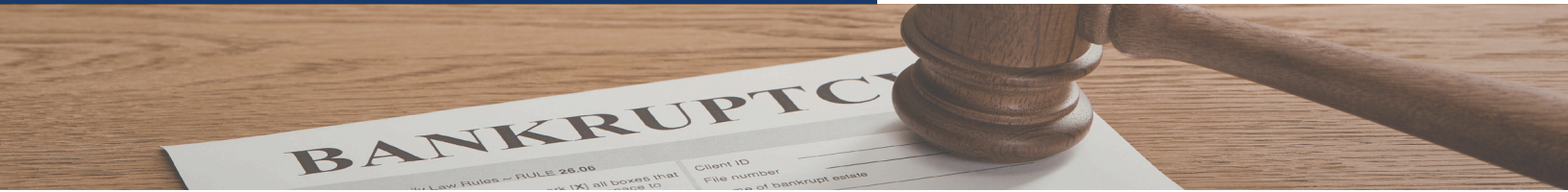


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Second Circuit Decision Clarifies That Estate Representatives May Settle Veil-Piercing Claims in Bankruptcy Cases

The Second Circuit Court of Appeals recently issued a notable decision in *In re Kwok*, holding that the debtor's bankruptcy trustee, as opposed to the debtor's creditors, had standing to assert veil-piercing claims against one of the debtor's affiliated entities. The decision is important because it clarifies that representatives of a debtor's bankruptcy estate have broad authority to pursue and settle litigation claims that are generally available to creditors.

The bankruptcy trustee in the *Kwok* case had ruled that certain non-debtor entities (nominally owned by Mr. Kwok's daughter) were alter-egos of the debtor under a theory of "reverse veil-piercing." The Second Circuit concluded that Bankruptcy Code section 544(a) gives the bankruptcy estate the right to pursue claims that could be pursued by any creditor provided that the claim was a "general" claim, and not a "direct" claim by a creditor for a "particularized injury."

The decision is also significant because it does not run afoul of the U.S. Supreme Court's decision in *Purdue Pharma* which held that courts can no longer grant non-consensual releases (outside the asbestos context) of "direct" claims held by creditors. Importantly, the *Kwok* decision bolsters the ability of debtors and trustees to use Chapter 11 as a dispute resolution mechanism in settling alter-ego and veil-piercing claims.

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