JENNER&BLOCK

Recent Developments in Bankruptcy Law, January 2022

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1. AUTOMATIC STAY

1.1 Covered Activities

1.1.a ***Taggart v. Lorenzen* standard applies to stay violation in a corporate case.** The debtor sold assets prepetition. After the petition date, the buyer demanded payment of certain working capital adjustments provided under the purchase agreement. The automatic stay prohibits any act to collect or recover a prepetition claim. Section 362(k) allows an individual debtor to recover damages for willful violation of the stay. Under Sixth Circuit law, it does not protect non-individual debtors. Therefore, the remedy for a stay violation in a non-individual debtor case is a civil contempt citation under section 105(a). *Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019), applied the general standards for a civil contempt citation to a violation of the discharge injunction, permitting a contempt finding only if the actor had no objectively reasonable basis on which to assert the discharge injunction did not apply. But in dicta, the decision distinguished automatic stay violations in individual debtor cases, suggesting a strict liability standard might be appropriate. Because section 362(k) does not apply in non-individual debtor cases, the distinction does not apply; the general civil contempt standards apply. In this case, compliance with the purchase agreement regarding purchase price adjustments would not violate the stay, but the belated demand for payment did. However, the seller had an objectively reasonable basis to conclude that the action did not violate the stay. Therefore, the court denies the request for sanctions. *Harker v. Eastport Holdings, LLC (In re GYPC, Inc.)*, ___ B.R. ___ (Bankr. S.D. Ohio Nov. 22, 2021).

1.1.b **Refusal to quash a prepetition garnishment writ does not violate the stay as long as the creditor stays all proceedings.** Before bankruptcy, the creditor obtained a writ of garnishment and garnished the debtor's bank account. The bank froze the account, but before it turned over any funds to the creditor, the debtor filed a bankruptcy petition. The creditor requested the state court stay the proceedings and advised the court that it had no objection to the bank's release of the funds, but it would not quash its writ or direct the bank to release the funds. The court stayed the proceedings, granted the debtor's request to quash the writ, and denied the debtor's request for a return of the funds. However, the bank unfroze the account a few days later. The automatic stay prohibits (1) a creditor from commencing or continuing an action to collect a prepetition debt, (2) enforcement against the debtor of a prepetition judgment, (3) any act to obtain possession of property of the estate or from the estate or to exercise control over such property, and (6) any act to collect or recover a prepetition claim. *City of Chicago v. Fulton*, 141 S. Ct. 585 (2021), held that section 362 requires a creditor holding property of the debtor or the estate to maintain the status quo but does not require turnover of the property, which is governed instead by section 542. Refusing to quash the garnishment was not the continuation of a prepetition action, nor is it an attempt to enforce a prepetition judgment, as long as the creditor stayed all proceedings in the action. Refusal to quash the writ was also not an act to obtain property or an act to collect the debt. Here, the creditor did nothing to change its position, and the debtor's account was unfrozen. Therefore, the creditor did not violate the stay. *Stuart v. City of Scottsdale (In re Stuart)*, 632 B.R. 531 (9th Cir. B.A.P. 2021).

1.2 Effect of Stay

1.3 Remedies

2. AVOIDING POWERS

2.1 Fraudulent Transfers

2.1.a **Tax foreclosure sale for the amount of taxes owing is subject to attack as a fraudulent transfer.** The debtor defaulted on property taxes. In accordance with state law, the local taxing authority foreclosed on the property by bidding in the amount of the taxes, which was about 10%

of the fair market value of the property. The debtor filed a chapter 13 case and brought a constructive fraudulent transfer action under section 548(a)(1)(B) to avoid the foreclosure sale. Section 548(a)(1)(B) permits a trustee (or a chapter 13 debtor) to avoid a transfer of property of the debtor made for less than reasonably equivalent value within two years before the petition date while the debtor was insolvent. In *BFP v. Res. Trust Corp.*, 511 U.S. 531 (1994), the Supreme Court held that a regularly conducted, non-collusive mortgage foreclosure sale resulted in reasonably equivalent value and so was not subject to avoidance as a fraudulent transfer. However, the Court did not address tax foreclosures. In this case, the ability of the taxing authority to purchase the property without an auction for a price that had no relation to the property's value gave rise to potential fraudulent transfer liability. *Lowry v. Southfield Neighborhood Revitalization Initiative (In re Lowry)*, ___ F.4th ___, 2021 U.S. App. LEXIS 13042 (6th Cir. Dec. 27, 2021).

