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The Insolvency Insider: Updates in Restructuring

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January and February of 2026 have provided several significant rulings from appellate and bankruptcy courts of various jurisdictions. These selected rulings address subjects such as the sale of insider claims, evidence needed for adequate protection, treatment of stub rent, and financial distress and bad faith. These recent decisions are predominantly favorable to secured creditors.

Credit Bid Sale of Insider Claims to Insider Approved

On February 4, 2026, Judge Thomas M. Horan of the Bankruptcy Court for the District of Delaware approved a credit bid sale of assets over the objections of the Unsecured Creditors' Committee and the United States Trustee. The sale was to an insider that acted as both the stalking horse bidder and the debtor-in-possession lender. The purchased assets included estate causes of action against insiders.

The Court made a few notable findings when it approved the sale. For example, the Court determined that, because a disinterested and independent director supported the sale, the onerous "entire fairness" standard did not apply.[1] Judge Horan further ruled, over the United States Trustee's objection, that the sale of estate claims against insiders to an insider (i) did not constitute an impermissible release and (ii) did not require a separate marketing process.

Judge Horan's decision provides a valuable roadmap for what steps need to be taken to achieve a value-maximizing sale in the face of insider concerns. In making its findings, the Court considered that the (i) Debtor had engaged in an extensive marketing process (that included 118 parties being engaged over a 99-day period), (ii) Unsecured Creditors' Committee reviewed the Debtor's investigation materials and found no additional claims, and (iii) independent director approved the sale. Debtors and their lenders can look to this decision to structure transactions that will withstand the scrutiny of the Delaware Bankruptcy Court, including the potential benefit of appointing an independent director to oversee the terms of any sale where a board of directors may otherwise be conflicted.

Prima Facie Showing Sufficient to Require Adequate Protection[2]

In the First Brands Group LLC chapter 11 cases, the District Court for the Southern District of Texas addressed an appeal from a Bankruptcy Court order permitting the use of cash collateral. The appellant, a creditor asserting a first-priority security interest in approximately $60 million of receivables, contended it was not adequately protected as the cash collateral order would have permitted the Debtors to draw on an account holding its collateral. The Debtors disputed both the creditor's right to the receivables and whether the creditor was entitled to adequate protection. The Bankruptcy Court, on a preliminary basis, indicated that it was not convinced of the creditor's lien priority. While the finding with respect to the

creditor's priority was preliminary, the Bankruptcy Court's ruling permitting the use of cash collateral was a "final determination" according to the District Court.

Judge Lee H. Rosenthal of the District Court confirmed that bankruptcy courts are permitted to conduct "some examination of lien validity" upon a motion for the use of cash collateral. However, the District Court severely curtailed that examination, holding that questions regarding the validity of property interests at that stage should only consider "whether the party asserting the interest

has made a *prima facie* showing of the validity and scope of that interest." The Court recognized that to do otherwise would violate Federal Rule of Bankruptcy Procedure 7001(b)'s requirement that lien validity be challenged through an adversary proceeding. Judge Rosenthal ruled that, until the creditor's lien validity was otherwise challenged properly through an adversary proceeding, the Debtors had to adequately protect the creditor's asserted interest.

Judge Rosenthal's opinion provides clarity—in one of the nation's most popular filing districts—to secured creditors with respect to the burden they must meet to establish a right to adequate protection; it is minimal.

Stub Rent: A Postpetition Administrative Expense?[3]

On January 23, 2026, Judge David D. Cleary of the Northern District of Illinois issued an opinion in *In re TRP Brands, LLC* that represents the latest word from the judiciary in an ever-growing body of caselaw on the treatment of stub rent. The Court held that while landlords had no basis to assert claims for stub rent under section 365(d)(3) of the Bankruptcy Code, their claims should nevertheless be conferred administrative priority under section 503(b)(1).

The Debtors were furniture retailers that, upon filing Chapter 11, immediately sought and commenced going out of business sales at several stores. Landlords for the Debtors' stores sought payment of their claims for rent in the period following the filing of the bankruptcy case until the next date on which rent came due under the store leases (i.e., "stub rent"). Although the Debtors conceded that the continued occupancy of the stores conferred a benefit to the estate, they argued that there was no post-petition "transaction" with the Debtors, which was required under applicable law to confer administrative priority on stub rent claims.[4] Judge Cleary found that the Debtors' continued operations in the locations, as opposed to immediate rejection of the subject leases, constituted "inducement" sufficient to transition the prepetition leases into postpetition contracts with the debtors-in-possession. The Court further recognized that the continued operations brought a benefit to the Debtors' estates, thereby meeting the Seventh Circuit's standard for administrative claim status.

