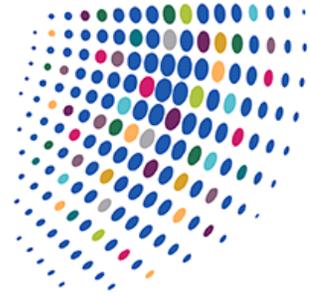


In the News

O'Melveny's Svirsky Quoted in Turnarounds & Workouts on Bankruptcy Courts' CDO Override

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O'Melveny & Myers LLP partner Gary Svirsky was quoted in the May 14, 2012, *Turnarounds & Workouts* article, "CDO Override: US Courts Have Authority Over Offshore Securities." The article discusses a recent bankruptcy case involving Zais Investment Grade Limited VII, a Cayman Islands-based distressed collateralized debt obligation (CDO). "In declining to dismiss a CDO issuer's involuntary Chapter 11 case, a New Jersey bankruptcy court found that it had jurisdiction over an offshore CDO and held that it had authority to override express contractual provisions setting out intercreditor rights," Svirsky said, describing the case. Svirsky told *Turnarounds & Workouts* that the ruling is "novel and questionable" because it could embolden senior noteholders to compel offshore CDOs or other special purpose entities into involuntary bankruptcy in the US, even though express indenture terms about collateral disposition are in place.

Svirsky further discussed the decision's two significant implications for structured finance. One is that the ruling implies that merely by performing essential managerial or administrative functions and holding pledged collateral in the US, an offshore CDO could be eligible to be a debtor in the US. "That result is noteworthy because many offshore CDOs are structured with a view to minimizing risk of a bankruptcy filing in the United States," Svirsky said. Another possible ramification, according to Svirsky, is an increasing disregard among bankruptcy courts towards provisions regarding creditors' rights. "The court's reference to rejecting burdensome executory contracts seems questionable at best because there is nothing in the decision to suggest that the indenture was burdensome...to the debtor's estate or that it was an executory contract," he said. Svirsky also noted that senior noteholders could try to use the Zais case to disregard the provisions of nearly any intercreditor agreement. Junior noteholders of an offshore CDO, however, "could require indenture terms that prohibit senior noteholders from commencing an insolvency proceeding against the debtor and provide that no insolvency proceeding may be commenced in the United States," he said.



Svirsky is a member of O'Melveny's Class Actions, Mass Torts and Insurance Litigation Practice and resides in the Firm's New York office.