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CR&B Alert

Commercial Restructuring & Bankruptcy News

MARCH 2014, ISSUE 1

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HAS THE SUPREME COURT LIMITED THE SCOPE OF SECTION 105 OF THE BANKRUPTCY CODE?

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Whenever bankruptcy lawyers cannot find a specific code provision to support a position, they turn to Section 105 which provides that the bankruptcy court has the authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. So when a chapter 7 debtor in California lied about whether there was equity in his residence, the bankruptcy court relied on Section 105 to surcharge the debtor's homestead exemption for the legal costs incurred by the chapter 7 trustee in uncovering the lie. Two appeals courts in the 9th Circuit affirmed that decision. After all, most courts have supported a broad application of Section 105, and the Supreme Court in 2007 issued a decision that supported the notion that the bankruptcy court's equitable powers could be used to prevent abuses of the bankruptcy system. Certainly lying to the court should not be tolerated and surcharging the debtor's homestead exemption for the trustee's fees in exposing the lie seems like a reasonable remedy. However, the Supreme Court ruled otherwise and held that Section 522 of the Bankruptcy Code says that exempt property cannot be liable for the payment of administrative expenses, so surcharging the collateral would violate that provision. Not allowing a bankruptcy court to use its authority under Section 105 to take action prohibited elsewhere in the Bankruptcy Code seems right, but time will tell whether other courts unnecessarily broaden this limited ruling. *Law v. Siegel*, No. 12-5196 (U.S. Mar. 4, 2014).

BALANCING OF INTERESTS RESULTS IN PRESERVATION OF PATENT LICENSEE RIGHTS IN CHAPTER 15 CASE

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Jaffé v. Samsung Electronics Company, Limited, et al., No. 12-1802 (4th Cir., Dec. 3, 2013)

CASE SNAPSHOT

In a chapter 15 cross-border insolvency proceeding, Jaffé, the insolvency administrator for the foreign main proceeding in Germany, requested ancillary relief from the bankruptcy court to administer and realize the value of approximately 4,000 U.S. patents owned by the debtor. When the bankruptcy court granted his request, it conditioned it upon Jaffé's compliance with section 365(n) of the United States Bankruptcy Code, which affords IP licensees with the ability to preserve their interests in executory IP licenses. Jaffé, however, intended to reject unilaterally all the licenses affecting the debtor's patents, as authorized under German insolvency law. On direct appeal to the Fourth Circuit Court of Appeals, the Circuit Court affirmed the bankruptcy court's ruling. The Circuit Court held that any ancillary relief requested by a foreign representative under section 1521(a) must necessarily be balanced against the effects of such relief on all interested parties, and those affected must be assured sufficient protection. Additionally, while German insolvency law applied to unilateral rejection of the non-U.S. patents, applying that law to licensees of U.S. patents was manifestly contrary to the fundamental public policy of the United States to protect, preserve, and foster investments in U.S. technology.

FACTUAL BACKGROUND

Qimonda AG, a German corporation that manufactured semiconductor devices, filed for insolvency in Munich, Germany, in January 2009. Dr. Michael Jaffé was the appointed insolvency administrator. Qimonda's principal assets comprise 10,000 patents, 40 percent of which are U.S. patents. To facilitate his administration of the patents, Jaffé filed an application in the Bankruptcy Court for the Eastern District of Virginia, seeking recognition of the German insolvency case as the foreign main proceeding, and requesting certain ancillary relief pursuant to section 1521(a) to allow Jaffé to administer, liquidate, and realize the value of the U.S. patents.

Standard for its industry, Qimonda's patents were subject to cross-license agreements with various competitors. In the semiconductor industry, advancements in technology and new patents necessarily incorporated and spun-off prior patented technology. To avoid constant exposure to IP infringement claims and lawsuits resulting from over-lapping patent rights of some 420,000 potentially applicable patents, the debtor and its competitors entered into cross-licensing agreements, authorizing one another to use each other's patented technology in their respective businesses.

At the same time Jaffé petitioned the U.S. Bankruptcy Court for section 1521(a) ancillary relief, he sent letters to the licensees under the debtor's cross-license agreements, terminating the agreements and rights to use the debtor's patents. Jaffé intended to re-license the same patents for cash royalties, as opposed to reciprocal cross-licensing rights that had no continuing value to the liquidating estate.

Ultimately, the bankruptcy court granted Jaffé the section 1521(a) ancillary relief he requested concerning the U.S. patents, but subjected his authority to reject the cross-licensing agreements to the licensee's rights under section 365(n) of the Bankruptcy Code. Section 365(n) provides a holder of an executory IP license the right to preserve its interests in the license. The district court certified a direct appeal by Jaffé to the Fourth Circuit Court of Appeals, and the Fourth Circuit affirmed the bankruptcy court ruling.

COURT ANALYSIS

The Fourth Circuit Court of Appeals began its analysis by examining the purpose of the chapter 15 changes to the Bankruptcy Code as part of the 2005 BAPCPA amendments. The court emphasized a global purpose to provide "an effective mechanism" for dealing with cross-border insolvencies, and detailed the five specific objectives set forth in section 1501(a): encouraging cooperation; increasing legal certainty and investment; promoting fair and efficient administration of assets to protect the interests of all affected entities; maximizing the value of the debtor's estate; and facilitating the rescue of troubled businesses.

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FOREIGN DEBTOR MUST SATISFY U.S. BANKRUPTCY CODE DEFINITION OF 'DEBTOR' TO UTILISE CHAPTER 15

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Drawbridge Special Opportunities Fund LP v. Elizabeth Barnet and William John Fletcher, Foreign Representatives (2nd Cir., August Term 2013)

CASE SNAPSHOT

In the case of *Drawbridge Special Opportunities Fund LP v. Elizabeth Barnet and William John Fletcher, Foreign Representatives* (2nd Cir., August Term 2013) the Second Circuit Court of Appeals clarified the ability of foreign entities to utilise chapter 15 of the Bankruptcy Code.

FACTUAL BACKGROUND

Octaviar Administration Pty Ltd. ("OA"), a company incorporated in Queensland, Australia, was placed into external administration in Australia in 2008, and the Supreme Court of Queensland ordered that OA be liquidated on July 31, 2009. In conjunction with the investigation of OA's affairs, a lawsuit was commenced August 3, 2012 against certain affiliates of Drawbridge Special Opportunities Fund LP in Australia seeking AUD210 million.

