Professor Kenneth N. Klee and Whitman L. Holt on

Supreme Court's Holding in *Czyzewski v. Jevic Holding Corp.*, 2017 U.S. LEXIS 2024 (March 22, 2017)

2017 Emerging Issues 7529

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I. Summary of Holding and Lessons to be Learned

In a majority decision authored by Justice Breyer,[1] the United States Supreme Court answers in the negative "the basic question" whether a bankruptcy court can "approve a structured dismissal that provides for distributions that do not follow ordinary priority rules without the affected creditors' consent,"[2] holding that a "distribution scheme ordered in connection with the dismissal of a Chapter 11 case cannot, without the consent of the affected parties, deviate from the basic priority rules that apply under the primary mechanisms the Code establishes for final distributions of estate value in business bankruptcies." *Czyzewski v. Jevic Holding Corp.*, No. 15-649, 2017 U.S. LEXIS 2024, at *21 & *7 (Mar. 22, 2017). In reaching that conclusion, the Court observes that "Chapter 11 foresees three possible outcomes," namely "a bankruptcy-court-confirmed plan," "conversion of the case to a Chapter 7 proceeding for liquidation," or "dismissal of the Chapter 11 case" and "return to the prepetition financial status quo." *Id.* at *8–9. Importantly, the "Code also sets forth a basic system of priority, which ordinarily determines the order in which the bankruptcy court will distribute assets of the estate" and forbids confirmation, "over the objection of an impaired creditor class," of a plan "that contains priority-violating distributions." *Id.* at *9. Finding no textual basis in the Bankruptcy Code to depart from this foundational priority system, even in putative "rare cases," the Court concludes that bankruptcy courts simply lack the power to approve nonconsensual priority-skipping structured dismissals of the kind at issue in *Jevic*. *Id.* at *23–26.

Reflecting Justice Breyer's judicial pragmatism, the Court is careful to limit its holding to the precise issue presented, including by "express[ing] no view about the legality of structured dismissals in general," *id.* at *26, and taking pains to distinguish other circumstances in which courts have "approved interim distributions that violate ordinary priority rule" in the service of "significant Code-related objectives," *see id.* at *26–28.

The lessons to be learned from this decision are that the Court will continue to hold bankruptcy judges to the limitations Congress sets in the Bankruptcy Code but, at least with respect to Justice Breyer, will tread slowly in upending settled bankruptcy practices. Of note, the Court in *Jevic* refrained from more broadly addressing the extent to which bankruptcy courts may exercise

1 Chief Justice Roberts and Justices Kennedy, Ginsburg, Sotomayor, and Kagan joined Justice Breyer's opinion. Justice Thomas filed a dissenting opinion, which Justice Alito joined. To avoid future confusion, there were only eight Justices on the Court when *Jevic* was decided.

2 Sometimes sought in connection with the approval of a settlement agreement under Bankruptcy Rule 9019, a "structured dismissal" refers to the resolution and dismissal of a chapter 11 bankruptcy case other than by one of three express statutory routes—confirmation of a chapter 11 plan, conversion to chapter 7 liquidation, or an outright dismissal of the case.

uncodified equitable powers or the outer limits of bankruptcy settlements in general. Indeed, the *Jevic* opinion may be most significant for what the Court chose not to decide.

II. Legal Background

Bankruptcy Code section 507(a) sets forth certain categories of claims that are entitled to priority in bankruptcy cases. Among these claims and as relevant to the *Jevic* decision, section 507(a)(4) grants fourth priority to claims for wages and salaries earned by individuals within 180 days prior to the commencement of the bankruptcy case. 11 U.S.C. § 507(a)(4). The priority scheme set forth in section 507 is expressly applicable in chapter 11 cases. *See* 11 U.S.C. §§ 103(a), 1129(a)(1). Moreover, the so-called "absolute priority rule," which provides that junior creditors may not receive or retain property on account of their claims unless and until dissenting senior creditors are paid in full, is codified in section 1129(b)'s "fair and equitable" requirement for confirmation of a contested chapter 11 plan. *See* 11 U.S.C. § 1129(b)(1) & (2)(B). In view of these requirements, a chapter 11 plan may not deviate from the priority scheme in section 507(a) by distributing property to junior creditors over the objection of impaired classes of claims held by senior creditors.

