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QUARTERLY BANKRUPTCY UPDATE

In this update, we've summarized several notable bankruptcy-related decisions that were issued during the third quarter of this year that you may find of interest, including: a Third Circuit decision regarding bankruptcy court jurisdiction; the Ninth Circuit ruling on the rate of interest that unimpaired creditors of a solvent debtor are entitled to receive; and the Delaware Bankruptcy Court's consideration of a recent amendment to section 547(b) of the Bankruptcy Code. These decisions, as well as several other recent rulings that we believe are worthy of review, are summarized below. Feel free to contact any member of our team for further information about these cases.

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Third Circuit Rules Asbestos Settlement Trusts Are Precluded From
Challenging Bestwall Subpoenas for Confidential Claimant Data

Bestwall LLC v. Armstrong World Indus. Inc., 47 F.4th 233 (3d Cir. 2022)[1]

On August 24, 2022, the Third Circuit reversed a Delaware District Court order quashing subpoenas that Bestwall LLC had served on ten asbestos settlement trusts, seeking to obtain confidential claimant data. According to the Third Circuit, the Trusts' arguments against the subpoenas were precluded because the Trusts' claim-processing agent, the Delaware Claims Processing Facility (or DCPF), had raised the same arguments when it objected to issuance of the subpoenas before the North Carolina Bankruptcy Court. The Trusts had not opposed issuance of the subpoenas before the North Carolina court despite receiving notice..

The Third Circuit explained that issue preclusion (also known as collateral estoppel) applies when four elements are satisfied: (1) the identical issue was decided in a prior adjudication; (2) there was a final judgment on the merits; (3) the party against whom the bar is asserted was a party or in privity with a party to the prior adjudication; and (4) the party against whom the bar is asserted had a full and fair opportunity to litigate the issue in question. The Third Circuit held that each element was satisfied here.

The Third Circuit's opinion primarily focused on the last two elements of the doctrine. As to the third element, the Third Circuit concluded that the Trusts and the DCPF were in privity because their interests "were, and still are, squarely aligned[,]" evidenced by the fact that both sought to protect the confidentiality of the same data. The court noted that the relationship between the Trusts and the DCPF "further confirm[ed]" their shared interests, and showed that the DCPF was acting in a representative capacity concerning the data it held on behalf of the Trusts. The court pointed to the contractual agreements between the Trusts and the DCPF, which obligated the DCPF to use "best efforts" to ensure the confidentiality of the data, as further support for this conclusion. Lastly, the court opined that the Trusts' decision not to join the subpoena litigation led to an inference that the DCPF adequately represented the Trusts' interests.

On the fourth element, the court found that the Trusts had a full and fair opportunity to litigate the issues because they had received notice of Bestwall's motion to issue the subpoenas and could have raised their objections before the North Carolina Bankruptcy Court.

The Third Circuit thus reversed, remanding the case with orders to enforce the original subpoenas authorized by the North Carolina Bankruptcy Court.

[1] Young Conaway serves as counsel to Sander L. Esserman, in his capacity as legal representative for future asbestos personal-injury claimants in the Bestwall chapter 11 case. Young Conaway also serves as outside counsel to the DCPF in other matters.

Third Circuit Reverses and Remands Bankruptcy Court's Dismissal of Adversary Proceeding, Holding That Bankruptcy Courts Have Post-Confirmation Jurisdiction to Decide "Core" Matters

Mesabi Metallics Co., LLC v. B. Riley FBR, Inc. (In re Essar Steel Minn. LLC), 47 F.4th 193 (3d Cir. 2022)

The Third Circuit Court of Appeals recently reversed and remanded a Delaware Bankruptcy Court's order that dismissed an adversary proceeding for lack of subject matter jurisdiction, finding that bankruptcy courts always have jurisdiction to decide core matters—even after confirmation.

