

APP No. _____

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of East Coast Foods, Inc., Debtor

CLIFTON CAPITAL GROUP, LLC,

Applicant

v.

BRADLEY D. SHARP, FORMER CHAPTER 11 TRUSTEE,

Respondent

On Application for an Extension of Time
to File Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

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Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Applicant Clifton Capital Group, LLC states that it has no parent corporation and that no publicly held company owns 10% or more of Applicant's stock.

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to this Court’s Rules 13.5, 22, 30.2, and 30.3, Petitioner Clifton Capital Group, LLC respectfully requests that the time to file its Petition for Writ of Certiorari in this matter be extended for 45 days up to and including January 29, 2024. Applicant has not previously requested an extension.

The Court of Appeals issued its opinion on May 8, 2023. (Appendix (“App.”) A). On September 14, 2023, following Applicant’s filing of a motion for rehearing or rehearing *en banc*, the Court of Appeals issued an amended opinion and denied rehearing. App. B. Absent an extension of time, the Petition for Writ of Certiorari would be due on December 13, 2023. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

Background

This case raises questions of exceptional importance regarding constitutional standing and federal jurisdiction over appeals arising from bankruptcy proceedings. Applicant is undisputedly one of the largest unsecured creditors in the underlying chapter 11 bankruptcy case of East Coast Foods, Inc. (ECF), better known as Roscoe’s House of Chicken & Waffles (Roscoe’s), a landmark restaurant chain in Southern California.

Despite this, the Court of Appeals held that Applicant, which has yet to receive any payment under a chapter 11 plan confirmed more than five years ago, lacks Article III standing to appeal the bankruptcy court's unwarranted award of a substantial (approximately \$400,000) fee enhancement to Respondent, who is the former chapter 11 trustee in the ECF bankruptcy case.

In 2016, ECF, which included four Roscoe's locations, filed for Chapter 11 bankruptcy. App. A at 4-6. The Office of United States Trustee appointed an official committee of unsecured creditors (Committee) to monitor ECF's activities. App. A at 6. The bankruptcy court eventually appointed Respondent as the chapter 11 trustee. *Id.*

The Committee and ECF's principal submitted a Plan effective September 2018. *Id.* In his final fee application filed in October 2018, Respondent requested \$1,155,844.71, the maximum allowable under the fee cap statute, 11 U.S.C. § 326(a). *Id.* This amount represented the lodestar (1,692.2 hours worked times an hourly rate of \$448.50, for \$758,955.50) plus a 65% enhancement. *Id.* at 6-7.

Applicant objected in the bankruptcy court, arguing the fee cap was not presumptively reasonable and the record did not support an enhancement beyond the lodestar. *Id.* at 7. The bankruptcy court disagreed, holding that the

fee cap was presumptively reasonable and, in the alternative, that the case was exceptional and merited deviation from the lodestar. *Id.*

Applicant first appealed to the district court. Respondent argued that Applicant lacked standing to appeal because it was not a “party aggrieved.” *Id.* The district court found Applicant aggrieved because there was insufficient capital in the estate to pay all creditors. *Id.* It held that “[b]ecause the increased compensation to the [Respondent] will further subordinate [Applicant’s] claim, the Court concludes that [Applicant] is directly and adversely affected by the Final Fee Order.” *Id.* The district court further held that the lodestar was the starting point for reasonable compensation and vacated and remanded for the bankruptcy court to award fees equal to the lodestar or “make detailed findings sufficient to justify a higher amount.” *Id.*

On remand, the bankruptcy court again found that Respondent was “entitled to an enhancement because the results in this case were truly exceptional.” *Id.* The bankruptcy court again awarded the statutory maximum. Applicant again appealed and the district court this time affirmed, and Applicant appealed to the Court of Appeals.

The Court of Appeals reversed the district court’s order affirming the bankruptcy court’s ruling and remanded with instructions to dismiss Applicant’s appeal for lack of Article III standing. The Court of Appeals

concluded that the chapter 11 bankruptcy plan provided that Applicant's unsecured claim would be paid in full and was secured by a collateral package, and therefore Applicant suffered no injury in fact by the enhanced fee award to the Trustee. App. A at 14-16.

On June 21, 2023, Applicant filed a Petition for Rehearing or Rehearing En Banc with the Court of Appeals. On September 14, 2023, in response to Applicant's petition for rehearing, the Court of Appeals issued an order and amended opinion but denied the petition for rehearing. App. B at 4-5.

Reasons for Granting an Extension of Time

Applicant respectfully requests a 45-day extension of time to file a petition for certiorari, to and including January 29, 2024. There is good cause for this extension to allow Applicant to prepare a certiorari petition.

First, Applicant's principal, who was appointed the chair of the Committee in ECF's bankruptcy case, has been unavailable to meet with Applicant's counsel and discuss the petition for certiorari due to travel and tending to a personal family matter involving the health of a very close elderly family member.

Second, and directly related to the point above, while Applicant's undersigned counsel has been involved in the litigation below, counsel has only recently been retained to prepare a petition for certiorari. Given the only

recent retention, there was insufficient time for counsel to prepare the petition by the current deadline. Additionally, over the next 45 days, there is also the press of business in numerous other matters necessitating the requested extension period here, including: (i) participating in two separate mediations that involve overlapping issues involving state law claims and bankruptcy issues; (ii) briefing and argument on a motion for summary judgment in a bankruptcy adversary proceeding; (iii) preparation of a responsive brief before the Court of Appeal in another matter arising from a bankruptcy appeal; (iv) preparation of a responsive brief in a separate appeal arising from a bankruptcy appeal pending in district court; and (v) preparation and filing of a chapter 11 plan of reorganization in a pending bankruptcy case.

Third, the Court of Appeals' decision contradicts its prior decisions, those of other Circuits, and this Court, which hold that a deprivation of money gives rise to an injury in fact for purposes of Article III standing. *See, e.g., Van v. LLR, Inc.*, 962 F.3d 1160 (9th Cir. 2020); *MSPA Claims I, LLC v. Tenet Fla., Inc.*, 918 F.3d 1312, 1318 (11th Cir. 2019)); *Habitat Educ. Ctr. V. U.S. Forest Serv.*, 607 F.3d 453, 457 (7th Cir. 2010); *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983 (2017); *Sprint Commc 'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 289 (2008). Applicant requires additional time to properly address the important questions raised by this case considering prior precedent

and the added complexity created by the fact that this case arises from a bankruptcy appeal, which raises additional issues related to standing and jurisdiction.

Finally, an extension will not cause prejudice to Respondent. An extension will likely not alter the when the Court will hear argument or issue its opinion in the event the Court grants certiorari. An extension will further ensure that Respondent need not prepare a brief in opposition during the winter holidays.

Conclusion

For the foregoing reasons, Applicant respectfully requests that the time to file its Petition for Writ of Certiorari in this matter be extended for 45 days up to and including January 29, 2024.

Dated: December 11, 2023

**BIENERT KATZMAN
LITRELL WILLIAMS LLP**

By: /s/ Anthony R. Bisconti

Anthony R. Bisconti

Attorneys for Applicant
Clifton Capital Group, LLC

CERTIFICATE OF SERVICE

A copy of this application was served by email and U.S. mail to the counsel listed below in accordance with Supreme Court Rule 22.2 and 29.3:

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Dated: December 11, 2023

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APPENDIX A

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In the Matter of: EAST COAST
FOODS, INC.,

Debtor,

CLIFTON CAPITAL GROUP, LLC,

Appellant,

v.

BRADLEY D. SHARP, former
Chapter 11 Trustee,

Appellee.

No. 21-55967

D.C. No. 2:20-cv-
10982-MWF

OPINION

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted September 2, 2022
Submission Withdrawn September 26, 2022
Resubmitted May 2, 2023
Pasadena, California

Filed May 8, 2023

Before: Milan D. Smith, Jr. and Ryan D. Nelson, Circuit
Judges, and Gershwin A. Drain,* District Judge.

Opinion by Judge R. Nelson

SUMMARY**

Bankruptcy

The panel reversed the district court's order affirming the bankruptcy court's enhanced fee award to the trustee in a funded Chapter 11 bankruptcy and remanded with instructions to dismiss creditor Clifton Capital Group, LLC's appeal for lack of Article III standing.

Clifton was chair of an official committee of unsecured creditors appointed by the Office of the United States Trustee to monitor the activities of debtor East Coast Foods, Inc., manager of Roscoe's House of Chicken & Waffles. The bankruptcy court appointed Bradley D. Sharp as Chapter 11 trustee. Clifton objected to Sharp's fee application, but the bankruptcy court awarded the statutory maximum fee. Clifton appealed. The district court concluded that Clifton had standing to appeal, and it

* The Honorable Gershwin A. Drain, United States District Judge for the Eastern District of Michigan, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

remanded. On remand, the bankruptcy court again awarded the statutory maximum. Clifton again appealed, and the bankruptcy court this time affirmed.

Addressing standing, the panel wrote that the Ninth Circuit historically bypassed the Article III inquiry in the bankruptcy context, instead analyzing whether a party is a “person aggrieved,” as a principle of prudential standing. The court, however, has returned emphasis to Article III standing following *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014), in which the Supreme Court questioned prudential standing.

The panel held that Clifton lacked Article III standing to appeal the fee award because it failed to show that the enhanced fee award would diminish its payment under the bankruptcy plan, and thus it failed to establish an “injury in fact.” The panel concluded that Clifton’s injury was too conjectural and hypothetical, and Clifton did not show that the fee award impaired the likelihood or delayed the timing of its payment. The panel concluded that the Chapter 11 plan did not relate to a limited fund because there was no finite amount of assets from which all creditors could be paid. Rather, the plan was a reorganizing plan that proposed to pay all allowed claims in full from the debtor’s ongoing operations and non-estate sources. The panel held that, given the detailed plan, which guaranteed payment to creditors plus interest, and the net equity in the plan, the district court clearly erred in finding that the estate was a limited fund and that there were not sufficient funds to pay back all the creditors. Thus, Clifton’s likelihood of payment was not impaired. The panel also concluded that Clifton did not suffer injury to the timing of its payment because Clifton’s alleged harms were conjectural, and it remained possible that Clifton would be paid within the plan’s initial

estimated window. Accordingly, Clifton currently lacked an injury in fact.

COUNSEL

Anthony Bisconti (argued), Bienert Katzman Littrell Williams LLP, Los Angeles, California; Steven J. Katzman, Bienert Katzman Littrell Williams LLP, San Clemente, California; for Appellant.

John N. Tedford IV (argued) and Uzzi O. Raanan, Danning Gill Israel & Krasnoff LLP, Los Angeles, California, for Appellee.

OPINION

R. NELSON, Circuit Judge:

Creditor Clifton Capital Group, LLC challenges the district court's order affirming the bankruptcy court's enhanced fee award of over \$1 million dollars to the trustee in a funded bankruptcy. Because Clifton has failed to show that the enhanced fee award will diminish its payment under the bankruptcy plan, Clifton lacks standing. We thus reverse the district court's order finding standing and remand with instructions to dismiss the appeal for lack of Article III standing.

I

This is not a normal bankruptcy. Roscoe's House of Chicken & Waffles is a landmark Los Angeles restaurant chain. Building on a staple menu predating the American

Revolution—Thomas Jefferson served his guests chicken and waffles—Roscoe’s has garnered celebrity attention since opening in 1975. President Obama enjoyed chicken wings and a waffle there in 2011, with “Obama’s Special” added to the menu.¹ Several movies have referenced Roscoe’s.² And numerous songs have memorialized the restaurant, including one by Ludacris who suggests that the listener “roll to Roscoe’s and grab somethin’ to eat.”³ Despite its cultural ubiquity, even Roscoe’s was not immune to a \$3.2 million judgment in a racial discrimination case.⁴ This significant judgment, along with other debt, threatened to impair Roscoe’s ability to pay its creditors.

But fear not. The public can still indulge in Roscoe’s famous soul food. As part of the bankruptcy plan, the restaurants remain open and founder Herb Hudson has guaranteed payment to Roscoe’s creditors. As a failsafe,

¹ Adrian Miller, *The Layered Legacy of Roscoe’s House of Chicken & Waffles*, RESY Blog (Sept. 8, 2020) <https://blog.resy.com/2020/09/the-layered-legacy-of-roscoes-house-of-chicken-waffles/>.

