FROM THE TOP

The U.S. Supreme Court issued two rulings in 2016 involving issues of bankruptcy law.

In *Husky Int'l Elecs., Inc. v. Ritz*, 194 L. Ed. 2d 655, 2016 BL 154812 (2016), the Court addressed the scope of section 523(a)(2)(A) of the Bankruptcy Code, which bars the discharge of any debt of an individual debtor for money, property, services, or credit to the extent obtained by "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." In a 7-1 decision, the Court ruled that the term "actual fraud" in section 523(a)(2)(A) encompasses a fraudulent transfer even if the transfer does not involve a false representation by the debtor transferor. Jones Day successfully argued *Husky* before the Supreme Court on behalf of the prevailing party—Husky International Electronics.

In *Commonwealth v. Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938 (2016), the Court upheld lower court rulings declaring unconstitutional a 2014 Puerto Rico law, portions of which mirrored chapter 9 of the Bankruptcy Code, that would have allowed the commonwealth's public instrumentalities to restructure a significant portion of Puerto Rico's $72 billion in bond debt. The Court ruled by a 5-2 margin (with one justice abstaining) that the Puerto Rico Public Corporation Debt Enforcement and Recovery Act was preempted by a provision of chapter 9 invalidating any "State" law purporting to implement a nonconsensual "method of composition" of a municipality's debts, even though Puerto Rico's municipalities are not eligible to file for relief under chapter 9. Following the ruling and facing the prospect of a July 1, 2016, default by Puerto Rico on a $2 billion bond payment, Congress passed the Puerto Rico Oversight, Management, and Economic Stability Act.

On June 28, 2016, the Court granted a petition for a writ of certiorari in *Czyzewski et al. v. Jevic Holding Corp.*, No. 15-649 (June 28, 2016), in which it will review a ruling by the Third Circuit upholding the "structured dismissal" of a chapter 11 case. *See Official Committee of Unsecured Creditors v. CIT Group/Business Credit Inc. (In re Jevic Holding Corp.)*, 787 F.3d 173 (3d Cir. 2015). The Court heard arguments in *Jevic* on December 7, 2016.

On October 11, 2016, the court agreed to review the Eleventh Circuit's decision in *Johnson v. Midland Funding, LLC*, 823 F.3d 1334 (11th Cir. 2016), *cert. granted*, 137 S. Ct. 326 (2016). In *Johnson*, the Eleventh Circuit ruled that there is no irreconcilable conflict between the Bankruptcy Code and the Fair Debt Collection Practices Act (the "FDCPA"). Thus, the court concluded, a creditor may file a proof of claim in a bankruptcy case even though the debt is time-barred, but when the creditor is a "debt collector," it may be liable under the FDCPA for "misleading" or "unfair" practices. The Eleventh Circuit's ruling is at odds with decisions issued by other circuit courts of appeal.

HIGHLIGHTS OF 2016

August 30—The EU's antitrust regulator demands that Ireland recoup roughly €13 billion ($14.5 billion) in taxes from Apple Inc., after ruling that a deal with the Irish government allowed the company to avoid almost all corporate tax across the entire EU bloc for more than a decade—a move that could intensify a feud between the EU and the U.S. over the bloc's tax probes into American companies.