

Direct Bankruptcy Appeals: Three Years Later

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The 2005 Bankruptcy Code Amendments

In 2005, as a part of the Bankruptcy Abuse and Consumer Protect Act of 2005 (?BACPA?), Congress amended section 158(d) (the jurisdictional statute for bankruptcy appeals brought in the court of appeals) to provide for a discretionary direct appeal from the bankruptcy court to the Circuit Court of Appeals. This new provision took effect 180 days after enactment (October 17, 2005) and applies only to bankruptcy cases filed after on or after October 17, 2005. BACPA, ? 1501(a); *In re McKinney*, 457 F.3d 623, 624 (7th Cir. 2006) (dismissing attempted direct appeal under BACPA because the amendments do not apply ?to bankruptcy proceedings filed before the effective date of the provision, which was October 17, 2005?); *In re Blumeyer*, No. 4:06CV1681 CDP, 2007 U.S. Dist. LEXIS 5037, at *4 (Bankr. E.D. Mo. Jan. 24, 2007) (same); *In re Berman*, 344 B.R. 612, 615 (B.A.P. 9th Cir. 2006) (same).

One of the principal reasons for this change was ?widespread unhappiness with the paucity of settled bankruptcy-law precedent.? *Weber v. United States Trustee*, 484 F.3d 154, 158 (2d Cir. April 13, 2007). Congress also enacted the direct appeal provision because (i) of ?the time and cost factors attendant to the present appellate system,? and (ii) ?decisions rendered by a district court as well as a bankruptcy appellate panel are generally not binding and lack stare decisis value.? H.R. Rep. 109-31, at p. 148 (House Judiciary Committee Report by Rep. Sensenbrenner) (April 18, 2005); see also *Weber*, 484 F.3d at 158-59 (stating direct-appeal provision designed to resolve legal ? not fact-intensive ? questions and that ?Congress hoped that [this provision] would permit us to resolve controlling legal questions expeditiously and might foster the development of coherent bankruptcy-law precedent?).

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