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Same Day Second Circuit Summaries by Wrobel & Schatz LLP

In re: Chrysler LLC et al., 09-2311-bk (2d Cir. January 25, 2010)

February 8, 2010

in [Bankruptcy](#)

[Link to Case](#)

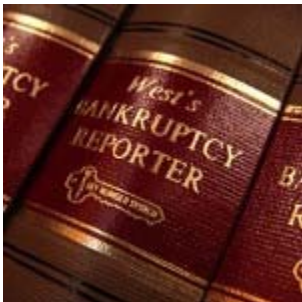
Keywords:

Panel: Jacobs, Kearse, and Sack

Opinion by: Jacobs

Appeal from: On remand from Supreme Court

Result: Prior decision vacated and appeal dismissed



§ 363 Asset Sale

By decision dated August 5, 2009, discussed [here](#), the Second Circuit approved the §363 asset sale of Chrysler and rejecting the claims of a group of pension funds and tort plaintiffs that the asset-sale was a disguised (“sub rosa”) plan of reorganization that short circuits the requirements of Chapter 11. By order dated December 14, 2009, [State Police Pension Trust, et al. v. Chrysler LLC et al.](#), 09-285, 2009 WL 2844364, 558 U.S. ___ (December 14, 2009), the Supreme Court vacated the decision and ordered the appeal dismissed as moot.

The Washington Legal Foundation, a conservative advocacy group that purports to “champion[] free market principles, limited and accountable government, individual rights, business civil liberties, and legal ethics”, has [this](#) to say about the vacated Second Circuit decision:

The Second Circuit’s opinion marked the most egregious endorsement yet of troubled firms’ use of the “quick sale” option of Section 363 of the Bankruptcy Code to avoid Chapter 11’s creditor-

protective provisions. The Indiana pensioners' appeal had sought to prevent this end-run by forcing the United Auto Workers (and others) to return to the bankruptcy estate the \$4.6 billion they received as part of the sale, whereby senior secured creditors could at last be made whole. The Supreme Court's order ended the year-long Chrysler bankruptcy battle without squarely deciding the important issues raised—but setting aside what had been an unfortunate precedent from an important court.

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