American Bankruptcy Institute

Southeast Bankruptcy Workshop

Case Updates: All Stars

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Hon. Scott M. Grossman
U.S. Bankruptcy Court (S.D. Fla.) | Fort Lauderdale

Hon. Sage M. Sigler
U.S. Bankruptcy Court (N.D. Ga.) | Atlanta

2024

***In re Matter of South Coast Supply Company*, 91 F.4 376 (5th Cir. 2024)**

Background Facts:

- South Coast Supply Company is an industrial products distributor who was forced to borrow $800,000 in 2016 from then-CFO, Robert Remmert, due to financial issues

- Before Remmert resigned, South Coast had paid him $320,628.04. After resignation, Remmert sent a demand letter for less than what was left on the original loan. After, South Coast filed Chapter 11 Bankruptcy in the Southern District of Texas.

- Briar Capital Working Fund Capital LLC was South Coast's only secured lender and filed proof of claim in the bankruptcy.

- Five months into the bankruptcy case, South Coast was not generating enough to continue operating and sought a post-petition DIP financing. The Court approved and authorized it to obtain DIP financing from Solstice Capital LLC, giving Briar Capital lien priority over Solstice property obtained by South Coast prior to the date of advancing DIP financing and Solstice lien priority for anything after.

- At the same time, South Coast filed suit against Remmert to "avoid" more than $300,000 of allegedly preferential transfers made right before the Chapter 11 proceedings

- Briar Capital objected to South Coast's first proposed Chapter 11 Plan

    - Sell all South Coast's intangible assets to Solstice for $500,000

    - Solstice pay up to $200,000 to satisfy claims under the Bankruptcy Code

    - Transfer some of South Coast property to Briar but not pay the for administrative expenses which are traditionally prioritized and paid in full

- After Briar Capital objected to South Coast's first proposed Chapter 11 Plan, Briar Capital, Solstice Capital, and the Court approved the second plan which provided: Briar capital would abandon security interest in $700,000 of sale proceeds and waive its claim to recover administrative expenses in exchange for interest in the pending preference action against Remmert

- Briar capital was substituted as an assignee in the case against Remmert. Remmert filed a motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure arguing Briar Capital lacked standing to prosecute the preference action. The district court agreed ruling outright sales of preference actions under 11 U.S.C. § 547 are impermissible

<u>Question Presented:</u> Can preference claims - a type of avoidance action - be validly sold under 11 U.S.C. § 547?

<u>Legal reasoning and outcome:</u>

- The Appellate Court reversed the district court's ruling. Under 11 U.S.C. § 547 preference actions may be validly sold and the purchasers of preference claims have standing to pursue them

- A Preference action falls under §541(a)(1) definition of "property of the estate" which includes "all legal or equitable interests of the debtor in property as of the commencement of the case"

    - In *United States v Whiting Pools Inc* the Supreme Court said "property of the estate" is any property made available to the estate in other aspects of the bankruptcy code. Congress intended a broad range of property.

    - Reading §541(a)(1) broadly preference actions fall within its scope as it is a mechanism in the Code by which additional property is made available to the estate.

- A Preference action falls under §541(a)(7) definition of "property of the estate" which includes "any interest in property that the estate acquires after the commencement of the estate". *In re TMT Procurement Corp* the 5th Circuit held this was meant to clarify the broad scope of §541(a)(1)

    - This court rules in accordance with the 5th, 8th, and 9th Circuit who have previously ruled avoidance powers, including preferential actions, may be sold

- The court rejects Remmert's contention the sale of preference actions clashes with the general principles of equity in the Bankruptcy Code. In some cases the estate may not have sufficient funds to pursue preference actions so assigning actions to creditors who could pursue maximize the bankruptcy estate to benefit all creditors.

    - Briar Capital Validly purchased the claim outright.Briar capitals waiver of the right to collect administrative expenses and release of its claim to $700,000 are benefits to the estate

- Remmert argues Briar Capital is not a "representative of the estate" but the court rules this is irrelevant to the appeal

- Section 1123(b)(3) and Section 363 of the Bankruptcy Code provide different mechanisms a debtor-in-possession may liquidate its assets. They do not provide a requirement that the purchaser of the estate's property also be a representative of the estate. The only requirement is the debtor-in-possession give notice and hold hearing

Truck Insurance Exchange v. Kaiser Gypsum Co., Inc. **(U.S. June 6, 2024)**

Background of Facts

On June 6, 2024, the Supreme Court decided *Truck Insurance Exchange v. Kaiser Gypsum Co., Inc.,* clarifying who can qualify as a "party in interest" under §1109(b) of the Bankruptcy Code. The Court held that a "party in interest" includes insurers with financial responsibility for bankruptcy claims, and that those parties can "raise" and "appear and be heard on any issue" in Chapter 11 cases.

