



[Home](#) » [2020](#) » [December](#) » [28](#) » [2020 RECAP: CORPORATE RESTRUCTURING REVIEW \(CRR\)](#)



[Recent Case Law](#)

## 2020 RECAP: CORPORATE RESTRUCTURING REVIEW (CRR)

January 5, 2021

# INTRODUCTION

Amidst a global pandemic, there were plenty of interesting bankruptcy and restructuring events and changes that occurred in 2020. We saw new Bankruptcy Code amendments go into effect (through the Small Business Reorganization Act of 2019), a government bailout in excess of \$2.3 trillion (through the CARES Act), many life-long retailers on the brink of disappearing (and the oldest—Lord & Taylor—is disappearing), the shuttering of over 100,000 restaurants and small businesses, an ailing travel industry that claimed the largest bankruptcy of the year (Hertz), and record breaking oil & gas bankruptcies.

In case you missed a Corporate Restructuring Review (CRR) Article covering some of the issues this year, CRR would like to provide you with a summary of everything that was discussed in 2020. Have a safe and happy New Year!

## TABLE OF CONTENTS

<p><b>AVOIDANCE ACTIONS</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Fifth Circuit Restricts Double Recovery in Fraudulent Transfer Action</a></li> <li>• <a href="#">Why Avoidance Actions Are Difficult to Dismiss by A Rule 12(b)(6) Motion</a></li> </ul> <p><b>APPEALS</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Delaware District Court Denies Interlocutory Appeal on Stern Claims</a></li> </ul> <p><b>CLAIMS</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Court Denies Class Action Proof of Claim in PG&amp;E's Bankruptcy</a></li> <li>• <a href="#">Fourth Circuit Distinguishes LLC Membership Interests from Economic Interests in Security Agreement Conveyance</a></li> <li>• <a href="#">Does a Claim Objection Under Section 502(d) Survive the Transfer of the Claim by the Original Claimant</a></li> <li>• <a href="#">Ultra Petroleum Redux: Make-Whole Provisions and Solvent Debtor Exception Remain Intact in the Southern District of Texas</a></li> </ul> <p><b>CHAPTER 11 PLANS</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Mississippi Court Joins Majority of Courts Finding that Setoff Rights Survive Plan Confirmation</a></li> </ul> <p><b>FINANCING</b></p>	<p><b>OIL &amp; GAS</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Alternatives for Managing Distress in the Oil Patch</a></li> </ul> <p><b>PROFESSIONALS</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Houston Court Questions the Utility of the J. Alix Protocol in Retaining Turnaround Advisors and their Firms</a></li> </ul> <p><b>REAL ESTATE</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Bankruptcy Topics in Distressed Real Estate</a></li> </ul> <p><b>SBRA</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Small Business Reorganization Act of 2020 is Effective</a></li> <li>• <a href="#">That was Quick: California Court Holds that SBRA Can Be Applied Retroactively</a></li> </ul> <p><b>STANDING</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Creditor Denied Derivative Standing to Countersue Plaintiff in Chapter 7 Adversary Proceeding</a></li> </ul> <p><b>SUBORDINATION/INTERCREDITOR</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Delaware Court Holds Enforcement of Intercreditor Agreement Does Not Breach Duty of Good Faith and Fair Dealing</a></li> <li>• <a href="#">Seventh Circuit Holds that Reclamation Claims Are Statutorily Subordinate to Prior Liens on Inventory</a></li> </ul>
--	---

- New Mexico Court Holds that Bankrupt Entities Are Eligible for the Paycheck Protection Program
- Fifth Circuit Holds that the SBA Cannot Be Enjoined from Denying Bankrupt Entities Access to PPP Funds

#### **WARN ACT**

- Private Equity Firm and Owner Face Potential WARN Act Liability in Portfolio Companies' Chapter 7 Bankruptcies

## **Articles**

### ***Avoidance Actions***

#### **Fifth Circuit Restricts Double Recovery in Fraudulent Transfer Action**



The laws of preferential and fraudulent transfers under the Bankruptcy Code can often seem theoretical and formulaic. When certain boxes are checked, it appears, at first blush, that a pre-bankruptcy transfer can be avoided, regardless of any intent or surrounding circumstances. However, in *Whitlock v. Lowe* (In re Curtis DeBerry), Case No. 18-50335 (5th Cir. ... Continue reading

