



U.S. Supreme Court Rules that a Debtor's Bankruptcy Plan Must Allow Secured Creditors to Credit-Bid by Stephen W. Switzer of Bingham, Greenebaum, Doll LLP. Reprinted with

The United States Supreme Court's recent decision in RadLAX Gateway Hotel, LLC v. Amalgamated Bank ensures that secured creditors in a bankruptcy proceeding will have the opportunity to credit-bid in auctions of collateral securing their claims. The RadLAX decision resolves a split between the circuit courts over this matter.

What is credit-bidding?

A secured creditor's right to credit-bid is designed to protect certain constitutional property rights and is based on the idea that a secured creditor should receive the benefits of its bargain. Credit-bidding allows a secured creditor to use the value of its claim in an auction of the collateral securing its claim.

For example, suppose a creditor has a \$1 million secured claim against a debtor and the debtor files a bankruptcy petition. If the debtor seeks to sell the collateral at auction, the creditor can bid up to \$1 million before being re-

quired to make any additional payments to purchase the collateral. If the creditor bids less than \$1 million and wins the auction, it receives the property and a deficiency claim in the amount the face value of the secured claim exceeds its bid.

Benefits of credit-bidding

Creditors use credit-bidding to protect the value of their collateral, since an inadequate sale price deprives the creditor of the full benefit of its claim. If the other bids at auction are unsatisfactory and below the value of the creditor's secured claim, the creditor may credit-bid to drive up the price or purchase the collateral itself.

Credit-bidding effectively allows the creditor to set a floor below which a third party may not purchase the collateral and ensures the creditor will either receive a satisfactory price for i

(Continued on page 4)

Inside this issue:

Bankruptcy and Credit Bidding	1
Tech Tip: Casemaker	2
Free CLE	3
Subscriber Renewals	5
BNA Content Changes	6
Bankruptcy Resources	7

Hamilton County Law Library

Hamilton County
Courthouse
1000 Main Street
Room 601
Cincinnati, OH 45202
T:513.946.5300
F:513.946.5252

Open Monday-Friday 8 - 4

[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

Tech Tip: Casemaker Access at the Hamilton County Law Library

Any subscriber may simply click on the Casemaker link from our list of databases from one of our seven workstations available here in the computer lab.

By: Julie Koehne

Follow these steps!

Case Law & News

Case Law & Forms

LexisNexis and Shepard's
Includes Ohio and Kentucky jury instructions, treatises, and national case law and statutes

Westlaw selected databases available

CCH Intelliconnect

LoislawConnect

FASTCASE

CaseMaker

Baldwin's Ohio Practice and Ohio forms

Forms, CLE, a

Forms - Ohio

Ohio and National **Transaction**

Ohio Forms - **Legal and Busine**

Ohio Jur Pleading and Practice

Ohio **Forms and Transactions**

Ohio Forms and Transactions **F**

Forms - National

Am. Jur. **Legal Forms 2d**

Am Jur. **Pleading and Practice**

Am. Jur. Legal Forms 2d: **Estate**



OHIO STATE BAR ASSOCIATION

Casemaker OSBA CLE OSBA Report Online Media Center Supreme Court Insurance

I. about OSBA

II. legal PROFESSIONALS

III. for PUBLIC

IV. news & PUBLICATIONS

V. osba MEMBERSHIPS

VI. osba STORE

Select the type of search, enter the search terms, select the jurisdiction and then click on the search button.

Casemaker THE LEADER IN LEGAL RESEARCH™

Back to 2.2 Home Client My Folders History Videos Help Webinar Sign Out

OH SEARCH search tips

KEYWORD CITATION PARTY SECTION DOCKET No. Turn off Autocorrect ?

Peruse your result list.

Casemaker THE LEADER IN LEGAL RESEARCH™

contract binding OH SEARCH search tips My Folder

KEYWORD CITATION PARTY SECTION DOCKET No. Turn off Autocorrect ?

Cases View All 8,830

1. **Appalachian Railcar Services, Inc. v. Boatright Enterprises, Inc., 602 F.Supp.2d 829 (W.D.Mich. 2008)**

Appalachian Railcar Services, Inc. v. Boatright Enterprises, Inc., 602 F.Supp.2d 829 (W.D.Mich. 2008) 23

United States District Court, Sixth Circuit March 25, 2008 602 F.Supp.2d 829

...Enterprises, & Board on Count 3 (Tortious Interference with Contract): Granting Summary Judgment to Defendant Board on Count ...

