JENNER&BLOCK

Recent Developments in Bankruptcy Law, January 2025

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1. AUTOMATIC STAY

1.1 Covered Activities

1.1.a **Enforcement of milk quota sale order does not violate the automatic stay.** The debtor had a milk quota from the government. A quota is required to produce and sell milk. A quota holder may sell or lien the quota. Because the debtor violated relevant regulations, the government ordered the sale of the quota. Section 362(a)(3) stays any act to obtain possession or control of property of the estate. A quota holder's right to sell or lien the quota qualifies it as property, which becomes property of the estate. Section 362(b)(4) excepts from the stay the enforcement of a governmental unit's police or regulatory power, except a money judgment. Because the milk quota was created under the government's police or regulatory power, the exception should apply. Here, the government's order required the sale of the quota, which is not the enforcement of a monetary judgment and so is excepted from the automatic stay. *Milk Indus. Reg. Office of the Commonwealth of Puerto Rico v. Ruiz (In re Ruiz)*, 122 F. 4th 1 (1st Cir. 2024).

1.1.b **Bankruptcy court enforces state court restraining order against paying seller of asset to the estate.** The debtor in possession agreed to pay a plan objector to purchase a domain name. The plan's effective date occurred, but distributions were not complete. The seller's judgment creditor obtained an order from the state court restraining the DIP from paying the seller. The automatic stay bars any act to obtain possession of property of or from the estate or to exercise control over property of the estate. Section 362(k) provides an individual injured by a willful stay violation with a damage claim. An individual includes a creditor but does not extend in this context to a creditor asserting rights in a non-creditor capacity or to non-debtor, non-creditor third parties who have only a tangential interest in the estate. The state restraining order simply freezes assets of a judgment debtor to permit a judgment creditor to use applicable collection procedures against the judgment debtor. It preserves the status quo and does not require turnover to the judgment creditor. Under these circumstances, the restraining order does not violate the stay and should be enforced. *In re Wythe Berry Fee Owner LLC*, 662 B.R. 26 (Bank. S.D.N.Y. 2024).

1.2 Effect of Stay

1.3 Remedies

1.3.a **Litigation to enforce the stay is not subject to an arbitration clause in the credit agreement.** The debtor contracted for services before bankruptcy but failed to pay for them. The contract contained an arbitration clause. After bankruptcy, the creditor made multiple collection attempts, both before and after the discharge. The debtor brought an action in the bankruptcy court to enforce the stay and the discharge injunction. Although federal law favors arbitration, when a claim under a contract that contains an arbitration clause is discharged, the arbitration clause is similarly discharged. Therefore, the debtor may proceed in the bankruptcy court. *Rogne v. Digital Forensics Corp.*, 2025 U.S. Dist. LEXIS 5865 (D. Minn. Jan. 13, 2025).

2. AVOIDING POWERS

2.1 Fraudulent Transfers

2.2 Preferences

2.3 Postpetition Transfers

2.4 Setoff

2.5 Statutory Liens

2.6 Strong-arm Power

2.6.a **Unperfected security interest is automatically subordinated without an avoiding power action.** The debtor granted the creditor a security interest in substantially all the debtor's assets. The creditor did not file a financing statement or take possession of the assets. In the debtor's chapter 11 case, the debtor in possession brought an action against the creditor to determine the extent, validity, and priority of the creditors' liens and interests in and against the debtor's assets. Under the U.C.C., a security interest attaches to collateral when it becomes enforceable and becomes enforceable when value has been given, the debtor has rights in the collateral, and the debtor has authenticated a security agreement describing the collateral. A security interest is perfected by filing a financing statement or possession. But an unperfected security interest is subordinate to the interest of a lien creditor. Under section 544(a), the trustee has all the rights and powers or a judicial lien creditor as of the commencement of the case. Therefore, an unperfected secured claim is automatically subordinate to the trustee's status as a lien creditor, even if the trustee does not bring an action to avoid the unperfected lien. As the debtor in possession has all the rights and power of a trustee, the creditor's security interest is unenforceable, and the creditor's claim is unsecured. *IYS Ventures, LLC v. Itria Ventures, LLC (In re IYS Ventures, LLC)*, 662 B.R. 336 (Bankr. N.D. Ill. 2024).

