Recent Developments in Bankruptcy Law, July 2023

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TABLE OF CONTENTS

1. AUTOMATIC STAY

1.1 Covered Activities

1.1.a **Bankruptcy court properly enjoins actions against nondebtor entity after divisional merger.** The debtor was the product of a divisional merger under Texas law, which replaced the former single corporate entity with a new nondebtor corporation and the debtor, which assumed substantial asbestos claims. The debtor indemnified the nondebtor for losses related to the asbestos claims that the debtor had assumed, and the nondebtor agreed to fund the debtor's bankruptcy costs and asbestos liabilities to the extent the debtor's assets were insufficient. A bankruptcy court has related-to jurisdiction over a proceeding if the proceeding has any conceivable effect on the estate. Because of the agreements between the debtor and the nondebtor, the nondebtor's potential liability in non-bankruptcy litigation by asbestos plaintiffs could have an effect on the debtor's bankruptcy estate, so the court had jurisdiction to enjoin the prosecution of those actions against the nondebtor. A court may grant a preliminary injunction only if, among other requirements, the plaintiff is likely to succeed on the merits of the underlying dispute. In a chapter 11 case, the focus is not the particular dispute but on whether the debtor's reorganization is likely to be successful. Here, based on the debtor's financial condition and the availability of section 524(g) to address the asbestos claims, the bankruptcy court properly determined that the debtor was likely able to confirm a plan. Therefore, the bankruptcy court properly enjoined the asbestos plaintiffs' actions against the nondebtor. *Bestwall LLC v. Official Committee of Asbestos Claimants (In re Bestwall LLC)*, 71 F.4th 168 (4th Cir. 2023).

1.1.b **Automatic stay tolls time for filing cross-appeal.** The debtor appealed an adverse monetary judgment and filed bankruptcy shortly thereafter. The plaintiff in the prebankruptcy action filed a cross appeal over a year later but within six days after it obtained relief from the stay in the debtor's bankruptcy case. Section 362(a)(1) stays the commencement or continuation of an action or proceeding against the debtor, and section 108(c) tolls any deadline that would otherwise expire during the stay until 30 days after the creditor receives notice of termination of the stay. Here, the cross-appeal was stayed, because it was a continuation of an action against the debtor, and the notice of cross-appeal was timely, because it was filed within 30 days after termination of the stay. *Vitamins Online, Inc. v. Heartwise, Inc.*, ___ F. 4th ___, 2023 U.S. App. LEXIS 9493 (10th Cir. June 27, 2023).

1.2 Effect of Stay

1.3 Remedies

2. AVOIDING POWERS

2.1 Fraudulent Transfers

2.1.a **Financial contracts safe harbor does not preempt state avoidance law in an assignment for the benefit of creditors.** The debtor fraudulently borrowed from numerous lenders and used the funds to pay a swap counterparty for trading losses of an unrelated corporation. The debtor also guaranteed a portion of the unrelated corporation's obligations to the swap counterparty. The debtor made an assignment for the benefit of creditors under Florida law. The assignee sued the counterparty to avoid and recover the payments and avoid the guarantee as fraudulent transfers and obligations under Florida law. Section 546(e) of the Bankruptcy Code prohibits a trustee from avoiding a transfer made in connection with a swap agreement except under section 548(a)(1)(A) of the Bankruptcy Code. A federal law impliedly preempts a state law when compliance with both laws is impossible, the state law stands as an obstacle to the accomplishment of a Congressional objective, or Congress intended to foreclose state regulation in the area. Section 546(e) expressly applies only to a bankruptcy trustee, not an assignee. Bankruptcy Code preemption occurs only at the commencement of a bankruptcy case. Bankruptcy and assignments are separate, mutually exclusive proceedings, so different treatment in each is appropriate. Swap agreements are governed only by state law, so there is no suggestion that federal intervention is required in an assignment. Therefore, section 546(e) does not preempt state fraudulent transfer law. *Von Kahle v. Cargill, Inc.*, ___ F. Supp. 4th ___, 2023 U.S. Dist. LEXIS 81120 (S.D.N.Y. May 9, 2023).

