



## Jonah Wacholder

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Jonah Wacholder is an Associate in the firm's Litigation department.

### Admissions

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New York

### Education

- Yale Law School (J.D., 2017)
- Swarthmore College (B.A., 2013)
  - Phi Beta Kappa

## Bankruptcy Update

Bankruptcy Update Blog provides current news and analysis of key bankruptcy cases and developments in US and cross-border matters. Patterson Belknap's Business Reorganization and Creditors' Rights attorneys represent creditors' committees, trade creditors, indenture trustees, and bankruptcy trustees and examiners in US and international insolvency cases. Our team includes highly skilled and experienced attorneys who represent clients in some of the most complex cases in courts throughout the US and elsewhere.

March 29, 2024

### **Seventh Circuit Addresses Scope of Section 546(e)**

We have previously blogged about the section 546(e) defense to a trustee's avoidance powers under the Bankruptcy Code. A trustee has broad powers to set aside certain transfers made by debtors before bankruptcy. See 11 U.S.C. §§ 544, 547,...

December 21, 2023

### **Second Circuit Clarifies *Tribune* in New Decision**

We have previously blogged about the section 546(e) defense to a trustee's avoidance powers under the Bankruptcy Code. A trustee has broad powers to set aside certain transfers made by debtors before bankruptcy. See 11 U.S.C. §§ 544, 547,...

October 5, 2023

### **Fourth Circuit Holds that Mootness Does Not Bar Bankruptcy Court Jurisdiction**

Federal law assigns to U.S. district courts original jurisdiction over all cases under Title 11 (the Bankruptcy Code) and all civil proceedings arising under Title 11 or arising in or relating to Title 11. See 28 U.S.C. § 1334(a),...

July 27, 2023

### **Tenth Circuit Holds that Sovereign Immunity Does Not Limit Section 544 Claim**

Section 544(b)(1) of the Bankruptcy Code enables a trustee to step into the shoes of a creditor and avoid a transfer “of an interest of the debtor in property” that an unsecured creditor could avoid under applicable state law. ...

May 30, 2023

### **New Ruling on Remedy for Disparity in Bankruptcy Fees**

We have blogged a few times about the Supreme Court’s decision in Siegel v. Fitzgerald and its implications. In Siegel , the Supreme Court invalidated the disparity in debtor-paid fees prevailing in most of 2018 between the 88 judicial...

March 29, 2023

### **Supreme Court Holds That Fraud Exception to Debt Discharge can Include Fraud by Someone Other Than the Debtor**

We have previously blogged about Bartenwerfer v. Buckley , No. 21-908, a Supreme Court case concerning the scope of the fraud exception to the dischargeability of debts in bankruptcy. Section 523 of the Bankruptcy Code exempts from discharge “any...

January 31, 2023

### **Bankruptcy Court Issues Ruling on Ownership of Celsius Account Assets**

The concept of “property of the estate” is important in bankruptcy because it determines what property can be used or distributed for the benefit of the debtor’s creditors. Defined by section 541 of the Bankruptcy Code, “property of the...

December 1, 2022

### **Second Circuit Reaffirms that Debtor Can Obtain Refund for Non-Uniform Bankruptcy Fees**

We have previously blogged about Siegel v. Fitzgerald , the Supreme Court decision last June that invalidated the 2018 difference in fees between bankruptcy cases filed in Bankruptcy Administrator judicial districts and U.S. Trustee judicial districts. As we explained,...

September 30, 2022

### **New SDNY Decision on Administrative Priority for Executory Contracts**

To encourage parties to transact with debtors in bankruptcy, the Bankruptcy Code in corporate bankruptcies provides highest priority to “administrative expenses,” which include “the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b); id. §...

July 28, 2022

### **Supreme Court Invalidates Chapter 11 Fee Scheme**

We have previously written about Siegel v. Fitzgerald , No. 21-441, the Supreme Court case considering the question of whether the 2018 difference in fees between Bankruptcy Administrator judicial districts and U.S. Trustee judicial districts was consistent with the...

