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SCOTUS Grants Cert in Jevic

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June 29, 2016 - Yesterday, the Supreme Court granted certiorari in *Czyzewski v. Jevic Holding Corp* ("Jevic"). As previously [reported](#), *Jevic* addressed whether a bankruptcy court can approve a settlement agreement that provides for distributions that violate the absolute priority rules as part of the structured dismissal of a chapter 11 proceeding. The Third Circuit held that such structured dismissals were appropriate even when they provided for distributions that do not strictly comply with the Bankruptcy Code's absolute priority schemes. The Third Circuit's ruling is consistent with the Second Circuit's holding in *In re Iridium Operating LLC*,^[1] which held that such structured dismissals may be appropriate if they are justified by other factors, but put the Third Circuit in conflict with the Fifth Circuit, which held in *Matter of AWECO, Inc.*^[2] that it was inappropriate to approve a structured dismissal that did not strictly comply with the absolute priority rule. The Supreme Court will now address this circuit split and decide whether the flexibility offered to debtors (and some creditors) by structured dismissals outweighs that impact that such dismissals can have on the rights of other creditors and interested parties.

The Supreme Court's decision may also have a broader impact on non-priority distributions more generally and could affect the permissibility of "gift plans," which are similar to the structured dismissals in *Jevic* as they often provide for secured or senior creditors to make payments to junior creditors in order to garner support for chapter 11 plans.

Footnotes

[1] 478 F.3d 452 (2d Cir. 2007)

[2] 725 F.2d 293 (1984).

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