Following plan confirmation, the Reorganized Debtor commenced an adversary proceeding, seeking to have the bankruptcy court determine whether a fee it purportedly owed to a financial advisor was discharged under its confirmation order and confirmed plan and, if so, to enforce the confirmation order against the financial advisor. The bankruptcy court dismissed the adversary proceeding for lack of subject matter jurisdiction.

On appeal, the Third Circuit overturned the decision, finding that the adversary proceeding was a core proceeding for three main reasons. First, the adversary proceeding implicated a number of the core proceedings listed in 28 U.S.C. § 157(b)(2), including determinations as to debt dischargeability, discharge objections, and plan confirmation. Second, the adversary proceeding included allegations that certain parties tried to circumvent the bankruptcy process by binding the Reorganized Debtor to a contract before it even came into existence—something the Third Circuit viewed as a core bankruptcy proceeding. Finally, the Third Circuit concluded that the bankruptcy court had subject matter jurisdiction to redress a possible contempt of the plan and confirmation order because civil contempt proceedings arising from core matters are core matters.

The Third Circuit additionally found that the bankruptcy court erred in holding that it lacked subject matter jurisdiction because, according to the Supreme Court's ruling in *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137 (2009), bankruptcy courts "plainly ha[ve] jurisdiction to interpret and enforce [their] own prior orders." The Reorganized Debtor's request for the bankruptcy court to "enforce the discharge and injunction provisions of its plan and confirmation order after the debtor emerged from bankruptcy" thus fell squarely within the *Travelers* ruling.

Ninth Circuit Rules That Solvent Debtors Are
<u>Required to Pay Post-Petition Interest At Applicable Contract</u>

In re PG&E Corp., 46 F.4th 1047 (9th Cir. 2022)

On August 20, 2022, the Ninth Circuit became the first circuit court to address the question of whether the unimpaired creditors of a solvent debtor are entitled to post-petition interest on their prepetition claims at the contract rate or the federal judgment rate. In *PG&E*, the Ninth Circuit reversed two lower courts, finding that the creditors in PG&E's chapter 11 case should have been granted a higher rate of post-bankruptcy interest on their claims and, further, that the Bankruptcy Code did not abrogate the common law principle that a party who files for bankruptcy with more assets than liabilities cannot force a creditor to accept a post-bankruptcy interest rate lower than the one the parties agreed on before the bankruptcy.

PG&E filed for chapter 11 bankruptcy protection in January 2019 after facing billions of dollars in potential liability related to its role in causing wildfires in California. However, at the time of the bankruptcy filing, PG&E's assets exceeded its known liabilities. The bankruptcy court confirmed a plan of reorganization, which provided that non-wildfire unsecured claims were unimpaired because they would receive full payment, plus post-petition interest at the standard federal judgment rate of 2.59%. An *ad hoc* committee of creditors holding these claims objected, arguing that under the "solvent debtor" exception, its members were entitled to 10% interest, as provided under California state law. The bankruptcy court rejected this argument, holding that the federal interest rate applied. The district court affirmed, and the issue was appealed to the Ninth Circuit.

The Ninth Circuit analyzed the "solvent debtor" exception, finding that the exception required debtors "to pay interest that accrued during bankruptcy before retaining value from an estate" and, further, that the exception was applied with regularity and "well-established" under the Bankruptcy Act. The Ninth Circuit next concluded that the "solvent debtor" exception survived the enactment of the Bankruptcy Code because the Bankruptcy Code did not "unambiguously displace the long-established solvent-debtor exception" and because the "pre-Code practice conclusively establishes creditors' equitable entitlement to contractual postpetition interest when a debtor is solvent, subject to any other countervailing equities."

However, the Ninth Circuit recognized that "a balance of equities" is required in order to ascertain the interest that the "plaintiffs are entitled to in this instance." According to the Ninth Circuit, "in most solvent-debtor cases involving unimpaired creditors, the equitable role of the bankruptcy court will be 'simply to enforce creditors' rights according to the tenor of the contracts that created those rights." But the court also recognized the "possibility that cases could arise where payment of contractual or default interest could impair the ability of other similarly situated creditors to be paid in full, or where other 'compelling equitable considerations' could counsel in favor of payment of postpetition interest at a different rate." While the Ninth Circuit did not see any sign of compelling equitable considerations that would defeat the presumption that plaintiffs are entitled to contractual or default post-petition interest, the court acknowledged that the record before it was limited. Therefore, the Ninth Circuit remanded for further consideration in light of its opinion.

