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OVERCOMING CREDITOR MISFORTUNE CREATIVELY: STRUCTURED DISMISSALS IN CHAPTER 11 BANKRUPTCIES

Alessandra Allegretto

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Alessandra Allegretto[*]

I. INTRODUCTION

Chapter 11 of the United States Bankruptcy Code is utilized to promote debtor reorganization and rehabilitation in the face of financial difficulty.[1] Cases filed under Chapter 11 are characterized as reorganizations, and this Chapter may be utilized by both businesses and individuals.[2] A Chapter 11 case usually involves a debtor proposing a plan of reorganization that keeps a business running, and pays creditors over time.[3] However, as debtors become increasingly familiar with bankruptcy law and practice, it remains difficult for creditors to collect debts owed to them. During the pendency of a Chapter 11 case, creditors may exercise their rights to collect by carrying out a Section 363 sale, moving for a case to be converted to a Chapter 7, or moving for dismissal.[4] In practice, these three collection remedies are time consuming, costly, and result in creditors recovering little of the proceeds to which they are entitled. This Note will argue that a fourth remedy, known as a structured dismissal, should be formally recognized by the courts and Bankruptcy Code, in order to increase the rate of creditor repayment, and resolve cases more effectively.

A structured dismissal is a relatively new technique utilized by creditors, which attempts to combine a statutory dismissal with additional terms that provide for repayment. Simply put, a structured dismissal:

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[1] CHAPTER 11—BANKRUPTCY BASICS, http://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics.

[2] 11 U.S.C. § 109(g); 11 U.S.C. § 362(d)–(e).

[3] *Supra* note 2.

[4] Norman L. Pernick & G. David Dean, *Structured Chapter 11 Dismissals: A Viable and Growing Alternative After Asset Sales*, AM. BANKR. INST. J. (June 5, 2010), http://www.coleschotz.com/2B7963/assets/files/News/293.pdf.

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> is a dismissal coupled with some or all of the following additional provisions in the dismissal order: releases (some more limited than others), protocols for reconciling and paying claims, "gifting" of funds to unsecured creditors, and provisions providing for the bankruptcy court's continued retention of jurisdiction over certain post-dismissal matters.[5]

While cases involving structured dismissals have not produced binding precedent for bankruptcy courts to follow, the technique has been used to successfully resolve multiple cases, and has become the most viable alternative to the three most common courses of action employed to resolve Chapter 11 cases.[6]

Part II of this Note will provide a general overview of Chapter 11 bankruptcy practices and procedures, and will provide a basic description of the most important components of a case. This Part will also analyze the role that secured and unsecured creditors play in bankruptcies, while simultaneously explaining the roles prescribed to each under the Bankruptcy Code. Part III will provide an in-depth analysis of each of the three most common collection remedies for creditors, including Section 363 sales, dismissal, and conversion to Chapter 7. Part IV will expand upon the issues that creditors face in Chapter 11 cases, and explain why collection and repayment prove to be so difficult. Lastly, Part V will argue that structured dismissals should be formally recognized by the Court and Bankruptcy Code as an alternative remedy for creditors, as stated in *Czyzewski v. Jevic Holding Corporation*.[7] In addition to analyzing *Jevic*, this Part will also discuss *In re Iridium Operating, LLC*, and both cases will help to demonstrate that structured dismissals are an essential resource during bankruptcy.[8]

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[5] John D. Ayer et al., *What Every Unsecured Creditor Should Know About Chapter 11*, AM. BANKR. INST. J., https://www.kirkland.com/siteFiles/kirkexp/publications/2398/Document1/Friedland_What_unsecured_creditor_should.pdf.

[6] *Id.*

[7] *Id.*

[8] Czyzewski v. Jevic Holding Corp., 137 S. Ct. 973 (2017); *In re* Iridium Operating, LLC, 478 F.3d 452 (2007).

