

Bankruptcy's Not-Quite-Neutrals

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ABSTRACT

Bankruptcy proceedings rely on a series of neutral players, such as the judge, the United States Trustee, mediators, and examiners, to oversee and facilitate various aspects of a case. Despite these players, calls for additional neutral players within the bankruptcy system have persisted throughout the development of U.S. bankruptcy law. For example, the American Bankruptcy Institute's Commission to Study the Reform of Chapter 11 recommended that an "estate neutral" be appointed to assist with various aspects of a chapter 11 case, and some scholars and commentators have argued that examiners and special masters should be appointed to assist bankruptcy judges with complex cases.

To better evaluate the need for more neutrality in bankruptcy, this Article examines the evolution and current status of the various neutral players in the bankruptcy system. In doing so, it showcases the breadth and depth of the roles we ask non-debtors and non-creditors to play in a bankruptcy case. By taking a holistic look at bankruptcy's existing neutrals, this Article identifies the gap between the ideal neutral, as envisioned by scholars and lawmakers, and the not-quite-neutrals that exist in bankruptcy practice today. The Article concludes with proposals to narrow the gap between vision and reality through the development of guardrails and the inclusion of neutral players that bring an identifiable value-add to a case.