Approval of a settlement agreement, as distinct from confirmation of a plan, is governed by Bankruptcy Rule 9019, which provides simply that "the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). The Supreme Court has stated that a bankruptcy court may approve a settlement agreement if the settlement is "fair and equitable." *See, e.g.*, *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson (In re TMT Trailer Ferry)*, 390 U.S. 414, 424, 20 L. Ed. 2d 1 (1968). Courts look to a variety of factors to determine whether a settlement is fair and equitable.[3]

III. Facts and Proceedings Below

In June 2006, Sun Capital Partners, Inc. and certain of its affiliates (collectively, "Sun") purchased Jevic Holding Corp., Jevic Transportation, Inc., and Creek Road Properties, LLC (collectively, the "Debtors") and subsequently refinanced the acquisition with a $101 million loan from a lender group agented by The CIT Group/Business Credit, Inc. ("*CIT*"). *Czyzewski v. Jevic Holding Corp. (In re Jevic Holding Corp.)*, No. 13-104-SLR, 2014 U.S. Dist. LEXIS 8813, at *3 (D. Del. Jan. 24, 2014). Just under two years later, the Debtors filed voluntary petitions for chapter 11 relief after ceasing substantially all operations, winding down their trucking business, and terminating approximately 90% of their workforce. *Id.* Two lawsuits were filed during the bankruptcy case. *Id.* First, certain truck drivers (the "Drivers") whose employment was terminated by the Debtors filed a complaint, on behalf of themselves and others similarly situated, alleging claims under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* (the "WARN Act") and a New Jersey state analogue, under which the Debtors were required to provide 60 days' written notice to employees before terminating their jobs. 2014 U.S. Dist. LEXIS 8813, at *4–5. Second, the official committee of unsecured creditors (the "Committee") brought an avoidance action on behalf of the estates

3 *See, e.g.*, *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (courts consider "(1) the probability of success in litigation; (2) the likely difficulty in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of creditors").

against CIT and Sun, alleging that the 2006 acquisition of the Debtors was a fraudulent transfer and a preference. *Id.* at *5.

Representing approximately 1,200 truck drivers asserting over $20 million in WARN Act claims, approximately $8.3 million of which constituted a priority wage claim under section 507(a)(4), the Drivers comprised the Debtors' largest group of unsecured creditors.[4] *Id.* at *4 n.4. Nevertheless, the Debtors, the Committee, CIT, and Sun (collectively, "Appellees") negotiated a settlement agreement that largely left out the Drivers' claims, providing instead for mutual releases, a $2 million payment by CIT to satisfy professional fees and administrative expenses, dismissal with prejudice of the Committee's avoidance action, assignment of Sun's lien on the Debtors' remaining $1.7 million in cash to a creditors' trust, and dismissal of the Debtors' chapter 11 cases. *Id.* at *5–6. In an oral opinion, the bankruptcy court approved the settlement over the objections of the U.S. Trustee and the Drivers, both of whom contended that the settlement improperly distributed property to creditors with lower priority claims than the Drivers' section 507(a)(4) priority wage claims. *Id.* at *6.

On appeal to the district court, the Drivers challenged approval of the settlement agreement, but the district court affirmed, agreeing with the bankruptcy court that the Drivers' claims against the estates were effectively worthless given the lack of unencumbered funds to continue the litigation and to satisfy any claims that might be allowed. *Id.* at *10. The district court further agreed that the settlement, which was the product of negotiations among all the major stakeholders, including the Drivers, was fair and equitable and offered the prospect of meaningful distributions to unsecured creditors and to some, though not all, priority creditors.[5] *Id.* at *11. Acknowledging that the "settlement does not follow the absolute priority rule" insofar as it proposed to pay unsecured creditors on their claims without first paying the Drivers' priority wage claims, the court concluded that noncompliance with the absolute priority rule "is not a bar to the approval of the settlement as it is not a reorganization plan." *Id.* at *12. Alternatively, the court found that having been substantially consummated, the settlement agreement could not be unwound and thus the Drivers' appeal was equitably moot. *Id.* at *14.

