

# Insolvency Notes

**In This Issue...**

Third Circuit Rules that Debtor May Terminate Viable Pension Plans if the Combined Effect of All Plans Considered for Termination Prevents the Debtor from Continuing in Business Outside of Bankruptcy ..... 1

Estimation of Unliquidated Asbestos-Related Personal Injury Claims for Voting Purposes —The *Quigley* Decision ..... 8

The New Insolvency Legislation In The Czech Republic ..... 13

Leave For Interlocutory Appeal Granted Regarding *Enron* Equitable Subordination Decision ..... 16

## Third Circuit Rules that Debtor May Terminate Viable Pension Plans if the Combined Effect of All Plans Considered for Termination Prevents the Debtor from Continuing in Business Outside of Bankruptcy

In its recent decision in *In re Kaiser Aluminum Corp.*,<sup>1</sup> the Third Circuit addressed a question of first impression among the federal courts of appeal: whether courts may consider the economic effects of multiple pension plans in the aggregate in determining whether a debtor will be allowed to terminate them, or, alternatively, whether the courts must analyze the effect of plan terminations on a plan-by-plan basis. In a ruling that may have significant implications for debtors seeking to terminate pension plans, the Third Circuit held that, in those instances where a debtor seeks to terminate multiple pension plans at once, the effects of the plans on the debtor’s reorganization must be considered in the aggregate, not on a plan-by-plan basis. Stated differently, a debtor may succeed in terminating pension plans that independently would not jeopardize the debtor’s reorganization efforts so long as the aggregate impact of all plans considered for termination makes it impossible for the debtor to continue to

operate its business outside of Chapter 11. Although the potential consequences of this ruling seem obvious, the Third Circuit refused to act as a legislative body in addressing them and, instead, invited Congress to address the possible ramifications of its reading of the relevant statute, the Employee Retirement Income Security Act of 1974 (as amended, “ERISA”).

### Factual Background

Kaiser Aluminum Corporation (“Kaiser” or the “Company”) is involved in all aspects of the aluminum industry, including the mining of raw materials, the refining of such materials, and the ultimate manufacturing of aluminum products. As of January 1, 2003, Kaiser was responsible for the retiree benefits of more than 15,300 retirees and dependent spouses and the pension benefits of over 11,000 retirees and beneficiaries.<sup>2</sup> In late 2001 and



**Editor’s Note**

The White & Case INSOLVENCY NOTES is prepared for the general information of our clients and other interested persons. It should not be acted upon in any specific situation without appropriate legal advice.

.....

We welcome your comments and suggestions. If you have any questions or would like a copy of any of the relevant cases, please contact Maria K. Pum, Brian Holman, or any member of the Financial Restructuring and Insolvency Group.

Editors:  
 Maria K. Pum, Partner  
 + 1 213 620 7705  
 mpum@whitecase.com

Brian Holman, Partner  
 + 1 213 620 7781  
 bholman@whitecase.com

.....

The Editors wish to express their gratitude to Fernando Menendez, Frank Eaton, Kevin McGill, Craig Averch, Zdenek Mikulas and David Pich for their contributions to this issue.

White & Case  
 1155 Avenue of the Americas  
 New York, NY 10036  
 + 1 212 819 8200

www.whitecase.com

<sup>1</sup> *In re Kaiser Aluminum Corp.*, 456 F.3d 328 (3d Cir. 2006).  
<sup>2</sup> *Id.* at 331.

## Insolvency Notes

early 2002, weak industry conditions, imminent debt maturities, burdensome asbestos litigation, and growing legacy obligations for future retiree medical and pension costs took their economic toll on Kaiser.<sup>3</sup> Concluding it was incapable of restructuring these obligations outside of bankruptcy, Kaiser and twenty-five of its related corporate entities filed for relief under Chapter 11 of the Bankruptcy Code between February 2002 and January 2003.

Following their bankruptcy filings, Kaiser and its subsidiaries sought relief from their overwhelming pension plan obligations in early 2004. Their efforts to obtain court approval for the termination of six underfunded pension plans were strongly opposed by the Pension Benefit Guarantee Corporation (the "PBGC"). The PBGC, which was established by Congress in 1974 as part of ERISA, was created to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants, provide timely and uninterrupted payment of pension benefits, and keep pension insurance premiums at a minimum.<sup>4</sup> In furtherance of this purpose, the PBGC provides a minimum level of pension benefits to participants in qualified pension plans in the event that the plans cannot pay benefits.<sup>5</sup> At present, the PBGC pays monthly retirement benefits, up to a guaranteed maximum, to approximately 683,000 retirees in 3,595 pension plans that have terminated.<sup>6</sup>

### Proceedings Below

The issue which ultimately percolated to the Third Circuit in *Kaiser* became manifest when the Company sought to replace seven pension plans

that had been established in connection with certain collective bargaining agreements then in effect with its various unions. Specifically, on January 11, 2004, Kaiser filed a motion with the Bankruptcy Court seeking authority to terminate seven pension plans<sup>7</sup> (which covered nearly 13,500 active hourly workers) in a voluntary "distress termination" under Title IV of ERISA.<sup>8</sup> In support of its motion, Kaiser stressed that it owed nearly \$48 million in unfunded minimum contributions for the 2003 plan year and would be required to make additional minimum contributions of at least \$230 million to the aforementioned plans between 2004 and 2009.<sup>9</sup> The Company argued that it would be incapable of operating outside of bankruptcy under the collective strain of these obligations.

Faced with the prospect of incurring additional obligations for Kaiser's failure to fund its plans, the PBGC opposed the Company's effort to terminate multiple plans in one fell swoop. The PBGC argued that the Bankruptcy Court should make independent determinations as to whether each of the pension plans considered for termination satisfied the reorganization test, which (as explained further below) requires debtors to establish that they would be unable to continue in business outside of bankruptcy while fulfilling their pension obligations. While the PBGC recognized that two of the plans that Kaiser sought to terminate satisfied the reorganization test even if considered under a plan-by-plan analysis, it argued forcefully that the Company could continue to fund some if not all of the other plans and still emerge successfully from Chapter 11.<sup>10</sup>

Notwithstanding the efforts of the PBGC, the Bankruptcy Court concluded that the adoption of a

---

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* (citing 29 U.S.C. § 1302(a)).

<sup>5</sup> Although the PBGC provides a substantial safety net for plan participants, the benefits guaranteed by the PBGC are often substantially lower than the fully vested pensions due to plan participants. *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> At the hearing on its motion, Kaiser withdrew its request for authority to terminate one of its pension plans on the grounds that it was not underfunded and, as such, no relief was necessary. *Id.* at 332.

<sup>8</sup> 29 U.S.C. § 1341(c)(2)(B)(ii).

