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The Mystery of Official Committee Formation and Its Unique Governance Issues[1]

Honorable Denise E. Barnett, USBC, W.D. Tenn. (Moderator)

Panelists:

James I. Stang, Partner, Pachulski Stang Ziehl & Jones LLP

Michael St. Patrick Baxter, Senior Counsel, Covington & Burling LLP

Millie Aponte Sall, Office of the United States Trustee, S.D. Tex.

[1] Materials prepared by Pachulski Stang Ziehl & Jones LLP. The views expressed herein shall not be attributed to any panelist . The views expressed in these materials also do not necessarily represent the views of nor are endorsed by the United States Trustee Program or the United States Government.

Creditor Committee Formation, Composition, and Court Removal of Committee Members – Recent Developments

I. Introduction

Despite the critical role that many creditors' committees play in larger chapter 11 cases, the formation, governance, and inner workings of committees and the dynamics among the committee members, as well as among the committee, the court, and the U.S. Trustee, may be mysterious and more complex and nuanced than they appear to outside parties. Interesting and debatable issues include:

(i) Does the U.S. Trustee have virtually unfettered discretion in appointing and removing committee members;

(ii) Other than conflicts of interest, should there be other disqualifying attributes for a creditor interested in being on the committee;

(iii) How should the U.S. Trustee balance the composition of a committee when the case has a particular type of claim that predominates in the debt structure;

(iv) If there are potentially predominant claims, should the U.S. Trustee consult with any other parties regarding committee composition;

(v) Generally, can a single committee adequately represent the interests of both tort claimants and commercial creditors in a chapter 11 case;

(vi) What should be the role (if any) of debtors in relation to committee composition;

(vii) Should the U.S. Trustee consider additional committee member appointments or other committee composition issues after the expiration of the claims bar date (given that committees are typically appointed well before the claims bar date and potentially larger or unforeseen claims may be filed);

(viii) What is the proper role of *ex officio* committee members;

(ix) Should a committee restrict or limit a member's ability to speak to the media; and

(x) How should the gray-area issues of member removal be handled generally and by whom.

Among the unique and developing legal analysis and practices related to committee composition, the issue of judicial removal of a member of an official creditors' committee has arisen recently in several larger chapter 11 cases, including, as discussed below, the Roman Catholic Church of the Archdiocese of New Orleans, public biopharmaceutical company Sorrento

Therapeutics, Inc., and LTL Management LLC (Johnson & Johnson's spinoff). Such cases have some similar elements, but this area of the law may be further fleshed out by the courts, given the lack of specific guidance in the Bankruptcy Code and, in particular, the lack of a statutory definition for "adequate representation" of creditors in section 1102(a)(4) of the Code.

Clearly, the United States Trustee has the authority to appoint and remove committee members and to otherwise alter the composition of a committee after it has been created. Generally, this authority is subject, however, to the bankruptcy court's power to override such decisions under section 1102(a)(4), which provides in pertinent part that:

> On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders.

11 U.S.C. § 1102(a)(4).

Various factors may raise issues of a committee member having a potential or actual conflict of interest or otherwise impairing adequate representation of other unsecured creditors collectively, including (i) the member selling or transferring a significant portion of its unsecured claim, (ii) the member's claim in whole or in part receiving special or different treatment, (iii) the member's classification as a creditor and an equity holder, (iv) the member expressing an interest in acquiring the debtor or its assets, or (v) the member engaging in significant litigation against the debtor.

All of that being said, based on the reported case law, it seems that bankruptcy courts are often wary of actually removing a committee member absent some substantial, adverse situation with special circumstances. *See, e.g., In re First RepublicBank Corp*., 95 B.R. 58, 60–61 (Bankr. N.D. Tex. 1988) (upholding U.S. Trustee's decision not to remove creditor from committee because he held claims against both debtor and subsidiary; conflict of interest needs to rise to level of breach of or inability to perform fiduciary duty before removal is mandated).

