



## Lowenstein Bankruptcy Lowdown Video 30 – Silver Airways Chapter 11: The Importance of Obtaining Creditor consent

By [Eric Chafetz](#) and [Gianfranco Finizio](#)

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**Gianfranco Finizio:**

Welcome to this edition of the [Lowenstein Bankruptcy Lowdown](#). Today we are going to be discussing a recent decision from the *Silver Airways* case from the Bankruptcy court in the Southern District of Florida. The decision is noteworthy because it confronts an issue that we see quite often in Chapter 11 cases: whether to move forward with the sale process, if the process is not likely to satisfy all administrative claims in full.

In *Silver Airways*, Judge Russin explained that if certain of the key administrative creditors consent to the process and take a negotiated risk over a guaranteed loss, the sale process can in fact go forward. In so ruling, Judge Russin relied on the Supreme Court's decision from *Jevic*.

Before we discuss *Silver Airways*, Eric: remind us what the Supreme Court held in *Jevic* almost eight years ago.

**Eric Chafetz:**

In *Jevic*, the Supreme Court held that bankruptcy courts cannot approve a structured dismissal of a chapter 11 bankruptcy case that deviates from the Bankruptcy codes priority scheme without the consent of the affected creditors.

**Gianfranco Finizio:**

Right. And how is *Jevic* relevant in *Silver Airways*, at least according to Judge Russin?

**Eric Chafetz:**

*Silver Airways* was set up as a quick sale case to get the sale process in motion. The Debtors filed a motion seeking approval of DIP financing and sale procedures that risked leaving some administrative expenses unpaid. Judge Russin expressed concern about administrative creditors not being paid in full, but he also recognized the consequences of denying the motions.

At the hearing on the motions, several administrative creditors voiced their support of the sale process, even if it meant that their administrative claims would be at risk of nonpayment. While the process did not get the affirmative consent of all creditors, and while Judge Russin said that silence does not constitute consent, he also noted that nobody objected to the requested relief or provided an alternative.

**Gianfranco Finizio:**

Relying heavily on the affirmative consent of nearly every creditor of significance, the court approved both motions. In so ruling, the court found that the state's primary administrative expense claimants reviewed the structure, understood the risks, and consented to proceed in the hope of a recovery. According to Judge Russin, that consent formed the legal basis for approval under *Jevic*.

To us, the result feels like the right one. But the reasoning is interesting in that it relies on *Jevic*, even though *Silver Airways* was well outside the context of a structured dismissal or even a Chapter 11 plan.

In recognition of this apparent disconnect, the opinion states that while Section 1129(a) of the Code typically applies at confirmation, its consent language resonates under these particular set of facts.

Thank you for joining us on this edition of the Lowenstein Bankruptcy Lowdown.