On August 13, 2012, Foreign Representatives of OA petitioned the Bankruptcy Court for the Southern District of New York for an order recognizing the Australian OA proceedings as a foreign main proceeding under section 1515 of the Bankruptcy Code (the "Recognition Petition"). In the Recognition Petition, the Foreign Representatives stated that OA did not transact business in the United States, have any operations in the United States or any creditors in the United States. They further stated that they may have assets in the United States in the form of claims or causes of action against entities located within the United States, and that they "intended to investigate these potential claims or causes of action and have filed this Chapter 15 petition to facilitate this investigation." Drawbridge filed an objection to the Recognition Petition on the basis that potential claims were insufficient assets to satisfy the requirements of chapter 15 (noting that a cause of action is generally considered to be an asset located in the domicile of the plaintiff, not the defendant) and that chapter 15 can't be used solely to foster discovery.

Notwithstanding the Drawbridge objection, the bankruptcy court issued an order granting the Recognition Petition (the "Recognition Order") and Drawbridge filed a notice of appeal. The Foreign Representatives filed a discovery motion, and Drawbridge filed a motion to stay pending appeal. The bankruptcy court granted the discovery motion and denied the stay motion. The Second Circuit granted the joint application of the parties for direct appeal and further stayed discovery.

COURT ANALYSIS

The question presented to the Second Circuit is whether section 109(a) of the Bankruptcy Code, which provides that "only a person that resides or has a domicile, a place of business or property in the United States, or a municipality, may be a debtor" under the Bankruptcy Code, applies to a debtor under chapter 15. The Second Circuit ultimately found that section 109(a) does apply to a debtor under chapter 15, and because the Foreign Representatives of OA made no attempt to establish a domicile, place of business or property in the United States, recognition should not be granted.

The Second Circuit reached its conclusion through what it described as "straightforward" statutory interpretation. Section 109(a) imposes a requirement that must be met by any debtor. Chapter 15 governs the recognition of foreign proceedings, defined as where the assets and affairs of the debtor are subject to the control or supervision of a foreign court. The Foreign Representatives raised two arguments, both of which were ultimately rejected. First, they argued that the requirements of section 109(a) only apply to debtors under the *Bankruptcy Code*, and OA is a debtor under the *Australian Corporations Act.* The Foreign Representatives argued that they were not seeking recognition of a "debtor," but of a "foreign proceeding," and section 109(a) was, therefore, inapplicable to them. The Second Circuit was not persuaded by this argument, noting that the "presence of a debtor is inextricably intertwined with the very nature of a Chapter 15" and the Foreign Representatives' distinctions were without merit.

Secondly, the Foreign Representatives argued that even if OA must qualify as a debtor under the Bankruptcy Code, it was only required to satisfy the section 1502 definition of debtor, and section 109(a) did not apply. The Second Circuit similarly dismissed this argument, noting that the definition of debtor contained in section 1502 (which defines a debtor "for the purposes of this chapter" as "an entity that is the subject of foreign proceedings") supplements, not supplants, the definition of debtor contained in section 109(a). Finally, the Second Circuit rejected the argument that the context and purpose of chapter 15 support their interpretation of the statute, noting that the requirements to be a debtor under chapter 15 were more onerous than the requirements laid out in chapter 1.

PRACTICAL CONSIDERATIONS

Chapter 15 of the Bankruptcy Code is expressly intended to "incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cross-border insolvency with the objectives of," among others, international cooperation, fair and efficient administration of cross-border insolvencies, and protection and maximization of the value of a debtor's assets. These goals, however, can only be pursued in the United States within the structures and requirements laid out in the Bankruptcy Code. The Bankruptcy Code clearly provides that a debtor must reside, have a domicile, place of business or property in the United States, or be a municipality. Chapter 15 does not provide foreign entities with an end-run around this requirement, and foreign representatives seeking recognition in the future should keep this fundamental requirement in mind before seeking chapter 15 recognition.

ATTORNEY-CLIENT PRIVILEGE DOES NOT PROTECT PERSONAL EMAILS SENT ON CORPORATE EMAIL SYSTEM

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In re Information Management Services, Inc. Derivative Litigation, No. 8168-VCL (Del. Ch. Sept. 5, 2013)

CASE SNAPSHOT

The Delaware Chancery Court ruled that the attorney-client privilege does not protect from disclosure emails sent by corporate officers to their personal attorneys using the company's email account. The court applied a four-part test to answer the question of whether an employee has a reasonable expectation of privacy in a work email account: does the corporation maintain a policy banning personal or other objectionable use; does the corporation monitor the use of the employee's computer or email; do third parties have a right of access to the computer or emails; and, did the corporation notify the employee, or was the employee aware, of the use and monitoring policies.

FACTUAL BACKGROUND

Information Management Services, Inc. is owned by two family trusts that each own 50 percent of the common stock, and place two members on the four person board of directors. The Burton family alleged that members of the Lake family, who had day-to-day control of IMS at the time of the dispute, breached their fiduciary duties to shareholders of IMS by mismanaging the company. Members of the Lake family countersued the Burton family, also alleging breaches of fiduciary duties. During discovery, IMS advised the Burton family that the defendant members of the Lake family used their IMS-issued email accounts to send litigation-related emails to their personal attorneys. The defendant members of the Lake family disclosed the emails on their privilege log but did not otherwise produce the documents. The Burton family filed a motion to compel and argued that the emails to counsel that were sent from IMS-issued email accounts were not privileged because IMS had a policy that all emails sent from IMS-issued email accounts were subject to search and review by the company. As such, emails sent from IMS-issued email accounts were not confidential communications.

COURT ANALYSIS

The court applied a four-part test to answer the question of whether an employee has a reasonable expectation of privacy in a work email account: does the corporation maintain a policy banning personal or other objectionable use; does the corporation monitor the use of the employee's computer or email; do third parties have a right of access to the computer or emails; and, did the corporation notify the employee, or was the employee aware, of the use and monitoring policies. In assessing the first factor, the court found that IMS had a written policy stating that while employees could use their IMS-issued email account to send non-work emails, those emails would not be private and could be accessed by IMS; the factor favored production. Next, the court found that IMS had the right to monitor emails but never engaged in email monitoring; the factor was treated as neutral by the court. Regarding the third factor, IMS is a third party that had the right to access employee's emails sent from IMS-issued email accounts; the factor favored production. Finally, the defendant members of the Lake family were two of the three most senior officers at IMS and did not deny knowing the email monitoring policy; the factor favored production. Accordingly, after applying the facts to the four-part analysis, the court determined that the attorney-client communication privilege did not apply. The defendants did not assert the work product doctrine, so the court did not analyze its possible application to the facts.