II. Recent Examples

In re The Roman Cath. Church of the Archdiocese of New Orleans, Bankr. No. 20-10846, (Bankr. E.D. La. 2023):

(i) Removal of Commercial Creditor from the Committee

TMI Trust Co. ("TMI") was the trustee of approximately $38 million in pre-petition bond debt owed by The Roman Catholic Church of the Archdiocese of New Orleans (the "Archdiocese"). Pending the Archdiocese and TMI trying to reach a deal with the creditors' committee and the U.S. Trustee on partial payments proposed to be made post-petition by the Archdiocese to TMI, the U.S. Trustee filed a Notice of Reconstituted Committee removing TMI from the committee in October 2020. In response to a motion to appoint a separate committee or reinstate the creditor, the U.S. Trustee stated that the "Settlement Agreement's lock-up provisions

constrain the Bond Trustee's independence and decision-making and thus its ability to exercise its fiduciary duties" (Dkt. No. 69). . Ultimately, a scaled- back version of the Archdiocese and TMI's proposal was agreed to by the parties.[2]

Shortly after its removal from the committee by the U.S. Trustee, TMI filed with the bankruptcy court a motion under section 1102 to either be reappointed to the committee or have another committee comprised of commercial creditors like TMI appointed, in addition to the current creditors' committee comprised of only sexual abuse claimants, which TMI asserted was effectively a tort claimants' committee that did not represent the interests of commercial creditors. The bankruptcy court granted TMI's motion over the U.S. Trustee's objection, finding, after extensive discovery, briefing and a trial, that the then-comprised committee with six abuse claimant members and no commercial creditors did not adequately represent the interests of commercial creditors. Mem. Op. & Order at 27 (Dkt. No. 745) ("Congress intended unsecured commercial creditors to be represented in the reorganization process through the unsecured creditors' committee. Although the Abuse Claimants in this case, at times, may share interests with commercial creditors, their interests often differ from the issues facing other creditors."). In its discretion, the court believed it most appropriate to order the appointment of an additional committee of commercial creditors under section 1102(a)(2). After entry of this order, in March 2021, the U.S. Trustee appointed the Official Committee of Unsecured Commercial Creditors, which TMI later joined as an *ex officio* member (a non-voting member that can participate in committee meetings).

(ii) Removal of Committee Members' Attorney and His Client-Committee Members

The committee in the Archdiocese case was further modified because of an alleged protective order violation. As detailed in the bankruptcy court's opinions dated June 7, 2022 (Dkt. No. 1574) and October 11, 2022 (Dkt. No. 1844), in January 2022, counsel for the Archdiocese notified the bankruptcy court through a motion that someone had recently contacted officials at a local high school and wrongfully disclosed confidential information (*e.g.*, the identity of a priest and details of sexual abuse allegations made against that priest). Some of the information allegedly disclosed to the high school was then published in a local online newspaper article in violation of a broad protective order in place governing discovery in the Archdiocese case. The Archdiocese asserted that the disclosed information could have come only from discovery produced by the Archdiocese to the creditors' committee. After the parties attempted to investigate the matter themselves with limited results, they asked the bankruptcy court to allow the U.S. Trustee to perform an independent investigation into the alleged breach of the protective order. According to the bankruptcy court's orders, the U.S. Trustee's investigation revealed that one source of the leak of the confidential information was an attorney representing four individual members of the committee. The bankruptcy court effectively imputed the attorney's conduct to the client-

[2] Pursuant to the original proposed settlement as set forth in the debtor's motion, the debtor would make certain interest (not principal) payments to TMI, one immediately and others during the case, as well as payment of reasonable fees and expenses, in exchange for which, among other things, TMI would provide certain limited contractual waivers related to existing and anticipated defaults and would not object to a debtor-proposed plan that provides for payment of all principal that has come due and reinstatement of the bond debt on its current terms. Among other revisions to the settlement, the order, while authorizing the interest payments, reserved all parties' rights to assert that any such payments should be reallocated or recharacterized as principal payments and to litigate the appropriate interest rate.

committee members and, acting *sua sponte*, removed them from the committee. After a further hearing, the bankruptcy court ultimately sanctioned the attorney hundreds of thousands of dollars.

In removing the committee members, the bankruptcy court explained that the attorney and his client-members of the committee owed fiduciary duties to the committee's constituency that required the applicable confidential information to be held in confidence, and, under the circumstances, to avoid any further violations of the protective order by the attorney, his client-committee members had to be removed:

> [Attorney] Trahant's willful breach of this Court's Protective Order clearly disqualifies him from further receiving Protected Material in this case and participating in any confidential Committee proceedings, including meetings, deliberations, and mediation. To be sure, Trahant has never served as a member of the Committee; yet, as personal counsel to individual Committee members, Trahant and his team of co-counsel received confidential information from the Debtor. The Court acknowledges that individual Committee members may retain the attorney of their choosing to represent their personal interests in this chapter 11 case and have chosen Trahant and his group. This Court certainly has no intention of invading the attorney-client privilege to modulate the communications between those Committee members and their attorneys; indeed, any attempt to regulate or stop the flow of information or candor that must exist between a client and her attorney is not only a futile endeavor, but would offend a fundamental facet of effective legal representation. Thus, an impasse has been reached.
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> This Court must nevertheless act to protect against disruption of the bankruptcy process, to guard the rights of all parties in interest, and, most immediately in light of the current posture of this case, to preserve the trust in the confidentiality of mediation. Given Trahant's willful breach and disregard of this Court's Protective Order and the dynamics present on the Committee, the Court is forced to impute Trahant's actions to those of his clients on the Committee and finds cause for their removal from the Committee. Therefore, IT IS ORDERED that, pursuant to § 105(a), and § 1102(a)(4), to prevent an abuse of process and to ensure adequate representation of creditors, the United States Trustee will immediately relieve the following members of the Committee from service on the Committee ….

Archdiocese Order at 4–5 (Dkt. No. 1574).

The Archdiocese case involves several interesting issues, including the following:[3]

[3] Other interesting issues have been raised in the Archdiocese case but are outside the scope of this article. For example, in the applicable appeals, also at issue was whether the former committee members, as appellants, had standing to appeal. The debtors argued on appeal, and the district court agreed, that appellants lacked standing; a creditor does not have a right to serve on a creditors' committee, nothing in the bankruptcy court order impaired the appellants' status as creditors or their claims, and the former members suffered no direct, financial harm.

(i) Did the bankruptcy court have the power to remove the committee members (due to their attorney's improper conduct) under section 105(a) and/or inherent equitable authority, or was the court required to proceed and provide relief in compliance only with section 1102(a)(4)?

(ii) Does it matter who seeks and who supports the member removal (the U.S. Trustee, the debtor, a creditor, other committee members, etc.)?

In its briefing, the creditors' committee in the Archdiocese case argued, among other things, that (i) the bankruptcy court, in imputing the attorney's conduct to the client-committee members and removing those members from the committee, failed to act within section 1102(a)(4) and apply the relevant factors and standards thereunder (including analysis of whether the facts support the finding that a member's conflict of interest is so severe that it prevents the member from acting properly or impairs adequate representation); (ii) the court cannot, under section 105(a) authority, sidestep section 1102(a)(4) and its technical requirements of a motion by a party in interest and a hearing; and (iii) there was no legal basis to impute the attorney's conduct to the client-committee members. On appeal, the district court did not substantively decide these issues, ruling instead that the former committee members lacked standing to bring the appeal. The appeal of the district court decision to the Fifth Circuit Court of Appeals is stayed pending the district court's disposition of a judge-disqualification motion.

***In re Sorrento Therapeutics, Inc.*, No. 23-90085 (Bankr. S.D. Tex. 2023) (Judge David Jones):**

In March 2023, the debtors in the chapter 11 cases of Sorrento Therapeutics, Inc., a biopharmaceutical company, and its affiliates, moved the bankruptcy court under section 1102(a)(4) to remove NantCell, a judgment creditor, from the creditors' committee, the other members of which are the landlord and trade creditors. According to the debtors in their motion, "These chapter 11 cases are at a critical juncture in terms of negotiating a plan and exit strategy and kicking off a sale and financing process." Because, purportedly, NantCell was a competitor of the debtors, has been for years and remains involved in litigation with the debtors and insiders, and might want to purchase the debtors' assets at the lowest price possible, "all of NantCell's incentives are diametrically opposed to the Debtors' successful reorganization, [and] NantCell's membership on the Unsecured Creditors' Committee, at best, serves no purpose. At worst, NantCell's membership will inhibit the Unsecured Creditors' Committee's ability to effectively represent the interests of Unsecured Creditors without conflicting interests." The bankruptcy court agreed with the debtors and removed NantCell from the committee, although NantCell disputed all of the debtors' allegations of a potential conflict of interest. The U.S. Trustee did not appoint any replacement, and the committee is proceeding with four members.