Delaware Bankruptcy Court Provides a Reminder of the Importance of Identifying Creditors and Providing Adequate Notice of the Bar Date

In re Rental Car Intermediate Holdings, LLC, No. 20-11247 (MFW), 2022 WL 2760127 (Bankr. D. Del. July 14, 2022)

The Delaware Bankruptcy Court recently issued an opinion with a helpful reminder of the importance of ascertaining the identities of a debtor's current and potential creditors and providing those parties with adequate notice of the bar date. In *Rental Car Intermediate Holdings*, Judge Walrath examined the status of claims against The Hertz Corporation and its affiliates submitted by individuals who accused the Debtors of filing false police reports against them (the "FPR Claimants").

Prepetition, the Debtors, a well-known car rental company, filed police reports when rented cars were deemed stolen by allegedly delinquent renters. However, in some instances, those renters had paid in full for using the rented vehicle. Renters who disputed the criminal allegations asserted "claims against the Debtors for damages they suffered when the Debtors filed false police reports accusing them of auto theft."

The court grouped the FPR Claimants into four categories based on the timing of their claims: (i) those who filed timely proofs of claim (Groups 1 and 2), (ii) those who filed proofs of claim after the bar date but before confirmation (Group 3), and (iii) those who did not file a claim but sought relief from the plan injunction to pursue their claims after confirmation (Group 4). The court's memorandum opinion mainly concerned creditors in Group 3 and Group 4.

The court first determined whether the FPR Claimants in Group 3 and Group 4 were "known" creditors entitled to "actual written notice." Because a known creditor is one who is "actually known or reasonably ascertainable by the debtor," "the correct standard to determine if the FPR Claimants were known creditors was not limited to whether they were reflected as such in the Debtors' records, but might be established by other evidence." Under the circumstances, an FPR Claimant was a known creditor entitled to actual notice only if the claimant had "put the Debtors on notice that the FPR Claimant had a claim for damages based on a false police report," and had presented "some evidence of a contact alleging that a filed police report was false or an arrest was wrongful."

In evaluating different types of contacts that various FPR Claimants had with the Debtors, the court held that the following did not constitute sufficient notice of a false police report claim: (i) discussions between an FPR Claimant and the Debtors regarding only a vehicle return or rental extension; (ii) reporting a false police report claim on the Debtors' customer service hotline; and (iii) unspecific notice from a third party, such as police, prosecutors, or other ride-sharing companies, that the Debtors were accused of making a false police report.

Conversely, the court held that the following *did* constitute sufficient notice to render the FPR Claimant a "known" creditor: (i) specific contacts accusing the Debtors of filing false police reports, (ii) the presence of a Debtor-employee at an FPR Claimant's trial where the charges were dismissed, and (iii) notice from a third party that provided specific information about the claimant and the basis for the false police report claim.

Accordingly, using this rubric, the court ruled that the proofs of claim filed by known FPR Claimants in Group 3 should be deemed timely and, further, granted known FPR Claimants in Group 4 relief from the plan injunction to pursue their claims in their forum of choice.

Judge Goldblatt Upholds Prepetition Financing Transaction,
Concluding That the Unanimous Consent of Individual Holders
Was Not Required to Effect Subordination of Pre-Existing First Lien Debt

In re TPC Grp., Inc., No. 22-50372 (CTG), 2022 WL 2498751 (Bankr. D. Del. July 6, 2022)

In connection with competing motions for summary judgment, the Delaware Bankruptcy Court recently upheld a prepetition financing transaction under which the Debtors agreed with a majority of their existing senior secured noteholders (the "Majority Holders") to issue new notes (the "10.875% Notes") to the Majority Holders that would be senior to, and secured by the same collateral as, the prior (now junior) notes (the "10.5% Notes").

