HOT TOPICS IN BANKRUPTCY CASE LAW

PRESENTED BY:

Kirk Burkley

Managing Partner – WH Burkley, LLP

kburkley@bernsteinlaw.com

Hon. David H. Leigh

US Bankruptcy Court, District of Utah

WH | BURKLEY LLP

ATTORNEYS AT LAW

UNITED STATES V. MILLER, 604 U.S. 518 (2025)

- **Issue:**
  - Whether §106(a) of the Bankruptcy Code abrogates the federal government's sovereign immunity not only for the trustee's federal avoidance action under §544(b), but also for the underlying state-law fraudulent-transfer claim that supplies the "applicable law" for that action
- **Facts:**
  - All Resort Group, a Utah-based transportation company, became insolvent. In 2014, while insolvent, two shareholders used approximately $145,000 of company funds to pay their personal federal income tax liabilities to the IRS. Three years later, the company filed for bankruptcy, and a trustee was appointed. The trustee sued the United States under §544(b) of the Bankruptcy Code, relying on Utah's fraudulent-transfer statute as the applicable law to avoid and recover the tax payments.

UNITED STATES V. MILLER, 604 U.S. 518 (2025)

- **Holding:**
  - The Supreme Court held that §106(a) abrogates sovereign immunity only with respect to the federal cause of action created by §544(b), not the underlying state-law claims that supply the "applicable law." Because sovereign immunity would bar a creditor from suing the federal government under Utah fraudulent-transfer law outside of bankruptcy, the trustee could not satisfy §544(b)'s actual-creditor requirement. The Court reasoned that §106(a) is purely jurisdictional and does not create or expand substantive rights, nor does it alter the elements of §544(b); therefore, it does not waive immunity for state-law causes of action nested within a §544(b) claim.
- **Effect:**
  - The Court significantly curtailed bankruptcy trustees' avoidance powers against the government, ruling that the federal government's sovereign immunity is not waived for state-law-based fraudulent transfer claims brought by a bankruptcy trustee.

HARRINGTON V. PURDUE PHARMA L.P., 603 U.S. 204 (2024)

- **Issue:**
  - Whether the Bankruptcy Code authorizes a court to approve, as part of a plan of reorganization under Chapter 11, a release that extinguishes claims held by non-debtors against non-debtor third parties, without the claimants' consent.
- **Facts:**
  - Purdue pharma filed for Chapter 11 amid extensive litigation over its role in an opioid epidemic. Purdue was owned by the Sackler family, who did not file for bankruptcy. Prior to the bankruptcy, the Sackler family withdrew $11 Billion (about 75% of total assets) from Purdue. In reorganization plan, Sacklers agreed to contribute about $4.3 Billion into the estate, in exchange for a release of all present and future claims (including claims of negligence, fraud, willful misconduct, etc). The bankruptcy court confirmed the plan, but the district court vacated it. Later, Second Circuit reversed and approved the plan. Trustee sought Supreme Court review.

HARRINGTON V. PURDUE PHARMA L.P., 603 U.S. 204 (2024)

- **Holding:**
  - Bankruptcy Court does not authorize nonconsensual third-party releases that extinguish claims against non-debtors as part of a chapter 11 plan. Bankruptcy Court lack authority to grant such releases absent consent of affected parties.
- **Effect:**
  - The decision prohibits nonconsensual third-party releases in Chapter 11 plans

IN RE PAT MCGRATH COSMETICS LLC, 26-10772 (BANKR. S.D. FLA. APRIL 21, 2026)

- **Issue:**
  - Whether a Chapter 11 plan may include third-party releases that bind creditors who do not affirmatively consent, specifically when those creditors are given notice and an opportunity to opt out, in light of the Supreme Court's restrictions on nonconsensual releases in Harrington v. Purdue Pharma.
- **Facts:**
  - Pat McGrath Cosmetics LLC filed for Chapter 11 and proposed a plan of reorganization that included third-party releases in favor of certain non-debtors (e.g., insiders, affiliates, or related parties). Creditors received notice of the plan and disclosure materials. The plan included an opt-out mechanism, allowing creditors to decline the releases. Some creditors Did not opt out (i.e., remained silent), while others objected or voted against the plan. The question arose whether creditors who failed to opt out could be deemed to have consented to the releases.

IN RE PAT MCGRATH COSMETICS LLC, 26-10772 (BANKR. S.D. FLA. APRIL 21, 2026)

- **Holding:**
  - Third-party releases may be treated as consensual and enforceable where creditors receive clear notice and an opportunity to opt out, and fail to do so. However, creditors who affirmatively reject the plan or are otherwise in a posture requiring explicit consent cannot be bound by such releases without actual agreement.
- **Effect:**
  - Establishes that implied consent (via failure to opt out) can satisfy the "consensual" requirement for third-party releases—if due process is met.

IN RE GOL LINHAS AÉREAS INTELIGENTES, S.A., CASE 1:25-CV-04610-DLC (S.D.N.Y. DEC. 1, 2025)

- **Issue:**
  - The U.S. Bankruptcy Court for the Southern District of New York confirmed the debtors' plan, holding that the opt-out releases included in the plan were consensual and therefore permitted under Purdue Pharma. The Bankruptcy Court held that federal law—not state law— governed whether the release was consensual. Applying federal law, the Bankruptcy Court held that creditors implicitly consented to the release by consenting to the Bankruptcy Court's jurisdiction; the released third-party claims affected the rest of the debtor's estate; and there was adequate service of process. The U.S. Trustee appealed the decision to the District Court.

