

874 F.3d 787, *, 2017 U.S. App. LEXIS 20596, **;
Bankr. L. Rep. (CCH) P83,176; 64 Bankr. Ct. Dec. 216

[HN11] A "make-whole" premium is a contractual substitute for interest lost on notes that are redeemed before their expected due date. Its purpose is to ensure that a lender is compensated for being paid earlier than the original maturity of its loan for the interest it will not receive.

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[HN12] The principle of "equitable mootness" is a prudential doctrine that is invoked to avoid disturbing a reorganization plan once it is implemented. The doctrine allows appellate courts to dismiss bankruptcy appeals when, during the pendency of an appeal, events occur such that even though effective relief could conceivably be fashioned, implementation of that relief would be inequitable. The doctrine requires an appellate court to carefully balance the importance of finality in bankruptcy proceedings against an appellant's right to review and relief.

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[HN13] Where a reorganization plan has been substantially consummated, the United States Court of Appeals for the Second Circuit presumes that an appeal of that plan is equitably moot. That presumption, however, gives way where five factors the Second Circuit first identified in *In re Chateaugay Corp.* ("Chateaugay II") are met. They are, where: (i) effective relief can be ordered; (ii) relief will not affect the debtor's reemergence; (iii) relief will not unravel intricate transactions; (iv) affected third-parties are notified and able to participate in the appeal; and (v) an appellant diligently sought a stay of the reorganization plan. Although the Second Circuit requires satisfaction of each Chateaugay II factor to overcome a mootness presumption, it has placed significant reliance on the fifth factor, concluding that a chief consideration under Chateaugay II is whether an appellant sought a stay of confirmation. Along those lines, the Second Circuit concluded in *In re Metromedia*, that if a stay was sought, it will provide relief if it is at all feasible, that is, unless relief would knock the props out from under the authorization for every transaction that has taken place and create an unmanageable, uncontrollable situation for the bankruptcy court.

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[HN14] Equitable mootness issues only arise in earnest following a judicial determination that some facet of a reorganization plan violates the Bankruptcy Code. It is generally considered inappropriately harsh to deny relief to which one is entitled on the purportedly

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