankruptcy estate**. When it found that the outcome of some of those actions would not affect the bankruptcy estate, the Fifth Circuit held that the bankruptcy court had no jurisdiction over them.

vii. The Sixth Circuit did not give any further hints to the District Court on this issue. However, elsewhere in the opinion, the court pointed out that the District Court has already determined that the non-settling

defendants have no viable claims to bring. If there are no actual claims, then there could be outcome that would affect the bankruptcy estate.

1. However, the District Court might decide that it should look not at the facts underlying the claims but rather at hypothetical claims, and make its determination based on that. If it did that, however, it may very well decide to skip the subject matter jurisdiction test and rule on the last basis for determination (see below) which appears to be an easy call.

b. Whether it has the *power* to do so

i. Stated *inter alia* that section 524 (Effect of discharge) does not *prohibit* a court from releasing a non-debtor from liability

c. Whether the Bar Order's scope was proper

i. Stated that Bar Order appeared overly broad, insofar as it barred more than just claims against the settling defendants for whatever liability they may have had to the plaintiffs, *i.e.* contribution or indemnity claims. The court stated that since the District Court had already determined that there were no potential claims for contribution or indemnity, it "might very well determine that a bar order would be inappropriate in this case".

iv. <u>*Epilogue – Life Works in Mysterious Ways*</u>. The Tribe could have simply settled and paid $2.75 Million, without insisting on language barring Papas / Gatzaros from bringing claims against them that didn't exist, but instead, they ultimately withdrew the settlement agreement and wound up getting the case dismissed against them six years later, only to have the opinion abrogated by the U.S. Supreme Court four years after that!

1. From *Buchwald Cap. Advisors, LLC for Greektown Litig. Tr. v. Sault Ste. Marie Tribe of Chippewa Indians*, 584 B.R. 706, 709–10 (E.D. Mich. 2018), *aff'd sub nom. In re Greektown Holdings, LLC*, 917 F.3d 451 (6th Cir. 2019) (affirming Bankruptcy Court's dismissal of the adversary proceeding against the Tribe on sovereign immunity grounds): "With the claims bar order under fire [after the remand

from the Sixth Circuit], *the parties stipulated in this Court to withdraw the motion for an order approving the settlement* and the proceeding before this Court was dismissed. (In re Greektown, No. 12–12340, ECF Nos. 48, 49, Stipulation and Dismissal.) The parties thereafter agreed to voluntary mediation before Bankruptcy Chief Judge Phillip Shefferly in an effort to resolve all of the claims against the all of the remaining Defendants in the MUFTA Adversary Proceeding. Despite their efforts under Judge Shefferly's guidance, the parties were unable to achieve a settlement of the Adversary Proceeding. (Adv. Pro. ECF No. 449, Mediator's Certificate, 6/2/2014). On June 9, 2014, with settlement negotiations at a standstill, the Tribe Defendants renewed the 2010 motion to dismiss on the grounds of sovereign immunity. (Adv. Pro. ECF No. 453, Renewed and Supplemented Motion to Dismiss Adversary Proceeding Re: Sovereign Immunity.)"

2. *See also Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 143 S. Ct. 1689, 216 L. Ed. 2d 342 (2023) abrogating *Greektown* and holding that the Bankruptcy Code unequivocally abrogates the sovereign immunity of federally recognized Indian tribes.

b. Other Circuits

i. 3rd Circuit

1. *In re Resorts Int'l, Inc.*, 372 F.3d 154, 164–65 (requiring a "close nexus" between the matter at hand and "the bankruptcy plan or proceeding")

ii. 5th Circuit

1. *Feld v. Zale Corporation (Matter of Zale Corporation)*, 62 F.3d 746 (5th Cir. 1995) (inquired simply whether the outcome of the actions covered by the bar order would affect the bankruptcy estate)

iii. 9th Circuit

1. *In re Wilshire Courtya*rd, 729 F.3d 1279, 1289 (9th Cir. 2013) ("close nexus" test requires “particularized consideration of the facts and posture of each case, as the test contemplates a broad set of sufficient conditions and retains a certain flexibility.”)

iv. 11th Circuit

1. *Munford v. Munford, Inc. (Matter of Munford, Inc.)*, 97 F.3d 449, 454 (11th Cir. 1996) (finding a provision in a post-confirmation adversary proceeding settlement order necessarily "related to" the bankruptcy case, giving court subject matter jurisdiction)

3. Case Studies

a. *In re St. James Nursing & Physical Rehab. Ctr., Inc.*, 645 B.R. 220 (Bankr. E.D. Mich. 2022)

i. Background: Creditor who did not file a proof of claim in Chapter 11 bankruptcy case but who later claimed that he was owed a debt under a written post-plan-confirmation settlement agreement with the reorganized debtor moved for the appointment of a Chapter 11 bankruptcy trustee, and the Michigan state court receiver who had been appointed in a separate matter in state court after plan confirmation then moved for entry of an order abstaining from hearing creditor's motion and closing the bankruptcy case.

ii. Holding: The Bankruptcy Court held that it lacked subject matter jurisdiction to grant relief under creditor's motion. Motions denied.

b. *In re Nobel Grp., Inc.*, 529 B.R. 284 (Bankr. N.D. Cal. 2015) (following *Resorts*, finding no "close nexus" and hence no jurisdiction)

i. Background: After debtor's confirmed Chapter 11 plan had been substantially consummated, with exception of payment of claims in subordinate classes, such as insider claims, debtor brought adversary proceeding to recover default interest previously paid to bank from proceeds of sale of collateral securing its claim, on theory that bank had breached terms of contract between parties by including such default interest in its claim. Bank moved to dismiss for lack of subject matter jurisdiction.

ii. Holding: The Bankruptcy Court held that it could not exercise continuing post-confirmation jurisdiction over state law breach of contract claims asserted by debtor against bank. Motion granted.