2.2 Preferences

2.3 Postpetition Transfers

2.4 Setoff

2.5 Statutory Liens

2.5.a **Section 108(c) does not toll the period for giving notice under section 546(b).** A creditor recorded a notice of mechanics lien prepetition. State law required that the creditor file an action to enforce the lien within 90 days after recordation. The debtor filed its petition during the 90-day period. The creditor gave notice under section 546(b) more than 90 days after the recordation date. Section 546(b) provides that in lieu of seizing property or commencing an action required under nonbankruptcy law to continue or maintain perfection of a lien, the creditor may continue or maintain the lien "by giving notice within the time fixed by such law for such seizure or such commencement," and giving such notice does not violate the automatic stay. Section 108(c) tolls the limitations period for a creditor to commence an action until the later of the end of such period or 30 days after notice of termination of the automatic stay. Because section 546(b) gives an alternative—giving notice—that does not violate the stay, section 108(c) does not toll the period for giving notice. Therefore, the creditor's notice was late, and his lien terminated. *Philmont Mgmt., Inc. v. 450 Western Ave., LLC (In re 450 Western Ave., LLC)*, 633 B.R. 894 (9th Cir. B.A.P. 2021).

2.6 Strong-arm Power

2.7 Recovery

3. BANKRUPTCY RULES

4. CASE COMMENCEMENT AND ELIGIBILITY

4.1 Eligibility

4.1.a **Shareholder approval requirement for a bankruptcy petition is not contrary to public policy.** The LLC debtor borrowed from an investor, who also acquired, for a separate substantial price, a preferred equity interest. The debtor's LLC agreement was amended to provide that the debtor could not file a bankruptcy petition without the affirmative vote of a majority of the preferred units. Applicable nonbankruptcy law determines who has authority to file a bankruptcy petition. A court should enforce any provision in the debtor's organic documents that specifies who has the authority. Such a provision might be contrary to public policy if it provided only a "golden share" to a creditor to prevent a filing. Here, however, the creditor is also a substantial equity holder, who, as a non-managing member of an LLC, does not have fiduciary duties to the LLC or its other members and thus may protect its rights by withholding consent to the bankruptcy filing. *In re 3P Hightstown, LLC*, 631 B.R. 205 (Bankr. D.N.J. 2021).

4.1.b **Nonoperating debtor is not eligible for subchapter V.** The debtor was a physician who owned a medical practice that had closed some years before the petition date. She filed a chapter 11 case and elected to proceed under subchapter V. To do so, she had to be "engaged in business or commercial activity." "Engaged in," in the present tense, has a temporal element and requires the debtor be engaged in business or commercial activity as of the petition date, not at some earlier time. Such a reading comports with the statute's purpose to assist small businesses to reorganize as going concerns. Therefore, the debtor does not qualify for subchapter V. *Nat'l Loan Invs., L.P. v. Rickerson (In re Rickerson)*, ___ B.R. ___, 2021 Bankr. LEXIS 3403 (Bankr. W.D. Pa. Dec. 14, 2021).

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6. CLAIMS AND PRIORITIES

6.1 Claims

6.1.a **The court must evaluate factually whether a make-whole is the economic equivalent of interest; if it is, it is subject to disallowance as postpetition interest, which must be paid at the federal judgment rate in a solvent case.** The debtor was solvent and proposed a plan that provided substantial recovery for equity. For its unsecured noteholders, it proposed the class be unimpaired by payment in cash in full on the effective date in the principal amount plus interest accrued but unpaid as of the petition date, without payment of a make-whole or postpetition interest. The notes' redemption clause, not its acceleration clause, determines whether the holders are entitled to a make-whole. If the indenture requires it, then it may be allowed only if it is not the economic equivalent of interest, based on the make-whole's terms and their relationship to interest on the notes, which is a factual question. Section 502(b)(2) disallows postpetition interest, even in a solvent debtor case; a plan's treatment of the claim as disallowed under section 502(b) does not constitute an impairment. Section 1124(3)'s repeal did not require the payment of postpetition interest at the contract rate to unimpaired classes. But the solvent debtor exception survived to a limited extent through 1129(a)(7) and 726(a)(5) for an impaired class of unsecured claims. Those sections require payment of postpetition interest at the federal judgment rate. There is no reason to treat impaired and unimpaired classes differently, so the federal judgment rate applies to unimpaired classes in a solvent debtor case. *Wells Fargo Bank, N.A. v. The Hertz Corp. (In re The Hertz Corp.)*, ___ B.R. ___, 2021 Bankr. LEXIS 3491 (Bankr. D. Del. Dec. 22, 2021).

