Paul | Weiss

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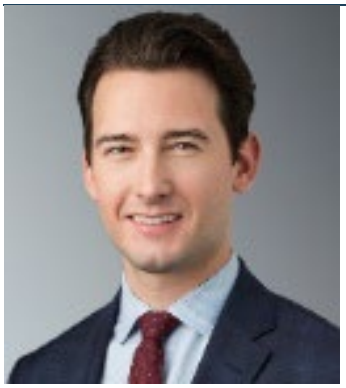
Restructuring Department Bulletin



Brian Bolin Named a 2023 "Outstanding Young Restructuring Lawyer" by *Turnarounds & Workouts*

Restructuring partner **Brian Bolin** was named as one of *Turnarounds & Workouts*' 2023 "Outstanding Young Restructuring Lawyers." The list recognizes 12 attorneys under the age of 40 who have made a significant impact on the restructuring industry. Brian was featured in the April issue for his work on various retail, healthcare and telecoms restructurings, including advising iconic beauty company Revlon in its plan of reorganization under chapter 11; KKR, as sponsor, in connection with Envision Healthcare's entry into $7.3B in debt transactions; and several other matters.

DID YOU KNOW…

The Supreme Court in ***MOAC Mall Holdings LLC v. Transform Holdco LLC*, 143 S.Ct. 927 (2023)** unanimously held that Section 363(m) of the Bankruptcy Code is not jurisdictional. Section 363(m) provides that absent a stay pending appeal, the reversal of a sale or lease of property on appeal does not affect the validity of the sale or lease to an entity that purchased or leased such property in good faith. The implication of the Court's decision is that parties must timely obtain the protections of Section 363(m) in bankruptcy court, as is commonly done in Section 363(b) sale orders. For a more detailed analysis of the opinion please see our Client Memo **here**.

Bankruptcy Court Applies "Knowledge Exception" to Section 546(e) Safe Harbor Defense in *Madoff* Action

On April 26, 2023, the Bankruptcy Court for the Southern District of New York held that, among other things, the trustee ("Trustee") for the liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") sufficiently alleged that the transferee defendant from whom the Trustee sought to recover a fraudulent transfer knew of BLMIS's fraud, and therefore could not claim the protections of the Section 546(e) safe harbor for settlement payments made to a financial institution or participant in connection with a securities contract. Citing District Court precedent, the Bankruptcy Court reasoned that the safe harbor was intended to promote the reasonable expectations of legitimate investors and therefore, if an investor knew that BLMIS was not actually trading securities, the investor had no reasonable expectation that it was signing a securities contract for that purpose. In other words, Section 546(e) does not apply by its plain terms to transfers where the transferee is complicit in the transferor's fraud. ***See Picard v. Merrill Lynch Bank (Suisse) SA (In re BLMIS)*, 2023 WL 3113085 (Bankr. S.D.N.Y. Apr. 23, 2023)**.

Bankruptcy Court Rules that Subpoena Service via Twitter was Adequate in a Chapter 15 Case

On March 22, 2023, the Bankruptcy Court for the Southern District of New York held that the foreign representatives' service via Twitter of a discovery subpoena on the foreign debtor's founders was adequate under Rule 45 of the Federal Rules of Civil Procedure and comported with due process. The Bankruptcy Court found that to satisfy due process, the service of a subpoena must be reasonably measured to insure the actual receipt of the subpoena. Relying on factors that courts have considered were adequate for service effected electronically, the Bankruptcy Court held that where the foreign representatives had demonstrated that the Debtor's founder used his Twitter account since the subpoena was served made it highly likely that he had actual notice of the subpoena. Recognizing that Twitter is a relatively new platform for service of process, the Bankruptcy Court held that the facts bearing on the control, frequency of use and likelihood of receipt that courts apply when considering service by email were similarly relevant to service via Twitter, and were satisfied in the present case. ***See In re Three Arrows Capital, Ltd.*, 649 B.R. 143 (Bankr. S.D.N.Y. 2023)**.

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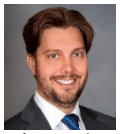
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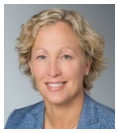
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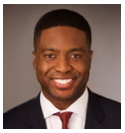
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