2.6.b **Section 544(a)(1) includes hypothetical nonavoiding power rights of hypothetical creditors, which become property of the estate.** Long before bankruptcy, the debtor sold a business that had potential mass asbestos, talc, and chemical liabilities. Before bankruptcy, some victims had sued the buyer under a successor liability theory. After bankruptcy, the debtor in possession sought to stay those actions. The automatic stay prohibits any act to obtain or exercise control over property of the estate. Section 544(a)(1) grants the trustee the rights and power of a hypothetical creditor holding a hypothetical claim that arose on the petition date. Although the strong-arm power is typically used to allow the trustee to avoid transfers that are avoidable by such a hypothetical creditor, its language also gives the trustee the rights and powers of such a creditor, without regard to avoidance of any transfers. As such, the rights of creditors to pursue successor liability claims against the buyer vested in the trustee. Those claims become property of the estate under section 541(a)(7), which covers any property that the estate acquires, on the theory that the estate acquires the strong-arm power claims upon the filing of the petition. Therefore, only the trustee or debtor in possession may pursue the successor liability claims. *Whittaker, Clark & Daniels, Inc. v. Brenntag AG (In re Whittaker, Clark, & Daniels)*, 663 B.R. 1 (Bankr. D.N.J. 2024).

2.7 Recovery

3. BANKRUPTCY RULES

3.1.a **Substantive consolidation permitted by motion.** The chapter 11 debtor and several nondebtor affiliates, all 100% owned by one individual, ignored corporate formalities, transferred funds among themselves without proper accounting, paid numerous personal expenses of the owner, and used each other's names when convenient. Based on these facts, and after a full trial, the court granted a motion to convert the case to chapter 7. The trustee moved for substantive consolidation of the debtor and its affiliates and served each of them as required by Rule 7004. Rule 7001(7) (now 7001(g)) requires an adversary proceeding for an injunction or other equitable relief." The phrase "other equitable relief" should be read in conjunction with the word "injunction," which is equitable relief, and does not necessarily require an adversary proceeding for any other kind of equitable relief, such as substantive consolidation, which is a form of equitable relief. Rule 7001(8) (now 7001(h)) requires an adversary proceeding to subordinate an allowed claim or interest. Although substantive consolidation has the effect of adjusting priorities of claim against the consolidated entities, it is not a proceeding to subordinate a claim. In any event, the lack of an adversary proceeding was harmless error. The bankruptcy court properly used the findings of fact from the conversion proceeding in the consolidation proceeding. The parties were the same, and even though the legal issues were not the same, the facts were fully litigated by the same parties and therefore could bind the parties in a later proceeding. Finally, substantive consolidation is a core proceeding, so the bankruptcy court has authority to issue a final order. *Smith v. Slott*, 2024 U.S. Dist. LEXIS 188956 (S.D. Fla. Oct. 17, 2024).

4. CASE COMMENCEMENT AND ELIGIBILITY

4.1 Eligibility

4.1.a **Failure to generate income does not disqualify a debtor from subchapter V.** The debtor developed new technology. It leased a facility, maintained bank accounts, continued attempts to generate business, provided marketing materials, and employed counsel to protect intellectual property. But it was unable to sell any products and so generated no income. Creditors filed an involuntary chapter 7 case. The debtor converted to chapter 11 and elected to proceed under subchapter V. A debtor is eligible for subchapter V if it is a "small business debtor" with aggregate debts of less than $3,024,725 in debts and at least 50% of its debts arose from commercial or business activities. A "small business debtor" is "a person engaged in commercial or business activity" with aggregate debts below the same limit. A court should review the totality of the circumstances to determine whether the debtor is engaged in commercial or business activities. Commercial means of or relating to commerce, and business includes transactions of an economic nature. The debtor's activities constituted commercial or business activities, even though they had not yet generated any income. Therefore, the debtor was eligible to proceed under subchapter V. *In re GCPS Holdings, LLC*, 2024 Bankr. LEXIS 2832 (Bankr. S.D. Tex. Nov. 20, 2024).