IN RE GOL LINHAS AÉREAS INTELIGENTES, S.A., CASE 1:25-CV-04610-DLC (S.D.N.Y. DEC. 1, 2025)

- **Facts:**
  - Gol Linhas, a Brazilian airline, sought chapter 11 protection in 2024. The debtors filed a plan and disclosure statement that included provisions purporting to release claims against third parties if the creditors holding those claims failed to affirmatively opt out of the release provision. The released parties included, among others, the DIP lenders, certain administrative agents and indenture trustees, and an ad hoc group of noteholders. The U.S. Trustee objected to the third-party release provision, arguing that the plan's opt-out mechanism was insufficient to establish a creditor's implied consent to the third-party release provision, and that the opt-out releases were therefore impermissible under the Supreme Court's landmark 2024 decision on third-party releases, Harrington v. Purdue Pharma L.P., 603 U.S. 205, 227 (2024).
  - The U.S. Bankruptcy Court for the Southern District of New York confirmed the debtors' plan, holding that the opt-out releases included in the plan were consensual and therefore permitted under Purdue Pharma. The Bankruptcy Court held that federal law—not state law— governed whether the release was consensual. Applying federal law, the Bankruptcy Court held that creditors implicitly consented to the release by consenting to the Bankruptcy Court's jurisdiction; the released third-party claims affected the rest of the debtor's estate; and there was adequate service of process. The U.S. Trustee appealed the decision to the District Court.

IN RE GOL LINHAS AÉREAS INTELIGENTES, S.A., CASE 1:25-CV-04610-DLC (S.D.N.Y. DEC. 1, 2025)

- **Holding:**
  - The District Court held that implied consent cannot be inferred from a party's failure to opt out of a third-party release and that the plan therefore included an impermissible non-consensual third-party release. This rendered the release provisions invalid in light of the Supreme Court's Purdue Pharma decision.
- **Effect:**
  - Opt-out releases have become customary in the wake of Purdue Pharma, with multiple bankruptcy courts in New York and Texas holding that a creditor's failure to opt out of a thirdparty release should be deemed consent to the release, provided that creditors have received sufficient notice of the third-party release. See, e.g., In re Robertshaw US Holding Corp., 662 B.R. 300, 323 (Bankr. S.D. Tex. 2024); In re Spirit Airlines, Inc., 668 B.R. 689 (Bankr. S.D.N.Y. 2025). The SDNY's decision in Gol Linhas disagrees with these decisions. In Gol Linhas, the SDNY held that silence cannot be construed as implied consent and therefore failure to opt out of a third-party release provision likewise cannot be deemed consent. The parties may ultimately appeal the SDNY's Gol Linhas decision. If they do, then the Second Circuit or potentially the Supreme Court may get the last word on this issue. Unless those higher courts weigh in, the legality of opt-out release provisions may remain unsettled.

OFFICE OF THE U.S. TRUSTEE V. JOHN Q. HAMMONS FALL 2006, LLC, 602 U.S. 487 (2024)

- **Issue:**
  - What is the appropriate remedy for Debtors that have been harmed as a result of the 2018 fee increase in Chapter 11 cases, which violated the Bankruptcy Clause's uniformity requirement?
- **Facts:**
  - In 2017, Congress enacted a temporary fee increase for Chapter 11 cases to address a shortfall in funding for the U.S. Trustee program. The legislation provided that the fee increase would be effective from 2018 to 2022 and applied to currently pending and newly filed cases. However, the fee increase was not immediately applicable in Alabama and North Carolina, which use a Bankruptcy Administrator system rather than the U.S. Trustee system. This created a disparity where debtors in 48 states paid higher fees than debtors in Alabama and North Carolina. In 2022, the Supreme Court in Siegel v. Fitzgerald held that this disparity violated the Bankruptcy Clause's uniformity requirement but did not determine the appropriate remedy. Congress subsequently enacted legislation in 2020 requiring uniform fees going forward. In the case at hand, the Debtors were 76 affiliated entities tied to the John Q Hammons hotel chain. The Debtors challenged the constitutionality of the fee scheme and sought a refund of the higher fees.

OFFICE OF THE U.S. TRUSTEE V. JOHN Q. HAMMONS FALL 2006, LLC, 602 U.S. 487 (2024)

- **Holding:**
  - The appropriate remedy is ***prospective parity*** (i.e. equal fees going forward), not refunds. The Court reversed 10th Circuit which granted a refund.
- **Effect:**
  - The decision denies refunds to approximately $326 million worth of overpayments made by Chapter 11 debtors.

TRUCK INSURANCE EXCHANGE V. KAISER GYPSUM CO., 602 U.S. 268 (2024)

- **Issue:**
  - Whether an insurer that has financial responsibility for claims is a "party in interest" under 11 U.S.C. §1109(b) and therefore entitled to object to reorganization plans.
- **Facts:**
  - Truck Insurance Exchange was the primary insurer for Kaiser Gypsum Co. and Hanson Permanente Cement, companies that manufactured and sold asbestos-containing products. The companies filed for Chapter 11 bankruptcy after facing tens of thousands of asbestos-related lawsuits. Under their insurance policies, Truck was contractually obligated to defend each covered asbestos personal injury claim and indemnify the debtors up to $500,000 per claim. As part of the bankruptcy process, the debtors proposed a reorganization plan creating an Asbestos Personal Injury Trust under §524(g) to handle all present and future asbestos-related claims. Truck objected to the plan, arguing it was not proposed in good faith because it imposed different disclosure requirements for insured versus uninsured claims, exposing Truck to millions of dollars in potentially fraudulent claims. The bankruptcy court, district court, and Fourth Circuit all ruled that Truck lacked standing as a "party in interest" under the "insurance neutrality" doctrine, which held that an insurer had standing only if the plan altered the insurer's prepetition obligations or policy rights.