The Petitioner Truck Insurance Exchange (Truck) served as the primary insurer for many companies involved in the production and distribution of products containing asbestos. The Debtors, Kaiser Gypsum Co. and its parent company Hanson Permanente Cement both filed for bankruptcy under Chapter 11 after facing thousands of asbestos-related lawsuits. The reorganization plan (the Plan) created a §524(g) Asbestos Personal Injury Trust (Trust), channeling all current and future asbestos claims into the Trust while also enjoining further legal action against the Debtors for any of those claims.

As the Debtors' primary insurer, Truck's contractual obligations included defending asbestos personal injury claims and indemnifying the Debtors' for up to $500,000 for each claim. Truck was the only party to oppose the Plan. They argued that the Plan lacked the same disclosures and authorizations for uninsured claims as it did for insured claims. The disparity rose concerns for Truck being at financial risk for fraudulent claims. Truck also asserted that the Plan modified its rights under insurance policies.

After the Bankruptcy Court recommendation, the District Court confirmed the Debtors' Plan, concluding that Truck's standing to object was limited. The court deemed the Plan "insurance neutral,"—unchanging Truck's prepetition obligations or its contractual rights. The Fourth Circuit affirmed the District Court's decision that Truck did not qualify as a "party in interest" under §1109(b).

The Supreme Court reversed the lower courts' decision and remanded the case. Justice Sotomayor delivered the opinion of the Court, in which all other Justices joined. Justice Alito took no part in the consideration or decision of the case. The Court emphasized the broad application of §1109(b), supported by the provision's text, context, and legislative history. When Congress enacted the Bankruptcy Code in 1978, §1109(b) expanded participatory rights, enabling any entity significantly impacted by a bankruptcy proceeding to participate and voice their concerns while also encouraging fair and equitable reorganization processes.

The Court concluded that by bearing the majority of the Trust's liability, Truck faced potential financial harm. Its financial responsibility thus gave Trust an interest in the bankruptcy proceedings, allowing their objections to be heard. In this case, Truck may be the only entity that would identify problems within the Plan, as the Plan already benefits the Debtors and any asbestos claimants.

Conceptually, the Court also found issue with the "insurance neutrality" doctrine, particularly that it conflated the merits of an objection with the question of whether an entity falls under a "party of interest." The inquiry in §1109(b) does not focus on the specific impact of a reorganization plan, but rather whether the proceedings can affect a prospective party. The Court reiterated that the narrow scope of "insurance neutrality" wrongly limits the numerous other ways that bankruptcy proceedings can impact insurers.

In response to Truck's objections, the Debtors point to the notion of peripheral parties potentially impeding a reorganization. However, the Court noted that §1109(b) does not provide parties in interest with a vote or a veto in bankruptcy proceedings—only the chance to be heard. While there may be other cases that include further evaluation on peripheral parties and direct interest, the Court decided that this case is not included. Thus, an insurer who bears financial responsibility for bankruptcy claims does in fact qualify as a "party in interest," and they can object to a Chapter 11 plan.

Harrington v. Purdue Pharma L.P. **(U.S. June 27, 2024)**

Background of Facts:

- In 2007, a Purdue Pharma affiliated pleaded guilty to a federal felony for false marketing OxyContin as "less addictive", affirming Purdue's role in the Opioid Crisis

- The Sackler family, owners of Purdue, initiated a "milking program" withdrawing about $11 billion (75% of total assets) from Purdue after thousands of lawsuits following the false marketing decision, leaving Purdue Pharma in a poor financial state

- In 2019 Purdue filed Chapter 11 Bankruptcy. The Sacklers proposed to return about $4.3 billion to Purdue's bankruptcy estate in exchange for 1) extinguishing any claims the estate might have against the family members and 2) releasing the family from all opioid related claims in the future (the Sackler discharge)

    - 2) contained a release and injunction banning claims by anyone who might otherwise sue Purdue

- Purdue agreed to these terms and included them in the reorganization plan. Additionally, Purdue would help individual victims with a minimum payment of $3,500 and maximum of $48,000. Any victim receiving more than the base would receive payment installments over up to 10 years.