May 18, 2022

### **Supreme Court Agrees to Hear a Case About the Scope of the Fraud Exception to Discharge**

A discharge in bankruptcy usually discharges a debtor from the debtor’s liabilities. Section 523 of the Bankruptcy Code, however, sets forth certain exceptions to this policy, including for “any debt . . . for money, property, services, or an...

March 4, 2022

### **Supreme Court to Consider Constitutionality of Chapter 11 Fees**

Article I, Section 8 of the United States Constitution gives Congress the power to “establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.” While Congress has general authority to establish a bankruptcy system,...

July 21, 2021

### **New Court Ruling on Whether Avoidance Powers Require Benefit to Creditors**

The Bankruptcy Code grants the power to avoid certain transactions to a bankruptcy trustee or debtor-in-possession. See, e.g., 11 U.S.C. §§ 544, 547–48. Is there a general requirement that these avoidance powers only be used when doing so would...

June 4, 2021

#### **New Bankruptcy Court Ruling on When a Creditor Can File a Late Proof of Claim**

A creditor in bankruptcy must normally file a proof of claim by a certain specified time, known as the bar date, or have its claim be barred. Bankruptcy Rule 3002(c)(6)(A) provides a narrow exception to this rule when a...

April 19, 2021

#### **Supreme Court Denies Petition for *Certiorari* in Tribune Creditors' Case**

In March, we reported on a brief filed by the Solicitor General recommending denial of a petition for certiorari filed by Tribune creditors seeking Supreme Court review of the Second Circuit ruling dismissing their state-law fraudulent transfer claims. This...

April 15, 2021

#### **Appeals Court Rules That a Discharge Injunction Bars a Fraudulent Transfer Claim Based on a Non-Dischargeable Debt**

A discharge of debt in bankruptcy “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the...

January 15, 2021

#### **Delaware Bankruptcy Court Issues Decision on Whether a Debtor Can Be a “Financial Participant”**

We have blogged previously about section 546(e), the Bankruptcy Code’s safe harbor for certain transfers otherwise subject to avoidance as preferences or fraudulent transfers. See 11 U.S.C. § 546(e). Among the transfers protected by the section 546(e) safe...

November 16, 2020

#### **Bankruptcy Court Denies Section 546(e) Safe Harbor Protection in Fraudulent Transfer Action**

The Bankruptcy Code enables a trustee to set aside certain transfers made by debtors before bankruptcy. See 11 U.S.C. §§ 544, 547, 548. These avoidance powers are subject to certain limitations, including a safe harbor in section 546(e) exempting...

September 18, 2020

#### **Delaware Bankruptcy Court Rejects Late Filings of Asbestos Claims**

Last February, we blogged about the Third Circuit’s decision in *In re Energy Future Holdings Corp.*, No. 19-1430, 2020 U.S. App. LEXIS 4947 (Feb. 18, 2020). The Third Circuit approved a process for resolving asbestos claims in which...

July 16, 2020

#### **New Appeals Court Ruling on the Scope of Subsequent Transferee Liability Under Section 550**

Section 550 of the Bankruptcy Code provides that, when a transfer is avoided under one of several other sections of the Code, a trustee may recover “the property transferred, or, if the court so orders, the value of such...

June 1, 2020

#### **Bankruptcy Sales Under Section 363: The Business Judgment Test That Judges Often Cite Isn’t Always the One They Use**

This post originally appeared in *Norton Journal of Bankruptcy Law and Practice*. Bankruptcy court approval is required when a debtor wants to sell property outside the ordinary course of its business. Courts will allow transactions that reflect a...

May 8, 2020

#### **Federal Appeals Court Addresses Equitable Mootness Doctrine**

Courts reviewing a bankruptcy court’s decision to approve a chapter 11 reorganization plan over the objections of an interested party must consider not only the merits, but also (if implementation of the plan was not stayed) potential injury to...