TRUCK INSURANCE EXCHANGE V. KAISER GYPSUM CO., 602 U.S. 268 (2024)

- **Holding:**
  - An insurer with financial responsibility for bankruptcy claims is a "party in interest" under § 1109(b) because the term encompasses entities that may be directly and adversely affected by reorganization proceedings due to a financial interest. The Court rejected the "insurance neutrality" doctrine, stating that it conflates the merits of an objection with the threshold standing inquiry. Section 1109(b) asks whether the reorganization proceedings might affect a prospective party, not how a particular reorganization plan actually affects that party. The Court emphasized that focusing solely on prepetition obligations wrongly ignores the many ways bankruptcy proceedings can alter and impose obligations on insurers and debtors.
- **Effect:**
  - The decision significantly expands insurers' rights to participate in bankruptcy proceedings, giving insurers with financial responsibility for claims the right to be heard on any issue in a Chapter 11 case.

CONEY ISLAND AUTO PARTS UNLIMITED, INC. V. *BURTON*, 607 U.S. ___ (2026)

- **Issue:**
  - Whether Federal Rule of Civil Procedure 60(c)(1)'s "reasonable time" requirement applies to motions under Rule 60(b)(4) seeking relief from allegedly void judgments.
- **Facts:**
  - Vista-Pro Automotive filed bankruptcy in 2014 and initiated adversarial proceedings against Coney Island Auto Parts to collect $50,000 in unpaid invoices. Vista-Pro allegedly failed to comply with mail-service requirements under Federal Rule of Bankruptcy Procedure 7004(b)(3). Coney Island did not answer, and the Bankruptcy Court entered a default judgment in 2015. The trustee sent a demand letter in April 2016, giving Coney Island notice of the judgment. In 2021, a marshal seized funds from Coney Island's bank account to satisfy the judgment. Coney Island then filed a Rule 60 motion to vacate the judgment, arguing improper service rendered it void.

CONEY ISLAND AUTO PARTS UNLIMITED, INC. V. *BURTON*, 607 U.S. ___ (2026)

- **Holding:**
  - The Supreme Court held that Rule 60(c)(1)'s reasonable-time limit applies to Rule 60(b)(4) motions alleging void judgments. The Court reasoned that the plain text states "a motion under Rule 60(b) must be made within a reasonable time," and motions alleging voidness are motions under Rule 60(b). The Court rejected arguments that void judgments, as legal nullities, can be challenged at any time, finding no constitutional or historical principle requiring courts to remain perpetually open to voidness allegations. Rule 60's text and structure take priority over historical practice.
- **Effect:**
  - The Court resolved a circuit split by establishing that parties cannot indefinitely challenge allegedly void judgments; they must file Rule 60(b)(4) motions within a reasonable time. This decision limits defendants' ability to attack default judgments for jurisdictional defects years after entry, requiring timely action even when alleging fundamental defects like lack of personal jurisdiction.

AKHLAGHPOUR V. ORANTES (IN RE AKHLAGHPOUR), NO. 24-2625 (9TH CIR. 2026)

- **Issue:**
  - Whether a bankruptcy court may grant leave under the *Barton doctrine* to continue litigation in state court after the lawsuit was filed without prior approval, and whether such an order violates the *Rooker-Feldman doctrine* when state courts have already issued decisions in the case.
- **Facts:**
  - Akhlaghpour filed Chapter 11 bankruptcy in October 2017 with Orantes as her attorney. A trustee was appointed in February 2018 who liquidated her properties. In December 2019, Akhlaghpour sued Orantes for legal malpractice in California state court without obtaining Barton approval. The superior court dismissed the case based solely on the Barton doctrine. The California Court of Appeal reversed in part, holding Barton applied to claims for actions as debtor-in-possession counsel but not for post-trustee-appointment actions as debtor-out-of-possession counsel. In 2023, Akhlaghpour reopened her bankruptcy case and sought retroactive Barton approval to continue the state court litigation. The bankruptcy court granted leave for certain time periods, the BAP reversed for violating Rooker-Feldman, and Akhlaghpour appealed.

AKHLAGHPOUR V. ORANTES (IN RE AKHLAGHPOUR), NO. 24-2625 (9TH CIR. 2026)

- **Holding:**
  - The Ninth Circuit held that a bankruptcy court may grant Barton approval after a lawsuit is filed in another forum without prior leave, and such approval does not violate the Rooker-Feldman doctrine. The court reasoned that subsequent Barton approval cures the jurisdictional defect and only removes a jurisdictional bar to future proceedings without retroactively affecting prior state court rulings. However, the court found the bankruptcy court abused its discretion by: (1) granting approval for pre-petition claims in a manner inconsistent with the Court of Appeal's dismissal with prejudice, and (2) granting approval for post-trustee-appointment claims not subject to Barton. The court clarified that when granting Barton approval after state court decisions exist, the bankruptcy court's order must be narrowly tailored to the jurisdictional issue.
- **Effect:**
  - The decision clarifies that failure to obtain Barton approval before filing suit is not fatal. Parties can seek approval after litigation begins to cure the jurisdictional defect. However, when state court decisions already exist, bankruptcy courts must craft orders that only remove the jurisdictional bar without conflicting with or appearing to modify state court rulings. The court encouraged plaintiffs to stay proceedings in other forums and immediately seek Barton approval once a potential issue arises, rather than waiting years as occurred here.

VINING V. TAUNT (IN RE M.T.G., INC.), NO. 24-1979 (6TH CIR. 2026)

- **Issue:**
  - Whether (1) Comerica Bank is liable for fraud on the court, either directly or vicariously, based on Chapter 7 trustee Taunt's failure to disclose a conflict of interest; (2) post-petition transfers approved by orders later vacated for fraud are avoidable under 11 U.S.C. § 549(a); and (3) Taunt is liable for conversion of estate assets when he exercised court-authorized control over estate property before being disqualified as trustee.
- **Facts:**
  - MTG filed Chapter 7 bankruptcy in 1996, and Charles Taunt was appointed trustee. Taunt entered a fee agreement with Comerica, MTG's largest secured creditor, creating a conflict of interest. Under Bankruptcy Rule 2014(a), Taunt was required to disclose all connections to creditors but failed to disclose the Comerica fee agreement twice. While concealing this conflict, Taunt obtained several orders benefiting Comerica, including a $5.3 million claim allowance, relief from the automatic stay, and settlement of pre-petition lender liability claims for $10,000. After investigation, the bankruptcy court found Taunt and his law firm Plunkett Cooney committed fraud on the court, disqualified Taunt, denied all fees, and vacated the Comerica Orders. Successor trustee Guy Vining filed an adversary proceeding seeking damages and additional relief. The bankruptcy court awarded limited attorney's fees against Taunt but found Comerica not liable for fraud on the court, held post-petition transfers were not avoidable, and dismissed conversion claims.