The *Sorrento* court explained that in analyzing the "adequate representation" element under section 1102(a)(4), courts analyze similar factors to those examined in deciding whether to appoint an additional committee under section 1102(a)(2) (citing, for example, *In re Roman Cath. Church of the Archdiocese of New Orleans*, No. 20-10846, 2021 WL 454220 (Bankr. E.D. La. Feb. 8, 2021)). Such factors include (1) the ability of the committee to function; (2) the nature of the case; (3) the standing and desires of the various constituencies; (4) the delay and additional cost that will result if the court grants the motion; and (5) the tasks that a committee or separate committee will

perform. The other four committee members (the landlord and trade creditors) supported NantCell's continuing service on the committee and adopted measures and protocols to try to eliminate risks of taint (such as NantCell not serving as committee co-chair going forward and NantCell being excused from discussion or participation in committee deliberations regarding certain areas that may implicate NantCell's potential conflicts). NantCell argued that the debtors' conflict-related allegations were baseless and that for removal, there must be evidence of the member breaching its fiduciary duties or the likelihood of the member do so (citing, for example, *In re ShoreBank Corp.*, 467 B.R. 156, 161 (Bankr. N.D. Ill. 2012)). The U.S. Trustee, while "sensitive" to concerns raised, was "aware of no information at this time that would indicate that NantCell is either unable or unwilling to perform its fiduciary role [as a committee member]." In the U.S. Trustee's view, the debtors' request to remove NantCell from the committee was premature.

The *Sorrento* court ordered the removal of NantCell from the creditors' committee pursuant to a March 24, 2023 order (Dkt. No. 280). The *Sorrento* court appeared to take a holistic view of all of the circumstances of the cases. At the March 2023 hearing, Judge David R. Jones said that it was in the best interest of the debtors, the chapter 11 case, and the bankruptcy process itself to remove NantCell from the committee. Judge Jones stated (as reported by *Law360*, Mar. 20, 2023), "You can't really genuinely argue with the fact that with all of the administrative overlay [including NantCell's recusal from discussions or votes relating to certain areas], the committee functions better without Nant on the committee than with Nant on the committee." NantCell had been in a long-standing dispute with Sorrento concerning NantCell's purchase of a Sorrento cancer treatment drug. In arbitration proceedings, Sorrento was awarded $125 million pre-petition, while losing a separate award of $175 million to NantCell and an affiliate. In February 2023, a California judge denied Sorrento's request to vacate the award to NantCell, and a week later the company filed for chapter 11 relief. In the debtors' initial court filings, Sorrento stated that the bankruptcy filing was intended to give it "breathing room" after the denial of its request to vacate the $175 million arbitration award (which makes NantCell Sorrento's largest unsecured creditor by far).

At the hearing, Judge Jones said that the process had become too unwieldy to justify keeping NantCell as a committee member and that even if NantCell were removed, the company would be adequately represented in the case through its own counsel and advisers. "A committee should be as absolutely transparent as possible. We shouldn't have to go through all these machinations in an effort to make the committee function." Judge Jones said, "I'm still trying to figure out why we're doing this. This case doesn't exist but for the dispute between these two parties. We're just enabling the continuation of that dispute." During this timeframe, Judge Jones, upon the motion of certain shareholders, entered an agreed order directing the appointment of an official committee of equity holders, because, among other things, the debtors were solvent, there were allegations of mismanagement by the board and officers, and the debtors and committee had agreed to such appointment.

The *Sorrento* case raises interesting issues, such as how the courts should view a debtor's request to remove a committee member and whether there is a material risk that some debtors may try to exert more control of the chapter 11 case by trying to have an oppositional committee member removed. Each case will be different in all of the details, but aspects of *Sorrento* may incentivize some debtors (or other parties) to test the limits on such matters for tactical

advantage/leverage in plan and case negotiations with creditors' committees. *Cf. First RepublicBank Corp*., 95 B.R. at 61 (noting that "[n]ot all conflicts mandate removal"; "a creditor disagreement over strategy or objectives on a committee does not amount to the type of conflict mandating removal").

***In re LTL Mgmt., LLC*, 636 B.R. 610 (Bankr. D.N.J. 2022):**

A different committee issue arose in the LTL Management, LLC case in the Bankruptcy Court for the District of New Jersey (Case No. 21-30589 (MBK)).[4] LTL was spun off from Johnson & Johnson to house liabilities from J&J's talc products; the new company, LTL, then filed a chapter 11 petition in the bankruptcy court in North Carolina in October 2021. In LTL's bankruptcy case, all mesothelioma and ovarian cancer claimants were initially represented by one tort claimant committee[5] selected by the bankruptcy administrator in North Carolina and approved by the North Carolina bankruptcy court.[6] The debtor's case was then transferred to the bankruptcy court in New Jersey, with the support of the original committee. Six weeks later, the U.S. Trustee appointed two new tort committees, which it described as a "reconstitution and amendment" of the original committee.

