

The Supreme Court Clarifies The Robinson-Patman Act As It Applies to Competitive Bid Situations

By Christopher E. Ware

In its first of three antitrust opinions this term, the Supreme Court limited the reach of the Robinson-Patman Act in competitive bid situations. Volvo Trucks North America, Inc. v. Reeder-Simco GMC, 126 S.Ct. 860 (January 10, 2006). The Reeder opinion is a victory for sellers who want to reward dealers or implement legitimate marketing strategies in competitive bid situations.



The Robinson-Patman Act, 15 U.S.C. § 13, generally prohibits a seller from offering different prices to similar purchasers of the same goods at the same time (“discriminating”) if the discrimination might lessen competition between competitors. Congress passed Robinson-Patman to protect small independent retailers and their independent suppliers from large chain stores that had the power to demand lower prices from sellers. Throughout the Act’s history, courts and commentators have disagreed over the injury a plaintiff must show to prove a Robinson-Patman violation. Recently, commentators have also debated whether courts should require Robinson-Patman plaintiffs to show injury to competition in the entire relevant market.

After the Supreme Court’s Reeder decision, we now know that in competitive-bid situations, sellers can offer different prices to different dealers for different bids and that plaintiffs cannot prove a Robinson-Patman violation using minimal evidence of injury. Also, it appears that a majority of the court (7-2, Stevens and Thomas dissenting), favors some sort of injury-to-market-place-competition requirement.

The Reeder dispute arose out of the competitive bidding process for heavy-duty trucks. To buy heavy-duty trucks, buyers solicit bids from truck dealers. When a dealer, such as Reeder, receives a potential order, it asks the manufacturer, here Volvo, for price concessions from the wholesale price. The dealer then includes any price concession in its bid for the buyer’s order. The dealer purchases trucks from Volvo only if it wins the buyer’s order.

When Reeder learned that it received smaller pre-bid price concessions than another Volvo dealer, it suspected that Volvo was trying to eliminate Reeder as a Volvo representative. It went on the offensive by suing under Robinson-Patman and an Arkansas dealership law.

To prove its Robinson-Patman claim, Reeder compared concessions it received when it competed against non-Volvo dealers to concessions other Volvo dealers received when

competing against non-Volvo dealers for different sales. Reeder pointed to just two occasions when it competed head-to-head with other Volvo dealers. On one occasion, neither dealer won the bid. On the other occasion, the other Volvo dealer won, but received a larger discount than Reeder only after it won the bid. Reeder won at trial and in the Eighth Circuit Court of Appeals. See, Volvo Trucks North America, Inc. v. Reeder-Simco GMC, 374 F.3d 701 (8th Cir. 2004).

The Supreme Court reversed. The court disregarded all of the evidence of alleged discriminatory pricing for different sales to different customers. The court said that in competitive bid

Continued on page 2

Inside this Issue

The Supreme Court Clarifies The Robinson-Patman Act As It Applies to Competitive Bid Situations	1
May 2006 State Bar Convention: Business Law Section Schedule	2
The Bankruptcy “Means Test” under the New Bankruptcy Code	3
Secured Letters Of Credit And The Bankruptcy Code § 502(b)(6) Cap On Lease Rejection Damages*	5
Board Roster	7

2 Business Law News

Continued from page 1

situations a dealer's competitors are only those dealers competing for the same sale to the same buyer. Evidence of different price discounts for different bids, accordingly, does not show that Volvo sold goods at a discriminatory (lower) price to Reeder's competitors. Likewise, the court said that the head-to-head evidence of different concessions post-bid or for losing bids was insufficient to substantially affect competition between Reeder and the "favored" dealer. That is, Reeder did not show it was sufficiently harmed.

The court closed by emphasizing that even if the court accepted Reeder's evidence of its own injury, it would "resist interpretation geared more to the protection of existing competitors than to the stimulation of competition." After Reeder, Robinson-Patman plaintiffs probably cannot prevail when there is no evidence that a favored dealer has market power, the alleged selective pricing actually fosters competition or the favored purchasers are not large stores or chains.