- Creditors were polled on the proposed plan and overwhelmingly supported it.

- The bankruptcy court approved, but the district court vacated that decision saying nothing in the law gives bankruptcy courts the authority to extinguish claims against third parties without claimants consent. The Second Circuit reversed the District Court's ruling.

- During appeal, the Sacklers proposed a new plan where they would contribute an additional $1.175-1.675 billion if the eight objecting States and District of Columbia dropped their objections to the reorganization plan. The States agreed.

Question Presented: Whether the Bankruptcy Code authorizes a bankruptcy court to extinguish claims against third parties (non debtors) without claimants consent?

Legal Reasoning and outcome:

- The Court rules the Bankruptcy Code does not authorize a release and injunction to discharge claims against a non debtor without consent of affected claimants within a Chapter 11 reorganization plan. They reverse the Second Circuit.

- §1141(d)(1)(A) of the Bankruptcy Code states when a court confirms a reorganization plan it discharges the debtor from any debt arising before the date of confirmation and operates as an injunction from creditors to collect or recover that debt. §524(e) says this only operates for the benefit of the debtor against creditors not other parties

    - The Sacklers did not file bankruptcy and thus did not place all of their assets for distribution to the creditors, yet they seek a discharge such as the one described

- Text: §1123 outlines the contents or terms of Chapter 11 reorganization plans. §1123(b) states six things a plan "may" contain. The Court, like the Second Circuit, focuses on §1123(b)(6) which says it can "include any other appropriate provision not inconsistent with the applicable provisions of this title"

    - The Court claims §1123(b)(6) is a catchall phrase and thus it does not receive broad interpretation but rather interpreted only in the light of surrounding context (ejusdem generis canon).

    - The link between the listed items (1-5) are "appropriate provision[s]" concerning the *debtor's* rights, responsibilities, and relationships between its creditors. Therefore, it does not give authority to discharge the debt of a non debtor.

    - Looking at the code more broadly, a discharge is usually reserved for the debtor alone. The code also constrains the debtor and requires them to come forward with virtually all its assets.

- The dissent reading of §1123(b)(3) that states bankruptcy estates settle creditors derivative claims against non debtors does not address the reason a bankruptcy court may do so: because those claims belong to the debtor's estate. The Sackler discharge is not like this because it seeks to resolve claims against the Sackler's not Purdue

- Statutory purpose: The Court must look at how far Congress has gone in a statue to pursue one policy over another. The Bankruptcy Code does not allow a bankruptcy court to resolve all collective-action problems blind to the role of other mechanisms. §1123(b)(6) say a bankruptcy court can address certain collective-action problems, but also states those powers are not limitless

- §524(e) and §524(g)(4)(A)(ii) provides a notable exception to the Code for asbestos-related bankruptcies stating the court may issue an injunction barring action directed against a third party. The code only doing so in one context makes it more unlikely that §1123(b)(6) applies to third parties.

- History/context: every bankruptcy law from 1800-1978 (the enactment of the present Bankruptcy Code) generally reserved the benefits of discharge to the debtor who offered a fair and full surrender of property

- The Court should not rule on the policy debates presented by either side - those are for Congress to add to the Bankruptcy Code rules for opioid-related bankruptcy like it did for asbestos-related cases.

- The Court clarifies it did not rule on consensual third party releases in connection with a reorganization plan. Nor do they say what qualifies a consensual release providing full satisfaction claims against a third party debtor

***In re Yellow Corporation* (Del. Bankr. March 27, 2024)**

Legal question

How should the Court reconcile the conflicting directives of the Multiemployer Pension Plan Amendments Act (MPPAA) and Section 502 of the Bankruptcy Code in determining whether the multiemployer pension plans' claims for withdrawal liability should be resolved through arbitration or through the bankruptcy claims allowance process? Furthermore, how should the Court address the Pension Benefit Guaranty Corporation (PBGC)'s motion to deny the Court's authority to consider the validity of its regulations?

Holding of case

The Court denied the multiemployer pension plans' motions for relief from the automatic stay and the PBGC's motion, ruling that the withdrawal liability claims should be resolved through the bankruptcy claims allowance process rather than arbitration.

