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Chapter 11 Plan Update:
Recent Cases Regarding Chapter 11 Plans and Confirmation

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1. Classification, Impairment and Voting

   a. *In re Tree of Life Church*, 522 B. R. 849 (Bankr. D. S.C. 2015). Secured tax claims may be separately classified, unlike unsecured priority tax claims which are not classified pursuant to Section 1123(a)(1). Although a plan may provide for the treatment under Section 1129(a)(9)(D) for secured tax claims, such claims will still be impaired.

   b. *In re Manuel Mediavilla, Inc.*, 2015 WL 9590312 (Bankr. D. P.R. December 30, 2015). Section 1129(a)(9)(D) provides for the treatment of secured tax claims, but does not render such claims unimpaired for purposes of voting.

   c. *In re Village Green I, GP*, 2016 WL 325163 (6th Cir. January 27, 2016). The plan provided for class of small claims to be paid over 60 days. The District Court reversed the confirmation order, finding the debtor had not proposed the plan in good faith since the classification was "an artifice" to circumvent the provisions of Section 1129(a)(10). The Sixth Circuit affirmed the District Court. The Sixth Circuit agreed the class was impaired, noting that that Section 1124(1) addresses only whether plan alters a party's interest "not whether the debtor had bad motives in seeking to alter them." Id. at *2. Instead, the Court held that the issue of motive is considered in the context of Section 1129(a)(3), regarding good faith, finding the rationale for the deferred payments undermined by projections showing sufficient cash to make the payments.

   d. *In re The Village at Lakeridge, LLC*, 2016 WL 494592 (9th Cir. February 8, 2016) and *In re The Village at Lakeridge, LLC*, 2016 WL 496006 (9th Cir. February 8, 2016)(Not for Publication). In the first decision, the Ninth Circuit concluded that the buyer of the claim of an insider does not acquire insider status, and the vote may be counted for purposes of determining class acceptance. In the second memorandum (not for publication), the Ninth Circuit also affirmed bankruptcy

court decision declining to designate the vote of party who acquired claim from insider.

e. *In re Innovasystems, Inc*., 2014 WL 7235527 (Bankr. D. N.J. 2014). The Bankruptcy Court determined it could estimate claim "all or nothing and consequently creditor's contingent claim would be estimated at $0 for plan voting purposes. The Court noted that the creditor was still able to protect its rights through a plan objection.
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f. *U.S. Bank National Association v. TJ Plaza, LLC*, 2015 WL 5710860 (D. Nev. 2015). The District Court affirmed the Bankruptcy Court's disallowance of vote by assignee of claim, where claim had been transferred after record date established by bankruptcy court.

2. Plan Issues.

a. *In re Sagamore Partners, Ltd.*, 620 Fed Appx. 864 (11th Cir. 2015). The Eleventh Circuit held, that in cure and reinstatement plan, Section 1123(a) requires payment of default interest. The Court noted the tension with Section 1124(2), which provides that impairment is determined without regard to the payment of default interest.

b. *In re Gentry*, 807 F. 2d 1222 (10th Cir. 2015). Debtors were individual guarantors of corporate debt. Bankruptcy court previously confirmed corporate debtor's Chapter 11 plan, providing for payment to secured creditor over 25 years. Debtors' plan provided that the creditor's claim would be satisfied by payments under the corporate plan. The Tenth Circuit held Bankruptcy Court did not err in finding the plan feasible, relying primarily on the corporate plan. However, the Court found that the guarantors' debt was not limited by the corporate debt and remanded for a determination of the amount.

c. *In re MPM Silicones, LLC*, 531 BR 321 (S.D.N.Y. 2015). The District court affirmed Bankruptcy Court order confirming plan. The Court held that application of the *Till* formulaic approach (in contrast to efficient market claims) was appropriate. Also denied that senior lenders were entitled to "make whole" premium under the terms of the indentures and NY law.

3. Nondebtor Releases and Injunctions

a. *In re Seaside Engineering & Surveying, Inc.*, 780 F. 3d 1070 (11th Cir. 2015). The Eleventh Circuit held that nonconsensual releases could be included as part of a reorganization plan, applying the *Dow Corning* factors.

b. *Hernandez v. Larry Miller Roofing, Inc.*, 2016 WL 67217 (5th Cir 2016). The Fifth Circuit held that a nondebtor release did not bar claims not specifically identified.

c. *In re Lightsquared, Inc*., Case No. 15-2848 (S.D.N.Y. October 7, 2015). In addition to the "typical" injunction" precluding parties from taking any action regarding released claims, the plan included a further injunction that prohibited actions that would interfere with the implementation of the plan, including obtaining the consents or licenses from the FCC. The District Court held that the further injunction should be considered issued under both Section 105 and Bankruptcy Rule 3020(c)(1) and Federal Rule 65. The District Court remanded the case to the Bankruptcy Court, finding that the injunction failed to meet the requirements of Federal Rule 65 requiring more specificity about the conduct enjoined, by whom and for how long.

4. Effect of confirmation and Discharge

a. *In re Northern New England Telephone Operations, LLC*, 795 F. 3d 343 (2nd Cir. 2015). The Second Circuit held that a lien is extinguished by chapter 11 plan if (i) the plan does not preserve lien, (ii) the plan is confirmed, (iii) the property is "dealt with" by the plan, and (iv) the lienholder participated in proceedings. The Court found provision that referenced "all property" vesting free and clear of liens was sufficient to "deal with" specific property. The Court also found that the lienholder participated where it filed proofs of claim (although not related to the specific lien.)

b. *In re Mendolia*, 2015 WL 475966 (Bankr. N.D.N.Y. 2015). Corporate debtors filed Chapter 11, subsequently equity owners filed individual Chapter 7 cases and a trustee was appointed. The Bankruptcy Court held that the confirmation of the reorganization plan in corporate case barred the Chapter 7 trustee in individual case from pursuing alleged fraudulent conveyance action against reorganized debtor, since such claims arose preconfirmation.

