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Ryan C. Beil

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**Under a Confirmed Chapter 11 Plan a Liquidating Trustee May Have Sole Authority to  
Review and Object to Claims.**

**Ryan C. Beil, J.D. Candidate 2020**

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**Introduction**

A liquidating trust is one that is organized for the primary purpose of liquidating and distributing the assets transferred to it.<sup>1</sup> When a plan under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") is confirmed and establishes a liquidating trust, the trust is treated as a distinct entity.<sup>2</sup> The liquidating trust terminates the debtor in possession's status and conveys the estate's rights and assets to a "liquidating trustee."<sup>3</sup> The confirmed plan does not simply substitute the trustee for the debtor-in-possession, but rather it creates a separate and distinct trust, holding certain property of the estate and giving the liquidating trustee control of this property.<sup>4</sup>

When a plan, vesting a liquidating trustee with the exclusive ability to object to claims, is confirmed, the plan acts as a binding contract.<sup>5</sup> Despite the binding nature of a confirmed plan,

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<sup>1</sup> See 29 CFR § 301.7701-4(d).

<sup>2</sup> See *In re Schupbach Invs., LLC.*, 808 F.3d 1215, 1222 (10th Cir. 2015).

<sup>3</sup> See *id.*

<sup>4</sup> See *Holywell Corp v. Smith*, 503 U.S. 47, 55 (1992).

<sup>5</sup> See *In re USN Commc'ns. Inc.*, 280 B.R. 573, 592 (Bankr. D. Del. 2002).

individual creditors may still attempt to object to proofs of claim before a court enters its actual confirmation order.<sup>6</sup> Since the confirmed plan binds all parties, courts will respect the overall binding nature of the confirmed plan and will accordingly uphold the terms of the plan that govern who may object to claims.<sup>7</sup> Even without considering the binding nature of a confirmed plan, courts also cite both long-recognized bankruptcy practice and sound policy concerns that drive the general line of authority respecting the exclusive authority of the liquidating trustee to object to claims.<sup>8</sup>

Courts consider the binding effect of confirmed plans and how a confirmed plan can alter the rights of creditors to object to claims.<sup>9</sup> Courts also consider the general line of authority among bankruptcy courts respecting the primacy of the trustee in the liquidation process. This memorandum examines these considerations in the context of a chapter 11 plan's establishment of a liquidating trust and appointment of a liquidating trustee. These considerations in this context were effectively analyzed in the Kansas bankruptcy court's decision in *In re Abengoa Bioenergy Biomass of Kansas*. Part I discusses the binding effect of a confirmed plan's establishment of a liquidating trust and trustee on creditors. Part II discusses the courts' recognition of the exclusive authority of the liquidating trustee to object to claims, which furthers

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<sup>6</sup> See *In re Abengoa Bioenergy Biomass of Kan., LLC*, No. 16-10446, 2018 BL 163316, at \*1 (Bankr. D. Kan. May 07, 2018).

<sup>7</sup> See *In re USN*, 280 B.R. at 592.

<sup>8</sup> See *In re Abengoa Bioenergy Biomass* 2018 BL 163316, at \*4-5.

<sup>9</sup> 11 U.S.C. § 1141(a) provides:

Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

sound public policy by ending litigation through the quick resolution of disputes and by promoting the expeditious administration of estates.<sup>10</sup>

## **I. Confirmed Plan’s Binding Effect on the Ability to Object to Claims**

### *A. Binding Effect of a Confirmed Plan*

When a plan is confirmed, creditors become bound by the confirmed plan, regardless of whether they are impaired or accepted by the plan.<sup>11</sup> Pursuant to 11 U.S.C. § 1141(a), a confirmed plan acts as a contract that is binding on all parties, debtors and creditors alike.<sup>12</sup> Prior to a plan’s confirmation, creditors have the opportunity to examine the terms of the proposed plan and respond accordingly.<sup>13</sup> Upon confirmation, the plan is effective and if creditors do not timely object they are bound by the terms of the plan and, as such, are precluded from subsequently objecting to provisions of the plan.<sup>14</sup> A party in interest’s failure to object to a claim made on a debtor’s assets prior to confirmation of the debtor’s reorganization plan may operate as a waiver, barring the party from asserting the objection later.<sup>15</sup> Ultimately, a creditor who received proper notice is bound by the terms of a confirmed plan “even if it had a different understanding of their meaning or did not realize their effect.”<sup>16</sup>