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II. CHAPTER 11 BANKRUPTCY PRACTICE GENERALLY

A. Filings and Types of Debtors

A Chapter 11 case is commenced by filing a petition with the Bankruptcy Court in the district where an individual or business is domiciled.[9] All debtors must file a schedule of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs.[10] A Chapter 11 case most commonly arises in the context of a struggling business, and this type of bankruptcy allows the debtor to continue business operations, with the expectancy that revenues will rebound and produce profits to repay creditors.[11]

Debtors automatically assume the title of "debtor in possession" in a Chapter 11 case, meaning that a debtor retains possession and control of its assets while undergoing a reorganization, without the appointment of a case trustee.[12] A debtor will remain a debtor in possession until the debtor's plan of reorganization is confirmed, the debtor's case is dismissed, the debtor's case is converted to Chapter 7, or a Chapter 11 Trustee is appointed.[13] Generally, the debtor, as "debtor in possession," operates the business and performs many of the functions that a trustee performs in cases under other chapters.[14] The ultimate goal is for the debtor to produce a plan of reorganization that is confirmed by the Bankruptcy Court, but multiple obstacles may impede this process.[15]

The Bankruptcy Code distinguishes between small and large business debtors. When a larger corporation files for bankruptcy a committee of creditors is appointed by the U.S Trustee, and this committee assists with administration of the case.[16] The committee usually consists of unsecured

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[9] 11 U.S.C. §§ 301, 303.
[10] Fed. R. Bankr. P. 1007(b).
[11] 11 U.S.C. § 1107.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] Ayer et al., *supra* note 5; 11 U.S.C. § 109(g); 11 U.S.C. § 362(d)–(e).
[16] 11 U.S.C. § 1102.

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creditors who hold the seven largest claims against the debtor.[17] The true role of the committee is to ensure that the debtor's plan is being properly executed, that funds remain available for distribution, and that the debtor's conduct is continually monitored.[18] In cases involving a small business debtor, a committee is not normally utilized. Small business debtor status is determined by a two-part test: the debtor must be engaged in commercial or business activities with total non-contingent liquidated secured and unsecured debts of $2,490,925 or less; and the debtor's case must be one in which the U.S. Trustee has not appointed a creditor's committee.[19]

B. Secured vs. Unsecured Creditors

Aside from continuing business operations, and rehabilitating personal and business financial status, one of the main purposes of filing for bankruptcy protection is to ensure that creditors are repaid. Creditors are repaid according to a priority scheme set forth in Section 507 of the Bankruptcy Code, whereby secured creditors receive payment first, followed by unsecured creditors.[20] Additionally, perfected secured creditors receive payment before unperfected secured creditor, even if both parties hold an interest in the same collateral.[21] This repayment scheme is known as the absolute priority rule.[22] Secured creditors are those individuals whose claims are secured by assets of the estate, such as a bank that holds a mortgage or note on a property.[23] All remaining creditors are considered unsecured, and rely on unencumbered assets of the bankruptcy estate in order to receive repayment.[24] Unsecured creditors run the risk of never being repaid, as they stand in line behind multiple sources that are statutorily entitled to repayment at earlier stages. Sections 507 and 503 of the Bankruptcy Code provide a priority for payment of unsecured claims that consists of the following: claims for domestic support obligations and other non-dischargeable

[17] *Id.*
[18] 11 U.S.C. § 101(51)(C).
[19] 11 U.S.C. § 101(51)(D).
[20] Ayer et al., *supra* note 5.
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*

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obligations, costs of administration, claims of interest, taxes, fines or penalties related to tax, deductions for actual expenses, attorney's fees, and prepetition obligations.[25] It is possible that creditors never receive what they are owed, or only receive payment after a significant period of time has passed, which makes all bankruptcy cases risky.[26]

C. Resolution of Cases

An unfortunate reality of many Chapter 11 matters is that most cases fail as a result of substantial delays, or other complications. The Bankruptcy Code was amended in 2005 to attempt to combat some of these issues, but the core of the problem remains—cases move slowly and there is little chance of repayment for unsecured creditors.[27] Approximately eight out of ten cases fail before they reach the stage of plan confirmation, however if a plan is confirmed, the likelihood of success increases to 33.4%.[28] Chances of success also increase when companies and individuals have a strong business plan, a viable source of income, and high levels of prepetition organization.[29] A major issue in Chapter 11 cases is that it can take years for a plan to be confirmed, with the average confirmation time hovering around 1.5 to 2 years.[30] Once a plan is confirmed, the debtor must strictly adhere to the terms set forth in the plan, or additional delays will result.[31]

III. CURRENT CHAPTER 11 REMEDIES

There are three statutory remedies available to Chapter 11 creditors when a debtor fails to perform their duties, or develop a confirmable plan: a Section 363 sale may be carried out, the case could be converted to Chapter

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[25] 11 U.S.C. §§ 507, 503.

[26] Robert J. Landry, *Individual Chapter 11 Reorganizations: Big Problems with the New "Big" Chapter 13*, 29 U. ARK. L. REV. 251, 255–56 (2007).