Summary of facts

Yellow Corporation, one of the nation's oldest and largest freight trucking companies, filed for bankruptcy protection in mid-2023. Prior to bankruptcy, the company had participated in several multiemployer pension plans, which were plans funded by multiple employers under collective bargaining agreements and would pay benefits to the company's retirees.

Under the Employee Retirement Income Security Act (ERISA) and the Multiemployer Pension Plan Amendments Act (MPPAA), when an employer withdraws from a pension fund, the employer is liable for covering the unfunded obligations to the pension plan upon exit.

In this case, the debtors filed for Chapter 11 Bankruptcy in August 2023, with the largest proof of claim filed by Central States for $4.8 billion in withdrawal liability and a total of $1.5 billion across pension plans filing similar proofs of claim. The pension funds filed motions to compel arbitration per the MPPAA. The PBGC argued that regulations under the Administrative Procedure Act (APA) and ERISA can only be challenged in federal district Court, not in a claims allowance dispute. Yellow Corporation's largest shareholder, MFN Partners, objected to the motion to compel arbitration, as the outcome would affect the value of their equity holdings – their equity would become worthless if the pension funds' claims were allowed, but would retain substantial value if those claims were disallowed.

The Court denied the motions to compel arbitration, arguing the Court had no authority to compel debtors (Yellow Corporation) to initiate arbitration. The Court also found a conflict between the MPPAA's arbitration requirement and the Bankruptcy Code's directive to resolve claim objections.

Summary of legal analysis

The Court determined there is no authority to compel the debtors to initiate arbitration, claiming the debtors' position is analogous to a defendants' in a civil lawsuit where Courts do not force the defendants to initiate arbitration.

The Court noted the conflict between the MPPAA, which mandates arbitration for withdrawal liability disputes, and Section 502 of the Bankruptcy Code, which requires the Bankruptcy Court to resolve objections to proofs of claim. The Court concluded that the question before the Court should be treated as a motion for relief from stay, in which the Court has the discretion to grant stay relief to permit arbitration.

In making their decision, the Court considered the involvement of other parties, the significance of the dispute, and the potential complications with parallel proceedings. These considerations supported the decision to deny the funds' motions for stay relief.

The Court remained doubtful of the PBGC's argument that the APA bars the Court from considering the validity of regulation, and ultimately denied the PBGC's motion for a determination that the Court may not consider the validity of its regulation. Furthermore, the implications of this argument supported the Court's decision to deny funds' motions for stay relief.

In re Pack Liquidating, LLC (Del. Bankr. Feb. 2, 2024)

Legal question

How should the Court reconcile the conflicting directives of the Multiemployer Pension Plan Amendments Act (MPPAA) and Section 502 of the Bankruptcy Code in determining whether the multiemployer pension plans' claims for withdrawal liability should be resolved through arbitration or through the bankruptcy claims allowance process? Furthermore, how should the Court address the Pension Benefit Guaranty Corporation (PBGC)'s motion to deny the Court's authority to consider the validity of its regulations?

Holding of case

The Court denied the multiemployer pension plans' motions for relief from the automatic stay and the PBGC's motion, ruling that the withdrawal liability claims should be resolved through the bankruptcy claims allowance process rather than arbitration.

Summary of facts

Yellow Corporation, one of the nation's oldest and largest freight trucking companies, filed for bankruptcy protection in mid-2023. Prior to bankruptcy, the company had participated in several multiemployer pension plans, which were plans funded by multiple employers under collective bargaining agreements and would pay benefits to the company's retirees.

Under the Employee Retirement Income Security Act (ERISA) and the Multiemployer Pension Plan Amendments Act (MPPAA), when an employer withdraws from a pension fund, the employer is liable for covering the unfunded obligations to the pension plan upon exit.

In this case, the debtors filed for Chapter 11 Bankruptcy in August 2023, with the largest proof of claim filed by Central States for $4.8 billion in withdrawal liability and a total of $1.5 billion across pension plans filing similar proofs of claim. The pension funds filed motions to compel arbitration per the MPPAA. The PBGC argued that regulations under the Administrative Procedure Act (APA) and ERISA can only be challenged in federal district Court, not in a claims allowance dispute. Yellow Corporation's largest shareholder, MFN Partners, objected to the motion to compel arbitration, as the outcome would affect the value of their equity holdings – their equity would become worthless if the pension funds' claims were allowed, but would retain substantial value if those claims were disallowed.

