

Unsecured Creditor Appeals Delaware Bankruptcy Court Ruling as to Postpetition Interest on an Unsecured Claim

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Financial Restructuring and Bankruptcy Alert
12.16.15

On November 27, 2015, UMB Bank, N.A., as Indenture Trustee for certain unsecured Payment In Kind (PIK) Notes, appealed an October 30, 2015 ruling by the Delaware Bankruptcy Court sustaining the Energy Future Holdings Corp. (EFIH) Debtors' Partial Objection to Proof of Claim to the extent it sought postpetition interest at the contract rate on approximately \$1.57 billion in principal indebtedness. *In re Energy Future Holdings Corp.*, No. 14-10979, (Bankr., D. Del. Oct. 30, 2015).

In his Memorandum Opinion and Order, The Honorable Christopher S. Sonchi laid out the rules for determining whether the bankruptcy code allows a creditor to receive postpetition interest on an unsecured claim. Judge Sonchi held that UMB Bank's PIK Note claim is limited to the principal and accrued fees and interest due as of the petition date and excludes unmatured, (*i.e.*, postpetition) interest at the contract rate. However, Judge Sonchi went on to point out that, if justified by sufficient development of the record, the bankruptcy court has the equitable power to award postpetition interest on UMB Bank's unsecured claim against the EFIH estate in bankruptcy.

1. UMB Bank's demand for postpetition interest on an allowed pre-petition claim must be disallowed as "unmatured interest" under 11 U.S.C. § 502(b)(2). The plain language of § 502(b)(2) limits claims to principal and accrued fees and interest due as of the petition date.
2. On the other hand, postpetition interest may be awarded on an unsecured claim under § 726(a)(5), at the legal rate, as a component of the plan confirmation process under § 1129, if such an award is in the best interest of the estate. However, this does not create a general rule establishing the availability or the appropriate rate of postpetition interest in every instance. Essentially, an unsecured creditor is entitled to postpetition interest only if it would be entitled to such a distribution in a hypothetical Chapter 7 liquidation.
3. The cramdown provision in § 1129(b)(2) does not require payment of postpetition interest at the legal rate to a rejecting class of creditors for a plan to be fair and equitable where a junior class is receiving a distribution. Rather, the court's equitable powers give a bankruptcy judge the discretion whether or not to award any postpetition interest to an impaired class and the discretion to set whatever rate it deems appropriate under the circumstances.
4. The court's equitable powers also enable a bankruptcy judge to refuse to award postpetition interest without the necessity of deeming a class to be impaired when claims within that class are otherwise unimpaired under § 1124(1). Likewise, a bankruptcy judge has the discretion to deem a class unimpaired without awarding postpetition interest at the contract rate pursuant to § 1129(a)(7).

If upheld on appeal, Judge Sonchi's opinion provides guidance on how postpetition interest on unsecured claims is (or is not) awarded under the bankruptcy code. The court has the discretion to require the payment of postpetition interest on unsecured claims, which may be at the contract rate or such other rate as the court deems appropriate.

Members of White and Williams LLP's Financial Restructuring and Bankruptcy Practice Group regularly represent debtors and secured and unsecured creditors in commercial bankruptcy and collection matters both in and out of court. Please contact Marc Casarino (302.467.4520; casarinom@whiteandwilliams.com) with any questions.

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