The Debtors filed chapter 11 and sought approval of DIP financing provided by the Majority Holders, which proposed a roll up of the amounts outstanding under the 10.875% Notes. In response, the minority holders of the 10.5% Notes (the "Minority Holders") commenced an adversary proceeding challenging the priority of the 10.875% Notes.

All parties agreed that the priority issue turned on the interpretation of Section 9.02 of the indenture under which the Debtors had issued the 10.5% Notes. That indenture provided that "an amendment, supplement or waiver. . . may not (with respect to any Notes held by a non-consenting Holder). . . make any change in the provisions of the Intercreditor Agreement or this Indenture dealing with the application of proceeds of Collateral that would adversely affect the Holders." The parties disagreed on the interpretation of the term "dealing with the application of the proceeds of collateral." The Debtors and the Majority Holders contended that the phrase addressed the ratable distribution of proceeds to noteholders, which the Debtors and the Majority Holders argued was not impacted by the prepetition transaction. The Minority Holders disagreed, contending that subordination of the 10.5% Notes adversely impacted the proceeds of collateral (which would have required the Debtors to obtain unanimous consent for the transaction).

The court concluded that Section 9.02(d)(10) of the indenture was not a disguised anti-subordination provision. Instead, it addressed holders' rights to ratable distributions of proceeds within a class of interests. Specifically, the court noted that in the absence of an express anti-subordination clause, a provision requiring ratable distribution of proceeds "would more naturally apply to distributions *within* a class, and not prohibit subordination of an entire class to another, different class." Further, the "hierarchy of consents required for particular amendments" in the indenture indicated that the parties intended to require a less rigorous approval standard than would apply for other actions, such as the release of collateral, which required approval of a supermajority of holders. Because the Majority Holders held the requisite votes to approve the transaction, the court concluded that the 10.875% Notes were in fact senior to the 10.5% Notes.

In addition to analyzing the relative priority of the Debtors' outstanding notes, the court also addressed the enforceability of "no action" clauses, which preclude individual noteholders (as opposed to an agent or trustee) from bringing an action to enforce the collective rights of noteholders. After considering the decisions of several other courts, the court concluded that, while "no action" clauses are generally enforceable under New York law, such a clause did not preclude noteholders from bringing suit to enforce rights granted to noteholders individually (as opposed to the rights granted to a collection of noteholders), as doing so would render meaningless the rights granted to individual holders under the indenture.

Delaware Bankruptcy Judge Grants Motion to Dismiss Trustee's Claim of Veil Piercing

In re MTE Holdings LLC, No. 19-12269 (CTG), 2022 WL 3691822 (Bankr. D. Del. Aug. 24, 2022)

On August 24, 2022, Judge Goldblatt of the Delaware Bankruptcy Court granted in part a motion to dismiss claims asserted by the trustee for the MDC Litigation Trust, seeking to pierce the corporate veil of an entity allegedly controlled by the debtors' former principal owner and CEO, Mark Siffin. The Trustee alleged that, prior to the bankruptcy, Siffin directed one of the debtors to transfer approximately $23.5 million to an affiliate owned by Siffin in order to avoid having the debtor's cash swept by its lenders. The Trustee asserted that roughly $8.5 million of this amount was ultimately paid over to Siffin.

In an attempt to recover from Siffin, the Trustee sought to pierce the corporate veil of the affiliate, arguing that the court should disregard the legal distinction between the affiliate and Siffin such that any judgment against the affiliate should be enforceable against Siffin. The Trustee alleged that Siffin was the sole owner of the affiliate and that the affiliate had no business operations. The Trustee also argued that Siffin used the affiliate for fraudulent purposes and that allowing Siffin to avoid liability would be inequitable.