<sup>9</sup> *Kaiser*, 456 F.3d 328, at 332.

<sup>10</sup> *Id.* at 333.

plan-by-plan approach would violate section 1113(b) of the Bankruptcy Code, which requires debtors to bargain fairly and equitably with *all* unions. Specifically, the Bankruptcy Court stressed that a plan-by-plan approach could, among other things, have the unintended consequence of providing creditors with leverage to force debtors to initiate bargaining with certain unions to the detriment of others.<sup>11</sup> Thus, while the Bankruptcy Court acknowledged that Kaiser could maintain up to three of its smaller plans under the PBGC’s plan-by-plan approach, it applied the reorganization test by considering the Company’s pension plans in the aggregate. Following this approach, the Bankruptcy Court held that the reorganization test was satisfied with respect to all the plans that Kaiser sought to terminate.<sup>12</sup>

The PBGC filed a timely appeal of the Bankruptcy Court’s decision, which appeal proved to be of no avail. The District Court upheld the Bankruptcy Court’s aggregate analysis of the plans under the reorganization test, noting that a plan-by-plan approach was not required under ERISA and, further, that any such approach would be inconsistent with Bankruptcy Code provisions requiring debtors to engage in fair and equitable bargaining.<sup>13</sup> In the District Court’s view, fairness and equity required the Bankruptcy Court to consider Kaiser’s plans in the aggregate. The PBGC appealed the District Court’s decision to the United States Court of Appeals for the Third Circuit.

### **Third Circuit Holds that Effect of Multiple Pension Plans Must be Considered in the Aggregate, Not on a Plan-By-Plan Basis**

On appeal, the Third Circuit considered whether the Bankruptcy Court should have made separate

determinations as to whether each of the plans Kaiser sought to terminate satisfied the reorganization test, or whether it properly applied the reorganization test to all of the plans in the aggregate. In concluding that the Bankruptcy Court correctly applied the reorganization test in the aggregate to all of the plans Kaiser sought to terminate, the Third Circuit explained as follows.

#### **Terminating Pension Plans under ERISA**

The Third Circuit began its analysis of the decisions rendered by the Bankruptcy Court and the District court by explaining the requirements for plan termination under ERISA, which provides the exclusive means of terminating single-employer pension plans.<sup>14</sup> Under ERISA, a plan sponsor may voluntarily terminate a pension plan in one of two ways: it may proceed with what is termed a “standard termination,” which requires the payment of all benefit commitments, or, alternatively, may initiate a “distress termination” if the plan’s assets are insufficient to satisfy all benefit liabilities.<sup>15</sup> In order to proceed with a distress termination, a plan sponsor must establish that it meets one of the four “distress tests” provided under 29 U.S.C. §1341(c)(2)(B). The tests are known as (1) the liquidation test, (2) the reorganization test, (3) the inability to continue to do business test, and (4) the unreasonably burdensome pension cost test.<sup>16</sup> In *Kaiser*, the Company sought termination of its plans under the reorganization test.

#### **Applying ERISA’s Reorganization Test for Plan Termination**

As the Third Circuit explained in *Kaiser*, “the reorganization test is satisfied when a bankruptcy court determines that a plan sponsor will be unable to continue business outside of Chapter 11 ‘unless

---

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *See id.* at 334 (citing 29 U.S.C. § 1341(a)(1)).

<sup>15</sup> *Id.*

<sup>16</sup> 29 U.S.C. §§ 1341(c)(2)(B)(i)-(iii); 29 C.F.R. § 4041.41(c)(4)

## Insolvency Notes

the *plan* is terminated.”<sup>17</sup> While the basic tenets of this test can be recited with ease, the court in *Kaiser* acknowledged that the more difficult question is whether courts can look at the effects of several plans in the aggregate in determining whether the debtor can “continue in business” absent termination. Affirming the decision of the District Court, the Third Circuit ruled that an aggregate analysis was not only permitted but required under both ERISA and the Bankruptcy Code.

As an initial matter, the Third Circuit explained that ERISA does not explicitly state how the reorganization test should be applied when an employer seeks to terminate several pension plans at once. Specifically, while the reorganization test unambiguously provides that termination is proper when the plan sponsor cannot continue business outside of Chapter 11 “unless the *plan* is terminated,”<sup>18</sup> ERISA does not contain any similar provisions addressing the simultaneous termination of multiple plans.<sup>19</sup> Given ERISA’s lack of express statutory instruction regarding the application of the reorganization test to multiple plans, the Third Circuit analyzed the text of ERISA for indicia of congressional intent on the issue.<sup>20</sup>

Although the PBGC argued that the plain text of Title IV—which employs singular terms such as “single employer plan” and “plan”—provided clear evidence of Congress’s intent to have the reorganization test applied on a plan-by-plan basis, the Third Circuit flatly rejected this narrow interpretation of the statute. The court explained that, as a general matter of statutory construction, the singular form of a word includes and applies to several persons, parties, or things

unless the context indicates otherwise.<sup>21</sup> Further, the court stressed that it was unlikely that Congress intended a plan-by-plan approach, as any such approach would prove unworkable under the statute as it is currently written. In particular, the Third Circuit noted that “the reorganization test cannot be rationally applied on a plan-by-plan basis unless a court makes basic assumptions about the order in which the plans should be considered and the status of the other plans that the employer is seeking to terminate.”<sup>22</sup> ERISA, the court explained, does not provide any guidance regarding the proposed application of a plan-by-plan analysis. Accordingly, the attempted implementation of a plan-specific test could result in absurd applications of the statute, which could guarantee virtually any result.

By way of example, the court explained that if a bankruptcy court were to apply the reorganization test to one plan while assuming that all the other plans remained active, it could conclude that the reorganization test was satisfied as to any of the plans considered independently. Conversely, if that same court assumed that all the other plans were terminated, it could conclude that the reorganization test was not satisfied as to any of the plans and, consequently, would deny the debtor much needed relief.<sup>23</sup> Based on the potential pitfalls of a plan-by-plan analysis, the court refused to read any such limitation into the statute. It stressed that courts should interpret laws to avoid absurd or bizarre results and, as such, made plain that it would “not adopt a statutory construction that leads to such an anomalous result, especially where the aggregate approach represents an alternative that is ‘neither irrational nor arbitrary.’”<sup>24</sup>

---

17 *Kaiser*, 456 F.3d 328, at 335. While the court recognized that plan termination would not be possible if it “would violate the terms and conditions of an existing collective bargaining agreement,” it noted that debtors seeking such termination could remove any contractual bar to termination in a collective bargaining agreement by receiving the bankruptcy court’s approval to unilaterally reject or modify any such agreement pursuant to section 1113 of the Bankruptcy Code. *Id.*

18 29 U.S.C. § 1341(c)(2)(B)(ii)(IV).