The Drivers appealed to the Court of Appeals for the Third Circuit, arguing, with the support of the U.S. Trustee, that "bankruptcy courts have no legal authority to approve structured dismissals, at least to the extent they deviate from the priority scheme of the Bankruptcy Code in distributing estate assets." *Official Comm. of Unsecured Creditors v. CIT Grp./Bus. Credit Inc. (In re Jevic Holding Corp.)*, 787 F.3d 173, 180 (3d Cir. 2015), *cert. granted*, 136 S. Ct. 2541, 195 L. Ed. 2d 867 (2016). Although "the Code does not expressly authorize structured dismissals," the Third Circuit reasoned that "structured dismissals are simply dismissals that are preceded by other orders

4 The bankruptcy court ultimately entered summary judgment against the Debtors, finding they had indisputably violated the state WARN Act. *In re Jevic Holding Corp.*, 496 B.R. 151, 165 (Bankr. D. Del. 2013). By contrast, multiple courts rejected the Drivers' efforts to impose liability on certain Sun entities through a single-employer theory of liability. *See Czyzewski v. Jevic Transp., Inc. (In re Jevic Holding Corp.)*, 656 Fed. Appx. 617 (3d Cir. 2016); *see also* note 6 *infra.*

5 The Drivers participated in the settlement negotiations but, as the district court put it, elected to "opt out" of the settlement to continue their litigation against the Debtors and Sun. *In re Jevic*, 2014 U.S. Dist. LEXIS 8813, at *11 n.10. Appellees conceded, as the Drivers contended, that it was in the interest of the Committee to negotiate a deal that excluded the Drivers because a settlement agreement that paid the Drivers' priority claims would have left unsecured creditors with nothing. *In re Jevic*, 787 F.3d at 178.

of the bankruptcy court (*e.g.*, orders approving settlements, granting releases, and so forth) that remain in effect after dismissal." *Id.* at 181. The court concluded that "absent a showing that a structured dismissal has been contrived to evade the procedural protections and safeguards of the plan confirmation or conversion process, a bankruptcy court has discretion to order such a disposition" in appropriate circumstances. *Id.* at 182. The circuit court thus articulated the rule that "the Code permits a structured dismissal, even one that deviates from the § 507 priorities, when a bankruptcy judge makes sound findings of fact that the traditional routes out of Chapter 11 are unavailable and the settlement is the best feasible way of serving the interests of the estate and its creditors." *In re Jevic*, 787 F.3d at 185–86. Admitting that the decision in this case was a close call, the court concluded that the bankruptcy court "had sufficient reason to approve the settlement and structured dismissal of Jevic's Chapter 11 case" as "the least bad alternative since there was 'no prospect' of a plan being confirmed and conversion to Chapter 7 would have resulted in the secured creditors taking all that remained of the estate in 'short order.'" *Id.* at 184–85.

Dissenting in part, Circuit Judge Scirica agreed with the majority that "settlements presented outside of plan confirmations must, absent extraordinary circumstances, comply with the Code's priority scheme" but disagreed that this appeal presented an extraordinary case where departure from the general rule was warranted. *Id.* at 186 (Scirica, C.J., concurring in part and dissenting in part). The dissent found "the settlement at odds with the goals of the Bankruptcy Code" insofar as its departure from the Code's priority scheme was not "directed at estate-value maximization," but rather "the settlement deviates from the Code's priority scheme so as to maximize the recovery that certain creditors receive" thereby raising "the same concern as transactions invalidated under the *sub rosa* plan doctrine." *Id.* at 186–87.

The Supreme Court heard oral argument in *Jevic* on December 7, 2016, and issued its decision on March 22, 2017.

IV. Analysis

A. Majority Opinion

After explaining the relevant factual and statutory background, the Court begins its analysis by addressing Appellees' argument that the Drivers "lack standing because they have suffered no injury, or at least no injury that will be remedied a decision in their favor." *Jevic*, 2017 U.S. LEXIS 2024, at *18. That argument, the Court reasons, depends on two assertions that the Court finds unsupported by the record—"(1) that, without a violation of ordinary priority rules, there will be no settlement, and (2) that, without a settlement, the fraudulent-conveyance lawsuit has no value." *Id.* at *19. Rather, as to the first proposition, "the record indicates that a settlement that respects ordinary priorities remains a reasonable possibility" given that the bankruptcy court has since denied the Drivers' WARN Act claims as against Sun.[6] *Id.* at *19–20. As to the second proposition,