4.1.b **Court approves bankruptcy remote structure.** The lender required the debtor LLC to have an independent manager at all times, whose judgment would be governed by the interests of the LLC and its members (including its creditors) and whose consent would be required for any major decisions, including filing a petition under the Bankruptcy Code. The debtor contracted with a staffing agency for a manager, who was duly appointed and served. When financial problems arose, the debtor filed a chapter 11 petition without the manager's knowledge or consent. State law governs a debtor's authority to file a bankruptcy petition. As a Delaware LLC, the debtor's operating agreement governs authority to file. Therefore, the independent manager's consent was required. Operating agreement provisions that respect a manager's fiduciary duty to the LLC are not presumptively void, although provisions that effectively nullify the fight to file a bankruptcy violate public policy and are void. Here, because the operating agreement did not restrict the independent manager's exercise of fiduciary duties on behalf of the LLC, the agreement is not against public policy or void, and the petition without the manager's consent is not properly authorized. *In re 301 W. N. Ave., LLC*, ___ B.R. ___ (Bankr. N.D. Ill. Jan. 6, 2025).

4.2 Involuntary Petitions

4.2.a **A fully secured creditor is a "countable" creditor under section 303(b).** Two creditors holding unsecured claims filed an involuntary petition against the debtor. Counting three creditors holding fully secured claims, the debtor had 13 creditors. Section 303(b) permits an involuntary petition against a debtor with 12 or more creditors to be filed only "by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, … if such noncontingent, undisputed claims aggregate at least $18,600 … more than the value of any lien on property of the debtor securing such claims held by the holders of such claims." The language is clear that a creditor holding partially secured claims is included both in the count and in eligibility to join the petition, and nothing in the language suggests otherwise for a creditor holding a fully secured claim. Therefore, the court dismisses the involuntary petition. *Wolverine Endeavors VIII, LLC v. East West Bank (In re King)*, 664 B.R 162 (9th Cir. B.A.P. 2024).

4.2.b **Creditor joining involuntary petition need not hold claim at time of joinder.** A single creditor filed an involuntary petition. A supplier later joined the petition. A third party paid the supplier's claim. Section 303(c) provides that "a creditor holding an unsecured claim … may join the petition with the same effect as if such joining creditor were a petition creditor under subsection (b)." Section 303(c) requires that joining creditors be treated the same as the initial petitioning creditors, who needed to have claims on the petition date. Taken as a whole, section 303 contemplates determination of the petition as of the petition date. Therefore, the bankruptcy court should determine whether the joining creditor held an unsecured claim as of the petition date, not as of the joinder date. *In re King*, 664 B.R 356 (9th Cir. B.A.P. 2024).

4.3 Dismissal

5. CHAPTER 11

5.1 Officers and Administration

5.1.a **Standing in a chapter 11 case requires meeting Article III, prudential, and party in interest requirements.** The debtor's plan proposed transferring rights under its insurance policies to a post-confirmation liquidating trust. The assignment might have affected the debtor's obligations under the policies to cooperate in defending potentially insured claims. The insurers objected. Under *Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268 (2024), entities that are potentially concerned with, or affected by, a proceeding are 'parties in interest'" under section 1109(b). Even though the insurers disputed liability under the policies and no decision had held otherwise, the possibility of future financial effect gave the insurers party-in-interest standing to object to confirmation and to take discovery. However, having party-in-interest standing does not obviate the constitutional requirement of Article III standing and prudential standing. Nothing in *Truck*, which did not address those issues at all, suggests otherwise. Here, the potential injuries and the potential remedy of denial of confirmation meet Article III standing requirements. Prudential standing prohibits a party from raising another's legal rights, bars adjudication of generalized grievances, and requires assertion of only legal rights that fall within the party's zone of interests. The court must apply the doctrine on an issue-by-issue basis. The plan's potential harm to the insurers grants them prudential standing regarding their policies, but they may not assert claims unrelated to the policies. *In re The Roman Catholic Diocese of Syracuse, New York*, 2024 Bankr. LEXIS 2942 (Bankr. N.D.N.Y. Dec. 9, 2024).

