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Delaware Bankruptcy Update

The Delaware Bankruptcy Court issued a number of notable rulings in recent months, several of which addressed issues frequently at dispute in connection with the plan confirmation process. Specifically, Judges Goldblatt and Stickles weighed in on implicit consent to third-party releases, and Judge Dorsey considered the circumstances under which non-consensual third-party releases are appropriate. Each of these decisions, as well as several other recent rulings from Delaware Bankruptcy Judges that are likely of interest to practitioners, is summarized below. Feel free to contact any member of our team for further information about these cases.

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Judge Stickles Approves Opt-Out Mechanisms for Third-Party Releases in *Furniture Factory, Alpha Latam Mgmt.*, and *Corp Group Banking*

Furniture Factory Ultimate Holding, L.P., Case No. 20-12816 (JKS), Hr'g Tr. at 46:19-20 (Bankr. D. Del Sept. 16, 2021) [Docket No. 503]

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In re Corp Grp. Banking S.A., Case No. 21-10969 (JKS), Hr'g Tr. at 44:11-19 (Bankr. D. Del. Feb. 16, 2022) [Docket No. 543]

Delaware Bankruptcy Judge Kate Stickles has approved opt-out mechanisms as sufficient manifestations of consent for third-party releases three times since September 2021—each time over the objection of the U.S. Trustee. In these rulings, from *Furniture Factory Ultimate Holding, L.P.*, *Alpha Latam Management, LLC*, and *Corp Group Banking S.A.*, Judge Stickles emphasized the need for clear, conspicuous language in ballots and confirmation hearing notices, and advised that parties who do not receive notice will not be deemed to grant releases.

Judge Stickles first ruled on this issue at the *Furniture Factory* confirmation hearing on September 16, 2021, overruling the U.S. Trustee's objection that the Debtors' plan contained non-consensual third-party releases by general unsecured creditors who did not return a ballot and whose distribution could be as low as two-hundredths of a percent. In reaching her decision, Judge Stickles focused on the conspicuous language in the ballots and confirmation hearing notice:

- The ballots "contained language that was obvious and conspicuous regarding the optional release selection" and included the text of the applicable plan provisions, including the definitions of "release" and "releasing parties."
- The ballots advised parties that "in making no affirmative election to opt out, the holder effectively releases all claims against the released parties."
- The confirmation hearing notice "contained a text box explaining the opt out" and "the deadline to object to the releases in the plan."

Judge Stickles explained that section 1141 of the Bankruptcy Code "binds creditors to a plan, and creditors need to speak up and object to release provisions, just like they need to object to other plan provisions that they disagree with." Over twenty percent of general unsecured creditors opted out of the third-party release, indicating that the instructions were clear. The Debtors also added language to the confirmation order that holders of claims with undeliverable solicitation packages would be deemed to opt out of the third-party releases. Considering these facts, Judge Stickles concluded that the third-party releases were consensual.

After the decision by the District Court for the Southern District of New York in *In re Purdue Pharma L.P.*, 635 B.R. 26 (S.D.N.Y. 2021), finding that an opt-out mechanism does not demonstrate consent to a third-party release, the U.S. Trustee continued to object to the use of opt-out mechanisms in cases before Judge Stickles, despite her clear ruling in *Furniture Factory*.

Her more recent rulings in *Alpha Latam Management* and *Corp Group Banking* confirm that her position has not changed and that she will approve the use of opt-outs if notice is adequate.

In *Alpha Latam Management*, Judge Stickles overruled the U.S. Trustee's objection to an opt-out mechanism at the disclosure statement hearing and later concluded that the third-party releases were consensual at the confirmation hearing. In both rulings, she reiterated the need for adequate notice and specific, conspicuous disclosures in the ballots and confirmation hearing notices. Referencing her prior rulings, she explained that "an opt-out mechanism is a valid means of obtaining consent" because "creditors have an obligation to read their mail and respond if appropriate." In contrast, if a creditor can demonstrate that it did not receive notice of the third-party release, the creditor "may not be bound to the release." The balloting agent must be prepared to file a report "addressing the parties served, undeliverable mail, and the opt-out."

