

THE SUPREME COURT, THE SOLICITOR GENERAL AND BANKRUPTCY: BFP v. RESOLUTION TRUST CORPORATION

Abstract

This chapter tells the story behind BFP v. Resolution Trust Corporation. I see BFP as a case that pitted relatively plain statutory language supporting the debtor-in-possession against policy interests supporting a secured creditor. I argue that an important explanation for the Supreme Court's decision to favor policy over the language of the statute was its perception of a need to protect the availability of non-bankruptcy remedies for secured creditors. Accordingly, I situate my discussion of BFP in the context of the role that the federal government has played in the Supreme Court's cases interpreting the Bankruptcy Code. In general, I contend, the Supreme Court's decisions evince a general skepticism about broad application of the Bankruptcy Code, which often has led to surprisingly narrow interpretations of relatively clear language. That reading challenges the common understanding of bankruptcy law as a domain of the Court's plain-language interpretative practice.