

Press Release

Counsel for Chapter 11 Creditors' Trustee Successfully Defeats Motion to Dismiss Complaint. Decision Clarifies Sixth Circuit Law on *Res Judicata* Effect of Plan Confirmation Order When Disclosure Statement Sufficiently Reserves Cause of Action

New York, New York, June 22, In *Robert Morris, Creditors' Trustee of Regional Diagnostics v. Zelch et al.*, No. 06-1957, 2007 WL 1587256 (Bkrtcy. N.D. Ohio), Judge Morgenstern-Clarren of the United States Bankruptcy Court for the Northern District of Ohio denied the defendants' motion to dismiss the claims of the Creditors' Trustee and clarified Sixth Circuit law concerning when statements made in the disclosure statement sufficiently reserve a cause of action under Bankruptcy Code § 1123(b) after plan confirmation..

The post-confirmation Creditors' Trustee commenced an adversary proceeding to recover funds from multiple defendants for fraudulent conveyance and breach of fiduciary duty based upon a failed LBO. Defendants argued that the causes of action were not preserved in the Plan of Reorganization and thus barred by *res judicata*. The Court held that information supplied by the disclosure statement and a claim letter to the insurance carrier attached to the disclosure statement were sufficient to preserve the creditors' claims from the *res judicata* effect of the plan confirmation order, even though the language in the Chapter 11 plan, by itself, was not sufficient to preserve such claims. The Court ruled that where a claim letter made part of the disclosure statement served as notice against "current and former directors and officers of Debtors," listed factual allegations of wrongdoing, and stated that anticipated damages exceeded "\$20 million," breach of fiduciary duty and fraudulent transfer claims were sufficiently preserved. Michael S. Fox, Robert W. Sadowski, Adam Friedman, Fredrick J. Levy, and Joshua S. Androphy of Olshan Grundman Frome Rosenzweig & Wolosky LLP represent the Creditors' Trustee.