Reeder signals the court's willingness to hold plaintiffs' feet to the fire on the Robinson-Patman injury requirements. In so doing, the court alleviated some concerns for sellers who are leery of Robinson-Patman, but want to reward aggressive dealers or pursue legitimate marketing programs in competitive-bid situations. Although Reeder is a victory for sellers, when selling to dealers making simultaneous bids to the same buyer, a seller should probably not offer different prices. Moreover, although the court's closing comments are potentially important, Reeder does not lessen the importance of Robinson-Patman for open market sales. ■

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May 2006 State Bar Convention Business Law Section Schedule

Wednesday, May 3, 2006

9:00 a.m. - 5:00 p.m. • Ballroom C

Program Chair: Atty. Walter J. Skipper, Quarles & Brady LLP, Milwaukee

- 8:30 Breakfast (Provided by the Business Law Section)**
- 9:00 Acquiring a Business – Tax Issues to Consider**
Atty. Daniel P. Cooper, Reinhart Boerner Van Deuren s.c., Milwaukee
Atty. Robert J. Misesy Jr., Reinhart Boerner Van Deuren s.c., Milwaukee
- 9:45 A Privately-Held Business – What Every Business Lawyer Should Know About Gift and Estate Tax and Succession Planning**
Atty. Catherine M. P. Hertzberg, Davis & Kuelthau SC, Milwaukee
- 10:15 Non-Compete Agreements: Trends and Developments**
Atty. Nola Hitchcock Cross, Cross Law Firm SC, Milwaukee
- 10:45 Break**
- 11:00 Organizing an LLC – Hot Topics in Drafting an LLC Operating Agreement**
Atty. Joseph D. Masterson, Quarles & Brady LLP, Milwaukee
- 11:30 Acquiring a Business - How to Establish CEO Compensation Packages and Agreements**
Atty. Walter J. Skipper, Quarles & Brady LLP, Milwaukee
Atty. Oleg Feldman, Quarles & Brady LLP, Milwaukee
- 12:00 Lunch (Provided by the Business Law Section)**
- 1:00 Tap Dancing in the Minefields – Dealing with Financially Distressed Customers and Vendors**
Atty. Timothy F. Nixon, Godfrey & Kahn SC, Green Bay
- 1:50 The Impact on Business of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005**
Atty. Ralph C. Anzivino, Marquette University Law School, Milwaukee
- 2:40 Break**
- 2:55 Legal Counsel's Responsibilities: Practical Ethical Issues Raised by Recent Tax Shelter & IRS Circular 230 Regulations**
Atty. Michael G. Goller, Reinhart Boerner Van Deuren s.c., Milwaukee
- 3:45 What Every Legal Counsel Should Know About Data Privacy and Security Issues**
Atty. Mark F. Foley, Foley & Lardner LLP, Milwaukee
- 4:35 A Primer on Hedge Funds – Trends and Developments**
Atty. Douglas J. Tucker, Quarles & Brady LLP, Milwaukee
- 5:00 Reception (Cocktail Hour) - Meet & Greet Convention Participants**



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The Bankruptcy “Means Test” under the New Bankruptcy Code

By Ralph C. Anzivino

The new “means test” created by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) went into effect on October 17, 2005. Many attorneys have been scrambling to absorb the voluminous changes to the Bankruptcy Code. Clearly, the most discussed and dreaded change has been the implementation of a “means test” for those individuals seeking to use Chapter 7 – Liquidation.

The objectives in creating the “means test” were ostensibly twofold. First, it was argued that those who file Chapter 7 bankruptcy and secure the benefits of a near-immediate discharge should be a “need-based” debtor. In other words, the benefits of a Chapter 7 should be reserved for those who truly need it. Second, it was argued that if a debtor has sufficient funds available after comparing the debtor’s income and living expenses, the debtor should be required to make some effort to repay his/her creditors. The purpose of this article is to explain the “means test” as developed by Congress, and you can judge for yourself whether Congress has achieved its objectives.

There are several prerequisites that must be satisfied before the individual debtor is subject to a “means test” analysis. First, the individual debtor must be one whose debts are primarily consumer debts. Second, within 180-days of filing their bankruptcy petition, every individual must receive credit counseling from an approved budget and credit counseling agency which includes performing a budget analysis. Once these two prerequisites are satisfied, the debtor will be subject to a “means test” determination. The purpose of the “means test” is to determine whether the debtor will be permitted to proceed with a Chapter 7- Liquidation, or whether their case be either dismissed or converted to another chapter.

The legal standard for dismissing or converting a Chapter 7 case is whether the granting of a discharge to a debtor would be an abuse. There are fairly limited circumstances that constitute “abuse.” However, a presumption of abuse is statutorily created for every debtor that fails the “means test.”

