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Divided Third Circuit Approves Structured Dismissal That Provides Class-Skipping Distribution

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A settlement providing for dismissal of a Chapter 11 case and distribution of estate property “that deviates from the Bankruptcy Code’s priority” scheme is permissible, held a divided panel of the U.S. Court of Appeals for the Third Circuit on May 21, 2015. *Official Committee of Unsecured Creditors v. CIT Group/Business Credit Inc.* (*In re Jevic Holding Corp.*), 2015 WL 2403443 (3d Cir. May 21, 2015) (2-1) (“*Jevic*”). In *Jevic*, an excluded group of terminated employees (the “Employees”) holding priority wage claims appealed from a court-approved settlement that had denied them a distribution but had provided lower-priority general unsecured creditors with a distribution from estate assets. According to the Employees and the U.S. Trustee, the Bankruptcy Code’s priority scheme should have been applied in the settlement context here.

Reasoning that bankruptcy courts have more flexibility in approving settlements than in confirming reorganization plans, the Third Circuit refused to adopt a purportedly “too rigid” rule advocated by the Employees. Rather, it held that “bankruptcy courts may approve settlements that deviate from the priority scheme of ... the Bankruptcy Code only if they have ‘specific and credible grounds to justify the deviation.’” Finding that the settlement in *Jevic* “remained the least bad alternative” for the estate and its creditors, the Third Circuit affirmed the bankruptcy court’s approval of the settlement, as had the district court.

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