At the *Corp Group Banking* disclosure statement hearing, Judge Stickles again found that opt-out provisions for third-party releases are adequate manifestations of consent. She reiterated her position that "as a general proposition parties in a bankruptcy case are affected by provisions of a plan and if parties have an issue with a plan provision, including releases . . . it's incumbent upon them to object." However, proper notice is essential, and parties who do not receive notice will not be deemed to grant releases.

Debtors with cases before Judge Stickles may rely on this precedent to argue that opt-out provisions in third-party releases are appropriate and demonstrate consent. Debtors should also be mindful of the language in their ballots and confirmation hearing notices to ensure that the releases and opt-out mechanisms are adequately and conspicuously described.

Judge Goldblatt Provides His View on Opt-Out Mechanisms for Third-Party Releases in *Avadim Health* and *Riverbed Technology*

In re Avadim Health, Inc., Case No. 21-10883 (CTG), Hr'g Tr. at 76-80 (Bankr. D. Del. Oct. 27, 2021) [Docket No. 394]

In re Riverbed Technology, Inc., Case No. 21-11503 (CTG), Hr'g Tr. at 26-28 (Bankr. D. Del. Dec. 3, 2021) [Docket No. 171]

At two recent confirmation hearings, Delaware Bankruptcy Judge Craig Goldblatt also approved the use of "opt-out" procedures, which require creditors to affirmatively act to avoid giving third-party releases. In each of these cases, Judge Goldblatt ruled that, in the absence of an objection to a third-party release, the affected parties will be bound by such release pursuant to the standard set forth in section 1141 of the Bankruptcy Code, which binds all creditors to the terms of a confirmed plan.

In *Avadim Health, Inc.*, the U.S. Trustee filed the only objection to the third-party releases, arguing that a party's failure to object to the releases does not constitute consent. In overruling the objection, Judge Goldblatt approached the issue from a different perspective, stating that "it may make more sense to treat [the failure to object] as the forfeiture of the potential objection, rather than the consent to the provision . . . ." Judge Goldblatt stated that he views this issue to be "analytically the same as any other plan provision whose propriety is uncertain and that a party that fails [to] raise an appropriate objection thus forfeits any such objection the party might have. . . . Perhaps another way of saying this is that I think the applicable standard is set out in Section 1141(a) of the Bankruptcy Code, that confirmation of the plan binds all creditors . . . and that that standard rather than the contractual standard of consent is the controlling standard here."

Judge Goldblatt also provided insight into his general approach to confirmation, stating that "in the absence of an objection by an affected party, the court will review the plan to make sure that there's nothing in it that's patently unlawful, but where you have a bankruptcy provision whose propriety is disputable and no affected party chooses to dispute it, courts will not typically take it upon themselves to play the role of vigilante and engage in a deep dive to resolve a potential dispute that is not raised by an affected party." While Judge Goldblatt recognized the U.S. Trustee's right to be heard, he stated that he "certainly view[s] that objection differently than [he] would an objection by a party with an economic stake . . . ."

Subsequently, on December 3, 2021, following a routine and uncontested confirmation hearing in *In re Riverbed Technology, Inc.* (Case No. 21-11503 (CTG)), Judge Goldblatt reiterated his views on third-party releases. The plan in *Riverbed* required parties to submit a form affirmatively opting out of the third party-releases if they wished not to be bound by them. Additionally, if a party returned a ballot voting to accept the plan, it could not opt out.

In approving these procedures, Judge Goldblatt again stated that he views the failure to object as "more of a forfeiture of a right to object, rather than the consent thereto." Accordingly, Judge Goldblatt revised the confirmation order's language approving the releases and opt-out procedures from "***establishing*** the applicable party's consent" to "***binding*** the applicable parties."

In an "Extraordinary Case," Non-Consensual
Third-Party Releases Can Be Eminently Appropriate

In re Mallinckrodt PLC, et al., Case No. 20-12522 (JTD), 2022 WL 404323, at *1 (Bankr. D. Del. Feb. 8, 2022)

Delaware Bankruptcy Judge John Dorsey recently approved various third-party releases in the Fourth Amended Joint Plan of Reorganization proposed by Mallinckrodt PLC and its Debtor affiliates. Having been plagued by "an onslaught" of opioid and other litigation, and with litigation costs averaging $1 million per week, the Debtors filed chapter 11 cases to obtain global settlements of their "massive liabilities" and devise a framework for satisfying such liabilities while preserving enterprise value and a going concern.

