Lowenstein Bankruptcy Lowdown Video 41 – Cannabis & Chapter 15: A New Path Through Bankruptcy?

By David M. Posner and Colleen M. Restel

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David M. Posner: It has been well accepted that cannabis companies cannot access the U.S. bankruptcy system. As a result, courts have consistently dismissed Chapter 11 cases involving cannabis businesses on the grounds that cannabis violated federal law. Whether you're growing it, selling it, leasing warehouse space to growers, or even just selling hydroponic equipment, the U.S. Trustee's office has taken a firm line: the bankruptcy system cannot be used for purposes Congress has determined are illegal.

Colleen M. Restel: The case law has backed that up. The Tenth Circuit Bankruptcy Appellate Panel dismissed a Chapter 13 case because the Debtors were producing and distributing marijuana, and the Court said you can't force a trustee to administer assets involved in federal crimes. Other courts have dismissed cases where the debtors sold indoor growing equipment or leased space to tenants growing marijuana. The U.S. Trustee argues these cases are unlike fraud cases because there, the illegal activity happened *before* the filing, and cannabis cases involve ongoing violations during administration and potentially after emergence.

David M. Posner: But creative lawyering has never let unfavorable laws and hostile case law stand in the way of accessing the benefits of the U.S. bankruptcy system.

We've seen it with nonconsensual third-party releases—after the Supreme Court shut the door in *Purdue Pharma* for Chapter 11 cases, practitioners pivoted to Chapter 15. In *Crédito Real*, Judge Connolly upheld enforcement of nonconsensual non-debtor releases from a Mexican plan, finding that *Purdue* applies only to Chapter 11. In *Odebrecht*, Judge Glenn similarly recognized a Brazilian plan with nonconsensual releases, noting that Section 1506's public policy exception should be "narrowly construed."

Colleen M. Restel: And now a similar method may be in play with cannabis cases. The Cannabist Co., a vertically integrated cannabis cultivation, manufacturing, and retail business, just filed a Chapter 15 case. They're seeking recognition of a CCAA proceeding in Canada. At the provisional hearing, Cannabist's counsel was careful to emphasize that the Chapter 15 Debtors themselves don't grow, sell, or handle cannabis—it's their non-debtor subsidiaries that operate in states where cannabis is legal. The U.S. Trustee reserved the right to object under Section 1506, which bars

relief that is "manifestly contrary to the public policy" of the United States. In fact, one of Cannabist's lenders already objected on that basis.

David M. Posner: So, the question becomes, "How narrowly will the Court construe that public policy exception?" If Cannabist secures recognition, it opens the door for other cannabis companies to use the Chapter 15 pathway: restructure in a foreign jurisdiction and seek recognition in the U.S. If the court applies Section 1506 to deny recognition, it reinforces the wall between cannabis and the federal bankruptcy system.

Either way, this is a case worth watching closely, because it tests whether the same creative Chapter 15 strategies that worked for nonconsensual releases can work for an entirely different kind of federal law conflict.

Colleen M. Restel: Thank you for watching. We'll see you on the next **Lowenstein Bankruptcy Lowdown**.