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ABI EXCLUSIVE

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Fifth Circuit Tells Us What Ritzen and Travelers Mean and Don't Mean

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> To revisit denial of a lift-stay motion, the prior order denying modification of the stay isn't required to say 'without prejudice.'

Regarding the automatic stay, finality and *res judicata*, the Fifth Circuit wrote an opinion chock full of quotes saying what two prominent bankruptcy decisions from the Supreme Court mean and what they don't mean.

A detailed recitation of the facts in the August 1 opinion by Circuit Judge Edith H. Jones doesn't much matter. Suffice it to say that a pair of individuals were in bankruptcy in 1990 but conveniently failed to disclose that they owned working interests and leasehold rights on 3,000 acres in Kansas.

In what can only be described as chutzpah, the debtors sued a defendant 30 years later in Kansas based on the rights that the debtors never disclosed and that therefore never left the estate under Section 554. The defendant brought third parties into the suit who were claiming interests in the property.

Everyone litigated happily in Kansas until the defendant learned in discovery that the debtors had been in bankruptcy but had not disclosed ownership of the oil and gas properties. At the behest of the defendant, the bankruptcy judge in Louisiana reopened the aged bankruptcy case.

Some of the parties wanted the bankruptcy judge to modify the stay so they could litigate in Kansas. The bankruptcy judge declined the invitation because any litigation even between nondebtors could affect the debtors' property interests.

Eventually, the chapter 7 trustee settled with the defendant by selling all of the estate's interests to the defendant. With the estate no longer involved, the bankruptcy court modified the automatic stay and abstained from further proceedings in an adversary proceeding that the trustee had brought against everyone in the Kansas litigation.

Evidently, the defendant wanted the bankruptcy court, not the court in Kansas, to rule on remaining claims between the defendant and the other parties to the lawsuits. To that end, the defendant appealed several orders, but the district court upheld the bankruptcy court across the board. A second appeal to the Fifth Circuit ensued.

Ritzen **and** ***Travelers***

The defendant argued that the bankruptcy court's original order denying a motion for modification of the automatic stay was *res judicata*, disabling the bankruptcy court from modifying the stay at a later time. To that end, the defendant relied on the Supreme Court's decisions in *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 140 S. Ct. 582 (2020), and *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137, 129 S. Ct. 2195 (2009). Judge Jones set

the record straight by saying that the defendant misapprehended "the distinction between 'finality' for the purposes of appealability and 'finality' for the purposes of *res judicata*. These are related, but separate, concepts," she said.

Judge Jones said that "*Ritzen* stands only for the proposition that bankruptcy lift-stay motions are discrete proceedings within core bankruptcy jurisdiction and that denials of such motions are 'final' for purposes of appealability." She then said that *Travelers* "had nothing to do with the scope of the automatic stay or appealability."

Bankruptcy is not a "straightjacket," Judge Jones said. "[N]ew facts or circumstances may also warrant an order modifying or lifting a bankruptcy automatic stay for a party previously denied relief."