Prior to filing the Plan, the Debtors engaged in arms'-length negotiations with certain interested parties and reached various settlements. Critically, the settlements included certain mutual releases among the Debtors and various third parties, which the Debtors sought to have approved through the Plan.

The Plan included releases (i) by the Debtors in favor of third parties; (ii) by holders of opioid claims in favor of the Debtors and various third parties; and (iii) by holders of non-opioid claims in favor of the Debtors and various third parties. The Debtors' releases were uncontested and approved. As discussed in detail below, the Plan's other release provisions were contested but ultimately approved.

Opioid Claimant Releases

The Opioid Claimant Releases were non-consensual because they were binding on the opioid claimants and such claimants could not opt out. The Court relied on a substantial evidentiary record—developed over 16 days of testimony—to conclude that the Opioid Claimant Releases were both necessary and fair.

The Debtors presented evidence that the settlement of opioid-related claims resolved approximately 3,000 opioid-related lawsuits, involving nearly $3 trillion in potential damages. The sheer volume of those cases made defending them impracticable—despite the Debtors having viable defenses. The testimony of the Debtors' independent director and CRO also illustrated that the releases were a critical component of the opioid settlement, without which the Debtors would suffer substantial harm, including an inability to continue to operate, reputational damage, an inability to attract and retain talent, and mounting financial pressures. In sum, the Opioid Claimant Releases, opioid settlement, and the chapter 11 cases were inextricably intertwined; therefore, the Opioid Claimant Releases were necessary to the success of the Debtors' reorganization.

The Opioid Claimant Releases were also fair. The evidence established that opioid claimants would receive greater value with the opioid settlement than without it. In addition, (i) the interests of future claimants had been adequately represented by the court-appointed future claimants representative; (ii) claims for fraud, criminal conduct, and gross negligence were excluded from the Opioid Claimant Releases; (iii) opioid claimants overwhelmingly voted to accept the Plan; (iv) claims against directors and officers were not likely to be meritorious; and (v) the Debtors provided additional consideration to opioid claimants in exchange for releases of

the Debtors' directors and officers. In sum, the Court noted that the cases involved "extraordinary" circumstances requiring an expeditious result and that the proposed opioid settlement, including the Opioid Claimant Releases, would "remove an existential threat to Debtors' business while at the same time ensuring that opioid claimants receive recoveries far in excess of what they could obtain through continued litigation."

Non-Opioid Releases

The Court also approved releases by non-opioid claimants, including non-voting claimants deemed to reject the Plan, in favor of various third parties, where such non-opioid claimants could opt out of the Non-Opioid Releases. Weighing in on the debate as to whether the failure to opt out of a release manifests consent, Judge Dorsey noted that in instances where notice is sufficient, the failure to opt out of a release may constitute consent. The Debtors went to substantial effort to ensure claimants had sufficient notice, including by engaging in a substantial media campaign, publishing notice in various news outlets, and providing easy access to opt-out forms, among other measures. Moreover, the case was widely publicized, involved an active creditor body, and concerned mass-tort claims, all of which, taken together, made the reliance on an opt-out mechanism eminently appropriate.

Delaware Bankruptcy Court Prefers "Pure Range Analysis" to Analyze <u>Ordinary Course of Business Preference Defense</u>

In re J&M Sales Inc., Case No. 18-11801 (JTD), 2022 WL 610780 (Bankr. D. Del. Mar. 1, 2022)

Delaware Bankruptcy Judge John Dorsey recently found that a "pure range analysis" was the best way to determine whether alleged preferential transfers were made in the ordinary course of business.

In *J&M Sales*, the Chapter 7 Trustee commenced an adversary proceeding, seeking to use sections 547, 548, and 550 of the Bankruptcy Code to avoid and recover certain prepetition transfers made by the Debtors to defendant Exist, Inc. Following an unsuccessful mediation, the Chapter 7 Trustee filed a motion for summary judgment only with respect to his preference claim, asserting that there was no genuine issue of material fact. The defendant countered that there was a material issue of fact regarding its defense that the alleged preferential payments were made "in the ordinary course of business."

Judge Dorsey agreed with the defendant and denied the Chapter 7 Trustee's motion for summary judgment, finding that "a comparison between the past payment history and the payments made within ninety days of the petition date demonstrates that there is a genuine issue of material fact regarding whether the transfers in the preference period were made in the ordinary course of dealings between the Debtors and defendant." *Id.* at *2.

