

PUBLICATIONS

Second Circuit Reinforces Bankruptcy Code Settlement Payment Safe Harbor

The Bankruptcy Strategist

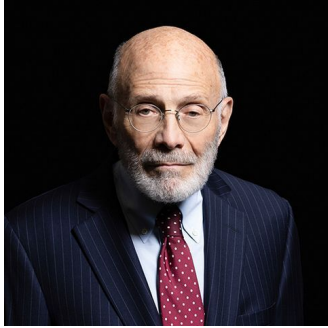
November 2024

In his latest article for *The Bankruptcy Strategist* titled, “Second Circuit Reinforces Bankruptcy Code Settlement Payment Safe Harbor,” Schulte Roth & Zabel of counsel Michael L. Cook explores the Second Circuit’s decision that transfers linked to securities contracts by qualifying financial institutions are protected under the Bankruptcy Code’s safe harbor. Schulte’s litigators (Bill Gussman and Frank Olander) represented certain of the successful defendants.

The Second Circuit affirmed the lower courts’ judgment that a “transfer made ... in connection with a securities contract ... by a qualifying financial institution” was entitled “to the protection of [Bankruptcy] Code §546 (e)’s safe harbor, which pre-empts the trustee’s state-law fraudulent [transfer] claims.” *In re Boston Generating, LLC*, 2024 WL 4234886 (2d Cir. Sept. 19, 2024). *In re Tribune Co. Fraudulent Conv. Litig.*, 946 F.3d. 66 (2d Cir. 2019) (*Tribune II*), *cert. denied*, 141 S. Ct. 2552 (2021) (Creditors could not circumvent §546(e) safe harbor by suing under state law). More significant, though, was the court’s explanation of why: a) the payment here was part of a securities contract; and why b) the debtor parent and its debtor subsidiary were “each a ‘financial institution’ under Bankruptcy Code (Code) §101(22)(A).”

Read the article.

Related People



**Michael
Cook**

Of Counsel
New York

Practices

BUSINESS REORGANIZATION