Paul | Weiss

MAY 2024

Restructuring Department Bulletin

DID YOU KNOW...

In *In re Yellow Corp.*, 2024 WL 1313308 (Bankr. D. Del. Mar. 27, 2024), the bankruptcy court concluded that the unusual circumstances of the trucking company's bankruptcy case, in which several multiemployer pension plans filed proofs of claim for withdrawal liability totaling $7.8 billion, strongly favored resolving the withdrawal liability disputes through the bankruptcy claims allowance process, rather than by arbitration as provided by the Multiemployer Pension Plan Amendments Act of 1980.

Alice Eaton Featured at Wharton's PE and Venture Capital Conference

Restructuring partner Alice Eaton spoke on the panel "Adjusting to a New Era: Redefining Value Creation in Uncertain Times," as part of the Wharton School of the University of Pennsylvania's 2024 Private Equity and Venture Capital Conference on March 29. The panel covered the use of innovative financing instruments and structures for investments in distressed assets.

Elizabeth McColm Discusses Women in Restructuring at Winter Bankruptcy Conference

Restructuring partner Elizabeth McColm was a featured speaker on the "Women Leaders in the Restructuring Field" keynote panel on March 12 at the inaugural Winter Bankruptcy Conference, hosted by the University of Chicago Center on Law and Finance and Brigham Young University Law School. Elizabeth shared her insights on navigating the dynamic restructuring industry.

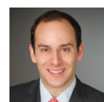
Eleventh Circuit Holds That Section 109 Debtor Eligibility Requirements Do Not Apply to Chapter 15 Cases and Are Not a Prerequisite to Recognition of a Foreign Proceeding

Section 109(a) of the Bankruptcy Code specifies who is eligible to be a debtor under the Bankruptcy Code. Among other things, only "a person that resides or has a domicile, a place of business or property in the United States," qualifies. Section 103(a) of the Bankruptcy Code, in turn, expressly applies chapter 1, which includes sections 103 and 109, to chapter 15 cases. Since its enactment, courts and commentators have debated whether a ***foreign*** debtor, subject to a ***foreign*** proceeding seeking chapter 15 relief, must also reside or have a place of business or property in the U.S. Previously, the Second Circuit held that a "straightforward" interpretation of the Bankruptcy Code compels that result, given that section 103(a) applies all of chapter 1, which includes section 109, to chapter 15 cases. *In re Barnet*, 737 F.3d 238 (2d Cir. 2013)

Recently, however, while agreeing with the Second Circuit's "straightforward" statutory interpretation, the Eleventh Circuit in *Al Zawawi* v. *Diss et al.* (*In re Al Zawawi*), 2024 WL 1423871 (11th Cir. Apr. 3, 2024), reached the opposite conclusion. The Eleventh Circuit opined that a debtor in a chapter 15 case need ***not*** satisfy section 109's definition of a "debtor." In an earlier decision interpreting chapter 15's predecessor, the Eleventh Circuit reasoned it would "make little sense to require that the subject of the foreign proceeding qualify as a 'debtor' under United States bankruptcy law." *In re Goerg*, 844 F.2d 1562 (11th Cir. 1985). Instead, Congress defined "foreign proceeding" "expansively" and "intended that the bankruptcy courts have 'maximum flexibility' in fashioning appropriate orders." *Id*. at 1568. In *Al Zawawi*, feeling bound by this precedent and informed by the definition of "foreign proceeding" and chapter 15's stated purpose of providing "effective mechanisms for dealing with cases of cross-border insolvency," the Eleventh Circuit again held that a foreign debtor need not satisfy section 109(a) as a prerequisite for recognition of a foreign proceeding in a chapter 15 case.

On April 24, 2024, the foreign debtor filed a petition for rehearing en banc. Should the Eleventh Circuit deny such motion or, upon rehearing affirm the underlying decision, a split between the Second and Eleventh Circuits will result, which Congress or the Supreme Court would ultimately need to resolve.

Questions? Please contact any of our Restructuring Partners to discuss these or other topics in greater depth.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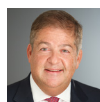
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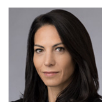
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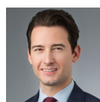
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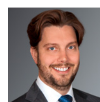
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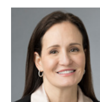
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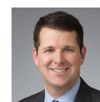
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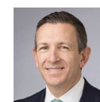
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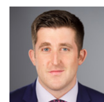
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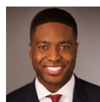
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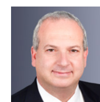
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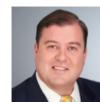
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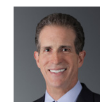
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