### *B. Application: When a Confirmed Plan Vests the Liquidating Trustee with Exclusive Authority to Object to Claims.*

A bankruptcy court in Kansas enforced the terms of a confirmed plan, which created a liquidating trust and vested the liquidating trustee with the sole authority to file, prosecute, settle,

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<sup>10</sup> See *McIlravy v. Kerr-McGee Coal Corp.*, 204 F.3d 1031, 1035 (10<sup>th</sup> Cir. 2000); see also *In re Manshul Constr. Corp.*, 223 B.R. 428, 431 (Bankr. S.D.N.Y. 1998).

<sup>11</sup> See Liquidating Trustee Motion to Strike, *In re Abengoa Bioenergy Biomass of Kan., LLC*, No. 16-10446, 2016 BL 131009 at \*1 (Bankr. D. Kan. May 07, 2018) (citing 11 U.S.C. § 1141(a)), ECF No. 1428.

<sup>12</sup> See *In re Varat Enters. Inc.*, 81 F.3d 310, 1317 (4<sup>th</sup> Cir. 1996); see also *In re USN Commc’ns Inc.*, 280 B.R. 573, 592 (Bankr. D. Del. 2002); *In re Sugarhouse Realty Inc.*, 192 B.R. 355, 367 (E.D. Pa. 1996).

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*

<sup>15</sup> See *In re Varat*, 81 F.3d at 1317.

<sup>16</sup> See *In re Platinum Oil Props., LLC.*, 465 B.R. 621, 638 (Bankr. D.N.M. 2011) (quoting *In re K.D. Co., Inc.*, 254 B.R. 480, 491 (10<sup>th</sup> Cir. BAP 2000)).

or otherwise resolve objections to claims.<sup>17</sup> The confirmed plan provided for the establishment of a liquidating trust on the plan's effective date and Article IV Subsection F of the confirmed plan, in particular, provided the following:

F. Role of the Liquidating Trustee

1. The Liquidating Trustee shall be the exclusive trustee of the Liquidating Trust and the Liquidating Trust Assets for purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3). *The powers, rights, and responsibilities of the Liquidating Trustee shall be specified in the Liquidating Trust Agreement and shall include the authority and responsibility to:* (a) receive, manage, invest, supervise, and protect the Liquidating Trust Assets; (b) pay taxes or other obligations incurred by the Liquidating Trust; (c) retain and compensate, without further order of the Bankruptcy Court, the services of employees, professionals and consultants to advise and assist in the reasonable administration, prosecution and distribution of Liquidating Trust Assets; (d) calculate and implement Distributions of Liquidating Trust Assets; (e) investigate, prosecute, compromise, and settle, in accordance with the specific terms of the Liquidating Trust Agreement, Causes of Action vested in the Liquidating Trust; (f) resolve issues involving Claims and Interests in accordance with this Plan; (g) undertake all administrative functions of the Debtor's Chapter 11 Case, including the payment of fees payable to the United States Trustee and the ultimate closing of the Debtor's Chapter 11 Case. The Liquidating Trust is the successor to the Debtor and its Estate.

*Id.* at \*2, ECF No. 811.

The confirmed plan vests the Liquidating Trustee with the authority to compromise, settle, otherwise resolve or withdraw any objections to claims without approval of the Bankruptcy Court.<sup>18</sup> The Kansas bankruptcy court read this provision to state that on the effective date, the liquidating trustee succeeded to all of the assets and rights of the debtor and was granted broad powers to dispute and resolve all claims against debtor with or without the bankruptcy court's involvement and that the liquidating trustee alone is responsible for administration and distribution of the liquidating trust assets; that grant of power includes

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<sup>17</sup> See *In re Abengoa Bioenergy Biomass*, 2016 BL 131009 at \*6.

