National Year in Review

Hon. Janet S. Baer (Bankr. N.D. Ill.)

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United States Supreme Court

***United States v. Miller*, 604 U.S. ___, 145 S. Ct. 839 (2025).**

In 2014, two principals of All Resorts Group, Inc. removed $145,138.78 from the corporation to pay their personal IRS tax obligations (the company received no benefit from this transfer). Three years later, the company filed a chapter 7 petition. The trustee filed an adversary proceeding against the United States to recover the tax payments, arguing that the transfer was a fraudulent transfer under §544(b)(1) and Utah's Uniform Fraudulent Transfer Act. The United States agreed that the transfer was a fraudulent transfer, but argued that because no creditor could assert a claim against the Government outside of bankruptcy under the Utah UFTA this meant that the trustee could not satisfy the "actual creditor requirement" of §544(b)(1) notwithstanding the waiver of sovereign immunity in §106. The trustee argued that Government's waiver of sovereign immunity with respect to claims brought under §544 extended to all aspects of the claim and allowed the trustee to proceed even if creditors outside of bankruptcy would be unable to do so because of the Government's sovereign immunity. The Tenth Circuit, in conflict with the Seventh Circuit (*see In re Equipment Acquisition Resources*, 742 F.3d 743 (7th Cir. 2014)) held that the Trustee met the standing requirement of §544(b)(1) and could proceed with his fraudulent transfer claim. *Miller v. United States*, 71 F.4th 1247 (10th Cir. 2023).

In an 8-1 decision authored by Justice Jackson, the Court reversed. It held that "[s]ection 106(a) is properly understood as a jurisdictional provision that empowers courts to hear §544(b) claims against the Government to the extent such claims are otherwise available under state law" but that §106(a) "does not alter the substantive meaning of section 544(b)'s 'applicable law' clause." 145 S. Ct. at 846. The Court explained that sovereign immunity is jurisdictional in nature in that it prevents a court from hearing claims against the government. When sovereign immunity is waived, it empowers the court to hear claims against the government, but does not in and of itself create new claims against the government. *Id*. at 849. Section 106's text reinforces this point, as it states that "[n]othing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law." 11 U.S.C. §105(a)(5).

Because it was undisputed that outside of bankruptcy, a creditor could not bring a fraudulent transfer claim against the government under the Utah UFTA, the Court concluded that the actual creditor requirement of §544(b) could not be met and the Tenth Circuit's decision should be reversed. The Court explained that the text and structure of §544 reinforced the Court's reading of §106. *Id*. at 851. Contrasting §544(b)'s actual creditor requirement with §544(a)(1) which allows a trustee to avoid certain liens whether or not an actual creditor could do so, led the Court to conclude that §544 reflects a "deliberate congressional choice to tie the trustee's rights under §544(b) to the rights of an actual creditor under 'applicable law.'" *Id*. at 851.

In his dissent, Justice Gorsuch rejected the majority's reasoning that ruling for the trustee would impermissibly give the trustee a substantive claim against the Government that would not otherwise exist. *Id*. at 857. According to Justice Gorsuch, whether pursued by a creditor or a bankruptcy trustee, a good substantive claim exists because everyone agrees that the Government received a fraudulent transfer. The question in bankruptcy is whether the Government can defeat the claim by raising the affirmative defense of sovereign immunity and, with respect to a trustee pursuing the claim, Justice Gorsuch says the answer is no. *Id*. "Admitting that much does not 'modify the elements of any claim or 'create any substantive claim for relief' that did not 'otherwise exist.'… It merely acknowledges that in one setting, but not another, Congress has chosen to waive an affirmative defense to an otherwise valid claim." *Id*.[1]

[1] *Lac du Flambeau Band of Lake Superior Chippewa Indians, et al. v. Coughlin* 599 U.S. 382, 388 (2023)] was also an 8-1 decision authored by Justice Jackson. In that opinion, the Court held that "the Bankruptcy Code unequivocally abrogates the sovereign immunity of any and every government that possesses the power to assert such immunity."

Recent Seventh Circuit Cases

***Sterling v. Southlake Nautilus Health & Racquet Club*, 140 F.4th 924 (7th Cir. 2025).**

Jacqueline Sterling filed bankruptcy and discharged a $957 default judgment owed to Southlake for gym membership fees. Although Southlake received notice of the bankruptcy, it failed to notify its collection attorneys and they continued their efforts to collect the default judgment even after the bankruptcy filing. When Ms. Sterling failed to notify the state court of her bankruptcy filing, as she was required to do pursuant to a local rule of the bankruptcy court, the state court unknowingly issued a bench warrant. A year later a police officer who stopped to help Ms. Sterling fix a flat tire discovered the bench warrant and Ms. Sterling landed in jail for the weekend. As a result of being jailed, Ms. Sterling missed four shifts working as a poker dealer at the Horseshoe Casino in Hammond. 140 F.4th at 929-30.

After her release, she filed a complaint for civil contempt against Southlake because of its violation of the discharge injunction. The bankruptcy court initially ruled for Southlake but the Seventh Circuit reversed, finding that Southlake acted in civil contempt when its attorneys continued to pursue collection after the discharge. The court remanded for damages. *Id*.

