

Lowndes Files Appellate Brief in Precedent-Setting Subchapter V Bankruptcy Case

Press Release
Lowndes
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Lowndes recently filed the appellant's initial brief in the United States Court of Appeals for the Eleventh Circuit in *BenShot, LLC v. 2 Monkey Trading, LLC and Lucky Shot USA, LLC*, a case that will determine the proper interpretation of two sections of the newly created Subchapter V of the Bankruptcy Code.

Michael Provenzale, lead Creditors' Rights partner at Lowndes, filed the brief on behalf of BenShot, LLC, a Wisconsin-based drinking glass company. BenShot was awarded over \$4 million in damages after a jury found that competitors Lucky Shot and 2 Monkey Trading Company had falsely labeled their products as "Made in the USA," but that debt was discharged in the competitors' subsequent bankruptcy.

"At the center of our appeal is a crucial question," said Provenzale. "Can a small business intentionally harm someone and then walk away from the damage during bankruptcy, all while the business owners retain their ownership? This case hinges on the interpretation of key sections within the newly established Subchapter V of the Bankruptcy Code, and its outcome will govern how businesses are held accountable."

On October 17, 2023, the United States filed an amicus curiae brief in support of BenShot and concluded that the Bankruptcy Court's judgment should be reversed. A motion was also filed requesting leave of court for a group of non-profits, including the Public Justice Center, Centro de los Derechos del Migrante, Florida Legal Services, the Georgia Legal Services Program, The National Center for Law and Economic Justice, the National Employment Law Project, and the Southern Poverty Law Center, to file an amicus brief supporting BenShot's position.

Subchapter V offers a much-simplified corporate reorganization process for small businesses, with significant differences from a traditional Chapter 11 reorganization. The most notable difference is that small business owners can retain their ownership without fully repaying all their creditors, a possibility typically unavailable in a traditional Chapter 11 reorganization.

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In the appeal, it is asserted that specific types of debts, such as those related to willful injuries, cannot be discharged in Subchapter V, and therefore, they remain outstanding even after bankruptcy. Subchapter V, which was established in 2019, has seen limited interpretation in appellate decisions. Only one Circuit Court has addressed this issue so far and aligned with the BenShot's perspective. There are also pending appeals in two other Circuits. Due to the limited legal precedent, the appeal was certified for direct appeal to the Eleventh Circuit, bypassing the typical route through the District Court for bankruptcy appeals.