6.2 Priorities

7. CRIMES

8. DISCHARGE

8.1 General

8.2 Third-Party Releases

8.2.a **Only the district court has constitutional authority to approve nonconsensual third-party releases under a plan.** The debtor and its shareholders, directors, and officers contributed substantially to the nation's opioid epidemic. It proposed a plan under which the individuals, who did not file bankruptcy petitions, would have contributed $4.4 billion and received broad nonconsensual releases from any liability related to the marketing, sale, and distribution of opioids, including direct claims against them by creditors of the debtor and including claims for fraud and claims of governmental units for nonpecuniary loss penalties. Under section 157 of title 28, the district court may refer proceedings arising under title 11 or arising in or related to a bankruptcy case to the bankruptcy court. But Article III prohibits a bankruptcy court from issuing a final order in litigation that is not a constitutionally core proceeding (arising under or arising in) without the parties' consent. A nondebtor's claim against another nondebtor is not a core proceeding. An order providing for a release of such a claim finally determines the claim. Without consent, a bankruptcy court does not have constitutional authority to determine such a claim, even if such determination occurs without adjudication of the claim. Therefore, a third-party release under a plan may be approved only by the district court, even if the approval occurs within a core proceeding such as plan confirmation. *In re Purdue Pharma, L.P.*, ___ B.R. ___ (S.D.N.Y. Dec. 12, 2021).

8.2.b **A bankruptcy court has subject matter jurisdiction to approve third-party releases if the released claims are related to the bankruptcy case.** The debtor and its shareholders, directors, and officers contributed substantially to the nation's opioid epidemic. It proposed a plan under which the individuals, who did not file bankruptcy petitions, would have contributed $4.4 billion and received nonconsensual broad releases from any liability related to the marketing, sale, and distribution of opioids, including direct claims against them by creditors of the debtor and including claims for fraud and claims of governmental units for nonpecuniary loss penalties. Section 1334(b) of title 28 gives the district court jurisdiction over proceedings related to a bankruptcy case. Related-to jurisdiction reaches any proceeding that could have any conceivable effect on the estate. A release of third-party claims that, unless released, could result in reimbursement or contribution claims against the estate, that could cause the estate to incur material fees or expenses in defending the claims, or that could result in depletion of estate assets are sufficiently related to the bankruptcy case to be within the court's related-to jurisdiction. However, the third party's contribution of funds to the reorganization, standing alone, does not create related-to jurisdiction. Here, at a minimum, litigation of the claims could have generated indemnification claims and would have required the estate to incur substantial expenses in addressing the claims. Therefore, proceedings on the claims are related to the case, whether or not the individuals contributed funding for the plan. *In re Purdue Pharma, L.P.*, ___ B.R. ___ (S.D.N.Y. Dec. 12, 2021).

8.2.c **The Code does not authorize third-party releases under a plan.** The debtor and its shareholders, directors, and officers contributed substantially to the nation's opioid epidemic. It proposed a plan under which the individuals, who did not file bankruptcy petitions, would have contributed $4.4 billion and received nonconsensual broad releases from any liability related to the marketing, sale, and distribution of opioids, including direct claims against them by creditors of the debtor and including claims for fraud and claims of governmental units for nonpecuniary loss penalties. Section 1123(a)(5) permits a plan to contain provisions providing for the plan's implementation relating to the use or disposition of property of the estate. Because it deals only with property of the estate, it does not authorize a third-party release simply because the releases might generate plan funding from the releasees. Section 1123(a)(6) permits a plan to include any provision not inconsistent with the other terms of the Code, and section 105(a) permits the court to issue any order necessary to carry out the provisions of the Code. These provisions could authorize a third-party release only if the release is not inconsistent with or necessary to carry out other provisions of the Code. No other provision of the Code authorizes a third-party release. Nor does the Code's silence on third-party releases imply any authority, and there is no residual authority on which the court may rely. As a comprehensive system for adjusting debtor-creditor relations, the Code would have addressed the issue if it were permitted. Moreover, section 523(a) excepts from discharge certain claims against an individual debtor, including claims for fraud and for certain governmental penalties. A third-party release that includes claims that would be nondischargeable is inconsistent with the Code. Section 524(e) provides that a discharge does not release a nondebtor's liability on a claim against the debtor. Because the claims here are direct claims against the third parties, not claims on which the debtor is liable, section 524(e) does not apply. For all these reasons, the court rules the plan's third-party release provisions are impermissible. *In re Purdue Pharma, L.P.*, ___ B.R. ___ (S.D.N.Y. Dec. 12, 2021).

