

## Special Committees Gain Traction In Chapter 11 Investigations

By **Tara Pakrouh** (July 22, 2025, 5:07 PM EDT)

This article discusses the use of special committees in Chapter 11 cases.

Special committees are showing up more often in large Chapter 11 cases, and for good reason. When a company enters bankruptcy with questions about insider transactions, board decisions, or other potential wrongdoing, it becomes difficult for the same insiders to investigate or decide how to handle those issues. To manage that conflict, many companies are turning to special committees made up of independent directors.

These committees can investigate questionable transactions, evaluate litigation claims, and make decisions that carry weight with the court and creditors. When done right, they help move the case forward. When done poorly, they create more problems than they solve. In this article, we look at why special committees are becoming more common, how they've been used in real cases and what makes them effective.



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### Why Special Committees Are on the Rise

The rise of special committees in Chapter 11 reflects two main trends: increased scrutiny of insider activity before bankruptcy, and a broader push for transparency in how cases are handled.

Courts and creditors are paying close attention to what happened before the filing — who got paid, how decisions were made and whether any claims against insiders should be pursued. If the same people who approved those transactions are still in control, it is hard for anyone to trust the process.

Creating a special committee allows a company to show it is taking these questions seriously. Independent directors, often brought in shortly before or after the filing, can examine past transactions without the same conflicts of interest. That does not mean courts always accept their conclusions without question, but it does create a process that stakeholders may view as more credible than one controlled by long-standing insiders.

### Learning From Celsius — Independent Committees Can Move the Process Forward

One of the clearest examples of a special committee making a real impact comes from the Celsius Network bankruptcy. Celsius, a crypto lending platform, filed for Chapter 11 in July 2022 amid serious concerns about its financial practices and insider transactions. In response, the company added two independent directors — David Barse and Alan Carr — and gave them authority to lead an investigation

and help steer the restructuring.

This special committee didn't just issue a report and step aside. It stayed involved in the decision-making throughout the case, helping to build trust with creditors and shape the company's plan of reorganization. That plan, which returned more than \$3 billion to creditors, was **confirmed** in late 2023. The committee's work was widely seen as key to getting the case across the finish line.

The Celsius case shows how special committees can create a level of trust that might not exist otherwise — especially in industries like crypto where regulation is still catching up.

### **SVB Financial Group — Preserving Value Through Independent Review**

Another example comes from SVB Financial Group, the parent company of Silicon Valley Bank. After the bank's collapse in March 2023, SVB Financial **filed** for Chapter 11. The most valuable parts of the estate were its investment arms — SVB Capital and SVB Securities.

To figure out what to do with these subsidiaries, the company created a five-member restructuring committee, separate from legacy leadership, to evaluate strategic options. The committee worked with outside advisers to explore a sale or other ways to maximize value.

Unlike Celsius, the focus here wasn't on insider wrongdoing. Instead, the committee's job was to make sure that any transaction involving these subsidiaries would be handled in a way that avoided conflicts and protected the estate's value. That effort paid off. The company successfully closed sales of both units, and the committee's independent oversight was a key reason those deals gained court approval without major pushback.

### **What FTX Teaches Us — The Limits of Internal Oversight**

But not all cases show special committees in a positive light. FTX, another crypto exchange, filed for Chapter 11 in late 2022 after allegations of fraud and corporate mismanagement became public. The company brought in new leadership in John J. Ray III, and began internal investigations almost immediately. Despite that, many stakeholders didn't think internal reviews were enough.

The U.S. trustee **pushed** for the appointment of an examiner. The U.S. Bankruptcy Court for the District of Delaware initially denied that request, citing the high cost and the work already being done by the company's new management. But in 2024, the Third Circuit **reversed** that decision, saying that an examiner was legally required under Section 1104(c) of the Bankruptcy Code.

The FTX case makes an important point: Special committees or internal teams can't always replace the need for truly independent oversight, especially when a case involves public trust, criminal allegations or massive financial losses.

