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## **Sixth Circuit Revisits Trustee Liability and Scope of Quasi-Judicial Immunity**

by

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In *Grant, Konvalinka and Harrison, P.C. v. Banks (In re McKenzie)*, 2013 U.S. App. LEXIS 10491 (6th Cir. May 24, 2013), the United States Court of Appeals for the Sixth Circuit revisited the issues of when a trustee can be held liable and the scope of quasi-judicial immunity.

The chapter 11 trustee in *McKenzie* filed three civil actions. The litigation centered on the transfer of a fifty-acre parcel of land from an entity in which the Debtor held a 50% interest to a newly-formed entity in which the Debtor held no interest. Addressing one of the three actions (the Trustee's adversary proceeding to avoid the transfer), the Bankruptcy Court granted the defendants' motion to dismiss, concluding that the Trustee failed to aver a transfer of the Debtor's interest in property; while the Debtor owned a one-half interest in the property's corporate owner, the 50-acre parcel itself was not property of the estate.

One of the Defendants, in turn, filed two adversary proceedings against the Trustee, and sought permission to bring a third action against the Trustee in state court pursuant to the Barton doctrine (which limits jurisdiction over certain claims to Bankruptcy Court), on grounds of malicious prosecution and abuse of process. The Bankruptcy Court dismissed the two adversary proceedings on grounds that they were barred by quasi-judicial immunity. The Bankruptcy Court also denied the defendant permission to sue the Trustee in state court. On appeal, the Defendant advanced two arguments: first, the Trustee's actions were outside the scope of his authority; second, the Trustee acted without prior Bankruptcy Court approval.

The Sixth Circuit addressed the prior approval argument first. While noting that obtaining prior bankruptcy court approval would typically shield a trustee from claims other than claim for breach of fiduciary duty, the Sixth Circuit concluded that "a trustee is not required to obtain prior court approval in order to invoke quasi-judicial immunity from suit by a third party for actions taken by the trustee on behalf of the estate and within the scope of his authority." *Id.* at \*18-\*19.

With regard to the defendants' ultra vires argument, the Sixth Circuit observed that the only context in which courts have found a trustee to be acting outside the scope of his authority has been where the trustee has seized property which is not estate property. The defendants sought to apply the aforementioned authorities to the Trustee's litigation on the theory that the Trustee was attempting to seize property that was not an asset of the estate. The Sixth Circuit ruled that the Trustee did the right thing: the Trustee went to court for the purpose of determining the parties' respective rights to the property in question, as opposed to attempting to unilaterally seize same. Accordingly, the Sixth Circuit held that the Trustee did not act ultra vires.