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***Office of the United States Trustee v. John Q. Hammons Fall 2006, LLC*, 144 S.Ct. 1588 (June 14, 2024)**

<u>Issue:</u> What is the appropriate remedy for debtors who overpaid their quarterly U.S. Trustee fees after the Supreme Court found an unconstitutional disparity with Bankruptcy Administrator districts in *Siegel v. Fitzgerald*, 142 S.Ct. 1770 (2022).

<u>Holding:</u> Given the "small, short-lived disparity caused by the constitutional violations" found in *Siegel*, prospective parity is the only appropriate remedy. In other words, debtors who paid unconstitutionally higher quarterly U.S. Trustee fees were not entitled to any refunds.

<u>Facts:</u> In 2022 the Supreme Court held in *Siegel* that disparate quarterly fees for debtors in U.S. Trustee districts versus Bankruptcy Administrator districts violated the uniformity requirement of the Constitution's Bankruptcy Clause. In deciding *Siegel*, the Supreme Court specifically declined to address the appropriate remedy. The debtors in *John Q. Hammons* – like the trustee in *Siegel* – had challenged the constitutionality of the fee disparity. The *John Q. Hammons* debtors litigated their challenge up to the Tenth Circuit. After *Siegel*, the Tenth Circuit ordered a refund of the overpaid fees. The U.S. Trustee sought certiorari. Although there was no circuit split and three other circuits had also ordered refunds after *Siegel*, the Supreme Court granted certiorari to determine the appropriate remedy.

<u>Analysis:</u> In a 6-3 decision authored by Justice Ketanji Brown Jackson, the Supreme Court held that prospective parity was the only appropriate remedy in this case. The Court noted that "the nature of the violation determines the scope of the remedy." In *Siegel*, the Constitutional violation was non-uniformity, rather than the magnitude of the fees. The disparity was short-lived – lasting only about seven months. And the disparity was "small," because only about 50 out of more than 2,000 large chapter 11 cases during this time period were filed in Bankruptcy Administrator districts. In other words, only about 2% of debtors during this period paid non-uniform fees. Concluding that the constitutional violation was short-lived and small, the Court then turned to the appropriate remedy.

To make that determination, it considered what Congress would have done had it been aware of the Constitutional infirmity. Consistent with Congress' intent to keep the U.S. Trustee system self-funded, Congress having itself fixed the problem in 2021 by mandating uniform fees prospectively, and the prospect taxpayers footing the bill for a $326 million refund for a program that was supposed to be self-funded, the Court determined that prospective parity was the only appropriate remedy. The Court reversed the Tenth Circuit, denying the debtors a refund.

***Vertiv, Inc. v. Wayne Burt PTE, Ltd.*, 92 F.4th 169 (3d Cir. Feb. 1, 2024)**

Issue: When should a District Court abstain from adjudicating a case in deference to a pending foreign bankruptcy proceeding?

Holding: Relying on its 1994 decision in *Philadelphia Gear Corp. v. Philadelphia Gear de Mexico, S.A.*, 44 F.3d 187 (3d Cir. 1994) – which predated the enactment of Chapter 15 of the Bankruptcy Code – the Third Circuit articulated a common law test to determine whether to extend adjudicatory comity to a foreign insolvency proceeding. First, a United States court must determine if the foreign insolvency proceeding is "parallel" to a civil action in a United States court. If so, the party seeking extension of comity must make a prima facie showing that (1) the foreign bankruptcy law shares U.S. policy of equal distribution of assets, and (2) that foreign law either mandates or authorizes a stay of the U.S. litigation. If the party seeking to extend comity to the foreign proceeding makes that showing, then the U.S. court must make additional inquiries as to whether (1) the foreign proceeding is taking place before an authorized tribunal; (2) the foreign court provides for equal treatment of creditors; (3) extending comity would be "in some manner inimical to" U.S. policy of equality; and (4) the party opposing comity would be prejudiced.

Facts: The plaintiffs were Delaware corporations headquartered in New Jersey. Defendant Wayne Burt was a Singaporean corporation with its primary place of business in Singapore. The plaintiffs sued the Singaporean defendants in the U.S. District Court for the District of New Jersey. Through one of Wayne Burt's directors, it agreed to entry of two consent judgments. As it turned out, though, Wayne Burt had been in a Singaporean liquidation proceeding before the New Jersey suits were commenced. Once the Singaporean liquidator discovered this, he moved to vacate the consent judgments, arguing that the former directors who purportedly consented to the judgments lacked authority to do so.

