



LOWENSTEIN BANKRUPTCY LOWDOWN



Lowenstein Bankruptcy Lowdown Video 21 – Monetizing Preference Claims in Bankruptcy: Fifth Circuit Decision Contributes to Growing Trend

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Eric Chafetz: Welcome to the [Lowenstein Bankruptcy Lowdown](#). We're diving into a recent decision by the Fifth Circuit Court of Appeals, concerning the sale of preference claims, that could have significant implications in bankruptcy cases for many stakeholders.

Brittany M. Clark: That's right. The Fifth Circuit, in the case of a matter of South Coast Supply Company, has added to the growing number of circuit courts that now allow preference claims to be sold and pursued by non-state fiduciaries.

Eric Chafetz: So, what exactly is a preference claim? It is an action that allows a debtor, or a trustee, to recover payments made to creditors if certain elements are satisfied, including that the payments are made within 90 days before a bankruptcy filing for non-insiders, or within a year for insiders.

Brittany M. Clark: In this case, the debtor South Coast Supply Company made payments totaling approximately \$321,000 under a loan agreement to its former CFO and insider, Robert Reamer, within a year before the bankruptcy filing. After filing for Chapter 11 bankruptcy, the debtor initiated a preference action to recover those payments.

Eric Chafetz: As part of the debtor's negotiated plan of reorganization, the preference claim against Mr. Reamer was to be sold to the debtor secured creditor, Breyer Capital. In exchange, Breyer Capital agreed to waive a large administrative claim and its right to recover certain sale proceeds.

The Fifth Circuit ruled that such claims are property of the estate and can be sold under Section 363 of the Bankruptcy Code, allowing them to be subsequently pursued by a non-state fiduciary.

Brittany M. Clark: This ruling is significant because it provides debtors, creditor committees, and lenders greater flexibility to monetize these claims, enabling them to capitalize on potential value rather than abandoning them due to resource constraints.

The court even noted that in certain instances, maximizing the value of the estate may require a debtor to sell preference claims.

Eric Chafetz: Importantly, the Fifth Circuit emphasized that the sale of preference claims should be evaluated on a case-by-case basis. In this instance, the court considered the sale of a single insider preference claim to a secured lender. However, it is unclear whether the court would have reached the same result if the preference claim was against a trade creditor rather than an insider. If the debtor sought to sell multiple preference claims instead of just one, or if the same reasoning would apply to the proposed sale of other estate causes of action.

Brittany M. Clark: It is also worth noting that this decision is consistent with, and relied on rulings from, the Eighth and Ninth Circuits, which could be evidence of a trend that provides more certainty to stakeholders in bankruptcy proceedings nationwide.

Eric Chafetz: In conclusion, the Fifth Circuit's decision could be a game changer. It allows for greater flexibility and potential value maximization in bankruptcy cases by permitting the sale of preference claims to non-state fiduciaries. These third parties can then prosecute the claims and provide much-needed immediate consideration to a bankruptcy estate.

Thanks for joining us today and stay tuned for future videos from Lowenstein.