PUBLICATIONS

# Second Circuit Affirms Designation of Secured Lenders' Vote and Effective Cram Down

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The U.S. Court of Appeals for the Second Circuit, on Dec. 6, 2010, summarily affirmed a bankruptcy court's designation of a secured lender's vote on a reorganization plan in a two-page order, effectively enabling the debtor to cram down the lender's claim. *In re DBSD North America, Inc.*, __ F.3d__, 2010 WL 4925878 (2d Cir. Dec. 6, 2010) (*held*, lower courts did not err in designating secured lender's vote, but "plan violated the absolute priority rule" in its treatment of a separate unsecured creditor). As a result, the secured lender that bought all of the debtor's senior first lien secured debt at par will be paid only interest over a period of four years before its loan matures. See *In re DBSD North America, Inc.*, 419 B.R. 179, 207- 08 (Bankr. S.D.N.Y. 2009) (confirming debtors' proposed plan). According to the Second Circuit, an "opinion" explaining its reasoning "will follow in due course."

The *DBSD* ruling is important to would-be acquirers of Chapter 11 debtors. As shown, a lender's socalled "loan to own" strategy may still be valid, but acquirers cannot overreach. Consistent with other decisions discussed, *DBSD* means that a competitor's manipulating the reorganization process to block a reorganization or to destroy the debtor's business will not work.

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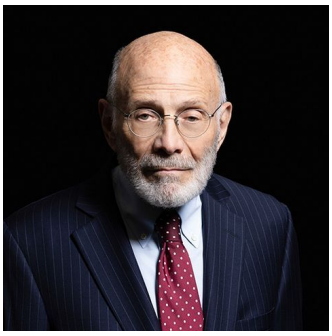

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