The District Court granted the liquidator's Rule 60(b) motions and vacated the consent judgments. The plaintiffs then filed an amended complaint, whereupon the liquidator moved to dismiss for under Rule 12(b)(6) on international comity grounds in deference to the Singaporean proceeding, and under Rule 12(b)(2) for lack of personal jurisdiction.

The District Court granted the motion to dismiss under Rule 12(b)(6) on the basis of international comity, and therefore did not address the personal jurisdiction argument. The plaintiffs appealed.

Analysis: Although the Third Circuit's decision did mention Chapter 15 of the Bankruptcy Code a couple of times, its analysis rested entirely on its 1987 decision in *Remington Rand Corp. Del. v. Bus. Sys. Inc.*, 830 F.2d 1260, 1266 (3d Cir. 1987) and its 1994 decision in *Philadelphia Gear Corp. v. Philadelphia Gear de Mexico, S.A.*, 44 F.3d 187 (3d Cir. 1994), both of which predated the 2005 enactment of chapter 15. Notwithstanding chapter 15 – the very purpose of which is "to provide effective mechanisms for dealing with cases of cross-border insolvency" – the Third Circuit updated and revised its common law test for affording comity to a foreign insolvency proceeding.

The opinion mentioned chapter 15 a few times in discussing the policy reasons to afford comity to foreign insolvency proceedings. But the opinion wholly failed to address and appreciate the effect of chapter 15's enactment on the case below. And in "updating" its pre-chapter 15 federal common law test for affording comity to a foreign insolvency proceeding, it arguably sanctioned a parallel common law track to "recognize" a foreign proceeding without requiring the filing of a petition for recognition under chapter 15. This notwithstanding Bankruptcy Code section 1509(c), which *requires* a request for comity by a foreign representative in a U.S. court other than the bankruptcy court that granted recognition of the foreign proceeding to be accompanied by a certified copy of the recognition order. Many commentators and chapter 15 scholars have criticized this decision as making chapter 15 either irrelevant or optional, at least in the Third Circuit.

***In re Gol Linhas Aéreas Inteligentes, S.A.*, 659 B.R. 641 (Bankr. S.D.N.Y. Apr. 22, 2024)**

Issue: Was the debtors' agreement with certain aircraft lessors to support a chapter 11 plan a permissible restructuring support agreement, or an impermissible "lockup" agreement that violates Bankruptcy Code section 1125?

Holding: Because the agreement did not contain adequate information about the plan terms it agreed to support, and failed to evidence any meaningful choice for the creditors, the agreement was not a permissible RSA, but instead was an impermissible "lockup" agreement that violated section 1125.

Facts: Early on in their chapter 11 cases, the debtors entered into stipulations with certain aircraft lessors to resolve disputes relating to rent, reserves, cash collateral, security deposits, and amendment and assumption of leases. In connection with those stipulations, the lessors also agreed to vote in favor of any chapter 11 plan filed by the debtors that reflected the economic substance of the agreement with the aircraft lessors, provided certain other minimal conditions were met, and to vote against any other plan. The creditors committee and the U.S. Trustee objected to approval of the lockup provision, arguing it was an improper vote solicitation that violated section 1125.

Analysis: The court surveyed case law on the difference between permissible restructuring support agreements and impermissible lockups. The court distilled from these cases what constitutes a permissible RSA: "informed creditors knowingly and rationally agreeing to a particular plan structure or features and signing onto an agreement that creates consensus and moves the case forward." The court then distinguished "lockups," which it described as agreements that bind creditors to vote in a particular way. The court discussed the minority and majority views on the issue, concluding that the majority view is that lockups are not per se improper, and may be approved if (1) there is sufficient information about the plan itself that creditors were committing to vote for, and (2) whether creditors had a meaningful choice, either to willingly agree during plan negotiation, or to rescind their agreement based on later available information. Under the minority view, however, lockups are per se impermissible.