2.2 Preferences

2.3 Postpetition Transfers

2.4 Setoff

2.5 Statutory Liens

2.6 Strong-arm Power

2.6.a **Misnomer on security agreement does not vitiate security interest.** The debtor borrowed from the lender in 1988. The lender filed a financial statement with the debtor's correct name in 1992 and filed continuation statements until the bankruptcy in 2018. The debtor corporation dissolved in 1994, but the debtor continued in business as a sole proprietorship under the same name. It incorporated again, under the same name, in 1999. The debtor signed a new financing statement in 2014 under an incomplete name, and the lender made a new loan in 2018 using the same incomplete name in the loan agreement. The trustee challenged perfection of the security interest. UCC section 9-308 requires, as a condition to perfection, that a security interest have attached. Section 9-203 requires, as a condition to attachment, that a security interest be enforceable against the debtor, which happens only if the debtor has authenticated a security agreement that contains a description of the collateral. Under applicable state law, the misnomer on the security agreement did not undermine its enforceability against the debtor, as a misnomer on a financing statement would on perfection. The 1992 financial statement was continued, and the 2014 statement subsumed it, thereby maintaining perfection on the collateral. Therefore, the lender's security interest was enforceable and perfected. *Nike USA Inc. v. CNB Bank & Trust N.A. (In re First to the Finish Kim & Mike Viano Sports, Inc.)*, 649 B.R. 763 (Bankr. S.D. Ill. 2023).

2.7 Recovery

3. BANKRUPTCY RULES

4. CASE COMMENCEMENT AND ELIGIBILITY

4.1 Eligibility

4.1.a **Subchapter V eligibility requires a nexus between the commercial activity and the debtor's debts.** The individual debtor owned a 50% interest in each of two subsidiaries, one of which was no longer operating but was a defendant in an action for rent under a breached lease. The debtor had guaranteed the lease and was also a defendant. She filed a chapter 11 petition and elected to proceed under subchapter V. Under section 1182((1)(A), to be eligible to proceed under subchapter V, the debtor must be "engaged in commercial or business activities" and have less than $7,500,000 in debts, "not less than 50 percent of which arose from the commercial or business activities of the debtor." Courts have construed "commercial or business activities" broadly to include managing litigation related to a closed business, so the debtor meets that eligibility requirement. In addition, the debt must arise from *the* commercial or business activity. Courts have enforced a "nexus" requirement, that the debt arise from the same commercial activity that qualifies the debtor for subchapter V. Here, because the debt arises from the litigation related to the closed business activity, it qualifies, and the court permits the debtor to proceed under subchapter V. *In re Hillman*, ___ B.R. ___, 2023 Bankr. LEXIS 1448 (Bankr. N.D.N.Y. June 2, 2023).

4.1.b **Creditor may not force conversion to subchapter V.** The lender required the LLC debtor to amend its LLC agreement to provide that upon a loan default, the sole member would lose all voting rights and that the debtor may not liquidate without the lender's consent. The debtor's manager voted to file a chapter 7 case for the debtor; the lender moved to dismiss or, in the alternative, to convert the case to one under subchapter V. The voting transfer provision affected only the member's rights, not the manager's, who retained authority to authorize the bankruptcy petition. The blocking provision, when subject to a creditor's (rather than an equity holder's) approval, is an unenforceable waiver of the right to file a bankruptcy provision. Section 1182(1) permits only the debtor to make a subchapter V election. Therefore, the court may not grant the creditor's motion to convert to a subchapter V case. The court leaves the case to proceed under chapter 7. *In re Roberson Cartridge Co., LLC*, ___ B.R. ___, 2023 Bankr. LEXIS 588 (Bankr. S.D. Tex. Mar. 7, 2023).

4.2 Involuntary Petitions

4.3 Dismissal

4.3.a **Debtor without financial distress does not have a valid reorganization purpose.** The debtor, which was generally financially healthy, and its solvent parent corporation were defendants in over 35,000 MDL cases, some of which had gone to verdict, some for the debtor, some for plaintiffs; all of the cases that had gone to verdict were on appeal. The parent agreed to fund the costs of a chapter 11 case for the debtor and to fund payments to all tort creditors, whether in chapter 11 or out. The debtor filed its chapter 11 case to manage the MDL process, which it claimed was broken, not over concerns of financial distress or impending insolvency. A court may dismiss a case not filed in good faith. The Code does not define good faith for these purposes, but courts have concluded that it requires a valid reorganization purpose, such as to preserve a going concern, maximize value available for creditors, and prevent waste and reduction in asset values that might result from liquidation. Based on these facts, the debtor does not have a valid reorganization purpose, and the court dismisses the case. *In re Aearo Techs. LLC*, ___ B.R. ___, 2023 Bankr. LEXIS 1519 (Bankr. S.D. Ind. June 9, 2023).