6 Sun had initially insisted on a settlement that gave the Drivers nothing because it did not want to help fund the Drivers' WARN Act lawsuit against it, but the bankruptcy court subsequently granted summary judgment in favor of Sun, finding that Sun and the Debtors were not a single employer, *see In re Jevic Holding Corp.*, 492 B.R. 416, 433 (Bankr. D. Del. 2013), and that decision was affirmed on appeal, *see* 656 Fed. Appx. 617, 621 (3d Cir. 2016). In light of that outcome, the Court surmises that since "Sun's given reason for opposing distributions to [the Drivers] has disappeared, why would Sun not settle while permitting some of the settlement money to go to [the Drivers]." *Jevic*, 2017 U.S. LEXIS 2024, at *20.

"the record indicates that the fraudulent-conveyance claim could have litigation value" in a converted chapter 7 case or in the event of dismissal.[7] *Id.* at *20. Consequently, the Court finds that the Drivers have standing because "approval of the structured dismissal cost [the Drivers] something," specifically the "chance to obtain a settlement that respected their priority" or "the power to bring their own lawsuit on a claim that had a settlement value of $3.7 million." *Id.* at *21.

Turning to the substantive issue "concern[ing] the interplay between the Code's priority rules and a Chapter 11 dismissal," *id.* at *11, the Court notes that the "priority system constitutes a basic underpinning of business bankruptcy law" that "has long been considered fundamental to the Bankruptcy Code's operation." *Id.* at *21–22. As such, the Court would "expect more than simple statutory silence if, and when, Congress were to intend a major departure." *Id.* at *23 (citing *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468, 149 L. Ed. 2d 1 (2001), for the proposition that "Congress . . . does not, one might say, hide elephants in mouseholes"). Finding no such intent evidenced in the statute, *see Jevic*, 2017 U.S. LEXIS 2024, at *23 (stating that nothing "about distributing estate value to creditors pursuant to dismissal appears in any relevant part of the Code"), the Court determines that "[i]nsofar as the dismissal sections of Chapter 11 foresee any transfer of assets, they seek a restoration of the prepetition financial status quo," except when the court orders otherwise "for cause." *Id.* at *24. Read in context, the Court interprets the "for cause" exception as applying "'to protect rights acquired in reliance on the bankruptcy cases.'" *Id.* (quoting H.R. Rep. No. 95-595, at 338). Because no other Bankruptcy Code provisions authorize structured dismissals with general end-of-case distributions of estate assets to creditors, the Court concludes the "for cause" statutory foothold alone is simply "too weak a reed upon which to rest so weighty a power." *Jevic*, 2017 U.S. LEXIS 2024, at *24–25.

The Court expressly limits its holding to structured dismissals that distribute estate value to lower priority creditors over the objection of omitted intervening senior creditors. *See id.* at *26 (distinguishing *In re Buffet Partners, L.P.*, 2014 Bankr. LEXIS 3204 (Bankr. N.D. Tex. July 28, 2014), on the basis that no party with an economic stake in that case objected to the dismissal ordered therein and making clear that the Court "express[es] no view about the legality of structured dismissals in general"). The Court also draws a line between interim and final distributions of estate value, distinguishing other circuit authority on the basis that, unlike the Third Circuit in *Jevic*, those opinions did not authorize "nonconsensual departures from ordinary priority rules in the context of a dismissal—which is a *final* distribution of estate value." *Jevic*, 2017 U.S. LEXIS 2024, at *26.

With respect to other instances "in which a court has approved interim distributions that violate ordinary priority rules," including "'first-day' wage orders that allow payment of employees' prepetition wages, 'critical vendor' orders that allow payment of essential suppliers' prepetition invoices, and 'roll-ups' that allow lenders who continue financing the debtor to be paid first on their prepetition claims," the Court further states that "one can generally find significant Code-related objectives that the priority-violating distributions serve." *Id.* at *26–27.[8] By contrast, the Court

7 Noting that CIT and Sun "settled the lawsuit for $3.7 million, which would make little sense if the action truly had no chance of success," the Court observes that the bankruptcy court "could convert the case to a Chapter 7, allowing a Chapter 7 trustee to pursue the suit against Sun and CIT" or "could simply dismiss the Chapter 11 bankruptcy, thereby allowing [the Drivers] to assert the fraudulent conveyance claim themselves." *Id.* at *20. It remains to be seen precisely what will occur on remand.