On remand, the bankruptcy court found $18,000 in emotional distress damages and $1,449 in damages for lost wages. But because it found that Southlake and Ms. Sterling were equally at fault because Ms. Sterling could have avoided the damages if she had notified the Lake County Court of her bankruptcy, the bankruptcy court only awarded her $9,724.50. Ms. Sterling also sought recovery of her attorney's fees and the court found that $198,710 was a reasonable fee. However, it also apportioned the fees based on Ms. Sterling's comparative fault and awarded her only $99,355. The bankruptcy court rejected her claim that because of her profession she will have to report her arrest to state gaming authorities for the balance of her career. *Id*. at 930-31.

The Seventh Circuit affirmed the bankruptcy court's application of comparative fault to the award of compensatory damages, holding that in a civil contempt proceeding, tort principles, such as comparative fault, may apply. *Id*. at 932-34. But the same is not true with respect with shifting fees where the Court is not bound by tort principles and has broad discretion. Because the bankruptcy court erred as a matter of law when it concluded it was bound to apply comparative fault principles to the attorney's fee award, the Seventh Circuit held the bankruptcy court abused its discretion and remanded so the bankruptcy court could determine, in light of its broad fee-shifting discretion, whether to reduce Southlake's liability for Ms. Sterling's fees. *Id*. at 934-35. In a concurring decision, Judge Rovner strongly suggested that Ms. Sterling be awarded all of the fees she incurred. *Id*. at 937-38.

***Thomas v. LVNV Funding, Inc.*, 132 F.4th 992 (7th Cir. 2025).**

A creditor waited 29 days to report a dispute over a $187 debt to Trans Union. The debtor filed suit under the Fair Debt Collection Practices Act contending that the delay entitled her to statutory damages under 15 U.S.C. §1692k(a)(2)(A), which authorizes "additional damages" up to $1,000 on top of "actual damages" under §1692k(a)(1). The jury awarded the debtor $250. The creditor appealed. It did not contest the fact that statute required it to notify the Trans Union earlier but argued that the delay did not injure the debtor and therefore the debtor lacked standing to sue. 132 F.4th at 994.

The Seventh Circuit rejected the argument that the delay in and of itself establishes a right to damages. While the FDCPA provides for statutory damages for violations of its requirements, the mere availability of statutory damages does not suffice to create standing. Because the debtor presented no evidence of actual injury – evidence that a natural person saw her credit file during the 29-day period when the dispute when unreported and she was therefore defamed because of the negative inference that arises from not paying an undisputed debt or that her credit score went up once the dispute was reported. The Seventh Circuit therefore reversed with instructions to dismiss due to a lack of a justiciable controversy. Id. at 994-95.

***Green v. Leibowitz*, 108 F.4th 530 (7th Cir. 2024).**

The debtor claimed his interest in a registered retirement savings plan organized under Canadian law as exempt based upon 735 ILCS §5/12-1006, which exempts assets "intended to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986." The trustee objected to the claimed exemption and the bankruptcy court sustained the objection. Both the district court and the Seventh Circuit affirmed on appeal. 108 F.4th at 531-32.

Because the term "retirement plan" is not defined in the Internal Revenue Code, the Court looked to the federal bankruptcy exemptions, specifically §522(b)(3) for guidance as to what qualifies as a retirement plan because that Code provision exempts retirement funds pursuant to specific Internal Revenue Code provisions. The debtor's Canadian plan did not fall under any of the specific provisions listed in §522(b)(3), but it did fall under another Internal Revenue Code section—§404A—which allowed the debtor's employer to deduct its contributions to the debtor's plan. The Seventh Circuit rejected this argument because the specific Internal Revenue Code provisions cited in §522(b)(3) provide detailed criteria for creating those plans, while §404A contains no such criteria. According to the Seventh Circuit, plans falling under this provision are divorced from any criteria establishing a retirement plan under the Internal Revenue Code, making the Canadian plan ineligible for exemption under Illinois's exemption statute. *Id*. at 533-35.

***In re Int'l Supply Co.*, 103 F.4th 478 (7th Cir. 2024).**

The trustee of a corporate debtor sued a bank to recover $1.7 million that it had received from the corporate debtor to satisfy the debt of the corporation's shareholder. The Trustee brought his claim under §544(a) and the Illinois UFTA. The bankruptcy court ruled for the trustee finding the debtor insolvent on a cash flow and adequate capital basis. On appeal, the lender argued that the sole legal basis to establish insolvency was the balance sheet test. 103 F.4th at 480-81.

The Seventh Circuit rejected the lender's argument finding it "disconnected" from the language of the statute. The Court also found that this argument and the lender's statue of limitations arguments were forfeited because they had not been raised below. *Id.* at 482.

***Marshall v. Johnson*, 100 F.4th 914 (7th Cir. 2024).**

Agreeing with both the Ninth and Tenth Circuits that Chapter 13 trustees must return all trustee compensation in cases dismissed prior to confirmation even when the trustee has made pre-confirmation adequate protection payments. Section 1326(a)(2) is clear that the trustee must retain plan payments until the plan is confirmed or denied, and the only stated exception is adequate protection payments on personal property.