5.2 Exclusivity

5.3 Classification

5.4 Disclosure Statement and Voting

5.5 Confirmation, Absolute Priority

5.5.a **Equal treatment prohibits granting indemnity to only some class members.** The debtor's secured credit agreement required pro rata treatment for all payments to the lenders, with two exceptions—one for a Dutch auction and another for "open market purchases" of debt. The debtor negotiated with only a majority of its secured lenders and agreed on an uptier transaction—the lenders amended the credit agreement to permit the transaction and then exchanged their first lien debt for new first lien debt and advanced an additional amount of new capital, which was granted the highest priority. The agreement also provided for the debtor to indemnify the participating lenders against any liabilities they might incur in connection with their participation. The debtor then proposed a plan that, in addition to the consideration to be distributed on all claims in the lenders' class, provided a new indemnity (though on identical terms) for any remaining lenders (those who had not traded out of their positions) at the time of confirmation. Section 502(e)(1)(B) disallows a contingent indemnity claim of a holder who is co-liable with the debtor. That section requires disallowance of the prepetition indemnity claim. Section 1123(b)(3)(A) permits a plan to settle any claim belonging to the estate. However, it does not permit using a settlement to resurrect through a plan a claim that is clearly disallowed. Section 1123(a)(4) requires a plan to provide equal treatment of all claims or interests in a class. A plan must provide not only equal distributional value but also must not require some holders to tender more valuable consideration for the same treatment. Here, only some holders of claims in the lender class received the indemnity, potentially worth millions of dollars, violating the equality of treatment. *Excluded Lenders v. Serta Simmons Bedding, L.L.C. (In re Serta Simmons Bedding, L.L.C.)*, ___ F. 4th ___, 2024 U.S. App. LEXIS 32969 (5th Cir. Dec. 31, 2024).

6. CLAIMS AND PRIORITIES

6.1 Claims

6.1.a **Court details WARN Act notice and exception requirements.** The debtor needed new financing, which it was seeking. It also was attempting to implement major changes in its business practices, which would have required union approval, which it was also seeking. The union negotiations

were difficult, reflecting the brinkmanship between the company and the union that had occurred in many prior negotiations. Ultimately, the negotiations were unsuccessful, and the union issued a strike notice. To the company's and union's surprise, the strike notice caused customers to flee and the business to fail within a few days, resulting in mass permanent layoffs. The company gave abbreviated WARN Act notices less than the required 60 days before the layoffs, with abbreviated explanations for the reasons for the shortened notice. The WARN Act's requirement of 60 days' advance notice of mass permanent layoffs is subject to two statutory exceptions and one case-law exception. The faltering company exception permits the employer to delay notice if giving notice would have precluded the employer from obtaining capital or financing needed to avoid or postpone the shutdown and layoffs. The company need not have actually considered issuing the notices and held back based on a concern about the notices' effect on the new financing. Here, the employer was seeking new financing, which would qualify for the exception, even though the employer had not considered issuing the notices, but the business reorganization would not qualify, even though it might enable the business to survive. The unforeseen circumstances exception applies where, under an objective standard, the circumstances causing the layoffs were unforeseeable. Here, neither the employer nor the union believed that the brinkmanship in the union negotiations nor the strike notice would doom the business. As such, the circumstances were objectively unforeseeable. However, for the exceptions to apply, the notice must state the basis for the exception in more than conclusory language. Language such as "we did not expect the business' failure or the denial of new financing," without any details, is inadequate. The case-law exception for a liquidating fiduciary applies where the business has actually ceased operations as of the layoff date. Since that was not the case here, the exception did not apply. *Moore v. Yellow Corp. (In re Yellow Corp.)*, 2024 Bankr. LEXIS 3029 (Bankr. D. Del. Dec. 19, 2024).

6.1.b **An uptier transaction is not an "open market purchase."** The debtor's secured credit agreement required pro rata treatment for all payments to the lenders, with two exceptions—one for a Dutch auction and another for "open market purchases" of debt. The debtor negotiated with only a majority of its secured lenders and agreed on an uptier transaction—the lenders amended the credit agreement to permit the transaction and then exchanged their first lien debt for new first lien debt and advanced an additional amount of new capital, which was granted the highest priority. An "open market" is a specific market that is generally open to participation by all buyers and sellers who qualify in which prices are set by competition. It is not defined merely by price competition among participants in the particular sale or purchase but by being open to all qualified participants. An open market purchase is one made on the specific market for the product. Here, the specific market is the secondary market for syndicated loans, and the product is the first lien debt. Since the debtor "purchased" the debt in private transactions, the purchase was not an open market purchase as required under the credit agreement. *Excluded Lenders v. Serta Simmons Bedding, L.L.C. (In re Serta Simmons Bedding, L.L.C.)*, ___ F. 4th ___, 2024 U.S. App. LEXIS 32969 (5th Cir. Dec. 31, 2024).

