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Delaware Bankruptcy Court Dismisses "Delaware Two-Step" Filing for Lack of Good Faith in *In re Bedmar, LLC*

By Richard J. Cooper, David H. Botter, Thomas S. Kessler and Jack Massey*

In this article, the authors review a bankruptcy court decision dismissing a Chapter 11 case for lack of good faith under Bankruptcy Code Section 1112(b).

Judge J. Kate Stickles of the U.S. Bankruptcy Court for the District of Delaware (the Court) has dismissed the Chapter 11 case of Bedmar, LLC (Bedmar) for lack of good faith under Bankruptcy Code Section 1112(b).[1]

Just six days prior to the Chapter 11 filing, Bedmar's ultimate parent company, National Resilience Holdco, Inc., and other affiliated entities (collectively, National Resilience) effectuated a series of divisional mergers under Delaware law to effectively transfer underperforming leases (the Leases) to the newly-formed Bedmar, and to separate them from the revenue-generating entities within the National Resilience family. The purpose of Bedmar's Chapter 11 filing was to reject the Leases and utilize a special feature of the Bankruptcy Code – Section 502(b)(6) – which allows debtors to cap long-term lease liabilities. The application of that provision would have reduced Bedmar's total lease obligations from approximately $372 million over approximately 15 years to just $32 million. National Resilience capitalized Bedmar prefiling with $41.4 million in cash and receivables, i.e., just enough to fund the bankruptcy case and the capped lease liabilities.

Certain Lease counterparties (the Landlords), as well as the U.S. Trustee, objected to the Chapter 11 filing on the ground that it was not filed in good faith. The Court agreed, holding that the case did not serve a valid bankruptcy purpose because Bedmar had more in assets than expected liabilities, and that its filing was instead intended to gain a tactical advantage vis-à-vis the Landlords. The Court's ruling acknowledged precedent from the U.S. Court of Appeals for the Third Circuit holding that, under other circumstances, a debtor may file for the primary purpose of using Section 502(b)(6) to cap liabilities, highlighting the importance of the "valid bankruptcy purpose" holding.

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[1] Opinion, In re Bedmar, LLC, Case No. 25-11027 (JKS) (Bankr. D. Del. Aug. 29, 2025).

CASE BACKGROUND

National Resilience was founded in 2020 as a biotech manufacturing venture and grew quickly, raising approximately $2 billion in equity financing and acquiring and developing manufacturing sites in the United States. Certain sites performed well, but others failed to garner contracts, and by early 2025, the company was experiencing a liquidity crunch. Rather than restructure the entire enterprise's debt under Chapter 11, which would have put all of its assets in play for creditors seeking recovery, National Resilience undertook a series of divisional mergers under 6 Del. C. § 18-217, allocating the underperforming Leases to the newly formed Bedmar entity, which had no business operations or employees.

Immediately upon entering bankruptcy, Bedmar filed a motion to reject the Leases as well as a Chapter 11 plan that proposed to pay the Landlords "in full," with their claims capped pursuant to Section 502(b)(6). The Landlords, along with the U.S. Trustee, moved to dismiss the Chapter 11 case, arguing that it did not meet the good faith filing requirement of Section 1112(b).

DISMISSAL OF THE CHAPTER 11 CASE

After a two-day trial, the Court granted the motions and dismissed the case for lack of good faith. The Court held that the Chapter 11 petition did not serve a valid bankruptcy purpose, because (i) the debtor was not in genuine financial distress, and (ii) the bankruptcy filing would neither preserve a going concern (given that Bedmar was never operational) nor maximize the value of the estate (as there was no benefit to the Landlords to counterbalance the harm associated with capping their claims).