***Bush v. United States*, 100 F.4th 807 (7th Cir. 2024).**

On the eve of a hearing in Tax Court to determine their liability for certain tax penalties, the Bushes filed a chapter 13 petition, which was later converted to a chapter 7 case. The Bushes filed a motion, asserting jurisdiction under §505(a)(1) of the Bankruptcy Code and 28 U.S.C. §1334(b) to have the bankruptcy court determine the amount of the tax penalties. The IRS contended it was entitled to a 75% fraud penalty while the Bushes contended that only the 20% negligence penalty applied. The bankruptcy court denied the IRS's motion to dismiss for lack of jurisdiction or alternatively to abstain. The district court granted leave to appeal and reversed. The Bushes appealed to the Seventh Circuit. 104 F.4th at 808-09.

On appeal, the Seventh Circuit held that §505(a)(1) did not confer jurisdiction upon the bankruptcy court but instead simply set forth a task for bankruptcy judges to perform. The Seventh Circuit held that "[m]ost genuine jurisdictional rules appear in Title 28, the Judicial Code, and that's true of bankruptcy too. The Bankruptcy Code itself tells us this. Section 105(c) reads: 'The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28.'" In reaching its decision that §505(a)(1) is not a jurisdictional grant, the Seventh Circuit acknowledged that its decision was in conflict with that of other Circuits. Id. at 809-11.

Although the Court acknowledged that it had previously held that bankruptcy courts had related to jurisdiction to determine the amount of a non-dischargeable tax debt, and the tax penalties at issue were non-dischargeable, it rejected that precedent as having "the quality of a drive-by ruling." *Id*. at 812. The Court held that there might be jurisdiction under §1334(b) only if, at the time the §505 motion was filed, a decision "could have affected the allocation of assets among creditors with outstanding claims." *Id*. at 813. The Court remanded so the district court could undertake that analysis.

***Bush v. United States*, 2025 WL 1232494 (7th Cir. April 29, 2025).**

On remand the district court again found that the bankruptcy court lacked jurisdiction because it concluded that the value of assets in the Bushes' estate determined solely by using the values in their schedules were not sufficient to yield a distribution to the IRS on account of its subordinated tax penalty claim. The Bushes appealed and the Seventh Circuit affirmed in a per curium decision. The Seventh Circuit held that the Bushes were "stuck" with the values they put in their schedules. 2025 WL 1232494, at *2.

***Young v. Lake County Treasurer*, 2024 WL 4864887 (7th Cir. Nov. 21, 2024).**

Both Young and D.A.Y. Investments, a limited liability company of which Young was the sole member, filed chapter 11 petitions and the two cases were jointly administered. The Lake County Treasurer moved to convert the cases to chapter 7 and Young opposed conversion in both cases. When the County Treasurer moved for summary judgment on the conversion motion, both debtors opposed the motion, but Young did not specifically join the D.A.Y.'s opposition. The bankruptcy court granted both motions. Young only appealed the conversion of D.A.Y.'s chapter 11 case. The district court dismissed the appeal because Young had not joined D.A.Y.'s opposition in the bankruptcy court.

The Seventh Circuit affirmed. It held that Young lacked standing to appeal because the order did not pecuniarily affect him. An order pecuniarily affects an appellant only if it diminishes the appellant's property, increases his burdens, or impairs his rights. *In re Ray*, 597 F.3d 871, 874 (citing *In re Cult Awareness Network*, Inc., 151 F.3d 605, 608 (7th Cir. 1998)). This rule limits appeals to "only those persons whose interests are directly affected by a bankruptcy order to appeal." A limited liability company like D.A.Y. is distinct from its members. The liquidation of D.A.Y.'s assets in Chapter 7 did not diminish the value of Young's interest in those assets—the company's insolvency already did that.

***Carrington v. Davis*, 2024 WL 4635240 (7th Cir. Oct. 31, 2024).**

A bankruptcy court ruled that a creditor could not enforce its judgment lien against the debtor, Jerrold Carrington, on a home that Carrington owned with his spouse as tenants by the entirety. It reasoned that Indiana law exempts from the bankruptcy estate any interest held as a tenant by the entirety, unless—as is not the case here—the spouses are jointly liable for the debt.

The district court affirmed. Because the creditor (the appellant here) cannot reach Carrington's exempted interest, we affirm. *In the Matter of Paeplow*, 972 F.2d 730, 736–37 (7th Cir. 1992), we clarified that the Indiana exemption statute provides "a blanket exemption for entirety property in the bankruptcy context," *id*. at 737, protecting such property from creditors (like Davis) who hold debts against just one spouse as well as creditors to whom both spouses are jointly indebted. Thus, even if the lien is secured and regardless of the absence of Carrington's spouse from bankruptcy, the bankruptcy court properly avoided the lien under §34-55-10-2(c)(5).