During the historical period, the Debtors paid 12 invoices, with the payment dates ranging from 100 to 430 days past the invoice date. The Chapter 7 Trustee argued that by applying a "weighted average" analysis, the weighted average days from invoice date to payment date increased from 276 days in the historical period to 371 days in the preference period, thus precluding an ordinary course defense. The defendant countered that the application of a weighted average approach improperly skews the data and that the Court should instead apply a pure range analysis which simply asks whether the payments made during the preference period fell within the range established in the historical period.

The Court agreed with the defendant, emphasizing that the consistency among the payments—rather than the lateness of payments—was the most important factor for the Court's consideration. Judge Dorsey noted that there was no single formula the Court was obligated to use to determine whether the ordinary course defense applied and that the Trustee had not met its burden to show that a weighted formula would be the most prudent under the facts.

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Delaware Bankruptcy Court Discusses a Trustee's Relaxed Pleading Standard When Asserting Fraud Claims in Complex Bankruptcy Matters

Bond v. Rosen, et al. (In re NSC Wholesale Holdings LLC), Case No. 18-12394 (CSS), 2022 WL 386134 (Bankr. D. Del. Feb. 9, 2022)

On February 9, 2022, Delaware Bankruptcy Judge Christopher Sontchi granted in part a motion to dismiss the liquidation trustee's adversary complaint in *Bond v. Rosen*, acknowledging, among other things, that a trustee is entitled to a relaxed pleading standard when asserting fraud claims in complex bankruptcy cases.

Federal Rule of Civil Procedure 9(b) provides the pleading standard for claims asserting fraud or mistake (such as negligent misrepresentation). The heightened standard "requires, at a minimum, that the plaintiff identify the speaker of the fraudulent statements" but does not require allegations "of date, place or time," so long as "some precision and some measure of substantiation" are pleaded in the allegations. *Id.* (quoting *Seville Indust. Mach. Corp. v. Southmost Co.*, 742 F.2d 786, 786 (3d Cir. 1984)). Judge Sontchi noted that the requirements of Rule 9(b) may be relaxed for trustees in complex bankruptcy cases because the trustee likely will not have access to all of the facts necessary to support a valid claim without discovery.

In dismissing certain of the liquidation trustee's claims without prejudice, Judge Sontchi emphasized that some measure of particularity is still required. Judge Sontchi dismissed the negligent misrepresentation and fraud claims because the liquidation trustee failed to allege particularized facts showing that (1) the defendants made a misrepresentation to the *Debtors* and (2) the *Debtors* relied on that misrepresentation to their detriment. Despite alleging that third parties relied on the alleged misrepresentation, Judge Sontchi held that independent, third-party reliance is insufficient to establish the reliance prong of a fraud-based claim under Delaware (and New York) law. The liquidation trustee would thus be permitted to take discovery to bolster the facts in support of his fraud-based claims.

Delaware Bankruptcy Court Issues Ruling on Enforceability of Make-Whole Provisions
and Allowance of Unmatured Interest

Wells Fargo Bank, N.A. v. The Hertz Corp. (In re The Hertz Corp.), Adv. Proc. No. 21-50995 (Bankr. D. Del. Dec. 22, 2021) [Docket No. 28]

In *Wells Fargo Bank, N.A. v. The Hertz Corp.*, Delaware Bankruptcy Judge Mary Walrath (1) granted in part the Debtors' motion to dismiss a complaint filed on behalf of holders of two series of senior unsecured notes for recovery of allegedly due make-whole premiums and (2) held that unimpaired unsecured creditors are entitled to post-petition interest at the federal judgment rate, not at the higher contract rate.

Prior to filing for bankruptcy, the Debtors issued unsecured notes under two bond issuances governed by indentures containing provisions that called for make-whole premiums and higher rates of interest after default.

The Debtors' plan of reorganization paid unsecured claims in full in cash on the effective date, and shareholders received cash and new warrants or subscription rights. The unsecured notes were categorized in the Plan as unimpaired. Under the Plan, noteholders were paid post-petition interest up to the effective date at the federal judgment rate (which was lower than the contract rate) or whatever rate was necessary for the notes to be unimpaired. Arguing that the noteholders were not really unimpaired, Wells Fargo Bank, N.A. and US Bank, the indenture trustees for the two issuances of notes, filed an adversary proceeding seeking (1) payment of the make-whole premiums, which totaled approximately $147 million, and (2) post-petition interest at the default rate in the contract, rather than at the federal judgment rate, which amounted to an additional $125 million.