VINING V. TAUNT (IN RE M.T.G., INC.), NO. 24-1979 (6TH CIR. 2026)

- **Holding:**
  - The Sixth Circuit affirmed on all claims. First, Comerica is not liable for fraud on the court because: (1) only "officers of the court" (i.e. attorneys and trustees) can commit fraud on the court, and Comerica was neither; and (2) no principal-agent relationship existed between Comerica and Taunt because Comerica lacked the right to control how Taunt performed his duties, and Comerica's attorneys owed no duty under Rule 2014 to disclose Taunt's conflict. The bankruptcy court did not abuse its discretion in awarding only partial attorney's fees given the litigation provided minimal financial benefit to the estate. Second, post-petition transfers are not avoidable under § 549(a) because they were authorized by valid court orders at the time of transfer, and the bankruptcy court's later vacatur did not have retroactive effect making the orders void ab initio. Third, Taunt is not liable for conversion because, as Chapter 7 trustee, he possessed statutory authority under 11 U.S.C. § 704(a)(1) to control and dispose of estate assets; his subsequent disqualification did not retroactively invalidate his previously court-authorized actions.
- **Effect:**
  - The decision establishes that creditors cannot be held liable for a trustee's fraud on the court absent an agency relationship with control over the trustee's conduct, and that vacating court orders obtained through fraud does not automatically void the transactions authorized by those orders. Trustees' court-authorized actions retain their legal effect even after subsequent disqualification for conflicts of interest, limiting successor trustees' ability to unwind estate transactions and recover damages for pre-disqualification conduct.

RIFFENBURG V. RICE (IN RE ROPER), NO. 25-6008 (B.A.P. 8TH CIR. 2026)

- **Issue:**
  - Whether an appeal from a bankruptcy court order approving sale of estate property is statutorily moot under 11 U.S.C. § 363(m) when the appellant failed to obtain a stay pending appeal and did not challenge the purchaser's good faith before the bankruptcy court.
- **Facts:**
  - Debtors Billy Joe Roper, Jr. and Vanessa Gabrielle Roper filed Chapter 7 bankruptcy in March 2023 and received discharge in June 2023. Debtor Vanessa Roper co-owned real property with her ex-husband Logan Riffenburg, acquired during their marriage. Their 2022 divorce decree intended to transfer the property to their daughter Claudia, but the transfer was never completed. Chapter 7 Trustee Mark Randy Rice filed an adversary proceeding and obtained summary judgment establishing the estate's interest in the property under § 544(a)(3). In March 2025, the Trustee moved to sell the estate's one-half interest to Blue Sun Capital LLC for $40,000. Riffenburg opposed, arguing the Trustee lacked good faith because co-Debtor Vanessa Roper had no individual debt to satisfy. The bankruptcy court approved the sale in May 2025, finding it was in good faith, for fair value, and in the estate's best interests, but made no specific findings regarding the purchaser's good faith. Riffenburg appealed but did not obtain a stay. The Trustee consummated the sale in August 2025, six days after Riffenburg filed an emergency stay motion with the BAP and moved to dismiss the appeal as statutorily moot under § 363(m).

RIFFENBURG V. RICE (IN RE ROPER), NO. 25-6008 (B.A.P. 8TH CIR. 2026)

- **Holding:**
  - The BAP majority held the appeal is statutorily moot under § 363(m) and dismissed. The court found all § 363(m) requirements satisfied: (1) no stay was obtained; (2) reversing the sale would affect its validity; and (3) the purchaser's good faith was not disputed. The majority reasoned that § 363(m) protects good faith purchasers, not trustees, and Riffenburg's challenges to the Trustee's conduct were irrelevant. The court held that lack of good faith requires "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." Because Riffenburg never challenged Blue Sun Capital's good faith before the bankruptcy court, he forfeited the right to raise it on appeal. The Court rejected Riffenburg's argument that effective relief remained available, explaining that statutory mootness is "not based on the impossibility or inequity of relief, but the preclusion of relief under a statute."
- **Effect:**
  - The decision reinforces that parties challenging § 363 sales must obtain stays pending appeal or face statutory mootness, and that challenges to purchaser good faith must be raised before the bankruptcy court or are forfeited on appeal. The ruling clarifies that only the purchaser's good faith matters for § 363(m) protection, not the trustee's conduct.

SATELLITE CAPITAL, LLC V. EMACIATION CAPITAL, LLC (IN RE SAWTELLE PARTNERS LLC), NO. 24-3480 (9TH CIR. 2026)

- **Issue:**
  - Whether a bankruptcy court has jurisdiction over an adversary proceeding involving quiet title and wrongful foreclosure claims between two third-party creditors concerning property that has been abandoned by the bankruptcy estate.
- **Facts:**
  - Satellite Capital, LLC filed an adversary proceeding in bankruptcy court against Emaciation Capital, LLC asserting quiet title and wrongful foreclosure claims concerning disputed property. Satellite's quiet title claim alleged that Emaciation's lien on the property was void under 11 U.S.C. § 506(d) and that Satellite was the senior lienholder under state contract law based on a settlement agreement between Emaciation and the bankruptcy trustee. The bankruptcy estate had abandoned the disputed property. The bankruptcy court ruled in favor of Emaciation. The district court affirmed, and Satellite appealed.

