

## Bankruptcy Alert

### Supreme Court to Address Secured Creditors' Right to Credit Bid

December 19, 2011

The issue of credit bidding has once again moved into the spotlight, and will in the coming year be the subject of a ruling by the Supreme Court, in what will be the highest court's first substantive ruling arising from a chapter 11 case in many years.<sup>1</sup>

In a client alert issued last summer ([Seventh Circuit Holds That Secured Lenders Must Have the Opportunity to Credit Bid](#)), we discussed the decision of the Seventh Circuit in the *River Road* bankruptcy case, in which it held that a proposed plan of reorganization that contemplated the sale of a debtor's assets free and clear of a dissenting secured lender's liens could not be confirmed under Bankruptcy Code section 1129(b)(2)(A) unless the proposed plan offered the secured lender the opportunity to credit bid in connection with the sale of the debtor's assets.<sup>2</sup> The *River Road* decision conflicted with last year's Third Circuit ruling in *In re Philadelphia Newspapers*,<sup>3</sup> in which the Third Circuit held that a debtor could sell assets free and clear of liens under a proposed plan of reorganization without affording dissenting secured lenders the opportunity to credit bid, and with the Fifth Circuit's earlier ruling in *Pacific Lumber*.<sup>4</sup>

Following the Seventh Circuit's ruling in *River Road*, the *River Road* debtors petitioned the Supreme Court to hear an appeal of the decision. Such is the importance of this issue to the distressed investing community that the Loan Syndications and Trading Association, despite supporting the winning side of the credit bidding argument at the Seventh Circuit, filed a brief in support of the debtors' effort to have the Supreme Court hear the case. With a clear split between the circuits now in existence, the Supreme Court agreed that the time is ripe for the law to be clarified, and for one side or the other in the credit bidding debate to prevail.

On December 12, 2011, the Supreme Court granted the petition and agreed to hear the appeal. We expect briefing on the appeal to conclude during the spring of 2012, with oral argument to be scheduled shortly thereafter. Resolution of the circuit court split will have wide-spread ramifications for the lender community and prospective debtors alike, as all eyes turn to the Supreme Court for clarity and guidance on the credit bidding question.

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#### CONTACT INFORMATION

<sup>1</sup> According to LSTA article "[Credit Bidding Goes to the Supreme Court](#)," it has been 11 years since the Court has addressed a substantive bankruptcy issue.

<sup>2</sup> *River Road Hotel Partners, LLC v. Amalgamated Bank*, Nos. 09-30029, 09-30047 (7th Cir. June 28, 2011). [Reference to prior credit bidding client alert].

<sup>3</sup> 599 F.3d 298 (3d Cir. 2010).

<sup>4</sup> 584 F.3d 229 (5th Cir. 2009).



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