

Restructuring Department Bulletin

Ken Ziman Discusses Increase in Corporate Bankruptcies with *Bloomberg Law*

Bloomberg Law quoted restructuring partner [Ken Ziman](#) on the recent uptick in large corporate bankruptcies in its July 8 article, “Big Bankruptcies Pile Up as Grab Bag of Stressors Takes Hold.” Ken notes that refinancing issues will continue to fuel a rise in bankruptcy activity. “We’re going to continue to see an increase in activity as refinancing issues become more of a concern for companies,” he says. “The availability of credit is much more limited, and financing cost is higher than it was six months ago.” » [read the article](#)



DID YOU KNOW...

The **Fifth Circuit Court of Appeals** unequivocally held that a **debtor may reject regulated energy contracts** “even if the Federal Energy Regulatory Commission (‘FERC’) would not like them to.” [Gulfport Energy Corp. v. FERC, 2022 WL 2815475 \(5th Cir. July 19, 2022\)](#). Affirming that a debtor’s rejection of a filed rate contract in bankruptcy is just a breach of the contract that does not modify or abrogate the filed rate, the Fifth Circuit held that FERC cannot prevent its rejection. Nor can FERC “bind a debtor to continue paying the filed rate after rejection” or “usurp the bankruptcy court’s power to decide [the debtor’s] rejection motions.”

Chapter 15 Recognition Order May Enforce Foreign Scheme that Discharges New York Law Governed Debt

A U.S. bankruptcy court’s recognition and enforcement of a foreign court sanctioned restructuring under Chapter 15 of the Bankruptcy Code can modify or discharge New York law governed debt. While Chapter 15 “limits a U.S. bankruptcy court’s authority to enjoin conduct outside the territorial jurisdiction of the United States,” it does not make a Chapter 15 recognition order that enforces a foreign scheme that discharges U.S. law governed debt any less controlling or binding and effective. [In re Modern Land \(China\) Co., Ltd., 2022 WL 2794014 \(Bankr. S.D.N.Y. July 18, 2022\)](#)

Fraudulent Transfer Provisions of the FDCPA Not Available to Ch. 7 Trustee Where Debt Is Not Owing to U.S.

Pension Benefit Guaranty Corporation pursuing a debt on behalf of a pension plan, and not on its own behalf, does not give rise to a “debt owing to the United States” within the meaning of the Federal Debt Collection Procedures Act (“FDCPA”). Chapter 7 trustee therefore cannot rely on the FDCPA as the “applicable law” under Section 544(b) of the Bankruptcy Code for standing, and thus, cannot take advantage of its six year look back period to avoid transfers. [In re JTR1, LLC, 2022 WL 3009620 \(Bankr. W.D.N.C. July 28, 2022\)](#)

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



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