Procedural History: In 2012, Lawyer Albert Davis obtained a judgment against Carrington for $78,000 and recorded the judgment in Lake County, Indiana, where Carrington held real estate as tenants by the entirety with his spouse. In 2017, Carrington filed Chapter 13 bankruptcy, claimed the property as exempt, and Davis filed a secured claim for $104,700.28. Carrington objected to the claim arguing that it was unsecured. The bankruptcy court stated that it was unsecured, the district court reversed stating that Davis held a future contingent interest that would pass through bankruptcy unaffected and remanded the case back to bankruptcy court. Carrington appealed to the Seventh Circuit who denied the appeal requiring the bankruptcy court to rule prior to hearing an appeal (this opinion preserved the debtor's rights). At bankruptcy court, the debtor moved to avoid the lien as impairing exemptions, and the court granted the motion. Davis appealed to district court again and a new district judge reversed the prior district court opinion stating that there was no "future contingent interest." That matter was then appealed to the Seventh Circuit a second time and the court affirmed the district court opinion.

Decisions of Other Circuits

***In re Highland Cap. Mgmt. LP*, 132 F.4th 353, 354 (5th Cir. 2025).**

Highland Capital Management was an investment firm founded by James Dondero, which for almost 30 years managed billion-dollar, publicly traded investment funds. It was forced into a chapter 11 bankruptcy when investors obtained judgments against the firm. During the chapter 11 case, Dondero filed numerous plans which the unsecured creditors and the independent directors of the debtor rejected. When the plans failed, Dondero began an aggressive litigation campaign and also began threatening employees and taking other improper actions that harmed the Debtors. Eventually Dondero was held in civil contempt and sanctioned. 132 F.4th at 354.

Anticipating that Dondero would continue to litigate, the plan included two provisions designed to protect the Debtor and associated persons. First, the plan contained an exculpation provision that permanently extinguished any claim for conduct during the chapter 11 case against the Debtor, the independent directors, the committee and its members, the Debtor's and the committee's professionals and certain employees. Second, the plan contained a gate-keeper clause as part of its plan injunction, which required persons seeking to pursue a claim against any of the exculpated parties to obtain bankruptcy court permission after showing that they had a colorable claim. The bankruptcy court confirmed the plan and these two provisions. *Id*. at 355-56.

In the first appeal from the confirmation order, the court ruled that the exculpation provision may only extend to the Debtor, independent directors whose retention was approved by the bankruptcy court, and the official committee and its members, in each case solely to the extent those parties was acting in their capacities as such. *In re Highland Capital Mgmt.*, 48 F. 4th 419 (5th Cir. 2022) ("*Highland 1*").

In the second appeal from the confirmation order, the court limited the persons the gatekeeper clause could protect to the same people that the court found in *Highland 1* could be exculpated. Relying upon *Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204 (2024), the Fifth Circuit explained that a plan may not release a non-debtor or enjoin claims against a non-debtor without the enjoined creditor's consent. The Court balanced this ban on non-consensual third-party releases against the *Barton* doctrine, which requires in certain circumstances individuals seeking to bring suit against a trustee or court-appointed officer to obtain leave of the court before filing suit, and concluded that there are several rationales that justify a limited gatekeeper function. 132 F.4th at 359 (citing *Barton v. Barbour*, 104 U.S. 126 (1881)).

The Fifth Circuit stated that the *Barton* doctrine prevents the usurpation of powers and duties from the bankruptcy court by diverting estate assets to the defense of litigation. In addition, the bankruptcy court has a strong interest in protecting appointed parties from personal liability for acts taken 'within the scope of her duties. But these rationales have never been

extended to create gate-keeping power over claims against non-debtors. For this reason, the Court concluded that the definition of protected parties must be narrowed to only the estate fiduciaries. 132 F.4th at 360.

But see In re AIO US, Inc., 2025 Bankr. LEXIS 2012, at *105-113 (Bankr. D. Del. Aug. 21, 2025) (viewing the gate-keeper provision as an attempt to create exclusive jurisdiction over the enforcement of the plan's exculpation clause and declining to approve the provision on that basis; as the court put it, "the plan says what it says, and other courts should be entitled to exercise their authority to interpret it").

***In re Congoleum Corp.*, 2025 U.S. App. LEXIS 21492 (3d Cir. Aug. 22, 2025).**

Congoleum filed its first bankruptcy case to settle its asbestos liability. But many years before it filed for bankruptcy it was part of a corporate group that included among others Bath Iron Works, a shipbuilder located in Maine. Because of the common ownership, many of Congoleum's older insurance policies which covered asbestos and other claims incurred at Congoleum's flooring facility in Kearny, New Jersey also named Bath Iron Works and other related entities as additional insureds. To reach agreements with its insurance carriers to fund a trust, Congoleum and the carriers developed a plan to obtain an adjudication that the contract interests in those policies of the other subsidiaries could be eliminated by obtaining a judicial determination that these other subsidiaries were not liable for any of the liabilities of the Congoleum flooring business and thus the liabilities the policies covered. The bankruptcy court received evidence in support of this finding and over the objection of certain insurers concerned that they could still be on the hook to the other companies, ruled that Bath Iron Works and the other subsidiaries were not liable for any of Congoleum's liabilities. This judicial determination was included in the confirmation order. 2025 U.S. App. LEXIS 21492, at *2-5.