19 *Kaiser*, 456 F.3d 328, at 335.

20 Although the court stated that every decision it had reviewed on this issue resulted in the application of an aggregate analysis, it noted that the available opinions provided no rationale as to why they employed the aggregate approach and, further, did not discuss whether they considered an alternate approach. *Id.* at 336 (collecting cases).

21 *Id.* at 337 (citing 1 U.S.C. § 1).

22 *Id.*

23 *Id.* at 338.

24 *Id.*

### **Bankruptcy Courts, as Courts of Equity, Cannot Adopt an Arbitrary Plan-by-Plan Approach to the Reorganization Test**

In addition to rejecting the adoption of a plan-specific approach under ERISA, the Third Circuit explained that a plan-by-plan application of the reorganization test in bankruptcy would only serve to disrupt bankruptcy courts in their traditional role as agents of equity. The court stated that the plan-specific test proposed by the PBGC ran contrary to the Bankruptcy Code in that it would have forced the Bankruptcy Court to approve the termination of some of Kaiser's plans, while leaving others intact—all without any principled basis on which to prefer certain workers over others.

As the court explained, the Bankruptcy Code underscores the importance of equity, particularly in bankruptcies involving unionized workers and employee retirement benefits. In making this statement, the court focused on section 1113 of the Bankruptcy Code, which allows debtors to modify or reject collective bargaining agreements only if a bankruptcy court determines that the debtor made a proposal to the union that assures that "all affected parties are treated *fairly* and *equitably*."<sup>25</sup> Similarly, the court placed emphasis on section 1114, which allows debtors to seek termination or modification of retiree benefits only after debtors have made a proposal for the modification of benefits to the authorized representatives of the debtor's retirees that treats all affected parties "fairly and equitably."<sup>26</sup> The court stressed that both section 1113 and 1114 require the bankruptcy court to determine that "the balance of the equities clearly favors" the motions before granting them.

Given the Bankruptcy Code's insistence on fairness and equity in the modification of collective bargaining agreements and/or retirement plans, the Third Circuit was convinced that the Bankruptcy Court could not have applied the plan-by-plan approach favored by the PBGC without producing an unfair result that would have violated principles of equity. Indeed, the court noted the following:

Had the Bankruptcy Court applied the reorganization test on a plan-by-plan basis it would have had to pick and choose between the six plans that Kaiser sought to terminate, deciding that certain plans would remain active. Some of Kaiser's workers would receive their full pension benefits, while others would receive no more than the amount guaranteed under ERISA. It is likely that even workers within the *same union* would be treated differently from each other because they participated in different plans, not all of which would necessarily be eliminated. Without some statutory basis or other principled rationale for this result, such disparate treatment smacks of arbitrariness.<sup>27</sup>

While the court readily acknowledged that the application of the aggregate approach to the facts in *Kaiser* would lead to the termination of more plans than was necessary for the Company to emerge from bankruptcy, it stressed that it was in the unenviable position of burdening some of Kaiser's plans proposed for termination or burdening them all, and that it could not do the former while fulfilling its obligation to do equity as required by the Bankruptcy Code: "Surely, the PBGC argues, it is not fair or equitable to strip an employee's pension benefits without any economic justification.... We are not unsympathetic to this view.... However, we are persuaded that, on the whole, an aggregate approach is more in line with the objectives of the Bankruptcy Code."<sup>28</sup>

---

<sup>25</sup> *Id.* at 340 (citing 11 U.S.C. 1113(b)(1)(A)).

<sup>26</sup> *Id.* (citing 11 U.S.C. § 1114(f)(1)(A)).

<sup>27</sup> *Id.* at 341.

<sup>28</sup> *Id.* at 342.

### The Third Circuit Rejects Other Arguments Raised by the PBGC

In addition to the points discussed above, the PBGC raised a number of other arguments for the adoption of a plan-specific approach. Specifically, the PBGC argued that legislative history, its authority to interpret ERISA, and public policy each provided independent grounds for reviewing the economic viability of pension plans on a plan-by-plan basis. Unmoved by these arguments, the Third Circuit rejected each in summary fashion.

With regard to legislative history, the PBGC argued that there was a clear legislative trend towards tightening restrictions on the termination of pension plans. The PBGC suggested that this trend, which it argued was evidenced by the Single-Employer Pension Plan Amendments Act of 1986 and the Pension Protection Act of 1987, reflected a clear congressional purpose to limit the circumstances under which pension plans could be voluntarily terminated and, therefore, provided additional support for the adoption of a more restrictive, plan-specific approach to the reorganization test.<sup>29</sup> The Third Circuit disagreed. It stated that the legislative history, at most, provided evidence of Congress's general intent to make it more difficult for employers to terminate pension plans. The court stressed that this intent, even if it exists, does not provide any guidance as to how a plan-by-plan approach should be applied in a multi-plan context: "We view the absence of any such guidance in the text of ERISA as more indicative of congressional intent than anything the PBGC has cited in the legislative record."<sup>30</sup>

Similarly, the Third Circuit was not persuaded by the PBGC's suggestion that the court should defer to its interpretation of the reorganization test.<sup>31</sup> Deference to the PBGC, the court argued, was improper because the PBGC did not have the expertise or the authority to determine when a plan should be terminated under the reorganization test.<sup>32</sup> It stressed that issues relating to an employer's bankruptcy and reorganization are within the expertise of the bankruptcy courts, not the PBGC.<sup>33</sup> Notwithstanding the PBGC's contentions to the contrary, the Third Circuit made clear that ERISA grants the bankruptcy courts alone the power to determine when an employer will be unable to pay all its debts pursuant to a plan of reorganization.<sup>34</sup>

Lastly, the PBGC argued that public policy favored the adoption of a plan-specific approach to the reorganization test. It raised two primary arguments in this regard. First, it argued that an aggregate approach would harm the American workforce by allowing plan terminations that were economically unnecessary.<sup>35</sup> Second, it stressed its concern that the adoption of an aggregate approach would place an additional financial strain on the PBGC by allowing the termination of more plans than necessary and, consequently, increasing the number of retirees seeking support.<sup>36</sup> Although the Third Circuit did not question the validity of either of these points, it stated that it did not sit as a legislative body and, therefore, could not implement a legal regime to address these complex issues: "If Congress perceives our holding to be in error, the cure is to amend ERISA."<sup>37</sup>

---

<sup>29</sup> *Id.* at 343-44.

<sup>30</sup> *Id.* at 344.

<sup>31</sup> The PBGC argued that such deference was appropriate under the Supreme Court's ruling in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

<sup>32</sup> *Kaiser*, 456 F.3d 328, at 344.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* (citing 29 U.S.C. § 1341(c)(2)(B)(ii)(IV)).

