

Restructuring Department Bulletin



Kyle Kimpler Named as One of *Turnarounds & Workouts 2022 Outstanding Young Restructuring Lawyers*

The Beard Group selected partner [Kyle Kimpler](#) as one of 12 restructuring lawyers below the age of 40 who are making a significant impact in the industry. The awards recognize lawyers that are elevating the legal profession to new heights. Among other outstanding achievements, the Beard Group noted that Kyle co-led a multi-disciplinary cross-border team representing an ad hoc group of parent company noteholders in Intelsat's Chapter 11 cases, and represented General Motors in litigation related to late-filed class claims involving the recall of over 14 million cars due to alleged ignition switch defects.

DID YOU KNOW...

On November 15, 2022, the Fifth Circuit issued an [order](#) denying Ultra Petroleum Corp.'s petition for rehearing *en banc* its recent decision in which the Fifth Circuit held that the Bankruptcy Code disallowed the make-whole amount at issue because it was the economic equivalent of unmatured interest. The Fifth Circuit also held that the 'solvent debtor' exception nonetheless required payment of the make-whole given the facts of Ultra Petroleum Corp.'s case, and that postpetition interest was to be calculated at the contract rate. See our [Client Alert](#) analyzing the Fifth Circuit's ruling in [Ultra Petroleum Corp. v. Ad Hoc Committee of OpCo Unsecured Creditors \(In re Ultra Petroleum Corp.\)](#), [51 F.4th 138 \(5th Cir. Oct. 14, 2022\)](#).

Second Circuit Denies Appeal of Windstream Debtors' Confirmation Order on Equitable Mootness Grounds

On October 25, 2022, the Second Circuit Court of Appeals, in a non-precedential ruling, denied an appeal of a district court decision that, among other things, confirmed the chapter 11 plan of Windstream Holdings, Inc. ("Windstream") on equitable mootness grounds. The equitable mootness doctrine allows a court to dismiss a bankruptcy appeal when implementation of effective relief would be inequitable, even if it could be fashioned. The doctrine's purpose is to avoid disturbing a chapter 11 plan once implemented, and it is presumed to apply only when a debtor's plan has been substantially consummated. The Second Circuit held that the appellant failed to satisfy the grounds for overcoming the presumption of equitable mootness in Windstream's case because, among other things, it failed to diligently seek a stay of the chapter 11 plan pending appeal as required under governing Second Circuit law. [U.S. Bank, N.A. v. Windstream Holdings, Inc. \(In re Windstream Holdings, Inc.\)](#), [Ch. 11 Case No. 21-1754 \(2d. Cir. Oct. 25, 2022\)](#).

Second Circuit Reinstates Ruling Directing Refund of Unconstitutional Chapter 11 US Trustee Fees

On November 10, 2022, the Second Circuit issued an [amended opinion](#) reinstating its judgment in [In re Clinton Nurseries, Inc.](#), [998 F.3d 56 \(2d. Cir. 2021\)](#) in which the Second Circuit awarded the debtors a refund of chapter 11 statutory fees that it had found unconstitutional. On October 25, 2022, the Supreme Court remanded the *Clinton Nurseries* decision for further consideration in light of its ruling in [Siegel v. Fitzgerald](#), [142 S.Ct. 1770 \(2022\)](#), also finding the fee statute at issue unconstitutional but declining to rule on the appropriate remedy. In its amended opinion, the Second Circuit affirmed its ruling that a refund of any overpayment of unconstitutional fees was the appropriate remedy for the Clinton Nursery debtors.

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



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