

Absolute Priority Rule Absolutism? How Strict Interpretation of the Bankruptcy Code's Cramdown Provisions Nearly Caused Hawker Beechcraft's Plan Confirmation to Skid Along the Runway

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In this article special counsel [Ben Feder](#) examines the narrow “plain language” reading of the absolute priority rule under Section 1129(b) of the Bankruptcy Code by Judge Stuart Bernstein of the U.S. Bankruptcy Court for the Southern District of New York in the chapter 11 cases of Hawker Beechcraft and its affiliates.

Ben states that the “debtors went into the plan confirmation hearing with almost no major objections and without any substantial litigation having taken place along the way, a remarkable achievement for chapter 11 cases of the debtors’ size and complexity. It therefore surprised nearly everyone in the courtroom when Judge Stuart Bernstein of the U.S. Bankruptcy Court for the Southern District of New York raised an objection of his own based on the alleged failure of one debtor to satisfy the cramdown requirements of § 1129(b) of the Bankruptcy Code.”

Kelley Drye represented a major creditor in these bankruptcy cases, and the article provides an insightful look of the legal arguments and applicable precedent that changed the judge’s view. “Judge Bernstein’s initial reading of § 1129(b) can be justified as a “plain language” reading of the statute, but, as with other recent instances of “plain language” interpretations of the Bankruptcy Code, it contravenes widely accepted views regarding the purpose and intent of the absolute priority rule and the Bankruptcy Code’s cramdown provisions.” Ben concludes that “Judge Bernstein correctly reconsidered his position that the plan violated the absolute priority rule with respect to [specific] unsecured creditors.”