SATELLITE CAPITAL, LLC V. EMACIATION CAPITAL, LLC (IN RE SAWTELLE PARTNERS LLC), NO. 24-3480 (9TH CIR. 2026)

- **Holding:**
  - The Ninth Circuit reversed and remanded with instructions to dismiss for lack of jurisdiction. The court held the bankruptcy court lacked jurisdiction under all possible grounds. First, the claims do not "arise under" or "arise in" title 11: Satellite's quiet title and wrongful foreclosure claims arise under state law, not the Bankruptcy Code; although Satellite referenced § 506(d), that provision does not create the right to relief, which depends exclusively on state contract law; and the claims could exist independent of bankruptcy since a lien dispute between third-party creditors is not unique to bankruptcy and could be brought in another forum. Second, the proceeding is not "related to" a bankruptcy case under 28 U.S.C. § 1334(b) because the outcome could not conceivably affect the estate being administered. Once the estate abandoned the property, the bankruptcy court's jurisdiction over it lapsed and the property's relationship to the bankruptcy proceeding ended. Third, the bankruptcy court did not have ancillary jurisdiction because Satellite's claims do not require the court to interpret or effectuate its prior rulings; mere judicial awareness and approval of settlement agreement terms do not suffice for ancillary jurisdiction.
- **Effect:**
  - The decision clarifies that bankruptcy courts lack jurisdiction over disputes between third-party creditors concerning property that has been abandoned by the estate, even when those disputes reference bankruptcy code provisions or settlement agreements approved by the bankruptcy court. Once property is abandoned and leaves the estate, any lien priority or foreclosure disputes must be resolved in state court or other non-bankruptcy forums.

KOKOSZKA V. NAGUIB (IN RE NAGUIB), ADV. NO. 24-00229 (BANKR. N.D. ILL. OCT. 22, 2025)

- **Issue:**
  - Whether Federal Rule of Bankruptcy Procedure 9006(b) authorizes extension of the two-year statute of limitations in 11 U.S.C. § 546(a) for filing avoidance actions, and whether the doctrine of equitable tolling applies to extend the deadline.
- **Facts:**
  - Debtors Gamal and Analida Naguib filed Chapter 7 bankruptcy, giving Chapter 7 Trustee Frank Kokoszka until March 30, 2024, to file avoidance actions under § 546(a)(1)(A). During the bankruptcy case, the Debtors and their adult children (the "Insider Defendants") extensively obstructed the Trustee's investigation through deficient schedules, objections to Rule 2004 examinations, motions to quash subpoenas, limited document production, and refusal to sit for depositions due to alleged medical conditions. On March 22, 2024, eight days before the deadline, the Trustee moved to extend the § 546(a) limitation period. The bankruptcy court granted a two-month extension on March 29, 2024, and after further briefing, extended the deadline to August 1, 2024. The Trustee filed his eight-count adversary complaint seeking to avoid and recover fraudulent and preferential transfers totaling nearly $475,000 on August 1, 2024. Defendants moved to dismiss as untimely, arguing § 546(a)'s deadline cannot be extended under Rule 9006(b) or equitably tolled.

KOKOSZKA V. NAGUIB (IN RE NAGUIB), ADV. NO. 24-00229 (BANKR. N.D. ILL. OCT. 22, 2025)

- **Holding:**
  - The bankruptcy court denied the motions to dismiss, holding the complaint was timely filed. First, the court held that Rule 9006(b) authorizes extension of § 546(a)'s limitation period. Following the Eleventh Circuit's decision in *In re IAS*, the court reasoned that although Rule 9006(b)'s text refers to deadlines in "these rules . . . or by order of court," it encompasses all Bankruptcy Rules, including Rule 7001 (defining adversary proceedings) and Rule 7003 (governing commencement of adversary proceedings). The court rejected the argument that applying Rule 9006(b) to § 546(a) violates separation of powers, explaining that § 546(a) is procedural by nature and does not confer or enlarge substantive rights, so the Rules Enabling Act does not preclude such extension. The court found "cause" existed under Rule 9006(b) because the Debtors and Insider Defendants failed to cooperate with the Trustee and actively obstructed his investigation. Second, addressing equitable tolling "in an abundance of caution," the court held the Trustee satisfied both required prongs: (1) reasonable diligence: the Trustee competently investigated the estate, filed asset reports, and pursued discovery through creditor Iglesias' counsel (a permissible approach to conserve estate resources); and (2) extraordinary circumstances: the Debtors fraudulently concealed information through deficient disclosure, baseless objections, and dilatory tactics both in bankruptcy and in prior state court litigation, preventing the Trustee from timely discovering facts supporting avoidance claims.

KOKOSZKA V. NAGUIB (IN RE NAGUIB), ADV. NO. 24-00229 (BANKR. N.D. ILL. OCT. 22, 2025)

- **Effect:**
  - Court adopts the position that Rule 9006(b) can extend statutory limitation periods in the Bankruptcy Code, specifically § 546(a), creating a lower "for cause" standard than equitable tolling. The court clarified that § 546(a) is a statute of limitations, not a jurisdictional bar, and is therefore subject to extension, waiver, and equitable tolling. The ruling permits trustees to seek prospective extensions before deadlines expire when debtors obstruct discovery, preventing wrongdoers from benefiting from their own obstructive conduct.

