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Restructuring Department Bulletin

Non-Creditor Known to Debtors Entitled to Actual Notice of Plan Injunction and Confirmation Hearing

In *In re Boy Scouts of America*, the Delaware District Court affirmed that a non-creditor's lawsuit against certain insurers in connection with his \$120 million judgment was not enjoined by the chapter 11 plan's insurance injunction because he did not receive actual notice of the plan confirmation hearing or insurance injunction. At issue was the type of notice required for a known non-creditor. The Bankruptcy Court ruled that because the debtor had actual knowledge of the non-creditor's claims against its insurers, due process required the debtor to send him notice of the confirmation hearing and a copy of the disclosure statement and plan if it intended the insurance injunction to enjoin the non-creditor's lawsuit. On appeal, the District Court agreed because the non-creditor was a known entity; he was entitled to actual notice of the insurance injunction and the confirmation hearing in accordance with the Bankruptcy Rules. This decision underscores the importance of providing constitutionally sufficient notice to all parties affected by a bankruptcy plan and any injunctive relief it contains, including to known non-creditors, to ensure its effectiveness against such parties.

Silvergate Examiner Finds Special Committee's Report Did Not Support Reasonableness of its Conclusions Regarding Release of Potential Estate Claims

In *In re Silvergate Capital Corp.*, the Delaware Bankruptcy Court appointed an examiner to investigate the independence of the debtor's Special Investigation Committee of the Board ("SIC") and the thoroughness of its conclusions regarding claims and causes of action against the debtor's current and former directors that were being released under the debtor's chapter 11 plan. Silvergate, the parent of Silvergate Bank, provided services to the cryptocurrency industry and was the subject of several lawsuits and regulatory

Did You Know...

[Alice Eaton](#) was honored at the Her Justice Annual Benefit on May 6 for her steadfast commitment to advancing equity and justice in New York City and beyond. Her Justice is a New York-based nonprofit organization that provides free legal help to women living in poverty. Restructuring partners Jake Adlerstein, Paul Basta, Brian Hermann and Ken Ziman served as honorary co-chairs of the event.

investigations following FTX's chapter 11 filing, which asserted, among other things, that Silvergate's board members breached their fiduciary duties, engaged in insider trading, and did not adequately monitor Silvergate's platforms for suspicious activity and failed to detect nearly \$9 billion in suspicious FTX and FTX-related transfers. Notwithstanding these prepetition allegations, some of which had settled or resulted in civil penalties/permanent injunctions, the SIC's investigation concluded that it was in the best interests of the estate not to pursue claims against the debtor's current and former officers and directors. The examiner's report found significant gaps in the SIC's process and, ultimately, concluded that the SIC's findings were not reasonable. Notably, the examiner found that the SIC's retention of the debtor's counsel "affected the independence" of its investigation and "resulted in an inevitable conflict of interest." The examiner also stated that the SIC's report lacked a thorough investigation into key issues and failed to fully analyze potential claims and the validity of multiple other derivative causes of action. The examiner's findings serve as a reminder that procedural rigor and substantive thoroughness are essential in bankruptcy investigations to protect the interests of the estate and its stakeholders.

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

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