[27] Elizabeth Warren & Jay Lawrence Westbrook, *The Success of Chapter 11: A Challenge to the Critics*, 107 MICH. L. REV. 603, 605–06 (2009).

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] Robert Bavarnick, *What You Need To Know About Chapter 11*, FORBES (Sept. 25, 2008), http://www.Forbes.com/2008/09/25/chapter-11-bankruptcy-ent-law-cx_rb_0925bovarnickchap11.html.

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7, or the case could be dismissed.[32] A debtor must work hard to succeed in Chapter 11, and it is their individual responsibility to present the court and relevant creditors with a plan that will maximize their business operations to repay outstanding debts.[33]

A. Section 363 Sales

If a business is struggling to remain operational or raise capital, that company may petition the Bankruptcy Court for permission to carry out a Section 363 sale.[34] A Section 363 sale is essentially a tool for buying and selling distressed assets, and quickly obtaining cash to fund a proposed or confirmed plan.[35] According to Section 363(f) of the Bankruptcy Code, a debtor can sell its assets free and clear of all liens and encumbrances if the following conditions are met:

1. Applicable non-bankruptcy law permits sale of such property free and clear of such interest;
2. Such entity consents;
3. Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
4. Such interest is in bona fide dispute; or
5. Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.[36]

The purpose of the aforementioned conditions is to ensure that a debtor can liquidate their assets when necessary, while also guaranteeing that creditors are not ignored or underpaid in the process.[37] A secured creditor must consent to all 363 sales, which is usually comprised of approval by a majority of creditors, however, unanimous consent must be received if a sale of

[32] Ayer et al., *supra* note 5.
[33] 11 U.S.C. §§ 1123, 1129.
[34] Brad B. Erens & David A. Hall, *Secured Lender Rights in 363 Sales and Related Issues of Lender Consent*, JONES DAY, http://m.jonesday.com/files/Publication/1d9f0ea2-6b17-4f0a-a9f4-05ab6625e38f/Presentation/PublicationAttachment/7ad913b1-d350-4a4d-a3a6-c79916f7c4d2/363.pdf.
[35] *Id.*
[36] *Id.*; 11 U.S.C. § 363(f).
[37] 11 U.S.C. §§ 1123, 1129.

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"substantially all" of the debtors assets is proposed.[38] One issue that results from 363 sales is that a debtor is left with few, if any, assets to distribute to unsecured creditors, and too few assets to continue to fund a Chapter 11 plan.[39]

While a 363 sale is one remedy available to creditors, it can only be utilized in cases where there is a high probability that a sale will result in a significant availability of funds, and even where funds are made available, they are usually only distributed to secured creditors.[40] This option leaves a large percentage of unsecured creditors unpaid and with little chance of ever collecting what they are owed.[41] This option can also perpetuate the inherent difficulties present in Chapter 11 cases, because all parties involved do not achieve their ultimate goals—businesses do not remain operational or profitable, and debts are not repaid.[42] In their article entitled, *Structured Chapter 11 Dismissals: A Viable and Growing Alternative after Asset Sales*, Norman L. Pernick and G. Gavin Dean explain that 363 sales are particularly challenging "in cases involving an under secured creditor with a blanket lien on all of the debtor's assets, especially without that secured creditor's agreement to fund the often-significant costs of both a liquidating plan and the plan process."[43] This remedy is most successful if a company has multiple high value assets that they wish to liquidate.

B. Conversion to Chapter 7

Another option for struggling Chapter 11 debtors is to convert the case to a Chapter 7 bankruptcy.[44] A conversion may only happen in cases where a plan has not already been confirmed.[45] Chapter 7 bankruptcies function as a pure liquidation effort, and all assets are placed in the hands of a trustee

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[38] *Id.*
[39] CHAPTER 11—BANKRUPTCY BASICS, *supra* note 1.
[40] *Id.*
[41] *Id.*
[42] Pernick & Dean, *supra* note 4.
[43] *Id.*
[44] *Id.*
[45] Peter S. Partee & Scott H. Bernstein, *Confirmed Chapter 11 Plan, But in Distress Again*, N.Y. L.J., https://www.hunton.com/files/Publication/08987370-b75d-45cc-959c-7b5a1006a0c7/Presentation/PublicationAttachment/0ddc02a0-3687-484b-91b5-fef0d37111ab/NYLJConfirmed_Chapter_11_Plan_6.29.09.pdf.