² See *id.* (“The restaurant has gotten a mention in films including: *Tapehead* (1988), *Swingers* (1996), *Jackie Brown* (1997), *Rush Hour* (1998), *Soul Plane* (2004). In 2004, Roscoe’s got more than a mention on the big screen: It got its own eponymous feature-length film.”).

³ LUDACRIS, *CALL UP THE HOMIES* (Def Jam Recordings 2008).

⁴ See *Beasley v. East Coast Foods, Inc. et. al.*, No. BC509995 (L.A. Sup. Ct.); see also Shan Li, *Parent Company of Roscoe’s House of Chicken and Waffles Files for Bankruptcy Protection*, LA Times (Mar. 29, 2016) <https://www.latimes.com/business/la-fi-roscoes-chicken-waffles-bankruptcy-20160329-story.html>.

Snoop Dogg suggested buying the chain to keep it in business.⁵

In 2016, East Coast Foods, Inc. (ECF), manager of the four Roscoe's locations, filed for Chapter 11 bankruptcy. The Office of United States Trustee appointed an official committee of unsecured creditors (Committee) to monitor ECF's activities, of which Clifton Capital Group, LLC (Clifton) was named chair. After an examiner found that ECF could not meet its fiduciary obligations, the court appointed Sharp as trustee, the de facto head of ECF for two years.

The Committee and ECF's principal submitted a Chapter 11 bankruptcy plan (the Plan), effective September 2018. The Plan granted \$450 per hour plus expenses for Sharp's services as trustee.

The Plan guaranteed the creditors full payment with interest secured by a "Collateral Package," which included all of the ECF's assets, and up to a \$10 million contribution from Hudson. The Plan's appraiser estimated the value of the Plan's assets contained within the Plan at over \$39.2 million with \$23.4 million of net equity, far exceeding the claims to be paid under the Plan.

In his final fee application filed in October 2018, Sharp requested \$1,155,844.71, the maximum allowable under the fee cap statute, 11 U.S.C. § 326(a). This amount represented the lodestar (1,692.2 hours worked times an hourly rate of

⁵ Farley Elliott, *Snoop Dogg Says He'll Save Roscoe's Chicken N' Waffles if it Comes to That*, LA Eater (Mar. 31, 2016) <https://la.eater.com/2016/3/31/11338382/snoop-dogg-buy-roscoes-chicken-waffles>.

\$448.50, for \$758,955.50) plus a 65% enhancement for exceptional services.

Clifton objected in the bankruptcy court, arguing the fee cap was not presumptively reasonable as the record did not support an enhancement beyond the lodestar. The court disagreed, holding that the fee cap was presumptively reasonable and, in the alternative, that the case was exceptional and merited deviation from the lodestar.

Clifton then appealed to the district court and moved to strike the Fee Order. Sharp countered that Clifton lacked standing to appeal because it was not a “party aggrieved.” The district court found Clifton aggrieved because there was insufficient capital in the estate to pay all creditors. *In re E. Coast Foods, Inc.*, No. CV 18-10098, 2019 WL 6893015, at *3 (C.D. Cal. Dec. 18, 2019). It held that “[b]ecause the increased compensation to the Trustee will further subordinate Clifton Capital’s claim, the Court concludes that Clifton Capital is directly and adversely affected by the Final Fee Order.” *Id.* The district court further held that the lodestar was the starting point for reasonable compensation and vacated and remanded for the bankruptcy court to award fees equal to the lodestar or “make detailed findings sufficient to justify a higher amount.” *Id.* at *4, 6.

On remand, the bankruptcy court again found that Sharp was “entitled to an enhancement because the results in this case were truly exceptional.” The bankruptcy court again awarded the statutory maximum. Clifton again appealed and the district court this time affirmed. Clifton now appeals to this court.

II

The question of whether a party has standing is a threshold issue that must be addressed before turning to the merits of a case. *Horne v. Flores*, 557 U.S. 433, 445 (2009). To appeal a bankruptcy court’s order, a party must establish Article III standing and that it is “aggrieved” by the order. *In re Fondiller*, 707 F.2d 441, 443 (9th Cir. 1983).

We review Article III standing determinations de novo. *Tailford v. Experian Info. Sols., Inc.*, 26 F.4th 1092, 1098 (9th Cir. 2022). But we review the factual determination that Clifton was a person aggrieved for clear error. *In re Point Ctr. Fin., Inc.*, 890 F.3d 1188, 1191 (9th Cir. 2018).

III

A

Our authority under Article III is dispositive. Because the Constitution limits our jurisdiction to “cases” and “controversies,” standing is an “essential and unchanging” requirement. *In re Sisk*, 962 F.3d 1133, 1141 (9th Cir. 2020) (quoting U.S. Const. art. III, § 2, cl. 1; *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Accordingly, a party must establish an Article III case or controversy before we exert subject matter jurisdiction. *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004) (“A suit brought by a plaintiff without Article III standing is not a ‘case or controversy,’ and an Article III federal court therefore lacks subject matter jurisdiction.” (citation omitted)).

In the bankruptcy context, we have historically bypassed the Article III inquiry, instead analyzing whether a party is a “person aggrieved.” See *Fondiller*, 707 F.2d at 443. This standard is a prudential requirement initially found within the Bankruptcy Act of 1898, which permitted appeal by any

“person aggrieved by an order of a referee.” 11 U.S.C. § 67(c) (1976) (repealed 1978). The “person aggrieved” standard was designed to limit appeals in bankruptcy proceedings because such cases invariably implicate the interests of various stakeholders, including those not formally parties to the litigation. *See Fondiller*, 707 F.2d at 443. Even after Congress repealed and replaced the Bankruptcy Act of 1898, however, we continued to apply the “person aggrieved” standard.⁶ *See id.*; *In re Com. W. Fin. Corp.*, 761 F.2d 1329, 1334 (9th Cir. 1985).

It is unclear why we continued to apply the person aggrieved rule in the absence of the statute providing the basis for doing so. We appear to have recast the pre-1978 statutory standard and applied it as a principle of prudential standing. But the Supreme Court has since questioned prudential standing, noting it “is in some tension with [the Court’s] recent reaffirmation of the principle that ‘a federal court’s obligation to hear and decide’ cases within its jurisdiction ‘is virtually unflagging.’” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (quoting *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125–26 (2014)). Still, our bankruptcy cases have historically addressed prudential standing with little attention to Article III standing. *See, e.g., Fondiller*, 707 F.2d at 441–43; *In re Int’l Env’t Dynamics, Inc.*, 718 F.2d 322, 326 (9th Cir. 1983); *Klein v. Rancho Mont. De Oro, Inc.*, 263 F.2d 764, 772 (9th Cir. 1959); *Com. W. Fin.*, 761 F.2d at 1334.

⁶ The Bankruptcy Reform Act of 1978 replaced the Bankruptcy Act of 1898. It governs the relationship between creditors and debtors when debtors can no longer pay their debts. Pub. L. No. 95-598, 92 Stat. 2549 (codified at 11 U.S.C. § 101).

After the Supreme Court’s decision in *Driehaus*, however, we have returned emphasis to Article III standing. *See, e.g., Sisk*, 962 F.3d at 1141–43. And determining our Article III jurisdiction before any prudential considerations does not offend our precedent. *See, e.g., In re P.R.T.C., Inc.*, 177 F.3d 774, 777–79 (9th Cir. 1999) (addressing Article III standing before person aggrieved prudential standing). We thus first examine Article III standing, which we find lacking here.

B

As the party invoking federal jurisdiction, Clifton “bears the burden of establishing” the elements of Article III standing. *Lujan*, 504 U.S. at 561. A party must establish “such a personal stake in the outcome of the controversy as to warrant *his* invocation of federal-court jurisdiction.” *Horne*, 557 U.S. at 445 (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) (emphasis in original)). Clifton must therefore show that it has: (1) suffered an “injury in fact” that is concrete, particularized, and actual or imminent, (2) the injury is “fairly traceable” to the defendant’s conduct, and (3) the injury can be “redressed by a favorable decision.” *Lujan*, 504 U.S. at 560–61 (alterations in original omitted).

1

Injury in fact is the “[f]irst and foremost” of the three standing elements. *Sisk*, 962 F.3d at 1142 (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998)). Clifton argues that it suffered an injury-in-fact because the Plan established the expectation that it would receive full payment of its claim, which has not yet occurred and which the Fee Order exacerbates. The Plan estimates that Clifton

would “receive a *pro rata* share of Available Cash⁷ in the annual sum of \$1,816,701 in 2022, \$2,996,321 in 2023, and \$634,634 in 2024 . . .” To date, Clifton notes that this totals millions of dollars in payments that have not been made. Clifton argues that the Fee Order’s grant of the \$400,000 trustee bonus harms both the likelihood and timing of any payment by further subordinating it.

This, Clifton contends, suffices as an injury ‘fairly traceable’ to the wrongful conduct of the excessive fee award because its “injury need not be financial,” *P.R.T.C.*, 177 F.3d at 777 (citation omitted), and because, under 11 U.S.C. § 330, payment of the fee award has priority and must be paid in full before unsecured creditors like Clifton receive any distribution. Clifton thus argues that it suffered a traceable and redressable injury in fact because a favorable decision would result in the excessive fees being returned to the ECF estate to pay out claims, and therefore would “increase the likelihood and timing” of payment to Clifton.

Sharp counters that Clifton’s alleged injury is too conjectural and hypothetical to establish an injury in fact because there is no diminished likelihood that Clifton will be paid in full. The Plan’s Collateral Package⁸ guarantees Clifton full payment with interest. Sharp further argues that

⁷ “Available Cash” is defined as cash in the estate from various sources, less (among other things) “the amount necessary or estimated and reserved to pay in full [] any Allowed Administrative Expense Claims,” which includes the Trustee’s awarded compensation pursuant to the Fee Order. See 11 U.S.C. § 503(b)(2) (providing that an administrative expense claim includes “compensation and reimbursement awarded under [11 U.S.C. § 330(a)].”).

⁸ As discussed below, the Collateral Package protects against any risks of nonpayment and includes all of the Reorganized Debtor’s assets.

Clifton cannot claim injury arising from the Plan’s estimates because Clifton approved the Plan understanding that the timing of its distributions depended on the allowed amounts of senior claims, meaning payment could be delayed by any increase in any Allowed Non-Subordinated Claims. Thus, Sharp asserts that Clifton’s alleged harm is no harm at all because Clifton’s payment is certain, and the only question at issue is when payment will occur.

2

We conclude that Clifton’s alleged injury is too conjectural and hypothetical to establish an injury in fact for Article III standing. We similarly conclude that Clifton is wrong that the fee award both impaired the likelihood and delayed the timing of its payment. The district court erroneously concluded that the fee award would further subordinate Clifton’s claim.

a

We first address the likelihood of payment. The district court concluded that Clifton had standing because it was an aggrieved party. Noting that Clifton had not been paid on any of its Allowed Claim, the court adopted Clifton’s argument that “[t]here are not yet enough funds on hand to pay all creditors, including Clifton Capital, in full” and that “there are outstanding contingencies under the Plan that must occur before those funds become available.” *E. Coast Foods*, 2019 WL 6893015, at *3. Sharp pointed out, however, that because Clifton was guaranteed 100% payment of its alleged claim under the Plan, it was not aggrieved. *Id.* at *2–3.

The district court seemingly concluded, without explicitly stating, that the Plan concerns a limited fund. *See*

id. at *3. It found that the alleged lack of sufficient capital to pay all claims would further subvert Clifton’s claim and thereby adversely affect its payment. *Id.* Therefore, the district court held that Clifton was aggrieved because it was appealing an order disposing of assets from which it (the claimant) seeks to be paid. *Id.* (citing *Int’l Env’t Dynamics*, 718 F.3d at 326).

