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Restructuring Department Bulletin

Jacob Adlerstein, Nick Charlwood, Liz Osborne and Kai Zeng Discuss Evolving Strategies for Navigating Distressed Situations

Restructuring partners took leading roles in recent legal education sessions focused on the latest restructuring trends in Europe and the United States, particularly liability management exercises (LMEs). On September 10, Jacob Adlerstein, Nick Charlwood and Liz Osborne presented a Lexology Learn masterclass, “A Transatlantic Perspective on Evolving Strategies on Navigating Distress,” covering the rise of LMEs and comparing European and U.S. restructuring processes. On September 23, Liz Osborne and Kai Zeng discussed the recent uptick in LME exercises in the European market, among other topics, in the webinar “European LMEs: Where Are We Now?” hosted by Octus.

Delaware Bankruptcy Court Rejects Gatekeeping Provision in Avon’s Chapter 11 Plan

In *In re AIO US, Inc.*, Case No. 24-11836 (Bankr. D. Del. Aug. 21, 2025), the Bankruptcy Court for the District of Delaware ruled that it could not confirm a chapter 11 plan that includes a “gatekeeping provision” that would have barred the assertion of any claim that could be characterized as violating the plan’s exculpation provision. Specifically, the gatekeeping provision required parties to, before pursuing a claim, seek the Court’s determination that such claim could not “reasonably be characterized” as an estate claim released or exculpated by the plan. The provision also required the Court to determine, irrespective of the Court’s subject matter jurisdiction, whether such claim was “colorable” on the merits before it could proceed. The Court declined to approve the gatekeeping provision unless modified or removed entirely, holding that neither the Bankruptcy Code, nor Third Circuit caselaw, among other things, authorizes such a broad injunction. While the Court acknowledged that exculpation and related injunctions are appropriate to protect estate fiduciaries from liability for acts taken in their official capacity, it found no basis for extending this protection

Did You Know...

In *In re Yellow Corp.*, Case No. 25-1421 (3d Cir. Sept. 16, 2025), the Third Circuit affirmed an order by the Delaware Bankruptcy Court regarding Pension Benefit Guaranty Corporation (“the PBGC”) regulations that imposed certain conditions on how pension plans should account for the special financial assistance funds distributed by the federal government during the COVID-19 pandemic, specifically in relation to the calculation of multiemployer pension plan (“MEPP”) withdrawal liability claims in bankruptcy. As discussed in our [May 2025 client alert](#), the Bankruptcy Court previously held that the pension funds’ MEPP claims were accelerated by the debtors’ bankruptcy filing and, moreover, that the funds were entitled to allowed claims in the principal amount of all claims against the debtors, including Yellow’s withdrawal liabilities, which totaled approximately \$6.5 billion. In reaching this conclusion, the Bankruptcy Court rejected Yellow’s argument that such regulations “impermissibly inflated” the pension plans’ withdrawal liability claims. The Third Circuit affirmed the Bankruptcy Court’s decision, finding that the regulations are a valid exercise of the PBGC’s delegated authority, thereby preserving substantial MEPP claims against Yellow’s estate.

to claims merely “related to” released or exculpated conduct, or for requiring bankruptcy court pre-approval of such claims. The Court further emphasized that the preclusive effect of its judgment should be determined by the court in which a subsequent action is brought, not necessarily only by the Court itself. The Court’s ruling underscores the limits of bankruptcy court authority to enjoin or pre-screen third-party claims. Debtors and plan proponents should prepare for greater scrutiny of gatekeeping plan provisions, especially in the Third Circuit.

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

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