PRATT'S JOURNAL OF BANKRUPTCY LAW

VOLUME 6 NUMBER 5 JULY/AUGUST 2010

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ISSN 1931-6992

Disenfranchising Strategic Investors in Chapter 11: "Loan to Own" Acquisition Strategy May Result in Vote Designation

MARK G. DOUGLAS

In this article, the author explores a situation where a creditor can be stripped of its right to vote on a plan as a consequence of its conduct during the course of a Chapter 11 case.

The ability of a creditor whose claim is "impaired" to vote on a Chapter 11 plan is one of the most important rights conferred on creditors under the Bankruptcy Code.[1] The voting process is an indispensable aspect of safeguards built into the statute to ensure that any plan ultimately confirmed by the bankruptcy court meets with the approval of requisite majorities of a debtor's creditors and shareholders and satisfies certain minimum standards of fairness. Under certain circumstances, however, a creditor can be stripped of its right to vote on a plan as a consequence of its conduct during the course of a Chapter 11 case.

In *In re DBSD North America, Inc.*,[2] a New York bankruptcy court ruled in December 2009 that the votes of a creditor which purchased the debtors' senior secured debt at par, after the debtors had filed a Chapter 11 plan that proposed to satisfy the senior secured debt in full (by means of a modified note under an amended first lien credit facility), should be "des-

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Published in the July/August 2010 issue of *Pratt's Journal of Bankruptcy Law.*
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ignated" (*i.e.*, disallowed) pursuant to Section 1126(e) of the Bankruptcy Code. The creditor's acknowledged purpose in buying the debt and voting to reject the Chapter 11 plan was to take control of the debtor. The bankruptcy court concluded that the creditor's conduct warranted designation of its votes, observing that:

> [w]hen an entity becomes a creditor late in the game paying…[100 cents] on the dollar, as here, the inference is compelling that it has done so not to maximize the return on its claim, acquired only a few weeks earlier, but to advance an "ulterior motive" condemned in the case law.[3]

According to the court, the creditor had an "ulterior motive" in acting not to maximize its interest as a creditor, but purely as a prospective owner of the reorganized debtors. A New York district court affirmed the ruling on March 24, 2010.[4] The rulings have been appealed to the Second Circuit Court of Appeals[5] and serve as a cautionary tale to prospective strategic investors pursuing a "loan to own" strategy.

CHAPTER 11 PLAN VOTING PROCEDURES

The preferred culmination of the Chapter 11 process is confirmation of a Chapter 11 plan specifying how the claims and interests of all stakeholders in the bankruptcy case are to be treated going forward. Depending on the provisions of the plan, classes of creditors, shareholders, and other stakeholders are provided with a voice in the confirmation process through the Bankruptcy Code's plan voting procedures. Generally, holders of allowed[6] claims and interests have the right to vote to accept or reject a Chapter 11 plan.[7] Claimants or interest holders whose claims or interests are not "impaired,"[8] however, are deemed conclusively to accept the plan, and stakeholders who receive nothing under a plan are deemed to reject it.[9] Any holder of a claim or interest to which an objection has been filed does not have the right to vote the portion of the claim or interest objected to, unless it obtains an order temporarily allowing the claim or interest for voting purposes pending resolution of the merits of the objection.[10] Unliquidated or

contingent claims may be estimated for purposes of voting on a plan.[11]

Voting rights can have a significant impact on the ultimate fate of a Chapter 11 plan. If a creditor holds a significant bloc of claims in a single class under a plan, it may be able to prevent confirmation of the plan or force the plan proponent to comply with the Bankruptcy Code's "cram-down" requirements to achieve confirmation.[12] Creditors holding a blocking position or having sufficient influence to create one through dealmaking with other creditors commonly use the resulting leverage to maximize their recoveries under the plan, sometimes at the expense of creditors who lack the same negotiating power. In some cases, the accumulation of claims and voting power can even be an effective means to gain control of a company in Chapter 11.[13]

DISQUALIFICATION OF VOTES

The drafters of the Bankruptcy Code recognized that the Chapter 11 voting process can sometimes be abused by the unscrupulous. Section 1126(e) of the Bankruptcy Code provides:

> On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title.