6.2 Priorities

7. CRIMES

8. DISCHARGE

8.1 General

8.2 Third-Party Releases

8.2.a ***Purdue* does not prohibit a temporary injunction to facilitate plan negotiations.** The debtor's former owners were subject to direct litigation by creditors, for which they might receive indemnification from the debtors, and the debtors had claims against the former owners. The claims might be resolved by a plan under which the former owners contributed substantial sums to fund the plan and provided for consensual releases by creditors of claims against them. To facilitate plan negotiations, the debtor in possession obtained a temporary injunction against litigation against the debtor's owners. The bankruptcy court has related-to jurisdiction over any action whose outcome might have any conceivable effect on the

estate. Section 105(a) gives the bankruptcy court power to issue any order necessary or appropriate to carry out the Code's provisions, including to protect the court's jurisdiction. A temporary injunction against non-debtor third-party litigation is related to a bankruptcy case. Therefore, the bankruptcy court has the power to issue the injunction. *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071 (2024), prohibits confirmation of a plan that contains a nonconsensual third-party release. But its holding was narrow, limited to the plan context, and did not impair the bankruptcy court's related-to jurisdiction. Here, the former owners' claims against the debtors and the debtors' claims against the former owners have a direct effect on the estate. Therefore, the bankruptcy court's issuance of the temporary injunction was appropriate. *State of Maryland v. Purdue Pharma L.P. (In re Purdue Pharma L.P.)*, 2024 U.S. Dist. LEXIS 216421 (S.D.N.Y. Nov. 26, 2024).

8.3 Environmental and Mass Tort Liabilities

9. EXECUTORY CONTRACTS

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

11.1.a **In personam injunction requires in personam jurisdiction.** A Texas district court appointed a receiver for a Ponzi-scheme debtor incorporated in Antigua. The Antiguan court appointed joint liquidators for the same entity. The liquidators filed and obtained recognition of the Antiguan proceeding under chapter 15 as a foreign non-main proceeding. They never appeared in the receivership proceeding. The receiver settled claims against a defendant whom the liquidators also were suing. The settlement contained a worldwide bar order that would have enjoined the liquidators from pursuing their action against the defendant. They objected by a filing in the chapter 15 case so as not to appear and submit to personal jurisdiction in the receivership case but were told by the court that it would hear their objection only if they appeared in the receivership case. A receivership court has in rem jurisdiction over property and may adjudicate all claims and disputes related to the property and bind the world. However, to enjoin a party from bringing an action related to the property, the court must have in personam jurisdiction over the party. A court may not issue an "in rem injunction." Here, the liquidators were not subject to general personal jurisdiction, did not meet the requirements for specific personal jurisdiction, and, by carefully not appearing in the receivership proceeding, did not waive any objection or consent to personal jurisdiction. The district court's requirement that they waive any objection to personal jurisdiction to object to the bar order's application to them and then take their chances on a contempt citation if they proceeded against the defendant after the court approved the settlement was an unfair "waiver trap": waive a personal jurisdiction objection or forfeit a merits objection. Such a trap vitiated the liquidators' voluntariness, because either choice was tainted by coercion. Therefore, the court vacates the bar order as it applies to the liquidators. *SEC v. Stanford Int'l Bank, Ltd.*, 112 F. 4th 284 (5th Cir. 2024).

11.2 Sanctions

11.3 Appeals

11.3.a **Appeal is not moot where court may excise a single illegal plan provision as a remedy.** The debtor's secured credit agreement required pro rata treatment for all payments to the lenders, with two

exceptions—one for a Dutch auction and another for "open market purchases" of debt. The debtor negotiated with only a majority of its secured lenders and agreed on an uptier transaction—the lenders amended the credit agreement to permit the transaction and then exchanged their first lien debt for new first lien debt and advanced an additional amount of new capital, which was granted the highest priority. The agreement also provided for the debtor to indemnify the participating lenders against any liabilities they might incur in connection with their participation. The debtor then proposed a plan that, in addition to the consideration to be distributed on all claims in the lenders' class, provided a new indemnity (though on identical terms) for any remaining lenders (those who had not traded out of their positions) at the time of confirmation. Whether an appeal from a confirmation order is equitably moot depends on whether a stay has been obtained, whether the plan has been substantially consummated, and whether appellate relief would affect either the rights of parties not before the court or the plan's success. None of the factors is dispositive. Although the appellants' stay request was denied and the plan was substantially consummated, all the necessary parties (debtor and indemnified lenders) were before the court, and the requested relief—excising the indemnity provision from the plan—would not destroy the plan. It would actually strengthen the reorganized debtor's financial prospects and would not undo the plan distribution provisions. Accepting the argument that the indemnified lenders would not have accepted the plan without the indemnity would require either setting aside confirmation in every case where the plan contained an illegal provision, thereby affecting the plan's success, or dismissing the appeal as moot, thereby permitting such provisions to take effect. Therefore, the court determines the appeal is not moot and it may excise the indemnity as a remedy. *Excluded Lenders v. Serta Simmons Bedding, L.L.C. (In re Serta Simmons Bedding, L.L.C.)*, ___ F. 4th ___, 2024 U.S. App. LEXIS 32969 (5th Cir. Dec. 31, 2024).

