

September 2025

Restructuring Department Bulletin

Second Circuit Finds Section 546(e) Safe Harbor Applies to Foreign Law Claims in Barring Clawback of Payments by Madoff Feeder Funds

In *In re Fairfield Sentry Ltd.*, No. 22-2101 (2d Cir. Aug. 5, 2025), the Second Circuit held that the liquidators of British Virgin Islands-based investment funds that invested in Bernard L. Madoff's ponzi scheme could not recover over \$6 billion in redemption payments made to investors shortly before the scheme's collapse. Notably, the Second Circuit held that the safe harbor provision of section 546(e) of the Bankruptcy Code applies extraterritorially in chapter 15 cases and bars both statutory and common law claims, including those based on foreign law. Among other things, section 546(e) carves out from avoidance "settlement payment[s]" made to "financial institution[s]" in connection with a securities contract." In reversing the lower courts, the Second Circuit rejected the argument that the safe harbor applies only to statutory avoidance powers conferred by the Bankruptcy Code or "under foreign law that exist solely in bankruptcy" as contrary to the plain meaning of the statute. The court concluded that section 546(e) bars any claims that seek to avoid covered securities transactions, including statutory or common law claims, based on the remedy sought rather than the legal elements of the claim. This decision affirms the Second Circuit's broad interpretation of the section 546(e) safe harbor based on the need for finality and certainty in securities transactions and ensures that the safe harbor provisions apply equally to claims asserted by debtors in chapter 11 cases and foreign representatives in chapter 15 proceedings.

Fourth Circuit Rules Federal Courts Have Jurisdiction Over Solvent Debtor Bankruptcies

In *In re Bestwall*, No. 24-1493 (4th Cir. Aug. 1, 2025), the Fourth Circuit addressed whether federal courts have subject-matter jurisdiction over bankruptcy cases filed by solvent debtors. Bestwall LLC, a subsidiary created by Georgia-Pacific to hold its asbestos

Did You Know...

Eighteen Paul, Weiss partners were named among Lawdragon's "500 Leading Global Bankruptcy & Restructuring Lawyers 2025," which recognizes the top U.S. attorneys helping companies navigate economic challenges. Among those named are restructuring partners Jacob Adlerstein, Paul Basta, Lauren Bilzin, Brian Bolin, Robert Britton, Alice Eaton, Joe Graham, Brian Hermann, Christopher Hopkins, Kyle Kimpler, Elizabeth McColm, Sean Mitchell, Liz Osborne, Andrew Rosenberg, John Weber, Kai Zeng and Ken Ziman; and litigation partner William Clareman.

liabilities through a "Texas two-step" divisional merger, filed for chapter 11 relief, having access to substantial financial resources through a funding agreement with its sister company. The Official Committee of Asbestos Claimants (the "Asbestos Committee") argued that the bankruptcy court did not have legitimate subject-matter jurisdiction over Bestwall because it was not "bankrupt," based on a founding-era understanding of the word in the Constitution, which gives Congress the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States."

The Fourth Circuit, however, rejected the argument that federal courts do not have subject-matter jurisdiction over bankruptcy cases filed by debtors who may be able to pay their obligations, as the Constitution grants federal courts jurisdiction over all cases arising under federal law, including the Bankruptcy Code, regardless of the debtor's solvency. While the dissent criticized the decision as enabling solvent companies to use bankruptcy strategically to shield themselves from tort liability, the Fourth Circuit's ruling confirms that federal courts have jurisdiction over bankruptcy filings by solvent entities.

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

[Jacob A. Adlerstein](#)
(212) 373-3142

[Alice Belisle Eaton](#)
(212) 373-3125

[Liz Osborne](#)
+44 (20) 7601-8729

[Paul M. Basta](#)
(212) 373-3023

[Joe Graham](#)
(212) 373-3057

[Andrew N. Rosenberg](#)
(212) 373-3158

[Lauren Bilzin](#)
(212) 373-2432

[Brian S. Hermann](#)
(212) 373-3545

[John Weber](#)
(212) 373-3656

[Brian Bolin](#)
(212) 373-3262

[Christopher Hopkins](#)
(212) 373-3334

[Kai Zeng](#)
+44 (20) 7601-8748

[Robert A. Britton](#)
(212) 373-3615

[Kyle J. Kimpler](#)
(212) 373-3253

[Ken Ziman](#)
(212) 373-3733

[Nick Charwood](#)
+44 (20) 7601-8840

[Elizabeth R. McColm](#)
(212) 373-3524

[William A. Clareman](#)
(212) 373-3248

[Sean A. Mitchell](#)
(212) 373-3356