



LOWENSTEIN BANKRUPTCY LOWDOWN

Lowenstein Bankruptcy Lowdown Video 23 – Enviva Chapter 11: An Important Decision on Reconstituting Creditors' Committees

By [David M. Posner](#) and [Gianfranco Finizio](#)

OCTOBER 2024

David M. Posner: Welcome to the [Lowenstein Bankruptcy Lowdown](#). In this episode, we'll talk about a memorandum opinion issued by Judge Kenney from the Enviva Chapter 11 case. The decision is noteworthy because it deals with the appointment of creditors' committees, and what happens when a creditor requests that the bankruptcy court reconstitute the Committee. Reconstituting creditors' committees is fairly unusual, so let's discuss it.

Gianfranco Finizio: The Debtor's capital structure in Enviva is substantial and included approximately \$1 billion of unsecured funded debt that was represented by two Indenture Trustees. Prior to the petition date, the Debtors entered into a restructuring support agreement with holders of most of that funded debt.

The Indenture Trustees did not sign the RSA, however. As a result, given the size of their claims, the Indenture Trustees sought to serve on the creditors committee. The United States Trustee ended up appointing a three-member committee, however neither Indenture Trustee was appointed to the Committee, so that substantial funded debt did not have a voice on the official committee.

As a result, one of the Indenture Trustees filed a motion for an order directing the U.S. Trustee to reconstitute the committee and appoint one of the Indenture Trustees to the Committee.

David M. Posner: The Indenture Trustee argued that the committee did not adequately represent the Debtor's general unsecured creditor body. The U.S. Trustee objected, arguing that the Committee adequately represented the unsecured creditors, and the code does not require proportionate representation of distinct creditor groups.

The movant countered that the Committee should include at least one member that can directly offer perspectives unique to the note holders, since the unsecured claims pool was dominated by funded debt.

Gianfranco Finizio: The court ultimately granted in part, and denied in part, the motion and

ordered that the U.S. Trustee add at least one Indenture Trustee to the Committee, and if the U.S. Trustee decided to appoint only one Indenture Trustee, the U.S. Trustee may decide which Indenture Trustee to appoint.

The court also observed that the fact that a majority of the holders of the bond that signed the RSA was not a reason to exclude either of the Indenture Trustees, neither of whom signed the RSA.

Ultimately, the U.S. Trustee reconstituted the Committee to add an Indenture Trustee, though it was not the Indenture Trustee that filed the motion. Regardless, it was still a victory for the holders of unsecured funded debt who now had a voice on the Committee in the form of that Indentured Trustee.

While this process will still be an uphill battle, the court's opinion in *Enviva* demonstrates that in the appropriate situation a court can and will interject itself into the committee composition process.

We look forward to seeing you on the next [Lowenstein Lowdown](#).