**CRR** Corporate Restructuring Review



## Why Avoidance Actions Are Difficult to Dismiss by a Rule 12(b)(6) Motion

Traditional avoidance actions under the Bankruptcy Code, i.e., preferences and fraudulent transfers, have laudable goals: (a) to provide equal treatment to creditors of an insolvent company and (b) to claw back otherwise unavailable assets for the benefit of creditors. It is no wonder then that the governing provisions of the Bankruptcy Code and applicable state ... Continue reading

**CRR** Corporate Restructuring Review

## *Appeals*

### Delaware District Court Denies Interlocutory Appeal on Stern Claims



Introduction Bankruptcy courts are often asked to determine the state law rights of debtors and claimants alike. However, the Supreme Court in 2011 held that the non-Article III courts (i.e., bankruptcy courts) generally do not hold constitutional authority to enter final judgments on state common law claims, despite being conferred with statutory authority under 11 ... Continue reading

**CRR** Corporate Restructuring Review

## *Claims*



## **Court Denies the Filing of Class Action Proof of Claim in PG&E's Bankruptcy**

Bankruptcy and class actions each establish elaborate procedures and provide a convenient forum to resolve numerous claims against one or more defendants, in an efficient manner. However, while a class action focuses on providing adequate representation to claimants with similar claims, bankruptcy focuses on enabling an insolvent company to reorganize. The two goals do not ... Continue reading

**CRR** Corporate Restructuring Review

## **Does a Claim Objection Under Section 502(d) Survive the Transfer of the Claim by the Original Claimant?**

The Southern District of New York recently reminded us in *In re Firestar Diamond, Inc., et al.*, Case No. 18-10509 (Bankr. S.D.N.Y. April 22, 2019) (SHL) [Dkt. No. 1482] that equitable principles in bankruptcy often do not match those outside of bankruptcy. Indeed, bankruptcy decisions often place emphasis on equality of treatment amongst all creditors ... Continue reading

**CRR** Corporate Restructuring Review

## **Ultra Petroleum Redux: Make-Whole Provisions and Solvent-Debtor Exception Remain Intact in the Southern District of Texas**

Introduction Since the March 2019 CRR article on the Ultra Petroleum case, entitled Fifth Circuit Holds that Chapter 11 Plan Does Not “Impair” Claimants by Denying Make-Whole Rights and Contractual Interest, a fair amount of activity has occurred in the case. While the Fifth Circuit’s original opinion, *Ultra Petroleum Corp. v. Ad Hoc Comm. of Unsecured ...* Continue reading

**CRR** Corporate Restructuring Review

## ***Chapter 11 Plans***

### **Mississippi Court Joins Majority of Courts Finding that Setoff Rights Survive Plan Confirmation**

Setoff is a right that allows a creditor to offset a prepetition debt owed to a debtor with its prepetition claim against the debtor. See *In re Luongo*, 259 F.3d 323, 334 (5th Cir. 2001). This remedy is aimed at preventing the inequitable and inefficient result that occurs when a creditor is forced to pay ... Continue reading

**CRR** Corporate Restructuring Review

## ***Financing***

### **New Mexico Court Holds that Bankrupt Entities are Eligible for the Paycheck Protection Program**

Joining three other bankruptcy courts, Judge Thuma of the District of New Mexico recently held that the rules issued by the Small Business Administration (“SBA”) that restrict bankrupt entities from participating in the Paycheck Protection Program (“PPP”) violated the Coronavirus Aid, Relief, and Economic Security Act, H.R. 748, P.L. 115-136 (the “CARES Act”), as well ... Continue reading

**CRR** Corporate Restructuring Review

## **Fifth Circuit Holds that the SBA Cannot Be Enjoined from Denying Bankrupt Entities Access to PPP Funds**

In a earlier article, entitled "New Mexico Court Holds that Bankrupt Entities are Eligible for the Paycheck Protection Program," we described how some bankruptcy courts confronted with exigent circumstances (including several within the 1st, 5th and 10th Circuits) have granted injunctive relief to debtors in bankruptcy who have been denied loans under Payment Protection Program ... Continue reading

**CRR** Corporate Restructuring Review

## ***Oil & Gas***

### **Alternatives for Managing Distress in the Oil Patch**

Introduction According to the U.S. Energy Information Administration (EIA), the United States (U.S.) regular gasoline retail price as of the Monday before Labor Day fell to \$2.22 per gallon this year, the lowest level for this time of year since 2004. The EIA concludes that U.S. gasoline prices are relatively low because of continued low ... Continue reading

