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Restructuring Department Bulletin

Alice Eaton and Sean Mitchell Discuss Paul, Weiss's Restructuring Practice in *Vault* Q&A

Alice and Sean describe the breadth of Paul, Weiss's Restructuring practice and what sets the practice apart in a Q&A in the 2024 edition of "Practice Perspectives: *Vault*'s Guide to Legal Practice Areas."

Elizabeth McColm and Sean Mitchell Publish "USA" Chapter in *ICLG – Restructuring & Insolvency Laws & Regulations 2024*

In the latest *ICLG – Restructuring & Insolvency Laws & Regulations*, Elizabeth and Sean discuss common issues in restructurings and insolvency proceedings in the United States, including insolvency procedures, tax and employee considerations, and cross-border issues, among others.

Southern District of New York Bankruptcy Court Upholds "Time Approach" to Calculating Landlord Lease Termination Claim

Section 502(b) of the Bankruptcy Code limits the amount of a landlord's claims for damages resulting from the termination of a lease of real property. Specifically, section 502(b)(6) caps such claims at "the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease." In calculating a landlord's claim under section 502(b)(6), courts have taken two approaches – the "time approach," which imposes a cap based on the rents specified for the first 15% of the remaining lease term (not to exceed three years) and, thereby ignores rent escalations that would occur in later years, and the "rent approach," which imposes a cap based on 15% of all rent specified for the remaining lease term (not to exceed three years).

While courts in the Southern District of New York have previously followed the "rent approach," in *In re Cortlandt Liquidating LLC*, No. 23-03262 (S.D.N.Y. Mar. 26, 2024), the Bankruptcy Court determined that based on "a very strong shift" among authorities, including "the ever-growing consensus among other district courts" and its own independent analysis, the "time approach" is the correct interpretation of section 502(b)(6). On appeal, the U.S. District for the Southern District of New York affirmed the Bankruptcy Court's decision finding the "plain language" of the statute "speaks in terms of time and not dollar amounts" and, moreover, that the "time approach" is consistent with the "legislative history of the statute and emerging consensus of relevant authorities." The District Court also affirmed the Bankruptcy Court's finding that the section 502(b)(6) cap applies to claims by a landlord against a tenant's guarantor, here, the iconic Century 21 department stores.

While the Second Circuit has not yet ruled on this issue, parties, particularly landlords, should be aware of the potential implications of *In re Cortlandt* on the calculation of claims under section 502(b)(6).

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



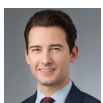
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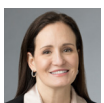
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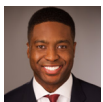
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DID YOU KNOW...

In *In re Mallinckrodt PLC*, No. 23-1111, 2024 WL 1786660, at *1 (3d Cir. Apr. 25, 2024), the Third Circuit affirmed the bankruptcy court's ruling that Mallinckrodt's future royalty obligations to Sanofi under a prepetition contract gave rise to a dischargeable prepetition claim. Sanofi had argued its rights to royalty payments were post petition obligations and not "claims" subject to discharge because Mallinckrodt's payment obligations were triggered postpetition, each time a sale of the licensed drug was made. The Third Circuit disagreed and held that Sanofi's right to future royalties was a contingent and unliquidated claim that arose prepetition when the parties signed the contract, and thus gave rise to a prepetition, general unsecured claim subject to discharge. The Court also rejected Sanofi's argument that the royalty payments were like tort injuries that can arise postpetition at the time an injury manifests, even if the exposure to the debtor's harmful product occurred prepetition. Notably, the Third Circuit opined that "[t]o protect itself, Sanofi could have structured the deal differently" – by licensing the rights to the drug, keeping a security interest in the intellectual property or setting up a joint venture to keep part of the ownership.