Fast forward seven years, and Congoleum was facing claims for pollution of the Passaic River. It filed a third-party complaint against Bath Iron Works claiming that under the environmental laws it was jointly liable for Congoleum's pollution. Occidental, which owned the company primarily liable for the pollution, then added Bath Iron Works to its lawsuit. Congoleum's second bankruptcy intervened and in that second bankruptcy, the bankruptcy court interpreted the first plan in Bath Iron Works' favor and held that the phrase "any liabilities" meant every liability including environmental liabilities. It also rejected the argument that that the finding was an improper third-party release, concluding that that it was a judicial determination that Bath Iron Works never had any liability in the first place. *Id*. at *5-6.

Congoleum asked Occidental to also withdraw its lawsuit based on the finding because Occidental was a creditor in the first bankruptcy case with notice of the confirmation order and the judicial finding. When Occidental refused to do so, Bath Iron Works moved to re-open the first Congoleum bankruptcy and sought an injunction enforcing the Congoleum plan. Occidental filed a motion for summary judgment on the issue in its district court lawsuit, which the

magistrate stayed pending the bankruptcy court's ruling. The bankruptcy court re-opened the bankruptcy case and found Occidental's lawsuit violated the terms of the Congoleum plan. *Id*. at *6-8.

Occidental appealed; the same district court judge hearing its environmental suit heard the appeal. The district court reversed, holding the bankruptcy court should not have reopened the case to interpret the plan and that the finding Bath Iron Works was not liable for any of Congoleum's liabilities was actually a release prohibited by CERCLA. *Id*. at *8-9.

The Third Circuit reversed the district court's judgment and affirmed the bankruptcy court's ruling. It held that while bankruptcy court jurisdiction diminishes upon confirmation of a plan it continues, an order seeking to interpret and enforce a confirmation order remains within the bankruptcy court's core authority to decide. The Third Circuit also rejected the argument that reopening the case was improper because the court that entered the confirmation order was a district court and that judge had died. It held that the district court was sitting as the bankruptcy court and that after it ruled on confirmation, it referred the case back to the bankruptcy court for decision. And the death of the judge was not dispositive because the administrative needs of the court frequently require reassignment of judges. *Id*. at *10-12.

The Third Circuit also rejected Occidental's argument that cause to reopen under §350 is limited to matters that impact the estate or the administration of the estate. While it acknowledged that those types of matters may provide cause to reopen a case, they are not prerequisites to reopening; if they were, reopening "for other cause" would simply be redundant of the two other provisions of §350(b), which allow reopening "to administer assets" or to "accord relief to the debtor." *Id*. at *14-16.

The Third Circuit also rejected Occidental's argument that the notice it received of the plan and the draft confirmation order was not sufficient because there was nothing that alerted it that the judicial determination would impact its interests. According to the Third Circuit, due process does not require a debtor "to go out of its way to identify all items of particular interest to each creditor, especially when the creditor is a sophisticated entity…." *Id*. at *20.

The Court also found that the finding was not a release and did not violate CERCLA and thus the finding was binding on Occidental and was not an advisory opinion because it resolved a live controversy regarding the liabilities of Bath Iron Works and the insurance carriers. *Id*. at *20-31.

In a dissent, Circuit Judge Matey stated that he would not have allowed the bankruptcy court to reopen the Congoleum chapter 11 case. He interpreted the "for other cause" clause of §350(b) to include only matters like the two proceeding specific clauses – i.e., maximizing assets for creditors and providing relief to the debtor. And in his view, allowing a bankruptcy court to reopen a case to interpret a confirmation order should be done only when the conflicting litigation is pending in state court. When another federal court is presiding over the litigation, the

dissent states that "bankruptcy exceptionalism" does not justify protecting the litigants from Article III officials. *Id*. at *32-37.

***In re Whittaker Clark & Daniels Inc.*, 2025 U.S. App. LEXIS 23439 (3d Cir. Sept. 10, 2025).**

Prior to the sale of substantially all of its assets in 2004, the debtors sold talc. The corporate shells remaining after the 2004 sale managed asbestos liabilities and agreed to indemnify the purchaser of the business from those liabilities. In a lawsuit pending in South Carolina, the court placed the debtors in receivership and gave the receiver the power to fully administer all of the debtors' assets. Thereafter the debtors filed chapter 11 petitions and the receiver moved to dismiss on the basis that the debtors lacked authority to file the petitions. The bankruptcy court denied the motion and the district court affirmed, concluding that the receivership order did not remove the authority of the debtors' boards to file for bankruptcy because the order did not displace the boards. 2025 U.S. App. LEXIS 23439, at *7-10.