"Designation" of a vote means that the vote is disqualified or disallowed.[14] Section 1126(e) expands the disqualification procedures that existed under Chapter X of the former Bankruptcy Act.[15] Under the Bankruptcy Act, a bankruptcy court was authorized to disqualify claims or stock for the purpose of determining the requisite majorities for acceptance of a plan if the holders of those claims or interests did not accept or reject the plan in good faith. The provision's purpose was to prevent speculators who had acquired claims or stock at depressed prices from exercising unfair veto power over the debtor's reorganization and to keep creditors and stockholders from securing advantages by refusing to vote in favor of a plan unless they received preferential treatment.[16] Section 1126(e) is broader than its

predecessor under the Bankruptcy Act — it authorizes the court to disallow votes that are not cast, procured, or solicited in good faith[17] or in accordance with the provisions of the Bankruptcy Code.[18] The bankruptcy court has broad discretion in determining whether to designate a vote.[19]

The statute does not explain what kind of conduct amounts to bad faith, which is necessarily a flexible concept that has been left to the courts to define according to the facts and circumstances of each individual case. Court findings of bad faith, however, appear to center around certain types of conduct; instances of bad faith identified by the courts can be grouped into three general categories:

(i) Use of obstructive tactics or holdup techniques by a creditor to extract better treatment for its claim than the claims of similarly situated creditors in the same class;[20]

(ii) Casting a vote for the ulterior purpose of securing some advantage to which the creditor would not otherwise be entitled;[21] and

(iii) Casting a vote motivated by something other than protection of a creditor's own self-interest.[22]

Votes, for example, have been deemed to be tainted if designed to assume control of the debtor,[23] put the debtor out of business or otherwise gain a competitive advantage, destroy the debtor out of pure malice,[24] or obtain benefits available under a private side agreement with a third party that depends on the debtor's inability to reorganize.[25] These factors have been identified by some courts as "badges of bad faith."[26] Standing alone, however, a creditor's "selfish motive" for casting its vote is not a basis for disqualification under Section 1126(e).[27] Given the practical ramifications of barring an impaired creditor from exercising a fundamental entitlement, most courts consider designation to be the "exception rather than the rule"[28] or even a "drastic remedy."[29] As such, the party seeking designation of a vote bears a heavy burden of proof.[30]

The analysis becomes more complicated in large Chapter 11 cases involving affiliated debtors. The existence of inter-company debts, an extensive body of creditors asserting multiple claims of varying priorities against one debtor or claims against more than one debtor based upon

inter-company guarantees, and inter-creditor or subordination agreements makes determining a creditor's motives in voting no simple matter.

Lawmakers attempted to address the potential problems arising from one of these eventualities — a creditor holding claims against the same debtor classified in competing classes — when enacting the Bankruptcy Code in 1978. The House version of the bill that later became the Bankruptcy Code originally contained a provision that would have expressly authorized the court to designate the vote of an "entity that has, with respect to such class, a conflict of interest that is of such a nature as would justify exclusion of such entity's claim or interest" from the computation involved in determining whether a class has accepted or rejected a Chapter 11 plan.[31] The provision, however, did not appear in the Senate version of the draft legislation and never made its way into the statute. At the time, a leading sponsor of the legislation, Senator Dennis DeConcini, expressed the view that Congress deemed the provision unnecessary because a bankruptcy court's broad equitable powers under Section 105(a) of the Bankruptcy Code[32] give the court the power to disqualify a creditor from voting its claims on the basis of conflict of interest.[33]

The seminal case addressing vote designation in Chapter 11 is a Pennsylvania bankruptcy court's 1990 decision in *In re Allegheny International, Inc.*[34] In that case, the court designated the votes of Japonica Partners, a hedge fund that acquired claims against a Chapter 11 debtor with the "ulterior motive" of seizing control of the debtor. The court concluded that Japonica was manipulating the bankruptcy process because it was acting not to protect its interests as a creditor, but as an opportunistic investor that bought up claims 22 months into the case after the debtor had filed its Chapter 11 plan and disclosure statement. Among other things, the evidence showed that Japonica purchased claims in classes with diametrically opposed interests in pending avoidance and lender liability litigation and that the amounts and prices of claims acquired by Japonica clearly indicated it was orchestrating a scheme to block confirmation of the debtor's Chapter 11 plan and propose a competing plan.[35] The bankruptcy court in *DBSD North America* looked to *Allegheny* for guidance in assessing whether a creditor's conduct in acquiring claims to block confirmation of a plan warranted designation of its votes under Section 1126(e).