Judge Goldblatt, applying Indiana law, held that the Trustee's allegations were insufficient to show Siffin and the affiliate's misuse of corporate formalities. Under Indiana law, the Trustee was required to show that: (1) a unity of interest and ownership between Siffin and the affiliate was such that their separate personalities no longer existed and (2) that adherence to the fiction of corporate separateness would sanction a fraud or promote injustice. Judge Goldblatt dismissed the veil-piercing claim without prejudice, holding that the factual allegations were thin and noting that "once the conclusory allegations are stripped away, the concrete factual allegations of the complaint are as consistent with the permissible use of an acquisition vehicle for which legal separateness would be respected as they are with the misuse of the corporate form in a way that would give rise to veil piercing or alter ego liability."

Judge Walrath Leaves Unsettled the Question Whether an Amendment to Section 547(b) of the Bankruptcy Code Created an Additional Requirement to Plead Due Diligence Efforts

In re Ctr. City Healthcare, LLC, 641 B.R. 793 (Bankr. D. Del. 2022)

The *Center City Healthcare* case recently posed the question of whether The Small Business Reorganization Act of 2019 created a new element for debtors to prove to recover a preference. That Act added language to § 547(b), providing in pertinent part that a trustee may avoid any transfer of an interest of the debtor in property "based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under [section 547(c) of the Bankruptcy Code]." 11 U.S.C. § 547(b). In *Center City Healthcare*, Judge Walrath of the Delaware Bankruptcy Court was presented with a motion to dismiss a preference action based on the argument that the complaint failed to allege in detail what due diligence efforts the debtors made, including the debtors' analysis of affirmative defenses. Ultimately, however, Judge Walrath did not squarely address the issue and granted the motion to dismiss (in part) on other grounds.

In holding that the complaint would satisfy any new pleading requirement, Judge Walrath reasoned that the complaint alleged that the debtors conducted an analysis of (i) the transfers made to the defendants during the avoidance period and (ii) whether the transfers were protected from avoidance by any applicable defense. Moreover, the complaint referenced demand letters that the debtors sent to the defendants, which invited the defendants to exchange information regarding any potential defenses.

Judge Walrath's decision suggests that the additional pleading burden imposed by the amendment, if any, appears to be minimal. Congress did not provide an explanation in the Bankruptcy Code itself or in any legislative history of what, if any, additional allegations the amendment requires. According to the court, the debtors sufficiently pleaded the traditional elements of a preference action and any new element if the amendment established one.

While Judge Walrath adjudicated the matter without determining whether the amendment created a new element, her ruling illuminates how light a burden the amendment would likely impose on plaintiffs, if any at all. As the court explained: "there is no requirement that the Debtors plead how the affirmative defenses are not available; the Debtors must simply plead that they considered them."

The Bankruptcy Court for the Southern District of Indiana Declines to Enjoin Litigation Against Non-Debtor Parent Pursuant to Sections 105(a) or 362 of the Bankruptcy Code

In re Aearo Techs. LLC, 642 B.R. 891 (Bankr. S.D. Ind. 2022)

On August 26, 2022, the United States Bankruptcy Court for the Southern District of Indiana ruled that the automatic stay did not extend to tort actions against a non-debtor affiliate and that the court lacked "related to" jurisdiction to issue an injunction halting those actions. In doing so, the Indiana Bankruptcy Court explicitly disagreed with recent decisions by courts in New Jersey and North Carolina.

In *Aearo Technologies*, the debtor, Aearo, filed chapter 11 to resolve mass-tort liability—on behalf of itself and its non-debtor parent, 3M—related to the manufacture and sale of allegedly defective hearing protection devices. In connection with the bankruptcy, Aearo and 3M entered into a funding agreement under which Aearo agreed to indemnify 3M against the tort claims, and 3M agreed to provide funding for Aearo's bankruptcy and the payment of tort-related liability. On the petition date, Aearo filed a motion requesting either a ruling that the automatic stay extended to the suits against 3M or the issuance of a preliminary injunction under section 105(a) enjoining the suits against 3M. Aearo raised three primary arguments in support of the motion: (i) that Aearo and 3M's liability was joint and several, (ii) that both entities are co-insureds under shared insurance policies, and (iii) that Aearo was obligated to indemnify 3M concerning the suits against it.