<sup>35</sup> *Id.* at 346.

<sup>36</sup> The court took judicial notice of the fact that the PBGC financial condition had deteriorated sharply in recent years. Indeed, the court noted that "[a]t the end of the 2005 fiscal year, the PBGC's liabilities exceeded its assets by \$23.1 billion, a swing in its net position of nearly \$33 billion since 2000." *Id.*

<sup>37</sup> *Id.* at 346-47.

## Comment

The Third Circuit's recent ruling in *Kaiser* marks the first by a federal court of appeals addressing whether courts may consider the economic effect of multiple pension plans in the aggregate in determining whether termination of such plans is proper. In holding that they must, the Third Circuit has adopted a rule that, by the court's own admission, will

result in plan terminations that are economically unnecessary. While the court has invited Congress to address the issue, it is unclear whether any change in the statute is likely in the near future. The Pension Protection Act of 2006, which was signed into law by President George W. Bush on August 17, 2006, does not amend ERISA's provisions regarding the distress termination of single-employer plans.<sup>38</sup>

---

<sup>38</sup> Pension Protection Act of 2006, Pub. L. No. 109-280, § 409, 120 Stat. 780 (2006).

## Estimation of Unliquidated Asbestos-Related Personal Injury Claims for Voting Purposes—The *Quigley* Decision

In the recent case of *In re Quigley Co., Inc.*,<sup>1</sup> the bankruptcy court addressed the appropriate method for estimating asbestos-related claims for voting on a debtor's Chapter 11 plan. The court ultimately held that, where certain claimants holding unliquidated asbestos-related claims had entered into a settlement agreement reducing the ultimate distributions on their claims by 90 percent, such claims would be discounted an equivalent amount for plan voting purposes.

### Background

#### The Pfizer Agreement.

Quigley Company Inc. ("Quigley") filed its Chapter 11 petition on September 3, 2004, after incurring significant asbestos-related liability (the "Asbestos Claims") stemming from its distribution and use of asbestos-containing products.

Many of Quigley's asbestos creditors (the "Asbestos Claimants") also asserted claims against Quigley's non-debtor parent company, Pfizer Inc. ("Pfizer"), on the theory that Pfizer was derivatively liable for the Asbestos Claims.<sup>2</sup> Prior to Quigley's Chapter 11 filing and in contemplation of the bankruptcy, Pfizer engaged in negotiations to settle the derivative claims, which resulted in a settlement agreement (the "Pfizer Agreement") with more than 80 percent of the Asbestos Claimants (the "Settling Claimants"). Under the Pfizer Agreement, Pfizer agreed to pay approximately \$430 million to the

Settling Claimants which would be allocated among them based on disease category and exposure.<sup>3</sup> In exchange, the Settling Claimants agreed to release their claims against Pfizer, but did not release their claims against Quigley.<sup>4</sup>

The settlement negotiations that led to the Pfizer Agreement also had as a "central feature"<sup>5</sup> the plan of reorganization for Quigley (the "Plan"). The Plan contemplated that a trust (the "Trust") would be formed and funded with \$645 million contributed by Pfizer and Quigley.<sup>6</sup> The Trust would administer and pay the claims of the Asbestos Claimants pursuant to trust distribution procedures referred to as the "TDP."<sup>7</sup> All current and future asbestos personal injury claims asserted against Quigley or Pfizer were to be channeled to the Trust and the channeling order would bar the Asbestos Claimants from pursuing their claims against reorganized Quigley, Pfizer or certain other entities.<sup>8</sup>

Although the Pfizer Agreement did not release Quigley, it did provide that if the Trust formed under the Plan "proved insufficient to satisfy 100 percent of the value attributed to the present and estimated future claims under the TDP, 'each Settling Plaintiff [would] reduce its distribution on its claim against Quigley to ten percent (10%) of the Payment Percentage of the allowed amount of such claim under the Trust Distribution Procedures.'"<sup>9</sup> According to the Quigley court, this was the equivalent of saying that the Settling Claimants had "agreed to reduce their claims against the Trust by

---

<sup>1</sup> 346 B.R. 647, (Bankr. S.D.N.Y. 2006).

<sup>2</sup> *Quigley*, at 649.

<sup>3</sup> *Id.* at 649-650.

<sup>4</sup> *Id.* at 650.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* (quoting from the Pfizer Settlement Agreement at § 2.4(b)).

90 percent.”<sup>10</sup> The court also noted that it appeared the Trust would be unable to pay 100 percent of the present and estimated and future claims so that “the 90 percent dilution provision will, therefore, apply.”<sup>11</sup>

The Plan divided Quigley’s creditors into several classes and grouped all the Asbestos Claims—whether settling or non-settling—into Class 4.<sup>12</sup> The dispute before the court in *Quigley* concerned the voting rights of the members of Class 4.

### Voting Procedures.

On August 17, 2005, in a “Solicitation Procedures Motion,” Quigley moved to estimate the unliquidated Asbestos Claims at \$1.00 solely for the purposes of voting to accept or reject the Plan.<sup>13</sup> The Ad-Hoc Committee of Tort Victims (the “Ad-Hoc Committee”), consisting of a group of Asbestos Claimants that were not parties to the Pfizer Agreement, opposed that motion. It argued that the Asbestos Claimants’ votes should be weighed based on the severity of their impairments, and that the votes of the Settling Claimants should be diluted to reflect the 90 percent reduction in the distributions on their claims against the Trust.<sup>14</sup> On January 23, 2006, the bankruptcy court approved the disclosure statement and approved the voting procedures but deferred the issues raised by the Ad-Hoc Committee. Eighty-five percent of the Asbestos Claimants in Class 4 voted to accept the Plan.<sup>15</sup> The court then turned to the two voting issues raised by the Ad-Hoc Committee.

### Estimation Methodology

In determining how to tabulate the votes of the Asbestos Claimants, the court began its analysis by noting the two approaches typically used in asbestos cases: (i) valuing all of the claims at \$1.00; and (ii) weighing the votes by ascribing values based on the claimant’s impairment.<sup>16</sup> Examining some of the major cases supporting the first approach,<sup>17</sup> the court concluded that the \$1.00 per vote method could be used when support for a proposed plan is overwhelming and a different voting method would not change the result.<sup>18</sup> Absent such circumstances, however, the court stated that the method of weighing each vote based on the nature and impairment of each claimant’s injury would more accurately align voting strength with claim value, and would prevent the holders of relatively small claims from disenfranchising the more severely impaired who hold larger claims.<sup>19</sup>

In *Quigley*, the debtor proposed an alternative that weighed the votes according to the values scheduled in the Plan. The court observed that “both sides acknowledge that this result is reasonable.”<sup>20</sup> Nevertheless, the Ad-Hoc Committee contended that rather than use the values set forth in the Plan, the court should use values derived from the debtor’s historical records in a methodology that would require discovery and the preparation of a matrix describing what each claimant should be paid based in part on the settlement history of the law firms that represented each of the Asbestos Claimants.<sup>21</sup> The court found that the alternative advocated by

---

10 *Id.* at 650.