DBSD NORTH AMERICA

DBSD North America, Inc., is a development-stage enterprise formed in 2004 to develop an integrated mobile satellite and terrestrial services network to deliver wireless satellite communication services to mass-market consumers. The company and its subsidiaries (the "debtors") filed for Chapter 11 protection in New York on May 15, 2009.[36] Shortly after the debtors filed an amended Chapter 11 plan, DISH Network Corporation ("DISH"), a competing satellite services provider, purchased $40 million in principal amount of the debtors' first-lien working capital facility debt. DISH thereby acquired all of the claims in Class 1 of the debtors' plan. A DISH affiliate then purchased $111 million in principal amount (less than all) of the second-lien claims classified separately under the plan, which proposed to convert the second-lien debt to equity. The second-lien claims purchase was made only after determining that the sellers were not bound by a plan support agreement. DISH paid 100 cents on the dollar for the first-lien debt.[37]

DISH voted all of its claims against the plan. As a consequence, Class 1 would have rejected the plan. However, the debtors sought a court order designating the Class 1 votes. Bankruptcy judge Robert E. Gerber sided with the debtors, finding that:

> DISH's acquisition of First Lien Debt was not a purchase to make a profit on increased recoveries under a reorganization plan … [but] [r]ather … DISH made its investment in this [C]hapter 11 case, and has continued to act, not as a traditional creditor seeking to maximize its return on the debt it holds, but as a strategic investor, "to establish control over this strategic asset."[38]

Judge Gerber based his decision upon the timing of DISH's claim purchases shortly before confirmation, the inflated price DISH paid for the debt, and internal DISH documents, as well as testimony that revealed its plans to use the debt purchase as a means to "control the bankruptcy process" and "acquire control" of the company, which was a "potentially strategic asset."

According to Judge Gerber, the circumstances represented a classic case for application of *Allegheny*, as well as the ruling's identification of "efforts to assume control of the debtor" as a badge of bad faith.[39] As Judge Gerber observed, DISH's conduct in seeking to block a plan that would have repaid its first-lien claims with a promissory note, in favor of proposing its own plan, which would have given it control of the debtors, "is indistinguishable in any legally cognizable respect from the conduct that resulted in designation in *Allegheny*, and DISH's vote must be designated for the same reasons."[40]

Judge Gerber rejected DISH's argument that its conduct was that of a "model bankruptcy citizen" in that it had not "moved to terminate exclusivity" or "proposed a competing plan." This line of defense was belied by the fact that, on the morning of the scheduled confirmation hearing (and after the close of briefing on the designation motion), DISH filed a motion seeking court authority to terminate the debtors' exclusivity and to propose its own Chapter 11 plan.[41]

DISH appealed the ruling to the district court, which affirmed. According to District Judge Lewis A. Kaplan, the bankruptcy court's finding that DISH had acted as a strategic investor to obtain control over the debtor was not clearly erroneous and was sufficient to support the court's finding of a lack of good faith for purposes of Section 1126(e).[42]

OUTLOOK

DBSD North America does not represent the first instance that Judge Gerber has considered the standards for vote designation under Section 1126(e). In his 2006 ruling in *In re Adelphia Comm. Corp.*,[43] Judge Gerber, acknowledging that "[t]he ability to vote on a reorganization plan is one of the most sacred entitlements that a creditor has in a [C]hapter 11 case," wrote that "[w]hile creditor tactics, activities or requests (or plan provisions that result from them) may be objectionable, the Code provides for other ways to address concerns that arise from such (such as upholding objections to confirmation) without the draconian measure of denying one's franchise to vote."[44] Thus, Judge Gerber declined a request to designate votes in the *Adelphia* case.

In *DBSD North America*, Judge Gerber reaffirmed the legitimacy of vigorous advocacy by creditors, including extremely aggressive actions, provided that such conduct is calculated "to increase their recoveries as creditors holding long positions in debt." DISH's undoing was that it "acted to advance strategic investment interests wholly apart from maximizing recoveries on a long position in debt it holds." Given the ruling in *Adelphia*, Judge Gerber's decision to designate votes in *DBSD North America* appears to be a consequence of what he perceived to be particularly egregious facts.

As noted, DISH has appealed the district court's ruling to the Second Circuit Court of Appeals. Only a handful of Chapter 11 vote-designation cases have reached the circuit courts of appeal since 1978, and the Second Circuit will have an opportunity to address the issue as a matter of first impression.

