



## Lowenstein Bankruptcy Lowdown Video 38 – What the 23andMe Decision Means for Landlord Claims in Solvent Chapter 11 Cases

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**Daniel B. Besikof:** Welcome to this edition of the [Lowenstein Bankruptcy Lowdown](#). Today, we're going to be discussing a recent Bankruptcy Court decision from the Eastern District of Missouri in *23andMe*.

The decision addresses landlord recoveries and rejection damages claims after applying the Section 502(b)(6) damages cap. Now, this is a common issue, but the stakes in *23andMe* were particularly high since the Landlord's \$10 million rejection damages claim was very large, and the \$300 million asset sale rendered the estates potentially solvent.

The Debtor's proposed plan cut the Landlord's claim nearly in half by application of the Section 502(b)(6) cap, and the Landlord objected to confirmation on three grounds.

First, the Landlord argued that Section 502(b)(6) should not cap rejection damages where the Debtor is solvent. What do you think, Nicole?

**Nicole Fulfree:** While the argument was thoughtfully presented, it wasn't terribly surprising that the court ruled against the landlord.

Judge Walsh emphasized that the statute is clear, the case law is overwhelming, and Congress already made the policy decision that the cap on rejection damages applies in all cases, solvent debtor or not.

**Daniel B. Besikof:** The Landlord's second argument was that its aggregate recovery in a hypothetical Chapter 7, where the uncapped portion of its claim would not be discharged, would be higher than its recovery under the plan, which discharged the Landlord's excess claim. The Court rejected this argument too, specifying that the best interest test requires an apples-to-apples comparison of what their creditor would recover from the Bankruptcy Estate in each scenario.

**Nicole Fulfree:** Finally, the Landlord argued that the Plan's discharge provisions would impermissibly cut off the Landlord's post-confirmation recourse against a debtor or guarantor. On this issue, the Court clarified that the excess claim would not be subject to discharge, but was quick to dispel any notion that the Landlord would actually be able to recover the excess claim in the Chapter 11, clarifying that the Landlord would not be entitled to any greater recovery under the Plan or from the post-confirmation trust

than as specifically set forth in the plan.

So, Dan, what are the takeaways here?

**Daniel B. Besikof:** Practically speaking, at least pending the outcome of the Landlord's appeal, Section 502(b)(6) appears to remain a firm ceiling, even in solvent Chapter 11 cases. And for debtors, this decision reinforces that liquidating plans can move forward without opening the door to uncapped landlord claims.

**Nicole Fulfree:** Thanks so much for joining us today. We hope to see you on the next edition of the [Lowenstein Bankruptcy Lowdown](#).