The district court relied on our precedent that in cases involving competing claims to a limited fund, “a claimant has standing to appeal an order disposing of assets from which the claimant seeks to be paid.” *Id.* (quoting *P.R.T.C.*, 177 F.3d at 778). A limited fund necessarily concerns a finite pool of assets to pay claims, thus creating the risk that creditors will not be paid, either in full or at all. In the limited fund context, changes to any allotment or transfer of funds, including an enhanced fee award, would materially affect the likelihood of any potential payment and therefore directly implicate creditor interests. Along these lines, we have found a party aggrieved when limited fund plans “eliminated” a party’s interest in estate assets from which they sought payment. *Com. W. Fin.*, 761 F.2d at 1335. We have also found standing when a bankruptcy court’s order transferred all significant assets out of the estate, effectively barring a creditor’s claim. *P.R.T.C.*, 177 F.3d at 778–79.

In contrast, in *Klein*, we found that plaintiffs challenging an order seeking payment of their attorney fees lacked standing because the plan specified that there were “additional monies” available, even though the plan did not expressly contemplate payment of their claims. 263 F.2d at 771–72. The plaintiffs challenged orders confirming a plan which they asserted disregarded compensation for legal services to which they were entitled. *See id.* Plaintiffs

argued that because the plan disposed of the estate's assets, the plan rendered payment impossible. *Id.*

Our court rejected both arguments. Even though the plan did not expressly contemplate the plaintiffs' compensation claims, the plan provided that "additional monies are available if need(ed) . . . to . . . pay off the unsecured creditors their claims in full." *Id.* at 772 (alterations in original). At judgment, the court noted that "if the sum which is actually available to pay appellants' claims as finally allowed proves insufficient, the court has only to enforce the provisions of the plan . . . requiring that additional monies be deposited or accrued in the registry." *Id.*

Even though *Klein* was decided under the "person aggrieved" standard, it is most analogous to this case. As in *Klein*, the Plan here does not relate to a limited fund because there is no finite amount of assets from which all creditors could be paid. *See id.* Rather, "the Plan is a reorganizing plan that **proposes to pay all Allowed Claims in full** (unless otherwise agreed) from the Debtor's ongoing operations and non-Estate sources."⁹

The Plan's mandatory "disclosure statement" which outlines the Plan, its risk factors, and its financial projections bolsters this conclusion.¹⁰ *See* 11 U.S.C. §§ 1121, 1125.

⁹ Under the Plan, Clifton is guaranteed full payment with interest "at the rate of 10% per annum until received, with interest accruing and compounding monthly."

¹⁰ The disclosure statement requires that plan include a classification of claims and how each class of claims will be treated under the plan. *See* 11 U.S.C. § 1123. Creditors whose claims are "impaired" vote on the

The Plan makes clear that Clifton’s claim will be paid in full with interest after all other allowed unsecured claims and penalty claims are satisfied. Clifton understood these terms: its principal Sam White testified that “the Plan was proposed to move this case forward and to ensure 100% payment to creditors as quickly as possible.”

Indeed, the Plan’s promise of full payment with interest is unconditionally guaranteed and secured by a “Collateral Package,” which includes all of ECF’s assets. The Debtor’s principal (Hudson) is responsible for contributing up to \$10 million to the Plan to affect the payment of claims. ECF is required to contribute to the Plan roughly \$110,000 per month plus the excess free cash flow from its post-confirmation operations. Additional funds are available from other entities owned by Hudson which are to contribute about \$130,000 per month to the Plan. Payments from ECF and Hudson will continue until all claims are paid in full with interest.

The Package further ensures enough available collateral to pay the Plan’s covered claims in full, plus a 35% equity cushion. The Plan’s appraiser estimated the value of the Plan’s assets contained within the Plan at over \$39.2 million with 23.4 million of net equity, exceeding the claims to be paid under the Plan by about \$17.3 million (the 35% equity cushion).

Given the detailed Plan which guarantees payment to creditors plus interest, and the net equity in the Plan, the district court’s finding that the estate is a limited fund and

plan before it is approved by the bankruptcy court. *See id.* at § 1126. Here, Clifton voted to approve the disclosure statement and the Plan was approved pursuant to § 1128.

that “there are not sufficient funds to pay back all the creditors,” is clearly erroneous. *E. Coast Foods*, 2019 WL 6893015, at *3. Moreover, even if Sharp receives the contested \$400,000 bonus, this will not impact Clifton’s ability to be paid because there are other sources from which to make Clifton’s payment at the appropriate time.

b

We similarly disagree with Clifton’s assertion that it suffered injury to the timing of its payment. In agreeing to the Plan, Clifton knew from the start that the timing of its payment could be longer or shorter than the Plan’s initial estimates depending on the amounts owed to senior claimants. The Disclosure estimates that all Allowed Unsubordinated Claims would be paid in full within four years, by mid-2022. But the Statement also notes that “[t]he term of the Plan can be shorter or longer than expected depending on the amount of the Allowed Claims.”

The Plan further estimates that allowed claims could be paid within six years, but “for every \$1 million change in allowed claims, the term of the Plan will change by 3.3 months.” Sharp points to specific unresolved allowed claims that have delayed payment, such as a pending priority claim by the IRS for over \$10.2 million which it asserts Clifton knew was present at the time the Plan was approved, and for which \$15 million is being held in reserve to pay. Sharp also points to the effects of COVID-19 and a missing \$1.5 million payment from Hudson as reasons that Clifton has not been paid yet. Sharp has entered into a series of forbearance agreements to give Hudson additional time to pay the balance due. No evidence suggests that payment will not occur. And in any event, this potential default is not traceable to the Fee Order itself.

Given these uncertainties, the Plan estimated that the distribution timeframe for subordinated claims, such as Clifton's, would be between 2022 and 2024. But these were only estimates. Ultimately, the Plan's guarantee that Clifton will be paid with interest precludes a finding of an injury in fact now even though these estimates thus far have proven inaccurate.

Clifton's alleged harms are thus conjectural at best. It remains possible that Clifton will be paid within the Plan's initial estimated window before the end of 2024. Given Clifton's consent to the Plan, and because this period has not passed, Clifton has failed to establish that the timing of its payment has been harmed beyond what the Plan initially provided. Since the Plan did not guarantee Clifton payment by a specific date (it merely provided an estimated window which has not passed), and the estimated timing of payment was subject to change based on priority claims, Clifton has not yet shown an actual injury. That is particularly true where Clifton is entitled to interest on the payments that are due. As such, Clifton has failed to establish the negative impact of any delayed payment not already addressed by the Plan.

This remains the case even where Sharp receives his payment before Clifton is paid. The Plan anticipates fulfilling Clifton's claims even if Sharp receives the challenged bonus. As we held in *Klein*, the availability of additional funds to satisfy plaintiffs' claims foreclose standing. 263 F.2d at 771. The same is true here.

This is not to say that no potential remedy would exist should the Plan prove insufficient. We agree with our prior analysis in *Klein* that Clifton, if necessary, could sue to enforce those provisions of the Plan. At that time, there may

be an actual injury that is both fairly traceable and would be easily redressable by ordering additional money deposited into the estate to pay Clifton’s claims. *See id.* at 766. But such facts do not presently exist. And standing must exist from the start of an action. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000) (“The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence. . . .”). As such, Clifton has failed to establish actual injury thus far and therefore lacks Article III standing to challenge the Fee Award.¹¹

IV

Because Clifton currently lacks an injury in fact, we reverse the district court’s order and remand with instructions to dismiss the appeal for lack of Article III standing.

REVERSED.

¹¹ Because Clifton lacks Article III standing, we need not address the prudential “person aggrieved” standard. *See Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1222–23 (9th Cir. 1998) (holding that a suit seeking declaratory judgment must first pass constitutional and statutory muster as presenting a case-or-controversy before the court exercises its prudential discretion).



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The Classics Los Angeles

The Layered Legacy of Roscoe's House of Chicken & Waffles

The Hollywood outpost. Photo courtesy of Roscoe's House of Chicken & Waffles

By Adrian Miller September 8, 2020

Share



Once upon a time in Los Angeles, people thought the idea of combining fried chicken and a waffle as a meal was absolutely crazy. Herbert Hudson thought otherwise.





- **The Classics: Homepage**
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- **Cielito Lindo Defines the Flavors of East L.A.**
- **El Tepeyac's Rich Family Legacy Continues One Burrito at a Time**

In 1975, he opened the first **Roscoe's House of Chicken and Waffles** restaurant in Long Beach. In time, the Los Angeles Times declared that the restaurant had become "such an L.A. institution that people don't even question the strange combo anymore." Forty-five years later, Roscoe's is living proof that a restaurant can have staying power by changing public opinion.

To speak of Roscoe's, one must first acknowledge the restaurant where Hudson first ate the dish: Wells Famous Home of Chicken and Waffles in Harlem, New York. Harlem has long been accepted as the native habitat for fried chicken and waffles, thanks to its origin story. During the Harlem Renaissance era, the story goes, jazz patrons were getting out of clubs in the wee hours of the morning. They were hungry, but that time of night was too late to have dinner, but also too early to eat breakfast. Joseph P. Wells, a marketing-savvy entrepreneur, seized on the market opportunity and popular demand by creating a fried chicken and waffles as a dinner-breakfast hybrid. In 1938, he opened his eponymous restaurant and live music venue which locals called "Wells Supper Club" and "Wells." Wells' story is fantastic, but it's not true.

cited in IN RE: Simon Capital Group, LLC; et al v. Bradley Sharp
 No. 21-55967 archived on May 4, 2023





Photo courtesy of Roscoe's House of Chicken & Waffles

People in the U.S. have been eating fried chicken and waffles since the 1700s, and at least a century earlier in Europe. German immigrants brought a creamed chicken and waffle tradition with them and transplanted it in rural Pennsylvania. They earned the nickname “Pennsylvania Dutch” though they should have properly been called “Pennsylvania Deutsch.” By the 1790s, this rural dish got a cosmopolitan vibe when it became fashionable in Philadelphia restaurants. The dish made its way to the American South, and the creamed chicken was substituted with fried chicken.

By the early 1800s, notable southerners like Thomas Jefferson had fried chicken and waffles for breakfast when they entertained others, especially for a special occasion. Enslaved African Americans gained expertise making the dish because they were the principal cooks for wealthy southerners. For the next 100 years, southern elites gorged on fried chicken and waffles until the early 1900s when the dish became less fashionable. That declining popularity created the cultural space for Wells to create and disseminate his enduring creation myth. Wells' restaurant closed in 1982 when he became ill, and he died in 1987. His widow, Mrs. Ann Wells, tried to revive the restaurant in the 1990s, but after a short run, it closed permanently. That left Roscoe's as the only notable restaurant showcasing fried chicken and waffles.

Understandably, Roscoe's customers are drawn to the myriad ways that fried chicken and waffles can be paired and eaten. Should they be eaten separately with maple syrup and hot sauce applied in the appropriate places? Should one fold the waffle around the bone-in fried chicken and then dipped in maple syrup? Should it all be cut up, mixed together, and drowned in maple syrup? What of the sides? Should bacon, eggs, or sausage be added? Should one double-down on carbohydrates and add grits? These are weighty questions that must be answered through a personal experimentation. When President Barack Obama visited a Roscoe's location in 2011, he ordered the “Number 9 – Country Boy” which consists of three fried chicken wings and the choice of French fries, potato salad, or a waffle. He chose the waffle. Afterwards, Roscoe's renamed that particular menu item the “Obama's Special.”



Stevie Wonder at the Hollywood location in 1977. Photo courtesy of Roscoe's House of Chicken & Waffles

*cited in IN RE: Clifton Capital Group, LLC, et al v. Bradley Sharp
No. 21-55967 archived on May 4, 2023*

Roscoe's isn't a one-trick pony, and its menu entices customers with other soul food items. In 1996, the late and legendary Los Angeles Times food writer Jonathan Gold wrote "The hard-core dish at Roscoe's, preferred by many of the customers who look as if they'd once spent a fair amount of time on the offensive line of the Cleveland Browns, is something called Stymie's Choice, a daunting mountain of fried chicken livers sluiced in gravy, swamped in grits and garnished with a couple of eggs." That option remains on the menu to this day. Gold also noted that others swear by the restaurant's "hot water cornbread," an underrated way to make cornbread by combining scalding hot water, cornmeal, and salt, forming a patty, and then frying the patty in shallow grease like one would do with a pancake. Hot water cornbread is also still on the menu, but it's only available on certain days.

