

DEBTOR/CREDITOR

R E L A T I O N S

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Release of Non-Bankrupt Parties

When a bankruptcy court confirms a Chapter 11 plan, the provisions of that plan bind all creditors. Typically, a Chapter 11 plan releases the Chapter 11 debtor from pre-existing liabilities. Recently, a federal appeals court in Richmond reiterated that a Chapter 11 plan may also release parties other than the Chapter 11 debtor (such as a guarantor), provided that strict conditions are met.

In order to approve a plan provision releasing a non-debtor third-party from liability to creditors, six conditions must be met: (1) there is an identity of interests between the debtor and the third-party; (2) the non-debtor has contributed substantial assets to the reorganization; (3) the release is essential to the reorganization; (4) the impacted class of creditors has overwhelmingly voted to accept the plan; (5) the plan provides a mechanism to pay for all or substantially all of the claims affected by the release; and (6) the plan provides an opportunity for those claimants who choose not to accept the plan to recover in full.

In the case before it, the court found that a Chapter 11 plan provision releasing officers and directors did not pass muster, because the promise of the officers and directors to continue serving was not a contribution of assets to the reorganization.

National Heritage Foundation, Inc. v. Highbourne Foundation, 760 F.3d 344 (4th Cir. 2014).

Proof of Claim Violates FDCPA

The Fair Debt Collection Practices Act (FDCPA) prohibits a creditor from threatening to sue or actually commencing a suit on a debt that is time-barred (such as by a statute of limitations). A federal district court in Indiana has decided that this prohibition applies equally to filing a proof of claim in a bankruptcy case. Thus, a creditor was sanctioned under the FDCPA when it filed a proof of claim

for a time-barred debt because “the creditor [was] trying to use the bankruptcy system to collect upon a debt, which it [could not] use other legal means to collect.”

Patrick v. PYOD, LLC, 2014 U.S. Dist. LEXIS 116092 (D. Ind. Aug. 20, 2014).

Exemption Follows Funds

Certain types of property may not be seized by a creditor to satisfy a judgment. Such property is “exempt” from the creditor’s claim.

A Maryland bankruptcy judge has determined that Maryland’s exemption for pension benefits continues to apply after the benefits have been received and deposited in the pensioner’s bank account. The Maryland statute exempts “money payable from” and “any interest in” a retirement plan. The court read this language to mean that creditors of the pensioner are not only prohibited from garnishing the pension, but are also prohibited from garnishing the pension distribution after it had been deposited into the pensioner’s bank account.

In re Massenburg, 508 B.R. 362 (Bankr. Md. 2014).

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This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation. Congress has required bankruptcy attorneys to state: “I am a debt relief agency. I help people file for bankruptcy relief under the Bankruptcy Code.” 11 U.S.C. § 528. If you wish to receive Notes on Debtor/Creditor Relations by email, go to www.jamesolsonattorney.com/newsletter.html and click on the link at the word “here”.

Prepared by James C. Olson, Attorney and Counselor at Law