

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2735

IN RE: INVITAE CORPORATION et al.,
Debtors

Official Committee of Unsecured Creditors,
Appellant

On Appeal from the U.S. District Court, D.N.J.
Judge Robert Kirsch, No. 3:24-cv-08550

Before: KRAUSE, FREEMAN, and ROTH, *Circuit Judges*
Submitted: July 7, 2026; Filed: Oct. 29, 2026

NONPRECEDENTIAL OPINION*

FREEMAN, *Circuit Judge*. The Official Committee of Unsecured Creditors (the “Committee”) in Invitae Corporation’s bankruptcy proceedings challenges the Bankruptcy Court’s orders (1) denying its motion for derivative standing and (2) confirming Invitae’s reorganization plan (the “Plan”), which contains releases of liability. The District Court affirmed both Bankruptcy Court orders, and we will affirm the District Court’s order.

I

Invitae is a medical genetics company founded in 2010. Between 2019 and 2021, it raised \$1.635 billion in capital through three primary transactions. First, it issued \$350 million of convertible unsecured notes set to come due in 2024 (the “2024 Unsecured Notes”). Most of the 2024 Unsecured Notes were issued to Deerfield Partners, L.P. (“Deerfield”). Second, it obtained a \$135 million loan, also due in 2024. Third, a variety

*This is not an opinion of the full Court and, under 3d Cir. IOP 5.7, is not binding precedent.

of lenders purchased \$1.15 billion in unsecured notes that were set to come due in 2028 (the “2028 Unsecured Notes”).

In the face of financial problems, Invitae retained independent consultants in 2022 to advise it about how to extend near-term debt, with a particular focus on the 2024 Unsecured Notes. Among other meetings, the consultants held discussions with creditors. Then Deerfield submitted a proposal to exchange the 2024 Unsecured Notes for secured debt.

Invitae’s Board and committees of the Board held a series of meetings to consider which of its options would be most beneficial to the company’s stakeholders. The consultants attended several of those meetings and engaged in detailed discussions of the options. Ultimately, in early 2023, Invitae entered into the “March Exchange” in which it (1) exchanged \$305.7 million in 2024 Unsecured Notes for \$275.3 in Series A Secured Notes due in 2028 and 14.2 million shares of Invitae’s common stock to Deerfield, and (2) issued \$30 million in Series B Secured Notes due in 2028 to Deerfield in exchange for cash.

Although the March Exchange relieved Invitae of its obligation to repay \$305.7 million in 2024 unsecured notes, the company still had financial problems, so several months later it entered into another transaction with Deerfield. In the “August Exchange,” Deerfield exchanged approximately \$17.2 million in 2024 Unsecured Notes for \$100,000 in 2028 Secured Notes plus approximately 15.8 million shares of Invitae’s common stock.

Invitae’s financial challenges continued, and the company retained consultants, investment bankers, and the law firm Kirkland & Ellis to explore strategic alternatives.

The Board also established a committee to evaluate restructuring options (the “Special Committee”), and it appointed Jill Frizzley as an independent advisor. Frizzley had experience in restructuring and in the healthcare industry, and she had no relationship with Invitae or Deerfield before her appointment as an advisor.

Two months after Frizzley became its advisor, Invitae appointed Frizzley to the Board as an independent director and made her a member of the Special Committee. Frizzley has served in similar roles with other companies many times.¹

Beginning in October 2023, Frizzley directed and oversaw an independent investigation into possible claims and causes of actions that could benefit Invitae. Under her direction, Kirkland & Ellis spent 600–700 hours reviewing the company’s documents and conducting interviews. The investigation continued until February 2024.

In January 2024, Invitae made retention payments to key executives to keep them with the company through its anticipated sale and restructuring process.

In February 2024, Invitae and its subsidiaries filed a voluntary petition for Chapter 11 bankruptcy. On the same day as the bankruptcy filing, the company entered into a Transaction Support Agreement (“TSA”) with Deerfield. In the TSA, Deerfield agreed to subordinate its secured claims to the “Convenience Class”—i.e., general unsecured creditors holding claims for (or electing to reduce their claims to) less than \$250,000. Payments to the Convenience Class were estimated to be \$17.2 million, collectively. And

¹ Frizzley has been appointed independent director of ten companies for which Kirkland & Ellis served as counsel in connection with a bankruptcy in the last four years.

later in the bankruptcy proceedings, Invitae and Deerfield agreed to an additional at least \$6.8 million in senior recovery to holders of general unsecured claims who were not part of the Convenience Class.

Deerfield also agreed in the TSA to allow Invitae to use its cash collateral to fund the bankruptcy, which provided Invitae with approximately \$142 million of liquidity. Additionally, Deerfield agreed to subordinate the payment of its claims to the payment of certain administrative costs and priority tax claims (estimated at the time to be \$64.8 million) and wind-down costs (estimated to be \$13–15 million). And the TSA gave Deerfield the right to “credit bid” in an auction for Invitae’s assets.

During the bankruptcy proceedings, the United States Trustee appointed the Committee to investigate potential claims on behalf of the estate. Following its investigation, the Committee filed a motion for derivative standing (the “Standing Motion”) to commence a lawsuit that would (1) seek to unwind the March Exchange and the August Exchange as fraudulent conveyances, (2) seek disgorgement of the January 2024 retention payments to executives, and (3) bring numerous claims against Invitae’s directors and officers, Deerfield, and U.S. Bank (the trustee and collateral agent for the March Exchange).² Invitae, Deerfield, and others opposed the motion. After briefing and an evidentiary hearing, the Bankruptcy Court told the parties that it intended to deny the Standing Motion but would defer a final ruling until it held a confirmation hearing for the proposed Plan.