February 21, 2020

### **Third Circuit Addresses the Due Process Rights of Asbestos Claimants**

When there are large numbers of substantial individual tort claims against a debtor, potentially involving claimants unknowable to the debtor who themselves may not know they have a claim, the bankruptcy process faces special problems. One objective of bankruptcy...

January 24, 2020

### **Supreme Court Resolves the Appealability of Orders Denying Relief from the Automatic Stay**

When a debtor files for bankruptcy, the Bankruptcy Code provides for an automatic stay of almost all proceedings to recover property from the debtor. See 11 U.S.C. § 362(a). A party in interest can seek an order exempting...

December 26, 2019

### **Federal Appeals Court Rules on Requirements for Involuntary Bankruptcy**

Section 303 of the Bankruptcy Code allows creditors to initiate an involuntary bankruptcy case against a debtor. The petition initiating the case must be filed by creditors holding claims aggregating to at least \$10,000, [1] and those claims must...

October 30, 2019

### **Bankruptcy Court Addresses Standard For Recovery Of An Alleged Fraudulent Transfer From A Subsequent Transferee**

The Bankruptcy Code gives a trustee powers to avoid certain pre-bankruptcy transfers of the debtor's property to other entities. For example, a trustee can avoid transfers made with the intent to impair the ability of creditors to collect on...

September 20, 2019

### **District Court Rules on Property of the Debtor Requirement for Fraudulent Transfer Claims**

Section 548 of the Bankruptcy Code enables trustees to avoid certain pre-bankruptcy transfers of "an interest of the debtor in property," where the transfer was intended to defraud creditors or where the transfer was made while the debtor was...

August 22, 2019

### **New York Bankruptcy Court Issues Ruling on Recognition of Foreign Proceedings**

Chapter 15 of the Bankruptcy Code, added in 2005, provides a route for debtors to obtain US recognition of their insolvency proceedings in other countries. A foreign proceeding can be recognized under chapter 15 as either a "foreign main..."

June 14, 2019

### **Supreme Court Decides Civil Contempt Standard for Violations of Discharge Orders**

Successful bankruptcy cases typically end with a court order releasing a debtor from liability for most pre-bankruptcy debts. This order, generally known as a "discharge order," prohibits the debtor's creditors from trying to collect on those now-discharged debts. See...

May 3, 2019

### **Another Ruling on Public Auctions Versus Private Sales Under Section 363**

Two weeks ago, we discussed asset sales under Bankruptcy Code section 363. As that post noted, section 363 requires court approval for asset sales outside the ordinary course of business, with courts ensuring that sales reflect a reasonable...

March 29, 2019

### **Bankruptcy Court Applies Automatic Stay to Continuation of Removed State-Court Action Against Debtor**

When a debtor files for bankruptcy, almost all proceedings to recover property from the debtor are automatically stayed by force of law. See 11 U.S.C. § 362(a). This provision, known as the automatic stay, is a central feature of...

February 28, 2019

### **Bankruptcy Court Holds Automatic Stay Inapplicable to Removal of State Court Action Against Debtor**

When a party files for bankruptcy, the Bankruptcy Code imposes an automatic stay of litigation against a debtor for claims arising prior to the commencement of the bankruptcy case. See 11 U.S.C. § 362(a). Where there is a basis...

January 18, 2019

### **Fifth Circuit Rejects "Futility" Defense in a State-Law Fraudulent Transfer Action**

Fraudulent transfer law allows creditors and bankruptcy trustees, under certain circumstances, to sue transferees to recover funds received where a debtor's transfers to the transferees actually or constructively defrauded its creditors. Under both the Uniform Fraudulent Transfer Act adopted...