Judge Cleary's opinion in *TRP Brands* allows flexibility to debtors, and by extension their secured lenders, when dealing with landlords. The Seventh Circuit follows the billing date approach that recognizes rent as an administrative expense under section 365(d)(3) only when that rent comes due and payable during the bankruptcy case. However, as Judge Cleary and others have ruled, claims for stub rent may be afforded administrative priority under section 503(b)(1) of the Bankruptcy Code if the landlord can satisfy the applicable test under that section. Should additional Courts follow Judge Cleary's lead, debtors may have the opportunity to either: (i) avoid administrative expense treatment of these claims altogether through rapid rejection; or (ii) avoid the immediate payment of stub rent claims and require sufficient showings from landlords to justify administrative expense treatment.

Circuits Split Over Financial Distress[5]

An opinion and dissent from the Fourth Circuit Court of Appeals arising out of the DBMP, LLC chapter 11 case frames the opposing views of a circuit split on the issue of whether financial distress is a requirement for good faith in the context of a chapter 11 case. The split comes out of the use of the so called "Texas Two-Step" by which companies in step one effectuate a divisional merger that splits good assets and bad liabilities and, in step two, commence a chapter 11 case to address the bad liabilities.

In *Herlihy v. DBMP LLC*, the Fourth Circuit affirmed a decision of the Bankruptcy Court denying a motion to lift the automatic stay. The motion had been filed by Plaintiffs in asbestos-related tort actions against the Debtor, after the Debtor had executed a Texas Two-Step and was party to an uncapped funding agreement for the payment of asbestos claims. The Plaintiffs argued that the Debtor had obtained a stay of the litigation through the bankruptcy filing "in bad faith" because the Debtor was "non-distressed, massively wealthy, and fully capable of paying all claims in full."

The Fourth Circuit disagreed, finding that the record did not include evidence suggesting bad faith. Instead, the Court indicated that the Debtor was legitimately seeking to invoke a Congressionally authorized process to address 60,000 pending claims and an expected steady stream of lawsuits to come. The Court further found that the asbestos process under the Bankruptcy Code was "quicker, more efficient and fairer" than could be provided by "widely dispersed litigation" and served an additional purpose of protecting future claimants. Circuit Court Judge Robert Bruce King forcefully disagreed, authoring a lengthy dissent and lamenting that "our Circuit has become the safe haven for ultra-wealthy corporations seeking to evade asbestos-related civil tort liability under the guise of the Bankruptcy Code." In Judge King's view, the record reflected a Debtor and non-debtor parent that had

"engaged in pervasive, well-documented, and systematic bad faith…" This bad faith was sufficient to modify the automatic stay and distinguish the case from previous precedent, according to Judge King.

While in the context of stay relief, as opposed to an improper filing of chapter 11 cases, Judge King's dissent is consistent with holdings in the Third and Fifth Circuits that require genuine, immediate financial distress as a prerequisite to a Chapter 11 filing. Those courts have generally rejected the idea that an otherwise-solvent company can file for bankruptcy simply to consolidate substantial claims that can or have been asserted against it. As companies' concerns over managing mass tort litigation clash with constitutional concerns for individual claimants, the debate of when the bankruptcy system can or should be used in place of, or alongside, the tort system to address mass tort incidents, will continue among the circuits.

1. Judge Horan ultimately found that the sale satisfied both the business judgement and entire fairness standards. ⌧
2. *See Evolution Credit Partners v. First Brands Group LLC (In re First Brands Group LLC)*, 26-73 (S.D. Tex. Jan. 31, 2026). ⌧
3. *See In re TRP Brands LLC*, 24-1529 (Bankr. N.D. Ill. Jan. 23, 2026). ⌧
4. See *Matter of Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984). ⌧
5. See *Herlihy v. DBMP LLC*, 24-2109 (4th Cir. Feb. 11, 2026). ⌧

John F. Ventola
Practice Chair, Finance & Restructuring

Douglas R. Gooding
Head of Restructuring & Bankruptcy

Kevin J. Simard
Partner

Jonathan D. Marshall
Head of Independent Director & Special Committees

Michael E. Comerford
Partner

Luke Barrett
Principal

Alexandra Thomas
Senior Associate

James B. Chapman III
Associate