I. Motions to Enforce Chapter 11 Plans

a. The bankruptcy court can enforce the terms of a confirmed plan up until that Chapter 11 plan has been "fully consummated."

   i. "Fully Consummated" is not defined by the Bankruptcy Code, as observed in *In re Wigley*, 2021 WL 519417, at *6 (Bankr. D.Minn. Jan. 25, 2021).

b. So, what is a "Fully Consummated" plan?

   i. Has to be more than "Substantial Consummation" as set out in Section 1101(2).

   ii. If "Substantial Consummation" is the commencement of distributions, it would follow that "Full" consummation is the completion of distributions under the plan.

   iii. Does this suggest that the Court's jurisdiction to enforce a plan lapses in parts? In other words, does the Court lose the ability to enforce the plan in a piecemeal manner as classes receive distributions? Or, can the Court enforce the entirety of the plan insofar as any creditor has an outstanding entitlement to a distribution?

II. Subject Matter Jurisdiction

a. At core, the issue of enforcing a confirmed plan is the question of subject matter jurisdiction.

b. In *In re Superior Air Parts, Inc.*, 516 B.R. 85 (Bankr. N.D. Tex. 2014), the debtor, who was a manufacturer of after-market aircraft engine replacement parts, filed a motion to enforce terms of confirmed plan.

   i. In that motion the debtor requested that one of its suppliers return to the debtor all of the debtor's property as set forth in the plan and confirmation order.

      1. This property included proprietary information.

c. First, the *Superior Air* Court noted that the plan provision that affected the relationship between the debtor and its supplier did not involve any substantive right created under the Bankruptcy Code.

i. "TAE's alleged obligation to use Superior's property only for Superior's benefit and to return the property at the conclusion of the manufacturing relationship would have arisen regardless of Superior's bankruptcy filing." *Superior Air*, 516 B.R. 85 at 95.

d. Further, the debtor's claim did not arise during or in relation to the bankruptcy case.

e. The Court in *Superior Air* ultimately determined that subject matter jurisdiction did not exist.

i. The court found that the debtor was, at core, trying to litigate a post-confirmation business dispute.

ii. Interestingly, the Court stated that if the debtor had truly wanted the return of its property pursuant to the Plan and Confirmation Order, a similar motion could and should have been filed many months, if not years, earlier than it was (i.e., within a reasonable time after the Plan became effective).

iii. Instead, the debtor voluntarily resumed its business relationship with the supplier post-confirmation and only asked for the return of its information and property because it had voluntarily terminated its post-confirmation business relationship with that supplier a few months before it filed the motion and years after its Plan was confirmed, consummated and fully implemented.

iv. Does this mean that the doctrine of latches applies to subject matter jurisdiction issues and enforcing the terms of the Plan?

v. Does this suggest that equity can strip a Court of subject matter jurisdiction over its own confirmation order?

Faculty

Brendan G. Best is a partner at Varnum LLP in Birmingham, Mich., and serves on the firm's Bankruptcy, Restructuring and Creditors' Rights team. His practice focuses on representing senior secured lenders, debtors, other creditors and other stakeholders in complex chapter 11 restructurings, out-of-court workouts and insolvency-related transactions and litigation. Mr. Best has more than 20 years of experience representing clients in insolvency-related matters across a wide array of industries including manufacturing, automotive, building supply and service, energy, oil and gas, health care, food service, gaming, hospitality, construction and real estate. He serves as outside commercial counsel for clients, advising them on commercial issues with customers, suppliers and other parties. He also counsels buyers, sellers, lenders and other stakeholders in complex troubled company transactions, both out of court and in § 363 bankruptcy sales. Mr. Best is a senior chapter 11 bankruptcy practitioner and litigator who has successfully represented clients in bench trials over issues including adequate protection, plan confirmation, valuation and other matters, as well as nondischargeability actions, avoidance actions and other debtor/creditor matters in state and federal courts, including automotive tooling and construction lien litigation. He is a frequent writer and speaker on restructuring, workouts and bankruptcy topics. Mr. Best is routinely honored as a top practitioner by publications including *DBusiness* magazine, *The Best Lawyers in America* and *Michigan Super Lawyers*. He is a board member and immediate past president of the Turnaround Management Association's Detroit chapter and an ABI member. Mr. Best received his B.A. *cum laude* in 1997 from The George Washington University and his J.D. *cum laude* in 2003 from Wayne State University Law School, where he was admitted to the Order of the Coif and was a member of the *Wayne Law Review*.

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the other appeal challenged the Detroit Water and Sewerage Department's ability to collect past due bills and set its rates. He also successfully represented the City at the U.S. Supreme Court in the appeal of its bankruptcy plan. Mr. Swanson frequently speaks at restructuring conferences and seminars and publishes articles on insolvency-related topics. He received his B.A. in 2004 from the University of Michigan and his J.D. in 2007 from the University of Minnesota Law School.