

Insolvency and Restructuring Update - September 29, 2009

September 29, 2009 | Client Update

In a recent bench ruling issued in the Lehman Brothers Chapter 11 proceedings in the Southern District of New York, Bankruptcy Judge James M. Peck held that (i) non-debtor counterparties to swap transactions with a debtor may not rely on Section 2(a)(iii) of the ISDA Master Agreement as a basis for withholding performance on account of the debtor's bankruptcy filing and (ii) although the Bankruptcy Code safe harbors for swap agreements and other derivative transactions protect the right of the non-debtor counterparty to terminate and net transactions, such right may be deemed waived if not exercised "promptly" upon a debtor counterparty's bankruptcy filing.

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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