11 *Id.*

12 *Id.* at 651.

13 *Id.* at 652.

14 *Id.*

15 *Id.* at 655.

16 *Id.* at 654.

17 The court examined the decisions in *Kane v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 843 F.2d 636, 641 (2d Cir. 1988) and *Menard-Sanford v. Mabey* (*In re A.H. Robins Co.*) 880 F.2d 694, 698 (4th Cir.) cert. denied, 493 U.S. 959 (1989).

18 *Quigley*, at 654.

19 *Id.*

20 *Id.* at 655.

21 *Id.*

the Ad-Hoc Committee was no better than the use of the values set forth in the TDP under the Plan. The court explained:

The same bits of information would be necessary under the Ad-Hoc Committee's proposal, and the Court would have to review every claim, including the identity of the lawyer representing the claimant, to determine its appropriate voting weight. Furthermore, the TDP values already reflect Quigley's settlement experience, have been approved by the Official Committee of Unsecured Creditors and the Future Claims Representative, and no one has suggested that the TDP values, or the differences in values assigned to the various disease categories, are arbitrary or unreasonable.<sup>22</sup>

After making this observation, the court then turned to the actual voting in the case. It noted that 85 percent of the Class 4 members that cast votes had voted to accept the Plan. That number would not change, regardless of the methodology chosen. Thus, the first part of the two-part test<sup>23</sup> for determining whether a class has voted to accept the plan was met regardless of the methodology chosen, because under either approach, "more than one-half in number" had voted to accept the Plan.<sup>24</sup> It was the "two-thirds in amount" test that might be affected by the methodology chosen.<sup>25</sup>

Under the \$1.00 per vote method, the fact that 85 percent of the votes cast were in favor of the Plan meant that more than two-thirds in amount had necessarily voted for the Plan. Furthermore, if the votes were weighted based on the TDP values

in the Plan, the court found that approximately 73 percent in amount had voted to accept the Plan, thus also satisfying the "two-thirds in amount" test. On the other hand, if the votes cast by the Settling Claimants were diluted to reflect the 90 percent reduction in distributions on their claims against the Trust as was advocated by the Ad-Hoc Committee, then the "two-thirds in amount" test under section 1126(c) would not be met.<sup>26</sup> The question was therefore whether it was appropriate to dilute the claims of the Settling Claimants by 90 percent.

### Appropriateness of Diluting the Settling Claims by 90 percent

In arguing for dilution of the claims of the Settling Claimants, the Ad-Hoc Committee contended that dilution was mandated by *In re Combustion Eng'g, Inc.*, 391 F.3d 190 (3d Cir. 2004). But the *Quigley* court was not impressed by this argument finding that *Combustion Engineering* was distinguishable because of the preference issues in that case. Furthermore, in the *Quigley* case, a non-debtor used its own assets to fund settlements, thereby increasing the funds available to creditors, which was not the case in *Combustion Engineering*. There were also problems in *Combustion Engineering* relating to an inadequate factual record, while in *Quigley* the court had not yet held the confirmation hearing so the record had yet to be developed. As was summarized by the *Quigley* court, the only question was "whether the Court should discount the [Settling Claimants'] votes regardless of the Plan proponents' good or bad faith, or the other concerns identified by the Third Circuit."<sup>27</sup> So *Combustion Engineering* did not mandate dilution of the Settling Claimants' votes.

---

<sup>22</sup> *Id.*

<sup>23</sup> The test for determining whether a class has voted to accept a plan is set forth in section 1126(c) of the Bankruptcy Code. That section provides that "[a] class of claims has accepted a plan if such plan has been accepted by creditors . . . that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors...."

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> The reason for this seemingly anomalous result is the fact that 93 percent of the Settling Claimants had accepted the Plan, while more than 50 percent of the non-settling claimants had voted to reject it.

<sup>27</sup> *Id.* at 657.

The court was not any more persuaded by the arguments of the Plan proponents who contended that the “plain language of the Bankruptcy Code” requires that there be no dilution.<sup>28</sup> The *Quigley* court viewed the issue as one of claims estimation, not a mechanical application of section 1126(c) of the Bankruptcy Code. As it summarized:

The question now posed is simply whether the Court should consider the [Settling Claimants’] concession of 90 percent of their claims under the Pfizer settlement in estimating the value of their claims for voting purposes.

The Court concludes that it should.<sup>29</sup>

In determining that the claims should be diluted, the court found that to do otherwise would ignore the Settling Claimants’ real economic interests and the economic realities of the case.<sup>30</sup> The court reasoned that, if the Settling Claimants had held liquidated claims, and agreed as part of a settlement to take 10 percent, their allowed claims would be reduced to the settlement amount and they could not vote any greater amount.<sup>31</sup> Although the Settling Claimants’ claims were unliquidated, the Pfizer Agreement provided for a 90 percent reduction in the distributions on those claims once they became liquidated by the Trust. The court stated that there was no reason to treat this agreement differently from the settlement of a liquidated amount, and therefore held that the Settling Claimants votes should be discounted by 90 percent. After diluting the Settling Claimants’ votes by 90 percent, the court found that Class 4 Asbestos Claimants had rejected the Plan pursuant to section 1126(c) of the Bankruptcy Code.<sup>32</sup>

## Motion for Reconsideration

On August 21, 2006, Quigley moved for reconsideration of the *Quigley* decision, arguing that the court misconstrued the provision of the Pfizer Agreement whereby the Settling Claimants had conditionally agreed to reduce the *distributions* on their claims against Quigley—claims that they neither released nor reduced—to 10 percent of the distributions they otherwise would be entitled to receive, *if and only to the extent* that the Trust had insufficient assets to pay all non-settling and future Asbestos Claimants in full. The court construed the Settling Claimants’ agreement with Pfizer as a reduction of the Settling Claimants’ *claims*. In reality, however, the Settling Claimants only had agreed to subordinate a portion of their distributions, and expressly retained their full claims against Quigley. Quigley further asserts that under applicable case law, subordination of a claim does not impair a claimant’s voting rights. The court has yet to rule on the motion for reconsideration.

## Comment

The *Quigley* decision rests heavily on the principle that claimants’ voting rights should be commensurate with their economic interests in the case. With this principle in mind, the court determined that the \$1.00 per vote method used in estimating unliquidated tort claims should generally be limited to circumstances where support for a proposed plan is overwhelming and a different voting method would not change the result. Absent such circumstances, the voting rights associated with unliquidated claims should be more directly tied to such claims’ approximate

---

<sup>28</sup> *Id.* at 656.

