

**Attorneys****Partner**

- Donald S. Zakarin

**Associate**

- Bryan T. Mohler

## **Pryor Cashman Obtains Dismissal of Suit Brought Against Client by SBA**

On October 27, 2008, the U.S. District Court for the Southern District of New York granted Pryor Cashman's motion, made on behalf of the limited and general partners of Coqui Capital Partners, L.P. (Coqui), to dismiss without prejudice the complaint filed by the U.S. Small Business Administration (SBA) against Coqui on the grounds that the SBA was bound by an arbitration provision and thus the Court did not have jurisdiction over the dispute.

Pryor Cashman represented the limited and general partners of Coqui, a Small Business Investment Corporation licensed by the SBA which had been sued by the SBA in its capacity of Receiver of Coqui in liquidation. Claiming that the limited partners owed millions of dollars in unpaid capital contributions owed to Coqui, the SBA filed the litigation in federal court to compel the limited partners to fulfill their alleged capital obligations.

On behalf of our clients, Pryor Cashman moved to dismiss the complaint, pointing out that their subscription agreements limit their obligation to make capital contributions to a period of 5 years and that the SBA claim was asserted after the expiration of the 5 year period, and seeking dismissal on the grounds that the SBA could not pursue its claims in the Receivership Court because the Amended Limited Partnership Agreement requires the SBA to arbitrate all disputes.

In opposition to the motion, the SBA argued that: (a) it was not bound by the arbitration provision; (b) the dispute was not subject to the arbitration provision; and (c) in any event, the Receivership Court had exclusive jurisdiction over the Receivership Estate.

The Court rejected the SBA's arguments and granted Pryor Cashman's motion, dismissing the complaint without prejudice to the SBA's pursuing its claims in arbitration. The Court further noted that while the Amended Limited Partnership Agreement defines the terms under which the partnership operates, the subscription agreements (which contain the 5 year limitation on capital calls) "specify the particular terms and conditions of each limited partner's obligations to contribute capital to the limited partnership."

The case was handled by Partner Donald Zakarin, Chair of the firm's Litigation Group, and associate Bryan Mohler.

To read the entire decision in *United States Small Business Administration v. Coqui Capital Management LLC*, please [click here](#).