<sup>18</sup> See *id.*

objections to claims that were filed before the effective date.<sup>19</sup> Here, a trustee representing a collection of creditors involved in a separate bankruptcy proceeding, attempted to object to proofs of claim before the Kansas bankruptcy court issued its confirmation order.<sup>20</sup> The liquidating trustee moved to strike these claims objections and sought to enforce his rights and duties over claims administration, pursuant to the terms of the confirmed plan.<sup>21</sup> Because the represented group of creditors did not object during confirmation to the plan's broad grant of authority to the liquidating trustee, the bankruptcy court enforced the terms of the confirmed plan, bound the creditors, and granted the liquidating trustee's motion to strike.<sup>22</sup>

## **II. General Line of Authority Respects the Primacy of the Trustee in the Liquidation Process**

### *A. The Primacy of the Trustee in the Liquidation Process is Consistent with Long-Recognized Bankruptcy Practice.*

Even without considering the binding effect of the terms of a confirmed plan, courts generally hold that a creditor's right to object to claims under 11 U.S.C. § 502(a) is constrained when a trustee is appointed.<sup>23</sup> The right to object is generally acknowledged to be solely exercised by the trustee. Pursuant to § 502(a) of the Bankruptcy Code, however, any party in interest may object to a claim. Despite this, under § 704 of the Bankruptcy Code, the trustee, if any purpose would be served, has the duty to examine proofs of claim and object to improper claims. In general a chapter 11 trustee has most of the same powers and duties as a chapter 7 trustee. In particular 11 U.S.C. § 1106(a)(1) provides that the trustee shall "perform the duties of a trustee, as specified in paragraphs...(5)...of section 704(a)." 11 U.S.C. § 704(a)(5) states "The trustee shall...if a purpose would be served, examine proofs of claims and object to the

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<sup>19</sup> *See id.* at \*2.

<sup>20</sup> *See id.* at \*1.

<sup>21</sup> *See id.*

<sup>22</sup> *See id.* at \*6 (citing 11 U.S.C. § 1141(a)).

<sup>23</sup> *See In re Western Asbestos Co.*, 313 B.R. 832, 845 (Bankr. N.D. Cal. 2003).

allowance of any claim that is improper.” Courts respect the powers the Bankruptcy Code grants to the trustee and generally respect the exclusive authority of the trustee to review and object to claims.<sup>24</sup>

*B. The Primacy of the Trustee in the Liquidation Process Furthers Sound Public Policy*

Courts generally hold that once a trustee has been appointed, creditors do not have standing to object to a proof of claim.<sup>25</sup> This doctrine is based on sound public policy that litigation should come to an end and is designed to quickly resolve disputes by preventing the continued re-argument of issues that have already been decided.<sup>26</sup> In respecting long-recognized bankruptcy practice, courts also reason that allowing creditor objections despite appointment of the trustee would threaten another sound public policy, i.e., the promotion of the orderly and expeditious administration of bankruptcy proceedings. As a majority rule, “courts...have limited the right of a creditor to object to a claim of another creditor...in order to promote a more orderly administration of the estate.”<sup>27</sup> This limitation was recognized by the Advisory Committee Notes to Rule 3007 of the Federal Rules of Bankruptcy Procedure, which provides that “while the debtor’s...creditors may make objections to the allowance of a claim, the demands of orderly and expeditious administration have led to a recognition that the right to object is generally recognized by the trustee.”<sup>28</sup>

*C. Application: Courts General Recognition of the Exclusive Authority of the Liquidating Trustee to Object to Claims in Furtherance of Sound Public Policy*

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<sup>24</sup> See *id.*

<sup>25</sup> See *In re Abengoa Bioenergy Biomass*, 2018 BL 163316 at \*3

<sup>26</sup> See *McIlravy v. Kerr-McGee Coal Corp.*, 204 F.3d 1031, 1035 (10th Cir. 2000).

<sup>27</sup> *In re Manshul Constr. Corp.*, 223 B.R. 428, 430 (Bankr. S.D.N.Y. 1998) (quoting *In re The Charter Co.*, 68 B.R. 225, 227 (Bankr. M.D. Fla. 1986).

<sup>28</sup> See *id.* at 431 (quoting Fed. R. Bankr. P. 3007 (Advisory Committee Note 1983)).

