

# Action Brought by Trustee to Enforce Judgment against Insured Director Is Core Proceeding

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The United States District Court for the District of Maine denied an insurer's motion to withdraw the reference and held that an action by a bankruptcy trustee to enforce a consent judgment against the insured director of the debtor was a core proceeding to be decided in bankruptcy court. *Executive Risk Indem., Inc. v. Brooks* (In re Jackson Brooks Inst., Inc.), Adv. Proc. No. 02-2009 (Bankr. D. Me. July 31, 2002).

An action by a bankruptcy trustee against a director of the debtor was ultimately settled by the parties. The settlement provided that the parties would enter a stipulated judgment against the director and that the director would assign his indemnity claims to the trustee. The parties submitted the settlement to the bankruptcy court for approval, and the director's liability insurer opposed the settlement. In addition, the insurer filed an insurance coverage action against the director in the district court. The director removed the case to the bankruptcy court and filed a motion to dismiss, maintaining that the trustee was the real party in interest. The insurer then sought to withdraw the reference of the coverage action to the bankruptcy court and move the case back to district court. In the meantime, the trustee filed suit against the insurer in the bankruptcy court to enforce the underlying judgment. The bankruptcy court stayed all proceedings pending the resolution of the motion to withdraw the reference.

The district court considered numerous factors to resolve the motion to withdraw the reference. As an initial matter, the district court observed that although the coverage litigation does not "arise under the bankruptcy code," the underlying liability action arose, in part, under the bankruptcy code, and the trustee's action to enforce the bankruptcy judgment was within the bankruptcy court's jurisdiction. Further, the district court accepted the director's argument that the coverage action filed by the insurers was "in essence" a defense to the trustee's action to enforce the judgment. The district court also found that judicial economy supported the resolution of the action to enforce the judgment and the coverage action in the same forum since the same coverage issues would be litigated in both suits. The court also reasoned that the bankruptcy court had jurisdiction over both actions to enforce its judgments as well as to address any ancillary proceedings. Further, the debtor's and creditors' resources would be conserved if the litigation occurred in one forum, and, according to the district court, the litigation of both actions in the bankruptcy court would promote uniformity of bankruptcy administration and discourage forum shopping. Lastly, the insurer did not request a trial by jury.