5. Appeal Issues Including Equitable Mootness

a. *Bullard v. Blue Hills Ban*k, __ U.S.__, 135 S.Ct. 1686 (2015). In a chapter 13 case, the Supreme Court ruled that denial of confirmation of a plan was not a final decision that could be appealed.

b. *In re O & S Trucking, Inc*., 2016 WL 279269 (8th Cir. 2016). The debtor lacked standing to appeal order confirming debtor's plan of reorganization.

c. *In re Tribune Media Company*, 799 F. 3d 272 (3rd Cir. 2015). Discussion of doctrine of equitable mootness.

d. *In re Transwest Resort Properties, Inc*., 801 F. 3d 1161 (9th Cir. 2015). Appeal not equitably moot, remanded to district court. The majority held that the interests of the new investors were not "third party" interests to be considered in applying the doctrine.

e. *In re One2One Communications, LLC*, 805 F.3d 428 (3rd Cir 2015). Appeal not equitably moot, remanded to district court to consider merits. Case was "garden variety" chapter 11, not involving complex transactions, or issuance of public debt. Judge in concurring opinion would find equitable mootness doctrine unconstitutional, after Supreme Court decision in *Stern v. Marshall*.

6. Plan Modifications.

a. *SCH Corp. v. CFI Class Action Claimants*, 597 Fed. Appx. 143 (3rd Cir. 2015). The Third Circuit determined that a settlement agreement resolving a funding dispute and extending time for plan payments was a plan modification requiring compliance with Section 1127, not approval as a settlement under Bankruptcy Rule 9019.

7. Post- Confirmation Jurisdiction

a. *Quincy Medical Center v. Gupta*, 2015 WL 58633 (D. MA January 5, 2015). The District Court held that the Bankruptcy Court lacked subject matter jurisdiction over dispute between purchaser of assets and two former employees asserting claims based on purchase agreement. Retention of jurisdiction in plan and sale order did not expand Bankruptcy Court's subject matter jurisdiction. (Case on appeal to First Circuit – argued February 3, 2016.)

b. *In re Wellesley Realty Associates, LLC*, 2015 WL 2261680 (Bankr. D. MA May 11, 2015, Feeney, J.) (Not for Publication). Judge Feeney found there was no subject matter jurisdiction postconfirmation over a dispute between reorganized debtor and town over ownership of escrowed funds. The plan was substantially consummated and all creditors paid in full or settled, effective date passed, and only members of reorganized debtor would benefit from recovery. Alternatively, the Court abstained.

8. Post Confirmation/Plan Implementation Issues

a. *In re Gulf States Long Term Acute Care of Covington, L.L.C.*, 614 Fed. Appx. 714 (5th Cir. 2015). Blanket reservation of causes of action was insufficient to reserve common law claims against third parties.

b. *Rossco Holdings, Inc. v. McConnell*, 613 Fed. Appx. 302 (5th Cir. 2015). Case involved litigation against defendants in Texas (5th Cir.) after plan confirmation in Chapter 11 cases in California (9th Cir.) The Fifth Circuit upheld the District Court's application of Fifth Circuit precedent, which requires specific reservation of claims, and concluded that such application did not modify the plan. Since the issue was not raised in the lower courts, the Court declined to consider the argument that the plan should have been interpreted under Ninth Circuit precedent (which did not require such specificity).

c. *In re Schupbach Investments, L.L.C.*, 808 F.3d 1215 (10th Cir. 2015). Confirmation of creditor's plan terminated debtor as debtor-in-possession, and as a result, there was no basis to award fees to debtor's counsel for postconfirmation services.

9. Individual Chapter 11 Cases:

a. *Zachary v. California Bank & Trust*, 2016 WL 360519 (9th Cir. January 28, 2016). Absolute priority rule continues to apply in individual Chapter 11, except as to postpetition earnings and assets added under Section 1115.

b. *In re Woodward*, 537 B. R. 894 (8th Cir. BAP 2015). Absolute priority rule applies to individual Chapter 11 case.

c. *In re Schupbach*, 607 Fed Appx. 831 (10th Cir. 2015). Lender's appeal in adversary on nondischargeability was mooted by confirmation of Chapter 11 plan that provided for surrender of collateral as satisfaction in full of lender's claim.

10. Small Business Cases

a. *In re Shea, Ltd.*, 2016 WL 740361 (Bankr. S.D. Tex January 19, 2016). Deadlines for filing a plan under Section 1121(e) apply only to small business debtor, but do not apply to creditors filing a competing plan.

b. *In re Star Ambulance Service, LLC*, 540 B.R. 251 (Bankr. S.D. Tex 2015). Small business plan could not be confirmed where Debtor had not asked for extension of 45 day requirement under Section 1129(e), and more than 83 days lapsed from filing of plan. Time frame was measured from first plan filed, not subsequent amended plan.

c. *In re Simbaki, Ltd*, 522 B.R. 917 (Bankr. S.D. Tex. 2014). Deadlines for filing a plan under Section 1121(e) do not apply to nondebtor plan proponents. Dismissal or conversion is not mandatory once the deadline for confirmation under Section 1129(e) has passed.