

Avoid Insider Status in Bankruptcy: Lessons from Capmark Financial Group Inc. v. Goldman Sachs Credit Partners, L.P.

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Through various affiliated entities, large financial institutions may have multiple touch points to a company client or multiple roles in a complex financial transaction. For example, one affiliate could have an equity interest in a company, another affiliate could have a lending relationship with the company and yet a third affiliate could provide financial advisory services to the same company. Such scenarios pose a risk that the lending entity will be deemed an “insider” of the company under the Bankruptcy Code (the “Code”) or similar state law. Insider status may in turn have significant ramifications on any potential recovery from the target company in bankruptcy, putting financial institutions at significantly greater risk of having long completed transactions reversed and funds clawed back and/or having their claims in bankruptcy sent to the back of the line.

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