The court then assessed whether IMS violated any federal or state (Maryland, where IMS conducted business) statute in monitoring employee emails from IMS-issued email accounts. The court held that IMS' policy regarding review of email traffic on IMS-issued email accounts did not violate the Federal Wiretap Act, the Federal Stored Communications Act, the Maryland Wiretap Act, or the Maryland Stored Communications Act.

The Lake family defendants were ordered to produce the emails to their personal counsel that were sent from their IMS-issued email accounts.

PRACTICAL CONSIDERATIONS

Employees using work-issued email accounts should be cognizant of their employer's policy regarding use of the work-issued email account for personal business. Of note, the court took care to point out that its decision was applicable only to the facts before it and may not apply to cases where the plaintiffs and defendants were families that together owned 100 percent of the common stock and controlled the board of directors of the company that issued the email review policy.

FAILURE TO VOTE, PLUS CONFIRMATION OBJECTION, DOES NOT EQUATE TO 'TACIT ACCEPTANCE'

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In re Waldo Alfaro, Bankr. Case No. 11-14580 (SR) (E.D. Pa. Nov. 22, 2013)

CASE SNAPSHOT

Addressing a novel issue in the Third Circuit, the United States Bankruptcy Court for the Eastern District of Pennsylvania held that a creditor's failure to vote to either accept or reject a plan of reorganization cannot be construed as the creditor's acceptance of the plan if the creditor objects to confirmation of the plan. The bankruptcy court also indicated an unwillingness to find "tacit acceptance," even if the creditor did not object to confirmation of the plan, reasoning that the Bankruptcy Code required affirmative votes when determining whether creditors had accepted a plan.

FACTUAL BACKGROUND

The debtor sought confirmation of its proposed plan under section 1129(a) of the Bankruptcy Code. The debtor asserted that acceptance of the plan had been attained, relying on its voting report. That report, however, reflected that no creditor had voted either to accept or reject the plan. A secured creditor objected to plan confirmation.

COURT ANALYSIS

In reaching its decision, the bankruptcy court first noted that the United States Court of Appeals for the Tenth Circuit had approved of "tacit acceptance" in *In re Ruit-Sweetwater*. In that case, the Tenth Circuit held that a creditor who did not vote on a plan and who also did not object to confirmation was deemed to have accepted the plan. The Tenth Circuit reasoned that "to hold otherwise would be to endorse the proposition that a creditor may sit idly by, not participate in any manner in the formulation and adoption of a plan and thereafter raise a challenge for the first time." The court then noted that the Tenth Circuit's holding was not binding on it and the United States Court of Appeals for the Third Circuit had not yet addressed the issue.

Finding the Tenth Circuit's position neither controlling nor persuasive, the bankruptcy court held that a creditor's failure to vote to either accept or reject a plan of reorganization cannot be construed as "tacit acceptance," at least when the creditor has objected to confirmation. The court also indicated disapproval of "tacit acceptance," even where a non-voting creditor had not objected to confirmation, but was not required to reach that issue under the facts of the case.

PRACTICAL CONSIDERATIONS

Given the uncertain treatment "tacit acceptance" may receive from courts, creditors are cautioned to protect their rights by affirmatively voting to either accept or reject a plan.

With these objectives in mind, the court then explained the process for recognition of foreign main proceedings and the automatic rights associated with that recognition, including application of the automatic stay to property located within the United States. In addition to the automatic relief, the court, upon the request of the foreign representative, can grant section 1521(a) discretionary relief where necessary to effectuate the purposes of chapter 15, but only if "the interests of creditors and other interested entities, including the debtor, are sufficiently protected." See 1522(a). Further, a court is authorized to condition the relief granted under section 1521 "to conditions it considers appropriate, including the giving of security or the filing of a bond." Section 1522(b). Finally, all actions authorized under chapter 15 are subject to section 1506, which provides that "[n]othing … prevents the court from refusing to take an action … if [it] would be manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506.

In his appeal, Jaffé argued that the bankruptcy court erred in conditioning his ability to reject the cross-licensing agreements affecting U.S. patents. He advanced three arguments in support. First he argued section 1522(a)'s sufficient protection test did not apply unless he specifically requested section 365 relief under section 1521(a). Second he claimed the bankruptcy court improperly applied the sufficient protection test by advancing one class of creditor interests, rather than putting all creditors on equal footing. Third, he asserted that the bankruptcy court overstated the consequences of rejection to the licensees and abused its discretion in applying the test. The Fourth Circuit rejected each of Jaffé's arguments.

In dispensing with the first argument, the Circuit Court held that a bankruptcy court must apply the sufficient protection test under section 1522(a) when a foreign representative makes a request for section 1521(a) discretionary relief. Jaffé did not need to request, by express statutory reference, a particular Code section before triggering the court's obligation to decide if those affected by the additional relief were sufficiently protected. Here, Jaffé specifically requested the right to administer and realize the debtor's U.S. assets, i.e., the patents; and in substance, that included the right to reject the executory cross-license agreements affecting those patents. Jaffé, having made this request, obligated the bankruptcy court to weigh how the relief affected interested parties, and to condition any relief granted in a manner that sufficiently protected them.

Jaffé's second argument characterized the section 1522(a) sufficient protection test as "merely procedural" and designed to ensure each creditor had equal footing or access to the foreign main proceeding. The Circuit Court acknowledged that Jaffé's second argument had logic. However, in reviewing the text of section 1522(a)'s requirements, the court found it more reasonable that Congress intended to impose a balancing test of various affected parties' interests, as employed by the bankruptcy court, as opposed to providing a mere procedural safeguard as Jaffé suggested. Congress included "debtors" among the list of parties whose interests must be sufficiently protected before the bankruptcy court grants section 1521 discretionary relief to a foreign representative. Since creditor and debtor interests are often misaligned, the court reasoned that providing protection to one might come at the expense of another. Such tug-and-pull analysis inherently calls for a balancing test. Further support for utilizing a balancing test that considers a particular class of interests is found in the Model Law on Cross-Border Insolvency, on which chapter 15 was based, and its accompanying Guide to Enactment issued by UNCITRAL. According to the Guide to Enactment, Article 22 (codified in section 1522), is designed "to protect the interests of creditors (in particular local creditors), the debtor and other affected persons." Thus, the Circuit Court concluded that the express language in the Guide to Enactment rebuts Jaffé's proposition and supports a finding that section 1522(a) is intended to provide particularized protection to affected parties.