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who is responsible for selling and distributing all remaining assets.[46] In the case of a conversion, a debtor is required to file a motion requesting that the Bankruptcy Court enter an order converting the case, pursuant to Section 1112 of the Code.[47] If the motion is granted, business operations are terminated, a United States Trustee is appointed, and the business is turned over to the Trustee so that he or she may liquidate all assets.[48]

While a bankruptcy is pending, debtors retain an almost absolute right to convert their case from Chapter 7 to Chapter 11. A debtor is only precluded from converting if the case was involuntarily commenced under Chapter 11, it was converted to Chapter 11 on request of someone other than the debtor, if a plan is substantially confirmed, or if certain circumstances exist that amount to "cause."[49] As with Section 363 sales, conversion also reduces the likelihood that unsecured creditors will receive payment, and further delays the bankruptcy process.

C. Dismissal

Debtors may also resolve a Chapter 11 bankruptcy through dismissal, and bankruptcy dismissals may take two forms: voluntary and involuntary.[50] A debtor may voluntarily petition the Bankruptcy Court for a simple order of dismissal if they wish to end the bankruptcy process and relieve themselves of the protections afforded by the automatic stay.[51] The right to voluntarily dismiss is not absolute, however. Similar to conversion, the court and trustee also have discretion to dismiss a case involuntarily for cause.[52] Factors supporting cause for dismissal include undue and unreasonable delay, fraud, and impracticability of the proposed plan.[53] The most significant result of dismissing a case is that the automatic stay is dissolved, and creditors may resume direct collection efforts outside of bankruptcy.[54]

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[46] *Id.*
[47] 11 U.S.C. § 1112.
[48] Pernick & Dean, *supra* note 4.
[49] *Id.*; 11 U.S.C. § 1112(b).
[50] 11 U.S.C. § 1112(b).
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] Landry, *supra* note 26.

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IV. PROBLEMS FOR CREDITORS

The three main avenues for exiting bankruptcy in the context of a Chapter 11 often result in significant difficulties for creditors. Collection can be difficult, and even where recovery of funds is possible, payments may only be made after significant delays.

A. Lack of Payment

In a Chapter 11 case, assets are often sold to fund the bankruptcy plan, but "where all assets have been sold and secured creditors are under secured, traditional exit routes can be expensive, protracted, unattainable, or even altogether too simple."[55] If creditors choose to pursue collection, there is no guarantee that they will ever recover funds, and they will often incur significant attorney's fees and other administrative expenses in the process. Similarly, even if a plan is confirmed, a secured creditor's cash collateral may be reduced if the debtor receives court approval to make use of the funds.[56] This further reduces the amount of money available at the end of the bankruptcy case, and creates significant risk that a creditor will be negatively impacted by the bankruptcy.[57]

B. Delay

In addition to the decreasing possibility that creditors will collect in Chapter 11 cases, there will likely be significant delays before any money is received. For example, confirming a plan requires overcoming multiple hurdles, namely, a debtor must be able to satisfy administrative and priority expenses, the plan must be deemed "fair and equitable," and the absolute priority rule must remain in effect.[58] These requirements take time to accomplish, and from the minute a bankruptcy petition is filed, an extraordinary amount of delays may block confirmation. In addition to delays

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[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] ANNE M. AARONSON & CATHERINE G. PAPPAS, STRUCTURED DISMISSALS IN CHAPTER 11: STREAMLINE OR SIDESTEP? 501–06 (Pennsylvania Bar Institute 2016).

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arising from the Bankruptcy Code, there are also litigation-related and administrative delays that slow the entire process. Again, there is also no guarantee that payment will ever be received, and if a case is dismissed, the bankruptcy estate reverts to its pre-petition status, further delaying collecting, as it is likely that no funds will be available.[59]

V. PROPOSED SOLUTION: STRUCTURED DISMISSALS

While Section 363 sales, conversion, and dismissal may be beneficial in a small number of cases, these existing remedies for creditors often result in minimal repayment of outstanding debts. One solution to the creditor collection problem in Chapter 11 cases is the use of a structured dismissal.[60] A structured dismissal functions as a hybrid of the three remedies previously discussed. A structured dismissal allows all parties involved in a bankruptcy to broker their own solutions to a case on an individual basis, and adjust repayment plans to meet the specific needs of each unique debtor and creditor.[61] Recent scholarship and research related to structured dismissals points out that use of this remedy could be "the quickest and most cost-effective way to conclude your Chapter 11 case."[62]

