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Subject: judicial estoppel
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PD

Hi Julia and Ed,

I have been doing my homework.

I believe that my case does not fill all five prerequisites required before a court can invoke judicial estoppel

I did not take two positions that are factually inconsistent because I initially disclosed the suit as an asset to the bankruptcy court and maintained that position throughout all judicial proceedings

five prerequisites required before a court can invoke judicial estoppel:
the party must

- (1) take two positions;
 - (2) that are factually inconsistent;
 - (3) in separate judicial or quasi-judicial administrative proceedings;
 - (4) intending for the trier of fact to accept the truth of the facts alleged; and
 - (5) have succeeded in the first proceeding and received some benefit from it.
- A statement under oath was not, however, a requirement for applying judicial estoppel.

The only prerequisites I believe can be perceived as being met here is (3,4,5) and that was with the Gagnon at the ADR not the McGuires since they had been removed previously.

I do not believe that Flynn can win a judicial estoppel motion limiting the amount we can recover since only three of the five prerequisites may have been met and that those three prerequisites is questionable at best.

Please advise and let me know if I am in error.

Thanks,
Paul