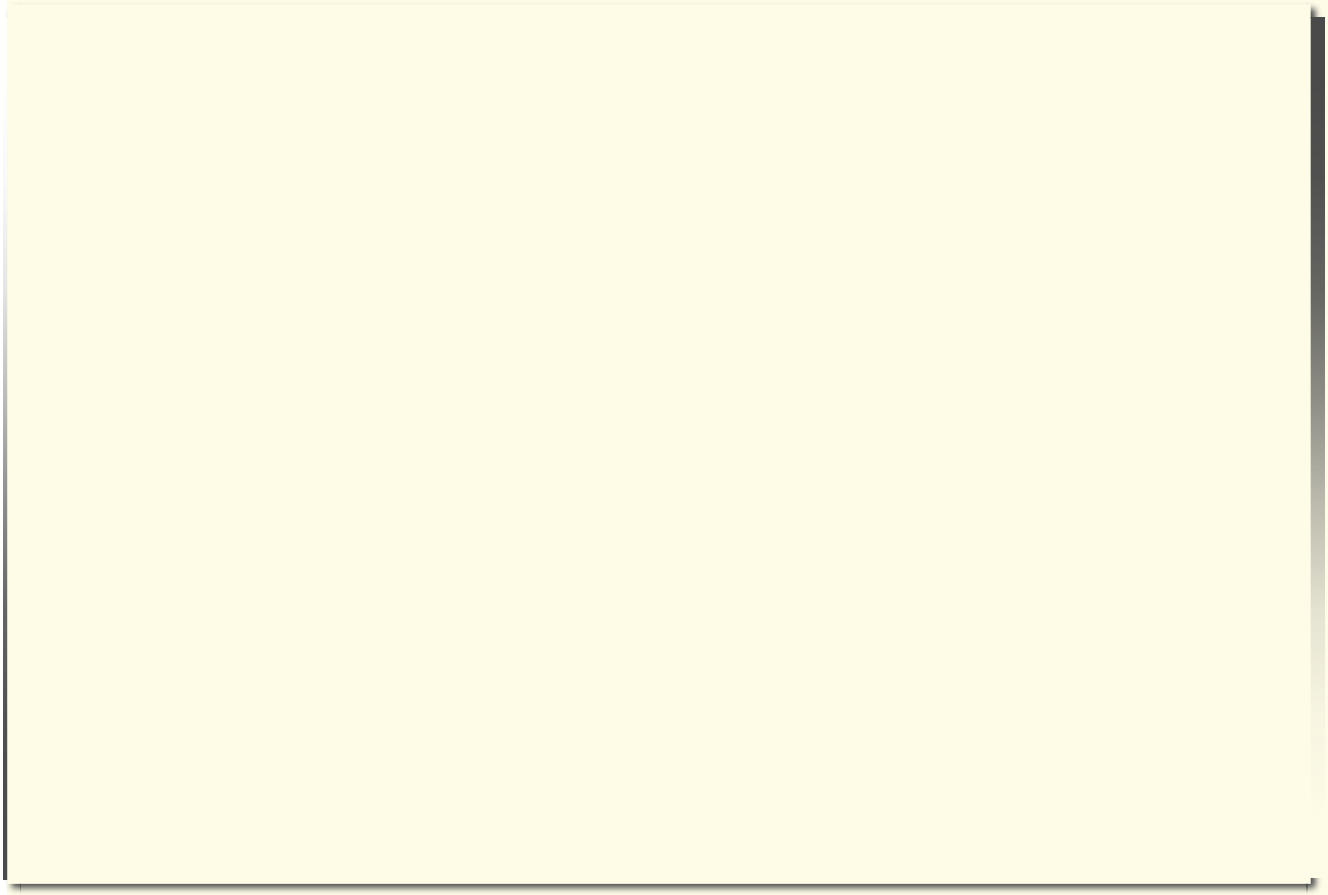
The defendant didn't give up, arguing that the initial denial of the lift-stay motion was *res judicata* because the order did not contain the magic words "without prejudice." Judge Jones rejected the idea, saying that "the roots of the automatic stay in equity's rules for injunctions . . . require preserving a bankruptcy court's ability to use its 'plastic powers to modify or condition an automatic stay.'"

Next, the defendant argued that everything occurring in Kansas was automatically void in view of the automatic stay. Judge Jones disagreed, citing the Fifth Circuit for holding that actions in violation of the stay are merely voidable and are not void until a court has declared them void.

In the same vein, Judge Jones cited the Fifth Circuit for having "recognize[d] that a bankruptcy court has the power to retroactively validate actions taken in violation of the automatic stay . . . without the use of the magic word 'annulment.'" She lauded "the manifestly reasonable decision of the bankruptcy court to allow the Kansas Litigation to go forward without a purely formalistic annulment order."

Opinion Link

PREVIEW



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Case Details

Case Citation	American Warrior Inc. v. Foundation Energy Fund IV-A LP (In re McConathy), 23-30529 (5th Cir. Aug.1, 2024)
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