The “means test” is essentially a budget analysis whereby the debtor’s monthly income is compared with the debtor’s monthly living expenses to determine whether the debtor’s net income exceeds certain statutorily defined standards. If the net income exceeds the statutorily defined standards, then a presumption of abuse exists. On the other hand, if the net income does not exceed the statutorily defined standards, then no presumption of abuse exists, and the case should proceed through Chapter 7, absent a finding of other abuse.

The first calculation is to determine the debtor’s gross, current monthly income. The debtor’s current monthly income is statutorily defined as the average monthly income from all sources that the debtor receives during the 6-month period prior to the petition without regard to its taxability. Benefits received under the Social Security Act, and payments to victims of war crime and terrorism are excluded. In a joint case, both spouses’ incomes are included. In those cases where only one spouse files, the current monthly income of the non-filing spouse shall also be included unless the spouses are legally separated and the filing spouse declares such status under the penalty of perjury.

Once the debtor’s gross monthly income is calculated, there is a preliminary test within the “means test” to determine whether the debtor must proceed to calculate their monthly net income. If the debtor’s gross monthly

income multiplied by twelve is equal to or less than the annual median income for a comparable family in Wisconsin, the individual debtor is not subject to the “means test.” The Census Bureau calculates and publishes the median family income for each state by family size. As of year end 2004, the median family income in Wisconsin for one person was \$37,873; for two people, \$48,281; for three people, \$58,135; and for four people, \$67,869. It is necessary to add \$6,300 for each family member above four. In other words, for a family of four in Wisconsin if their gross annual income is less than \$67,869 the debtor is not subject to the “means test,” and no presumption of abuse arises.

If the debtor’s gross annual income, however, exceeds the Wisconsin median family income, it is necessary to calculate the debtor’s monthly expenses. The debtor’s monthly expenses are a composite of expenses defined by the IRS and BAPCPA. The monthly expenses broadly fit into one of two categories. The first are Deductible Expenses According to IRS Standards. The second are Other Deductible Expenses Approved by BAPCPA, but not listed in the IRS Standards. A description of each category and the approved expenses in each category is as follows:

I. Deductible Expenses according to IRS Standards

1. Expenses for food, clothing, household supplies, personal care and related expenses are determined by the IRS according to their National standards. In Wisconsin for a family of four the approved monthly amount for this category is \$1,564.
2. The monthly approved

Continued on page 4

4 Business Law News

Continued from page 3

expenses for housing, utilities and transportation is determined by Local IRS standards. The approved monthly expense for a family of four for housing and utilities in Milwaukee County is \$1,393. For transportation, the IRS approved costs per month are \$247 for one car, and \$341 for two cars.

3. "Other necessary expenses" as defined in the Internal Revenue Code are deductible, but in the actual amounts experienced by the debtor.
4. Taxes. Federal, State and Local income taxes, social security taxes, Medicare taxes are all deductible. This deduction is payroll taxes to reduce the gross income to net income.
5. Mandatory payroll deductions. This deduction includes mandatory retirement contributions, union dues, etc., but not discretionary deductions.
6. Life insurance for the debtor.
7. Court ordered support payments.
8. Educational expenses necessary for the debtor's employment, or for a physically or mentally challenged child.
9. Childcare expenses.
10. Health care expenses not covered by insurance or a health savings account.
11. Telecommunications services necessary for the health and welfare of the debtor and the debtor's dependents.

II. Other Deductible Expenses Approved by BAPCPA, but not listed or addressed by the IRS Standards:

1. Premiums for health insurance, disability insurance and contributions to health savings accounts.
2. Expenses for an elderly, chronically ill or disabled member of the household.
3. Any expenses under the Family Violence Prevention and Safety Act.
4. The amount by which the debtor's home energy costs exceed the allowed IRS standards.
5. Educational expenses for a dependent child under 18 for elementary and secondary school not to exceed \$125/month/child.
6. Verifiable food and clothing expenses above the IRS allotment.
7. Continued charitable contributions.
8. Contractual payments for the next 60-months for secured debts (car and house payments), priority debts (specified in 11 USC § 507) and arrearages on secured debt, with the total amount being divided by 60 to arrive at a monthly expense.
9. Projected Chapter 13 administrative expenses.

Once the monthly amount of all these expenses is determined, the debtor's monthly expenses are deducted from the debtor's gross income to arrive at the debtor's net monthly income.

BAPCPA provides that "abuse" shall presume to exist when the debtor's currently monthly income minus the debtor's monthly expenses when multiplied by 60 is greater than the smaller of either:

- a. 25% of the debtor's non priority claims in the case, or \$6,000, which ever is the larger of the two; or

- b. \$10,000.