Structured dismissals fall outside of the confines of the Bankruptcy Code, and therefore have not been universally adopted by courts.[63] Multiple memorandum opinions centered around the use of structured dismissals have been published, and the use of this technique is becoming increasingly prominent among bankruptcy courts.[64] Structured dismissals have been slow to rise in popularity because they must be worked out on an individual basis, based on the unique facts of each case. Despite this fact, "structured dismissals have evolved to streamline a debtor's exit by avoiding the expense or potential pitfalls of confirmation, conversion, or plain dismissal."[65] Structured dismissals incorporate the processes that traditional Chapter 11

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[59] *Id.*

[60] Nan Roberts Eitel et al., *Structured Dismissals, or Cases Dismissed Outside the Code's Structure*, DEP'T OF JUSTICE, https://www.justice.gov/sites/default/files/ust/legacy/2011/07/13/abi_201103.pdf.

[61] *Id.*

[62] Pernick & Dean, *supra* note 4.

[63] *Id.* at 290.

[64] *Id.* at 291.

[65] *Id.*

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remedies make use of, such as releases and exculpations, provisions for payment of unsecured creditors, retained jurisdiction of the Bankruptcy Court over certain matters, and survival of Bankruptcy Court orders, while simultaneously granting debtors and creditors more freedom to resolve a case in a way that is mutually beneficial.[66] While structured dismissals offer all parties involved in a case a novel way to resolve bankruptcy matters, their use remains controversial.

A. In re Iridium Operating, LLC

In the case of *In re Iridium Operating, LLC*, the Second Circuit approved the use of a structured dismissal to resolve a bankruptcy.[67] This Chapter 11 case began when Iridium Operating, LLC, a subdivision of Motorola, endeavored to provide voice and data communication around the globe using satellite technology.[68] After years of development, and nearly four billion dollars in debt, demand for Iridium's services sharply declined and the company was forced into bankruptcy.[69] A number of lenders, represented mainly by J.P. Morgan Chase, placed liens on a majority of Iridium's property after filing. The Official Committee of Unsecured Creditors that formed for this case objected to these liens, and sought to have the cash collateral held by JP Morgan Chase released.[70] With the lenders and Committee at odds, both parties eventually entered into a settlement agreement whereby a structured dismissal was used to resolve the bankruptcy.[71]

The terms of settlement were complex, but the parties ultimately agreed to the following: the lender's liens were named senior in priority, and Iridium's remaining cash was divided between three major bank accounts.[72] All parties also agreed that funds deposited in the bank accounts would then be used by creditors to sue Motorola for additional recovery.[73] A central

[66] *Id.*
[67] *In re* Iridium Operating, LLC, 478 F.3d 452 (2007).
[68] *Id.* at 452.
[69] *Id.*
[70] *Id.* at 454.
[71] *Id.*
[72] *Id.*
[73] *Id.* at 459.

concern during the pendency of this case was that the Bankruptcy Code's absolute priority rule would be violated if this settlement was approved. The Committee argued that the settlement constituted a violation of the Bankruptcy Code's standards, and also violated the traditional plan confirmation process.[74] In a decision that ultimately ratified the use of structured dismissals in the Second Circuit, the court held that "in the Chapter 11 context, whether a pre-plan settlement's distribution plan complies with the Bankruptcy Code's priority scheme will be the most important factor for a bankruptcy court to consider in approving a settlement under Bankruptcy Rule 9019."[75] This decision signaled the court's willingness to take a more flexible approach to resolving bankruptcies, and shifted the focus of settlements away from the previously narrow focus of only satisfying the absolute priority rule.[76]

B. Czyzewski v. Jevic Holding Corporation

Following *In re Iridium*, and many similar cases throughout the country that debated the validity of structured dismissals, *Czyzewski v. Jevic Holding Corporation* arose in the Third Circuit.[77] This case was argued before the Supreme Court on December 7, 2016, and the Court held that "bankruptcy courts may not approve structured dismissals of Chapter 11 bankruptcy cases that provide for asset distributions which do not follow ordinary priority rules established by the Bankruptcy Code without the consent of affected creditors."[78] In *Jevic*, the Court is confronted with two main questions. First, can a bankruptcy court, in dismissing a case under the U.S. Bankruptcy Code, permit parties to structure the dismissal to include substantive provisions regarding the distribution of assets of a debtor's bankruptcy estate, instead of simply dismissing the case and leaving parties to their remedies under applicable non-bankruptcy law?[79] If the answer to this question is yes, then the second question is whether such provisions effect a distribution of those

[74] *Id.* at 456.
[75] *Id.*
[76] *Id.* at 458.
[77] *Id.*
[78] Czyzewski v. Jevic Holding Corp., 137 S. Ct. 973 (2017).
[79] *Id.* at 974.