**CRR** Corporate Restructuring Review

## ***Professionals***

## **Houston Court Questions the Utility of the J. Alix Protocol in Retaining Turnaround Advisors and their Firms**

In *In re McDermott International, Inc., et al.*, Case No. 20-30336 (Bankr. S.D. Tex. May 20, 2020) [Dkt. No. 916], Judge Jones called into question the usefulness of the J. Alix Protocol in retaining turnaround advisors and their firms during a bankruptcy case. According to Judge Jones: While innovative at its inception, the Alix Protocol ... Continue reading

**CRR** Corporate Restructuring Review

***Real Estate***

***SBRA***



## **Bankruptcy Topics in Distressed Real Estate**

Introduction Bankruptcy cases involving commercial real estate present a multitude of problems. Those problems typically arise in the context of voluntary cases filed under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and involve a dispute between the business debtor and its mortgage lender. As such, this Paper focuses primarily on chapter 11 ... Continue reading

**CRR** Corporate Restructuring Review

## **Small Business Reorganization Act of 2019 (SBRA) is Effective**

The Small Business Reorganization Act of 2019 ("SBRA") is in effect as of yesterday, February 19, 2020. The SBRA was enacted to provide smaller business debtors with a more streamlined path to restructuring their debts. Below are some highlights of the new law. Absolute-Priority Rule The SBRA exists today, in large part, because small businesses ... Continue reading

**CRR** Corporate Restructuring Review

## **That was Quick: California Court Holds that the SBRA can be Applied Retroactively**

The Small Business Reorganization Act of 2019 ("SBRA") became effective on February 19, 2020, after being enacted by Congress at blazing speed. Indeed, the legislation was first introduced into the House of Representatives on June 18, 2019, was received by the Senate on July 24, 2019 and was signed by the President on August 23, ... Continue reading

**CRR** Corporate Restructuring Review

## ***Standing***

### **Creditor Denied Derivative Standing to Countersue Plaintiff in Chapter 7 Adversary Proceeding**

Creditor denied derivative standing in chapter 7 case.

**CRR** Corporate Restructuring Review

## ***Subordination/Intercreditor***

## **Delaware Court Holds Enforcement of Intercreditor Agreement Does not Breach Duty of Good Faith and Fair Dealing**

In *LNV Corporation v. Ad Hoc Group of Second Lien Creditors (In re La Paloma Generating Company, LLC)*, Adv. Pro. No 19-50110 (JTD) (D. Del. January 13, 2020), a Delaware bankruptcy court recently held that actions taken by a senior secured creditor to enforce its rights under an intercreditor agreement did not constitute a breach of ... Continue reading

**CRR** Corporate Restructuring Review

## **Seventh Circuit Holds that Reclamation Claims are Statutorily Subordinate to Prior Floating Liens on Inventory**

In *Whirlpool Corporation v. Wells Fargo Bank, N.A., et al. (In re hhgregg, Inc.)*, No. 18-3363 (7th Cir. Feb. 11, 2020), the Seventh Circuit Court of Appeals recently held that the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") created a federal priority rule rendering a secured lender's first-priority, floating liens on inventory ... Continue reading

**CRR** Corporate Restructuring Review

***Warn Act***

## Private Equity Firm and Owner Face Potential WARN Act Liability in Portfolio Companies' Chapter 7 Bankruptcies

In *Shameeka Ien v. TransCare Corp., et al. (In re TransCare Corp.)*, Case No. 16-10407, Adv. P. No. 16-01033 (Bankr. S.D.N.Y. May 7, 2020) [D.I. 157], the Bankruptcy Court for the Southern District of New York recently refused to dismiss WARN Act claims against Patriarch Partners, LLC, private equity firm ("PE Firm"), and its owner, ... Continue reading

**CRR** Corporate Restructuring Review

Share this:



### H. Joseph Acosta, Esq.

Partner at Dorsey & Whitney LLP

Website <https://www.dorsey.com/people/a/acosta-joe>

◀ Bankruptcy Topics in Distressed Real Estate

New Mexico Court Reminds that Prosecuting Prepetit...

Related Posts

Author(s)



**H. Joseph Acosta, Esq.**

Partner at Dorsey

## Personal Links

Dorsey

[Linkedin Profile](#)

[View Full Profile →](#)

### Contact Information

Dorsey & Whitney LLP  
300 Crescent Court, Ste. 400  
Dallas, Texas 75201  
Tel.: 214.981.9970  
[acosta.joseph@dorsey.com](mailto:acosta.joseph@dorsey.com)

### Categories

Select Category



### Links

- [American Bankruptcy Institute](#)
- [Bankruptcy Code and Rules](#)
- [Interactive Bankruptcy Code \(ABI\)](#)
- [Pacer](#)

### Follow Blog

Enter your email to follow CRR.

Email Address

Follow

### You May Missed