11.3.b **Prudential ("person aggrieved") standing is not required of a party below.** The debtor proposed confirmation of a chapter 13 plan with a provision contrary to the local chapter 13 plan form—revesting upon confirmation rather than upon a final decree. The court required compliance and confirmed. The debtor appealed. An appellant must have constitutional standing, that is, an injury in fact traceable to the challenged conduct and likely redressable by a favorable decision. Here, the debtor's property interests were directly affected by the lower court's decision, and she therefore has constitutional standing. In bankruptcy appeals, courts have imposed an additional prudential standing requirement, that the appellant be a "person aggrieved" by the decision, that is, that the appellant is directly and adversely affected pecuniarily by the decision. That additional requirement is to limit appeals of remote non-parties. Its purpose is not implicated when a party below appeals. Because the debtor was the party below and remained integrally connected to the issues on appeal, she need not satisfy the person aggrieved standard. *Trantham v. Tate*, 112 F. 4th 223 (4th Cir. 2024).

11.3.c **Availability of partial relief prevents equitable mootness finding.** Over the objection of minority bondholders, the debtor confirmed a prepackaged plan that provided extra consideration to the majority bondholders for their agreement to backstop an equity rights offering. The minority appealed and sought a stay pending appeal, which the district court denied in part because the majority argued that allowing plan consummation would not impose irreparable harm on the minority. In the appeal, the majority moved to dismiss on equitable mootness grounds. Equitable mootness requires showing that plan consummation has not been stayed, the plan has been substantially consummated, and the requested relief would affect either third parties' rights or the plan's success. Here, the second factor is satisfied. The first factor is also satisfied, but the denial of a stay on the ground that reallocation of equity precluded a finding of irreparable harm weighs against a finding of equitable mootness. Finally, the availability of that remedy prevents satisfaction of the third factor. Therefore, the court denies the motion to dismiss. *In re CovergeOne Holdings, Inc.*, Case no. CIVIL 4:24-cv-02001 (S.D. Tex. Oct. 23, 2024).

11.4 Sovereign Immunity

12. PROPERTY OF THE ESTATE

12.1 Property of the Estate

12.1.a **Successor liability and avoiding power claims are property of the estate.** Long before bankruptcy, the debtor sold a business that had potential mass asbestos, talc, and chemical liabilities. Before bankruptcy, some victims had sued the buyer under a successor liability theory. After bankruptcy, the debtor in possession sought to stay those actions. The automatic stay prohibits any act to obtain or exercise control over property of the estate. Where creditors have claims that are common to all creditors, such as alter ego claims, they are property of the estate. Claims asserting successor liability on a "business continuation" theory are common to all creditors. Therefore, they are property of the estate, and only the debtor in possession or trustee may bring them. The individual creditors are stayed. *Whittaker, Clark & Daniels, Inc. v. Brenntag AG (In re Whittaker, Clark, & Daniels)*, 663 B.R. 1 (Bankr. D.N.J. 2024).

12.1.b **Debtor does not hold an interest in property that is subject to a constructive trust.** The debtor borrowed but never repaid money to purchase real property. In state court, the lender obtained a judgment that the debtor held the property in constructive trust for the lender and must convey it to the lender. Another creditor soon filed an involuntary petition against the debtor. A preference is a transfer of an interest of the debtor in property for or on account of an antecedent debt to or for the benefit of a creditor that enables the creditor to receive more than in a chapter 7 liquidation. Applicable nonbankruptcy law determines what interest, if any, a debtor has in property. Here, state law provides that a person holding property subject to a constructive trust has an equitable duty to convey it to the rightful owner, who is deemed to hold equitable title ab initio. Applying state law, the debtor did not have an interest in the property, and the debtor's conveyance to the lender as required by the state court order was not a transfer of an interest of the debtor in property. *Snyder v. Biros (In re U Lock Inc.)*, ___ F. 4th ___, 2025 U.S. App. LEXIS 476 (3d Cir. Jan. 9. 2025).