In the bankruptcy case, the debtors filed a declaratory judgment action against the purchaser of its assets and the plaintiffs in pending talc lawsuits seeking a declaration that successor liability claims against the purchaser are property of the debtors' estates. The committee intervened. The bankruptcy court ruled for the debtors. The committee appealed and Third Circuit accepted the appeal for direct review and consolidated it with the appeal from the district court's order on the dismissal motion. While the appeals were pending, the debtor sought to settle the successor liability claims with the former purchaser for approximately $535 million and the bankruptcy court's decision on the settlement remained pending. *Id*. at *10-12.

On the dismissal issue, the Court held that an improperly filed petition does not affect the bankruptcy court's subject matter jurisdiction. Although an earlier Supreme Court decision couched the lack of authority to file a bankruptcy case in jurisdictional terms, *see Price v. Gurney*, 324 U.S. 100, 107 (1945), under the more recent Supreme Court precedent, a procedural bar to filing suit only has jurisdictional consequences if the statue clearly speaks in jurisdictional terms. Because §301 does not speak to the power of the court, an improperly filed bankruptcy petition does not strip the courts of subject matter jurisdiction. *Id*. at *12-15.

Under New Jersey law, which governed, the Third Circuit held that the South Carolina receiver need to move for and be granted recognition in New Jersey and seek the appointment of an ancillary receiver to displace the debtors' boards. Failing to do so, the boards retained authority to file the petitions. The Third Circuit also questioned the power of a South Carolina court to regulate the internal affairs of a foreign corporation. *Id*. at *15-25.

In the second appeal, the court held that in order for a claim held by a creditor to belong to the estate, it must have existed at the outset of the bankruptcy and it must be a general claim, meaning one "with no particularized injury arising from it." *Id*. at *28. Whether a claim is

general or personal to the creditor focuses not on the nature of the injury but on the theory of liability. *Id*. Significantly, the court rejected the argument that the debtor itself must be able to pursue the claim before bankruptcy for the claim to become property of the estate. Because the claims here depend entirely on the debtors' relationship with the successor, they are general claims. *Id*. at *29.

***In re Hertz Corp.*, 117 F.4th 109 (3d Cir. 2024).**

Hertz Corporation and its affiliates (collectively, "Hertz") operated one of the world's largest rental car companies. Hertz sought bankruptcy protection in May 2020 after its revenue declined 90% as a result of the COVID-19 pandemic. During the bankruptcy, Hertz's stock price rose 450% and Hertz was able to sell common stock to raise approximately $28 million. By confirmation, Hertz was in the position to pay all of its secured and unsecured creditors in full with over $1 billion of value available for distribution to prepetition equity holders.

Under Hertz's confirmed chapter 11 plan, all creditors received payment of (1) principal in full, (2) prepetition accrued interest at the contractual rate, and (3) postpetition, unmatured interest at the federal judgment rate in lieu of the contract rate. As all creditors were receiving payment in full and their treatment was only limited by operation of the disallowance of unmatured interest under §502(b)(2), Hertz categorized all creditors as "unimpaired" for purposes of plan confirmation, relying in part upon the Third Circuit's decision in *In re PPI Enters. (U.S.), Inc.*, 324 F.3d 197, 206-207 (3d Cir. 2003) (holding that payment in full of a landlord's unsecured rejection damages claim at the capped amount under §502(b)(6) rendered the claim unimpaired).

Certain unsecured noteholders (the "Noteholders") appealed the bankruptcy court's confirmation order to the Third Circuit, arguing that Hertz's payments to prepetition equity holders without first paying such Noteholders' unmatured interest at the contract rate (a) rendered the Noteholders' claims impaired, (b) violated the absolute priority rule, and (c) violated the solvent debtor exception.

In a 2-1 decision, the Third Circuit held that Hertz's payment of funds to equity before full payment of the Noteholders' claims for unmatured interest at the contract rate (including the applicable make-whole amount) altered the Noteholders' right to protection of the absolute priority rule under §§1124(1) and 1129(b) of the Bankruptcy Code, rendering the Noteholders' claims "impaired," despite the Noteholders' classification as "unimpaired" creditors under the Hertz plan. 117 F.4th at 132. The court relied heavily on the Supreme Court's decision in *Czyzewski v. Jevic Holding Corp*, 580 U.S. 631, 137 S.Ct. 973 (2017), to conclude that the absolute priority rule applies to all creditors regardless of whether the creditors are impaired or unimpaired under the plan. Accordingly, the Third Circuit directed Hertz to pay to the Noteholders the unmatured interest and make-whole amounts at the contract rate to render those claims "unimpaired" under the confirmed plan. *Id.* at 125.

Shortly after the Third Circuit issued its ruling, Hertz petitioned for rehearing, highlighting a potential inconsistency between the court's decision in *Hertz* (addressing

impairment of claims for unmatured interest under §502(b)(2)) and the court's prior ruling in *PPI Enterprises* (addressing impairment of landlord rejection damages claims under §502(b)(6)). The Third Circuit denied rehearing and concurrently issued an amended opinion clarifying that the holding in *PPI Enterprises* capping landlord damages in solvent debtor cases pursuant to §502(b)(6) does not apply equally to §502(b)(2).

