

Feuding Circuits: The 5th vs the 10th

Moderator: Bill Rochelle, ABI

Panelists:

Hon. Stacey Jernigan – N.D. Texas

Hon. Beth Brown – D. Colorado

Asset Sales & 363(m) Mootness: Is Failure to get a Stay “Jurisdictional” or Merely a Limit on Remedies?: So, You Thought You Had the Right to Appeal?

- **Cert** Granted in *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 2022 WL 2295163 (S.Ct. June 27, 2022)(appeal from 2nd Cir.).
- Fifth Circuit: *In re C Whale Corp*, 2022 WL 135125 (5th 1/13/22); *In re Gilchrist*, 891 F.2d 559 (5th 1990).
- Tenth Circuit: *In re CW Mining*, 641 F3d 1235 (10th 2011).



Uniformity Clause Violated By U.S. Trustee Fees vs. Bankruptcy Administrator Fees:



- *Siegel v. Fitzgerald*, 142 S.Ct. 1770 (2022).
- *Fifth Circuit*: (on the side of the U.S. Trustee): *Matter of Buffets, LLC*, 979 F.3d 366 (5th 2020).
- *Tenth Circuit*: Tenth Circuit (on the side of chapter 11 debtors): *In re John Q. Hammons Fall 2006, LLC*, 15 F.4th 1011 (10th 2021).

Just How Big is the Discharge in Sub V Cases?



- **1192:** the court shall grant the debtor a discharge of all debts except... (2) *of the kind* specified in § 523(a).
- **523(a)'s preface:** a discharge under ... 1192 ... does not discharge *an individual debtor* from [21 categories of debts].
- **In re Cleary Packaging, LLC**, 36 F.4th 509 (4th Cir. 2022).

Does Hounding a Debtor for Payment Vitiolate the Ordinary Course Defense?



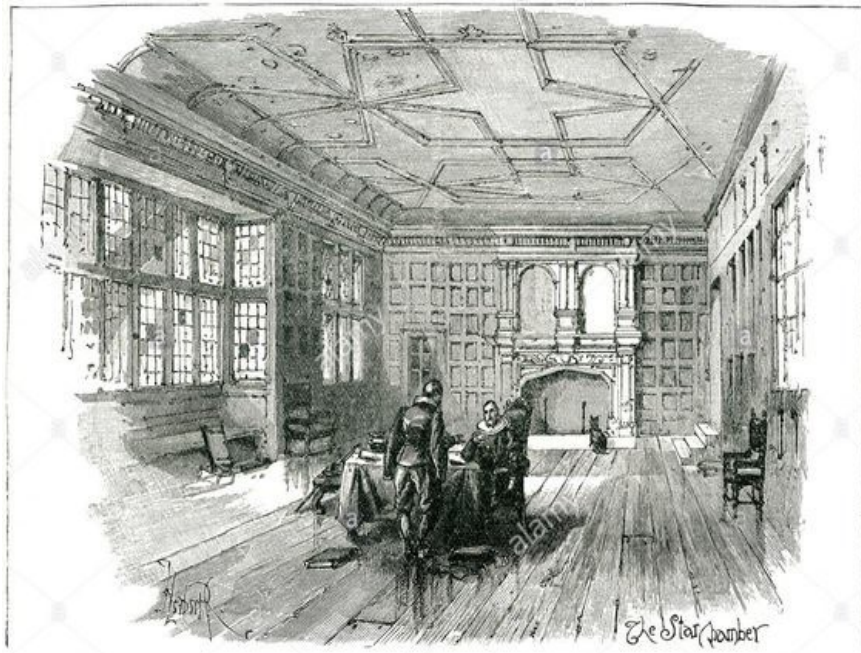
- *In re Décor Holdings, Inc.*, 2022 WL 348625 (Bankr. S.D.N.Y. Febr. 3, 2022).
- *In re HHGregg, Inc.*, 2022 WL 370279 (Bankr. S.D. Ind. Jan. 13, 2022).

Chipping Away at the Barton Doctrine


- ***Chua v. Ekonomou*, 1 F.4th 948 (11th Cir. 2021).**
- ***In re Keitel*, 636 B.R. 845 (Bankr. S.D. Fla. 2022).**



The Star Chamber



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Are 24 hr. Pre-Packs Appropriate?

- Do they violate state law? See *Stream TV Networks, Inc. v. SeeCubic, Inc.*, 2022 WL 2149437 (Del. Sup. Ct. June 15, 2022) (requires shareholder approval for sale of all assets).
- Do they violate the Bankruptcy Code & Rules? See Lynn M. LoPucki, “Chapter 11’s Descent into Lawlessness,” 96 ABLJ 247 (2022).

Equitable Mootness: A Doctrine on its Way Out?

The *Fish Dish* case:
In re Veroblue Farms USA, Inc, 6 F.4th 880
(8th Cir. 2021).