<sup>29</sup> *Id.* at 657.

<sup>30</sup> *Id.* at 657-658 (citing *Pension Benefit Guaranty Corp. v. Enron Corp.*, No. 04 Civ. 5499 (HB), 2004 WL 2434928 at \*5 (S.D.N.Y. Nov. 1, 2004)).

<sup>31</sup> *Id.* at 658.

<sup>32</sup> *Id.* at 658-659.

## Insolvency Notes

economic value. Correspondingly, where a claimant has voluntarily reduced the expected distribution on its claim pursuant to an agreement with the debtor, such reduction should be taken into account in assigning a dollar amount to the claim for voting purposes. As *Quigley* asserted in its motion to reconsider, however, the Pfizer Agreement did not reduce the distributions on the Settling Claimants' claims—it merely subordinated them. The distinction is critical in determining the true economic value of these claims for voting purposes, and it will be interesting to see how the court addresses this issue in light of the recent motion for reconsideration.<sup>33</sup>

In short, the *Quigley* decision resulted in rejection of a plan supported by a group of creditors who represented a significant majority in their class, but were stripped of their majority voting position on account of their agreement to subordinate a portion of the distributions on their claims. Consequently, before entering into any agreement affecting the ultimate distributions on unliquidated claims, both debtors and creditors should carefully consider the potential impact of such agreement on voting rights and plan confirmation.

---

<sup>33</sup> We will apprise you of the results in an upcoming edition of the Insolvency Notes.

# The New Insolvency Legislation in the Czech Republic

On April 14, 2006, President Václav Klaus of the Czech Republic signed a new bankruptcy reform act into law. The new Czech Insolvency Act (the “New Insolvency Act”) will become effective July 1, 2007. The adoption was the culmination of several years of continuous and intense legislative initiatives aimed at instituting modern legal regulations for the treatment of debtors in financial trouble and eliminating certain shortcomings of the current insolvency legislation.

## Need for Modern Insolvency Legislation

During the period beginning in 1950 when the country was veiled behind the Iron Curtain and ending in 1991 when the Bankruptcy and Composition Act of 1991 was enacted (the “Old Bankruptcy Act”), the Czech Republic had no insolvency law. In the fifteen years following its enactment in 1991, the Old Bankruptcy Act was amended more than twenty times. Essentially all of the amendments to the Old Bankruptcy Act strengthened creditors’ rights, yet universally recognized shortcomings in the Czech system remained, resulting in poor recoveries for creditors.

The New Insolvency Act makes sweeping changes to insolvency proceedings for both businesses and individuals. The New Insolvency Act is designed to, among other things, shorten insolvency proceedings, make these proceedings more transparent, provide a more influential or stronger position to creditors and render the entire insolvency process more efficient. To accomplish these goals, the New Insolvency Act has been given a more extensive structure, the terms it uses have been made more exact, deadlines have been implemented, and a number of crucial decisions have been passed directly to creditors.

## Changes Under the New Insolvency Act

### Threshold Test of “Insolvency”

Under the Old Bankruptcy Act, every natural person considered as an entrepreneur in the sense of the Czech Commercial Code or any legal entity was eligible to submit a proposal declaring bankruptcy if the entrepreneur or legal entity was considered “insolvent” based on having two or more creditors *and* the inability to repay debts as they fell due. Alternatively, the entrepreneur or legal entity could demonstrate “insolvency” if the sum of the debtor’s debts exceeded the value of the debtor’s assets. The tests under the New Insolvency Act are similar, although they have been relaxed to some extent. Under the New Insolvency Act, the nonpayment test is met if there is a *reasonable expectation* that the debtor will be unable to pay the *majority* of its debts as they come due. With regard to the balance sheet test, the New Insolvency Act compares the value of the debtor’s assets to *all* of the debtor’s debts, and not merely the *past due* debts, as was the case under the Old Bankruptcy Act, to measure over-indebtedness.

### Types of Proceedings

Under the New Insolvency Act, there are three types of bankruptcy proceedings, two of which did not exist under the Old Bankruptcy Act:

- **Bankruptcy.** In this type of proceeding, the debtor’s assets and business are liquidated; creditor’s claims are settled proportionately using the proceeds of the liquidation. This type of proceeding also existed under the Old Bankruptcy Act.
- **Restructuring.** In this type of proceeding, the debtor’s business is preserved and operated under a restructuring plan supervised by creditors.

The creditors' claims are satisfied based on an approved plan using the proceeds from the debtor's operations. Once the obligations of the debtor as set forth in the plan are fulfilled and the aims of the reorganization plan achieved, the bankruptcy proceedings are terminated and the debtor's enterprise can continue with its ordinary activities as it did before the reorganization. Unless agreed between the debtor and its creditors (both secured and unsecured), a restructuring is only available for entrepreneurs whose annual gross revenue was at least CZK 100,000,000 (about \$4,500,000) or which has at least 100 employees.<sup>1</sup>

- **Debt Clearance.** In this type of proceeding, an eligible debtor is able to propose a payment to creditors of less than 100 percent and that portion of the debtor's debts that is unsatisfied is extinguished. Debt clearance proceedings are only available to debtors with no more than 50 creditors and which are either natural persons or businesses with less than CZK 2,000,000 (about \$90,000) in gross revenues in the last fiscal or calendar year. In a debt clearance, the debtor applies to the court for approval to use a debt clearance proceeding and presents to the court an estimate of its total income for the next five years and a statement of its total income for the past three years. It also discloses its proposed payout to creditors either by way of a prompt sale of the debtor's property and lump sum payment to creditors, or over time with a series of installment payments. If the projected payout to creditors as proposed by the debtor is less than 30 percent of the debts owed, the debtor must obtain the consent of its unsecured creditors before the proposed debt clearance is approved by the court. Once a debtor obtains the consent of its unsecured creditors, the insolvency court must still determine whether or not the debtor

should be permitted to settle its debts by debt clearance. This is a discretionary test applied by the insolvency court with no established criteria.

The New Insolvency Act provides that the creditors may select the type of proceeding at their first meeting, and that this determination is binding on the Court. Alternatively, the Court may determine the type of insolvency proceeding within three months after a Declaration of Insolvency is issued.<sup>2</sup>

### Access to Collateral

Under the Old Bankruptcy Act, a secured creditor was entitled to 70 percent of the net proceeds of the assets serving as security for the debts owed to such secured creditor, and the remaining 30 percent was made available for distribution among the unsecured creditors pro-rata. Under the New Insolvency Act, secured claims are entitled to payment in full from the proceeds of the sale of the collateral for such claims. Only if the net proceeds from the sale exceed 100 percent of the secured claims will any proceeds be available to unsecured creditors.

