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Restructuring Department Bulletin

Paul, Weiss Restructuring Department and Six Partners Receive Top Rankings in *Chambers Global*

Chambers & Partners ranked Paul, Weiss as an "Elite – Band 1" firm in Bankruptcy/Restructuring in the United States in this year's Global Guide. Five New York-based restructuring partners—Paul Basta, Alice Eaton, Brian Hermann, Elizabeth McColm and Andrew Rosenberg—earned individual rankings in the U.S. region, underlining their elite reputation in the area, and London-based restructuring partner Liz Osborne was ranked in the UK region in the Restructuring/Insolvency category. Firmwide, Paul, Weiss is ranked among the top firms across 36 practice areas, and 51 Paul, Weiss lawyers received individual rankings in the Global Guide. Chambers & Partners identifies and ranks law firms and individual lawyers through extensive analysis in addition to market research and feedback from clients and peers.

Alice Eaton Discusses Restructuring Market Developments, Reflects on Restructuring Career, on ABI's Women in Restructuring Podcast

Restructuring partner Alice Eaton was the featured guest on the inaugural episode of the Women in Restructuring podcast, a collaboration between Debtwire and the American Bankruptcy Institute highlighting leading women in the restructuring field. In the episode, Alice discusses recent trends in corporate restructuring, including an increase in private credit transactions and litigations related to liability management exercise transactions, as well as how she got her start in the field.

Supreme Court Bars Bankruptcy Trustee from Suing IRS to Recover Fraudulent Transfers in *U.S.* v. *Miller*

As noted in our prior client alert, oral argument was heard in January on whether the Bankruptcy Code allows a bankruptcy trustee to sue the federal government under section 544(b)(1) of the Bankruptcy Code when no "actual creditor" could sue the federal government outside of bankruptcy because of its sovereign immunity. At issue was whether section 106(a) abrogates the federal government's sovereign immunity only with respect to the bankruptcy cause of action that section 544(b) creates, or whether it also abrogates sovereign immunity with respect to the underlying state law claims that constitute the "applicable law" for the federal claim. On March 26, 2025, the Supreme Court ruled in *U.S.* v. *Miller*, No. 23-824, 2025 WL 906502 (U.S. Mar. 26, 2025), that while section 106(a) of the Bankruptcy Code abrogates sovereign immunity for the federal cause of action created by section 544(b), it does not take the additional step of also abrogating sovereign immunity for whatever state law claim provides the "applicable law" under section 544(b). As a result, the trustee's section 544(b) claim failed because it could not identify an "actual creditor" that could have voided the fraudulent transfer against the federal government given that claim was barred by sovereign immunity under state law. The Court rejected the argument that its reading of section 106(a) would, as a practical matter, prevent bankruptcy trustees from ever winning a section 544 suit against the federal government. It observed in dicta that section 544(a) (as opposed to section 544(b)) eschews any "actual creditor" requirement and permits a trustee to avoid certain transfers that "could have" been avoided by a lien creditor. Because federal tax law separately provides that federal tax liens may be invalidated under certain circumstances, the Court observed that a trustee could avoid such liens against the federal government under section 544(a) without identifying an "actual creditor" and without needing to identify a waiver of sovereign immunity to sustain a claim under the Internal Revenue Code.

The Supreme Court's decision resolves a circuit split in favor of the minority view and reinforces the federal government's use of sovereign immunity as a defense to certain state fraudulent transfer actions. Bankruptcy trustees and debtors must now navigate the constraints of sovereign immunity more carefully when seeking to avoid transfers involving the federal government.

DID YOU KNOW...

In *In re InterCement Brasil S.A.*, No. 24-12291 (MG), 2025 WL 961736 (Bankr. S.D.N.Y. Mar. 31, 2025), the Bankruptcy Court overruled noteholder objections and granted Chapter 15 recognition to a subsidiary debtor that was a special purpose financing vehicle based on the location of its parent's corporate "nerve center" on the Chapter 15 filing date, rather than on the location of the subsidiary's registered office.

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

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