NOTES

[1] 11 U.S.C. §§ 101 *et seq.*

[2] 421 B.R. 133 (Bankr. S.D.N.Y. 2009), *aff'd*, 2010 WL 1223109 (S.D.N.Y. Mar. 24, 2010).

[3] *Id.* at 140.

[4] 2010 WL 1223109 (S.D.N.Y. Mar. 24, 2010).

[5] The notice of appeal was filed on April 12, 2010. District Judge Lewis A. Kaplan denied a motion for a stay pending the appeal to the Second Circuit on May 7, 2010.

[6] Section 502(a) of the Bankruptcy Code provides that a filed proof of claim is deemed allowed unless a party-in-interest objects. In a Chapter 11 case, a creditor need not file proof of its claim if the claim is scheduled by the debtor in the correct amount without any indication that the claim is disputed, contingent or unliquidated. *See* Fed. R. Bankr. P. 3003(c). If an objection to a claim is filed, Section 502(b) directs the bankruptcy court to determine the allowed amount of the claim after notice and a hearing in accordance with certain restrictions and limitations specified in the statute (*e.g.*, disallowing certain late-filed claims and claims for unmatured interest and capping landlord claims for future rent). Section 502(c) of the Bankruptcy Code mandates the estimation of almost any contingent or unliquidated claim where failure to

do so "would unduly delay the administration of the case." A claim may be allowed temporarily for purposes of voting on a plan. *See* Fed. R. Bankr. P. 3018(a).

[7] 11 U.S.C. § 1126(a).

[8] Section 1124 of the Bankruptcy Code provides that a class of claims or interests is impaired under a Chapter 11 plan unless the plan either (i) "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest" or, (ii) notwithstanding any contractual right to accelerated payment, reinstates the original maturity date of the obligation, cures any outstanding defaults, compensates the claimant or interest holder for damages suffered in reasonably relying on the default provision and otherwise leaves unaltered the legal, equitable or contractual rights of the claimant or interest holder.

[9] 11 U.S.C. §§ 1126(f) and (g).

[10] *Jacksonville Airport, Inc. v. Michkeldel, Inc.*, 434 F.3d 729, 731 (4th Cir. 2006).

[11] 11 U.S.C. § 502(c). The estimate should ensure that the claimant's voting power is commensurate with its economic stake in the Chapter 11 case. *See Pension Benefit Guaranty Corp. v. Enron Corp.*, 2004 WL 2434928, *1-2 (Bankr. S.D.N.Y. Nov. 1, 2004).

[12] Among other things, consensual confirmation of a Chapter 11 plan depends on acceptance of the plan by all classes of creditors. *See* 11 U.S.C. § 1129(a)(8). A class of claims accepts a plan if the plan is accepted (via deemed acceptance or votes cast) by creditors in the class holding at least two-thirds in amount and more than 50 percent in number of the allowed claims in the class, disregarding the claims of non-voting creditors and creditors whose votes have been disallowed. *See* 11 U.S.C. § 1126(c). Thus, a creditor or creditor bloc holding a sufficient number of claims in an impaired class can control the vote of the class, effectively preventing consensual confirmation of the Chapter 11 plan. In this case, the plan could be confirmed only under the non-consensual, or "cramdown," requirements specified in Section 1129(b) of the Bankruptcy Code.

[13] *See, e.g., Figter Limited v. Teachers Insurance and Annuity Association of America (In re Figter, Ltd.)*, 118 F.3d 635, 639 (9th Cir. 1997). Chapter 11 plans commonly involve equity for debt swaps, where stock in the reorganized company is distributed in exchange for cancellation of indebtedness. *See, e.g., In re Armstrong World Industries, Inc.*, 348 B.R. 136 (D. Del. 2006); *In re*

Winn-Dixie Stores, Inc., 356 B.R. 813 (Bankr. M.D. Fla. 2006).

[14] Sections 1126(c) and (d) of the Bankruptcy Code provide that the vote of any entity designated by the bankruptcy court is to be excluded in assessing whether the requisite majorities for class acceptance have been achieved.