In addition to good food, Roscoe's fame was fueled by its proximity to, and support from, famous people. A reporter for the Atlanta Voice newspaper playfully wrote in 1978, just a few years after Roscoe's opened, "Roscoe's Chicken and Waffle Emporium which is a west coast version of Nu Yawk's famous Wells Chicken & Waffles, sure has a soulful radio spot going for them on KJLH/FM Radio Station. Just like Wells was in the good ole days in Nu Yawk, Roscoe's is now becoming the gathering place for all entertainers, musicians, and celebrities to meet and eat after things and places close in Hollywood." Comic great Redd Foxx and singer Natalie Cole were two such celebrities who praised Roscoe's and encouraged others to visit the restaurant whenever they visited the City of Angels.

Case: 21-55967, 05/08/2023, ID: 12710467, DktEntry: 59-2, Page 5 of 13

When Hudson, a foreman with General Motors, moved to California to open the restaurant, he knew that Angelenos would need some convincing. A 1978 advertisement in the Los Angeles Sentinel informed the newspaper's African American readers that fried chicken and waffles was "An East Coast Specialty with a West Coast Atmosphere." Like his inspiration, Wells, Hudson used his Motown connections to attract music industry folks to eat in his restaurants, provide live music, and even manage some locations. Hudson reinforced his local music vibe when he opened his second location in the spot formerly occupied by a popular music venue called Tommy Tucker's Play Room. Hudson saw immediate success, and opened additional locations in an old coffee shop on Pico Boulevard, one in South Central L.A., and another one in Pasadena. Roscoe's reach has expanded and contracted over the years with locations opening and closing, including a restaurant in the San Francisco Bay Area. Today, Roscoe's boasts seven locations in the L.A. area.



Leonard Pitts and Stevie Wonder, 1977. Photo courtesy of Roscoe's

More than any other African American-owned restaurant, Roscoe's has become part of popular culture, especially in motion pictures. The restaurant has gotten a mention in films including: *Tapehead* (1988), *Swingers* (1996), *Jackie Brown* (1997), *Rush Hour* (1998), *Soul Plane* (2004). In 2004, Roscoe's got more than a mention on the big screen: It got its own eponymous feature-length film. "It's the true story of how Roscoe's Chicken and Waffles was created," Cuba Gooding, Sr., told the *Los Angeles Times* in 2001. "I play one of the gangster types (named Fast Black) that I watched growing up, which is different from the drive-by-shooting, suicidal-drug-using, murderous-type kids they have today." The film debuted in 2004, and it's safe to say, it didn't get the same amount of love from moviegoers as customers give the restaurant. In a strange circle of life moment in 2007, Cuba Gooding, Jr. aided someone shot outside of a Roscoe's location while he waited for a carryout order.

Roscoe's last decade has come with challenges. Hudson has been on both sides of business litigation, as a defendant and a plaintiff. The former because of a successful employment discrimination case brought by an African American employee at one of the restaurants. The \$3.2 million judgment in favor of the employee caused Hudson to put the four Roscoe's locations that he didn't own into bankruptcy. As a plaintiff, Hudson sued someone in Chicago, Illinois who opened a "Roscoe's House of Chicken and Waffles," adding an extra "s" to the name, a similar logo, and similar menu items. Chicagoans flocked to the restaurant believing it to be an outpost of the L.A. restaurant. They settled out of court a day after Hudson filed a trademark infringement lawsuit.

Despite these recent troubles, Roscoe's soldiers on. A new location is in the works for West L.A., and the company talks of even more expansion. Though Roscoe's didn't not start fried chicken and waffles as a restaurant craze, it certainly inspired many other entrepreneurs. Fried chicken and waffles were once considered a novel addition to the dining scenes of many cities. Now, it seems weird for restaurant menus to go without it. That's a legacy worth celebrating.

Roscoe's House of Chicken & Waffles: Various locations, including 1514 N Gower St., Hollywood. www.roscoeschickenandwaffles.com

Adrian Miller is a James Beard Award-winning author who has written about African American presidential chefs, barbecue, and soul food. He lives in Denver, Colorado.

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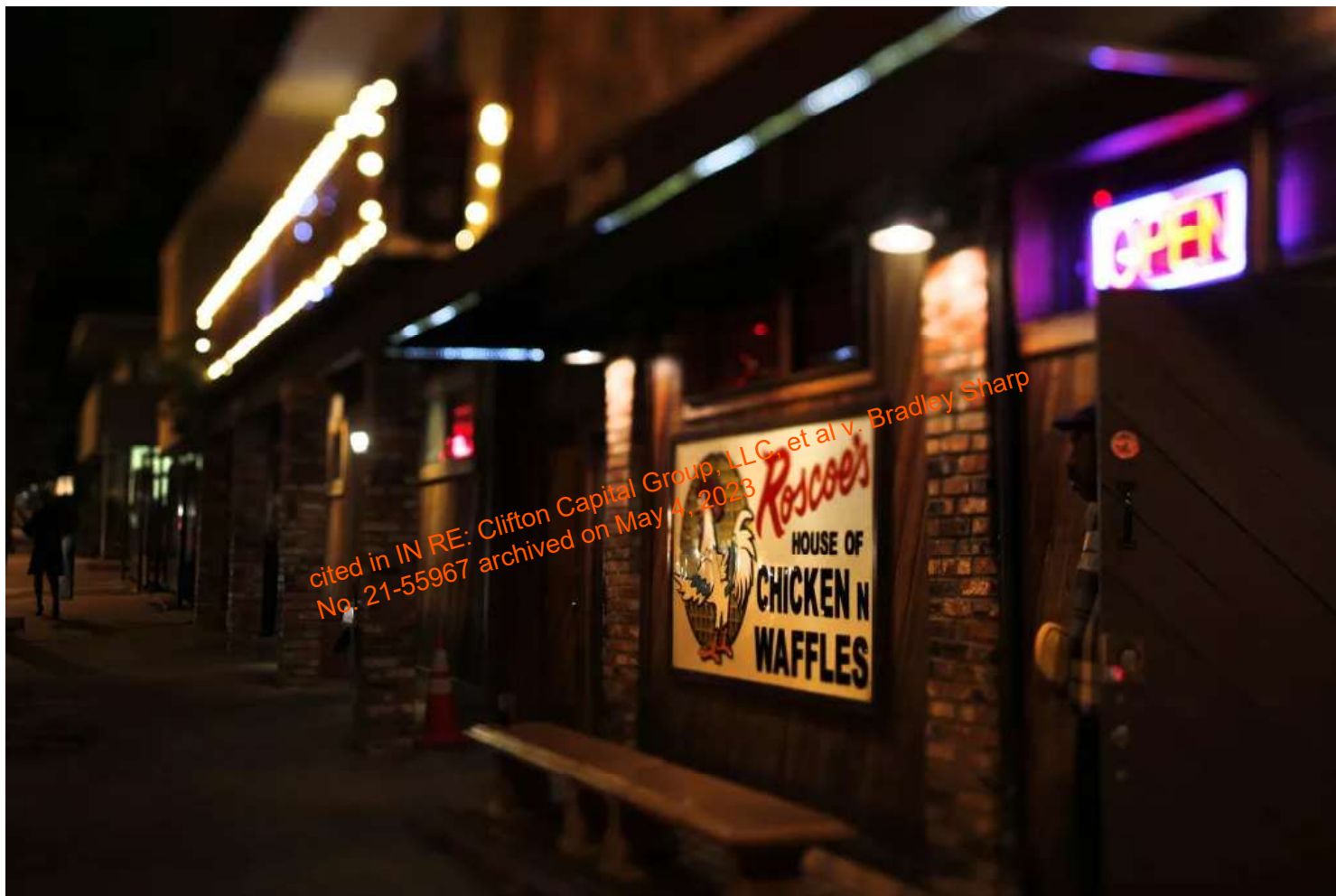
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BUSINESS

Parent company of Roscoe's House of Chicken and Waffles files for bankruptcy protection



The parent company of Roscoe's House of Chicken and Waffles has filed for bankruptcy protection. (Jay L. Clendenin / Los Angeles Times)

BY SHAN LI

MARCH 29, 2016 3:40 PM PT

Roscoe's House of Chicken and Waffles is a Los Angeles culinary institution, dishing up its soul food to the likes of Snoop Dogg and Magic Johnson.

But now the Long Beach chain is in trouble — its parent company, East Coast Foods Inc., filed for Chapter 11 bankruptcy protection Friday.

The filing came mere months after the company was ordered to pay \$3.2 million to a former employee who won a wrongful termination and discrimination lawsuit against the chain.

In filings with U.S. Bankruptcy Court in California, East Coast Foods estimated that it has debts between \$10 million and \$50 million. Its assets, on the other hand, total less than \$50,000.

Lawyers for East Coast Foods did not respond to a request for comment. In court filings, the company did not say whether bankruptcy would affect the day-to-day operations of its seven Southland Roscoe's restaurants.

Roscoe's has been dishing up its chicken-and-waffle combos since 1975, along with Southern staples such as grits, biscuits and cornbread. In 2011, President Obama made an unannounced stop at the West Los Angeles spot when he was in town on a fundraising trip.

As befitting an eatery that started in the Southland, Roscoe's has also been referenced in numerous films, television and music. The late rapper Notorious B.I.G. name-checks the chain in his song "Going back to Cali." Samuel L. Jackson's character tempts an underling with a Roscoe's meal in Quentin Tarantino's 1997 crime drama "Jackie Brown." Rapper Snoop Dogg took both Larry King and David Beckham to the chicken mecca on his reality TV show.

But Roscoe's has recently been at the center of less welcoming attention.

In October, a judge in Los Angeles ordered the company to pay \$3.2 million to Daniel Beasley, a former employee who claimed that there was systemic racial discrimination

at the chain. A jury awarded Beasley close to \$1.7 million; he was also awarded \$1.5 million in attorney's fees.

In the suit, Beasley accused the company of giving Latino employees preferential treatment over black workers, including better schedules and shifts. Beasley said he was fired in retaliation when he tried to change those practices. He became homeless after losing his job, according to media reports.

In court filings, East Coast Foods listed Beasley as one of its largest unsecured creditors.

Bankruptcy experts speculated that the Chapter 11 filing may have been sparked by something beyond the original judgment.

"The judgment, that's a big number, but I wouldn't think that was a big number for a large restaurant chain," said Eric Pezold, a partner specializing in bankruptcy at Snell & Wilmer who is not involved with the bankruptcy or the Beasley case. He said something else may have occurred "between there and now to precipitate this filing."

Beasley's attorney, Scott Cummings, said he had hired a lawyer to start the process of collecting on the judgment, which Roscoe's is appealing. Cummings said he was worried that the bankruptcy filing was an attempt to get away from paying what is owed to his client.

"It looks strange," he said. "I'm very concerned that might be what's going on."

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Shan Li

Shan Li covered the retail and restaurant industries for the Los Angeles Times. She previously reported on the California economy and the technology sector. A Texas native, she graduated from the business school at New York University, where she decided journalism was much more interesting than a job on Wall Street. She left The Times in 2017.

