

Second Circuit Court of Appeals Overturns Marblegate

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Decision restores certainty to out-of-court debt restructurings

In a surprising 2014 decision, the District Court for the Southern District of New York held that the Trust Indenture Act of 1939 (TIA) was violated by a debtor's restructuring transaction that was permitted under, and involved no amendment to, the relevant indenture. In *Marblegate Asset Management v. Education Management Corp.*, which we discussed in an

[earlier memo](#)

, the district court interpreted Section 316(b) of the TIA to impose substantive limitations on out-of-court restructurings that harm bondholders' *practical ability to receive* payment – not just their *legal right* to payment – unless all bondholders consent.

A few weeks later another district judge in the Southern District issued a similar decision in *Meehancombs Global Credit Opportunities Funds, LP v. Caesars Entertainment Corp.*, holding that a majority amendment to strip parent guarantees similarly deprived bondholders of their practical ability to recover payment, and thus required unanimity. More recently, in December 2016, a third district judge in the Southern District declined to extend the *Marblegate* and *Caesars* precedents, and held in *Waxman v. Cliffs Natural Resources Inc.* that an exchange offer, in the absence of any majority action through consent and in the absence of any asset stripping or guarantee releases, would not fit within the earlier decisions or implicate the TIA, as we discussed in a

[recent memo](#)

Today, in a long-anticipated decision, the Second Circuit Court of Appeals overturned *Marblegate*. And, although silent on covenant and guarantee stripping, we believe the *Marblegate* decision tacitly overrules *Caesars*. To the relief of any company seeking to restructure its debt outside of bankruptcy, it appears that the *Marblegate* and *Caesars* era has come to a close.

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