The bankruptcy court ultimately declined to grant Aearo's requested relief under section 362 or section 105(a). With respect to section 362, the bankruptcy court held that the automatic stay does not have any direct applicability to non-debtors in the Seventh Circuit. In reaching this conclusion, the bankruptcy court noted that neither the plain language of the automatic stay nor the applicable case law offered a sufficient basis to extend the stay to non-debtors. Although the bankruptcy court acknowledged the existence of Fourth Circuit law identifying exceptions where the automatic stay may be applied to non-debtors, it declined to endorse those exceptions.[2] Significantly, with respect to section 362(a)(3), the bankruptcy court was unmoved by Aearo's argument that the erosion of the shared insurance policies—which the bankruptcy court conceded were property of the estate—amounted to an action to exercise control over property of the estate. The bankruptcy court explained that the Seventh Circuit focuses on whether a third party's effort to obtain control over property of the estate would have a pecuniary effect on the estate. Here, no pecuniary effect would result given the terms of the funding agreement between 3M and Aearo. Put differently, even if litigation against 3M eroded the policies, Aearo's bankruptcy estate would not be harmed because it could turn to 3M to fund its liabilities.

The bankruptcy court also ruled that it lacked "related to" jurisdiction to enjoin the tort suits that third-party plaintiffs brought against 3M. The bankruptcy court contrasted the approach to "related to" jurisdiction adopted by the First, Third, Fifth, Sixth, and Ninth Circuits, which requires "only that the outcome of the proceeding 'could conceivably have any effect' upon the bankruptcy

[2] *See, e.g., A.H. Robins Co., Inc. v. Piccinin (In re A.H. Robins Co., Inc.*). 788 F.2d 994, 998 (4th Cir. 1986); *see also A.H. Robins Co., Inc. v. Aetna (In re A.H. Robins Co., Inc.*), 828 F.2d 1023-24 (4th Cir. 1987).

estate," with the more stringent approach by the Seventh Circuit which requires a finding that "the dispute 'affects the amount of property for distribution [i.e., the debtor's estate] or the allocation of property among creditors" before "related to" jurisdiction may be exercised.

"At first blush," the bankruptcy court noted, the pending mass tort litigation against 3M appeared to satisfy this standard given Aearo's obligation to indemnify 3M. But, delving deeper, the court noted that the "economic realities of the Funding Agreement" paint a different picture because the Funding Agreement also provides for an uncapped non-recourse commitment by 3M to fund all of Aearo's liabilities, including liabilities related to the mass-tort claims. In other words, the Funding Agreement amounted to little more than a circular arrangement under which "Aearo is able to ask 3M for the funds required to pay Aearo's indemnity obligation to…3M." As a result, the court determined that there would be no financial impact to creditors from the continuation of the pending actions against 3M. Thus, the court lacked "related to" jurisdiction over those actions.

Delaware Supreme Court Holds That Approval of Class B Stockholders Is Required to Transfer Pledged Assets to Secured Creditors

Stream TV Networks, Inc. v. SeeCubic, Inc., 279 A.3d 323 (Del. 2022)

In *Stream TV Networks, Inc., v. SeeCubic, Inc.*, the Delaware Supreme Court reversed the Court of Chancery and held that the approval of a corporation's Class B stockholders was required to transfer pledged assets to secured creditors in connection with what was effectively a privately structured foreclosure transaction.

Stream TV Networks, Inc. was primarily controlled through an investment vehicle owned by the Rajan family, which held 19,000,000 Class B shares and the majority of Stream's outstanding voting power. In 2020, Stream began experiencing financial difficulties, which eventually led to the appointment of outside directors, creating a Board comprised of two members of the Rajan family and four independent directors.

