

## Insider Status In Bankruptcy Reviewed For Clear Error, Not De Novo

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In [U.S. Bank, N.A. v. Village at Lakeridge, LLC](#), the Village petitioned for Chapter 11 bankruptcy with two primary creditors, U.S. Bank and an insider owner. It needed consent to enter into a cramdown reorganization plan, but U.S. Bank refused to consent, and the insider was statutorily unable to provide consent. To fix the problem, the insider owner transferred its \$2.76 million claim to a non-insider for \$5,000, who then consented to the cramdown. U.S. Bank objected, and the bankruptcy court held that the purchaser was indeed a non-insider, although he dated the insider seller, because the transaction was at arm's length. A divided Ninth Circuit affirmed, holding that it could only review the bankruptcy court's determination for clear error, and the evidence was insufficient to overcome that standard, although one judge dissented, arguing that de novo review should have applied. The Court, in a unanimous decision by Justice Kagan, affirmed on the sole issue of the standard of review, holding that the determination of insider status was a mixed question of law and fact that weighed in favor of clear error review rather than de novo. Specifically, the Court held that the determination of whether the transaction to the non-insider was at arm's length was central to the inquiry, thus making the inquiry more of a fact question suitable for trial court determination, and less a legal determination suitable for appellate review. Justice Sotomayor, joined by Justices Kennedy, Thomas, and Gorsuch, filed a concurrence, agreeing with the Court's result on the question at issue, but noting her concerns with whether the Ninth Circuit's underlying test for determining insider status was correct, since the nature of that test would heavily affect the standard of review. Justice Kennedy filed a separate concurrence noting that lower courts may still fine-tune their tests for insider status, noting that, in this case, the insider seller's failure to make the same offer to third parties might weigh against an arm's length determination.