

JANUARY 2024

Restructuring Department Bulletin

Alice Belisle Eaton and Billy Clareman Discuss Latest Restructuring Developments at PLI Event

Practising Law Institute's "Recent Developments in Distressed Debt, Restructurings, and Workouts 2024" featured restructuring partner Alice Belisle Eaton and litigation partner Billy Clareman. Co-chair Alice delivered opening remarks and spoke on "Market Update: Distressed Debt and Restructurings," "Corporate Governance, Officer and Director Risks and Claims in Distressed Situations" and "Sale of Distressed Assets" panels. Billy participated in "Hot Topics: Lightning Round" focusing on structured dismissal, golden shares and golden director and successful out-of-court restructuring and mediation updates.

Bob Britton Named a 2023 Restructuring Rising Star by *Petition*

Petition, a financial newsletter covering financial markets, distressed investing and bankruptcy recognized restructuring partner Bob Britton as a "Rising Star of '23."

Bankruptcy Code's Plain Language Mandates Appointment of Examiner to Investigate FTX Trading Ltd.'s Management

In *In re FTX Trading Ltd.*, 2024 WL 204456 (3d Cir. Jan. 19, 2024), the Third Circuit held that section 1104(c) of the Bankruptcy Code requires appointment of an examiner if requested and if "the debtor's fixed, liquidated, unsecured debts" exceed \$5 million. Section 1104(c) of the Bankruptcy Code provides, in relevant part, that "on request of a party in interest or the United States trustee...the court shall order the appointment of an examiner to conduct such an investigation of the debtor as is appropriate...if (1) such appointment is in the interests of creditors...or (2) the debtor's fixed, liquidated, unsecured debts...exceed \$5,000,000."

The U.S. Trustee moved for mandatory appointment at the outset of the cases. The Bankruptcy Court denied the motion, finding that "as is appropriate" qualified "appointment of an examiner" thereby rendering the decision whether an appointment was warranted discretionary. The Third Circuit reversed. It concluded that "as is appropriate" modified "to conduct such an examination of the debtor" and did not qualify "shall order the appointment of an examiner." Accordingly, the statutory text mandates appointment of an examiner if requested and if the \$5 million debt threshold is met. The Third Circuit noted that the scope of the investigation is nonetheless discretionary. Thus, the Bankruptcy Court "retains broad discretion to direct the examiner's investigation, including its scope, degree, duration and cost," which can prevent duplication of efforts and disruption of the reorganization process. On January 23, 2024, the FTX Group informed the Bankruptcy Court that it will not seek further review of the opinion.

DID YOU KNOW...

- The Second Circuit declined to reconsider its decision in the Nine West LBO securities litigation (described in the [December 2023 newsletter](#)) that the section 546(e) safe harbor does not shield from avoidance \$78 million in payroll transfers made to individual officer, director and employee-shareholders. The individual shareholders plan to appeal to the Supreme Court.
- In [Ursa Operating](#), the Third Circuit held in a non-precedential decision that mineral royalties due under leased property owned by non-debtor lessors were the lessors' real property interests under applicable state law and thus not property of the debtor-well operator's bankruptcy estate.

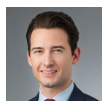
Questions? Please contact any of our Restructuring Partners to discuss these or other topics in greater depth.



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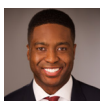
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