### Increased Role of Unsecured Creditors

One of the frequent criticisms of the Old Bankruptcy Act was the fact that creditors had little influence on bankruptcy proceedings. This fact, coupled with the very low recovery rate for unsecured creditors (on average, only 1 – 4% of the face value of claims registered), resulted in little participation by creditors. Although secured creditors typically played a slightly more active role, in general, the whole bankruptcy process was primarily under the control of the bankruptcy judge and the bankruptcy administrator.

Under the New Insolvency Act, unsecured creditors are given a stronger position and more powers than they had under the Old Bankruptcy Act. For example, now it will be the creditors that determine

---

1 Although the Old Insolvency Act had a procedure known as "composition," which is similar to a reorganization, this procedure was virtually unused and debtors' financial difficulties were almost exclusively solved through bankruptcy proceedings, which always led to the liquidation of the debtor.

2 A Declaration of Insolvency is issued within 15 days from the filing of the petition, which may be filed by the debtor or a creditor. Under the Old Bankruptcy Act, a debtor became bankrupt only after the court granted the declaration of bankruptcy. The New Bankruptcy Act changes this procedure and provides that an entity is a "debtor" once (i) the entity or a creditor files a petition, and (ii) the petition is recorded in the Insolvency Register established by the New Bankruptcy Act.

in a reorganization or debt clearance procedure how the bankruptcy of a particular debtor should be resolved. The new law also provides creditors with a host of procedural tools that give them more control over the actions of the bankruptcy administrator, including the power to remove and replace the bankruptcy administrator at practically at any time if creditors are dissatisfied with the performance of the bankruptcy administrator. These changes likely will induce greater creditor participation in insolvency proceedings than was the case under the Old Bankruptcy Act.

### **Claims**

Like the Old Bankruptcy Act, the New Bankruptcy Act provides that, once an insolvency proceeding is commenced, creditors must register their claims within a time-limit set by the court. The court then delivers copies of the claims to the bankruptcy administrator, who prepares a list of admitted and disputed claims. The New Bankruptcy Act changes the process of liquidating disputed claims. Specifically, if a creditor's claim is disputed, and the court finds that the creditor's actual claim was less than 50 percent of the registered claim, then the creditor (i) loses the right to have its claim satisfied; (ii) must pay the difference between the actual and registered amounts of the claim into the bankruptcy estate; and (iii) for secured claims, loses the right to have the claim satisfied from the sale of the collateral. In addition, the foregoing payment is deemed guaranteed by operation of law by the person(s) who signed the creditor's claim.<sup>3</sup>

One change under the New Insolvency Act is that creditors may set-off their claims against a debtor's counterclaims even after a Declaration of

Insolvency is issued. A creditor may setoff a claim if: (i) the creditor pays into the bankruptcy estate the amount, if any, by which the debtor's claim exceeds the creditor's claim; (ii) at the time of acquiring the claim, the creditor was not aware of the debtor's insolvency; and (iii) the creditor registered its claim in the insolvency proceeding and the claim was recognized by the bankruptcy administrator.

### **Other Modifications**

The final sections of the New Insolvency Act are dedicated to special bankruptcy proceedings for banks, savings banks, insurance companies and credit cooperatives.

Notably, cross-border insolvencies within the European Union are directly regulated by Council Regulation (EC) No. 1346/2000 on insolvency proceedings. All of the EU laws and regulations, including the insolvency regulation, became binding on the Czech Republic when it joined the EU on May 1, 2004. The New Insolvency Act, however, does not contain any cross-border insolvency provisions. Accordingly, the omission of such provisions results in uncertainty with cross-border insolvencies in relation to countries that are not members of the EU.

### **Conclusion**

It will take some time before the legal and business communities become accustomed to the New Insolvency Act and are able to utilize its advantages for the benefit of all parties involved. Nevertheless, it is a positive development that a new and modern insolvency law was finally adopted in the Czech Republic.

---

<sup>3</sup> These penalties may not apply if the creditor does not exercise its rights during the proceedings relating to the claim and if the creditor does not vote during creditors' meetings.

## Leave For Interlocutory Appeal Granted Regarding *Enron* Equitable Subordination Decision

In the December 2005 issue of *Insolvency Notes*, we discussed the decision by the United States Bankruptcy Court for the Southern District of New York that held that a claim that is subject to subordination due to a creditor's misconduct or failure to return a preference remains subject to subordination in the hands of a good faith transferee of such claim. *Enron Corp. v. Avenue Special Situations Fund II, LP et al.*, 333 B.R. 205 (Bankr. S.D.N.Y. 2005) ("*Enron*"). On September 5, 2006, the District Court for the Southern District of New York granted leave to the defendant transferees and certain "Intervenors" to file an interlocutory appeal from that decision.<sup>1</sup> In determining that the

decision was "one of those rare cases in which an immediate review of and interlocutory order is warranted,"<sup>2</sup> the court seemed particularly intrigued by the legal question of whether the language of Bankruptcy Code §510(c), its legislative history and its case law "indicate that the 'principles of equitable subordination' do not allow the doctrine [of equitable subordination] to be applied to innocent claim holders."<sup>3</sup> How the District Court will rule on the appeal from the *Enron* decision remains to be seen, but the District's Court's ruling will certainly be of great interest to the volatile claims trading market.

---

<sup>1</sup> *Enron Corp. v. Springfield Associates, L.L.C. (In re Enron Corp.)*, Adv. No. 05-01025, slip op. (S.D.N.Y. Sept. 5, 2006)

<sup>2</sup> *Id.* at 16.

<sup>3</sup> *Id.* at 20 (footnote omitted.).

## White & Case Restructuring Partners—Worldwide

Clients entrust our global financial restructuring and insolvency group of 150 lawyers with their most significant restructuring and bankruptcy matters because of our expertise, depth and track record, including in the world's most complex cross-border insolvencies. To learn more, contact any of the partners listed below.