8.2.d **A bankruptcy court does not have authority to grant third-party releases without the claimants' consent to the bankruptcy court's adjudication of the claims.** The debtor sold its assets and proposed a liquidation plan that provided broad third-party releases, particularly securities class action claims against directors and officers. The disclosure statement and ballots made clear that non-voting equity holders, who received nothing under the plan, and voting creditors could opt out of the releases. In providing notice of the releases and the opt-out right, the court focused only the securities class action litigation, not on all the other possible claims that the broad releases might cover and did not provide notice to those other potential claimants. The bankruptcy court does not have constitutional authority to hear and determine non-core claims without the parties' consent. Although a bankruptcy court has *in rem* jurisdiction over property of the estate, third-party claims are not property of the estate, and the bankruptcy court may not determine them. For these reasons, it does not have constitutional authority to determine the claims by releasing them without the parties' consent to its authority. An opportunity for third-party claimants to opt-out in plan voting does not constitute sufficient consent to the court's authority or to the releases to permit the bankruptcy court to determine the claims, because consent may not generally be based on inaction. Therefore, the bankruptcy court should have issued a report and recommendation to the district court to consider the third-party releases. *Patterson v. Mahwah Bergen Retail Group, Inc.* ___ B.R. ___, 2020 U.S. Dist. LEXIS 7431 (E.D. Va. Jan. 13, 2022).

8.2.e **Court disapproved third-party releases under liquidating plan.** The debtor sold its assets and proposed a liquidation plan that provided broad third-party releases, particularly securities class action claims against directors and officers. The disclosure statement and ballots made clear that non-voting equity holders, who received nothing under the plan, and voting creditors could opt out of the releases. In providing notice of the releases and the opt-out right, the court focused only the securities class action litigation, not on all the other possible claims that the broad releases might cover, and did not provide notice to those other potential claimants. In the Fourth Circuit, approval of third-party releases requires an identity of interests between the releasee and the debtor, contribution of substantial assets, importance to the reorganization, overwhelming plan acceptance, payment of substantially all of the classes affected by the release, an opportunity for non-settling claimants to recover in full and specific factual findings supporting the foregoing. Satisfaction of these factors means the releases are integral to the plan. The bankruptcy court did not make adequate findings on these factors. Moreover, a liquidating plan under which the releasees do not make any contribution does not satisfy the test. Therefore, the court disapproves the releases and, under the plan's severability provision, severs them from the plan. *Patterson v. Mahwah Bergen Retail Group, Inc.* ___ B.R. ___, 2020 U.S. Dist. LEXIS 7431 (E.D. Va. Jan. 13, 2022).

8.2.f **Actual notice of a third-party release satisfies due process, despite lack of formal notice**. The creditor was injured by a valet driver after dropping off his car at a hotel. He sued the valet company, the hotel owner, and several affiliates of the hotel, including the hotel operator, in state court. The hotel owner filed a chapter 11 case. Its plan provided for a third-party release and related injunction in favor of the affiliates, all of which it had indemnified under the various agreements relating to the hotel's operation. The creditor received a copy of the plan and disclosure statement, which described the releases, but did not receive the notice required under Bankruptcy Rule 2002(c)(3), which requires specific notice of any injunction provided for in the plan. The creditor did not object to the releases. Due process requires that a creditor receive notice. Although the Rules require a specific form of notice, the Rules are only procedural, and actual notice satisfies due process. Therefore, the release and injunction bind the creditor. *Jackson v. Le Centre on Fourth, LLC (In re Le Centre on Fourth, LLC)*, ___ F.4th ___, 2021 U.S. App. LEXIS 33845 (11th Cir. Nov. 15, 2021).

