

2025 WRAPPED

December 30, 2025

By Albena Petrakov



2025 is nearly in the books, but before we turn the page, we're taking a step back to reflect on some overlooked lessons from the bankruptcy courts. We've combed through the year's rulings and selected three cases that merit a closer look, along with practical takeaways you can apply going forward.

Bankruptcy Remote Structures, In re 301 W N. Ave., LLC, 666 B.R. 583 (Bankr. N.D. Ill. 2025)

301 W North Avenue, LLC is a Delaware limited liability company. Its primary asset is a mixed-use real estate development known as the North Park Pointe Apartments, located at 301 West North Avenue in Chicago, Illinois ("301 West North Property"). The debtor borrowed \$26 million secured by the 301 West North Property. The lender required the debtor to be a bankruptcy-remote entity and to have an independent director. The independent director was sourced through CT Corporation Staffing, Inc. ("CTCS"). As part of the financing, the debtor entered into a limited liability company agreement (the "LLC Agreement") and appointed the independent manager identified by CTCS. The LLC Agreement governed the duties of the managers and the actions requiring the manager's consent, including the filing of a bankruptcy petition. 301 W. North Avenue LLC ultimately defaulted on the loan and filed for bankruptcy without the consent of an independent manager. The debtor asserted that the consent was not necessary because lender-mandated terms imposed constituted provisions eliminating its right to file bankruptcy, and as such, violated public policy and unenforceable. In its analysis of whether the filing was properly authorized, the Court ruled that the LLC Agreement and appointment of the independent director were enforceable.

In 301 W North Avenue, the debtor's LLC agreement required unanimous consent of the managers, including the independent manager, to file for bankruptcy. The independent manager was neither consulted nor consented. The court dismissed the case: no authority, no case. At the same time, the court distinguished disfavored "golden share" vetoes held by creditors, considered void as against public policy, from fiduciary-based consent structures, which are enforceable when drafted to protect the entity and its stakeholders — not just the lender.

Takeaway: If a lender has the right to appoint an independent director for a limited liability company, and the operating agreement creates a structure in which a director's fiduciary duties are respected and that complies with applicable statutes, the agreement is enforceable.

Treatment of SAFEs In Bankruptcy Proceedings, In re Rhodium Encore, 2025 WL 2501132 (Bkrcty.S.D.Tex.)

SAFEs (Simple Agreement for Future Equity) are financial instruments commonly used in startup financing as an alternative to convertible notes.

In a first reported decision, the Bankruptcy Court for the Southern District of Texas found that SAFE notes in that case gave

their holders not a mere equity interest but a contingent claim, and they could recover ahead of common stockholders. The Court emphasized that the contractual language mandated this outcome and followed Delaware's objective theory of contracts, i.e., a contract's construction should be that which an objective, reasonable third party would understand. The SAFEs were not shares of stock but contracts that required the company to return the purchase price received from SAFE holders upon certain triggering events. This right to payment contingent on future events fits the Bankruptcy Code definition of a "claim" under 11 U.S.C. § 101(5)(A). The notes also explicitly created a liquidation priority for cash-out amounts. The relevant provision stated that the cash-out amount was junior to creditor claims but senior to common stock.

Takeaway: If your SAFE has cash out on dissolution/liquidity, you likely hold a contingent claim that ranks ahead of common but behind creditors. When drafting a SAFE note, if the economic deal is equity-only risk, remove cash-out rights, or subordinate expressly to common; if investor protection is essential, state the cash-out priority unambiguously and ensure charter and cap table modeling reflect it.

SPAC Redemptions, *In re Indus. Hum. Cap., Inc.*, No. 23-11014-LMI, 2025 WL 3534176, at *1 (Bankr. S.D. Fla. Dec. 9, 2025)

The court addressed whether funds held in a SPAC trust account were property of the bankruptcy estate. Industrial Human Capital ("IHC"), a SPAC^[1], raised \$116.7 million in its IPO and deposited the proceeds into a trust account managed by Continental Stock Transfer & Trust Company ("CSTTC") under a Trust Agreement. The Trust Agreement provided for CSTTC to manage, supervise, and administer the Trust Account. Although the parties to the Trust Agreement are IHC and CSTTC, the named beneficiaries of the Trust Agreement are IHC and the purchasers of the shares issued through the IPO, identified as the "Public Stockholders."

IHC did not find suitable acquisition targets, and investors asked for redemption, which the company made. Against the advice of counsel that payment to creditors should be made first, IHC CEO authorized CSTTC to release the funds to investors. Then, creditors put the company in an involuntary Chapter 7 proceeding, and a trustee was appointed. The trustee filed lawsuits to claw back the payments.

Although the agreement named the public stockholders as beneficiaries, the court emphasized that the funds originated from the sale of IHC's stock and were therefore property of IHC and, upon bankruptcy, property of the estate. The investors' argument that the funds were held in trust for their benefit was rejected because the trust did not alter the fundamental nature of the funds as proceeds of stock sales belonging to the debtor.

Takeaway: SPAC trust funds remain property of the debtor's estate in bankruptcy, even if held in a trust account for redemption purposes. The existence of a trust agreement and redemption rights does not override the fact that IPO proceeds are corporate assets. Investors should understand that redemption rights do not insulate funds from clawback or estate claims in insolvency proceedings.

^[1] As the Court explained, a SPAC, also known as a blank check company, is a company that is formed for the sole purpose of acquiring, usually through merger, another company. In addition to funds contributed to fund the cost of forming the SPAC, the SPAC then raises funds from investors, which are placed in trust until the target is identified. Generally, there is a time limit to find the target; after the expiration of that time, the funds are subject to return by the original investors.