Paul | Weiss

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Restructuring Department Bulletin

Chris Hopkins Named a *Law360* Bankruptcy Rising Star

Law360 named restructuring partner Chris Hopkins a 2024 Rising Star in the Bankruptcy category. The awards annually highlight the top lawyers under the age of 40. In his accompanying feature article, Chris discusses his work representing CHC Group, Party City and creditors of Rite Aid. "It's such a varied practice in that no two transactions, no two companies are exactly alike," he said. "It keeps things very dynamic."

Secured Noteholder Prepayment Penalty Ruled "Unreasonable" and "Unenforceable" under Section 506(b) of the Bankruptcy Code

In his oral ruling in *In re Invitae Corp.*, Ch. 11 Case No. 24-11362 (MBK), (Bankr. D.N.J. Jul. 23, 2024), Chief Judge Michael B. Kaplan held, among other things, that the secured noteholders' make-whole premium, which totaled approximately $27.5 million, was unenforceable under section 506(b) of the Bankruptcy Code. Section 506(b) allows oversecured creditors to recover fees, costs or charges if three criteria are met: (a) the creditor must be oversecured; (b) the agreement under which the claim arose must provide for such fees and costs; and (c) the claim must be reasonable. The court focused on the last prong of the analysis, noting that bankruptcy courts consider various factors when determining reasonability, including the impact on junior creditors and equitable considerations which may be critical in determining the reasonableness of a prepayment premium. Turning to the facts of the case, the court found that the acceleration of the obligations under the exchange transaction giving rise to the make-whole amount was "inevitable and foreseeable" from the outset, and that awarding the make-whole premium would unnecessarily penalize other creditors in the case. Concluding that multiple prepayment penalties foisted upon the unsecured creditor body was "unacceptable and inequitable," the court held that the make-whole amount was unreasonable and therefore unenforceable under section 506(b) of the Bankruptcy Code. Despite disallowing the make-whole, the court, however, granted the secured noteholders post-petition interest through the date of repayment at the non-default rate.

DID YOU KNOW...

- On July 5th, Invesco filed a notice of appeal of Judge Lopez's decision in *In re Robertshaw*, which found that Robertshaw had breached its credit agreement, but limited the remedy for such breach to monetary damages (as opposed to equitable relief), as further described in our recent client memo. Subsequently, on July 19th, Robertshaw, its sponsor and the ad hoc lender group cross-appealed.
  In *In re Mercon Coffee Corp.*, No. 23-11945 (MEW) (Bankr. S.D.N.Y. Jul. 19, 2024), the Bankruptcy Court denied proposed releases that were made in favor of insiders to induce their continued employment because they did not meet the "exacting" standards of section 503(c) of the Bankruptcy Code. By its terms, that section prohibits "transfers" or "obligations" for the benefit of an insider made for the purposes of inducing such person to remain with the debtor's business except in compliance with its requirements. The Debtors conceded that they could not satisfy section 503(c) of the Bankruptcy Code, but argued that the statute only applies to allowance and payment of administrative expenses, not releases. The Bankruptcy Court disagreed, ruling that the statute applies to post-petition transfers and obligations generally, not just cash payments.

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


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