[15] Section 203 of the Chandler Act of 1938, 11 U.S.C. § 603 (repealed 1978), provided that "[i]f the acceptance or failure to accept a plan by the holder of any claim or stock is not in good faith, in the light of or irrespective of the time of acquisition thereof, the judge may, after hearing upon notice, direct that such claim or stock be disqualified for the purpose of determining the requisite majority for the acceptance of a plan." Section 203 was superseded by Rule 10-305(d), 11 U.S.C. app. at 559 (Supp. V 1975) (repealed effective 1983), which provided that "[f]or the purpose of determining the requisite number of acceptances, the court after hearing on notice to the creditor or stockholder may disqualify any acceptance or rejection of a plan or modification of a plan if such acceptance or rejection was not in good faith in the light of or irrespective of the time of the acquisition of the claim or stock by such creditor or stockholder."

[16] *See In re Pleasant Hill Partners, L.P.*, 163 B.R. 388, 393 (Bankr. N.D. Ga. 1994) (citing H.R. 6439, 75th Cong. 183-4 (1937)); *see generally*, 4 Norton Bankr. L & P. 2d § 91:24 (2010). Although bad faith was not defined in Section 203 or elsewhere in the statute, the Supreme Court explained in *Young v. Higbee Co.*, 324 U.S. 204, 211 (1945), that the prohibition against votes cast in bad faith was intended to apply "to those stockholders whose selfish purpose was to obstruct a fair and feasible reorganization in the hope that someone would pay them more than the ratable equivalent of their proportionate part of the bankrupt assets." The Court further noted that the provision's purpose was to prevent creditors from participating who "'by the use of obstructive tactics and hold-up techniques exact for themselves undue advantages from the other stockholders who are cooperating,'" and that "[b]ad faith was to be attributed to claimants who opposed a plan for a time until they were 'bought off'" or who "'refused to vote in favor of a plan unless … given some particular preferential advantage.'" *Id.* at 211 (quoting Revision of the Bankruptcy Act: Hearing on H.R. 6439 Before H. Comm. on the Judiciary, 75th Cong., 180-182 (1937)).

[17] Section 1125 of the Bankruptcy Code contains the vote solicitation and disclosure requirements.

[18] *See Century Glove, Inc. v. First Am. Bank*, 860 F.2d 94, 97 (3d Cir. 1988)

(Section 1126(e) "grants the bankruptcy court discretion to sanction any conduct that taints the voting process, whether it violates a specific provision or is in 'bad faith'"). Even so, decisions interpreting the precursors of Section 1126(e) continue to be informative in determining conduct amounting to bad faith. *See In re Dune Deck Owners Corp.*, 175 B.R. 839, 844 (Bankr. S.D.N.Y. 1995); *In re Gilbert*, 104 B.R. 206, 215-16 (Bankr. W.D. Mo. 1989).

[19] *In re Adelphia Communications Corp*., 359 B.R. 54, 60 (Bankr. S.D.N.Y. 2006) (citing *Century Glove*, 860 F.2d at 97).

[20] *Young v. Higbee Co.*, 324 U.S. at 211; *In re Federal Support Co.*, 859 F.2d 17, 19 (4th Cir. 1988).

[21] *See, e.g., Zenter GBV Fund IV v. Vesper*, 2001 WL 1042217 (6th Cir. Aug. 29, 2001) (upholding lower courts' determination that holding company formed by corporation's owner for purpose of purchasing unsecured claims in corporation's bankruptcy in order to block approval of trustee's plan acted in bad faith, where it appeared that owner acted with ulterior purpose of gaining advantage for himself in any future negotiations with trustee so as to possibly limit his own liability).

[22] *See, e.g., In re Allegheny International, Inc.*, 118 B.R. 282, 289 (Bankr. W.D. Pa. 1990) (alternative plan proponent's conduct with respect to acquired claims amounted to "bad faith" under Section 1126(e) where proponent filed plan of reorganization at eleventh hour, acquired claims after debtor's disclosure statement was approved, purchased clear blocking position, making confirmation of debtor's plan extremely difficult, and where proponent's interest was to take over and control debtor).

[23] *See, e.g., In re Holly Knoll Partnership*, 167 B.R. 381, 388 (Bankr. E.D. Pa. 1994); *Allegheny*, 118 B.R. at 289.

[24] *See, e.g., In re MacLeod Co.*, 63 B.R. 654, 656 (Bankr. S.D. Ohio 1986).

[25] *See Dune Deck Owners Corp.,* 175 B.R. at 844 (canvassing law construing Section 1126(e)); *see generally* 7 Collier on Bankruptcy ¶ 1126.06[2] (16th ed. 2010); 4 Norton Bankr. L. & Prac. 2d § 91:24 (2010).