Noting the circuit split on the allowance of make-whole premiums, Judge Walrath issued a split decision on the issue, focusing on the specific redemption language in each of the indentures. The relevant provision in one indenture provided for a make-whole if the Debtors redeemed the notes "prior to maturity," which would be accelerated to the petition date in the event of a bankruptcy filing, whereas the other indenture stated a make-whole premium would be due if the Debtors redeemed the notes "[a]t any time prior to [the specified date]." The Court dismissed the claims (and granted the motion to dismiss) as to the first issuance of notes, but not the second issuance.

Regarding the first issuance of notes, the Court agreed with the Debtors' argument that the use of the undefined term "maturity" in the make-whole provision in the indenture refers to the common meaning of maturity, as the indenture uses a defined term—"Stated Maturity"—to reference the original maturity date. Accordingly, the Court explained, although the notes were redeemed prior to the original maturity date, they were nevertheless not redeemed "prior to maturity," because the maturity date had been accelerated because of the bankruptcy. As for the second issuance of notes, the Court denied the Debtors' motion to dismiss because, under the express terms of the indenture, the noteholders had stated a plausible claim that the make-whole provision was triggered by a redemption "prior to [the specified date]," which date was not modified upon the Debtors' bankruptcy filing.

As to the second issuance of notes, the Court then turned to the Debtors' argument that the make-whole premium was "unmatured interest" disallowed by section 502(b)(2) of the Bankruptcy Code. Interpreting *In re Energy Future Holding Corp.*, 842 F.3d 247 (3d Cir. 2016), Judge Walrath was not prepared to conclude, as a legal matter, that make-wholes cannot be disallowed as unmatured interest. She opined that whether the make-whole premium qualified as unmatured interest was a fact question, not a legal question. Despite this, the Court did hold that section 502(b) of the Bankruptcy Code stripped the bondholders of the right to unmatured interest. Further, because the loss of rights stemmed from the Code, not from the Plan, the Court determined that the noteholders were correctly considered unimpaired under the Plan.

Finally, the Court held that unimpaired creditors who are paid in full should receive the same treatment—payment of their allowed claim plus post-petition interest at the *federal judgment rate*, not a higher contract rate, in accordance with section 726(a)(5) of the Bankruptcy Code. Thus, the noteholders were not entitled to the higher default interest rate under the indentures.

Delaware Bankruptcy Court Holds That Unscheduled IRS Claim Cannot Be Used as a Predicate Claim Under Section 544(b)(1) to Extend the Applicable Statute of Limitations

In re J & M Sales Inc., Case No. 18-11801 (JTD), 2022 WL 532721 (Bankr. D. Del. Feb. 22, 2022)

Delaware Bankruptcy Judge John Dorsey recently held that a chapter 7 trustee could not use an IRS claim for unpaid payroll taxes as a predicate claim under section 544(b)(1) of the Bankruptcy Code to extend the applicable statute of limitations to 10 years for purposes of asserting otherwise time-barred fraudulent-conveyance claims.

The Court had previously dismissed the chapter 7 trustee's constructive fraudulent-conveyance claims as time-barred under the applicable four-year statute of limitations of the Delaware Uniform Fraudulent Transfer Act. The chapter 7 trustee subsequently sought leave to amend his complaint to re-allege these dismissed claims on behalf of the IRS pursuant to sections 502(a) and 544(b) of the Bankruptcy Code. The chapter 7 trustee argued that the prepetition IRS claim for unpaid payroll taxes (paid in full shortly after the petition date) could be used as a basis to bring a claim on behalf of the IRS as a predicate creditor and extend the statute of limitations.

Judge Dorsey found that Congress intended with sections 502 and 544(b) that an allowable claim *only* includes claims for which a proof of claim has been filed. Since the IRS did not file a proof of claim (or even an informal proof of claim) and the Debtors did not schedule an IRS claim, the trustee could not rely on the IRS as a predicate creditor for purposes of pursuing fraudulent-conveyance claims beyond the lookback period provided in DUFTA.

