

**PUBLICATIONS**

## Appellate Courts Skeptical About Bankruptcy Court Sanctions

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In his latest article for *The Bankruptcy Strategist* titled, “Appellate Courts Skeptical About Bankruptcy Court Sanctions,” Schulte Roth & Zabel of counsel Michael L. Cook discusses recent appellate decisions showing a distaste for appeals from bankruptcy court sanction orders. A split Fourth Circuit even refused to hear such an appeal. Other courts tend to limit sanctions or, alternatively, accept a bankruptcy judge’s findings under a stringent “abuse of discretion” standard.

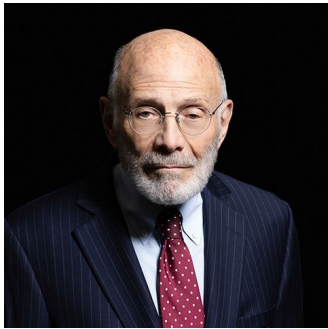
The Fifth Circuit, for example, takes a balanced approach. “[Bankruptcy courts have only civil contempt powers because that is all Congress has given them .... Accordingly, bankruptcy courts may issue contempt orders, but any contempt sanction imposed by a bankruptcy court must be civil” — compensatory, not punitive. *In re Highland Capital Management*, 2024 WL 1450065, \*2 (5th Cir. Apr. 4, 2024) (2-1). *Accord, In re Markus*, 78 F.4th 554, 563 n.5 (2d Cir. 2023). A split Fourth Circuit, as noted, went further: a bankruptcy court’s “civil contempt and sanctions orders ... for violating a discovery order are interlocutory and cannot be immediately appealed as of right.” *In re Bestwall, LLC*, 2024 WL 1841960, (4th Cir. Apr. 29, 2024) (2-1). The Second Circuit takes a more nuanced approach. *PHH Mortg. Corp. v Senesenich (In re Gravel)*, 6 F. 4th 503, 511, 513 (2d Cir. 2021). (“A bankruptcy court’s award of sanctions, including findings of contempt, are reviewed [on appeal] for abuse of discretion;” reviewed under 28 U.S.C. § 158 (d)(2)(A) (after certification); “this court has a duty to conduct its own ‘exacting’ review of contempt orders;” bankruptcy court cannot “hold a

party in contempt for violating an order that is subject to varying interpretations”).

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