---

### Bangkok

Chinnavat Chinsangaram	+ 662 656 1721 ext. 5011	cchinsangaram@whitecase.com
Weerawong Chittmittrapap	+ 662 656 1721 ext. 4001	wchittmittrapap@whitecase.com
Manida Zimmerman	+ 662 656 1721 ext. 4003	mzimmerman@whitecase.com

---

### Brussels

Thierry Bosly	+ 32 2 209 82 18	tbosly@whitecase.com
---------------	------------------	----------------------

---

### Budapest

Károly Fóti	+ 36 1 488 5200	kfoti@whitecase.com
-------------	-----------------	---------------------

---

### Dresden

Axel Bauer	+ 49 351 8888 10	abauer@whitecase.com
Bettina Schmudde	+ 49 531 8888 10	bschmudde@whitecase.com

---

### Düsseldorf

Biner Bähr	+ 49 211 540 680 192	bbaeher@whitecase.com
------------	----------------------	-----------------------

---

### Frankfurt

Claudia Jansen	+ 49 69 4272686 5361	cjansen@whitecase.com
----------------	----------------------	-----------------------

---

### Hamburg

Klaus Pannen	+ 49 40 350 05 166	kpannen@whitecase.com
Sven-Holger Undritz	+ 49 40 350 05 184	shundritz@whitecase.com

---

### Hong Kong

Edward Cairns	+ 852 2822 8713	edcairns@whitecase.com
Ken Ellis	+ 852 2822 8718	kellis@whitecase.com
Mark Fairbairn	+ 852 2822 8700	mfairbairn@whitecase.com
Jeremy Leifer	+ 852 2822 8753	jleifer@whitecase.com

---

### London

Maurice Alllen	+ 44 20 7532 1210	mallen@whitecase.com
Mike Goetz	+ 44 20 7532 3626	mgoetz@whitecase.com
Alastair Graham	+ 44 20 7532 3270	agramham@whitecase.com
Dan Hamilton	+ 44 20 7532 3689	dhamilton@whitecase.com
John Higham – QC	+ 44 20 7532 1803	jhigham@whitecase.com
Martin Hughes	+ 44 20 7532 1409	mhughes@whitecase.com

## Insolvency Notes

---

### Los Angeles

Craig Averch	+ 1 213 620 7704	caverch@whitecase.com
Brian Holman	+ 1 213 620 7781	bholman@whitecase.com
Maria Pum	+ 1 213 620 7705	mpum@whitecase.com

---

### Mexico City

Thomas Heather	+ 5255 5540 9638	theather@whitecase.com
Javier Perez-Rocha	+ 5255 5540 9622	jperez-rocha@whitecase.com

---

### Miami

John Cunningham	+ 1 305 995 5252	jcunningham@whitecase.com
Thomas Lauria	+ 1 305 995 5282	tlauria@whitecase.com
Gerard Uzzi	+ 1 305 995 5274	guzzi@whitecase.com

---

### Moscow

Igor Ostapets	+ 7 095 787 3019	iostapets@whitecase.com
Eric Michailov	+ 7 095 787 3018	emichailov@whitecase.com

---

### Munich

Martin Heidrich	+ 49 89 206043 975	mheidrich@whitecase.com
-----------------	--------------------	-------------------------

---

### New York

Howard Beltzer	+ 1 212 819 8306	hbeltzer@whitecase.com
Andrew DeNatale	+ 1 212 819 8303	adenatale@whitecase.com
Sandeep Qusba	+ 1 212 819 8419	squsba@whitecase.com
Evan Hollander	+ 1 212 819 8660	ehollander@whitecase.com
Alexis Rovzar	+ 1 212 819 8691	arovzar@whitecase.com
Abraham Zylberberg	+ 1 212 819 8500	azylberberg@whitecase.com

---

### Paris

Jean-Luc Boussard	+ 33 1 55 04 15 00	jlboussard@whitecase.com
Reinhard Dammann	+ 33 1 55 04 15 40	rdammann@whitecase.com
Francois Farmine	+ 33 1 55 04 15 30	ffarmine@whitecase.com
Thomas McDonald	+ 33 1 55 04 17 61	tmcDonald@whitecase.com
Philippe Metais	+ 33 1 55 04 15 82	pmetais@whitecase.com

---

### Prague

Ivo Barta	+ 420 2 5577 1143	ibarta@whitecase.com
Jan Matejcek	+ 420 2 5577 1242	jmatejcek@whitecase.com
David Plch	+ 420 2 5577 1298	dplch@whitecase.com

---

### Singapore

Bertie Mehigan	+ 65 6347 1311	bmehigan@whitecase.com
----------------	----------------	------------------------

---

**Tokyo**

Robert Grondine	+ 81 3 3259 0155	rgrondine@whitecase.com
Tetsuya Morimoto	+ 81 3 3259 0175	tmorimoto@whitecase.com

---

**Washington, DC**

Sam J. Alberts	+ 1 202 626 3616	salberts@whitecase.com
----------------	------------------	------------------------

---

**Warsaw**

Lech Gilicinski	+ 48 22 50 50 135	lgilicinski@whitecase.com
-----------------	-------------------	---------------------------

## White & Case

White & Case is a leading global law firm with nearly 2,000 lawyers in 24 countries. Among the first US-based law firms to establish a truly global presence, we provide counsel and representation in virtually every area of law that affects cross-border business. Our clients value both the breadth of our network and depth of our US, English and local law capabilities in each of our offices and rely on us for their complex cross-border transactions, arbitration and litigation. Whether in established or emerging markets, the hallmark of White & Case is our complete dedication to the business priorities and legal needs of our clients.

Our approach is based on listening to our clients' needs, taking the time to understand their business and responding with effective strategies and solutions, no matter how big the opportunity or formidable the challenge. With new technologies, globalization, consolidation and other forces continuously changing how business gets done, we help our clients evaluate the risks and rewards of ventures designed to advance their interests.

We work with the world's most established and respected companies, including 75 percent of the *Global Fortune 100* and 25 percent of the *Fortune 500*, as well as with start-up visionaries, governments and state-owned entities.

Leading industry publications consistently recognize White & Case for exemplary work, including:

White & Case is a dominant force in the major markets of Europe, North America and Asia. Synonymous with excellence, White & Case is a truly global player.

—*PLC Which Lawyer? 2006 Yearbook*

Restructuring Team of the Year 2005

—*IFLR Americas Awards*

Banking and Finance Team of the Year 2005

—*Legal Business*

Global Law Firm of the Year 2005

—*Project Finance International*

Infrastructure Team of the Year 2005

—*The Lawyer*

Transportation and Infrastructure Legal Adviser of the Year 2005

—*Infrastructure Journal*

One of the Top Five Law Firms for Global M&A 2005

—*Thomson Financial/Bloomberg*

Best Firm for Oil & Gas Financings and Petrochemicals Financings 2005

—*Project Finance*

One of the Top Ten Antitrust Law Firms 2005

—*Global Competition Review*

One of the Top Ten Global Employment Law Firms 2005

—*PLC Cross-Border Quarterly*

Top International Law Firm 2005

—*Vault Guide to the Top 100 Law Firms*

### Other Periodicals

Please refer to the White & Case Home Page, [www.whitecase.com](http://www.whitecase.com), to access current and archived copies of our many newsletters and client memoranda.

This newsletter is protected by copyright. Material appearing herein may be reproduced or translated with appropriate credit. Due to the general nature of its contents, this newsletter is not and should not be regarded as legal advice.