5. CHAPTER 11

5.1 Officers and Administration

5.1.a **Oregon court denies critical vendor payment motion in chapter 11 case.** The debtor owed a creditor for hay cutting services. The creditor refused to cut the debtor's hay postpetition unless the debtor paid the prepetition bill, and the debtor could not find anyone else to cut the hay. Without the cut, the debtor would have to incur additional expense to purchase hay to feed his cattle. No matter. Ninth circuit caselaw does not permit payment of some (but not all) prepetition general unsecured creditors. Therefore, the court refuses to authorize payment of the creditor's claim as a critical vendor. *In re MacMillan*, ___ B.R. ___, Case no. 23-30159-thp11 (Bankr. D. Ore. June 29, 2023).

5.2 Exclusivity

5.3 Classification

5.4 Disclosure Statement and Voting

5.5 Confirmation, Absolute Priority

6. CLAIMS AND PRIORITIES

6.1 Claims

6.1.a **Revenue bond claim is allowed as general unsecured claim in amount of net present value of future net revenues through original bond maturity.** The municipal electric utility debtor issued bonds under an indenture that required the debtor to pay all future net revenues (after allowable operating expenses) to the bondholders. Outside bankruptcy, the bondholders could require payment from net revenues. In bankruptcy, the bondholders' claim is allowable only to the extent enforceable under nonbankruptcy law. Here, because a plan would deprive the bondholders of that right, the bondholders would have a damage claim for breach of the contract. The amount of damages is the present value of future net revenues; that is, the amount the bondholders could require the debtor to pay under the terms of the indenture through maturity, not necessarily the face amount of the bonds. *Puerto Rico Fiscal Agency & Fin. Adv. Auth. v. U.S. Bank Nat'l Assoc. (In re Fin. Oversight & Mgmt. Bd.)*, ___ B.R. ___, Case No. 19-00391-LTS (D.P.R. Mar. 22, 2023).

6.2 Priorities

7. CRIMES

8. DISCHARGE

8.1 General

8.1.a **Discharge injunction does not protect principal from alter ego claim.** The LLC debtor confirmed a chapter 11 plan, which provided a discharge of claims against the debtor. The creditor sued the debtor's principal in state court under an alter ego theory for the same claims it asserted in the chapter 11 case. Section 524(a) enjoins a creditor from seeking to collect a discharged debt as a personal liability of the debtor. Section 524(e) provides that a discharge does not affect the liability of any entity other than the debtor that might be liable for claims against the debtor. The alter ego claim does not seek to hold the debtor personally liable for the claim. Since the discharge does not extinguish a debt, a creditor may still seek collection from another entity that might be liable on the debt. Accordingly, the discharge injunction does not bar the creditor's alter ego claim against the principal. *RS Air, LLC v. NetJets Aviation, Inc. (In re RS Air, LLC)*, 651 B.R. 538, (9th Cir. B.A.P. 2023).

8.2 Third-Party Releases

8.2.a **Bankruptcy court has authority to grant broad third-party releases, subject to strict guidelines.** The debtors manufactured opioids. Their products resulted in an opioid epidemic, exposing the debtor to substantial mass tort liability. Their shareholders/directors/officers were also exposed for both direct and derivative claims of the victims and were indemnified by the debtors for all such claims and defense costs. The debtors proposed a plan under which the shareholders contributed at least $5.5 billion to various funds against which claims of individuals and governments, among others, were channeled. In exchange, the shareholders received non-consensual third-party releases of both derivative and direct claims relating to the debtors "as to which any conduct, omission or liability of any Debtor or any Estate is the legal cause or is otherwise a legally relevant factor." Over 90% of creditors accepted the plan. A bankruptcy court has subject matter jurisdiction over claims related to a case, which includes any claim that might conceivably have an effect on the bankruptcy estate. A claim against the shareholders might have an effect on the estate because of the debtor's indemnification obligations and could effectively determine the debtors' liabilities. Section 105(a) does not by itself authorize releases under the bankruptcy court's equitable powers, but section 1123(a)(6), which authorizes a plan to include any provision not inconsistent with the Code, does, and section 105(a) may be used to enforce that provision. However, because third-party releases are subject to potential abuse, the bankruptcy court must consider seven necessary but not sufficient factors in deciding whether to approve a plan with a release: the identity of interests between the debtor and releasees and whether the claims against each are factually and legally intertwined, the release's scope is appropriate (that is, necessary to the plan) and essential to the reorganization, the releasees contributed substantial assets to the reorganization, the affected class overwhelmingly supported the plan, and the plan provides fair payment for released claims. Here, all factors support the releases. *Purdue Pharma, L.P. v. City of Grande Prairie (In re Purdue Pharma, L.P.)*, 69 F.4th 45 (2d Cir. 2023).