Jaffé's last argument maintained that even if a balancing test was appropriate, the bankruptcy court abused its discretion in overstating the harm to the licensees of rejected cross-license agreements under German law. The bankruptcy court found that the licensees had billions in sunk costs invested in the creation of semiconductor facilities and manufacturing that relied upon unfettered use of the U.S. patents, which put them at Jaffé's mercy to either pay exorbitant cash royalties or risk business cessation or IP infringement lawsuits. According to Jaffé, however, his offer to re-license the patents to the affected competitors on "reasonable and nondiscriminatory" (RAND) terms, and his agreement to subject the royalty calculations to arbitration, if needed, mitigated these "hold-up" concerns. The Circuit Court found no abuse of discretion in how the bankruptcy court applied the sufficient protection test. The bankruptcy court acknowledged Jaffé's offer for re-licensing on RAND terms, but found it did not provide sufficient protection. Evidence at trial showed that the licensees could not avoid payment of royalties by designing around the patents. Additionally, the new licenses offered by Jaffé offered limited protection against a future insolvency, and precedent for unilateral rejection by the assignee of the debtor's U.S. patents. The Circuit Court concluded it was reasonable for the bankruptcy court to find that these concerns "introduce a dangerous degree of uncertainty to a licensing system that plays a critically important role in the semiconductor industry, as well as other high-tech sectors of the global economy." While application of section 365(n) diminished the value of the U.S. patents to the estate, it did not render them worthless. When the harm to the estate was weighed against the harm to the licensees and the industry as a whole, the Circuit Court concluded that the bankruptcy court did not abuse its discretion in applying the section 1522(a) test.

The Circuit Court ended its analysis by finding that section 1506 provides an independent ground for conditioning rejection of U.S. patent license agreements. Citing to the Guide on Enactment, the Circuit Court held that section 1506, which excuses a court from granting any relief that is manifestly contrary to U.S. public policy, is "an additional, more general protection of U.S. interests that may be evaluated apart from the particularized analysis of Section 1522(a)." Thus, section 1506(a) provided an alternative basis on which to condition the relief granted to a foreign representative.

PRACTICAL CONSIDERATIONS

This is another recent chapter 15 case deciding to what extent comity for the foreign main proceeding trumps the specific statutory protections afforded to creditors having interests in the debtor's assets or companies located in the United States. In both instances, the foreign main proceeding could not be used as an end-run around U.S. statutory protections embedded in the Bankruptcy Code or in its bankruptcy law jurisprudence. In *Ad Hoc Group of Vitro Noteholders v. Vitro S.A.B. de C.V.*, 701 F.3d 1031 (5th Cir 2012), the bankruptcy court rejected an attempt to authorize third-party nonconsensual releases contained in a plan where insiders controlled voting. Here, the bankruptcy court rejected an attempt that would put IP licensees with multi-billion-dollar investments in U.S. patent

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CLAIM OF OUT-OF-THE-MONEY NON-RECOURSE JUNIOR LIENHOLDER ALLOWED UNDER SECTION 1111(b)

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In re B.R. Brookfield Commons No. 1 LLC, 735 F.3d 596 (7th Cir. 2013)

CASE SNAPSHOT

In a chapter 11 case, the Seventh Circuit held that a secured creditor holding a non-recourse loan on property with insufficient equity to cover even the first lien, was nevertheless entitled to assert a recourse claim pursuant to section 1111(b)(1)(A), and that regardless of the value of the collateral, section 1111(b)(1)(A) permits a secured creditor with a perfected pre-petition lien to treat a non-recourse loan as if it had recourse against the borrower.

FACTUAL BACKGROUND

Valstone held a non-recourse second lien on certain real property owned by the debtor, Brookfield, and the property declined in value such that Valstone's junior lien was not secured by any equity in the property. Brookfield elected to keep the property, but objected to Valstone's proof of claim, arguing that a totally unsecured non-recourse loan should be disallowed. The bankruptcy court allowed Valstone's claim, and the district court affirmed, finding that the "plain meaning of Section 1111(b)(1)(A) is clear and unambiguous," and that the only prerequisite to assert a secured claim is that the loan be secured by a lien on property of the estate.

Brookstone appealed the decisions to the Seventh Circuit, which considered the issue as a matter of first impression.

COURT ANALYSIS

The Seventh Circuit analyzed the plain and unambiguous text of section 1111(b)(1)(A), which states that a "claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse," unless an 1111(b)(2) election is made or the property is sold under section 363. Thus, the Seventh Circuit ruled that the plain meaning of section 1111(b) required that it treat Valstone's claim as a secured recourse claim irrespective of the value of the property.

The Seventh Circuit also analyzed the legislative history of section 1111(b), and found that Congress enacted the statute specifically to remedy the harsh result of *Great Nat'l Life Ins. Co. v. Pine Gate Associates, Ltd.,* 2 Bankr. Ct. Dec. 1478 (Bankr. N.D. Ga. 1976), in which the bankruptcy court allowed the debtor to use its "cramdown" powers to avoid the deficiency claim of a first lien holder, thereby depriving the lien holder of the future appreciation of the property and resulting in a windfall to the debtor. The Seventh Circuit found that the disallowance of a properly perfected junior unsecured lien would likewise result in a windfall to a debtor because, outside of bankruptcy, the second lienholder would have at least had the right to foreclose on the property.

The Seventh Circuit was also persuaded by the similar ruling of *In re Atlanta West VI,* 91 B.R. 620 (Bankr. N.D. Ga. 1988), in which the bankruptcy court allowed the secured claim of a third-priority lien holder under section 1111(b), even though the secured creditor's lien was completely unsecured as a result of the diminished value of the property. The Seventh Circuit criticized the contrary finding in *In re SM 104 Ltd.,* 160 B.R. 202 (Bankr. S.D. Fla. 1993), which held that a junior lienholder whose non-recourse lien was not secured by any equity in the property, was not even a creditor of the estate and was not entitled to any vote on a debtor's plan. The Seventh Circuit found that the *SM 104* decision was an "outlier" because the *SM 104* court "did not consider bankruptcy treatises, legislative history, persuasive cases, or controlling cases during its statutory interpretation."