² We refer to U.S. Bank Trust Company, National Association as “U.S. Bank.”

The Committee then filed an objection to the proposed Plan. It objected to the Plan’s provision that released all claims against Deerfield, U.S. Bank, Invitae, and those companies’ then-current and former directors, managers, and officers.

The Bankruptcy Court overruled the objection and confirmed the Plan. The Committee’s appeal to the District Court resulted in a limited remand to the Bankruptcy Court for additional factfinding and analysis. After the Bankruptcy Court issued supplemental findings of fact, the District Court affirmed the Bankruptcy Court’s orders. The Committee timely appealed to this Court.

II³

In this appeal, where “the District Court sat as an appellate court to review the Bankruptcy Court, we review the Bankruptcy Court’s legal determinations *de novo*, its factual findings for clear error, and its exercises of discretion for abuse thereof.” *In re Goody’s Fam. Clothing Inc.*, 610 F.3d 812, 816 (3d Cir. 2010). A bankruptcy court’s decision whether to grant derivative standing is an exercise of its equitable discretion. *Off. Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003). Therefore, “we will reverse only where the court’s decision is arbitrary, fanciful, or clearly unreasonable—in short, where no reasonable person would adopt the court’s view.” *In re VistaCare Grp., LLC*, 678 F.3d 218, 232 (3d Cir. 2012) (citation modified).

³ The Bankruptcy Court had jurisdiction under 28 U.S.C. § 157(b). The District Court had jurisdiction under 28 U.S.C. § 158(a)(1). We have jurisdiction under 28 U.S.C. §§ 158(d) and 1291.

The parties agree that derivative standing is proper only if (1) “the committee presents a colorable claim or claims for relief that on appropriate proof would support a recovery” and (2) “the debtor unjustifiably failed to bring suit.” *In re STN Enters.*, 779 F.2d 901, 905 (2d Cir. 1985). To determine whether a debtor unjustifiably failed to bring suit, a bankruptcy court must conduct a “cost-benefit analysis” to assess whether an action bringing the proposed claims “is likely to benefit the reorganization estate.” *Id.* That entails weighing factors including the “probabilities of legal success” and the amount of “financial recovery in event of success,” against factors including the costs to the estate of proceeding with the action, including attorneys’ fees. *Id.*

In its supplemental findings of fact, the Bankruptcy Court determined that the costs of bringing the Committee’s proposed claims outweighed the benefits, even if the claims were colorable. Among other things, it considered the many benefits the estate received from Deerfield through the negotiated TSA—a TSA that Deerfield likely would not have entered if Invitae pursued claims against Deerfield. Those benefits included Deerfield’s agreement to subordinate its claims to: the payment of administrative costs, priority tax claims, and wind-down costs; the Convenience Class; and other general unsecured creditors. It found that, as a result of those commitments, “the overwhelming majority of general unsecured creditors . . . [we]re expected to receive payment in full.” App. 360.

The Bankruptcy Court also found that, without Deerfield’s cash collateral, Invitae likely would have been unable to fund the bankruptcy without accruing significant additional costs to obtain debtor-in-possession financing or to engage in a contested cash collateral hearing. And Deerfield’s bid on Invitae’s assets (a bid Deerfield could not have

made if the Committee pursued its proposed claims) caused Invitae to obtain about \$60 million in additional value for the assets Invitae ultimately sold to another bidder.

Turning to probability of success, the Bankruptcy Court observed that the Committee's proposed claims would face numerous possible defenses and litigation hurdles. Those included a factual dispute about Invitae's solvency, the availability of safe-harbor defenses, "the arms'-length nature of the pre-petition negotiations," the use of numerous special advisors and consultants to assist the Board, the use of a disinterested director, "Deerfield's noninsider status," and the "high threshold for overcoming director and officer business judgment decisions." App. 363. Given all this, the Bankruptcy Court determined the benefits the estate received from Deerfield far outweighed any speculative recovery from the Committee's proposed claims, and the potential additional recovery to each creditor would be "minimal." App. 362.

The Bankruptcy Court's thorough analysis shows that it properly exercised its discretion. The Committee's arguments to the contrary lack merit. The Bankruptcy Court did not need to render a definitive legal opinion about how each possible defense and litigation hurdle would be resolved. And the Bankruptcy Court did not overlook the scope of the potential recovery. Instead, it assessed the attendant costs, risks, and delays and determined they outweighed the potential recovery. Its decision was not arbitrary, fanciful, or clearly unreasonable, so we will affirm its order denying the Standing Motion.

If the Committee had derivative standing to pursue its desired adversary proceedings, the Plan's claim-release provision could harm their ability to bring claims against the released parties. But because we will affirm the denial of derivative standing,

the Committee is not aggrieved by its inability to file those claims. *See* Committee Reply Br. at 21 (alleging “harm[] by the improper grant of releases because [the Committee] alleged colorable claims against the[] [released] parties”). Because the Committee challenges only the claim-release provision in the Plan, its appeal of the Plan confirmation order cannot proceed. *See In re Combustion Eng’g, Inc.*, 391 F.3d 190, 215 (3d Cir. 2004), *as amended* (Feb. 23, 2005).⁴

* * *

For the foregoing reasons, we will AFFIRM the District Court’s order.

⁴ Even if the Committee were aggrieved by the Plan confirmation order, its appeal would fail on the merits for the reasons stated by the District Court in its thorough and cogent opinion.