8.3 Environmental and Mass Tort Liabilities

9. EXECUTORY CONTRACTS

10. INDIVIDUAL DEBTORS

10.1 Chapter 13

10.2 Dischargeability

10.3 Exemptions

10.4 Reaffirmations and Redemption

11. JURISDICTION AND POWERS OF THE COURT

11.1 Jurisdiction

11.1.a **Court lacks related-to jurisdiction over action filed after dismissal of bankruptcy case.** The debtor's settlement of a creditor's claim resulted in dismissal of the bankruptcy case. State court litigation over the settlement followed. The creditor removed the state court action to the bankruptcy court but later sought remand on the ground that the bankruptcy court lacked jurisdiction over the proceeding. Removal jurisdiction is determined at the time of removal. The "well-pleaded complaint" rule requires that the ground of federal jurisdiction appear on the face of the complaint. However, that rule does not apply to bankruptcy "arising in" or "related to" jurisdiction, because that jurisdiction often arises after the commencement of the removed action and so can't be pled in the original complaint. Here, the removed action was commenced after the dismissal of the bankruptcy case and so could not have any effect on the administration of the case so as to give rise to related-to jurisdiction, because there is no estate left to administer. Therefore, the court remands the action. *Lee v. Choudhri (In re Briar Bldg. Houston LLC)*, 649 B.R. 719 (Bankr. S.D. Tex. 2023).

11.1.b **Bankruptcy court does not have post-confirmation jurisdiction to approve settlement of discharged claims.** Before bankruptcy, the debtor settled two class actions relating to royalties the debtor owed under gas leases, although the settlements had not yet received final class action court approval. The settlements provided for cash distributions and for certain amendments to the leases. Neither the class representatives nor any of the class members filed proofs of claim. The chapter 11 plan provided for a discharge of all unsecured claims, for no distribution on unfiled claims, and for continuation of the leases. After the plan effective date, the reorganized debtor reached new settlements with the class representatives, also providing for cash payments and for different lease modifications. It sought bankruptcy court approval of the settlements. After confirmation, a bankruptcy court's jurisdiction is limited. The court may exercise core jurisdiction to determine claims against the estate. Because no claims were filed here, the court did not have core jurisdiction to approve the settlement. Post-confirmation related-to jurisdiction permits determination of any proceeding that deals with pre-confirmation relations between the parties, is based on prepetition antagonism between the parties, or is based on facts or law deriving from the reorganization or the plan. Here, because the plan completely discharged the claims under the leases and provided for ride-through of the leases, the bankruptcy court did not have related-to jurisdiction to approve a settlement of the claims or modifications to the leases. *Trowbridge v. Chesapeake Energy Corp. (In re Chesapeake Energy Corp.)*, 70 F. 4th 273 (5th Cir. 2023).

11.2 Sanctions

11.3 Appeals

11.3.a **Article III, rather than "person aggrieved," should govern bankruptcy appellate standing.** The plan provided for payment over time of 100% of claim plus interest, secured by collateral with a substantial equity cushion, although payment would be delayed until payment in full of priority claims. A creditor appealed from the bankruptcy court's fee award to the chapter 11 trustee. The standard for standing in bankruptcy appeals has been the "person aggrieved" standard, which is a prudential standing doctrine that was derived from language in the Bankruptcy Act that was not carried over into the Code. However, the Supreme Court has questioned prudential standing doctrines, holding that federal courts are obliged to exercise jurisdiction they have. Therefore, the court should look to Article III standing requirements, even in bankruptcy cases, before addressing any prudential standing considerations. Article III requires a concrete, particularized actual or imminent injury in fact that is fairly traceable to the defendant's conduct and can be redressed by a favorable decision. Here, the possibility that higher trustee fees would impair the creditor's recovery was too remote and speculative to constitute a concrete, imminent injury, so the court dismisses the appeal. *Clifton Cap. Group, LLC v. Sharp (In re East Coast Foods, Inc.)*, ___ F.4th ___, 2023 U.S. App. LEXIS 16403 (9th Cir. May 8, 2023).