...to Consumers Energy on Count 6 (Breach of Contract): Granting in Part & Denying in Part Summary Judgment ...

...is a diversity action arising out of a contract between plaintiff Appalachian Page 834 Railcar Company ("ARCS" ...

...exercised its contractual right to unilaterally terminate the contract. Consumers solicited and received several bids for the ...

2. **Hadix v. Johnson, 694 F.Supp. 259 (E.D.Mich. 1988)**

Hadix v. Johnson, 694 F.Supp. 259 (E.D.Mich. 1988) United States District Court, Sixth Circuit July 1, 1988 17

694 F.Supp. 259

...in this case, PLS operates pursuant to a contract with the Department of Corrections (Plaintiffs' exhibit 40 ...

...similar aspects of PLS operations. According to its contract, "operational and administrative control and responsibility" are vested ...

...are being carried out in compliance with the contract. Further pressure is exerted by the state in ...

Free CLE

Due to increased attendance, registration in advance is now required for all Law Library CLEs.

Free to subscribers; \$35 for non-subscribers

To register, call 513.946.5300 or via email reference@cms.hamilton-co.org

Casemaker CLE

Did you know that Ohio State Bar Association members have free access to Casemaker?

Join Rebecca Skeeles of OSBA for a free CLE!

Tuesday, December 4, 2012

1-2pm

1.0 hour of general CLE in Ohio

Westlaw CLE

Tuesday, December 11, 2012

Noon-1pm

1.0 Hour of general CLE in Ohio

The Ohio Supreme court requires active attorneys and attorneys registered for corporate status to complete and report 24 hours of accredited CLE activities every two years. This year, attorneys with last names beginning with M-Z are required to report. For more info on Ohio CLE regulations, check out the Ohio Supreme Court's website-<http://www.supremecourt.ohio.gov/AttySvcs/CLE/default.asp>

Looking for other CLE opportunities in the Cincinnati area? You can search for approved seminars here-
<http://www.supremecourt.ohio.gov/AttySvcs/CLE/ActivitySearch/>

Sad News

It is with much sadness that we notify law library subscribers and friends that Mary Ann Sweeney, our library assistant, a long-time employee of the library, and our dear friend, passed away on October 30 of complications associated with cancer. Mary Ann had been very private about her illness, so we apologize if this comes as a shock. The staff and Mary Ann's family is most appreciative of the kindnesses and concern shown by our patrons and colleagues during a difficult period.

People have inquired about a fund for memorial gifts in Mary Ann Sweeney's honor to assist her young adult children with expenses. The family has set up an account at PNC Bank for people who want to contribute to the children. Donors may go to any PNC Bank branch location directly and donate to the Mary Ann Sweeney Estate/Children of Mary Ann Sweeney.



Public Announcement

The Hamilton County Law Library Resources Board announces its 2013 meeting schedule. All meetings will be held at 1:00 p.m. in the Law Library's Board Room. Members of the public are welcome to attend. Minutes of previous meetings are posted on the web at <http://www.hamiltonco.org/cinlawlib/about/trustees.html>.

January 3, 2013

April 4, 2013

July 11, 2013

October 3, 2013

(Continued on page 4)

its claim or take possession of the collateral securing the claim.

Credit-bidding in a bankruptcy

In RadLAX, the debtor purchased a hotel and received a secured loan to renovate the hotel and construct a parking garage. The project quickly overran its budget, and the debtor filed for chapter 11 bankruptcy protection.

Chapter 11 of the Bankruptcy Code authorizes a debtor to submit a reorganization plan to the court, and the debtor's creditors then vote for or against the plan. In RadLAX, the debtor's plan proposed an auction sale of its assets free and clear of any liens, which denied creditors the opportunity to credit-bid at the auction. The plan provided that any proceeds received from the sale would be paid to the bank in satisfaction of its claim. The bank objected to the plan, claiming that chapter 11 required the debtor to allow its creditors to credit-bid in the auction of its collateral.

When a creditor objects to a chapter 11 plan, a debtor may force approval of the plan through a process termed "cramdown." In order to receive confirmation over a creditor's objection, a plan must be "fair and equitable" to the objecting creditor. A court will deem a plan fair and equitable if it provides for any of three outcomes identified in the Bankruptcy Code:

1. the creditor retains its lien and receives deferred cash payments in satisfaction of its claim;
2. the property is sold free and clear of the lien subject to Section 363(k) of the Bank-

ruptcy Code; or

3. the creditor receives the "indubitable equivalent" of its claim.