MCCALL V. BOTW HOLDINGS, LLC (IN RE BOTW HOLDINGS, LLC), CASE NO. 2:25-CV-108-KHR (D. WY. 2025)

- **Issue:**
  - Whether (1) a debtor-in-possession's post-petition payments to an insider consulting firm were made in the ordinary course of business under 11 U.S.C. § 363(c)(1), thus not requiring court approval; and (2) whether the consulting firm constitutes a "professional person" under 11 U.S.C. § 327(a), requiring court approval for employment.
- **Facts:**
  - BOTW Holdings, LLC filed Chapter 11 bankruptcy petitions in April 2024. Prior to bankruptcy, in August 2023, BOTW entered a consulting agreement with Stryk Group USA, LLC to evaluate business operations. In December 2023, Stryk Group Holdings, LLC (affiliated with Stryk Group) purchased BOTW Holdings' membership interests, and Chase Myers became Chief Operating Officer and Manager of BOTW. On March 11, 2024, shortly before the bankruptcy filing, BOTW entered a new consulting agreement with Stryk Group whereby Stryk Group agreed to provide personnel and services to fill operational gaps identified under the prior evaluation. After filing bankruptcy, BOTW continued making payments to Stryk Group totaling $480,000 through December 2025 without court approval. Creditor John A. McCall moved to bar further payments, arguing Stryk Group was a "professional person" requiring court approval under § 327, or alternatively, that payments were not in the ordinary course of business and required court approval under § 363(b). The bankruptcy court held an evidentiary hearing, and ruled payments were in the ordinary course of business and Stryk Group was not a professional person. McCall appealed.

MCCALL V. BOTW HOLDINGS, LLC (IN RE BOTW HOLDINGS, LLC), CASE NO. 2:25-CV-108-KHR (D. WY. 2025)

- **Holding:**
  - The district court affirmed the bankruptcy court. First, the court held the payments were made in the ordinary course of business under § 363(c)(1). Under the vertical dimension test, the court found no "economic risks of a nature different from those" creditors accepted when extending credit. The court reasoned that risks associated with employee performance or waste exist in regular employment scenarios, and BOTW would have to hire someone else to perform these necessary day-to-day services if not for the Agreement. Evidence showed personnel performed necessary tasks, the services were required for daily operations, and fees were below market value. The court distinguished cases involving concealed insider transactions, finding here that Stryk Group already had the Agreement in place before bankruptcy, debtor provided notice to the bankruptcy court, services were necessary for day-to-day operations, and fees were reasonable. Second, the court held Stryk Group was not a "professional person" under § 327(a). Applying the majority view that professional persons are those "who play a central role in the administration of the debtor's estate," the court found most personnel were not involved in bankruptcy proceedings at all. While Myers had discretion as COO, he was paid only for his compliance role under the Agreement, not for duties related to estate administration or reorganization. The court emphasized that if Myers did not perform compliance work, someone else would need to be paid for it. The personnel were not employed "to represent or assist the trustee in carrying out the trustee's duties under this title."

MCCALL V. BOTW HOLDINGS, LLC (IN RE BOTW HOLDINGS, LLC), CASE NO. 2:25-CV-108-KHR (D. WY. 2025)

- **Effect:**
  - The decision clarifies that post-petition payments to insider entities for ordinary business services do not automatically fail the ordinary course of business test simply because of insider status— the key inquiry is whether the transaction subjects creditors to economic risks different from those they accepted when extending credit. The ruling permits debtors-in-possession to continue paying for necessary personnel and services without court approval when those services are routine, disclosed, reasonably priced, and part of day-to-day operations. The decision also distinguishes between an individual's role as a corporate officer (which may involve estate administration) and their separate compensated role providing specialized services, holding that § 327 approval is not required when the individual is paid only for non-administrative services.

IN RE WHITTAKER, CLARK & DANIELS INC., NOS. 24-2210, 24-2211, 25-1044 (3D CIR. SEPT. 10, 2025)

- **Issue:**
  - Whether the rule from *Klaxon Co. v. Stentor Electric Manufacturing Co.*, 313 U.S. 487 (1941)— requiring federal courts to apply the forum state's choice-of-law rules—extends to bankruptcy proceedings, and if so, whether exceptions exist when strong federal interests are at stake.
- **Facts:**
  - Whittaker and its affiliates filed Chapter 11 bankruptcy in New Jersey. During the proceedings, disputes arose requiring determination of which state's substantive law governed various issues, including the authority of Whittaker's board to file for bankruptcy and ownership of successor liability claims. The parties agreed that New Jersey law governed these issues, but the underlying question of which choice-of-law framework applies in bankruptcy (i.e. the forum state's rules under *Klaxon* or a federal common law choice-of-law rule), remained unresolved in the Third Circuit.

IN RE WHITTAKER, CLARK & DANIELS INC., NOS. 24-2210, 24-2211, 25-1044 (3D CIR. SEPT. 10, 2025)

- **Holding:**
  - The Third Circuit majority did not decide the *Klaxon* question because the parties agreed New Jersey law governed. However, Judge Krause wrote a lengthy concurrence (joined by no other judges) advocating that *Klaxon* applies categorically in bankruptcy without exception. Judge Krause reasoned that: (1) the Bankruptcy Code's structure and Erie doctrine require applying state choice-of-law rules because bankruptcy takes parties' property rights as it finds them under state law; (2) the Code contains no choice-of-law provisions, indicating Congress did not intend federal courts to fashion federal choice-of-law rules; (3) when federal interests conflict with state law, the proper remedy is applying a federal rule of decision (which preempts state law via the Supremacy Clause), not adopting a federal choice-of-law rule; and (4) constitutional constraints (Full Faith and Credit, Due Process, Privileges and Immunities Clauses) already limit impermissible state choice-of-law rules. Judge Ambro wrote a separate concurrence endorsing the Second and Fourth Circuits' approach: *Klaxon* applies in bankruptcy unless "some overwhelming federal policy requires us to formulate a choice of law rule as a matter of independent federal judgment." Judge Ambro argued that while such circumstances would be rare, courts should not categorically foreclose the possibility of fashioning federal choice-of-law rules when strong federal interests in bankruptcy warrant them, noting that *Butner v. United States* recognized federal interests can sometimes require different results even when state law generally governs property rights.

