

Restructuring Department Bulletin



Sean Mitchell Elected Partner in Restructuring Department

[Sean Mitchell](#) was elected partner in the New York office of Paul, Weiss. He focuses his practice on representing governmental entities, debtors, equity owners, creditor groups and distressed investors in a broad range of restructuring matters, including chapter 11 cases, cross-border matters, out-of-court restructurings and bankruptcy-related acquisitions. Sean has a wide

range of experience across a number of industries, including consumer products, retail, media and communications, healthcare, energy and manufacturing. He clerked for Honorable Martin Glenn in the U.S. Bankruptcy Court for the Southern District of New York and served in a clerkship for the Honorable Barrington D. Parker in the U.S. Court of Appeals for the Second Circuit. Sean graduated from Harvard Law School in 2014, and received his B.A., with honors, in Economics from Harvard University in 2010.

DID YOU KNOW...

The Seventh Circuit in [Warsco v. Creditmax Collection Agency, Inc.](#), 2023 WL 128394 (7th Cir. Jan. 9, 2023) held that federal rather than state law defines the meaning of “transfer” for purposes of determining whether a preference occurs under section 547 of the Bankruptcy Code, and that only actual payment counts as a “transfer.” The Seventh Circuit held that its prior ruling that state law defined a “transfer” in section 547, and that under applicable state law, a transfer occurs when a garnishment order is entered, not when the money is paid, was wrongly decided in light of the Supreme Court’s decision in [Barnhill v. Johnson](#), 503 U.S. 392 (1992).

Fifth Circuit Remands Bankruptcy Court’s Refusal to Abstain from Adjudicating Uri Storm-Related Pricing Claims

On January 5, 2023, the Fifth Circuit issued an opinion vacating and remanding the bankruptcy court’s refusal to abstain from adjudicating claims against Electric Reliability Council of Texas, Inc. (“ERCOT”) arising from the week-long winter storm Uri in 2021. In the chapter 15 case of Just Energy Group, Inc., the Fifth Circuit held that (a) the abstention doctrine created in [Burford v. Sun Oil Co.](#), 319 U.S. 315 (1943), is distinct from statutory abstention under 28 U.S.C. § 1334(c) and (b) [Burford](#) applies in the bankruptcy context. The Fifth Circuit noted that abstention under [Burford](#) requires a careful balancing of state and federal interests that rarely favor abstention, but on consideration of the relevant factors at issue in Just Energy’s case, the bankruptcy court should have abstained from adjudicating Just Energy’s claims against ERCOT for Uri-storm related invoices. On January 18, 2023, Just Energy filed a [petition for rehearing en banc](#). [Just Energy Group, Inc. v. Electric Reliability Council of Texas, Inc. \(In re Just Energy Group, Inc.\)](#), 2023 WL 111207 (5th Cir. Jan. 5, 2023).

District Court Denies Leave to Appeal Chapter 15 Discovery Order

On January 12, 2023, the District Court for the Southern District of New York denied The Boeing Company’s request for discretionary appeal of the bankruptcy court’s order permitting discovery in the chapter 15 case of Comair Limited. The bankruptcy court had granted the foreign representative of Comair authority under section 1521(a)(4) of the Bankruptcy Code to conduct discovery of Boeing related to causes of action that Comair might hold against Boeing arising from an aircraft purchasing agreement. The order granting the discovery motion did not address Boeing’s objections to the requests; it directed the parties to meet and confer in an effort to resolve the discovery-related disputes. The district court found that the order was not a “final” order that entitled Boeing to appeal as of right and declined to grant Boeing leave to appeal, noting, among other things, that Boeing had not shown that doing so would materially advance the ultimate termination of the litigation or that exceptional circumstances existed. [The Boeing Co. v. Ferguson \(In re Comair Ltd.\)](#), 2023 WL 171892 (Jan. 12, 2023).

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



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