

Southern District of New York Dismisses Insider Preference Claims Against Affiliates of Goldman Sachs

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Firms offering comprehensive financial services scored a significant victory on April 9, 2013, when Judge Robert Sweet of the United States District Court for the Southern District of New York dismissed Capmark Financial Group Inc.'s ("Capmark") insider preference action against four lender affiliates of The Goldman Sachs Group, Inc. ("Goldman Sachs"), which arose out of Capmark's 2009 bankruptcy. Davis Polk represented the Goldman Sachs lender affiliates and advanced the arguments adopted by Judge Sweet. The Court's opinion rejected Capmark's attempt to cast the lenders as "insiders" of Capmark based on an indirect equity interest in Capmark held by funds managed by affiliates of Goldman Sachs and Goldman Sachs's service as an advisor to Capmark. In doing so, Judge Sweet reaffirmed that corporate veils separating a lender from an affiliated entity holding equity positions or serving as advisor to the debtor will not lightly be disregarded, and that participation in an arm's-length transaction as an ordinary commercial lender will not give rise to insider status. Furthermore, Judge Sweet held that reorganized debtors are judicially estopped from making an about-face on key factual issues underlying relief secured in bankruptcy court. In sum, the Capmark decision should pose a substantial obstacle to claims alleging that a lender is an "insider" by virtue of affiliated entities' contacts with a debtor in the absence of evidence that the lender actually used the affiliates' contacts to influence the debtor's decisions.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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