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Restructuring Department Bulletin

Paul Basta Discusses Distressed Transactions at Columbia Law School Brazil Forum

Restructuring partner Paul Basta participated in a panel, “Distressed Transactions and Restructuring: Trends in the U.S. and Brazil,” at Columbia Law School Brazilian Association’s 2025 CLS Brazil Forum in New York on April 10. The Association’s first annual forum, CLS Brazil, discussed Brazil-U.S. relations and current legal issues under the theme of “Challenges and Perspectives.”

Third Circuit Holds That Less Onerous Bankruptcy Code Standard, Not Common Law, Governs Sealing of Confidential Information in Bankruptcy

In *In re ESML Holdings*, 2025 WL 1119944 (3d Cir. Apr. 16, 2025), the Third Circuit considered whether the public’s right to inspect bankruptcy records is governed by common law or section 107 of the Bankruptcy Code. Section 107(a) provides that “paper[s] filed in a case under the [Bankruptcy Code] and the dockets of a bankruptcy court are public records and open to examination by any entity.” Section 107(b), however, permits the sealing of such papers to “(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or (2) protect a person with respect to scandalous or defamatory matter[.]” Similarly, under the common law, judicial proceedings and records enjoy a “presumption of [public] access” and a party seeking to seal them must demonstrate that the “material is the kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking [to seal].”

In *ESML Holdings*, the bankruptcy court granted a plaintiff’s request in an adversary proceeding to unseal certain confidential documents based on the public access doctrine. On appeal, the Third Circuit joined the First, Second and Eighth Circuits in holding that section 107 differs from and displaces the common law standard for sealing judicial records in bankruptcy cases. It found that section 107 protects a broader category of information than common law. In addition, because the statute’s use of “shall” mandates the bankruptcy court’s protection of covered information, the Court concluded that it eliminates the balancing of public and private interests that the common law, in contrast, requires. The Third Circuit accordingly remanded to the bankruptcy court to permit application of the statutory standard. In doing so, the Court recognized that section 107 is not as onerous as the common law

DID YOU KNOW...

- In *In re Yellow Corp.*, Case No. 23-11069 (Bankr. D. Del. Apr. 7, 2025), the Bankruptcy Court for the District of Delaware issued “preliminary observations” regarding the allowance and calculation of multiemployer pension plan (“MEPP”) withdrawal liability claims in bankruptcy. Outside of bankruptcy, an employer that withdraws from a MEPP may pay its withdrawal liabilities over time at an annual payment set at a level that approximates the employer’s typical annual plan payments, capped at 20 years. At issue in *Yellow* was how such a payment stream is treated in bankruptcy.
- The Court found that bankruptcy operates as an acceleration of the principal amount of all claims against the debtors—“whether or not a clause in a prepetition agreement provides that a bankruptcy filing accelerates the maturity date”—including *Yellow*’s withdrawal liabilities. The Court also found that section 502(b)(2) of the Bankruptcy Code, which disallows claims for unmatured interest, operates to present value discount a claim for liability that would, absent acceleration of the claim due to the bankruptcy filing itself, otherwise mature in the future. In substance, disallowing the claim for unmatured interest is to present value discount the stream of future payments, with the discount rate being the rate of interest expressly required or implied in the future payment stream. Determining the MEPPs’ allowed claim amount, therefore, requires identifying the portion of the withdrawal liability that, as of the petition date, is unmatured interest and disallowing that portion of the claim. While Judge Goldblatt’s decision is not a binding opinion, it provides guidance on how to value a schedule of future payments under section 502(b)(2) of the Bankruptcy Code, and calculate the allowed amount of MEPP withdrawal liability claims in bankruptcy.

standard for sealing which requires that disclosure “will work a clearly defined and serious injury,” but cautioned that there still must be a substantial risk that disclosure would detrimentally affect the producing party’s competitive standing and that this injury must be actual and objective, not speculative or subjective.

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

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