

## Maximizing Recoveries from Post-Confirmation Litigation: Part I



Marc J. Carmel | Wednesday, February 6, 2019

In bankruptcy, debtors often do not have enough cash to pay all creditors in full, let alone make a distribution to equityholders. Sometimes debtors distribute non-cash considerations, which could include an interest in plaintiff-side litigation. Depending on a number of factors, including the debtor's size, a "litigation trust" can be a key component to that debtor's successful exit from bankruptcy.<sup>1</sup> A litigation trust is formed to hold the estate's claims, then sue parties that breached contracts or committed torts against the debtors.

To maximize recoveries from post-confirmation confirmation litigation, the creditors need to address certain issues pre-confirmation.<sup>2</sup> Sometimes, the value of the creditors' interests in the litigation trust can be only maximized if both the creditors and their debtor planned appropriately and addressed certain issues prebankruptcy. This two-part series of articles addresses these issues.

Part I highlights certain key ways for creditors receiving interests in litigation trusts (i.e., the "litigation trust beneficiaries") to minimize risks and maximize recoveries from post-confirmation litigation by focusing on the debtor's director and officer (D&O) liability insurance. Part II (in a forthcoming issue) will focus on litigation trust beneficiaries preserving causes of action; reviewing release and exculpation provisions in a chapter 11 plan and other documents in a chapter 11 case; transferring litigation privileges and protections; litigation trusts; and the possibilities of using litigation funding to maximize recoveries.

[\*Click here to read the full article.\*](#)

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