[26] *Dune Deck Owners Corp.*, 175 B.R. at 844 (citing cases).

[27] *See Figter*, 118 F.3d at 639; *Federal Support Company,* 859 F.2d at 19; *In re Three Flint Hill Ltd. Partnership*, 213 B.R. 292, 301 (D. Md. 1997); *In re Cloverleaf Enterprises, Inc.*, 2010 WL 1445487, *2 (Bankr. D. Md. Apr. 2, 2010); *In re Cajun Elec. Power Co-op., Inc.*, 230 B.R. 715, 742 (Bankr. M.D. La. 1999); *see also In re Marin Town Center*, 142 B.R. 374, 379 (N.D. Cal. 1992) ("Section 1126(e) does not require a creditor to have an interest in

seeing the debtor reorganize"); *In re Save Our Springs (S.O.S.) Alliance, Inc.*, 388 B.R. 202, 232 (Bankr. W.D. Tex. 2008) (if creditor sufficiently manifests a proper motive, courts are unwilling to second-guess wisdom of creditor's exercise of business judgment and to designate its vote on proposed Chapter 11 plan as having been cast in bad faith; however, if creditor fails to convince court that its conduct was motivated by business judgment, then court must inquire into creditor's motives; standard is both inherently fact-intensive and difficult to apply, since what appears to be enlightened self-interest to creditor may well appear to be ulterior motive to debtor); *In re Pine Hill Collieries Co.*, 46 F. Supp. 669, 671 (E.D. Pa. 1942) ("If a selfish motive were sufficient to condemn reorganization policies of interested parties, very few, if any, would pass muster").

[28] *See, e.g.*, *Dune Deck Owners Corp.*, 175 B.R. at 844; *In re 500 Fifth Avenue Associates*, 148 B.R. 1010, 1020 (Bankr. S.D.N.Y. 1993).

[29] *Adelphia*, 359 B.R. at 60; *In re Peter Thompson Assocs., Inc.*, 155 B.R. 20, 23 (Bankr. D.N.H. 1993).

[30] *See Adelphia*, 359 B.R. at 60; *In re United Marine, Inc.*, 197 B.R. 942, 946 (Bankr. S.D. Fla. 1996); *In re Kovalchick*, 175 B.R. 863, 875 (Bankr. E.D. Pa. 1994).

[31] H.R. 8200, 95th Cong., 1st Sess. (1977), included this provision as Section 1126(e). The present Section 1126(e) was denominated as Section 1126(f) in the House bill. The House Report accompanying the bill explained the purpose of proposed Section 1126(e):

> Subsection (e) permits the court to designate for any class of claims or interests any person that has, with respect to that class, a conflict of interest that is of such nature as would justify exclusion of that person's claim or interest from the amounts and number specified in subsection (c) or (d). A person might have such a conflict, for example, where he held a claim or interest in more than one class. Exclusion from one class for voting purposes would not require his exclusion from the other class as well. The result is to overrule cases such as *Aladdin Hotel Corp. v. Bloom*, 200 F.2d 627 (8th Cir. 1953), which, though not in the bankruptcy context, would appear to count votes for a reorganization plan motivated by an attempt to squeeze out a minority of a class. In that case, the conflict of interest of those voting for the plan was clear, but the court permitted the votes.

H. R. Rep. No. 95-595, at 411 (1977). The conflict of interest section was not included in the Senate bill, S.2266, 95th Cong., 2d Sess. (1978), and did

not make it into the Bankruptcy Code as enacted. Lawmakers considered the provision unnecessary because in their view, Section 105 of the Bankruptcy Code "constitutes a sufficient power in the court to designate exclusion of a creditor's claim on the basis of a conflict of interest." 124 Cong. Rec. S17420 (daily ed. Oct. 6, 1978) (statement of Sen. DeConcini).

[32] Section 105(a) of the Bankruptcy Code provides in relevant part that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11]."

[33] *See supra* n. 30.

[34] 118 B.R. 282 (Bankr. W.D. Pa. 1990).

[35] *Id.* at 286-92.

[36] *DBSD*, 421 B.R. at 135.

[37] *Id.*

[38] *Id.* at 136-37.

[39] *Id.* at 139.

[40] *Id.* at 143.

[41] *Id.* at 142.

[42] *DBSD*, 2010 WL 1223109 at *3-5.

[43] 359 B.R. 54 (Bankr. S.D.N.Y. 2006).

[44] *Id.* at 57.