More simply, if the debtor's monthly net income is greater than \$166.67, then a presumption of "abuse" exists. If the debtor's monthly net income is less than \$100.00, no presumption of abuse exists. Between \$100 – 166.67, it depends on the amount of unsecured, non priority debt in the case. The monthly 'abuse' standard changes with the amount of unsecured, non priority

Unsecured, non priority debt	25% of monthly amount/60
\$24,000	\$100.00
\$28,000	\$116.67
\$32,000	\$133.34
\$36,000	\$150.00
\$40,000	\$166.67

debt as follows:

For example, if the unsecured non priority debt in the case is \$28,000, the presumption of abuse will arise if the debtor's monthly net income exceeds \$116.67. Once the unsecured, non priority debt exceeds \$40,000, the \$10,000 or the \$166.67 monthly standard is applicable.

Whenever the debtor's monthly net income exceeds the statutorily defined amounts, the presumption of abuse arises. The presumption of abuse, however, can be rebutted by demonstrating "special circumstances" that justify additional expenses or adjustments of current monthly income that will reduce the debtor's net income below the abuse standards. Although not intended to be exclusive, the only two "special circumstances" noted in the code are a serious medical condition or a call or order to active duty in the military.

Finally, BAPCPA provides various mechanisms to ensure the relative accuracy of the income and expense calculations. Remember, the devil is always in the details. The actual monthly calculations are subject to attorney verification, scrutiny by the US Trustees Office and the financial information presented by the debtor will be subject to audits conducted on a random basis. In sum,

Continued on page 5

Continued from page 4

you can judge for yourself whether the “means test” has been carefully enough drafted to achieve its dual objectives. As an anecdotal note, Judge Dee McGarity, Chief Judge, Bankruptcy Court, Eastern District of Wisconsin, recently reported that for the period between April 20, 2005 and October 17, 2005 (the period between BAPCPA enactment and effective date) only 14% of the cases filed during that period would have failed the “means test.” The other 86% of cases would have not have been affected by the “means test.” ■

Ralph C. Anzivino is a Professor of Law at Marquette University Law where he teaches a variety of classes in the areas of contracts, creditor/debtor law, business bankruptcy, sales, and secured transactions.

Endnotes

- ¹ 11 USC § 707(b)(1)
- ² 11 USC § 109(h).
- ³ 11 USC § 707(b)(1).
- ⁴ 11 USC § 707(b)(2)(A).
- ⁵ 11 USC § 707(b)(3).
- ⁶ 11 USC § 101(10A)(A).
- ⁷ 11 USC § 101(10A)(B).
- ⁸ 11 USC § 707(b)(7)(B).
- ⁹ 11 USC § 707(b)(6).
- ¹⁰ http://www.usdoj.gov/ust/bapcpa/bci_data/median_income_table.htm
- ¹¹ 11 USC § 707(b)(2)(A)(ii).
- ¹² <http://www.irs.gov/businesses/small/article/0,,id=104627,00.html>
- ¹³ 11 USC § 707(b)(2)(A)(ii).
- ¹⁴ <http://www.irs.gov/businesses/small/article/0,,id=104827,00.html>
- ¹⁵ <http://www.irs.gov/businesses/small/article/0,,id=104623,00.html>
- ¹⁶ 11 USC § 707(b)(2)(A)(ii).
- ¹⁷ 11 USC § 707(b)(2)(A).
- ¹⁸ 11 USC § 707(b)(2)(B).
- ¹⁹ *Id.*
- ²⁰ 11 USC § 527(c); 11 USC § 707(b)(4)(C) & (D).
- ²¹ 11 USC § 307
- ²² 28 USC 586(f)

Secured Letters Of Credit And The Bankruptcy Code § 502(b)(6) Cap On Lease Rejection Damages*

By David I. Cisar and Rebecca H. Simoni

Bankruptcy Code § 502(b)(6) “caps” a landlord’s lease rejection damages claim against a debtor/tenant at the greater of (i) one year’s rent or (ii) 15 percent of the unpaid rent for the remaining term, not to exceed three years’ rent (the “Rent Cap”). A landlord’s claim for damages in excess of the Rent Cap is disallowed. The favored method of trying to avoid the Rent Cap is to require the tenant to obtain a standby letter of credit, upon which the landlord may draw if the tenant defaults. The tenant’s lender may secure the reimbursement obligation under the letter of credit agreement with collateral of the tenant, which sets the stage for the question of who loses if the letter of credit proceeds exceed the Rent Cap: the landlord, the debtor/tenant, or the letter of credit issuer.

