Paul | Weiss

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Restructuring Department Bulletin

Bankruptcy-remote LLC Agreement Did Not Impermissibly Restrict LLC's Right to File Bankruptcy

In re 301 W. North Ave., LLC, Case No. 24-02741 (Bankr. N.D. Ill. Jan. 6, 2025), the Bankruptcy Court dismissed the chapter 11 case of a Delaware limited liability company for "cause" under section 1112(b) of the Bankruptcy Code because the company had not been properly authorized to file for chapter 11 relief. The court found that the underlying LLC agreement prohibited the company from filing a bankruptcy petition without the unanimous written consent of its members and managers, including that of its independent manager, which the evidence clearly established the company did not obtain. The court held that "[t]here is cause to dismiss a case if corporate authority to file for relief under the Bankruptcy Code does not exist." The opinion details how a company may be prevented from filing for bankruptcy without violating public policy, sometimes referred to as making the company "bankruptcy remote." Its holding validates the practice, if properly done. The would-be debtor is appealing the dismissal.

Delaware Bankruptcy Court Rules on WARN Act Claims in *In re Yellow*

The Worker Adjustment and Retraining Notification Act (the "WARN Act") and similar state statutes generally require employers to provide employees with advance notice of a plant closing or a mass layoff, failure of which entitles the employees to recover backpay, which may give rise to administrative expense claims in bankruptcy. In a ruling that highlights the importance of complying with both the substantive and procedural requirements of the WARN Act, the Delaware Bankruptcy Court found in *In re Yellow Corp.*, Case No. 23-11069 (Bankr. Del. Dec. 19, 2024), that Yellow failed to provide appropriate notice to certain of its employees and thus faced potential WARN Act liability. The court examined whether Yellow could invoke the "faltering company" and "unforeseeable business circumstances" exceptions to liability. While Yellow substantively qualified for both exceptions, the court found that it could not rely on them because of the procedurally deficient notices that Yellow had sent. The court also considered the "liquidating fiduciary" exception, which exempts companies from WARN Act compliance if they cease business operations, but determined that Yellow was still an "employer" under the WARN Act when it laid off 3,500 non-union employees on July 28, 2023, as it had not yet completed its final shipment. However, the court found a genuine dispute of material fact regarding whether Yellow was a "liquidating fiduciary" when it laid off 22,000 union employees two days later, on July 30, 2023, and denied summary judgment on that issue. The court also considered whether Yellow's good faith conduct and communications to employees beyond the procedural defective notices could reduce its WARN Act liabilities and concluded it could do so, but deferred ruling on the facts until after trial. The court also addressed the enforceability of releases signed by non-union employees in exchange for severance payments and found that a genuine question of fact existed as to whether the severance payments constituted valid consideration, given that Yellow had decided to pay severance to all non-union employees regardless of whether they signed the release. While Yellow subsequently settled certain WARN Act claims, the trial on the remaining WARN Act claims concluded on January 23, 2025, and the court took the matter under advisement following post-trial briefing.

DID YOU KNOW...

- *Lawdragon* recognized restructuring partners Paul Basta and Brian Hermann on its "2025 Lawdragon 500 Leading Lawyers in America" list, which annually recognizes the top lawyers across the country.
- *The M&A Advisor* recognized Paul, Weiss's work in two categories at its 19th Annual Turnaround Awards: "Healthcare/Life Sciences Deal of the Year – Over $1 billion" for Rite Aid's successful emergence from bankruptcy, led by restructuring partners Andy Rosenberg and Chris Hopkins; and "Out-of-Court Restructuring of the Year – $100 - $500 million" for the restructuring of Inseego's convertible notes, led by restructuring partner Jake Adlerstein and corporate partner Ray Russo.
- As discussed in our recent client alert, two highly anticipated appellate decisions were issued on December 31st in the *Serta* and *Mitel* bankruptcy proceedings, which reversed lower court decisions that addressed uptier transactions. These opinions signal that courts will take a "plain meaning" approach to interpreting key debt document provisions and that each transaction will rise or fall on the specifics of the debt documents.

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

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