After surveying case law on the issue, the court adopted the majority view – that lockups were not per se impermissible. But in this case the court concluded that the lockup provision did not contain adequate information about the plan terms nor any evidence of a meaningful choice for the creditors. While declining to opine on the exact amount of information or stage of a case at which a plan support agreement may become permissible, in this case the court determined that lack of any information about plan terms violated the purpose and goals of section 1125. Together with the lack of any meaningful "outs" for the counterparties, the court denied approval of the lockup agreement. In doing so, the court noted the crucial difference between agreeing to *settlement terms that must be included* in any plan, versus agreeing to vote for *any plan that included* those terms. The latter was impermissible, because it tied the creditors hands. Accordingly, the court denied approval of the lockup agreement.

Faculty

Prof. Anthony J. Casey is the Donald M. Ephraim Professor of Law and Economics at The University of Chicago Law School in Chicago. He is also the faculty director of the Law School's Center on Law and Finance. Prof. Casey is an expert on business law, finance and corporate bankruptcy, and he teaches courses and seminars in corporate governance, business law, bankruptcy and reorganization, finance, litigation strategy, civil procedure, and law and technology. His research — which has been published in the *Yale Law Journal*, the *Columbia Law Review*, the *Supreme Court Review* and the *University of Chicago Law Review* — examines the intersection of finance and law, with a focus on corporate bankruptcy. He has also written about the role of intellectual property law in the organization and financing of creative projects, and about how technological innovation is changing the foundations of our legal system more generally. He also has written about asset valuation, creditor priority, the constitutionality of bankruptcy courts and intercreditor agreements. Before entering academics, Prof. Casey was a partner at Kirkland and Ellis, LLP and an associate at Wachtell, Lipton, Rosen & Katz. His legal practice focused on corporate bankruptcy, merger litigation, white-collar investigations, securities litigation and complex class actions. After law school, he clerked for Chief Judge Joel M. Flaum of the U.S. Court of Appeals for the Seventh Circuit. Prof. Casey was recognized in 2017 as one of ABI's inaugural "40 Under 40" honorees. He received his J.D. with high honors from The University of Chicago Law School, where he was awarded the John M. Olin Prize for outstanding student of law and economics.

Hon. Scott M. Grossman is a U.S. Bankruptcy Judge for the Southern District of Florida in Fort Lauderdale, sworn in on Oct. 2, 2019. He previously was a shareholder with a large international law firm in its global restructuring and bankruptcy practice, and he represented distressed companies, debtors, secured and unsecured creditors, official committees, trustees, landlords and purchasers of distressed assets, and worked on bankruptcy cases across various industries, including real estate, hospitality, health care, entertainment, banking, technology, energy and financial fraud. While primarily involved in chapter 11 reorganizations, he also represented clients in out-of-court workouts and restructurings, chapter 7 liquidations, receiverships, assignments for the benefit of creditors and insolvency-related litigation. Judge Grossman was active in local bar activities, including having served as president of the Bankruptcy Bar Association of the Southern District of Florida. When in private practice, he was listed in *Chambers USA*, *The Best Lawyers in America* and *Super Lawyers* magazine, and was a member of the winning teams for the Global M&A Network's Turnaround Atlas Awards for both "Cross Border Special Situation M&A Deal (Small-Mid Markets)" in 2019, as well as "Turnaround of the Year — Small Markets" in 2015. Judge Grossman began his legal career in the Attorney General's Honors Program at the U.S. Department of Justice, where he was a trial attorney in the Tax Division, Civil Trial Southern Section, from 1999-2004. He received his B.S. in 1996 from the University of Florida and his J.D. in 1999 from George Washington University Law School.

Hon. Sage M. Sigler is a U.S. Bankruptcy Judge for the Northern District of Georgia in Atlanta, appointed in March 2018. She succeeded Hon. Mary Grace Diehl, for whom she clerked after graduating from law school. Prior to her appointment to the bench, Judge Sigler was a partner in Alston & Bird LLP's Bankruptcy Group. She is an active member of ABI's Board of Directors, NCBJ, IWIRC, TMA and the Bankruptcy Section of the Atlanta Bar Association, and she has been a volunteer presenter for the Credit Abuse Resistance Education (CARE) program. Judge Sigler was an honoree in ABI's inaugural class of "40 Under 40" in 2017. She received her B.A. in political science from the University of Florida in 2001 and her J.D. in 2006 from Emory University School of Law, where she was the executive symposium editor of the *Emory Bankruptcy Developments Journal*.