Some landlords go the extra step, in an effort to avoid this dilemma, of requiring that the issuer commit not to secure the reimbursement obligation with assets of the tenant. In addition, the question arises whether the proceeds of the letter of credit should be applied against the landlord’s allowed claim under the Rent Cap, or whether the landlord may recover the allowed claim under the Rent Cap from the debtor while applying the letter of credit proceeds against the disallowed portion of the claim (that part that exceeds the Rent Cap).

In the recent case of *In re Mayan Networks Corp.*, 306 B.R. 295 (B.A.P. 9th Cir. 2004), Judge Klein, in a concurring opinion, concluded that the secured letter of credit issuer should suffer the loss if the proceeds of the secured letter of credit exceed the Rent

Cap. The case, especially the concurring opinion, has generated considerable discussion in bankruptcy circles and among letter of credit issuers.

The real issue on appeal was whether the letter of credit proceeds were to be applied against the claim under the Rent Cap or to the remainder (the disallowed portion) of the claim. On this issue, the primary opinion cites to the legislative history of § 502(b)(6) and concludes (based on *Oldden v. Tonto Realty Corp.*, 143 F.2d 916 (2d Cir. 1944), which is cited in the legislative history) that the letter of credit proceeds are to be applied against the claim under the Rent Cap, thus leaving the landlord with a reduced allowed claim. The case did not present the issue addressed by the concurring opinion because the \$648,966 letter of credit at issue which was secured by a \$650,000 deposit of the debtor’s cash was much less than the claim under the Rent Cap of \$2,701,535. 306 B.R. at 297. Thus, the concurring opinion is only dicta (which begs the question of whether the issue discussed was briefed).

In addition to being dicta, the concurring opinion’s patchwork of references to security deposits and the setoff provisions of § 553, the turnover provisions of § 542, and the temporary disallowance provisions of § 502(d), is simply not persuasive in the light of the purpose of § 502(b)(6) and the application of § 506.

First, the concurring opinion’s reliance on the legislative history of § 502(b) should be revisited. The leg-

Continued on page 6

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Continued from page 5

islative history states that the Rent Cap is premised on two considerations: (1) the contingent nature of lease rejection damages and the resulting difficulty of proof (in fact, prior to the 1934 bankruptcy amendments, a landlord's lease rejection damage claim was not even "provable"); and (2) the fact that landlord claims are qualitatively different in that the landlord retains the underlying asset, the real estate. 124 Cong. Rec., H11,093 94 (daily ed. Sept. 28, 1978). The legislative history focuses on the excess claim a landlord would have under a rejected long term lease. Despite this focus on the overly-large, contingent, questionable nature of a landlord's claim in the legislative history, the concurring opinion in *Mayan Networks* visits the Rent Cap damages limitation on the letter of credit issuer, whose position exhibits none of those features, and who had the foresight to take security for its contractual reimbursement right against the tenant.

Second, the concurring opinion's analogy of a letter of credit to a security deposit is unpersuasive, as the security deposit relationship (between the landlord and tenant) does not involve an adversely affected third party (the issuer) who is not the direct object of the Rent Cap and whose claim is secured by a security interest. The concurring opinion argues that the claim of a landlord who holds a security deposit that exceeds the Rent Cap claim is temporarily disallowed under § 502(d) until the excess amount of the security deposit is turned over to debtor under § 542. The concurring opinion then posits that, because the purpose of the letter of credit is similar to a security deposit, they must be treated the same. However, the turnover provisions of § 542 cannot be invoked to defeat a secured creditor's rights under § 506 (see below).

Third, a significant part of the concurring opinion seeks to limit the rights of the secured letter of credit issuer based on § 502(e) and § 509. Section 502(e) typically applies to co debtors, sureties and guarantors. 4 *Collier on Bankruptcy*, ¶ 502.06[2][b] (15th ed.

2003). It disallows claims for reimbursement or contribution of an entity that is liable with the debtor on, or that has secured the claim of a creditor, to the extent that: (a) the creditor's claim is disallowed, (b) the claim for reimbursement or contribution is contingent, or (c) the reimbursement or contribution creditor also asserts a subrogation claim. The primary purpose of § 502(e) is to prevent the assertion of duplicate claims when, for example, the reimbursement claim is still contingent or the creditor has both a reimbursement and subrogation claim. *Id.* at ¶ 502.06[2][c], [d] and [e]; *Great American Federal Savings & Loan Association v. Adcock Excavating Inc.*, 1990 WL 51219 (N.D. Ill. 1990) (which discusses the purpose and legislative history behind § 502(e)). Based on its analysis, the concurring opinion concludes that § 502(e) somehow invalidates the issuer's secured reimbursement claim.

