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Ninth Circuit Gives Creditors' Committee Members Limited Litigation Protection

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“Any ... suit [against creditors’ committee members for their official acts] must be brought in the bankruptcy court, or in another court only with the express permission of the bankruptcy court,” held the U.S. Court of Appeals for the Ninth Circuit in *In re Yellowstone Mountain Club LLC*. Modifying the lower courts’ broad dismissal of the plaintiff’s suit against the chairman of the creditors’ committee (“Committee”) in the district court (“another forum”), the Ninth Circuit found that: (a) the prior-leave requirement protects Committee members, not just bankruptcy trustees; (b) claims against Committee members based on asserted pre-bankruptcy “tort, contract and fraud” could be brought outside the bankruptcy court without prior permission; and (c) a Committee member is not “entitle[d] ... to immunity for all actions as” a member. In this article, of counsel Michael Cook discusses the Ninth Circuit’s decision that lawsuits against creditors’ committee members must be brought in the bankruptcy court.

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