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## YCST Trend Watch 2014: Enforcement of Ch. 11 Plan Provisions, Sale Orders and Settlement Agreements

In 2014, the Delaware Bankruptcy Court, Delaware District Court and Third Circuit Court of Appeals issued a series of rulings that addressed the scope of liability of parties in chapter 11 cases. Over the next several weeks we will issue YCST Trend Watches addressing these rulings and presenting strategic considerations for all parties to the restructuring process.

Set forth below are summaries of decisions relating to [the enforcement of chapter 11 plan provisions, sale orders and settlement agreements](#), together with a link to the subject decisions. Parties-in-interest would do well to bear in mind the principles that flow from these cases, as discussed in more detail below [to read the complete Trend Watch, [CLICK HERE](#)].

Enjoy and stay tuned for the next installment...

### **1. *In re Pallet Co.*, 2014 Bankr. LEXIS 3702, Case No. 13-11459 (Bankr. D. Del. May 20, 2014) (Gross, J.) – DEBTOR COULD NOT INVOKE PLAN'S INJUNCTIVE PROVISIONS TO PROTECT LITIGATION DEFENDANTS WHO WERE NOT SPECIFICALLY CONTEMPLATED BENEFICIARIES OF SUCH INJUNCTIVE RELIEF**

The debtor and certain affiliates moved to enforce injunctive provisions of the debtor's confirmed chapter 11 plan. At issue was a complaint filed against certain private equity/investment firms and their principals, which action had been commenced prior to the chapter 11 proceeding. [READ MORE](#)

### **2. *In re Lower Bucks Hosp.*, 571 F. App'x 139 (3d Cir. 2014) (Ambro, J.) – DEBTOR'S FAILURE TO PROVIDE SUFFICIENT NOTICE AND DISCLOSURE OF NON-DEBTOR RELEASES LED COURT TO EXCISE SUCH PROVISIONS FROM PLAN WITHOUT CONSIDERING SUCH RELEASES ON THE MERITS**

In proceedings before the United States Bankruptcy Court for the Eastern District of Pennsylvania following the approval of a debtor's disclosure statement, a bondholder objected to certain third-party releases that the debtor proposed be granted in favor of Bank of New York Mellon Trust Company, N.A. (the "BNY"), as indenture trustee for holders of the debtor's bonds. [READ MORE](#)

### **3. *In re Filene's Basement, LLC*, 2014 Bankr. LEXIS 2000, Case No. 11-13511 (Bankr. D. Del. Apr. 29, 2014) (Carey, J.) – SETTLEMENT AGREEMENT MAY STILL BE ENFORCED AGAINST DEBTORS, DESPITE DEBTORS' WITHDRAWAL OF THEIR MOTION TO APPROVE THAT AGREEMENT, IF THE BANKRUPTCY COURT DETERMINES THAT THE AGREEMENT SHOULD BE APPROVED AFTER CONSIDERATION OF CIRCUMSTANCES**

In an odd procedural posture, one third party moved ("Enforcement Motion") to enforce a settlement agreement with the reorganized debtors, pursuant to which settlement the reorganized debtors had agreed to transfer a real property lease. The reorganized debtors objected to the enforceability of the aforementioned settlement agreement and moved ("Assumption Motion") to assume the lease and assign it to another party who offered a higher/better price. [READ MORE](#)

### **4. *In re NE Opco, Inc.*, 513 B.R. 871 (Bankr. D. Del. 2014) (Sontchi, J.) – BANKRUPTCY COURT ENFORCES "FREE AND CLEAR" PROVISIONS OF SALE ORDER AND PURCHASE AGREEMENT WITH RESPECT TO CLAIMS AND INTERESTS ARISING PRIOR TO CONSUMMATION OF SALE**

A former employee of the debtors sought to pursue claims in state court against a buyer who acquired the debtors' assets pursuant to a Bankruptcy Court order under section 363(f) of the Bankruptcy Code. The former employee claimed that he had direct claims against the buyer, which claims allegedly arose both prior to and after consummation of the sale of the debtors' assets. [READ MORE](#)

### **5. *In re Joan Fabrics Corporation*, 508 B.R. 881 (Bankr. D. Del. 2014) (Sontchi, J.) – BANKRUPTCY COURT FINDS BUYER BOUGHT ASSETS SUBJECT TO PRE-SALE TAX OBLIGATIONS BASED ON CONTRACTUAL LANGUAGE OF APA**

The buyer of certain assets in a sale approved under section 363(f) of the Bankruptcy Code filed a motion to enforce sale order and seeking sanctions against a North Carolina taxing authority that had garnished the buyer's bank accounts to collect taxes assessed against the debtors prior to the sale, which taxes constituted a lien under North Carolina law on real property bought by the purchaser. [READ MORE](#)

### **6. *In re Ormet Corp.*, 2014 Bankr. LEXIS 3071, Case No. 13-10334 (Bankr. D. Del. July 17, 2014) (Walrath, J.) – BANKRUPTCY COURT APPROVES SALE FREE AND CLEAR OF SUCCESSOR-LIABILITY CLAIMS OVER OBJECTION OF PENSION TRUST**

Steelworks Pension Trust (the "Trust") objected to the debtor's attempt, pursuant to section 363(f) of the Bankruptcy Code, to sell its assets free and clear of the Trust's successor-liability claims for under-funding of the pension plan, claiming successor liability claims under ERISA and MPPAA should not be overridden by section 363 of the Bankruptcy Code. [READ MORE](#)

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#### Relevant Decisions

[In re Pallet Co.](#)  
[In re Lower Bucks Hosp.](#)  
[In re Filene's Basement, LLC](#)  
[In re NE Opco, Inc.](#)  
[In re Joan Fabrics Corporation](#)  
[In re Ormet Corp.](#)