Collier on Bankruptcy states that: "The importance of section 502 or section 509 election is relevant only to secured claims. A co-debtor should elect treatment as a reimbursement or contribution claimant if it has a lien on the debtor's property. On the other hand, a co debtor should elect subrogation if the underlying creditor's claim is secured." *Id.* at ¶ 502.06[2][e] (citing to 124 Cong. Rec., H11,094 (daily ed. Sept. 28, 1978)). *Collier* validates secured reimbursement claims notwithstanding potential § 502(e) disallowance.

Section 509 validates subrogation claims, but subordinates them to the claim of the primary creditor until its claim is paid, for the purpose of avoiding duplicate claims. The application of § 509 to the secured reimbursement right of the letter of credit issuer is questionable, as at most it leads to subordination of contingent subrogation claims. The letter of credit issuer is relying not on subrogation to the landlord (the landlord does not hold any collateral) in asserting its lien rights, but on its reimbursement contract. Moreover, if subrogation were really a problem the issuer could simply waive it and

rely on its reimbursement contract.

The concurring opinion gives the example that if the estate pays a landlord its claim under the Rent Cap and a secured guarantor pays the landlord the disallowed balance of the claim, the guarantor's reimbursement claim against the estate is disallowed under § 502(e), and the guarantor must return its collateral under § 542. *Mayan Networks*, 306 B.R. at 307. However, the opinion makes no mention of § 506 ("Determination of Secured Status") in its analysis.

Subsection 506(d)(1) provides:

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) such claim was disallowed only under section 502(b)(5) or 502(e)....

Even if the guarantor's or issuer's reimbursement claim is disallowed based on 502(e), that does not result in the issuer losing its lien, pursuant to § 506(d)(1). This was the conclusion of the court in *Tri Union Development Corporation*, 314 B.R. 611 (Bankr. S.D. Texas 2004) where the court, dealing with contingent bonding company claims (which were disallowed because they had not ripened) concluded: "The Court agrees. The bonding company's liens survive the determination that [its] claims are disallowed under § 502(e)(1). [It] may retain its lien position until such time as its contingent liability is eliminated." *Id.* at 622. This is the most direct answer to the issue.

Conclusion

While the concurring opinion in *Mayan Networks* purports to be a holistic analysis of numerous provisions of the Bankruptcy Code, the numerous analogies do not shed light on the issue. After rejecting the independence principle, the opinion concludes that a letter of credit issuer is covered by § 502(e), and therefore, to the extent the reimbursement claim exceeds the Rent Cap, it is to be disallowed. There is a signifi-

Continued on page 8

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Continued from page 6

cant hiatus to the next conclusion, that therefore the issuer must surrender its collateral, which is bridged only by analogy to § 542. The opinion ignores § 506(d)(1) which states that even though the reimbursement creditor's (issuer's) claim is disallowed, it retains its lien. Under § 506(d)(1), the secured letter of credit issuer does not bear the insolvency risk.

As noted by the primary opinion in *Mayan Networks*, letters of credit do not enjoy a comfortable place in bankruptcy law. However, they have been analyzed under the bankruptcy law in the context of an indirect preference. When an unsecured creditor shores up his position by obtaining a letter of credit within the preference period, and the issuer secures the letter with collateral of the debtor, it is not the issuer that loses, but the previously unsecured creditor. In *re Air Conditioning Inc.*,

845 F.2d 293 (11th Cir. 1988); In *re Compton Inc.*, 831 F.2d 586 (5th Cir. 1987). This conclusion is consistent with the objective of the preference statute.

Similarly, for secured letters of credit that are drawn when a tenant defaults, the landlord, to whom the Rent Cap limitation is directed, should lose. This is essentially the conclusion reached in *In re Stonebridge Technologies Inc.*, 291 B.R. 63 (Bankr. N.D. Texas 2003) where the court recognized that the independence principle of letters of credit was not the issue, and focused on recovering the excess proceeds received by the landlord, after apply the Rent Cap. Fundamental principles of letters of credit and secured transactions should not be sacrificed, especially when the letter of credit issuer was not the source of the problem § 502(b)(6) was intended to solve. ■

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