IN RE WHITTAKER, CLARK & DANIELS INC., NOS. 24-2210, 24-2211, 25-1044 (3D CIR. SEPT. 10, 2025)

- **Effect:**
  - The decision creates a three-way circuit split on choice-of-law rules in bankruptcy. The Ninth Circuit requires federal choice-of-law rules in bankruptcy, rejecting *Klaxon* entirely. The Eighth Circuit applies *Klaxon* categorically without exceptions. The Second and Fourth Circuits apply *Klaxon* unless a compelling federal interest justifies a federal choice-of-law rule. The split creates uncertainty for litigants and bankruptcy courts about which framework applies. Judge Krause's concurrence provides the most comprehensive analysis of the issue in any circuit, arguing that any federal interest strong enough to displace state choice-of-law rules would necessarily require a federal rule of decision (making the choice-of-law question moot), while Judge Ambro maintains that courts retain limited authority to craft federal choice-of-law rules in rare circumstances where bankruptcy policies demand them.

HERLIHY V. DBMP, LLC, NO. 24-2109, 2026 U.S. APP. LEXIS 4201 (4TH CIR. FEB. 11, 2026)

- **Issue:**
  - Whether asbestos tort claimants demonstrated sufficient "cause" under 11 U.S.C. § 362(d) to lift the automatic stay imposed by DBMP's Chapter 11 bankruptcy, on the grounds that DBMP filed its petition in bad faith by executing a corporate restructuring to isolate asbestos liabilities in a newly created and financially solvent subsidiary.

HERLIHY V. DBMP, LLC, NO. 24-2109, 2026 U.S. APP. LEXIS 4201 (4TH CIR. FEB. 11, 2026)

- **Facts:**
  - CertainTeed Corporation, a Delaware subsidiary of Compagnie de Saint-Gobain (a French company), manufactured asbestos-containing building products from the 1930s through the 1990s and faced mounting asbestos-related tort liability. By 2019, CertainTeed had spent approximately $2 billion defending and resolving over 300,000 asbestos lawsuits since 2002. CertainTeed still faced roughly 60,000 pending claims, with many more projected future claims. In October 2019, CertainTeed executed a divisional merger under Texas law (known as a "Texas Two-Step"). CertainTeed split up into two entities: New CertainTeed, which retained 97% of CertainTeed's assets and operating liabilities, and DBMP LLC, which received all of CertainTeed's asbestos liabilities, $25 million in cash, and the equity of a siding and trim business valued at approximately $150 million. Simultaneously, DBMP and New CertainTeed entered into an uncapped funding agreement obligating New CertainTeed to satisfy all of DBMP's asbestos liabilities, with no repayment obligation and no monetary cap. The entire restructuring (nicknamed "Project Horizon"), was designed to isolate asbestos liabilities in a single entity and file a Chapter 11 petition without subjecting the broader CertainTeed enterprise to bankruptcy. DBMP filed its Chapter 11 petition in the Western District of North Carolina in January 2020, automatically staying all asbestos-related tort claims under § 362(a). The bankruptcy court also entered a preliminary injunction extending stay protections to New CertainTeed and affiliated entities. In April 2024, Michael Herlihy (diagnosed with mesothelioma in 2023 from asbestos exposure at a CertainTeed plant) and the Estate of Peter Bergrud (a construction worker who died of mesothelioma in 2019 from decades of exposure to CertainTeed's asbestos-cement pipe) filed individual motions to lift the stay to pursue their state-court asbestos claims in Washington and California. The bankruptcy court denied the motions, the district court affirmed, and the claimants appealed.

HERLIHY V. DBMP, LLC, NO. 24-2109, 2026 U.S. APP. LEXIS 4201 (4TH CIR. FEB. 11, 2026)

- **Holding:**
  - The Fourth Circuit affirmed, holding that the bankruptcy court did not abuse its discretion in denying the motions to lift the automatic stay. Applying the three-factor balancing test from *In re Robbins*, 964 F.2d 342 (4th Cir. 1992), the court found that lifting the stay would greatly prejudice the debtor's estate by depleting resources, would flood the tort system with tens of thousands of asbestos cases, and would imperil the bankruptcy court's ability to "treat consistently and fairly all similarly situated claimants in a 524(g) plan." *Id*. at *2-3. The majority further held that, while good faith is an implied requirement for obtaining automatic stay protection, the claimants failed to establish bad faith under the two-pronged test from *Carolin Corp. v. Miller*, 886 F.2d 693 (4th Cir. 1989), which requires both subjective bad faith and objective futility. The court reasoned that DBMP legitimately invoked § 524(g), a provision Congress enacted specifically to address overwhelming asbestos liability, that § 524(g) does not require a showing of insolvency, and that the uncapped funding agreement ensured no CertainTeed asset was shielded from paying asbestos claimants. Judge King dissented, arguing that DBMP was a fabricated shell entity with no independent economic existence, that the debtor bore the burden of proof under § 362(g) to disprove bad faith and never met it, that the majority improperly conflated the § 1112(b) dismissal standard with the more lenient § 362(d) standard for stay relief, and that § 524(g) cannot serve as a reorganization purpose for a fully solvent debtor that manipulated the corporate form to strand asbestos victims in bankruptcy while shielding the broader enterprise from any bankruptcy scrutiny.

HERLIHY V. DBMP, LLC, NO. 24-2109, 2026 U.S. APP. LEXIS 4201 (4TH CIR. FEB. 11, 2026)

- **Effect:**
  - The ruling effectively insulates solvent parent corporations from mass tort litigation by allowing fabricated subsidiaries to obtain Chapter 11 protection, and forecloses individual asbestos claimants from obtaining stay relief absent evidence meeting both prongs of the *Carolin test*.