PRACTICAL CONSIDERATIONS

Junior creditors should contest any efforts by a debtor to disallow their claim or prohibit them from voting on bankruptcy plans merely because the junior creditor is "out of the money." So long as the junior creditor properly perfected its liens, whether or not the loan is a recourse loan, and whether or not the lien has any monetary value, the junior creditor's entire claim is entitled to be treated as having recourse status pursuant to section 1111(b), entitling the creditor to voting rights under a chapter 11 plan. This issue has been settled in the Seventh Circuit but not in other circuits, and the lower courts in the Eleventh Circuit have issued inconsistent decisions.

Balancing of Interests Results in Preservation of Patent Licensee Rights in Chapter 15 Case—continued from page 6

technology at substantial risk of loss. In each case, it is a balancing test weighing the effects of foreign laws on the various interested parties. But, no matter how those scales should tip, no U.S. bankruptcy court can be compelled to utilize a foreign law that runs manifestly contrary to fundamental U.S. public policy.

NOT SO FAST IN APPLYING DETROIT BANKRUPTCY PRECEDENT – AT LEAST IN CALIFORNIA

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This article originally appeared in *Pensions & Investments Online*.

Lest California cities in, or considering, bankruptcy get too euphoric over the mileage they might get from the Detroit ruling on public employee pension rights ("Detroit ruling reverberates with pension funds around country," Pensions & Investments Dec. 9), a check under the hood might be useful.

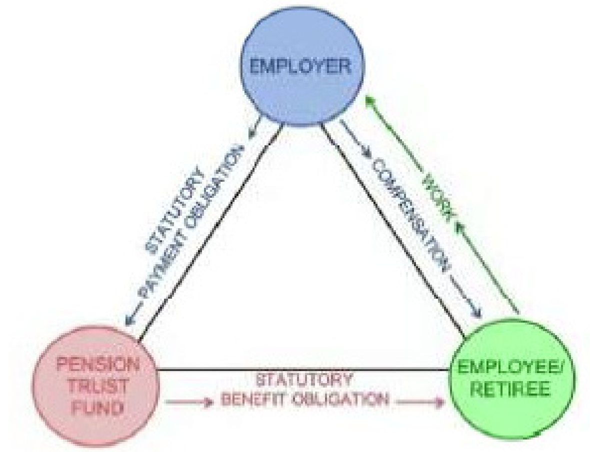
Fifty years ago, Michigan changed its constitution to grant public employees contract rights to their pensions in retirement. The state's employees thought that this would be an ironclad way to protect their pensions against impairment, given the added state and federal constitutional protections afforded contracts. Instead, Michigan inadvertently exposed their public servants' pensions to the chop shop of federal bankruptcy courts, which are in the business of doing just what employees fear — impairing contracts. And Michigan declined to go further in protecting pension plan participants' rights. Indeed, as U.S. Bankruptcy Court Judge Steven W. Rhodes said in his Detroit ruling Dec. 3, Michigan could have added additional protections for retirees. "It could even have explicitly required the state to guarantee pension benefits. But it did none of these." For that reason, it was pretty easy for Mr. Rhodes to conclude that since the only rights pension plan participants had were contract rights, "they are subject to impairment in a federal bankruptcy proceeding."

But here is where California's vehicle for delivering pension benefits has a few options that might give its public pension plan participants better mileage in the long run. In California, retirees do not have a contract with their former public employers. They are not "creditors" of the municipalities for whom they once worked and they don't have "claims" against those municipalities. What's more, the unfunded liabilities on the books of the retirement fund are not even a "debt," according to the California Court of Appeals.

The obligations owed to California retirees to pay their retirement benefits are owed by an independent public agency — the retirement trust fund — not by their former employer. That's by statutory design, not by contract. And the obligation owed by the employer to the pension trust fund is also not one of contract, but of statute. It was the exercise of the state of California of its governmental powers that created these statutory obligations, independent of any contractual rights and obligations between the employer and employee while in the employment relationship.

As a result, there can be no "contract" between a California retiree and a former employer that is in danger of "impairment." And the federal bankruptcy courts may not interfere with the exercise of state political and governmental powers, under the 10th Amendment of the U.S. Constitution and Section 903 of the Bankruptcy Code.

The following diagram might be helpful in understanding these relationships:



Only while the employee is working for the employer is there a contract that can be rejected (a la the Vallejo city bankruptcy proceedings) or impaired by a bankruptcy court. Once in retirement, the retiree looks to the pension trust fund for a monthly benefit check, and the trust fund looks to the employer for full funding. This is the statutory framework in California. In contrast, the Detroit bankruptcy judge was stuck with a Michigan law that only described the contractual relationship of two of the parties, down the right side of the diagram. California law, however, presents the full picture, with all the vehicles' retirement features protected by statute. Call it the California "lemon law" for pensioners.

Detroit's pension guzzler cannot compare with the California hybrid. The California model includes the optional equipment employees in Michigan never got — an explicit guarantee of their pension benefits. California state, county and city pension laws all require full funding of retiree benefits by statutory mandate, not contract, expressly written into the Public Employees' Retirement Law, the State Teachers' Retirement Law, the County Employees Retirement Law, and in virtually every other city charter and municipal code. That's the left side of the diagram. As a result, public agency retirees in California have a statutory engine powering their rights, and need not fear that a bankruptcy court will run them off the road.

So let's be careful when we assume all vehicles for delivering pension promises might run out of gas in federal bankruptcy court. At least in California, your mileage might differ.

STATE CLAIMS BROUGHT AGAINST PURCHASER AFTER SECTION 363 SALE CONSTITUTE IMPERMISSIBLE COLLATERAL ATTACK

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In re Christ Hospital, No. 12-12906 (MS), (Bankr. D.N.J., Dec. 3, 2013)

CASE SNAPSHOT

After the debtor's assets were sold "free and clear" of all liens, claims and interests through a sale under section 363 of the Bankruptcy Code, a competitor of the purchaser and debtor asserted various economic tort claims against the purchaser in state court. The bankruptcy court enjoined the state court proceedings, finding that the claims asserted constituted "interests" within the meaning of section 363, and the competitor's attempt to pursue the claims constituted an impermissible attempt to collaterally attack the bankruptcy court's order granting the sale free and clear.