***In re Adams*, 2025 U.S. App. LEXIS 22651 (3d Cir. Sept. 3, 2025).**

Eileen Adams and her husband filed bankruptcy petitions multiple times to stave off a foreclosure of their home. They also fought the foreclosure in state court challenging the assignment of the note to the party seeking foreclosure and arguing that the holder of the note lacked standing to foreclose. The Adams ultimately lost in state court and on appeal and the New Jersey Supreme Court declined to review the case. Ms. Adams then filed bankruptcy again and the prevailing note holder moved to lift the stay. The bankruptcy court granted the motion and the district court affirmed, citing to the *Rooker-Feldman* doctrine and concluding that the federal courts lacked jurisdiction to void a previously entered state court judgment. 2025 U.S. App. LEXIS 22651, at *1-6.

The Third Circuit affirmed but rejected the lower court's *Rooker-Feldman* analysis. According to the Third Circuit, the doctrine ensures that the only federal court with jurisdiction over final decrees or judgments of the state supreme courts is the United States Supreme Court. Thus, the doctrine applies only when "a plaintiff flouts that grant of appellate jurisdiction to the Supreme Court, not every time a litigant seeks a re-do of a state court decision." *Id*. at *7. After contrasting the *Rooker-Feldman* doctrine with issue preclusion, the Third Circuit held that the *Rooker-Feldman* doctrine is "not simply issue preclusion by another name." *Id*. at *13.

But as the Third Circuit explained, because bankruptcy is unlike ordinary civil litigation, the lines between the two concepts can be blurred because bankruptcy courts are empowered to avoid state court judgments using the avoiding powers, to modify judgments through a plan, and to discharge judgments. Accordingly, in bankruptcy *Rooker-Feldman* applies only when two additional conditions are met: (1) the claim is alleged as part of an adversary proceeding; and (2) the federal bankruptcy claim is not independent of the state court claim. *Id*. at *15-16. If the federal bankruptcy claim is an independent claim, however, that does not mean that the litigant may re-litigate an issue decided by the state court; it means that the federal court must exercise its jurisdiction and apply state law to determine whether the defendant prevails under principles of preclusion. *Id*. at 18.

In the case of Adamses, who were contesting a motion for stay relief, *Rooker-Feldman* did not apply. But the claim was precluded because the New Jersey courts had concluded that the lender's foreclosure judgment was valid final order decided on the merits. Therefore, the debtor

could not defend the lift stay motion on the basis that the foreclosure judgment was in error. Id. at *19-21.

Lest one worry about the Adamses, they bought their home back at the foreclosure, paying more than $400,000 for it. *Id*. at * 6.

Recent N.D. Illinois Cases

***In re Marla Martin*, Case No 24 B 13368 (N.D. Ill. July 18, 2025)**.

Debtor's counsel cited four cases for a proposition of law, but none of them exist as alleged in a brief that was filed with the court. While Debtor's counsel understood what he did wrong and appeared to be remorseful, the court found violations of Rule 9011 and sanctioned counsel $5,500.00. The Court also ordered counsel to register for the National Conference of Bankruptcy Judges in Chicago and attend the session titled "*Smarter Than Ever: The Potential and Perils of Artificial Intelligence*." The court also stated that "the next lawyer who does the same thing is warned that he or she will likely see a more significant penalty."

***In re Coast to Coast Leasing, LLC*, 661 B.R. 621 (Bankr. N.D. Ill. 2024).**

Following the *Purdue* decision, the bankruptcy court held it continued to have the authority to stay third-party litigation to facilitate a debtor's reorganization efforts, applying the traditional injunction factors. The court found *Purdue* inapplicable, because the temporary injunction would not release claims against the protected parties. 661 B.R. at 624.

***In re Pirron*, 2025 Bankr. Lexis 362 (Bankr. N.D. Ill. Feb. 18, 2025).**

The trustee argued that debtor should turn over a tax refund arising from a jointly filed return with his non-debtor wife. The court discussed each of the methods courts use to address this issue: the "50/50 rule", the "income rule", the "separate tax return" rule, and the "withholding rule" and found that a rigid application of any of these rules did not precisely answer the question of whether the trustee was entitled to the refund. Rejecting the idea that the question should be decided based on equitable principles, the court found that the question is one of legal entitlement: if the debtor and his wife contested their respective rights to the refund, who would be legally entitled to receive it. Because it was the wife's tax attributes and income that created the refund, the court ruled against the trustee.

***In re 301 W North Avenue, LLC*, 666 B.R. 583 (Bankr. N.D. Ill. 2025).**

Secured mortgage lender moved to dismiss the chapter 11 case of 301 W North Avenue, LLC, a Delaware limited liability company, as unauthorized where the independent director on the board of the LLC did not consent to the chapter 11 filing as required under the operating agreement. The debtor owned and operated a seven-story, mixed use high-rise building comprising sixty-nine residential units and 4,268 square feet of retail space. Debtor was a borrower under a commercial mortgage loan with a traditional covenant-package designed to make the borrower "bankruptcy remote," including an obligation to obtain the approval of an independent director before commencing a chapter 11 bankruptcy so long as the mortgage loan was outstanding.