11.3.b **Fifth Circuit confirms person aggrieved standard for appellate standing.** The appellant had objected to fee applications. Its objections were overruled. It had asserted an administrative claim, but the claim had been disallowed, so allowance of the fees could not have affected the appellant. The appellant was also a party to an adversary proceeding, but the possibility that the outcome of that proceeding could be affected by the fee decision was remote. Nevertheless, it appealed the overruling of its fee objections. In addition to Article III standing, a bankruptcy appellant must meet the "person aggrieved" standard, that is, that the appellant is directly and adversely affected pecuniarily by the order, or the order diminishes its property, increases its burden, or impairs its rights. Although the standard derives from the repealed Bankruptcy Act, courts have continued to apply it to prevent litigation sclerosis, which might result if all parties in interest in a bankruptcy case had standing to appeal. Section 1109(a) gives a party in interest the right to appear and be heard, but that right applies only in the bankruptcy court, not in appellate courts. Because the appellant's rights were not adversely pecuniarily affected by the fee order, it is not a person aggrieved and does not have standing to appeal. *NexPoint Advisors, L.P. v. Pachulski Stang Ziehl & Jones, LLP (In re Highland Cap. Mgmt., L.P.)*, ___ F. 4th ___, 2023 U.S. App. LEXIS 18361 (5th Cir. July 19, 2023).

11.3.c **Equitable mootness doctrine does not apply in a chapter 7 case.** A creditor objected to the trustee's final report and fee application and to trustee's counsel's fee application. The court approved the applications, and the trustee distributed estate assets accordingly. The creditor filed an informal notice of appeal, seeking review of the orders regarding the trustee's final report and compensation and counsel's compensation, but did not list counsel as a party to the appeal. The court ordered a proper notice of appeal, which the creditor filed, listing only the orders overruling his objections, not the orders awarding fees. In a related corporate case, the creditor objected to the trustee's final report and fee application and counsel's fee application. The court overruled the objections and awarded compensation, and the trustee made distributions. The creditor appealed all three orders but did not list counsel as a party to the appeal. Although Official Form 417A (notice of appeal) requires listing all parties to the appeal, Bankruptcy Rule 8003(a)(3)(A) requires only substantial conformity with the form. Attaching a copy of the order appealed from suffices to include the necessary parties to the appeal. Equitable mootness protects parties relying upon plan confirmation from a drastic change from an appeal. A reorganization's complexity, third parties' reliance, and the difficulty of unwinding a plan are central to the equitable mootness doctrine. These considerations do not apply in a chapter 7 liquidation case. *Taleb v. Miller, Canfield, Paddock & Stone, P.L.C. (In re Kramer)*, 71 F. 4th 428 (6th Cir. 2023).

11.4 Sovereign Immunity

11.4.a **Section 106 waives sovereign immunity as to Indian tribes.** The debtor borrowed from a commercial entity owned by an Indian Tribe. After bankruptcy, the lender pursued the debtor in violation of the automatic stay. The debtor sued to recover for the stay violation. Indian Tribes and their commercial entities enjoy sovereign immunity. Section 106(a) abrogates sovereign immunity of "governmental units," as defined. The definition does not specifically include Indian Tribes but includes "other foreign or domestic government." Indian Tribes are neither clearly foreign nor clearly domestic governments; they have aspects of each. To abrogate the Indian Tribes' sovereign immunity, Congress must do so unmistakably clearly, without ambiguity. However, the clear statement rule is not a magic-words requirement, and clarity may be determined using traditional statutory interpretation principles. Here, the definition is comprehensive and broad. By using two opposing terms in the catchall phrase, Congress covered all that comes between "foreign or domestic" and therefore covered Indian Tribes. Other Bankruptcy Code provisions reinforce that conclusion. Because the Bankruptcy Code is intended as broad regulation of all matters related to bankruptcy, excluding Indian Tribes from the definition of "governmental units" would exclude them from many other Code provisions, contrary to Congress' apparent intent. Therefore, section 106 waives immunity of the Indian Tribes. *Lac Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. ___. 143 S. Ct. 1689 (2023).