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assets in a manner that contravenes the Bankruptcy Code's priority scheme?[80]

The facts of this case are relatively straightforward, and arose in the context of a failed buyout that resulted in a Chapter 11 bankruptcy.[81] Jevic Holding Corporation ("Jevic") was a New Jersey based trucking company that ceased all business operations when it filed for bankruptcy.[82] Jevic employed multiple drivers during the time that the company was operational, and all drivers were laid off as a result of the bankruptcy.[83] The drivers who lost their jobs sued the company, and one of its private equity sponsors, Sun Capital.[84] One main secured creditor, CIT Group, held a lien on virtually all of Jevic's assets, but when the company went out of business, its assets were worth significantly less than what was owed on the company's loan.[85] Due to the magnitude of this case, an Official Committee of Unsecured Creditors was appointed, and this Committee commenced litigation against Sun Capital and CIT Group to recover funds.[86] As the case moved forward, Jevic proceeded with liquidating its assets, and after three years all that remained in the Jevic estate was approximately $1.7 million dollars.[87] The major issue with these funds was that they were subject to the secured creditors liens, so they were not readily payable.[88] Additionally, a plan could not be confirmed because there was an insufficient amount of funds to satisfy creditors.[89]

The parties in *Jevic* attempted to resolved this matter using the traditional forms of Chapter 11 disposition: conversion, dismissal and sale; but under the projected outcome of each of these scenarios, significant portions of creditors would remain unpaid.[90] Instead, a structured dismissal was brokered that included a settlement which satisfied the claims of the secured creditors and Committee.[91] Under the terms of the settlement, the

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[80] *Id.*
[81] *Id.* at 982.
[82] *Id.* at 983.
[83] *Id.* at 984.
[84] *Id.*
[85] *Id.* at 985.
[86] *Id.* at 986.
[87] *Id.*
[88] *Id.*
[89] *Id.* at 992.
[90] *Id.*
[91] *Id.*

Committee agreed to halt all litigation if Sun Capital and CIT Group allowed the $1.7 million dollars left in the estate to be used to pay administrative expenses and unsecured creditors.[92] Significantly, the drivers who were laid off were not included in the settlement, nevertheless the Bankruptcy Court gave its approval for the resolution.[93] The exclusion of the drivers from the settlement effectively violated the Bankruptcy Code's payment priority scheme, which is the crux of the issue that was elevated to the Supreme Court.[94]

This case is controversial because the Court's ruling ensured that the bankruptcy process may not be altered too drastically.[95] Parties will still be required to adhere to the plain meaning of the Code, and cannot avoid the traditional priority scheme when paying creditors.[96] However, this ruling only perpetuates the issues associated with Chapter 11 bankruptcies because it is difficult to impose strict limits on structured dismissals. By nature, structured dismissals are individualized, so requiring parties to still adhere to the priority scheme limits the amount of creative solutions that parties may reach.

One alternative to the requirement of a strict priority scheme is simply to amend the Bankruptcy Code, and allow for the addition of structured dismissals as a statutory remedy. There is a persistent need for change to promote efficiency and resolve a greater number of cases. By allowing creditors and debtors to operate outside of the Bankruptcy Code to resolve cases, creative solutions that are more appealing to both sides can develop. In its current form, Chapter 11 case disposition is constricted by the Code, and parties run into real issues if one of the three methods of resolution do work with the facts or circumstances of a case. The bankruptcy process was developed decades ago and has not experienced significant changes since its inception, and with society's increasing sophistication, the perfect time for change is the present.[97]

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[92] *Id.* at 993.
[93] *Id.*
[94] *Id.* at 994.
[95] *Id.* at 995.
[96] *Id.*
[97] *Id.* at 996.

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VI. CONCLUSION

Chapter 11 bankruptcy practice is an increasingly complex area of the law. Traditionally, Chapter 11 cases are resolved via one of three statutorily prescribed methods of disposition: section 363 sales, conversion to Chapter 7, or dismissal.[98] These have been in place for years, and do not always result in a beneficial outcome for all creditors. In recent years, the idea of structured dismissals was presented to courts as an alternative way to resolve Chapter 11 cases. Structured dismissals allow debtors and creditors to bypass the Bankruptcy Code's payment priority scheme, and craft settlements on an individualized basis.

[98] CHAPTER 11—BANKRUPTCY BASICS, *supra* note 1.

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