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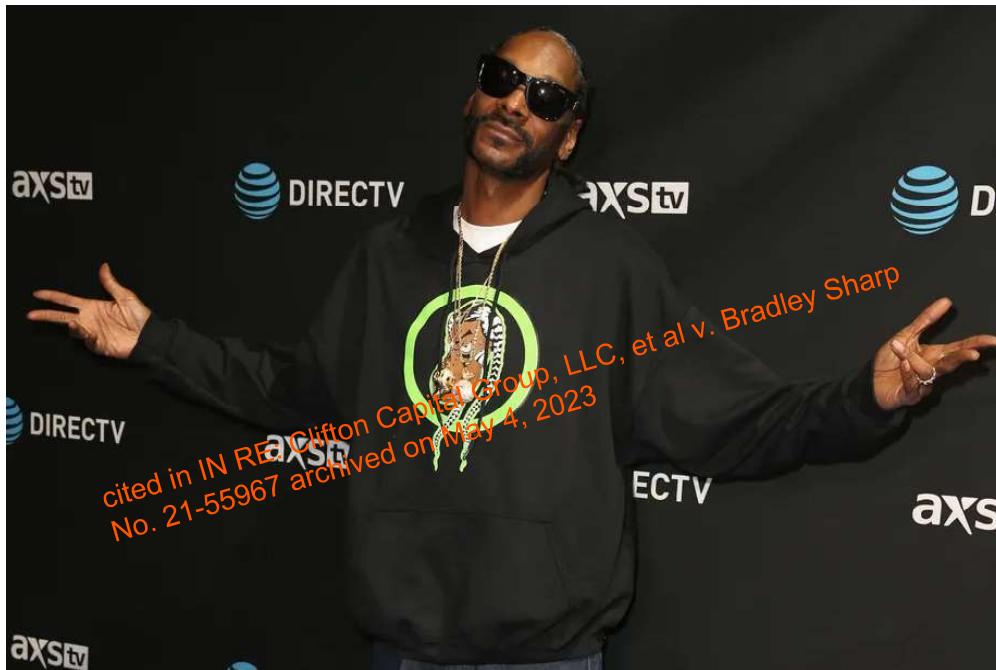
LA RESTAURANT OPENINGS

Snoop Dogg Says He'll Save Roscoe's Chicken N' Waffles if it Comes to That

And he might change the name

by Farley Elliott | Mar 31, 2016, 10:12am PDT

Via Roscoe's Chicken N' Waffles Files for Chapter 11 Bankruptcy [ELA] and Snoop Dogg Thinking About Saving Roscoe's Chicken N Waffles [TMZ]



Joe Scarnici/Getty Images

Is **Snoop Dogg** — man of the people, rapper to the stars, eater of all things delicious — going to buy up Roscoe's Chicken N' Waffles in order to keep the company from going belly up? Probably not. But we can dream.

In a seemingly humorous exchange posted early yesterday morning to *TMZ*, Snoop is asked about the **bankruptcy proceedings happening with Roscoe's Chicken N' Waffles**, which seeks to re-consolidate its debt following a massive lawsuit from last year. Snoop, seen standing next to Warren G outside Lure nightclub in Hollywood, is of course a longtime fan of the brand, but **seems genuinely surprised** to hear the news of the company's recent troubles.

Instead of simply wishing them well in what could be difficult time, Snoop steps up to the plate and says "I guess I'm gonna have to buy it, man." Which, you know, would be awesome. He *also* says he'd rename the place to Snoop Dogg's Chicken N' Waffles, which admittedly does have a pretty great ring to it.

Of course it's all a laugh (or is it?), though Snoop does have an affinity for the restaurants. More than likely, Roscoe's is happy to avoid talks of a sale in times like this though, in favor of quietly **working through their lawsuit woes** and chapter 11 bankruptcy court proceedings. A spokesperson for the company told *Eater* yesterday that there were no plans to currently close any existing location, so for now — Snoop or no Snoop — it's business as usual.

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No. 21-55967 archived on May 11, 2023

APPENDIX B

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In the Matter of: EAST COAST
FOODS, INC.,

Debtor,

CLIFTON CAPITAL GROUP, LLC,

Appellant,

v.

BRADLEY D. SHARP, former
Chapter 11 Trustee,

Appellee.

No. 21-55967

D.C. No. 2:20-cv-
10982-MWF

**ORDER AND
AMENDED
OPINION**

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted September 2, 2022
Submission Withdrawn September 26, 2022
Resubmitted May 2, 2023
Pasadena, California

Filed May 8, 2023
Amended September 14, 2023

Before: Milan D. Smith, Jr. and Ryan D. Nelson, Circuit
Judges, and Gershwin A. Drain,* District Judge.

Opinion by Judge R. Nelson

SUMMARY**

Bankruptcy

The panel reversed the district court's order affirming the bankruptcy court's enhanced fee award to the trustee in a funded Chapter 11 bankruptcy and remanded with instructions to dismiss creditor Clifton Capital Group, LLC's appeal for lack of Article III standing.

Clifton was chair of an official committee of unsecured creditors appointed by the Office of the United States Trustee to monitor the activities of debtor East Coast Foods, Inc., manager of Roscoe's House of Chicken & Waffles. The bankruptcy court appointed Bradley D. Sharp as Chapter 11 trustee. Clifton objected to Sharp's fee application, but the bankruptcy court awarded the statutory maximum fee. Clifton appealed. The district court concluded that Clifton had standing to appeal, and it

* The Honorable Gershwin A. Drain, United States District Judge for the Eastern District of Michigan, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

remanded. On remand, the bankruptcy court again awarded the statutory maximum. Clifton again appealed, and the bankruptcy court this time affirmed.

Addressing standing, the panel wrote that the Ninth Circuit historically bypassed the Article III inquiry in the bankruptcy context, instead analyzing whether a party is a “person aggrieved,” as a principle of prudential standing. The court, however, has returned emphasis to Article III standing following *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014), in which the Supreme Court questioned prudential standing.

The panel held that Clifton lacked Article III standing to appeal the fee award because it failed to show that the enhanced fee award would diminish its payment under the bankruptcy plan, and thus it failed to establish an “injury in fact.” The panel concluded that Clifton’s injury was too conjectural and hypothetical, and Clifton did not show that the fee award impaired the likelihood or delayed the timing of its payment. The panel concluded that the Chapter 11 plan did not relate to a limited fund because there was no finite amount of assets from which all creditors could be paid. Rather, the plan was a reorganizing plan that proposed to pay all allowed claims in full from the debtor’s ongoing operations and non-estate sources. The panel held that, given the detailed plan, which guaranteed payment to creditors plus interest, and the net equity in the plan, the district court clearly erred in finding that the estate was a limited fund and that there were not sufficient funds to pay back all the creditors. Thus, Clifton’s likelihood of payment was not impaired. The panel also concluded that Clifton did not suffer injury to the timing of its payment because Clifton’s alleged harms were conjectural, and it remained possible that Clifton would be paid within the plan’s initial

estimated window. Accordingly, Clifton currently lacked an injury in fact.

COUNSEL

Anthony Bisconti (argued), Bienert Katzman Littrell Williams LLP, Los Angeles, California; Steven J. Katzman, Bienert Katzman Littrell Williams LLP, San Clemente, California; for Appellant.

John N. Tedford IV (argued) and Uzzi O. Raanan, Danning Gill Israel & Krasnoff LLP, Los Angeles, California, for Appellee.

ORDER

The opinion filed on May 8, 2023, and appearing at 66 F.4th 1214, is amended as follows: On slip opinion page 4, lines 7–8, delete <Plan’s assets contained within the Plan Collateral Package> and replace with <Collateral Package>.

On page 13, line 6, delete footnote 9.

On page 13, line 8, replace footnote 10 with <The disclosure statement requires that the plan include a classification of claims and how each class of claims will be treated under the plan. *See* 11 U.S.C. § 1123. Creditors whose claims are “impaired” generally vote on the plan before it is approved by the bankruptcy court. *See id.* at § 1126. Here, however, Clifton waived that right in a stipulation approved by the bankruptcy court and the plan was subsequently approved pursuant to § 1128.>.

On page 14, line 10, delete <Plan's assets contained within the Plan> and replace with <Package>.

On page 16, line 6, delete <Given Clifton's consent to the Plan, and b> and replaced with .

With these amendments, Judges M. Smith and R. Nelson vote to deny the petition for rehearing en banc, and Judge Drain so recommends. The full court was advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. The Petitions for Rehearing and Rehearing En Banc are DENIED. No further petitions for rehearing will be accepted.

OPINION

R. NELSON, Circuit Judge:

Creditor Clifton Capital Group, LLC challenges the district court's order affirming the bankruptcy court's enhanced fee award of over \$1 million dollars to the trustee in a funded bankruptcy. Because Clifton has failed to show that the enhanced fee award will diminish its payment under the bankruptcy plan, Clifton lacks standing. We thus reverse the district court's order finding standing and remand with instructions to dismiss the appeal for lack of Article III standing.

I

This is not a normal bankruptcy. Roscoe's House of Chicken & Waffles is a landmark Los Angeles restaurant chain. Building on a staple menu predating the American

Revolution—Thomas Jefferson served his guests chicken and waffles—Roscoe’s has garnered celebrity attention since opening in 1975. President Obama enjoyed chicken wings and a waffle there in 2011, with “Obama’s Special” added to the menu.¹ Several movies have referenced Roscoe’s.² And numerous songs have memorialized the restaurant, including one by Ludacris who suggests that the listener “roll to Roscoe’s and grab somethin’ to eat.”³ Despite its cultural ubiquity, even Roscoe’s was not immune to a \$3.2 million judgment in a racial discrimination case.⁴ This significant judgment, along with other debt, threatened to impair Roscoe’s ability to pay its creditors.

But fear not. The public can still indulge in Roscoe’s famous soul food. As part of the bankruptcy plan, the restaurants remain open and founder Herb Hudson has guaranteed payment to Roscoe’s creditors. As a failsafe,

¹ Adrian Miller, *The Layered Legacy of Roscoe’s House of Chicken & Waffles*, RESY Blog (Sept. 8, 2020) <https://blog.resy.com/2020/09/the-layered-legacy-of-roscoes-house-of-chicken-waffles/>.

² See *id.* (“The restaurant has gotten a mention in films including: *Tapehead* (1988), *Swingers* (1996), *Jackie Brown* (1997), *Rush Hour* (1998), *Soul Plane* (2004). In 2004, Roscoe’s got more than a mention on the big screen: It got its own eponymous feature-length film.”).

³ LUDACRIS, *CALL UP THE HOMIES* (Def Jam Recordings 2008).

⁴ See *Beasley v. East Coast Foods, Inc. et. al.*, No. BC509995 (L.A. Sup. Ct.); see also Shan Li, *Parent Company of Roscoe’s House of Chicken and Waffles Files for Bankruptcy Protection*, LA Times (Mar. 29, 2016) <https://www.latimes.com/business/la-fi-roscoes-chicken-waffles-bankruptcy-20160329-story.html>.

Snoop Dogg suggested buying the chain to keep it in business.⁵

In 2016, East Coast Foods, Inc. (ECF), manager of the four Roscoe's locations, filed for Chapter 11 bankruptcy. The Office of United States Trustee appointed an official committee of unsecured creditors (Committee) to monitor ECF's activities, of which Clifton Capital Group, LLC (Clifton) was named chair. After an examiner found that ECF could not meet its fiduciary obligations, the court appointed Sharp as trustee, the de facto head of ECF for two years.

The Committee and ECF's principal submitted a Chapter 11 bankruptcy plan (the Plan), effective September 2018. The Plan granted \$450 per hour plus expenses for Sharp's services as trustee.

The Plan guaranteed the creditors full payment with interest secured by a "Collateral Package," which included all of the ECF's assets, and up to a \$10 million contribution from Hudson. The Plan's appraiser estimated the value of the Collateral Package at over \$39.2 million with \$23.4 million of net equity, far exceeding the claims to be paid under the Plan.

In his final fee application filed in October 2018, Sharp requested \$1,155,844.71, the maximum allowable under the fee cap statute, 11 U.S.C. § 326(a). This amount represented the lodestar (1,692.2 hours worked times an hourly rate of

⁵ Farley Elliott, *Snoop Dogg Says He'll Save Roscoe's Chicken N' Waffles if it Comes to That*, LA Eater (Mar. 31, 2016) <https://la.eater.com/2016/3/31/11338382/snoop-dogg-buy-roscoes-chicken-waffles>.

\$448.50, for \$758,955.50) plus a 65% enhancement for exceptional services.

Clifton objected in the bankruptcy court, arguing the fee cap was not presumptively reasonable as the record did not support an enhancement beyond the lodestar. The court disagreed, holding that the fee cap was presumptively reasonable and, in the alternative, that the case was exceptional and merited deviation from the lodestar.

Clifton then appealed to the district court and moved to strike the Fee Order. Sharp countered that Clifton lacked standing to appeal because it was not a “party aggrieved.” The district court found Clifton aggrieved because there was insufficient capital in the estate to pay all creditors. *In re E. Coast Foods, Inc.*, No. CV 18-10098, 2019 WL 6893015, at *3 (C.D. Cal. Dec. 18, 2019). It held that “[b]ecause the increased compensation to the Trustee will further subordinate Clifton Capital’s claim, the Court concludes that Clifton Capital is directly and adversely affected by the Final Fee Order.” *Id.* The district court further held that the lodestar was the starting point for reasonable compensation and vacated and remanded for the bankruptcy court to award fees equal to the lodestar or “make detailed findings sufficient to justify a higher amount.” *Id.* at *4, 6.