The debtor filed a motion asking the court to determine that the U.S. Trustee's committee appointment was invalid, arguing that the original, single creditors' committee approved by the North Carolina bankruptcy court should be reinstated, because the U.S. Trustee's appointment of the two committees was unauthorized and improper. In the debtor's view, the U.S. Trustee could not unilaterally remove or reform the original committee approved by the North Carolina bankruptcy court, and the New Jersey bankruptcy court had inherent powers and authority under sections 105 and 1102(a)(4) to reconstitute the original committee. Under an order entered in January 2022 (Dkt. No. 1273), the New Jersey bankruptcy court, presiding over the debtor's case, found that the North Carolina bankruptcy court's order approving the first committee was the law of the case, precluding the U.S. Trustee's unilateral appointment of the two committees. The judge granted the motion but did so without prejudice, leaving the door open for a later request for a second committee if circumstances change or develop.

The U.S. Trustee's response argued that the Bankruptcy Code did not authorize the movant's relief because although the court may order the U.S. Trustee to change the membership of an official committee to assure adequate representation, the Bankruptcy Code does not authorize a court to veto the U.S. Trustee's decision to appoint an official committee, either mandatory or additional. The court concluded that there should be some meaningful monitoring ability by the court over the U.S. Trustee's actions. As explained by the LTL court:

[4] In January 2023, the Third Circuit Court of Appeals ordered the dismissal of the chapter 11 case.

[5] This original committee was comprised of six ovarian cancer claimants, four mesothelioma claimants, and one insurer.

[6] While all other jurisdictions utilize U.S. Trustees, North Carolina and Alabama have bankruptcy administrators who oversee the bankruptcy cases filed in those jurisdictions. The bankruptcy administrator recommends the appointment of a creditors' committee, and the bankruptcy court then must approve the appointment. In U.S. Trustee jurisdictions, the U.S. Trustee appoints a creditors' committee and files notice thereof, without the need for any court approval. This case has a unique set of facts (appointment of a committee in a bankruptcy administrator district followed by a transfer of the case to a district with a U.S. Trustee) which is unlikely to repeat itself in the future.

> Although there is a sharp conflict among courts regarding this issue of reviewability, this Court finds more persuasive the arguments and decisions that favor judicial review [of the U.S. Trustee]. In reaching this conclusion, the Court is guided, in part, by practicality. Indeed, the notion that the U.S. Trustee's decisions regarding committee appointments are not subject to *any* type of review by *any* authority seems to belie common sense. While § 1102(a)(1) grants the U.S. Trustee the authority to appoint additional committees as he or she "deems appropriate," there is nothing in this section that expressly or impliedly restricts judicial review of such decisions. Thus, neither the statute's language nor structure demonstrates that Congress wanted the U.S. Trustee to "police its own conduct."

LTL Mgmt., 636 B.R. at 620–21 (citations omitted).

III. Developing Issues and Concerns

Some cases have suggested that, generally, courts may exercise authority in connection with creditors' committees solely under section 1102 and not separately pursuant to section 105. *See, e.g., In re Cont'l Cast Stone*, 625 B.R. 203, 209–11 (Bankr. D. Kan. 2020).

The authority to remove a committee member is a balance of power over committee composition (which could materially impact the outcome of the chapter 11 case through, for example, changed perspectives in plan negotiations with the debtor) between the U.S. Trustee and the committee on the one hand and the bankruptcy court on the other. One bankruptcy court discussed some of the relevant considerations when it affirmed its review power and ultimately removed a member:

> Prior to 1986, § 1102(c) authorized the court to alter or modify the composition of a committee. *See* 11 U.S.C. § 1102(c) (repealed 1986). The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 transferred this authority to the U.S. trustee, and § 1102(c) was repealed. As a result, courts are divided as to the extent to which the court may alter or modify a committee and review decisions made by the U.S. trustee.
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> Some courts have held that they are without the authority to review committee decisions made by the U.S. trustee because § 1102 no longer expressly provides them the authority to do so.
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> Other courts have held that the courts retain the authority to review committee decisions. But even these courts do not agree on what level of deference to give the trustee's decisions. One line of cases holds that no deference be given to the trustee, and the trustee's decisions are reviewed *de novo*.

