

**“Fish Tank” Live at the Paris Hotel –
Will the Shooter be Able to Sell Its Assets Without Successor Liability
Tuesday, October 10, 2017 – 12:00-1:00pm
Paris Hotel, Rivoli CB**

Faculty

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**Successor Liability Cases in
Free & Clear Sales Under 11 U.S.C. §363**

I. Notice and Due Process Requirements

A. Known Unsecured Creditors Creditors – No Notice

1. 1st Circuit:
 - a. *In re Savage Indus., Inc.* 43 F.3d 714 (1st Cir 1994) – post- petition injury/products liability claim;
 - b. *Cousins Int’l Food Corp. v. Vidal*, 565 B.R. 450 (B.A.P. 1st Cir. 2017 – pre-petition alleged unlawful termination of employment claim.
2. 2nd Circuit - *In re Motors Liquidation Co.*, 829 F.3d 135 (2nd Cir. 2016), *cert. denied*, 2017 WL 1427591 (Apr. 24, 2017) – pre-petition defective ignition switch damage claim.
3. 6th Circuit – *Al Perry Enter., Inc. v. Appalachian Fuels, LLC*, 503 F.3d 538 (6th Cir. 2007) - sales commissions/sale order interpretation case.
4. 7th Circuit – *ItoFCA, Inc. v. MegaTrans Logistics, Inc.*, 322 F.3d 928 (7th Cir. 2003) – copyright/ownership of asset sold.

B. Known Secured Secured – No Notice

1. 7th Circuit – *In re Edwards*, 962 F.2d 641 (7th Circuit) – secured creditor.
2. 9th Circuit BAP – *In re Ex-Cel Concrete Co., Inc.*, 178 B.R. 198 (B.A.P. 9th Cir. 1995).

C. **Unknown Unsecured Creditors**

1. 5th Circuit:

- a. *In re Mooney Aircraft, Inc.*, 730 F.2d 367 (5th Cir. 1984) – unknown future claimant.
- b. *In re Placid Oil Co.*, 753 F.3d 151 (5th Cir. 2014) – unknown future contingent claimants.

2. 11th Circuit – *Epstein v. Official Comm. Of Unsecured Creditors of the Estate of Piper Aircraft Corp. (In re Piper Aircraft Corp.)*, 58 F.3d 1573 (11th Cir. 1995) – future claimants not holding claims against debtor.

II. **11 U.S.C. §363(f) “Interests”**

A. **Non-Statutory “Claims”**

1. 3rd Circuit – *In re Trans World Airlines, Inc.*, 322 F.3d 283 (3rd Cir. 2003) – employment discrimination claims and travel voucher program for flight attendants “interests” to be sold free and clear.

2. 8th Circuit – *Cibulka v. Trans World Airlines, Inc.*, 92 Fed. Appx. 366 (8th Cir. 2004) – disability discrimination actions “interests” to be sold free and clear.

B. **Statutory “Claims”**

1. 4th Circuit – *In re Lechie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996) – amounts owed under Benefit Fund and Benefit Plan of the Coal Industry Retiree Health Benefit Act of 1992 are interests subject to 363(f) sale.