

Delaware District Court Affirms Bankruptcy Court Ruling that Private Equity Fund is not Liable for WARN Act Liability of Its Portfolio Company

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On September 29, 2014, in *Czyzewski v. Sun Capital Partners, Inc. (In re Jevic Holding Corp.)*, the United States District Court for the District of Delaware issued a decision holding that a private equity fund, Sun Capital Partners, Inc. (“Sun Capital”), could not be held liable for its portfolio company’s alleged violation of the WARN Act. Applying the Third Circuit’s test for “single employer” liability, the District Court concluded that Sun Capital and its wholly owned subsidiary, Jevic Transportation, Inc. (“Jevic”), did not function as a “single employer” for WARN Act purposes. The decision, affirming Delaware Bankruptcy Judge Brendan L. Shannon’s 2013 ruling, provides valuable guidance to private equity funds seeking to ensure that they are not held liable for their portfolio companies’ WARN Act liabilities. It is important to note, however, that Jevic does not change the landscape for private equity funds in the separate but somewhat analogous context of portfolio companies’ underfunded pension liabilities, which was addressed by the First Circuit in its important and controversial 2013 decision in the *Scott Brass, Inc.* bankruptcy case, also involving Sun Capital funds.

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