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- **Supreme Court Rules on Stern Gap Issues:** Recently, the Supreme Court issued a much anticipated follow up decision to its 2011 *Stern v. Marshall* decision, addressing the scope of bankruptcy court jurisdiction. After *Stern*, there remained uncertainty surrounding whether a bankruptcy court could hear matters deemed "core" by Congress, but on which Article III of the Constitution prohibited bankruptcy courts from entering final judgments ("Stern Claims"). The Supreme Court held that a bankruptcy court may hear a Stern Claim and issue proposed findings of fact and conclusions of law to the district court for *de novo* review, as if the claim were a non-core matter, closing the so-called "Stern Gap." However, the Supreme Court reserved for another day issues relating to whether (1) litigants may consent to bankruptcy court jurisdiction with respect to Stern Claims; and (2) whether fraudulent transfer claims are indeed Stern Claims. *Exec. Bens. Ins. Agency v. Arkison*, 189 L. Ed. 2d 83 (2014).

- **Bondholders Retain Claims Against Indenture Trustee**: The Third Circuit has upheld a bankruptcy court decision that exposes the indenture trustee to potential claims of aggrieved bondholders, finding that the debtor's disclosure statement failed to properly inform the bondholders that they would be waiving their claims against the indenture trustee by accepting a settlement. The settlement pertained to the debtor's attempt to strip the bondholders of their secured status on $26 million in bonds, alleging that the indenture trustee failed to update certain UCC filings. Under the settlement, the bondholders reduced their secured claim to $8.15 million and waived any claims against the indenture trustee. However, in affirming the bankruptcy court, the Third Circuit held that the releases could not be enforced, as they were not disclosed to the bondholders in a "clear and conspicuous manner." *In re Lower Bucks Hosp.*, No. 13-1311, 2014 U.S. App. LEXIS 12633 (3rd Cir. July 3, 2014).

- **Court Restricts Estate's Payment of Committee Member Attorneys:** The Southern District of New York has recently overturned the bankruptcy court's decision in *Lehman Brothers* that approved a chapter 11 plan provision permitting attorneys retained by individual creditors' committee members to be paid by the bankruptcy estate. The district court found that such a plan provision was inconsistent with section 503(b)(4) of the Bankruptcy Code, which provides for payment of certain creditors' professionals' fees and expenses, but which "glaringly exclude[s]" members of creditors' committees. Instead, the District Court found that in order to have their professionals' fees paid for by the bankruptcy estate, members of the creditors' committee must make a substantial contribution to the bankruptcy case, as such payments are provided for by sections 503(b)(3)(D) and (b)(4) of the Bankruptcy Code. *Davis v. Elliot Mgmt. Corp. (In re Lehman Bros. Holdings Inc.)*, 508 B.R. 283 (S.D.N.Y. 2014).

- **Another Court Limits Credit Bid**: A secured lender's right to credit bid the full value of its claim has once again been called into question, this time by the Eastern District of Virginia Bankruptcy Court. The bankruptcy court, in hopes of fostering "a robust bidding process," limited a secured lender's credit bid to $14 million, less than half the amount owed on the claim. In so doing, the court was troubled by the secured lender's (i) "less than fully-secured lien status"; (ii) "overly zealous loan-to-own strategy" and (iii) misconduct, which had a negative impact on the auction process. This recent decision, along with the earlier *In re Fisker* decision (capping credit bid at the amount the lender paid for the loan), indicate a growing willingness of bankruptcy courts to limit or deny credit bidding in order to promote a competitive bidding environment where the secured claim is in doubt. *In re Free Lance-Star Publ'g Co.*, No. 14-30315, 2014 Bankr. LEXIS 1611 (Bankr. E.D. Va. Apr. 14, 2014).

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