On remand, the bankruptcy court again found that Sharp was “entitled to an enhancement because the results in this case were truly exceptional.” The bankruptcy court again awarded the statutory maximum. Clifton again appealed and the district court this time affirmed. Clifton now appeals to this court.

The question of whether a party has standing is a threshold issue that must be addressed before turning to the merits of a case. *Horne v. Flores*, 557 U.S. 433, 445 (2009). To appeal a bankruptcy court’s order, a party must establish Article III standing and that it is “aggrieved” by the order. *In re Fondiller*, 707 F.2d 441, 443 (9th Cir. 1983).

We review Article III standing determinations de novo. *Tailford v. Experian Info. Sols., Inc.*, 26 F.4th 1092, 1098 (9th Cir. 2022). But we review the factual determination that Clifton was a person aggrieved for clear error. *In re Point Ctr. Fin., Inc.*, 890 F.3d 1188, 1191 (9th Cir. 2018).

III

A

Our authority under Article III is dispositive. Because the Constitution limits our jurisdiction to “cases” and “controversies,” standing is an “essential and unchanging” requirement. *In re Sisk*, 962 F.3d 1133, 1141 (9th Cir. 2020) (quoting U.S. Const. art. III, § 2, cl. 1; *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). Accordingly, a party must establish an Article III case or controversy before we exert subject matter jurisdiction. *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004) (“A suit brought by a plaintiff without Article III standing is not a ‘case or controversy,’ and an Article III federal court therefore lacks subject matter jurisdiction.” (citation omitted)).

In the bankruptcy context, we have historically bypassed the Article III inquiry, instead analyzing whether a party is a “person aggrieved.” See *Fondiller*, 707 F.2d at 443. This standard is a prudential requirement initially found within the Bankruptcy Act of 1898, which permitted appeal by any “person aggrieved by an order of a referee.” 11 U.S.C. §

67(c) (1976) (repealed 1978). The “person aggrieved” standard was designed to limit appeals in bankruptcy proceedings because such cases invariably implicate the interests of various stakeholders, including those not formally parties to the litigation. *See Fondiller*, 707 F.2d at 443. Even after Congress repealed and replaced the Bankruptcy Act of 1898, however, we continued to apply the “person aggrieved” standard.⁶ *See id.*; *In re Com. W. Fin. Corp.*, 761 F.2d 1329, 1334 (9th Cir. 1985).

It is unclear why we continued to apply the person aggrieved rule in the absence of the statute providing the basis for doing so. We appear to have recast the pre-1978 statutory standard and applied it as a principle of prudential standing. But the Supreme Court has since questioned prudential standing, noting it “is in some tension with [the Court’s] recent reaffirmation of the principle that ‘a federal court’s obligation to hear and decide’ cases within its jurisdiction ‘is virtually unflagging.’” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (quoting *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125–26 (2014)). Still, our bankruptcy cases have historically addressed prudential standing with little attention to Article III standing. *See, e.g., Fondiller*, 707 F.2d at 441–43; *In re Int’l Env’t Dynamics, Inc.*, 718 F.2d 322, 326 (9th Cir. 1983); *Klein v. Rancho Mont. De Oro, Inc.*, 263 F.2d 764, 772 (9th Cir. 1959); *Com. W. Fin.*, 761 F.2d at 1334.

After the Supreme Court’s decision in *Driehaus*, however, we have returned emphasis to Article III standing.

⁶ The Bankruptcy Reform Act of 1978 replaced the Bankruptcy Act of 1898. It governs the relationship between creditors and debtors when debtors can no longer pay their debts. Pub. L. No. 95-598, 92 Stat. 2549 (codified at 11 U.S.C. § 101).

See, e.g., Sisk, 962 F.3d at 1141–43. And determining our Article III jurisdiction before any prudential considerations does not offend our precedent. *See, e.g., In re P.R.T.C., Inc.*, 177 F.3d 774, 777–79 (9th Cir. 1999) (addressing Article III standing before person aggrieved prudential standing). We thus first examine Article III standing, which we find lacking here.

B

As the party invoking federal jurisdiction, Clifton “bears the burden of establishing” the elements of Article III standing. *Lujan*, 504 U.S. at 561. A party must establish “such a personal stake in the outcome of the controversy as to warrant *his* invocation of federal-court jurisdiction.” *Horne*, 557 U.S. at 445 (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) (emphasis in original)). Clifton must therefore show that it has: (1) suffered an “injury in fact” that is concrete, particularized, and actual or imminent, (2) the injury is “fairly traceable” to the defendant’s conduct, and (3) the injury can be “redressed by a favorable decision.” *Lujan*, 504 U.S. at 560–61 (alterations in original omitted).

1

Injury in fact is the “[f]irst and foremost” of the three standing elements. *Sisk*, 962 F.3d at 1142 (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 103 (1998)). Clifton argues that it suffered an injury-in-fact because the Plan established the expectation that it would receive full payment of its claim, which has not yet occurred and which the Fee Order exacerbates. The Plan estimates that Clifton

would “receive a *pro rata* share of Available Cash⁷ in the annual sum of \$1,816,701 in 2022, \$2,996,321 in 2023, and \$634,634 in 2024 . . .” To date, Clifton notes that this totals millions of dollars in payments that have not been made. Clifton argues that the Fee Order’s grant of the \$400,000 trustee bonus harms both the likelihood and timing of any payment by further subordinating it.

This, Clifton contends, suffices as an injury ‘fairly traceable’ to the wrongful conduct of the excessive fee award because its “injury need not be financial,” *P.R.T.C.*, 177 F.3d at 777 (citation omitted), and because, under 11 U.S.C. § 330, payment of the fee award has priority and must be paid in full before unsecured creditors like Clifton receive any distribution. Clifton thus argues that it suffered a traceable and redressable injury in fact because a favorable decision would result in the excessive fees being returned to the ECF estate to pay out claims, and therefore would “increase the likelihood and timing” of payment to Clifton.

Sharp counters that Clifton’s alleged injury is too conjectural and hypothetical to establish an injury in fact because there is no diminished likelihood that Clifton will be paid in full. The Plan’s Collateral Package⁸ guarantees Clifton full payment with interest. Sharp further argues that

⁷ “Available Cash” is defined as cash in the estate from various sources, *less* (among other things) “the amount necessary or estimated and reserved to pay in full [] any Allowed Administrative Expense Claims,” which includes the Trustee’s awarded compensation pursuant to the Fee Order. *See* 11 U.S.C. § 503(b)(2) (providing that an administrative expense claim includes “compensation and reimbursement awarded under [11 U.S.C. § 330(a)].”).

⁸ As discussed below, the Collateral Package protects against any risks of nonpayment and includes all of the Reorganized Debtor’s assets.

Clifton cannot claim injury arising from the Plan's estimates because Clifton approved the Plan understanding that the timing of its distributions depended on the allowed amounts of senior claims, meaning payment could be delayed by any increase in any Allowed Non-Subordinated Claims. Thus, Sharp asserts that Clifton's alleged harm is no harm at all because Clifton's payment is certain, and the only question at issue is when payment will occur.

2

We conclude that Clifton's alleged injury is too conjectural and hypothetical to establish an injury in fact for Article III standing. We similarly conclude that Clifton is wrong that the fee award both impaired the likelihood and delayed the timing of its payment. The district court erroneously concluded that the fee award would further subordinate Clifton's claim.

a

We first address the likelihood of payment. The district court concluded that Clifton had standing because it was an aggrieved party. Noting that Clifton had not been paid on any of its Allowed Claim, the court adopted Clifton's argument that "[t]here are not yet enough funds on hand to pay all creditors, including Clifton Capital, in full" and that "there are outstanding contingencies under the Plan that must occur before those funds become available." *E. Coast Foods*, 2019 WL 6893015, at *3. Sharp pointed out, however, that because Clifton was guaranteed 100% payment of its alleged claim under the Plan, it was not aggrieved. *Id.* at *2-3.

The district court seemingly concluded, without explicitly stating, that the Plan concerns a limited fund. *See*

id. at *3. It found that the alleged lack of sufficient capital to pay all claims would further subvert Clifton’s claim and thereby adversely affect its payment. *Id.* Therefore, the district court held that Clifton was aggrieved because it was appealing an order disposing of assets from which it (the claimant) seeks to be paid. *Id.* (citing *Int’l Env’t Dynamics*, 718 F.3d at 326).

The district court relied on our precedent that in cases involving competing claims to a limited fund, “a claimant has standing to appeal an order disposing of assets from which the claimant seeks to be paid.” *Id.* (quoting *P.R.T.C.*, 177 F.3d at 778). A limited fund necessarily concerns a finite pool of assets to pay claims, thus creating the risk that creditors will not be paid, either in full or at all. In the limited fund context, changes to any allotment or transfer of funds, including an enhanced fee award, would materially affect the likelihood of any potential payment and therefore directly implicate creditor interests. Along these lines, we have found a party aggrieved when limited fund plans “eliminated” a party’s interest in estate assets from which they sought payment. *Com. W. Fin.*, 761 F.2d at 1335. We have also found standing when a bankruptcy court’s order transferred all significant assets out of the estate, effectively barring a creditor’s claim. *P.R.T.C.*, 177 F.3d at 778–79.

In contrast, in *Klein*, we found that plaintiffs challenging an order seeking payment of their attorney fees lacked standing because the plan specified that there were “additional monies” available, even though the plan did not expressly contemplate payment of their claims. 263 F.2d at 771–72. The plaintiffs challenged orders confirming a plan which they asserted disregarded compensation for legal services to which they were entitled. *See id.* Plaintiffs

argued that because the plan disposed of the estate's assets, the plan rendered payment impossible. *Id.*

Our court rejected both arguments. Even though the plan did not expressly contemplate the plaintiffs' compensation claims, the plan provided that "additional monies are available if need(ed) . . . to . . . pay off the unsecured creditors their claims in full." *Id.* at 772 (alterations in original). At judgment, the court noted that "if the sum which is actually available to pay appellants' claims as finally allowed proves insufficient, the court has only to enforce the provisions of the plan . . . requiring that additional monies be deposited or accrued in the registry." *Id.*

Even though *Klein* was decided under the "person aggrieved" standard, it is most analogous to this case. As in *Klein*, the Plan here does not relate to a limited fund because there is no finite amount of assets from which all creditors could be paid. *See id.* Rather, "the Plan is a reorganizing plan that **proposes to pay all Allowed Claims in full** (unless otherwise agreed) from the Debtor's ongoing operations and non-Estate sources."

The Plan's mandatory "disclosure statement" which outlines the Plan, its risk factors, and its financial projections bolsters this conclusion.⁹ *See* 11 U.S.C. §§ 1121, 1125. The Plan makes clear that Clifton's claim will be paid in full with

⁹ The disclosure statement requires that the plan include a classification of claims and how each class of claims will be treated under the plan. *See* 11 U.S.C. § 1123. Creditors whose claims are "impaired" generally vote on the plan before it is approved by the bankruptcy court. *See id.* at § 1126. Here, however, Clifton waived that right in a stipulation approved by the bankruptcy court and the plan was subsequently approved pursuant to § 1128.

interest after all other allowed unsecured claims and penalty claims are satisfied. Clifton understood these terms: its principal Sam White testified that “the Plan was proposed to move this case forward and to ensure 100% payment to creditors as quickly as possible.”

Indeed, the Plan’s promise of full payment with interest is unconditionally guaranteed and secured by a “Collateral Package,” which includes all of ECF’s assets. The Debtor’s principal (Hudson) is responsible for contributing up to \$10 million to the Plan to affect the payment of claims. ECF is required to contribute to the Plan roughly \$110,000 per month plus the excess free cash flow from its post-confirmation operations. Additional funds are available from other entities owned by Hudson which are to contribute about \$130,000 per month to the Plan. Payments from ECF and Hudson will continue until all claims are paid in full with interest.

The Package further ensures enough available collateral to pay the Plan’s covered claims in full, plus a 35% equity cushion. The Plan’s appraiser estimated the value of the Package at over \$39.2 million with 23.4 million of net equity, exceeding the claims to be paid under the Plan by about \$17.3 million (the 35% equity cushion).