8 The Court's citation of *In re Kmart Corp.*, 359 F.3d 866 (7th Cir. 2004), as authority for "the justifications for critical-vendor orders" is quite odd. Although the Seventh Circuit did generally describe the theoretical justifications for critical vendor relief,

concludes, no "significant offsetting bankruptcy-related justification" supports a priority-violating distribution attached to a final disposition because, not only does it "circumvent the Code's procedural safeguards," but also "it does not preserve the debtor as a going concern; it does not make the disfavored creditors better off; it does not promote the possibility of a confirmable plan; it does not help to restore the *status quo ante*; and it does not protect reliance interests." *Id.* at *27–28. Beyond the specific holding of *Jevic*, this paragraph at least implicitly blessing several interim distributions of value that violate strict priority yet advance "significant Code-related objectives" is the most important aspect of the Court's opinion.

Finally, the Court rejects the Third Circuit's attempt to limit its decision to approval of nonconsensual priority-violating structured dismissals in "those 'rare case[s]' in which courts could find 'sufficient reasons' to disregard priority." *Id.* at *29 (quoting *In re Jevic*, 787 F.3d at 175, 186). The Court admonishes that the difficulty in giving precise content to the concept of sufficient reasons "threatens to turn a 'rare case' exception into a more general one." *Jevic*, 2017 U.S. LEXIS 2024, at *29. The phenomenon about which the Court is concerned—in which ostensibly "extraordinary" relief, such as non-debtor releases effected via a chapter 11 plan, soon becomes sought in many run-of-the-mill cases—is something most bankruptcy lawyers will have experienced in practice. *Cf. United States v. Kramer*, 19 F. Supp. 2d 273, 282 n.12 (D.N.J. 1998) ("[I]f most settling parties nonetheless believe they are paying more than their fair shares, [defendant]land is a bit like Garrison Keillor's Lake Wobegon, 'where all the children are above average.'"). The uncertainty resulting from a "rare case" exception, the Court warns, "will lead to similar claims being made in many, not just a few, cases." *Jevic*, 2017 U.S. LEXIS 2024, at *30. Opening such floodgates could result in potentially serious consequences, including "departure from the protections Congress granted particular classes of creditors," "changes in the bargaining power of different classes of creditors even in bankruptcies that do not end in structured dismissals," "risks of collusion," and "making settlement more difficult to achieve." *Id.* at *30–31; *cf.* Daniel J. Bussel & Kenneth N. Klee, *Recalibrating Consent in Bankruptcy*, 83 Am. Bank. L.J. 663, 693-94 (2009) (explaining how bankruptcy law "has long depended on vague and uncertain legal rules as a primary means of forcing parties into a renegotiation of legal rights to facilitate reorganization," because "[b]y creating uncertainty, especially factual uncertainty, about the parties' rights, bankruptcy law provides an environment where parties are encouraged to compromise rather than to stand on their legal rights").

Declining to "'alter the balance struck by the statute'" even in rare cases, the Court reverses and remands, holding that bankruptcy courts simply do not have the power to authorize nonconsensual priority-skipping distribution schemes in connection with a chapter 11 dismissal. *Jevic*, 2017 U.S. LEXIS 2024, at *31 (quoting *Law v. Siegel*, 134 S. Ct. 1188, 1198, 188 L. Ed. 2d 146 (2014)).

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that court notoriously found such justifications largely lacking and thus affirmed a district court order disallowing the critical vendor payments at issue. *See* 359 F.3d at 871–74. The Supreme Court would have been better served citing authority that actually endorses critical vendor payments, which is a practice that can be firmly grounded in the Court's own decisions from the 1800s. *See* Kenneth N. Klee & Whitman L. Holt, Bankruptcy and the Supreme Court: 1801-2014, at 247 (West Academic 2015) (explaining how "this doctrine has deep roots in prior decisions in which the Court applied common law principles").

