PUBLICATIONS

Time to Revisit Equitable Mootness

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Respected appellate judges have condemned the judicially created doctrine of "equitable mootness" for at least the past 20 years. That doctrine allows an appellate court to avoid reaching the merits of an appeal from a Chapter 11 plan confirmation order. *See, e.g., In re Nordhoff Invs. v. Zenith Elecs. Corp.*, 258 F. 3d 180,185 (3d Cir. 2001) ("doctrine prevents ... court from unscrambling complex bankruptcy reorganization ... [plans] ."). In 1994, Judge Frank Easterbrook, speaking for the U.S. Court of Appeals for the Seventh Circuit, however, "banish[ed] 'equitable mootness' from the local "lexicon." *In re UNR Indus.*, 20 F. 3d 766, 769 (7th Cir. 1994). Most recently, Judge Cheryl Ann Krause of the U.S. Court of Appeals for the Third Circuit, in a concurring opinion on July 21, 2015, urged the court to "consider eliminating, or at the very least reforming equitable mootness." *In re One2One Communications, LLC*, 2015 WL 4430302, at *7 (3d Cir. July 21, 2015). In this article, SRZ partner Michael L. Cook discusses two recent decisions from the U.S. Courts of Appeal for the Third and Ninth Circuits that confirm why equitable mootness should be revisited.

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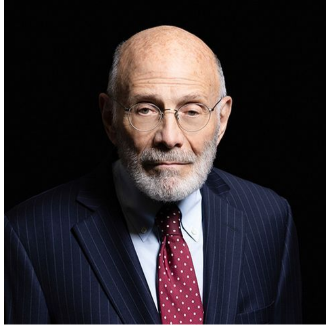

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