Given the detailed Plan which guarantees payment to creditors plus interest, and the net equity in the Plan, the district court’s finding that the estate is a limited fund and that “there are not sufficient funds to pay back all the creditors,” is clearly erroneous. *E. Coast Foods*, 2019 WL 6893015, at *3. Moreover, even if Sharp receives the contested \$400,000 bonus, this will not impact Clifton’s ability to be paid because there are other sources from which to make Clifton’s payment at the appropriate time.

b

We similarly disagree with Clifton's assertion that it suffered injury to the timing of its payment. In agreeing to the Plan, Clifton knew from the start that the timing of its payment could be longer or shorter than the Plan's initial estimates depending on the amounts owed to senior claimants. The Disclosure estimates that all Allowed Unsubordinated Claims would be paid in full within four years, by mid-2022. But the Statement also notes that "[t]he term of the Plan can be shorter or longer than expected depending on the amount of the Allowed Claims."

The Plan further estimates that allowed claims could be paid within six years, but "for every \$1 million change in allowed claims, the term of the Plan will change by 3.3 months." Sharp points to specific unresolved allowed claims that have delayed payment, such as a pending priority claim by the IRS for over \$10.2 million which it asserts Clifton knew was present at the time the Plan was approved, and for which \$15 million is being held in reserve to pay. Sharp also points to the effects of COVID-19 and a missing \$1.5 million payment from Hudson as reasons that Clifton has not been paid yet. Sharp has entered into a series of forbearance agreements to give Hudson additional time to pay the balance due. No evidence suggests that payment will not occur. And in any event, this potential default is not traceable to the Fee Order itself.

Given these uncertainties, the Plan estimated that the distribution timeframe for subordinated claims, such as Clifton's, would be between 2022 and 2024. But these were only estimates. Ultimately, the Plan's guarantee that Clifton will be paid with interest precludes a finding of an injury in

fact now even though these estimates thus far have proven inaccurate.

Clifton's alleged harms are thus conjectural at best. It remains possible that Clifton will be paid within the Plan's initial estimated window before the end of 2024. Because this period has not passed, Clifton has failed to establish that the timing of its payment has been harmed beyond what the Plan initially provided. Since the Plan did not guarantee Clifton payment by a specific date (it merely provided an estimated window which has not passed), and the estimated timing of payment was subject to change based on priority claims, Clifton has not yet shown an actual injury. That is particularly true where Clifton is entitled to interest on the payments that are due. As such, Clifton has failed to establish the negative impact of any delayed payment not already addressed by the Plan.

This remains the case even where Sharp receives his payment before Clifton is paid. The Plan anticipates fulfilling Clifton's claims even if Sharp receives the challenged bonus. As we held in *Klein*, the availability of additional funds to satisfy plaintiffs' claims foreclose standing. 263 F.2d at 771. The same is true here.

This is not to say that no potential remedy would exist should the Plan prove insufficient. We agree with our prior analysis in *Klein* that Clifton, if necessary, could sue to enforce those provisions of the Plan. At that time, there may be an actual injury that is both fairly traceable and would be easily redressable by ordering additional money deposited into the estate to pay Clifton's claims. *See id.* at 766. But such facts do not presently exist. And standing must exist from the start of an action. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 170

(2000) (“The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence. . . .”). As such, Clifton has failed to establish actual injury thus far and therefore lacks Article III standing to challenge the Fee Award.¹⁰

IV

Because Clifton currently lacks an injury in fact, we reverse the district court’s order and remand with instructions to dismiss the appeal for lack of Article III standing.


REVERSED.

¹⁰ Because Clifton lacks Article III standing, we need not address the prudential “person aggrieved” standard. *See Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1222–23 (9th Cir. 1998) (holding that a suit seeking declaratory judgment must first pass constitutional and statutory muster as presenting a case-or-controversy before the court exercises its prudential discretion).

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The Classics Los Angeles

The Layered Legacy of Roscoe's House of Chicken & Waffles

The Hollywood outpost. Photo courtesy of Roscoe's House of Chicken & Waffles

By Adrian Miller September 8, 2020

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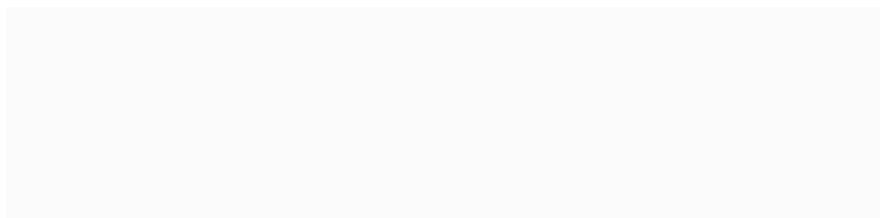
Once upon a time in Los Angeles, people thought the idea of combining fried chicken and a waffle as a meal was absolutely crazy. Herbert Hudson thought otherwise.

In 1975, he opened the first **Roscoe's House of Chicken and Waffles** restaurant in Long Beach. In time, the Los Angeles Times declared that the restaurant had become "such an L.A. institution that people don't even question the strange combo anymore." Forty-five years later, Roscoe's is living proof that a restaurant can have staying power by changing public opinion.

To speak of Roscoe's, one must first acknowledge the restaurant where Hudson first ate the dish: Wells Famous Home of Chicken and Waffles in Harlem, New York. Harlem has long been accepted as the native habitat for fried chicken and waffles, thanks to its origin story. During the Harlem Renaissance era, the story goes, jazz patrons were getting out of clubs in the wee hours of the morning. They were hungry, but that time of night was too late to have dinner, but also too early to eat breakfast. Joseph T. Wells, a marketing-savvy entrepreneur, seized on the market opportunity and popular demand by creating a fried chicken and waffles as a dinner-breakfast hybrid. In 1938, he opened his eponymous restaurant and live music venue which locals called "Wells Supper Club" and "Wells." Wells' story is fantastic, but it's not true.



- › The Classics: Homepage
- › Soul Survivor: The Story of the World's Oldest Soul Food Restaurant
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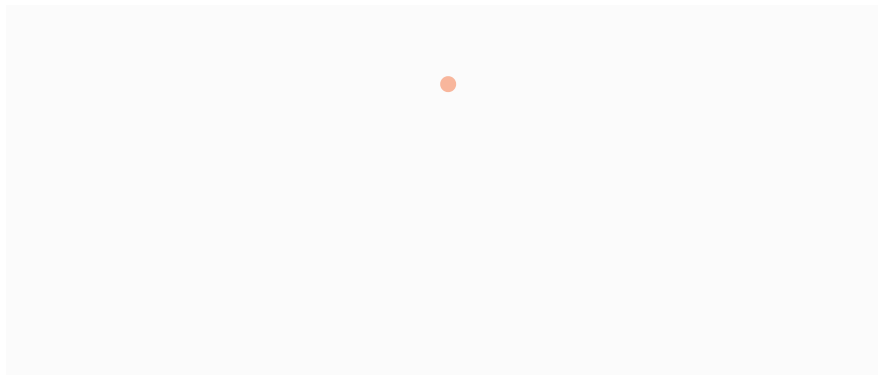


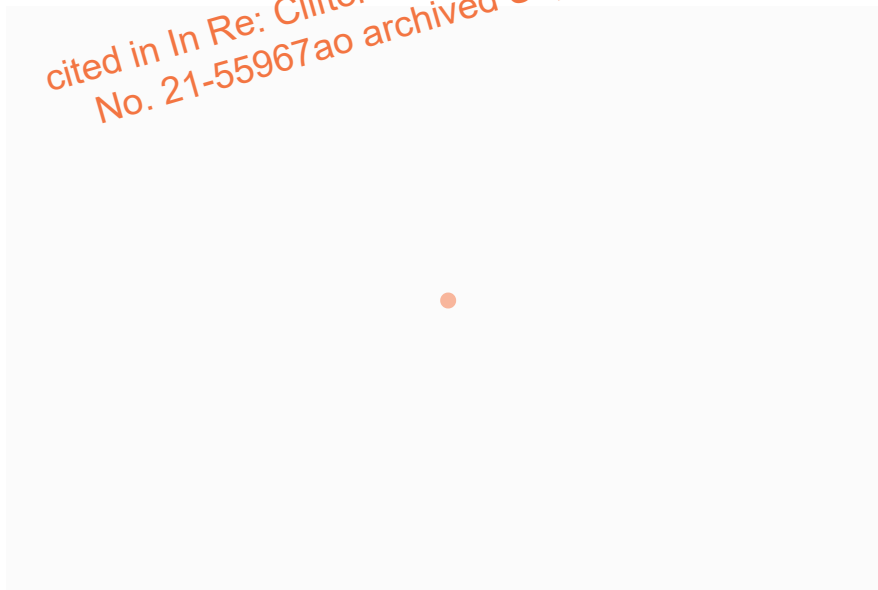
Photo courtesy of Roscoe's House of Chicken & Waffles

People in the U.S. have been eating fried chicken and waffles since the 1700s, and at least a century earlier in Europe. German immigrants brought a creamed chicken and waffle tradition with them and transplanted it in rural Pennsylvania. They earned the nickname "Pennsylvania Dutch" though they should have properly been called "Pennsylvania Deutsch." By the 1790s, this rural dish got a cosmopolitan vibe when it became fashionable in Philadelphia restaurants. The dish made its way to the American South, and the creamed chicken was substituted with fried chicken.

By the early 1800s, notable southerners like Thomas Jefferson had fried chicken and waffles for breakfast when they entertained others, especially for a special occasion. Enslaved African Americans gained expertise making the dish because they were the principal cooks for wealthy southerners. For the next 100 years, southern elites gorged on fried chicken and waffles until the early 1900s when the dish became less fashionable. That decline in popularity created the cultural space for Wells to create and disseminate his enduring creation myth. Wells' restaurant closed in 1982 when he became ill, and he died in 1987. His widow, Mrs. Ann Wells, tried to revive the restaurant in the 1990s, but after a short run, it closed permanently. That left Roscoe's as the only notable restaurant showcasing fried chicken and waffles.

Understandably, Roscoe's customers are drawn to the myriad ways that fried chicken and waffles can be paired and eaten. Should they be eaten separately with maple syrup and hot sauce applied in the appropriate places? Should one fold the waffle around the bone-in fried chicken and then dipped in maple syrup? Should it all be cut up, mixed together, and drowned in maple syrup? What of the sides? Should bacon, eggs, or sausage be added? Should one double-down on carbohydrates and add grits? These are weighty questions that must be answered through a personal experimentation. When President Barack Obama visited a Roscoe's location in 2011, he ordered the "Number 9 — Country Boy" which consists of three fried chicken wings and the choice of French fries, potato salad, or a waffle. He chose the waffle. Afterwards, Roscoe's retained that particular menu item as the "Obama's Special."

cited in In Re: Clifton Capital Group LLC v. Sharp
No. 21-55967ao archived September 8, 2023



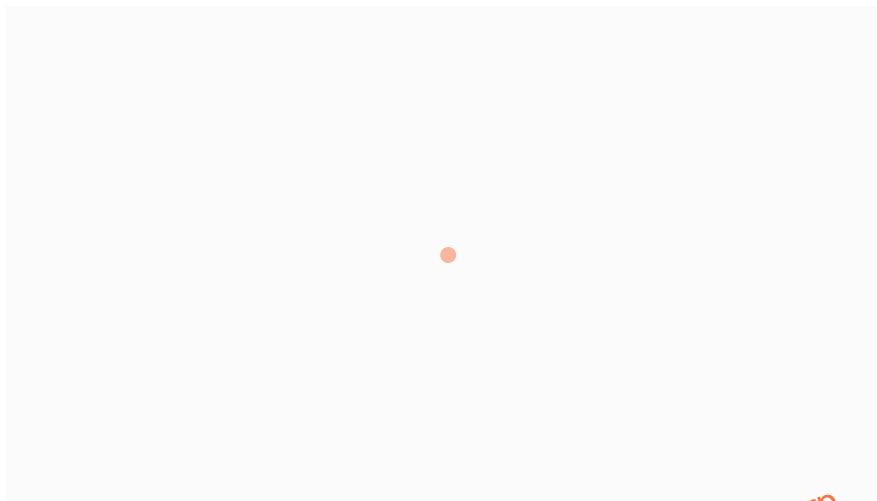
Stevie Wonder at the Hollywood location in 1977. Photo courtesy of Roscoe's House of Chicken & Waffles

Roscoe's isn't a one-trick pony, and its menu entices customers with other soul food items. In 1996, the late and legendary Los Angeles Times food writer Jonathan Gold wrote "The hard-core dish at Roscoe's, preferred by many of the customers who look as if they'd once spent a fair amount of time on the offensive line of the Cleveland Browns, is something called Szymie's Choice, a daunting mountain of fried chicken livers sluiced in gravy, swamped in grits and garnished with a couple of eggs." That option remains on the menu to this day. Gold also noted that others swear by the restaurant's "hot water cornbread," an underrated way to make cornbread by combining scalding hot water, cornmeal, and salt, forming a patty, and then frying the patty in shallow grease like one would do with a pancake. Hot water cornbread is also still on the menu, but it's only available on certain days.