B. Justice Thomas's Dissent

Justice Thomas writes a brief dissent, joined by Justice Alito. The dissent complains that whereas the Court "granted certiorari to decide '[w]hether a bankruptcy court may authorize the distribution of settlement proceeds in a manner that violates the statutory priority scheme,'" the Drivers in fact "chose to argue a different question on the merits," namely "[w]hether a Chapter 11 case may be terminated by a 'structured dismissal' that distributes estate property in violation of the Bankruptcy Code's priority scheme." *Jevic*, 2017 U.S. LEXIS 2024, at *32 (Thomas, J., dissenting). The dissent concludes that "the recast question is narrower—and different—than the one on which we granted certiorari" and "is also not the subject of a circuit conflict." *Id.* at *33. Chastising such "bait-and-switch tactics" and finding it unwise to decide a novel question of bankruptcy law without the benefit of the views of additional courts of appeal and full adversarial briefing, the dissent would have dismissed the writ of certiorari as having been improvidently granted. *Id.* at *32–33.[9]

V. Practice Tips

Consistent with the Supreme Court's bankruptcy jurisprudence in recent years, *Jevic* demonstrates once again that this Court is generally not inclined to deviate from the text of the Bankruptcy Code, irrespective of whether the results of this interpretative approach are desirable on policy grounds. *See, e.g.*, *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1946–49, 195 L. Ed. 2d 298 (2016); *Baker Botts L.L.P. v. ASARCO LLC*, 135 S. Ct. 2158, 2169, 192 L. Ed. 2d 208 (2015); *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2073, 182 L. Ed. 2d 967 (2012); *Hall v. United States*, 132 S. Ct. 1882, 1893, 182 L. Ed. 2d 840 (2012). Indeed, the Court in *Jevic* echoes its now familiar warning against allowing uncodified equitable principles to alter the priority schemes in the Bankruptcy Code. *Compare Jevic*, 2017 U.S. LEXIS 2024, at *31, *with Law v. Siegel*, 134 S. Ct. 1188, 1197–98, 188 L. Ed. 2d 146 (2014), *and United States v. Noland*, 517 U.S. 535, 540–43, 134 L. Ed. 2d 748 (1996).

By narrowly circumscribing the *Jevic* decision to nonconsensual priority-violating structured dismissals, *see Jevic*, 2017 U.S. LEXIS 2024, at *24 ("We express no view about the legality of structured dismissals in general"), the Court apparently attempts to carve out some common features of modern bankruptcy practice, expressly excluding from its decision first-day orders authorizing what would otherwise be priority-violating payments of prepetition employee wages, critical vendors, and debt roll-ups, all of which the Court distinguishes as "serv[ing] significant Code-related objectives." *Id.* at *26–27. Practitioners and lower courts are now left to grapple with the meaning and outer boundaries of this test for permissible interim distributions and, to borrow a turn of phrase, may find it "difficult to give precise content to the concept" of these "significant Code-related objectives" and "significant offsetting bankruptcy-related justifications." *Id.* at *29 & *27. Indeed, it is somewhat surprising that a decision chastising "uncertainty" in the bankruptcy

9 Neither of the opinions in *Jevic* address the primary merits argument that was actually advanced by the respondents—that "nothing in the Code either authorizes or requires bankruptcy courts to review and approve Chapter 11 settlements in the first place, so it follows *a fortiori* that nothing in the Code authorizes or requires such courts to apply the priority system to such settlements." *See* Brief for Respondents at 3–4, *Czyzewski v. Jevic Holding Corp.* (No. 15-649). The proposition that settling parties can do whatever they want without judicial review shocked many in the bankruptcy community and was quickly jettisoned at oral argument before the Supreme Court. *See* Transcript of Oral Argument at 34–35, *Czyzewski v. Jevic Holding Corp.* (No. 15-649).

context, *id.* at *31, simultaneously endorses vague and amorphous tests for permitted interim distributions. In any event, the Court has at least implicitly endorsed critical-vendor orders and similar relief, which should open the door for bankruptcy attorneys to try to pursue such relief in jurisdictions where such relief was previously prohibited or restricted.

More broadly, the line drawn in the *Jevic* opinion between "interim" and "final" distributions of estate value invites parties to seek to effect increasingly larger distributions under the guise of an "interim" settlement, or a series of piecemeal settlements, during the middle portion of a bankruptcy case. It remains for future courts to determine precisely when a permissible interim action becomes an impermissible final reckoning.

In sum, after *Jevic* it is clear that the nonconsensual priority-violating structured dismissal is dead. Beyond that, however, future courts may yet need to decide the legality of other structured dismissals, the contours of permissible interim distributions, and the limitations on relief that can be obtained via a bankruptcy settlement.

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