

Did *Jevic* leave a hole large enough for a teamster to drive a truck through?



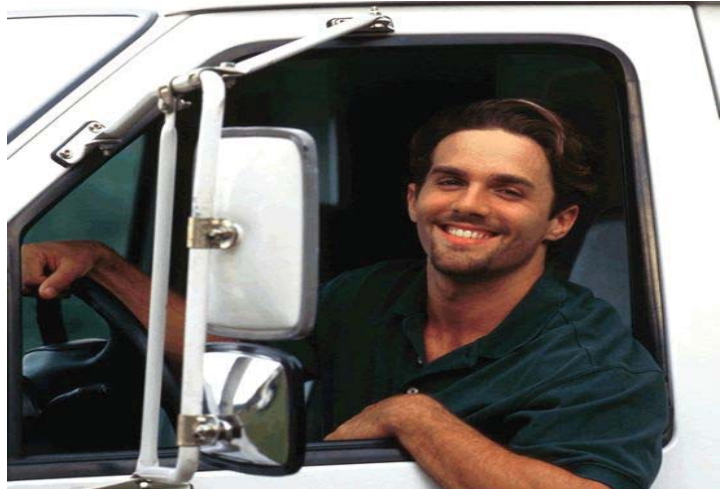
WHAT DOES IT MATTER?

- We are in the Fifth Circuit. The Fifth Circuit has long held that pre-plan settlements cannot violate the priority rules.
- *AWECO*

JEVIC Held that Priority Skipping Structured Dismissals were improper

No real change on that point.

Left open the question of whether structured dismissals are OK



AT LEAST TWO REASONS IT MATTERS

BUSINESS

Secured creditors oftentimes have a veto on the venue of a Chapter 11 case

(the “Golden Rule”: “he who has the money rules”)

A DIP financier can dictate venue.



THE DEVELOPMENT OF THE LAW

Cases that impact important issues of largely regional law oftentimes end up being decided by judges with little expertise in the law: ex.: oil and gas cases.



JEVIC'S FACTS

2006 LBO (THE FINANCIAL CRISIS INTERVENED)

2008 Chapter 11 in Delaware

Teamsters had been fired in contravention of New Jersey WARN Act

Assets sold

Creditors sued CIT and SUN (Private Equity) for fraudulent transfer

Teamsters Liquidated NJ WARN Act Claim in Bankruptcy (\$8.2 million entitled to priority)

Teamsters Sued SUN on alter ego theory for WARN Act Claim

Creditors settled fraudulent transfer case with CIT & SUN



STRUCTURED DISMISSAL

Dismissal without a “plain vanilla” dismissal order
Can be extremely complicated, involving the creation of trusts, exculpations, etc., or can be a simple resolution of a two-party dispute.



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