In addition to good food, Roscoe's fame was fueled by its proximity to, and support from, famous people. A reporter for the Atlanta Voice newspaper playfully wrote in 1978, just a few years after Roscoe's opened, "Roscoe's Chicken and Waffle Emporium which is a west coast version of Nu Yawk's famous Wells Chicken & Waffles, sure has a soulful radio spot going for them on KJLH/FM Radio Station. Just like Wells was in the good ole days in Nu

Yawk, Roscoe's is now becoming the gathering place for all entertainers, musicians, and celebrities to meet and eat after things and places close in Hollywood." Comic great Redd Foxx and singer Natalie Cole were two such celebrities who praised Roscoe's and encouraged others to visit the restaurant whenever they visited the City of Angels.

When Hudson, a foreman with General Motors, moved to California to open the restaurant, he knew that Angelenos would need some convincing. A 1978 advertisement in the Los Angeles Sentinel informed the newspaper's African American readers that fried chicken and waffles was "An East Coast Specialty with a West Coast Atmosphere." Like his inspiration, Wells, Hudson used his Motown connections to attract music industry folks to eat in his restaurants, provide live music, and even manage some locations. Hudson reinforced his local music vibe when he opened his second location in the spot formerly occupied by a popular music venue called Tommy Tucker's Play Room. Hudson saw immediate success, and opened additional locations in an old coffee shop on Pico Boulevard, one in South Central L.A., and another one in Pasadena. Roscoe's reach has expanded and contracted over the years with locations opening and closing, including a restaurant in the San Francisco Bay Area. Today, Roscoe's boasts seven locations in the L.A. area.



Leonard Pitts and Stevie Wonder, 1977. Photo courtesy of Roscoe's

More than any other African American-owned restaurant, Roscoe's has become part of popular culture, especially in motion pictures. The restaurant has gotten a mention in films including *Tapehead* (1988), *Swingers* (1996), *Boyz n the City* (1997), *Rush Hour* (1998), *Soul Plane* (2004). In 2004, Roscoe's got more than a mention on the big screen: It got its own eponymous feature-length film. "It's the true story of how Roscoe's Chicken and Waffles was created," Cuba Gooding, Sr. told the *Los Angeles Times* in 2001. "I play one of the gangster types (named Poo Black) that I watched growing up, which is different from the drug-dealing, suicidal-drug-using, murderous-type kids they have today." The film debuted in 2004, and it's safe to say it didn't get the same amount of love from moviegoers as customers give the restaurant. In a strange circle of life moment in 2007, Cuba Gooding, Jr. aided someone shot outside of a Roscoe's location while he waited for a carryout order.

Roscoe's last decade has come with challenges. Hudson has been on both sides of business litigation, as a defendant and a plaintiff. The former because of a successful employment discrimination case brought by an African American employee at one of the restaurants. The \$3.2 million judgment in favor of the employee caused Hudson to put the four Roscoe's locations that he didn't own into bankruptcy. As a plaintiff, Hudson sued someone in Chicago, Illinois who opened a "Roscoe's House of Chicken and Waffles," adding an extra "s" to the name, a similar logo, and similar menu items. Chicagoans flocked to the restaurant believing it to be an outpost of the L.A. restaurant. They settled out of court a day after Hudson filed a trademark infringement lawsuit.

Despite these recent troubles, Roscoe's soldiers on. A new location is in the works for West L.A., and the company talks of even more expansion. Though Roscoe's didn't start fried chicken and waffles as a restaurant craze, it certainly inspired many other entrepreneurs. Fried chicken and waffles were once considered a novel addition to the dining scenes of many cities. Now, it seems weird for restaurant menus to go without it. That's a legacy worth celebrating.

Roscoe's House of Chicken & Waffles: Various locations, including 1514 N Gower St., Hollywood. www.roscoeschickenandwaffles.com

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BUSINESS

Parent company of Roscoe's House of Chicken and Waffles files for bankruptcy protection



The parent company of Roscoe's House of Chicken and Waffles has filed for bankruptcy protection. (Jay L. Clendenin / Los Angeles Times)

BY SHAN LI

MARCH 29, 2016 3:40 PM PT

Roscoe's House of Chicken and Waffles is a Los Angeles culinary institution, dishing up its soul food to the likes of Snoop Dogg and Magic Johnson.

But now the Long Beach chain is in trouble — its parent company, East Coast Foods Inc., filed for Chapter 11 bankruptcy protection Friday.

The filing came mere months after the company was ordered to pay \$3.2 million to a former employee won a wrongful termination and discrimination lawsuit against the chain.

In filings with U.S. Bankruptcy Court in California, East Coast Foods estimated that it has debts between \$10 million and \$50 million. Its assets, on the other hand, total less than \$50,000.

Lawyers for East Coast Foods did not respond to a request for comment. In court filings, the company did not say whether bankruptcy would affect the day-to-day operations of its seven Southland Roscoe's restaurants.

Roscoe's has been dishing up its chicken and waffle combos since 1975, along with Southern staples such as grits, biscuits and cornbread. In 2011, President Obama made an unannounced stop at the West Los Angeles spot when he was in town on a fundraising trip.

As befitting an eatery that started in the Southland, Roscoe's has also been referenced in numerous films, television and music. The late rapper Notorious B.I.G. name-checks the chain in his song "Going back to Cali." Samuel L. Jackson's character tempts an underling with a Roscoe's meal in Quentin Tarantino's 1997 crime drama "Jackie Brown." Rapper Snoop Dogg took both Larry King and David Beckham to the chicken mecca on his reality TV show.

But Roscoe's has recently been at the center of less welcoming attention.

In October, a judge in Los Angeles ordered the company to pay \$3.2 million to Daniel Beasley, a former employee who claimed that there was systemic racial discrimination

at the chain. A jury awarded Beasley close to \$1.7 million; he was also awarded \$1.5 million in attorney's fees.

In the suit, Beasley accused the company of giving Latino employees preferential treatment over black workers, including better schedules and shifts. Beasley said he was fired in retaliation when he tried to change those practices. He became homeless after losing his job, according to media reports.

In court filings, East Coast Foods listed Beasley as one of its largest unsecured creditors.

Bankruptcy experts speculated that the Chapter 11 filing may have been sparked by something beyond the original judgment.

"The judgment, that's a big number, but I wouldn't think that was a big number for a large restaurant chain," said Eric Pezold, a partner specializing in bankruptcy at Snell & Wilmer who is not involved with the bankruptcy or the Beasley case. He said something else may have occurred "between there and now to precipitate this filing."

Beasley's attorney, Scott Cummings, said he had hired a lawyer to start the process of collecting on the judgment, which Roscoe's is appealing. Cummings said he was worried that the bankruptcy filing was an attempt to get away from paying what is owed to his client.

"It looks strange," he said. "I'm very concerned that might be what's going on."

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Shan Li covered the retail and restaurant industries for the Los Angeles Times. She previously reported on the California economy and the technology sector. A Texas native, she graduated from the business school at New York University, where she decided journalism was much more interesting than a job on Wall Street. She left The Times in 2017.

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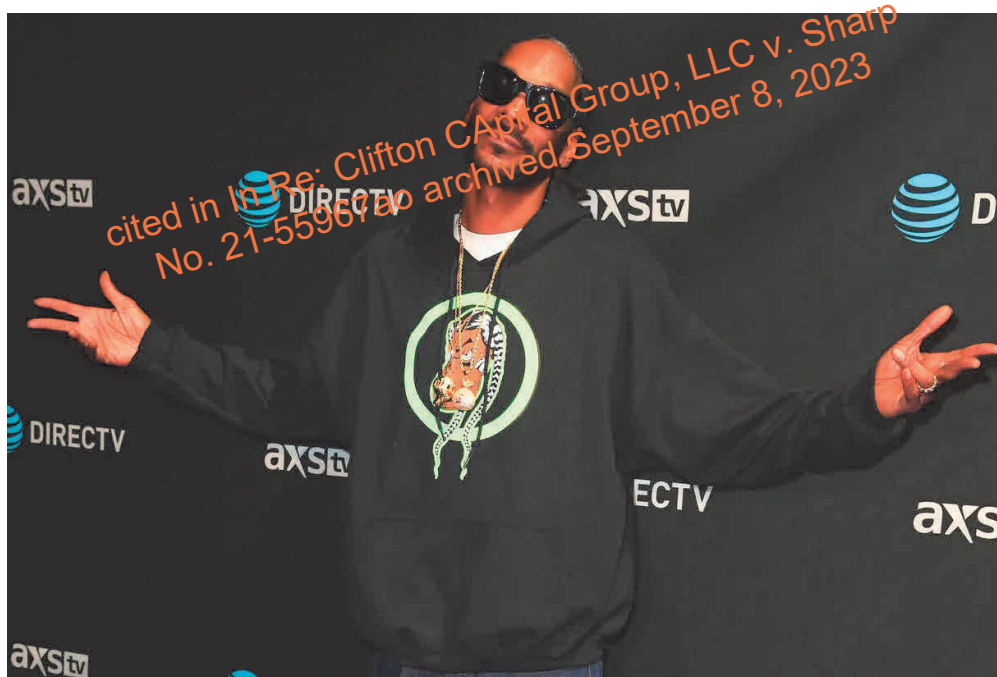
LA RESTAURANT OPENINGS

Snoop Dogg Says He'll Save Roscoe's Chicken N' Waffles if it Comes to That

And he might change the name

by Farley Elliott | Mar 31, 2016, 10:12am PDT

Via [Roscoe's Chicken N' Waffles Files for Chapter 11 Bankruptcy \[ELA\]](#) and [Snoop Dogg Thinking About Saving Roscoe's Chicken N Waffles \[TMZ\]](#)



Joe Scarnici/Getty Images

***Farley Elliott** is the Senior Editor at Eater LA and the author of Los Angeles Street Food: A History From Tamaleros to Taco Trucks. He covers restaurants in every form, from breaking news to the culture, people, and history that surrounds LA's dining landscape.*

Is **Snoop Dogg** — man of the people, rapper to the stars, eater of all things delicious — going to buy up **Roscoe's Chicken N' Waffles** in order to keep the company from going belly up? Probably not. But we can dream.

In a seemingly humorous exchange posted early yesterday morning to *TMZ*, Snoop is asked about the **bankruptcy proceedings happening with Roscoe's Chicken N' Waffles**, which seeks to re-consolidate its debt following a massive lawsuit from last year. Snoop, seen standing next to Warren G outside Lure nightclub in Hollywood, is of course a longtime fan of the brand, but **seems genuinely surprised** to hear the news of the company's recent troubles.

Instead of simply wishing them well in what could be difficult time, Snoop steps up to the plate and says "I guess I'm gonna have to buy it, man." Which, you know, would be awesome. He *also* says he'd rename the place to Snoop Dogg's Chicken N' Waffles, which admittedly does have a pretty great ring to it.

Of course it's all a laugh (or is it?), though Snoop does have an affinity for the restaurants. More than likely, Roscoe's is happy to avoid talks of a sale in times like this though, in favor of quietly **working through their lawsuit woes** and chapter 11 bankruptcy court proceedings. A spokesperson for the company told *Eater* yesterday that there were no plans to currently close any existing location, so for now — Snoop or no Snoop — it's business as usual.