In *In re Abengoa Bioenergy Biomass of Kan., LLC*, the Kansas bankruptcy court granted the liquidating trustee’s motion to strike the represented group of creditors’ claims objections.<sup>29</sup> Along with enforcing the binding effect of the confirmed plan, the Kansas bankruptcy court cited the general line of authority respecting the primacy of the trustee in the liquidation process.<sup>30</sup> This general line of authority includes *In re Western Asbestos Co.*, where a bankruptcy court in the Northern District of California enforced a liquidating trustee’s exclusive right to object to claims while denying other creditors that right.<sup>31</sup> The California bankruptcy court reasoned that once a plan is confirmed, its terms govern who may object to claims.<sup>32</sup> Furthermore, the Kansas bankruptcy court also cited a convincing chapter 7 case, *Pascazi v. Fiber Consultants*.<sup>33</sup> In *Pascazi*, the United States District Court for the Southern District of New York denied an individual creditor standing to object to claims.<sup>34</sup> The court reasoned that as a majority rule, the trustee alone may interpose objections to individual claims.<sup>35</sup>

The Kansas bankruptcy court emphasized that this general line of authority furthers sound public policy recognized by all courts that litigation should come to an end.<sup>36</sup> Furthermore, this general line of authority also furthers sound public policy by encouraging the orderly administration of the estate.<sup>37</sup> This policy was recognized by the Advisory Committee Notes to Rule 3007 of the Federal Rules of Bankruptcy Procedure, which emphasizes that “if every

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<sup>29</sup> See *In re Abengoa Bioenergy Biomass*, 2018 BL 163316 at \*2.

<sup>30</sup> See *id.* at \*4.

<sup>31</sup> See *id.* at \*4 (citing *In re Western Asbestos Co.*, 313 B.R. 832, 845 (Bankr. N.D. Cal. 2003)).

<sup>32</sup> See *id.*

<sup>33</sup> The Kansas Bankruptcy Court cited this chapter 7 case because “what is contemplated under the ABBK liquidating trust is very similar to a chapter 7 case- the major physical assets of the estate were liquidated pre-confirmation and the trustee will, after the claims are resolved, distribute them.”

<sup>34</sup> See *id.* at \*4 (citing *Pascazi v. Fiber Consultants*, 313 B.R. 124, 129 (S.D.N.Y. 2011)).

<sup>35</sup> See *id.* at 129.

<sup>36</sup> See *In re Abengoa Bioenergy Biomass*, 2018 BL 163316 at \*5 (citing *Gage v. Gen. Motors Corp.*, 796 F.2d 345, 349 (10th Cir. 1986)).

<sup>37</sup> See *id.* at \*4; see also *In re Manshul Constr. Corp.*, 223 B.R. 428, 430 (Bankr. S.D.N.Y. 1998).



creditor were entitled to challenge the claim of another creditor...an orderly administration would degrade to chaos.”<sup>38</sup> Ultimately, the Kansas bankruptcy court cited long-recognized bankruptcy practice in furtherance of sound public policy to hold that when a trustee has been appointed, a creditor no longer has standing to object to a proof of claim.<sup>39</sup>

## **Conclusion**

Courts generally hold that when a chapter 11 plan creates a liquidating trust and appoints a liquidating trustee, the trustee alone has the authority to review and object to claims.<sup>40</sup> In arriving at this conclusion, courts consider both the binding effect of the terms of a confirmed plan and how this effect can alter the rights of creditors to object to claims.<sup>41</sup> Courts also consider the general line of authority respecting the primacy of the trustee in the liquidation process.<sup>42</sup> This doctrine is grounded in sound public policy as it encourages both the quick resolution of disputes and expeditious administration of estates.<sup>43</sup> Regardless of whether a court cites the binding effect of a confirmed plan or the general holdings of other courts, when a confirmed chapter 11 plan creates a liquidating trust and appoints a liquidating trustee, the trustee alone has the authority to review and object to claims.

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<sup>38</sup> *See In re Manshul Constr. Corp.*, 223 B.R. 428, 431 (Bankr. S.D.N.Y. 1998) (quoting Fed. R. Bankr. P. 3007 (Advisory Committee Note 1983)).

<sup>39</sup> *See In re Abengoa Bioenergy Biomass*, 2018 BL 163316 at \*5.

<sup>40</sup> *See id.* at \*6.

<sup>41</sup> *See id.* at \*4.

<sup>42</sup> *See id.*

<sup>43</sup> *See id.* at \*4-5.