BESTWALL LLC V. OFF. COMM. OF ASBESTOS CLAIMANTS OF BESTWALL, LLC, 148 F.4TH 233 (4TH CIR. 2025) REHEARING *EN BANC* DENIED, 157 F.4TH 579 (4TH CIR. OCT. 30, 2025), CERT. PETITION FILED (FEB. 20, 2026)

- **Issue:**
  - Whether federal courts have subject-matter jurisdiction over a Chapter 11 bankruptcy case filed by a solvent debtor, specifically, whether the Bankruptcy Clause of Article I, Section 8 of the Constitution limits bankruptcy jurisdiction to debtors in genuine financial distress.

BESTWALL LLC V. OFF. COMM. OF ASBESTOS CLAIMANTS OF BESTWALL, LLC, 148 F.4TH 233 (4TH CIR. 2025) REHEARING *EN BANC* DENIED, 157 F.4TH 579 (4TH CIR. OCT. 30, 2025), CERT. PETITION FILED (FEB. 20, 2026)

- **Facts:**
  - Georgia-Pacific LLC faced approximately 64,000 pending asbestos claims with tens of thousands more anticipated through 2050, stemming from its 1965 acquisition of Bestwall Gypsum Co. In July 2017, Georgia-Pacific executed a "Texas Two-Step" merger, splitting itself into two entities: a "new" Georgia-Pacific that received virtually all of the company's $28.3 billion in assets and business operations, and Bestwall LLC, which received minimal assets, no employees, and no business operations, but inherited all asbestos liabilities. The two entities existed as Texas corporations for less than five hours before Georgia-Pacific re-incorporated in Delaware and Bestwall re-incorporated in North Carolina. Georgia-Pacific simultaneously entered a Funding Agreement guaranteeing payment of all of Bestwall's bankruptcy and asbestos-related expenses, including full funding of any § 524(g) asbestos trust. In November 2017, Bestwall filed for Chapter 11 bankruptcy in the Western District of North Carolina, triggering an automatic stay of all pending asbestos litigation against both Bestwall and Georgia-Pacific. The Official Committee of Asbestos Claimants moved to dismiss for lack of subject-matter jurisdiction, arguing that the Bankruptcy Clause of the Constitution limits bankruptcy to debtors in genuine financial distress and that Bestwall, which could fully satisfy all its obligations through the Funding Agreement, was not constitutionally "bankrupt." The bankruptcy court denied the motion, and the Fourth Circuit granted cert for direct appeal.

BESTWALL LLC V. OFF. COMM. OF ASBESTOS CLAIMANTS OF BESTWALL, LLC, 148 F.4TH 233 (4TH CIR. 2025) REHEARING *EN BANC* DENIED, 157 F.4TH 579 (4TH CIR. OCT. 30, 2025), CERT. PETITION FILED (FEB. 20, 2026)

- **Holding:**
  - The Fourth Circuit affirmed (2-1), holding that federal courts have subject-matter jurisdiction over bankruptcy cases filed by solvent debtors. The majority reasoned that Article III grants federal courts jurisdiction over all cases "arising under" the laws of the United States, and because the Bankruptcy Code is a federal law, any petition filed under it presents a federal-question case within that jurisdiction. The majority further held that the Committee's argument that the Bankruptcy Clause constitutionally bars solvent debtors from seeking relief is not a jurisdictional challenge at all, but rather a challenge to Congress' Article I power to make certain parties eligible for bankruptcy. Such a challenge goes to the merits of the statute's constitutionality, not to subject-matter jurisdiction, and is therefore not ripe until plan confirmation. The majority noted that no court has ever adopted the view that financial distress is a jurisdictional prerequisite, and that at least five circuits have held debtor eligibility requirements under the Bankruptcy Code to be non-jurisdictional. Judge Agee concurred separately, emphasizing that the Supreme Court has long recognized the Bankruptcy Clause to be a plenary, broad, and evolving grant of power to Congress. Judge King dissented, arguing that the Bankruptcy Clause's original meaning-- rooted in English law, colonial practice, early dictionaries, and early American statutes-- limited bankruptcy to debtors truly unable or unwilling to pay their debts, and that allowing solvent corporations to invoke bankruptcy as a tactical shield violates both Article I and the Seventh Amendment rights of tort claimants. On October 30, 2025, the Fourth Circuit denied rehearing *en banc* by an 8-6 vote, with Judge King again dissenting, calling Bestwall's proceeding a "manufactured sham Chapter 11 bankruptcy." *Bestwall LLC v. Off. Comm. Of Asbestos Claimants of Bestwall, LLC,* 157 F.4th 579, 586 (4th Cir. 2025). A petition for certiorari was filed on February 20, 2026.

BESTWALL LLC V. OFF. COMM. OF ASBESTOS CLAIMANTS OF BESTWALL, LLC, 148 F.4TH 233 (4TH CIR. 2025) REHEARING *EN BANC* DENIED, 157 F.4TH 579 (4TH CIR. OCT. 30, 2025), CERT. PETITION FILED (FEB. 20, 2026)

- **Effect:**
  - The decision establishes (in the Fourth Circuit) that a debtor's solvency is irrelevant to subject-matter jurisdiction in bankruptcy. Additionally, the ruling provides a significant green light to companies seeking to use the Texas Two-Step to consolidate mass tort liabilities in bankruptcy. The sharp 8-6 *en banc* split and pending certiorari petition signal that the Supreme Court may weigh in on the constitutional limits of the Bankruptcy Clause and the validity of Georgia-Pacific's actions.

WH | BURKLEY LLP
ATTORNEYS AT LAW

www.bernsteinlaw.com
601 Grant Street, 9th Floor Pittsburgh, PA 15219
Pittsburgh, PA – Cleveland, OH – Columbus, OH – Akron, OH – Wheeling, WV