

Seventh Circuit Delivers a Major Win for Secured Creditors; Holds that Secured Creditors Cannot be Denied Right to Credit Bid in a Sale Under a Plan

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On June 28, 2011, in a much anticipated decision, a panel of the United States Court of Appeals for the Seventh Circuit, in *In re River Road Hotel Partners, LLC*, affirmed a decision of the Bankruptcy Court for the Northern District of Illinois, Eastern Division, holding that a plan of reorganization providing for a sale of encumbered assets may not be confirmed over the objection of a debtor's secured creditors, where the secured creditors were denied the right to credit bid at the auction of their collateral. The Seventh Circuit's decision represents a significant victory for secured lenders.

The Seventh Circuit's opinion stands in direct contrast to two fairly recent opinions of the Third and Fifth Circuits, both of which held that sales of collateral pursuant to plans of reorganization do not need to provide secured creditors the right to credit bid if the secured creditors are provided the "indubitable equivalent of their secured claims. In *In re Pacific Lumber Co.*, the Fifth Circuit confirmed a plan of reorganization that denied a group of secured noteholders their asserted right to credit bid at a private judicial sale of certain timberland that was subject to the secured creditors' liens. Consistent with the Fifth Circuit's reasoning in *Pacific Lumber*, in *In re Philadelphia Newspapers, LLC*, a split panel of the Third Circuit approved the debtors' bid procedures that did not permit secured creditors to credit bid at an auction of substantially all of the company's assets conducted pursuant to the debtors' plan of reorganization. Circuit Judge Thomas L. Ambro (a noted former bankruptcy practitioner) issued a lengthy dissenting opinion in that case, which was heavily cited with approval in *River Road*, rejecting the majority's conclusions that the plain meaning of the Bankruptcy Code required the result reached, and concluding that the Bankruptcy Code mandates that secured creditors have the right to credit bid in chapter 11 plan sales. In *River Road*, Judge Ambro's reasoning carried the day.

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