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Pryor Cashman Successfully Precludes Introduction of Law Professor's Proposed Expert Testimony

Pryor Cashman is representing a group of claimants in contested proceedings in the Chapter 11 bankruptcy case of SageCrest II, LLC (“SageCrest”) pending in the U.S. Bankruptcy Court for the District of Connecticut. The disputes center on whether claimants redeemed their membership interests under SageCrest’s operating agreement and applicable law, such that the unpaid amounts they claim to be owed for their redemptions are entitled to treatment as “creditor claims” and not as equity interests for purposes of the SageCrest bankruptcy case.

In support of its position, SageCrest proposed to introduce expert reports and supporting testimony of Carter G. Bishop, Professor of Law at Suffolk University Law School, concerning the interpretation of the debtor’s operating agreement. Professor Bishop’s two reports opined that (1) claimants did not effectively redeem their membership interests prior to the commencement of the bankruptcy case pursuant to the Debtor’s operating agreement and (2) claimants’ membership interests should be characterized as “securities” under federal securities law and bankruptcy law.

Pryor Cashman, on behalf of claimants, moved to exclude Professor Bishop’s expert reports and proposed trial testimony as impermissible legal conclusions and opinions on ultimate issues.

On May 5, 2009, after briefing and oral argument, U.S. Bankruptcy Judge Alan H.W. Shiff issued a bench ruling granting Pryor Cashman’s motion. *SageCrest II, LLC, et al. v. Topwater Exclusive Fund III, LLC, et al (In re SageCrest II, LLC)*, Adv. Proc No. 08-05097 (AHWS) (Bankr. D. Conn., Transcript of Proceedings, May 5, 2009 [Docket Entry No. 55]).

In its ruling, the Court concluded that Professor Bishop’s first report and proposed testimony (concerning the redemption of the claimants’ membership interests) constituted improper legal conclusions and opinions that would not be helpful to the Court and that usurped the Court’s exclusive province to interpret and construe a contract, and excluded the entire expert report and proposed testimony on that issue.

The parties entered into a stipulation to resolve issues concerning the second expert report (concerning the legal characterization of the membership interests as “securities” under federal law), thereby obviating the need for any testimony by Professor Bishop on that aspect of the case.

Pryor Cashman Bankruptcy Partner Richard Levy, Jr. and Counsel Robert M. Fleischer represented the claimants in the motion proceedings.