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THE ELEVENTH CIRCUIT FUNDAMENTAL-LY APPROVES OF BAR ORDERS

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On October 19, 2017, the Eleventh Circuit Court of Appeals stated "a bankruptcy court can enjoin ***any*** civil action if the outcome could alter the debtor's rights, liabilities, options, or freedom of action or in any way impacts upon the handling and administration of the bankrupt estate." *In re: Fundamental Long Term Care*, No. 16-16462, 2017 WL 46826791 at *8 (11th Cir. Oct. 19, 2017) (emphasis added).

In *Fundamental,* the Eleventh Circuit made short shrift of the appellants' claim that the bankruptcy court lacked jurisdiction to enjoin state law claims. *Id.* at *6. The Eleventh Circuit then asked whether the claims to be barred could conceivably affect the administration of the bankruptcy estate. *Id*. However, rather than apply the same reasoning as it had in its *In re Munford*, 97 F.3d 449 (11th Cir. 1996) decision, i.e., that where a settlement was conditioned on the entry of the bar order the bankruptcy court possessed subject matter jurisdiction to issue it, the Eleventh Circuit determined that if the appellants were successful in their state court claims, the "potential existed to deconstruct the bankruptcy court's resolution of the dispute." *Fundamental* at *8. This formulation seems to us to be even more expansive than the clear reasoning in *Munford* because here reference is made to the *potential* to upset the resolution reached in the bankruptcy court, not that the proposed settlement itself was actually conditioned on it.

The Eleventh Circuit concluded this part of the analysis with a fascinating statement: "The [appellants] have identified no scenario in which a claim to recover on [the appellants' state court claims against a non-debtor] would not impact the size and administration of the bankruptcy estate, as well as the debtor's potential claims with respect of the [transaction]." *Fundamental.* at *9. This language, hinted but did not outright say, that the Eleventh Circuit has shifted the burden to the party opposing the Bar Order to demonstrate that the action it wishes to take will *not* affect the bankruptcy estate.

The Eleventh Circuit's longstanding record of upholding Bar Orders remains relatively unblemished including in the Southern District of Florida. This law is an important consideration for anyone involved in making a venue decision in connection with the filing of chapter 11 and chapter 7 cases.

For more information on this topic, please contact the authors, Paul Steven Singerman or Isaac Marcushamer on the firm's Business Reorganization Team.

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