FACTUAL BACKGROUND

In the sale order approving the purchase of substantially all of the assets of Christ Hospital, the chapter 11 debtor, Hudson, the successful bidder, obtained broad protections under section 363(f) authorizing Hudson's purchase of the assets "free and clear" of liens, claims and interests. Prime, a competitor of both Hudson and the debtor, sued Hudson in state court, alleging tortious interference with prospective financial gain, unfair competition, and tortious interference with contractual relations, premised upon Hudson's purchase of the debtor's assets. Hudson asked the bankruptcy court to enjoin the state court action, relying on the terms of the sales order, as well as the doctrines of res judicata and collateral estoppel. Prime argued that the bankruptcy court did not have jurisdiction over the state law claims, and that neither res judicata nor collateral estoppel were applicable.

COURT ANALYSIS

As an initial matter, the court agreed that res judicata and collateral estoppel were not applicable. After analyzing the scope of the term "interest," the court found that Prime's economic claims, which were premised upon the sale of the debtor's assets, were "connected to, or arise from, the property being sold," and were thus an "interest" affected by the free and clear sale under section 363(f). The court then proceeded to conclude that Prime's attempt to assert economic tort claims against Hudson after the conclusion of the sale constituted an impermissible attempt to collaterally attack the bankruptcy court's sale order. Moreover, the fact that a 363 sale is an *in rem* proceeding, resulting in the transfer of property rights that are "good against the world, not just against parties to a judgment or persons with notice of the proceeding," further protected Hudson from tort claims premised upon the sale. The court also noted that by receiving sufficient notice of the sale and failing to object, Prime effectively consented to the sale. Because of the foregoing, the court found that the claims pending in state court conflicted with the bankruptcy court order and were thus barred; accordingly, the court granted Hudson's motion for injunctive relief.

PRACTICAL CONSIDERATIONS

Purchasers of assets through sales under section 363 of the Bankruptcy Code can take comfort in the breadth of the protections afforded to the purchaser of a debtor's assets, but must also ensure that the court's sales order sets forth broad protections. On the flip side, however, parties in interest who potentially have claims premised upon the sale of the debtor's assets would be wise to remember the phrase, "speak now or forever hold your peace."

THIRD CIRCUIT AFFIRMS – CLAIMS PURCHASER SUBJECT TO PREFERENCE CLAIM TO THE SAME EXTENT AS ORIGINAL CLAIMANT

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In re KB Toys Inc., 2013 BL 317570 (3d Cir., 2013)

CASE SNAPSHOT

The Court of Appeals for the Third Circuit affirmed the district court's decision holding that a trade claim that is subject to disallowance under section 502(d) in the hands of the original claimant is similarly disallowable in the hands of a subsequent transferee.

FACTUAL BACKGROUND

ASM Capital II, LLP purchased nine claims from other creditors of the debtor. The claimants from whom ASM purchased these claims were all listed on the debtor's statement of financial affairs as having received a payment during the 90 days preceding the bankruptcy filing. The bankruptcy trustee objected to the claims pursuant to section 502(d) and argued that the claims were disallowable because the original claim holder received a preference payment from the debtor prior to transferring the claim to ASM. The bankruptcy court disallowed the claims by finding that "a claims purchaser holding a trade claim is subject to the same section 502(d) challenge as the original claimant." ASM appealed the bankruptcy court's decision and the district court affirmed. ASM appealed to the Court of Appeals.

COURT ANALYSIS

The Court of Appeals for the Third Circuit began its analysis with an interpretation of section 502(d). The statute is broadly written to include "any claim of any entity." The court held that this language meant that any claim, regardless of who held the claim, was disallowable if the claim belonged to an entity that received an avoidable preference. Stated differently, section 502(d) applied to claims, not claimants, so the fact that ASM held the claim (as a result of the claim assignment) but was not the creditor that received the pre-bankruptcy preferential payment, was of no consequence to the court's analysis. The determining factor according to the Court of Appeals was that ASM was the current holder of the claims that were associated with a fraudulent transfer. The court found this reading of section 502(d) was the only plausible reading because otherwise a creditor that received a preferential transfer "would have an incentive to sell its claim and 'wash' the claim of any disability." The infirmity of the claim travels with the claim and does not rest with the holder of the claim; ASM, as the current holder of the infirmed claims, now held disallowed claims.

ASM also argued that it purchased the claims in good faith and was therefore afforded the protections of a good faith purchaser under section 550(b). The court held that section 550(b) did not apply to ASM because (i) ASM did not purchase property of the estate, it purchased claims against the estate, and (ii) sophisticated claim purchasers, like ASM, are aware, or should be aware, of the risks associated with buying claims.

PRACTICAL CONSIDERATIONS

Entities that purchase claims from a creditor must be fully aware of the risks associated with claim purchasing. The claim-purchasing entity should conduct sufficient diligence regarding the claim (or claims) it is purchasing to know whether the claim may be subject to dispute or disallowance in the debtor's bankruptcy. The fact that the claim purchaser is not the entity that received the preferential transfer will not affect the disallowance of the claim under section 502(d).

PREMIUM FINANCING ARRANGEMENTS IMMUNE TO PREFERENCE ACTION

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Forman v. IPFS Corporation of the South (In re Alabama Aircraft Industries, Inc.), Bankr. Case No. 11-10452 (PJW), Adv. Pro. No. 13-50727 (PJW) (Bankr. D. Del. Dec. 5, 2013)

CASE SNAPSHOT

The bankruptcy court found that, because of the unique structure of premium financing arrangements, payments made pursuant to such an arrangement could not be subject to a preference action because the financier could never be paid an amount greater than it would recover in a hypothetical chapter 7 proceeding. The court also held that the secured creditor's secured status should be determined as of the time of each alleged preferential payment, rather than at the time of the bankruptcy filing.

FACTUAL BACKGROUND

A chapter 7 trustee brought a preference action against a secured creditor that had provided insurance premium financing to the debtor pre-bankruptcy. At issue were four payments made by the debtor on the secured debt that were made either later or earlier than when due. The bankruptcy court granted summary judgment in favor of the secured creditor, finding that the very nature of insurance premium financing insulated the secured creditor from preference attack.

COURT ANALYSIS

The bankruptcy court stated that the key inquiry was whether the secured creditor's retention of any payment would allow it to receive more from the debtor's bankruptcy estate than it would have received in a hypothetical chapter 7 bankruptcy case where the payment had not been made. The court then noted that the most a secured creditor can receive in a chapter 7 bankruptcy case is the value of its collateral.

The court explained that if the value of the collateral is such that the secured creditor would receive payment in full from the debtor in a chapter 7 bankruptcy case, the secured creditor's secured status is fully secured (as opposed to undersecured). The court concluded that, under those circumstances, any pre-bankruptcy payment to the secured creditor could not be a preference because the secured party would receive payment in full in a hypothetical chapter 7 bankruptcy case and, therefore, would not be receiving more than it would have on account of the payment.