The RadLAX decision turned on the court's interpretation of the second and third prongs.

Section 363(k) requires that a creditor be allowed to credit-bid at the sale of collateral. Because the proposed plan did not permit credit-bidding, the bank claimed that the plan failed to achieve the second "fair and equitable" outcome. The debtor argued that the plan satisfied the "indubitable equivalent" standard of the third prong. Previously, the Third and Fifth Circuit Courts accepted similar arguments and permitted cramdown plans that precluded credit-bidding. Those courts evaluated compliance with the "indubitable equivalent" requirement independently, without considering the effect of the other two "fair and equitable" outcomes. Both courts determined that cash payments from the debtor could provide the "indubitable equivalent" of a secured claim, focusing in part on the "or" separating the three prongs.

The Supreme Court held that the "indubitable equivalent" analysis was unnecessary when a plan seeks to sell property free and clear of creditor liens. The "fair and equitable" requirement identified in the cramdown test provides the terms under which such a plan must operate. Section 363(k) provides a specific framework for selling collateral free and clear of creditor liens. Allowing a debtor to circumvent the procedures set forth in Section 363(k) and receive plan approval under the more general "indubitable equivalent" provision would frustrate Congressional intent.

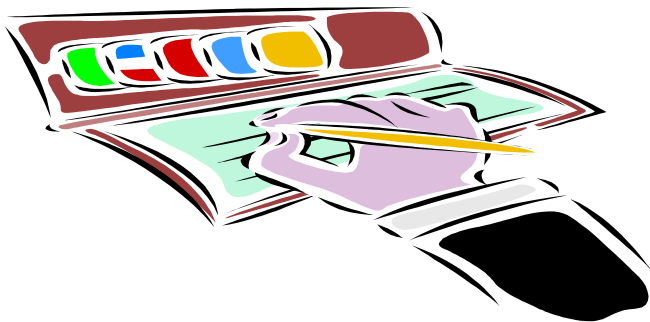
A victory for creditors

The RadLAX decision represents a victory for creditors seeking to maximize the value of their secured claims. Credit-bidding provides important protections for creditors in an unstable economic environment, and the RadLAX decision ensures that debtors cannot deny secured creditors the opportunity to utilize credit-bidding to protect the value of their claims.

If you have questions about credit-bidding, please contact a member of Bingham Greenebaum Doll LLP's Real Estate Practice Group or Tax and Finance Practice Group.

Subscriber Renewals

Ah, December! The time of year when subscribers reflect on the resources of the Hamilton County Law Library and the value of its legal information services. Some library patrons stop in nearly daily to use the computer lab, borrow a book, or have a cup of coffee. Others call or email the library frequently with research questions or in need of a case or forms, for example. Some attorneys use our videoconferencing service to meet with incarcerated clients. Many of you attend CLEs here occasionally. Thank you for leaning on the Law Library for your legal information needs. Let us know about any unmet needs. We will mail the invoices for 2013 annual fees shortly. You are welcome to pay in December, of course, but you may wait until January if preferred.



Hamilton County Clerk of Courts New E-Filing

Effective December 3, 2012, the Hamilton County Clerk of Courts is implementing a new e-filing notification system. Currently, whenever a document is filed electronically, only the e-filer receives notification when the document has been processed. Starting December 3rd, if you are a registered, active attorney of record on any Common Pleas case, the e-filing system will send you a courtesy e-mail notification that a document has been filed with the Clerk's Office. The electronic communication will be sent to any e-mail address associated with your attorney ID in the court system. Only electronically filed documents will generate this notification.

In order to take advantage of this new service, attorneys practicing in the Hamilton County Court of Common Pleas should ascertain that they have a current, accurate e-mail address on file with the Clerk of Courts.

We look forward with great anticipation to this exciting change. Please continue to partner with us to make this latest step into the digital world a success for all involved. Attorneys must sign up to e-file. The forms can be accessed here-

<http://www.courtclerk.org/forms/EFApplicationandCredit.pdf>

For more information, check out the main e-filing page here-

<http://www.courtclerk.org/efiling.asp>

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

You and the Legal System

The You and the Legal System series will take a hiatus in November, December and January and resume in February 2013. If you have a suggestion for a topic, contact [Laura Dixon-Caldwell](mailto:Laura.Dixon-Caldwell@cms.hamilton-co.org).

