



Bankruptcy Roundup VII - Fall 2017

November 29, 2017 - This week the LSTA hosted the seventh installment of its quarterly roundup of Recent Developments in Bankruptcy Law. As usual, Rich Levin of Jenner & Block focused on a number of key recently-decided bankruptcy cases which raised issues that could impact loan market participants.

Importantly, the first case, *Momentive*, involved an issue on which the LSTA filed an amicus brief: should a market rate of interest be applied in Chapter 11 cases where there exists an efficient market or should courts rely on a “formula” rate such as a risk-free base rate plus a credit spread? Consistent with the views expressed by the LSTA in its brief (and summarized in detail here), a panel of judges at the US Court of Appeals for the 2nd Circuit ruled that the market rate, if it is available, should prevail. *Momentive* was also one of the vehicles for a discussion of the enforceability of make whole provisions. In contrast to a recent decision in the 3rd Circuit, the 2nd Circuit ruled that the acceleration of the debt brought about by a bankruptcy filing changes the date of maturity of the accelerated notes, and thus any payment following the bankruptcy filing would have been a post-maturity payment. As a result, the make whole provision was not triggered. Mr. Levin also covered the scope of third party releases, merger termination fees, the broad scope of Chapter 15 jurisdiction, and whether parties could recover fees related to collecting bankruptcy fees. The presentation slides, summary of cases and a replay of the entire webinar are available here.