11.4.b **Section 106(a) waives sovereign immunity for section 544(b) claims against the US.** The corporate debtor paid the personal income taxes of its principals and received nothing in return. Section 544(b) permits the trustee to avoid a transfer that is avoidable under applicable nonbankruptcy law by a creditor holding an unsecured claim against the debtor. The trustee sued the United States to avoid the tax payments under Utah's UFTA, which generally permits a creditor holding an unsecured claim to avoid a transfer by an insolvent debtor. Sovereign immunity would protect the United States from an action by the creditor. However, section 106(a) abrogates sovereign immunity "with respect to" section 544. A Congressional waiver of sovereign immunity is effective only if clear and unambiguous. "With respect to" means relating to or concerning and is to be read broadly. Therefore, the abrogation "with respect to" section 544 is effective to allow a bankruptcy trustee to bring the action against the United States, even though the triggering creditor would have been barred. *Miller v. United States*, 71 F. 4th 1247 (10th Cir. 2023).

12. PROPERTY OF THE ESTATE

12.1 Property of the Estate

12.2 Turnover

12.3 Sales

13. TRUSTEES, COMMITTEES, AND PROFESSIONALS

13.1 Trustees

13.2 Attorneys

13.3 Committees

13.4 Other Professionals

13.5 United States Trustee

13.5.a **Remedy for unconstitutional 2017 U.S. Trustee fee increase is a refund.** In 2017, Congress amended 28 U.S C. § 1930(a)(6) to increase U.S. Trustee fees, effective January 1, 2018, including for then-pending chapter 11 cases. The fees are entitled to priority as an administrative expense. At the time, section 1930(a)(7) authorized but did not require the Judicial Conference to charge the same fees in chapter 11 cases pending in Bankruptcy Administrator district. The Judicial Conference increased fees for cases pending in those districts effective October 1, 2018, but not for then-pending cases. The debtor filed its chapter 11 case in 2008. Under its confirmed plan, a liquidating trustee administered the case. The trustee brought an action to recover the difference in fees it paid compared to the fees it would have paid in a Bankruptcy Administrator district. In *Siegel v. Fitzgerald*, 142 S. Ct 1770, (2022), the Court held the difference unconstitutional and remanded for determination of the remedy. The remedy should be guided by Congressional intent, based on Congress' apparent intensity of commitment to the main rule and the degree of potential disruption that would occur by extension vs. abrogation of the scheme. Where a tax or fee is unconstitutionally applied to one group, the court may order a refund, even if the legislature later applies the higher tax or fee to the other group, if there was not a clear procedure for pre-payment challenge or if there was a procedure for post-payment challenge, as was used here. Because the court did not have jurisdiction to require the higher payment in cases in the BA districts and, even if it did, requiring such payments might be impossible to implement, the only possible remedy to equalize the burden was to order refunds to the disfavored group. Accordingly, the court orders repayment of the unconstitutional US trustee fees. *U.S. Trustee Region 21 v. Bast Amron LLP (In re Mosaic Mgmt Group, Inc.)*, 71 F.4th 1341 (11th Cir. 2023).

14. TAXES

14.1.a **Government may not retain more than taxes owing in a tax foreclosure sale.** The homeowner failed to pay property taxes for several years. Applicable law provides that after three years, absolute title vests in the government, whether or not the property value exceeds the tax debt. Here, after obtaining absolute title, the government sold the property for substantially more than the tax debt (including interest and penalties) and did not remit the excess to the homeowner. The Takings Clause of the Fifth Amendment prohibits the taking of property for a public use without just compensation. Existing rules and understandings define property, including applicable state law and traditional property law principles. Under these principles, the homeowner's equity in the real estate is "property" for Fifth Amendment purposes. Since the Magna Carta, England and the American colonies and states recognized that a surplus resulting

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from a tax sale had to be returned to the property owner. Supreme Court precedents since the 1880s concurred. Therefore, the Takings Clause prohibits the government from retaining more of a property's value than required to pay the debt owing to the government. *Tyler v. Hennepin County*, 598 U.S. ___. 143 S. Ct. 1369 (2023).

15. CHAPTER 15—CROSS-BORDER INSOLVENCIES