8.2.g **Standard to approve litigation settlement bar order differs from standard to approve chapter 11 plan third-party release.** The chapter 11 creditors committee settled claims against the debtor's former officers and directors. The court approved the settlement, which included a bar order that released them from any claims directly or indirectly related to the bankruptcy. A bar order in ordinary litigation, whether or not in the bankruptcy court, differs from a third-party release under a chapter 11 plan. A court may approve a bar order if it is integral to the settlement agreement, that is, if the settling defendants would not have settled without it. By contrast, a court may approve a third-party release under a plan only if it is necessary for the reorganized entity to succeed. Here, because the agreement settled ordinary litigation claims and the bar order was necessary to the settlement, the court properly approved it. *Markland v. David (In re Centro Group, LLC)*, ___ Fed. App'x ___, 2021 U.S. App. LEXIS 32962 (11th Cir. Nov. 5, 2021).

8.3 Environmental and Mass Tort Liabilities

9. EXECUTORY CONTRACTS

9.1.a **Rejection relieves the estate from an arbitration agreement.** The debtor's limited partnership agreement provided for arbitration of disputes. The debtor in possession rejected the agreement. Later, it sued some of the limited partners, who demanded arbitration of the claims. Rejection of an executory contract relieves the estate from any specific performance obligation under the contract. An arbitration agreement within a contract is really a separate contract, not merely an enforcement mechanism in the case of a breach. Therefore, rejection relieves the estate from the obligation to arbitrate. *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Cap. Mgmt., L.P.)*, ___ B.R. ___, 2021 Bankr. LEXIS 3314 (Bankr. N.D. Tex. Dec. 3, 2021).

10. INDIVIDUAL DEBTORS

10.1 Chapter 13

10.2 Dischargeability

10.3 Exemptions

10.4 Reaffirmations and Redemption

11. JURISDICTION AND POWERS OF THE COURT

11.1 Jurisdiction

11.2 Sanctions

11.3 Appeals

11.3.a **U.S. trustee has standing to appeal plan confirmation.** The debtor sold its assets and proposed a liquidation plan that provided broad third-party releases, particularly securities class action claims against directors and officers. The disclosure statement and ballots made clear that non-voting equity holders, who received nothing under the plan, and voting creditors could opt out of the releases. The U.S. trustee and the securities litigation lead plaintiff, who had opted out of the releases, objected to the releases. Because of the U.S. trustee's supervisory role and the express grant in section 307, he has standing to appeal plan confirmation. But the securities action lead plaintiff does not, because the releases do not affect him as an opt-out creditor. *Patterson v. Mahwah Bergen Retail Group, Inc.* ___ B.R. ___, 2020 U.S. Dist. LEXIS 7431 (E.D. Va. Jan. 13, 2022).

11.3.b **Section 363(m) prohibits relief on appeal even from an allegedly illegal sale authorization.** The individual debtors moved to approve a credit bid sale to its secured lender, which had rolled up its prepetition loan with a financing under section 364. After the court approved the sale, the debtors developed arguments why the sale should not have been approved. They moved to amend the sale order and stay the sale. The bankruptcy court denied the motion, and the debtors appealed. Section 363(m) prohibits the reversal or modification on appeal of an order authorizing a sale to a good faith buyer unless the authorization has been stayed pending appeal. Section 363(m) applies to any sale authorized by the court, not only sales authorized by the statute. Therefore, any argument that the roll up invalidated the creditor's postpetition lien, undermining the authority for a credit bid, did not affect section 363(m)'s application. Therefore, the appeal is moot. A concurrence questions whether the decision is consistent with a prior circuit precedent that permitted an appeal from an order authorizing a postpetition cross-collateralization on the ground that the Code does not authorize cross-collateralization. *Reynolds v. Servisfirst Bank (In re Stanford)*, ___ F.4th ___, 2021 U.S. App. LEXIS 32503 (11th Cir. Nov. 1, 2021).

11.4 Sovereign Immunity

12. PROPERTY OF THE ESTATE

12.1 Property of the Estate

12.2 Turnover

12.3 Sales

13. TRUSTEES, COMMITTEES, AND PROFESSIONALS

13.1 Trustees

13.1.a **Representation of creditor against debtor's shareholder in unrelated case disqualifies subchapter V trustee as not disinterested.** The subchapter V debtor's equity holder was a holding company that was jointly owned by a husband and wife. The husband was a director of another company that was a debtor in an unrelated bankruptcy case. The subchapter V trustee represented a creditor in the other bankruptcy case in litigation against the husband for matters related to the other case. The trustee moved to dismiss the case as a bad faith filing and opposed plan confirmation. Section 1183 requires a subchapter V trustee to be disinterested, that is, not to have "an interest materially adverse to the interest of … equity security holders." The creditor in the other case has an interest materially adverse to the interest of the husband. For these purposes, an attorney assumes the interest of the client. Although the husband owns the equity interest in the debtor indirectly, through a holding company, the concern is the holder's interest, not the form of ownership. Disinterestedness is especially important in a subchapter V case, because subchapter V requires the trustee to actively facilitate a plan and, in effect, to act more as a mediator, who is not adverse to the debtor or its equity holders. Thus, the disinterestedness requirement must be enforced strictly. The trustee here is not disinterested, and his appointment and compensation are denied. *In re 218 Jackson LLC*, 631 B.R. 937 (Bankr. M.D. Fla. 2021).

