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APPROVAL OF BANKRUPTCY SETTLEMENTS – NO EVIDENTIARY HEARING REQUIRED

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When seeking approval of a settlement in a bankruptcy case, the usual vehicle for approval is the filing of a motion pursuant to Bankruptcy Rule 9019 and a subsequent hearing. While Rule 9019 and case law require certain factual and legal thresholds be established to gain the approval, the Rule does not specifically require an evidentiary hearing on motions to approve settlements. Instead, Rule 9019(a) contemplates approval of a settlement after "notice and hearing," not "notice and evidentiary hearing." On February 1, 2016, the Eleventh Circuit Court of Appeals upheld this logic in a 1-page order affirming a ruling from the Bankruptcy Court in the Middle District of Florida that approved a settlement without an evidentiary hearing despite argument by Appellant Regions Bank that the Court committed error amounting to an abuse of discretion by not conducting an evidentiary hearing. Regions Bank v. Herendeen, et al., No. 15-11301 (11th Cir. Feb. 1, 2016) (per curiam).

The case began when two bankruptcy Trustees sought approval of a settlement that would result in significant funds being paid into the estates and the waiver of certain claims from the other settling party. Regions Bank (also a target in pending litigation by the Trustees) had appealed the approval order on the principal basis that the Bankruptcy Court did not conduct an evidentiary hearing on the approval of the settlement. The Trustees argued that (1) no evidentiary hearing was required under the plain language of Rule 9019(a); (2) the proffers of testimony and documents introduced in connection with the hearing on the settlement motion were sufficient for the Bankruptcy Court to have apprised itself of the facts to appropriately exercise its discretion in approving the settlement; and (3) Regions Bank had more than ample opportunity to conduct discovery regarding the merits of the case, but that it elected not to do so.

The Bankruptcy Court ruling was first appealed to the District Court, which affirmed approval of the settlement. Regions Bank then appealed to the Eleventh Circuit. The brief filed by the Trustees focused on the application of the plain meaning rule to Rule 9019, and the evidentiary basis for the Bankruptcy court's decision to approve the settlement. The District Court's opinion and the questions from the Eleventh Circuit Judges at oral argument made it clear that an evidentiary hearing is not required in order to obtain the court approval of a settlement. While holding an evidentiary hearing may have avoided the time spent dealing with multiple appeals, the law seems well-settled that such a hearing is not required under the plain language in Rule 9019(a), a proposition previously recognized by the Seventh Circuit Court of Appeals in Depositer v. Marv M. Holloway Found., 36 F.3d 582 (7th Cir, 1994).

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