> Another line of cases grants some deference to the trustee. These courts apply an arbitrary and capricious standard or an abuse of discretion standard.
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> Since § 1102(c) was repealed, courts often rely on their inherent powers under 11 U.S.C. § 105(a) to review the trustee's committee decisions.
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> This court adopts the view that it has the inherent equitable power under § 105(a) to review the trustee's committee decisions under an abuse of discretion standard.

In re Fas Mart Convenience Stores, Inc., 265 B.R. 427, 431 (Bankr. E.D. Va. 2001) (citations omitted). *See also, e.g., In re Venturelink Holdings, Inc*., 299 B.R. 420, 423 (Bankr. N.D. Tex. 2003) ("Under 11 U.S.C. § 105(a), this court may review the United States Trustee's decision on the question of the removal of a committee member to determine if the United States Trustee acted arbitrarily and capriciously. The United States Trustee would act arbitrarily and capriciously if he refused to remove a committee member who held a conflict of interest amounting to a breach of the fiduciary duty owed by the creditor to the creditors represented by the committee or who appeared to hold such a conflict."); *In re Voluntary Purchasing Grps., Inc.*, No. 4:96CV396, 1997 WL 155407, at *3 (E.D. Tex. Mar. 21, 1997) ("[T]he Court agrees with other jurisdictions that have held that 11 U.S.C. sec. 105(a) allows the bankruptcy court to review the trustee's decisions on committee appointments To rule otherwise would be to close the only forum to which a party could resort if it disagreed with the trustee's appointments."); *First RepublicBank Corp*., 95 B.R. at 61 (Bankr. N.D. Tex. 1988) (finding that the court had authority under section 105(a) to review whether the U.S. trustee acted arbitrarily and capriciously in performing his tasks; beyond section 1102(a)(4), "[a] committee member holding a conflict of interest cannot continue to serve[,]" and "[a] conflict of interest that amounts to a breach of that fiduciary duty constitutes the type of conflict that would mandate removal of the creditor from the committee").

Other courts post-BAPCPA, however, have taken the opposite approach and held that section 105 does not provide bankruptcy courts additional authority to review committee composition. *See, e.g., In re Caesars Entm't Operating Co*., 526 B.R. 265, 268 (Bankr. N.D. Ill. 2015) (*citing, Law v. Siegel*, 134 S. Ct 1188, 1994 (2014) and holding that section 105 cannot be used to disband committees when section 1102(a) grants other powers but not that one); *In re ShoreBank Corp*., 467 B.R. 156, 160 (Bankr. N.D. Ill. 2012) (holding that "[n]ow that section 1102(a)(4) allows the court to determine for itself whether a committee's make-up must be changed to ensure adequate representation of creditors, judicial review of the U.S. Trustee's decision is not only unnecessary, it is prohibited under the doctrine that "when a specific Code section addresses an issue, a court may not employ its equitable powers to achieve a result not contemplated by the Code."); *See also, In re New Life Fellowship, Inc*., 202 B.R. 994, 997 (Bankr. W.D. Okla. 1996) (holding that section 1102(a)(1) deprives the court of discretion to use section 105 concerning appointment or abolition of committees).

On the other side, perhaps section 1102(a)(4) is the only mechanism by which the bankruptcy court may remove a committee member. It allows removal only in the case of inadequate representation (*expressio unius est exclusio alterius*: including one is the exclusion of others). The argument to be made would be that a court's use of its section 105(a) authority would be an improper enlargement or a sidestepping of section 1102(a)(4).

Whether such serious judicial intervention is appropriate from a policy standpoint is debatable. Arguably, the U.S. Trustee's decisions should be given some degree of deference because it is the Trustee communicating with the creditors' committee and other creditors and often conducting detailed interviews to evaluate potential committee members' ability to serve, and it is important for committees to function freely without undue concern about removal or other related disputes. Perhaps this is mostly a theoretical exercise; many cases of the alleged need to remove a committee member will be clear (material conflict of interest, bad faith conduct, etc.),

and, therefore, the court, the U.S. Trustee, and other committee members will be on the same page. But at least some special circumstances and cases may arise that will cause courts to provide special relief, such as in the Archdiocese case (discussed above) in which the bankruptcy court had to remove the client-committee members of an attorney who violated a protective order to prevent further violations. *See* Archdiocese Order at 5.

We will wait to see how the courts, the U.S. Trustees, creditors' committees, and other parties develop this area of the law as other gray-area issues arise.