Debtor objected to the motion to dismiss, arguing independent director approval was not required because: (1) the independent director resigned her director role and acquiesced in the bankruptcy filing; and (2) even if the independent director was still in place, the requirement for independent director approval to file bankruptcy is a restriction on bankruptcy that is void against public policy.

The bankruptcy court (J. Cleary) overruled the debtor's objections and granted the mortgage lender's motion to dismiss. As to the independent director's resignation, the court ruled the independent director had not resigned as of the petition date and, therefore, her approval of the bankruptcy filing was required under the operating agreement. *Id.* at 14-15. Moreover, the court found that the independent director did not acquiesce in or ratify the bankruptcy filing when she resigned shortly after the filing. *Id.* at 14-15. "Indeed, resigning shortly after learning about the bankruptcy case suggests [the independent director] acted consistently with repudiation" of the unauthorized filing. *Id.* at 16.

Having held that the independent directors' approval of the bankruptcy filing was required under the operating agreement, the court turned to debtor's argument that such a requirement is void against public policy. The court reviewed the operating agreement to determine whether it created a governance structure that respects the independent director's fiduciary duties and is consistent with non-bankruptcy law (i.e., Delaware). "Provisions restricting the exercise of fiduciary duties that effectively nullify or eliminate the right to file bankruptcy violate public policy and are not enforceable." *Id.* The court found that the operating agreement imposed a fiduciary duty on the independent director to consider "only the interests of the Constituent Members [(defined as the board of the debtor and its constituent members)] and the Company (including the Company's respective creditors)…." *Id.* at 20. The court also noted that "to the extent the [operating agreement] restricts or eliminates the [independent director's] fiduciary duty to [members/equity holders in the LLC], this is entirely consistent with Delaware law and cannot be construed to contravene public policy." The "key issue on which courts focus is whether a debtor's right to file for relief under the Bankruptcy Code is restricted by the independent managers provisions." The court contrasted this situation with cases where the restrictions in the limited liability company operating agreement limited the director's/special members' ability to consider the interests of the debtor—e.g., *In re Lake Michigan Beach Pottawattamie Resort LLC*, 547 B.R. 899, 913 (Bankr. N.D. Ill. 2016) (holding restrictions in operating agreement unenforceable where the provisions at issue limited the ability of the special member appointed by the lenders to consider the interests of the debtor); *In re Intervention Energy Holdings, LLC*¸553 B.R. 258, 265 (Bankr. D. Del. 2016) (holding provision in operating agreement that requires vote of golden share negotiated for by minority equity holder/lender was unenforceable because the holder of the golden share owed not duty except to itself).

***Cordova v. City of Chicago*, 668 B.R. 413 (Bankr. N.D. Ill. 2025).**

Putative class of chapter 13 plaintiffs sought certification of class of plaintiffs with claims against the City of Chicago for violations of sections 542 and 362 of the Bankruptcy Code arising from the City's refusal to turnover impounded vehicles belonging to the chapter 13 debtors after receiving notice of the bankruptcy filing. City of Chicago objected to the motion on a number of bases, including (1) a prior decision from another judge (C.J. Cox) dismissing a putative class of chapter 7 debtors related to the City of Chicago's ticket/impounding practices because, among other things, the individual debtors had not moved to reopen their bankruptcy cases; (2) sovereign immunity; (3) class certification is not available for contempt claims arising from violations of section 542; and (4) failure to satisfy the requirements for class certification under rule 23 of the Federal Rules of Civil Procedures.

Noting that the court already addressed certain of the City of Chicago's arguments when it denied the City's motion to dismiss (*see Cordova v. City of Chicago (In re Cordova)*, 635 B.R. 321 (Bankr. N.D. Ill. 2021), the court addressed each of the arguments in turn. The Court first rejected the City's argument that failure to reopen individual chapter 13 cases presented an absolute bar to proceeding on a claim against the City. *Id.* at 28-29. The court also rejected the City's assertion of sovereign immunity consistent with its prior ruling that Congress abrogated sovereign immunity for the City of Chicago's alleged violations of sections 362 and 542 of the Bankruptcy Code under section 106 of the Bankruptcy Code. *Id.* at 29-30. The court also held that class certification could be appropriate claims related to violations of section 542 because contempt is not the sole enforcement mechanism for a section 542 violation. *Id.* at 30-31. In so holding, the court drew a distinction between the violations of discharge orders (*see Bruce v. Citigroup Inc.*, 75 F.4th 297, 303 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 564 (2024) (refusing to certify a class of claims for contempt of discharge orders)) and violations of a statute, concluding the latter need not be remedied solely with reference to the court's inherent contempt power, but instead could be enforced using the court's statutory authority under section 105 of the Bankruptcy Code. *Id.* at 31-32 (citing *In re Callum*, 649 B.R. 186, 195 (Bankr. N.D. 2023)). The court's decision ended with a lengthy analysis of the class-certification requirements under section 23 of the Federal Rules of Civil Procedure and concluded that the plaintiffs had satisfied each of the requirements necessary for class certification. *Id.* at 48.