Noting an apparent split of authority on the issue, the bankruptcy court then raised the question of whether the secured creditor's secured status should be evaluated as of the date of the filing of the bankruptcy case, or as of the time of each alleged preferential payment. The court agreed with the reasoning of the cases holding the latter, and therefore the court concluded that if the secured creditor was fully secured at the time of each payment, then none of the payments could be recovered as preferences.

The court then found that, given the unique nature of insurance premium financing, the value of the unearned premiums (i.e., the collateral) will at all times exceed the outstanding balance of the secured debt. Such collateral simply does not depreciate faster than the debt is repaid, which ensures that the financier is always fully secured. Thus, the court concluded that pre-bankruptcy payments to secured creditors providing insurance premium financing are insulated from preference attack.

PRACTICAL CONSIDERATIONS

Apart from the obvious relevance this case has to lenders providing insurance premium financing, this case is noteworthy for two reasons. First, it represents another authority weighing in on the issue of whether the secured creditor's secured status should be evaluated for purposes of a preference analysis as of the date of the filing of the bankruptcy case or as of the time of each alleged preferential payment. Second, it provides lenders with credit facilities analogous to insurance premium financing with an opportunity to argue that they are insulated from preference attack as well.

ATTEMPTED TRIANGULAR SET-OFF NOT PERMITTED BECAUSE OF LACK OF MUTUALITY, NOR IS IT WITHIN SAFE HARBOR

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Sass v. Barclays Bank plc (In re American Home Mortgage Holdings, Inc.), Adv. Proc. No. 11-51851 (CSS) (Bankr. D. Del., Nov. 8, 2013)

CASE SNAPSHOT

The Bankruptcy Court for the District of Delaware held that affiliated entities could not engage in a so-called triangular set-off with one of the debtors post-petition. The debtor was a party to a swap agreement with Barclays Bank and repurchase agreement with Barclays Capital. Following commencement of the case, the Barclays entities attempted to set-off amounts owed to the debtor under the repurchase agreement with amounts owed to Barclays Capital under the swap agreement. The bankruptcy court rejected the attempted post-petition set-off on the basis that a triangular set-off lacked mutuality and, therefore, was not permitted under the Bankruptcy Code.

FACTUAL BACKGROUND

The debtor, American Home Mortgage Investment Corp., and Barclays Capital entered into a Master Repurchase Agreement pursuant to which AMHI transferred certain collateral to Barclays Capital in exchange for transfer of funds and an agreement to sell such collateral back to AMHI for a repurchase price on demand. Three days prior to the petition date, Barclays Capital sent AMHI a notice of default and acceleration under the Master Repurchase Agreement. AMHI lacked sufficient capital to repurchase the collateral upon the default and acceleration and, therefore, Barclays Capital retained the collateral and asserted a deficiency against AMHI.

Contemporaneously with the repurchase transaction, AMHI entered into a swap agreement with Barclays Bank as a hedge on certain interest rate caps entered into between Barclays Bank, AMHI and a trust created by AMHI. During the course of the transaction, AMHI posted certain swap collateral with Barclays Bank, including cash and bonds. Under the Schedule to the swap ISDA Master Agreement, a non-defaulting party has a right to set-off obligations between the defaulting party and the non-defaulting party or its affiliates. Four days before the petition date, Barclays Bank sent notice of an early termination date to AMHI and stated that it was exercising its right to set-off any amounts owed by Barclays Bank to AMHI against any amounts owed by AMHI to Barclays Capital as provided under the Schedule.

Following the petition filing, Barclays Bank sent a termination calculation statement indicating that it was in-the-money and owed approximately $4 million. AMHI argued that on the termination date, Barclays Bank held more than $13 million in collateral. Thereafter, Barclays Bank sent notice that it intended to apply part of this surplus to amounts owed to Barclays Capital under the repurchase agreement. Following confirmation of the debtor's plan, the plan trust brought suit against the Barclays entities seeking, inter alia, turnover of property of the estate and a declaratory judgment regarding the triangular set-off, and the suit challenged the claims filed by the Barclays entities under the repurchase and swap agreements.

COURT ANALYSIS

The court determined that the crux of the dispute was "whether the Bankruptcy Code allows for triangular setoff in swap and repurchase agreements." Noting that section 553 does not provide set-off rights, but rather preserves any non-bankruptcy set-off rights, the court found that to impose a set-off: "(1) the amount owed by the debtor must be a prepetition debt; (2) the debtor's claim against the creditor must also be prepetition; and (3) the debtor's claim against the creditor and the debt owed the creditor must be mutual." Mutuality requires "that each party must own his claim in his own right severally, with the right to collect in his own name against the debtor in his own right and severally." Because the debts were between different Barclays entities, the bankruptcy court held that no mutuality existed.

The bankruptcy court further rejected the Barclays entities' argument that the set-off was protected by the sections 559-561 safe harbor provisions, as the set-off occurred in connection with the termination of the swap. The court held that the safe harbor provisions could not be interpreted so as to do away with the mutuality requirement of section 553. The court found its decision was supported by a primary bankruptcy policy objective of treating similarly situated creditors equally – if groups of creditors were permitted to engage in set-offs, they could unfairly obtain greater distributions at the expense of other similarly situated creditors.

PRACTICAL CONSIDERATIONS

The court's decision adds to a growing body of case law that prevents parties from contracting around the mutuality requirements for the exercise of set-off. Accordingly, lenders must careful not to rely on potential set-offs as security, where the obligations are not directly between the lender and the borrower.

PLAN NOT 'FAIR AND EQUITABLE' BECAUSE OF SUBSTANTIAL RISKS PLACED ON SECURED CREDITOR

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In re Premiere Hospitality Group, Inc., Case No. 13-02145-8-RDD (Bankr. E.D.N.C., Dec. 16, 2013)

CASE SNAPSHOT

The court granted a secured creditor's objection to confirmation of the debtor's proposed chapter 11 plan. The decision relied only on the creditor's evidence, accepting the creditor's argument regarding reasonable loan terms. The court held that the debtor's proposed plan was not fair and equitable because it "imposed[d] substantial risks" on the secured creditor.