September 28, 2018

**Bankruptcy Court Finds Arbitration Clause in Consumer Loan Contract to be Sufficient Cause to Grant Relief from Automatic Stay**

When a bankruptcy petition is filed, an automatic stay comes into effect staying proceedings against the debtor or the debtor's property. 11 U.S.C. § 362(a). The stay centralizes litigation regarding the debtor and its property in the debtor's bankruptcy...

August 24, 2018

**Third Circuit Enforces Plan Releases Against Later-Purchasing Shareholders Bringing Claims Concerning Post-Confirmation Conduct**

Bankruptcy plans often include provisions releasing debtors and their officers and directors from certain potential liability. In *Zardinovsky v. Arctic Glacier Income Fund*, No. 17-2522 (3d Cir. Aug. 20, 2018), the United States Court of Appeals for the...

July 9, 2018

**Bankruptcy Court Rules Section 327 Inapplicable to Certain Management Consultant Retentions**

Section 327(a) of the Bankruptcy Code imposes restrictions on the employment of professionals to assist a trustee, requiring that such professionals "not hold or represent an interest adverse to the estate" and be "disinterested persons." Section 363(b) permits the...

June 14, 2018

**Supreme Court Resolves Circuit Split on the Dischargeability of Debts Obtained by Oral Misrepresentations**

On June 4, the Supreme Court decided *Lamar, Archer & Cofrin, LLP v. Appling*, No. 16-1215, in a unanimous opinion by Justice Sotomayor. The Court affirmed the Eleventh Circuit and resolved a circuit split about the meaning of...

May 10, 2018

**Bankruptcy Court Holds That Transferee Not Liable For Intentional Fraudulent Transfer Where Funds Were Returned To Debtor**

Section 544 of the Bankruptcy Code permits a bankruptcy trustee to avoid any transfer that would be avoidable by creditors under state fraudulent transfer law. Section 550 of the Bankruptcy Code permits the bankruptcy trustee to recover from the...

March 29, 2018

**Delaware District Court Dismisses Appeal by Creditors' Committee After Case is Converted from Chapter 11 to Chapter 7**

The Bankruptcy Code provides for the appointment of a creditors' committee in chapter 11 bankruptcy cases. See 11 U.S.C. § 1102. There is no parallel provision applicable to chapter 7 cases. When a bankruptcy case is converted from chapter...

February 27, 2018

**Bankruptcy court holds that state consumer fraud claims against corporations are dischargeable in bankruptcy**

Section 1141(d)(6)(A) and section 523(a)(2) of the Bankruptcy Code together provide that debts owed by a corporation to a government entity are not dischargeable if such debts were obtained by false representations. Does this rule apply to claims by...

February 1, 2018

**Eighth Circuit rejects foreseeability test for notice to unknown creditors**

In *Dahlin v. Lyondell Chemical Co.*, 2018 U.S. App. LEXIS 1956 (8th Cir. Jan. 26, 2018), the Eighth Circuit Court of Appeals rejected an argument that bankruptcy debtors were required by due process to provide more prominent notice...

December 21, 2017

**Court Holds that Bankruptcy Judges Cannot Impose Punitive Sanctions**

Bankruptcy courts lack the power to impose serious punitive sanctions, a federal district judge ruled recently in *PHH Mortgage Corporation v. Sensenich*, 2017 U.S. Dist. LEXIS 207801 (D. Vt. Dec. 18, 2018). Judge Geoffrey Crawford reversed a bankruptcy...

November 27, 2017

**Solicitor General recommends US Supreme Court review in dischargeability case**

On November 9, responding to a request from the U.S. Supreme Court, the Solicitor General filed a brief at the Court recommending that the petition for writ of certiorari in *Lamar, Archer & Cofrin, LLP v. Appling*, No....

## Publications

June 1, 2020

**Bankruptcy Sales Under Section 363: The Business Judgment Test That Judges Often Cite Isn't Always the One They Use**

*Norton Journal of Bankruptcy and Law Practice*

March 28, 2019

**Toward a Global Solution on Vaccine Liability and Compensation**

*Food and Drug Law Journal*