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YCST PORTFOLIO COMPANY GROUP TREND WATCH



In the month of May, the Third Circuit Court of Appeals, the United States Bankruptcy Court for the District of Delaware, and the Delaware Supreme Court spoke to issues that impact the management of distressed portfolio companies. Summaries of those decisions are set forth below and copies of the complete summary and decisions are accessible by hyperlink herein.

[CLICK HERE for the COMPLETE SUMMARY](#)

Third Circuit Approves Structured Dismissal Settlement That Did Not Comport With the Priorities Codified in Section 507 of the Bankruptcy Code

Why is this important? The Third Circuit has for the first time sanctioned the use of a structured dismissal to “conclude” a chapter 11 case, which may provide parties with a more efficient exit after consummation of a transaction pursuant to section 363 of the Bankruptcy Code. [READ MORE](#)

Delaware Bankruptcy Court Upholds Debtor’s Setoff Rights Against Section 503(b)(9) Claims

Why is this important? The Bankruptcy Court for the District of Delaware will not permit a creditor to arbitrarily apply estate payables to prepetition general unsecured claims and, as a result, leave the estate with priority/administrative claims. Instead, debtors will be able to avail themselves of section 558 of the Bankruptcy Code to setoff prepetition estate payables against priority/administrative claims, thereby treating all prepetition creditors equitably. [READ MORE](#)

Delaware Supreme Court Permits Pre-Trial Dismissal of Money Damages Claims Against Independent Directors, Even Where the Entire Fairness Standard Applies

Why is this important? In the context of a distressed portfolio company, we oftentimes (if we are smart) employ the services of an independent director to guide the company through the tumultuous restructuring landscape. And those independent directors (if they are smart) are protected by a provision in the company’s charter exculpating them from monetary liability for breaches of the duty of care. For firms representing distressed companies and/or their boards, the Cornerstone Therapeutics decision permits independent directors to obtain dismissal of exculpated claims against them, even in cases implicating heightened judicial scrutiny under the entire fairness standard of review. [READ MORE](#)

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