FACTUAL BACKGROUND

The debtor, a corporation that operated several dozen hotels, filed a voluntary petition under chapter 11, following years of operating below capacity with numerous rooms out of order. The debtor's petition was filed in response to a lawsuit filed by the debtor's primary secured creditor seeking the appointment of a receiver.

The creditor's claim of just more than $2 million – which was accruing interest at a default rate of 8.25 percent – was secured by a leasehold deed of trust, assignments of leases and rents, and a security agreement granting the creditor a lien on equipment, intangibles and proceeds thereof. The debtor's plan proposed repayment amortized over a 30-year period at a rate of 4.75 percent, with a balloon payment in 10 years. The secured creditor voted to reject the plan, arguing among other objections that its treatment under the plan was not fair and equitable, because the plan did not properly account for risk factors inherent in the debtor's business and financial position, and, further, that the plan's payment terms were not consistent with market terms for loans for similar businesses.

A manager in the secured creditor's special assets group testified that the debtor's loan was modified several times. The manager further testified that the creditor did not receive any payments from the time of the latest modification (18 months prior to the debtor's voluntary petition) until it received a post-petition adequate protection payment from the debtor. According to the manager, based on the debtor's history, the debtor would not qualify for a loan. Moreover, taking into account the debtor's history and the unique circumstances banks consider when lending to hotel properties, the manager testified that a 20-year amortization was more reasonable than the 30-year amortization proposed in the plan, and that based on an assessment of risk factors, an interest rate of 6.25 percent - 6.5 percent would be more reasonable. The debtor's plan proposed an interest rate of 4.75 percent.

COURT ANALYSIS

Section 1129(b)(1) of the Bankruptcy Code provides that a plan must be "fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." Although the standards a plan must meet to be considered "fair and equitable" are set forth in section 1129(b)(2), the court looked beyond those statutory requirements, finding that those standards are not exhaustive. Instead, the court – citing case law from the Bankruptcy Court for the Eastern District of North Carolina and from the Fifth Circuit – held that even if the standards of section 1129(b)(2) are met, a plan should not be confirmed unless it is "literally…fair and equitable."

The court found that "[a] plan which imposes substantial risks upon a creditor may not be fair and equitable under 11 U.S.C. section 1129(b)(2)," and "that the 'costs of the debtor's reorganization should be borne by those who stand to gain from the reorganization.'" Relying on the testimony from the secured creditor's manager, the court held that the plan's treatment of the secured creditor was not fair and equitable because the plan placed "all the risks associated with the debt on [the secured creditor]." Because it found that the plan was not "fair and equitable," the court did not consider the secured creditor's other objections to the plan.

PRACTICAL CONSIDERATIONS

Courts may refuse to confirm a plan that satisfies the standards of section 1129(b)(2), if court finds the plan is not "fair and equitable" taking into account other factors, such as market treatment for loans of a similar nature, the debtor's history, and whether the plan attempts to shift the risk associated with a loan to a creditor and away from the debtor.

A BANKRUPTCY COURT'S NEWLY FOUNDED ABILITY TO CERTIFY QUESTIONS OF LAW, NAMELY INVOLVING CORPORATE LAW ISSUES, TO THE DELAWARE SUPREME COURT

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The Delaware State Legislature recently amended Article IV, section 11 of the Delaware Constitution to add United States Bankruptcy Courts to the expanding list of courts and agencies that may certify questions to the Delaware Supreme Court. The list already included other Delaware courts, the United States Supreme Court, a Court of Appeals of the United States, a United States District Court, the United States Securities and Exchange Commission, or the highest appellate court of any other state. See Del. Const. Art. IV, § 11(8). If history is any predictor, it will not take long for United States Bankruptcy Courts (and counsel involved in the underlying bankruptcy proceeding) to begin to utilize this new avenue of interpretation of Delaware law, and the questions to be certified will likely involve evolving areas of corporate governance and fiduciary duties.

Prior to the most recent amendment, the SEC was the last addition to the certification list in 2007. At the time, the Legislature indicated that the amendment was necessary as "more than half of the publicly traded companies in the United States are Delaware corporations." See 2007 Delaware Laws Ch. 37 (S.B. 62). The amendment was quickly utilized the following year when the SEC certified two questions to the Delaware Supreme Court regarding a proposed stockholder bylaw submitted for inclusion in proxy materials. See *CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227 (Del. 2008). The United States District Courts have also certified questions to the Delaware Supreme Court in recent years. See *Lincoln Nat. Life Ins. Co. v. Joseph Schlanger 2006 Ins. Trust*, 28 A.3d 436 (Del. 2011) (certified question related to Delaware insurance law); *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust, ex rel. Christiana Bank & Trust Co.*, 28 A.3d 1059 (Del. 2011) (certified questions regarding Delaware insurance and trust law); *A.W. Fin. Servs., S.A. v. Empire Res., Inc.*, 981 A.2d 1114 (Del. 2009) (certified questions regarding Delaware escheat law).

The Delaware State Legislature appears ready to extend the ability to certify questions to the Delaware Supreme Court even further, beyond domestic courts and regulatory agencies. A bill recently introduced proposes to add to the certification list "the highest appellate court of any foreign country, or any foreign governmental agency regulating the public issuance or trading of securities." See 2013 DE H.B. 232. The bill was just introduced in January 2014 and requires passage by two sessions of the Legislature, which means the earliest possible enactment will be 2015. In any event, the ability to certify questions of law, namely involving issues of first impression and/or evolving areas of corporate law, to the Delaware Supreme Court will save clients and counsel time and expense by having the ultimate decision-maker on such issues opine on these issues first.

COUNSEL'S CORNER: NEWS FROM REED SMITH

Robert Simons has written an article entitled: "Structured Dismissal Strategy: A Viable Alternative to Conversion To Chapter 7 Liquidation From Chapter 11 Reorganization." This article is published as a part of - Inside the Minds: Chapter 7 Commercial Bankruptcy Strategies, 2014 ed., published by Aspatore Books, a Thomson Reuters business.

Robert Simons spoke on March 4 in the first of Reed Smith's teleseminar series "The Coal Industry – A New Reality." Robert discussed aspects of the recent Freedom Industries chemical spill in West Virginia in his presentation, "Coal Industry Survival Guide."

Derek Baker conducted a CLE program for a financial institution's legal staff, entitled, "Issues and Recent Trends in Bankruptcy Impacting Secured Lenders" on December 5.

Amy Tonti conducted a video conference presentation to the legal staff of a financial institution, entitled "Intersection of Bankruptcy Law with Trust and Pension Laws."

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