### **What Courts Expect from Special Committees**

Bankruptcy judges are not quick to accept a special committee's conclusions at face value. Instead, they look at how the committee was formed and what it did:

- Was the committee made up of truly independent directors?
- Did it hire professionals who weren't tied to the debtor's existing advisers?

- Was the scope of the investigation clear and meaningful?
- Were the results shared in a way that stakeholders could understand and respond to?

If the answer to those questions is "yes," courts may defer to the committee's decisions, especially when it comes to pursuing or settling estate claims. But if the committee is seen as a rubber stamp or a tool for insiders to avoid scrutiny, it may end up doing more harm than good.

### **The Practicalities of Forming and Advising a Special Committee**

When a debtor forms a special committee, the benefit lies in the credibility and substance of the process, not just the optics. Delaware courts evaluate these committees closely, especially in the context of insider transactions, prepetition conduct or potential claims affecting the estate.

The framework for an effective special committee rests on a few foundational elements described below.

#### ***Structural Independence***

Independence must be real, not just formal. Courts scrutinize relationships with management, the controller or legacy board members.

A single-member committee is held to an even higher standard. As noted by the Delaware Court of Chancery in 2023 in *In re: Baker Hughes*, the burden of proving independence is "hefty" if only one fiduciary is appointed.[1]

Independence of legal and financial advisers is equally important. Overlapping engagements can undercut the committee's objectivity.

#### ***Clear Authority and Defined Scope***

The board's resolution should delegate authority under Delaware General Corporation Law, Section 141(c)(2), giving the committee full decision-making power over:

- Investigating potential claims;
- Retaining and directing outside advisers; and
- Approving or disapproving proposed settlements or transactions.

Ambiguous mandates invite conflict over whether the committee was actually empowered to act.

#### ***Deliberate, Documented Process***

Delaware courts expect a thoughtful process. Four touchstones of good governance are especially relevant:

- Avoid haste. Decisions must be made deliberately, not under pressure or appearing to be rushed.

- Prepare thoroughly. Materials should be distributed in advance, and the committee should consult advisers as needed.
- Ask questions. Members must actively engage, test assumptions and challenge information presented.[2]
- Maintain accurate records. Meeting minutes should document both the substance of discussions and the reasoning behind decisions.[3]

### ***Execution — The Work Plan***

A successful committee investigation includes:

- Implementing a litigation hold to preserve relevant documents;
- Developing a plan for document collection, review and interviews (board members, management, key employees);
- Establishing a timeline for interim and final reports to the committee; and
- Creating space for committee members to review findings, ask questions and adjust direction if needed.

A declaration summarizing the committee's work may be useful in court, especially if its conclusions are challenged.

### ***Role of Legal Counsel***

As Vice Chancellor J. Travis Laster noted in 2023 in *Hyde Park Venture Partners v. FairXchange*, "Lawyers can and should give advice ... but lawyers should not be giving orders." [4]

Counsel must provide guidance, but decision-making must remain with the committee members. They hold the fiduciary duty, and they bear the responsibility for the outcomes.

### **Special Committees — A Tool, Not a Cure-All**

Special committees are not a magic solution. They don't make every conflict go away, and they don't guarantee that a case will run smoothly. But when used thoughtfully, they can improve transparency, reduce litigation risk and make complex cases more manageable for all involved.

The best results come when committees are formed early, given real authority, and supported by advisers who are independent and experienced in bankruptcy investigations. As cases like Celsius and SVB show, these committees can add real value. And, as FTX reminds us, there are still limits to what they can do.

In today's Chapter 11 landscape, especially in cases involving new industries, intense media scrutiny or insider complexity, special committees are likely to remain an essential tool in the restructuring toolkit.

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[1] In re: Baker Hughes, Derivative Litig., 2023 Del. Ch. LEXIS 88, at \*22 (Del. Ch. April 17, 2023).

[2] In re: Puda Coal Inc., 2013 Del. Ch. LEXIS 338 (Feb. 6, 2013).

[3] Smith v. Van Gorkom, 488 A.2d 858 (Del. 1985).

[4] Hyde Park Venture Partners v. FairXchange, 292 A.3d 178, 208–09 (Del. Ch. 2023).