On March 23, 2020, SLS Holdings VI, LLC, Stream's senior secured creditor, filed a complaint against Stream seeking foreclosure and other relief in the Delaware Superior Court. Thereafter, the Board created a Resolution Committee comprised of two Board members, which later approved the "Omnibus Agreement." The parties to the Omnibus Agreement were Stream, SLS, Hawk (another secured creditor), and certain equity investors outside of the Rajan family. The Omnibus Agreement provided that Stream would assign its assets to SeeCubic, the appellee, in lieu of SLS and Hawk continuing to pursue foreclosure, and SeeCubic would allow Class A common stockholders to exchange their shares.

The Rajan board members refused to comply with the Omnibus Agreement. On September 8, 2020, Stream filed suit in the Court of Chancery, moving for a temporary restraining order to bar SeeCubic from seeking to enforce the Omnibus Agreement and arguing that the Class Vote Provision contained in Stream's charter requires the separate approval of holders of Class B Common Stock. On December 8, 2020, the Court of Chancery concluded that SeeCubic was entitled to injunctive relief because (1) the Resolution Committee had the authority to bind Stream to the Omnibus Agreement, and (2) neither the Class Vote Provision in Stream's Charter nor the Omnibus Agreement required a shareholder vote under Section 271 of the DCGL.[3] The Court of Chancery later converted this preliminary injunction into a permanent injunction.

On appeal, Stream argued that the plain text of the Class Vote Provision controlled and that Section 271 and its default rules are irrelevant. The Class Vote Provision provides that "for so long as shares of Class B Voting Stock remain outstanding," the "affirmative vote or written consent" of a majority of Class B voting stock "shall be necessary for . . . an Acquisition or Asset Transfer." Stream's charter defines "Asset Transfer" as a "sale, lease or other disposition of all or substantially all of the assets or intellectual property of Stream . . . or exclusive licenses."

The court explained that a contract's construction in Delaware should be that which would be understood by an objective, reasonable third party. Applying these principles, the Delaware

[3] Section 271 requires a stockholder vote for a sale of all or substantially all of a corporation's assets. *See* 8 *Del. C.* § 271.

Supreme Court sided with Stream, determining that a vote of the Class B Stockholders was required under the plain meaning of the Class Vote Provision. The court found that the Omnibus Agreement effected an "Asset Transfer" that unambiguously triggered a majority vote of the Class B stockholders, and therefore there was no need to look at Section 271 to construe the Class Vote provision.

The court focused on the meaning of the phrase "other disposition," which Stream argued was broader than the word "exchange" in Section 271 and that the difference in word choice must be seen as intentional and a sign that the parties intended for the Charter to have a different meaning than the statute. The court agreed and concluded that the Charter's definition of Asset Transfer differed materially from Section 271. Specifically, the court noted the difference between the definition of Asset Transfer in Section 271, which uses the phrase "sell, lease, or exchange," and the definition in the Charter, which defined Asset Transfer as "sale, lease or other disposition," and found that the Charter's use of the phrase "other disposition" had a meaning that was broader than the term "exchange."

The court next turned to deciphering the meaning of "other disposition," which was not defined in the Charter. The court referred to dictionary definitions of the phrase and concluded that the phrase "other disposition" included the transfer of assets contemplated in the Omnibus Agreement. The court further turned to the language of the Omnibus Agreement and noted that the Omnibus Agreement effected a transfer and assignment of all rights, title, and interest in all of Stream's assets for the benefit of Stream's creditors, evidenced by the clear language in the Omnibus Agreement. The court concluded that (1) an assignment of all rights, title, and interest in the assets of the Company is a "disposition" because it is a type of transfer or relinquishment of property, and (2) "disposition" included the assignment of Stream's assets to SeeCubic under the Omnibus Agreement, thereby triggering the Class B Vote Provision.

The key takeaway from Delaware Supreme Court's decision in *Stream TV Networks, Inc., v. SeeCubic, Inc.*: unless there is ambiguity, Delaware courts interpret contract terms according to their plain meaning, including term in corporate charters.