Further, the Court held that the petition had been filed to gain a tactical advantage vis-à-vis the Landlords, which is not a permitted use of the Bankruptcy Code in the absence of a valid reorganization purpose.[2]

The Court focused in particular on the first prong – the debtor's lack of genuine financial distress – finding that, on the contrary, its financial "obstacles" were "a fiction" that had been manufactured by National Resilience. In so finding, it rejected the debtor's assertion that a showing of genuine financial distress requires merely a comparison of an entity's assets (in this case, approximately $50 million in cash) with its liabilities (here, approximately $372

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[2] The Court found that the evidence "establishe[d] that the Enterprise carefully orchestrated the Corporate Transactions that led to the Debtor's bankruptcy filing" as shown in an email from the CEO of National Resilience stating that, "I used a legal tool to rid Resilience of the toxic sites. Now I'm down to a profitable core that will only grow from here. To me the best path to return value to shareholders." Opinion at 35.

million in lease liabilities), looking instead to the quantum of the capped liabilities under the Leases (totaling approximately $33 million) as compared to the entity's assets (which were, by design, greater than this liability).[3]

With respect to the second prong, the debtor argued that the filing was a necessity to prevent a race-to-the-courthouse by the Landlords, and for that reason, the Chapter 11 served a necessary function beyond gaining a tactical advantage in a two-party dispute. The Court rejected this argument, observing that Bedmar was current on its lease payments, and there was no indication of imminent enforcement actions on the part of the Landlords.

The Court's opinion specifically addressed Third Circuit precedent in *In re PPI Enters. (U.S.), Inc.*,[4] in which the U.S. Court of Appeals for the Third Circuit held that "an insolvent debtor can file under Chapter 11 in order to maximize the value of its [] asset[s] to satisfy its creditors, while at the same time availing itself of the landlord cap under § 502(b)(6)."[5] The Court held that Bedmar's case was distinguishable, because in *PPI*, the debtor was insolvent and had filed in order to facilitate its corporate parent's winddown in a foreign jurisdiction and liquidate its sole asset. Bedmar, by contrast, was not in financial distress, had no other assets, and the benefits of the Section 502(b)(6) lease cap would accrue solely to its affiliates, none of whom were in insolvency proceedings, with no other bankruptcy purpose.[6]

LESSONS FROM *BEDMAR*

The Court's decision in the *Bedmar* case is a cautionary tale with implications for entities that seek to isolate liabilities in a so-called "BadCo" and then liquidate or reorganize that entity through a Chapter 11 proceeding in the

[3] Notably, the Court's decision cites no precedent for the proposition that the relevant quantum of liabilities for purposes of comparing to assets is the total liability after application of the Section 502(b)(6) cap, rather than prepetition (and uncapped) total liabilities.

[4] In re PPI Enters. (U.S.), Inc., 324 F.3d 197 (3d Cir. 2003).

[5] In re Integrated Telecom Express, Inc., 384 F.3d 108 (3d Cir. 2004) (describing the holding in In re PPI Enters).

[6] Notably, courts in the Third Circuit impose a significantly higher bar with respect to the good faith requirements of Section 1112(b) than do courts in other circuits, assigning to the debtor the burden of showing good faith. See LTL Mgmt., LLC v. Those Parties Listed on Appendix A to Complaint (In re LTL Mgmt., LLC), 64 F.4th 84, 100 (3d Cir. 2023). Query whether Bedmar would have fared better in, for example, the Southern District of New York, where a party seeking to dismiss a bankruptcy case for lack of good faith bears the initial burden and must establish not only an objective lack of good faith, but also subjective bad faith by the debtor. See In re General Growth Properties, Inc., No. 09-411977 (Bankr. S.D.N.Y. Aug. 11, 2009). In matters of good faith, as in many aspects of bankruptcy practice, venue can be paramount.

bankruptcy courts of the Third Circuit. Given the facts of this case, it is unlikely to precipitate a shift in existing caselaw holding that a debtor in genuine financial distress may avail itself of the Section 502(b)(6) lease liability cap. Instead, *Bedmar* adds to a growing body of caselaw holding that in order to take advantage of the protections of the Bankruptcy Code, a company must demonstrate genuine financial distress, and courts remain skeptical of tactical pre-filing reorganizations designed to surgically limit the assets available to creditors in a restructuring.[7]

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[7] See generally LTL Mgmt., LLC, supra (dismissing Chapter 11 case of an entity created through divisional merger for purposes of isolating mass tort liabilities in a single entity, on grounds that the company was not in genuine financial distress); In re Aearo Technologies, LLC., No. 22-02892-JJG-11 (Bankr. S.D. Ind. June 9, 2023) (dismissing Chapter 11 case of entity facing tort liability on grounds that no financial distress existed where parent company had agreed to fund litigation).