National Bankruptcy Conference Releases White Paper on Executive Benefits Insurance Agency v. Arkison


Fairfax, VA (PRWEB) December 10, 2013 -- The National Bankruptcy Conference (NBC), a non-profit, non-partisan, self-supporting organization of leading judges, scholars, and practitioners in the field of bankruptcy law, has released a white paper entitled, "Executive Benefits Insurance Agency v. Arkison: Does Party Consent Render Bankruptcy Court Adjudication Constitutionally Valid?" The paper analyzes one of the issues currently before the Supreme Court in the case of Executive Benefits Insurance Agency v. Arkison—the constitutional effectiveness of party consent to adjudication by a non-Article III judge.

The white paper was authored on behalf of the NBC by Conferees S. Elizabeth Gibson, University of North Carolina at Chapel Hill – School of Law, and Jonathan M. Landers, Scarola Malone & Zubatov LLC. It examines how the Supreme Court’s precedents should guide the Court’s analysis of that issue and discusses the negative impact a decision rejecting consent could have on the operation of the bankruptcy system, adjudication of civil actions by magistrate judges, and the workload of the district courts.

After reviewing past decisions in which the Court or individual justices suggested that party consent enables bankruptcy courts to decide matters that Article III would otherwise prevent them from adjudicating, this paper examines the Court’s leading precedent on the constitutional effect of consent to non-Article III adjudication—the 1986 decision in Commodity Futures Trading Commission v. Schor. The paper contends that the Court’s analysis in Schor supports the constitutionality of bankruptcy court adjudication of private rights with the parties’ consent, notwithstanding the decision of three federal circuits to the contrary.

The paper concludes with a discussion of the practical importance of the Court’s decision of the consent issue in Arkison. It provides examples of the delays and added costs that would result from a bifurcation of bankruptcy adjudication between bankruptcy and non-bankruptcy courts. It also notes the likely effect of the decision on magistrate judges and discusses the impact that a decision rejecting consent to adjudication by bankruptcy and magistrate judges would have on the workload of district courts.

Executive Benefits Insurance Agency v. Arkison, 133 S. Ct. 2880 (2013) is scheduled for argument before the U.S. Supreme Court on January 14, 2014.

The National Bankruptcy Conference (NBC) is a non-profit, non-partisan, self-supporting organization of approximately sixty lawyers, law professors and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and any proposed changes to those laws. For more information about the NBC, please visit http://www.nationalbankruptcyconference.org.

S. Elizabeth Gibson is the Burton Craig Professor of Law at the University of North Carolina Chapel Hill - School of Law. A native of Raleigh, North Carolina, Professor Gibson earned her J.D., with high honors, from UNC School of Law in 1976. After law school she clerked for Judge J. Braxton Craven Jr. of the U.S. Court of Appeals for the Fourth Circuit (1976-77) and for Justice Byron R. White of the U.S. Supreme Court (1977-78). Following her judicial clerkships she practiced law with the Washington, D.C., law firm of Shea & Gardner.
Gibson returned to the School of Law in 1983 as an associate professor of law. She became a professor of law in 1988 and a Burton Craig Professor of Law in 1993. Gibson teaches courses in civil procedure, federal jurisdiction and bankruptcy. She was the recipient of the 1988 and 1991 McCall Awards for Teaching Excellence at the School of Law, and is a member of the National Bankruptcy Conference and the American College of Bankruptcy. In 2000 she was nominated by President Clinton to serve as a judge on the U.S. Courts of Appeals for the Fourth Circuit. The Senate adjourned without taking any action on her nomination. Since 2008 she has served as the reporter for the Advisory Committee on Bankruptcy Rules. She was selected for the position by Chief Justice John Roberts.

Jonathan M. Landers is a nationally recognized authority in bankruptcy and insolvency law. He graduated from Colgate University (Phi Beta Kappa) and from the Harvard Law School (magna cum laude, Harvard Law Review). He has broad experience in bankruptcy, insolvency, restructuring, financing transactions, purchase/sale of assets and bankruptcy and insolvency litigation matters, representing debtors, lenders and lending syndicates, large creditors, litigation trustees and defendants, and asset sellers and purchasers. He has served as lead counsel for clients in numerous matters including BostonGen (Committee), Strauss Auto (Debtor as litigation plaintiff), Hoop (Disney Stores -- Debtor), Odyssey Group (North Face and Head Sportswear -- Debtor), Insilco (Lending Group), Champion Homebuilders (Committee as litigation plaintiff), Finova (Debtor), Enron (large creditor), Adelphia (large creditor/agent), Placid Oil (large lender), Penrod (large lender), Greyhound (contract party), and Bergner (contract party). His clients have included Wells Fargo Bank, Dial Corporation, Merrill Lynch, and Citibank (in the bankruptcy of a number of major US law firms, most recently, Heller Ehrman, Thelen and Brobeck).

Mr. Landers is the co-author of three books and more than 30 published articles on bankruptcy, creditors' rights and civil procedure, a former partner for 23 years with Gibson, Dunn & Crutcher, LLP, a former professor/visiting professor at the Universities of Chicago, California, Illinois, San Francisco and Kansas, a frequent speaker at legal education institutes, one of 65 members of the National Bankruptcy Conference and a member of American College of Bankruptcy (founding class), and has been recognized repeatedly in New York Super Lawyers and Best Lawyers in America.
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