

JANUARY 2025

Restructuring Department Bulletin

Paul, Weiss Named Chapter 11 Firm of the Year in Global Restructuring Review Awards

Global Restructuring Review (GRR) recognized Paul, Weiss as the “Chapter 11 Firm of the Year” in its 2024 GRR Awards, which honor the most impressive restructuring practices and individuals of the past year. The firm was recognized for its role advising in several major chapter 11 matters, including the restructurings of Hornblower, Lumileds, Revlon and Rite Aid, among others.

Brian Hermann Discusses Chapter 11 Trends at Bankruptcy Conference

Restructuring partner Brian Hermann participated in a panel, “Liability Management Transactions,” as part of the University of Texas School of Law’s 2024 Jay L. Westbrook Bankruptcy Conference. The panel discussed the latest trends in chapter 11 cases and their implications.

Paul Basta Discusses Large Restructurings at the 2024 Distressed Investing Conference

Restructuring partner Paul Basta participated in a panel, “Where Do We Go From Here? The Return of Capital R Restructurings,” as part of the 2024 Distressed Investing Conference. The panel focused on mega restructurings, discussing the administrative costs associated with complicated chapter 11 cases and whether out-of-court restructurings will continue to be prevalent, among other topics.

Supreme Court Hears Argument on Whether Bankruptcy Trustee Can Sue IRS to Recover Fraudulent Transfers

Section 544(b)(1) of the Bankruptcy Code authorizes a bankruptcy trustee (or debtor-in-possession) to step into the shoes of an “actual creditor” with an unsecured claim and invoke the state law applicable to the transfer that the trustee seeks to avoid. At the same time, and relevant here, section 106(a) of the Bankruptcy Code waives the government’s sovereign immunity “with respect to” section 544(b) of the Bankruptcy Code, among other sections. In *Miller v. U.S.* (In re All Resort Group, Inc.), 617 B.R. 37 (Bankr. D. Utah 2020), the Internal Revenue Service (“IRS”) raised the U.S. government’s sovereign immunity as a defense to a chapter 7 trustee’s avoidance action which sought to recover the debtor’s payment of its principals’ personal tax debts as fraudulent transfers. The government argued that an “actual creditor” could not exist under non-bankruptcy law into whose shoes the trustee could step because under non-bankruptcy

DID YOU KNOW...

As described in our recent [article](#), the Fifth Circuit issued a unanimous decision in *In re Serta*, which reversed the bankruptcy court’s decisions in the company’s chapter 11 cases that had validated a 2020 uptier transaction with a subset of favored lenders. Among other things, the Fifth Circuit concluded that the bankruptcy court erred in finding the uptier constituted an “open market purchase”, and that the plan indemnity protecting the favored lenders from liability violated section 502(e)(1)(B) of the Bankruptcy Code, which requires the disallowance of certain contingent prepetition indemnity claims and should, therefore, be excised from the plan.

law (the Utah Uniform Fraudulent Transfer Act (“UFTA”)), the government was immune from suit. In response, the trustee argued that section 106(a) waived the government’s immunity not only as to the section 544(b)(1) proceeding, but also as to the underlying UFTA action invoked to avoid the transfers. The bankruptcy court agreed with the trustee, and in *Miller v. U.S.*, 71 F.4th 1247 (10th Cir. 2023), the Tenth Circuit affirmed the bankruptcy court’s ruling. On December 2, 2024, after granting certiorari to the government, the U.S. Supreme Court heard oral argument on whether the Bankruptcy Code allows a trustee to sue the federal government under section 544(b)(1) when no “actual creditor” could sue the federal government outside of bankruptcy because of its sovereign immunity. The Supreme Court’s decision in *U.S. v. Miller* will resolve a circuit split among the Fourth, Ninth and Tenth Circuits—each of which held that section 106(a)’s abrogation of sovereign immunity is absolute with respect to section 544(b)(1) of the Bankruptcy Code and thus necessarily also extends to the derivative state law claim on which the section 544(b)(1) claim is based—and the Seventh Circuit, which held to the contrary. The Supreme Court’s decision will have significant implications for fraudulent transfer cases against the government. A ruling in favor of the trustee could expand the ability of trustees to recover fraudulent transfers from the IRS relying on state law lookback periods, potentially increasing the government’s exposure in bankruptcy cases. Conversely, a decision for the government could reinforce the protection of sovereign immunity and limit the scope of trustees’ recovery powers. We will continue to monitor developments and provide updates as the case progresses.

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

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