12.2 Turnover

12.3 Sales

13. TRUSTEES, COMMITTEES, AND PROFESSIONALS

13.1 Trustees

13.1.a **Trustee seizing nonestate assets is immune from suit.** The debtor refused to turn over assets and records to the trustee, who then obtained an order permitting him to enter the debtor's residence and seize both assets and records. In executing the order, the trustee and his counsel also seized personal records of the debtor's wife and children. The wife filed an action in the district court against the trustee and his counsel. Under *Barton v. Barbour*, 104 U.S. 126 (1881), a court does not have subject matter jurisdiction over an action outside the bankruptcy court against a trustee for acts done in the trustee's official capacity without leave of the bankruptcy court. This case falls under that prohibition. However, the *Barton* doctrine has an ultra vires exception, where the trustee, by mistake or wrongfully, takes possession of another's property. The complaint here alleged sufficient facts to fall within the exception, so the district court has subject matter jurisdiction to hear the action. However, court-appointed officers enjoy judicial immunity for acts taken within the scope of their authority, even if the act is in error, malicious, or in excess of the appointing court's jurisdiction. Here, the trustee and his counsel were acting within the scope of their authority and are therefore immune from suit. *Juravin v. Ryan* ___ F. 4th ___, 2024 U.S. App. LEXIS 28043 (11th Cir. Nov. 5, 2024).

13.2 Attorneys

13.3 Committees

13.4 Other Professionals

13.4.a **Court approves "discretionary fee" to committee professional**. The committee employed a financial advisor under a fee agreement that provided for a monthly fee plus, at the conclusion of the employment, a "discretionary fee" based on the committee's business judgment and subject to review under section 330(a). The court approved the employment under section 328(a) as reasonable terms and conditions of employment. At the end of the case, the committee and the advisor negotiated the

discretionary fee. The discretionary fee is not a "bonus," which might be subject to approval under a stricter standard, but was part of the original fee agreement, which the court had approved, subject to later review under section 330 for reasonableness. Here, the court approved a slightly reduced discretionary fee as reasonable. *LTL Mgmt., LLC v. Houlihan Lokey Cap., Inc.*, 2024 U.S. Dist. LEXIS 234895 (D. Del. Dec. 31, 2024).

13.5 United States Trustee

14. TAXES

15. CHAPTER 15—CROSS-BORDER INSOLVENCIES

15.1.a **Chapter 15 court refuses comity to foreign ex parte order.** The court granted recognition to a Brazilian insolvency proceeding as a foreign main proceeding. The Brazilian liquidator brought an action in Brazil against numerous defendants, some of who were domiciled in the United States and had no contacts with Brazil, and obtained an ex parte freezing order against the defendants' assets sufficient to satisfy a judgment. The liquidator sought enforcement of the order in the chapter 15 case. Recognition of a foreign proceeding does not require recognition or comity for every order in the foreign proceeding. Section 1521(a) provides that following recognition of a foreign proceeding, the court may grant appropriate relief, including "any additional relief that may be available to a trustee." Section 1507(a) permits a court to provide additional assistance to a foreign representative. "Appropriate relief," beyond the specific provisions of section 1521(a), encompasses relief that would have been available under former section 304, which was chapter 15's predecessor. Only if the requested relief is not available as "appropriate relief" under section 1521(a) may the court consider "additional assistance" under section 1507(a), which must be guided by comity principles and may not be manifestly contrary to the public policy of the United States. Granting comity requires a jurisdictionally competent foreign court using proceedings consistent with civilized jurisprudence, lack of fraud in procuring the order, and non-violation of US public policy notions of decency and justice under the Due Process Clause. An order issued without personal jurisdiction over a defendant violates US public policy. Personal jurisdiction requires minimum contacts with the forum state, whether or not the foreign court requires minimum contacts. Here, the defendants had no contacts with Brazil, so the court refuses comity to the ex parte freezing order. In addition, *Grupo Mexicano* prohibits a prejudgment asset freezing order in a federal court, and a trustee would not be authorized to obtain one. Finally, the order is not final, and courts to not extend comity to a nonfinal order. Therefore, the court denies recognition and enforcement. *In re Nexgenesis Holdings Ltda.*, 662 B.R. 406 (Bankr. S.D. Fla. 2024).