

# W|Brief

Issue 1 | April 2017



Welcome to the first edition of our quarterly update, W|Brief. Our aim with this newsletter is to provide you a concise source of developments in our firm's practice areas and to update you on our firm's continued growth. From a recent U.S. Supreme Court ruling on structured dismissals to the launch of our Mobility practice group, we hope you find W|Brief informative. We value our relationship with you and wish you continued prosperity in 2017.

Scott A. Wolfson  
Founding Member

## Mobility

### Wolfson Bolton Is Proud To Announce The Creation Of Its Mobility Practice Group

Wolfson Bolton PLLC announced the creation of its Mobility Practice Group. The Group, which is a natural fit for the boutique firm founded in 2009 in Troy, Michigan, will be headed by founding member Peter Bolton.

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## Bankruptcy

### Supreme Court Rejects Structured Dismissals That Violate Bankruptcy Priority Distribution Scheme

The United States Supreme Court recently held that "[a] distribution scheme ordered in connection with the dismissal of a Chapter 11 case cannot, without the consent of the affected parties, deviate from the basic priority rules that apply under the primary mechanisms the [Bankruptcy] Code establishes for final distributions of estate value in business bankruptcies." In *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973 (2017), a group of truck drivers held a \$12.4 million judgment against their former bankrupt employer, Jevic Transportation Company. In accordance with the Bankruptcy Code's distribution scheme, approximately \$8.3 million of the judgment was entitled to priority payment after Jevic's secured creditors, but before Jevic's unsecured creditors. Jevic's unsecured creditors' committee, however, agreed to a settlement under which the bankruptcy court would, among other things, dismiss Jevic's bankruptcy case and make distributions to Jevic's general unsecured creditors without any payment to the truck drivers. The truck drivers objected, arguing that the proposed settlement violated the Bankruptcy Code's priority distribution scheme by failing to pay priority creditors before general unsecured creditors.



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## Corporate/Finance

### Intercreditor Agreement Enforced Despite Restructuring of Priority Debt

The Bankruptcy Court for the District of Delaware recently upheld the terms of a pre-petition intercreditor agreement by ruling that the first lien rights of an asset based lending group were not impacted by the pre-petition restructuring of the lenders' debt. In *Salus Capital Partners, LLC v. Std. Wireless Inc. (In re Radioshack Corp.)*, 550 B.R. 700 (Bankr. D. Del. 2016), two groups of lenders provided Radioshack \$835 million in financing before Radioshack filed for bankruptcy, comprised of \$250 million provided by a term loan lender group and \$585 million provided by an asset based lending group.

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## Litigation

### Michigan Supreme Court Permits Jury Waiver Regarding Award of Attorney Fees



The Michigan Supreme Court recently held that a plaintiff waived her right to a jury regarding the award of attorney fees. In *Barton-Spencer v. Farm Bureau Life Ins. Co. of Michigan* (Mich. April 14, 2017), the plaintiff had signed an agreement stating that if the defendants were successful in future litigation, the plaintiff "agrees to reimburse [the defendants'] attorney fees and costs as may be fixed by the court in which suit or proceeding is brought" (emphasis added). All parties demanded a jury trial, and the jury subsequently found for defendants on their counterclaim and a portion of the plaintiff's breach of contract claim. The court later granted defendants' postjudgment motion seeking contractual attorney fees. The Court of Appeals reversed the trial court's decision to grant defendants contractual attorney fees because it found that the contractual language did not clearly show that the plaintiff waived her right to a jury regarding attorney fees. The Supreme Court disagreed and reversed the Court of Appeal's decision, stating, "The phrase 'fixed by the court' is not ambiguous. When the parties agreed to this provision, they agreed that the amount of attorney fees and costs would be fixed by a judge rather than a jury. In ordinary parlance, the word 'court' refers to judges." Contracting parties would be well-served by reviewing their boilerplate agreements in light of this decision and determining whether they adequately define jury rights.