BNA Content

Following a thorough review of the content in other online resources and in consideration of budget constraints, the Law Library recently cancelled most of the BNA web-based content to which we subscribed. We do still provide access to BNA's excellent Tax Management Portfolios. Since BNA does not provide usage reports, we cannot be certain of the impact of this decision; however, anecdotal evidence suggests use was low. If you are concerned about cessation of access to BNA resources, please contact Mary Jenkins at mjenkins@cms.hamilton-co.org or 513.946.5300 to discuss.

We expect that law library patrons will value the extensive collections that we offer through other providers such as CCH, Aspen, HeinOnline, Lexis, Westlaw, ALI, and Fastcase. In particular, users of business-related content on BNA may appreciate the following libraries on CCH: Securities, Corporate Governance, Mergers & Acquisitions, International Business, Business Practices, and LLCs. Likewise, our CCH license includes extensive Labor and Employment Law resources. We offer many online titles from CCH in the area of Personal Injury and Products Liability. And, to supplement BNA's Tax Management Portfolios, we point users to CCH's vast Tax practice area. Please speak with a reference staff member about any particular research needs.

Bankruptcy Resources

Law library patrons have access to a wide variety of resources on Bankruptcy Law. If you have questions about access to these resources, contact us at 513.946.5300.

Books

Bankruptcy Basics: a step by step guide for pro bono attorneys, general practitioners, and legal services offices/ John Rao, Tara Twomey
KF1524. R36 2007-

Bankruptcy deskbook/ William C. Hillman, Margaret M. Crouch
KF1524. L435 2006-

Bankruptcy law fundamentals
KFO221 .B34 2011

Chapter 7 Commercial bankruptcy strategies 2012: leading lawyers on analyzing the trends, strategies and risks in chapter 7 liquidations
KF1544 .C532 2012

Chapter 11 bankruptcy and restructuring strategies: leading lawyers on developing a case strategy, working with key players, and achieving a client's goals
KF1544 .C46 2008

*Chapter 13 bankruptcy: keep your property and repay debts over time/ Stephen Elias and Robin Leonard
KF1524 .L46 2008

Chapters 7 and 13 bankruptcy in Ohio: line-by-line workshop
KFO221 .B344 2010

Collection law and bankruptcy law
KFO167 .C6 B68 2011

Collier on Bankruptcy, 14th edition
KF1524 .C6 1977-

Consumer bankruptcy handbook, with forms/

Henry J. Sommer; John Rao, editor and contributing author
KF1040 .Z9 S65 2009-

*How to file for Chapter 7 bankruptcy/
Stephen Elias
KF1524.6 .E4 2008

*New bankruptcy: will it work for you/
Stephen Elias
KF1524 .6 .E43 2011

Nuts and bolts of bankruptcy law/ L. Joshua Davidson
KFO221 .B345 2011

Online resources

Onsite access

CCH Bankruptcy Law Library

Bankruptcy Law Report Letters

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Law & Explanation

Bankruptcy Law Reporter - Laws, explanations, rules of procedure, forms, state exemptions, court decisions, organized by Code section

Bankruptcy Law Reporter Court Decisions Archive

Indexes & Tables

Remote access

Aspen/Loislaw Bankruptcy Treatise Library

Ginsberg & Martin on Bankruptcy

Bankruptcy Litigation and Practice: A Practitioner's Guide

Bankruptcy Litigation Manual

Automatic Stay Litigation in Bankruptcy

Advanced Chapter 11 Bankruptcy Practice

Tax Planning for Troubled Corporations

Bankruptcy Law Update

CCH Bankruptcy Case Reporter

Loislaw Bankruptcy Court Collection

*Available remotely through ESSBOhost.

Upcoming Events:

December 4: Casemaker CLE

December 11: Westlaw CLE

December Holidays:

The Law Library will be closed:

Tuesday, December 25 in observance of Christmas.

Tuesday, January 1 in observance of New Year's Day.



December 2012 Law Library Newsletter

INSIDE THIS MONTH

- Bankruptcy and Credit Bidding
- Tech Tip: Casemaker
- Free CLE
- Subscriber Renewals

ADDRESS CORRECTION REQUESTED

Hamilton County Law Library
Hamilton County Courthouse
1000 Main Street, Room 601
Cincinnati, OH 45202