13.2 Attorneys

13.2.a **Court may authorize postpetition retainer for counsel.** After bankruptcy, the debtor in possession sought to substitute new counsel. The application provided for counsel to receive a retainer from the estate, to be held in counsel's trust account until the court allowed fees that could be collected from the retainer. Section 327 authorizes the debtor in possession to employ counsel, and section 328(a) authorizes the employment "on any reasonable basis, including a retainer." Therefore, the Code authorizes the application, which the court grants. *In re Golden Fleece Beverages, Inc.*, ___ B.R. ___, 2021 Bankr. LEXIS 3319 (Bankr. N.D. Ill. Nov. 24, 2021).

13.2.b **Court cautions attorney on plagiarism.** Debtor's counsel in a subchapter V case included with the schedules and statement of affairs a 10-page disclaimer, which counsel copied from various mega-case filings. The disclaimer denied any obligation to update the documents or to notify creditors of any changes, contrary to the requirements of the Bankruptcy Rules. The court takes counsel to task for such a broad disclaimer. The court goes further, challenging the ethics of an attorney who copies work written by another attorney in another case. Ultimately, the court acknowledges that attorneys (and judges too) often copy from prior documents, but admonishes attorneys to "copy smart," that is, to make sure the facts match up and the law is correct and hasn't changed since the original text was written. *In re Summit Fin., Inc.*, ___ B.R. ___, 2021 Bankr. LEXIS 3077 (Bankr. C.D. Cal. Nov. 5, 2021).

13.2.c **Court approves employment retroactively to date before the employment application was filed.** The trustee employed an accountant effective January 28, 9 days after the petition date, but did not file the application to approve the employment until February 17. *Roman Catholic Archdiocese v. Acevedo Feliciano*, 140 S. Ct. 696 (2020), prohibits a federal court from issuing a *nunc pro tunc* order except to correct the record to reflect what actually happened. Section 327 requires court approval of the employment of a professional, but it does not have a temporal limitation, as other sections, which require approval "after notice and a hearing," do. Applying *Acevedo* to an employment application would add a timing requirement that Congress did not impose. Moreover, Rule 9013 imposes a delay on approval because it requires a written application and a hearing. If *Acevedo* did not permit approval after a professional started work, the trustee would be severely hampered in carrying out duties. Moreover, this case differs from those where the employment application was delayed for months or years, often until the time of the final fee application. Since section 327 permits employment approval after actual employment, the court approves the employment effective as of January 28. *In re Hunanyan*, 631 B.R. 904 (Bankr. C.D. Cal. 2021).

13.3 Committees

13.4 Other Professionals

13.4.a **Disappointed professional has standing to assert RICO claim against competitor for noncompliance with disclosure obligations.** In at least 13 cases in which the financial adviser was employed at the expense of the estate, it did not disclose all its connections, as required by Rule 2014. A competitor sued, claiming a RICO violation and a pay-to-play scheme. The competitor claimed it was injured by not being able to pitch for positions in a number of the cases and that the defendant adviser received employment in cases in which full disclosure would have disqualified it as not disinterested, taking opportunities away from the competitor. RICO provides a private right of action to anyone injured by a violation but requires an adequate showing that the violation caused the injury. In determining the complaint adequately alleged cause, the court of appeals stresses the importance of insuring the integrity of the bankruptcy system. Finding that the complaint adequately alleged that the financial adviser's conduct corrupted the employment process, the court determines that unsuccessful participants in the process are directly harmed, as are litigants who are entitled to a level playing field. The fraud alleged requires the courts' unique supervisory responsibilities. Therefore, the claim may proceed. *Alix v. McKinsey & Co., Inc.*, ___ F.4th ___, 2022 U.S. App. LEXIS 1596 (2d Cir. Jan 19, 2022).

13.5 United States Trustee

14. TAXES

15. CHAPTER 15—CROSS-BORDER INSOLVENCIES