The Court noted in a footnote that it was "troubled by the chapter 7 trustee's position that he can rely upon accrued but unpaid payroll taxes as a basis to use the IRS's ten-year lookback for avoidance actions," because under this theory "every business bankruptcy case would automatically have a ten-year lookback period for fraudulent transfers under Section 544(b)."

Judge Shannon Caps Attorneys' Fees in Lease Damages Dispute and
Affirms Federal Judgment Rate for Unimpaired GUCs

In re RGN-Grp. Holdings, LLC, Case No. 20-11961 (BLS), 2022 WL 494154 (Bankr. D. Del. Feb. 17, 2022)

In *In re RGN-Group Holdings, LLC*, Delaware Bankruptcy Judge Brendan Shannon issued a brief yet important two-pronged opinion in which he (1) capped a landlord's claim for attorneys' fees pursuant to section 502(b)(6) of the Bankruptcy Code and (2) agreed with Judge Walrath's decision in *Hertz* to apply the federal judgment rate, as opposed to a contractual or other interest rate, when a plan leaves unsecured creditors unimpaired.

The dispute arose when the debtor H-Work, LLC breached its lease with Teachers Insurance and Annuity Association of America. TIAA filed a claim to which the Debtors objected. Judge Shannon sustained the objection, in part, allowing TIAA's claim in a reduced amount, while holding in abeyance TIAA's claims for interest and attorney's fees.

The lease provided that "[i]n the event either party files suit to enforce the performance of or obtain damages caused by a default under any of the terms of this Lease, the party against whom a judgment is rendered shall pay the prevailing party's reasonable attorneys' fees." TIAA argued that, since the court allowed part of its claim, it was a prevailing party and could recover its attorneys' fees. The Debtors countered that (1) they were not a party to the lease because they had assigned their interest therein and (2) a proof of claim is not a "suit" but merely a "written statement that a debt exists."

The Court agreed with TIAA, first holding that H-Work remained responsible for obligations under the lease. Then, noting that "suit" under Black's law dictionary is a broad term that "refers to an ongoing dispute at any stage, from the initial filing to the ultimate resolution," the court ruled that an objection to a proof of claim, as a contested matter under Bankruptcy Rule 9014, qualified as a "suit." Thus, TIAA was entitled to attorney's fees under the lease. However, the Court held that such attorneys' fees were subject to the cap set forth in section 502(b)(6) of the Bankruptcy Code.

In determining whether attorneys' fees (and other non-rent costs) are "termination damages" subject to the section 502(b)(6) cap, the Court asked: Assuming all other conditions remain constant, would the landlord have the same claim against the tenant if the lease had not been terminated? Judge Shannon noted that, to apply this test, other courts have found it necessary to examine the claim underlying the attorneys' fees and distinguish between lease termination and non-termination damages. Considering the various parts of TIAA's allowed claim, the Court held that only attorneys' fees related to the unpaid rent obligations accruing prior to termination of the lease would not be subject to the section 502(b)(6) cap. TIAA's Claim for broker commissions and tenant relocation expenses, along with the attorneys' fees incurred in the pursuit of those claims, would not exist except for the termination of the lease. Therefore, those claims, and the attorneys' fees associated with them, were subject to the cap set forth in section 502(b)(6).

With respect to interest, Judge Shannon ruled that TIAA was entitled only to the federal judgment rate. The Court cited other decisions holding that "when a debtor in bankruptcy is

solvent, unsecured creditors are entitled to postpetition payment of interest 'at the legal rate' before any distribution of remaining assets are made to the debtor." Noting that bankruptcy court decisions split over whether "the legal rate" means applying a federal judgment rate, contract rate, or applicable state law, the Court cited the Ninth Circuit in support of the federal judgment rate, as well as Judge Walrath's recent decision in *Hertz*. *See In re Cardelucci*, 285 F.3d 1231, 1234 (9th Cir. 2002); *Wells Fargo Bank, N.A. v. The Hertz Corp (In re The Hertz Corp.)*, No. 20-11218, 2021 WL 6068390 (Bankr. D. Del. Dec. 22, 2021). The Court also noted that *Hertz* and the Ninth Circuit recognized that applying the federal judgment rate "promotes several important policies of the Bankruptcy Code," including similar treatment of creditors with the same priority, predictability, and the efficient administration of the estate.