

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

Notes holders, as to which the plan is fair. In fact, our judgment allows for no redistribution other than that from the Debtors to the Senior-Lien Notes holders.

Given the scale of Debtors' reorganization, we are not persuaded that a payment of, perhaps, \$32 million in annual payments over seven years, with no other redistribution from other creditors or third parties, would unravel the plan, threaten Debtors' **[**38]** emergence, or otherwise materially implicate the concerns identified in *Chateaugay II*.

Our conclusion is supported by the findings of the lower courts, which had intimate familiarity with the Debtors' financial condition and the transactions that will arise from the reorganization. Although it made no determinative ruling as to equitable mootness, the bankruptcy court opined that "the risk of equitable mootness is not strong here *for either set of movants* . . . the senior secured lender set of movants and the senior subordinated noteholder movants." 15-1682 JA 4165 (emphasis added). The district court agreed. 15-1682 JA 4837 ("I agree with Judge Drain that the risk of equitable mootness here is not very great . . ."). Debtors' request that we dismiss these appeals as equitably moot is denied.

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To summarize, we conclude as follows:

1. The Second-Lien Notes stand in priority to the Subordinated Notes.
- [*806]** 2. The Senior-Lien Notes holders are not entitled to the make-whole premium.
3. The lower court erred in the process it used to calculate the interest rate applicable to the replacement notes received by the Senior-Lien Notes holders. On remand, the bankruptcy court should assess whether an efficient market rate can be **[**39]** ascertained, and, if so, apply it to the replacement notes.
4. We decline to dismiss any of these appeals as equitably moot.

For the foregoing reasons, we **AFFIRM** the District Court's order in part, with respect to the priority of the Subordinated Notes and the Senior-Lien Notes holders' entitlement to a make-whole premium; **REVERSE** the order in part, with respect to the method of calculating the interest rate on the Senior-Lien Notes holders' replacement notes; and **REMAND** the matter for further proceedings consistent with this opinion.

In re CIL, LTD., Debtor

18-cv-2226

UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

2018 U.S. Dist. LEXIS 83452

May 4, 2018, Decided

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