

Second Circuit Overturns Marblegate, Holding That Section 316(b) of the Trust Indenture Act Protects Noteholders' Rights Only With Respect to Core Payment Terms

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On January 17, 2017, the United States Court of Appeals for the Second Circuit ruled, in a 2-1 decision, in favor of the for-profit education company Education Management Corp. and its affiliated entities ("EMC"), holding that EMC's out-of-court restructuring—which severely limited a holdout creditor from receiving any repayment—did not alter any of the governing indenture's core payment terms and, thus, did not violate Section 316(b) of the Trust Indenture Act ("Section 316(b)"). The Second Circuit's decision reversed a 2015 decision of the Southern District of New York, which held that Section 316(b) was applicable to involuntary debt restructurings that impair a nonconsenting creditor's ability to receive repayment even without formally changing any core indenture payment terms. While potentially subject to further review, this decision marks a return to the traditional interpretation of Section 316(b) as a shield only against collusive changes to core indenture terms that affect the noteholders' legal—not substantive—right to receive payment when due.

Attorney

- Charles A. Gilman