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## Alternative Dispute Resolution/Facilitation

Scott A. Wolfson is a certified mediator with an excellent track record of bringing parties together to reach a settlement without the necessity of a trial. He mediates bankruptcy and commercial disputes. Scott is an appointed member of the Mediation Panel of the U.S. Bankruptcy Court for the Eastern District of Michigan and the Commercial Case Evaluation Panel of the Oakland County Circuit Court.

### Testing The Waters Of The Safe Harbor



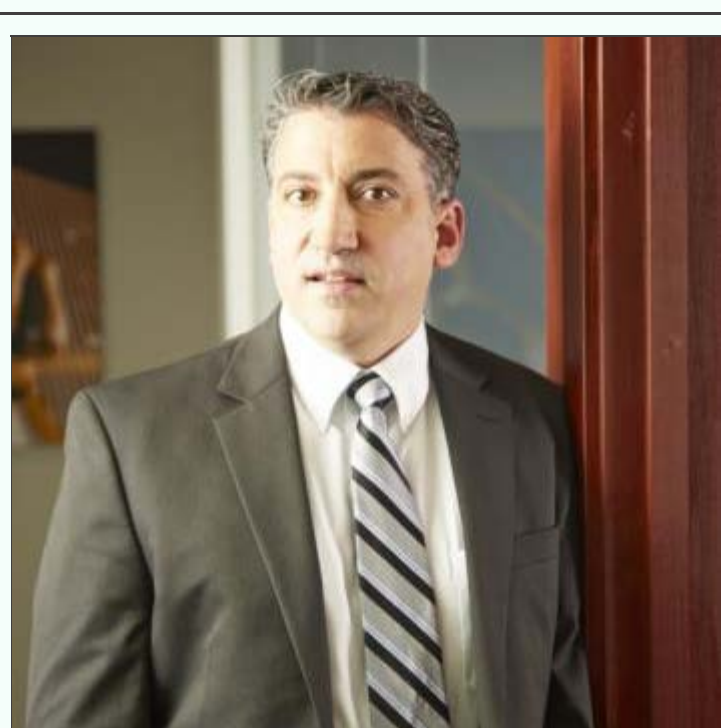
By: Anthony Kochis and Thomas Kelly

Payments made under supply-of-goods contracts, or contracts for the sale of goods, are often the subject of bankruptcy avoidance actions. Sections 546(e) and (g) of the Bankruptcy Code (11 U.S.C. § 546(e) and (g)) prohibit the avoidance and recovery of preferential and constructively fraudulent transfers made in connection with forward contracts and swap agreements. Specifically, section 546(e) protects settlement payments made to a forward contract merchant in connection with a forward contract, whereas section 546(g) protects transfers made to a swap participant in connection with a swap agreement.

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## Spotlight: Peter Bolton

Pete Bolton is a founding member of the firm. Bolton started his career as a commercial lender at National Bank of Detroit in 1990 following graduation from Michigan State University with a degree in Finance. Upon completion of four years of night school, he graduated Summa Cum Laude from the University of Detroit Mercy School of Law in 1997 where he was also an Associate Editor of the Law Review. At that time, he decided to leave his position in the bank's Syndications Department and start his legal career at the Honigman firm in Detroit. That is where he met the other founding member of the firm, Scott Wolfson. Following a number of career moves over the impending twelve years, including working as the Lending Product Manager at a computer software company and as the global head of Visteon's Supplier Risk Management Group, Pete and Scott joined forces to start their own firm. Pete is the current President of the Shrine Educational Fund, is an assistant golf coach for the Shrine High School Golf Team, and past chair of the Shrine Catholic Schools Unified School Board. Pete makes his home in Royal Oak, Michigan with his wife and two children. In addition to spending time with his family and volunteering, Pete enjoys golf, reading, and traversing his family's farm in Northern Michigan.



## Thanks for Reading!

Look for us at ABI Central States in Traverse City on June 8th-June 11th.

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