KOBRE & KIM | DISPUTES AND INVESTIGATIONS

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Kobre & Kim Clients Secure Significant Trial Victory Recharacterizing AIG's US $37+ Billion Claim

Following a nine-day trial, Kobre & Kim clients secured a significant victory in the AIG Financial Products (AIG FP) bankruptcy case, when a Delaware court deemed AIG's asserted US $37+ billion claim should be treated as an equity investment rather than genuine debt and, in addition, equitably subordinated AIG's claim to our clients' claims. Our clients seek hundreds of millions, which will be determined in a second phase of the case.

Former executives of AIG Financial Products (AIG FP), represented by Kobre & Kim, obtained a key ruling in the long-running litigation that began in Connecticut state court and was later tried in bankruptcy court after AIG FP filed for bankruptcy in 2022. The U.S. Bankruptcy Court for the District of Delaware held that AIG's asserted US $37+ billion intercompany claim should be recharacterized as equity rather than debt and, alternatively, subordinated to the former executives' claims because AIG engaged in deception.

The decision rejects AIG's effort to recover ahead of other stakeholders based on decades of funding provided to AIG FP during the financial crisis and thereafter. In a detailed opinion, the court found that the economic reality of the transactions supported treating the payments as equity contributions rather than loans. The court further held that, even if characterized as debt, AIG's claims would be equitably subordinated.

The ruling represents a significant outcome for the former executives following nearly seven years of litigation challenging AIG's asserted claims and seeking to protect their rights to deferred compensation and other claims against the estate.

The decision further highlights Kobre & Kim's experience securing trial victories in high-stakes restructuring and insolvency disputes. In recent years, the firm has helped clients achieve significant courtroom successes in matters such as the landmark Hunkemöller liability management exercise dispute, which addressed complex questions relating to creditor rights, capital structures and restructuring transactions.

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Why This Matters

The decision demonstrates that courts may look beyond the formal labels attached to insider financing arrangements and instead focus on their economic substance.

The ruling highlights several important considerations:

- Intercompany payments documented as debt may face challenges where the underlying facts suggest an equity investment rather than a true lending relationship.
- Parent company and insider claims can face heightened scrutiny where the insider claimant exercised control over the debtor's affairs to harm it or obtain an advantage against other creditors.
- Recharacterization and equitable subordination remain powerful tools for stakeholders seeking to challenge insider claims that threaten to dilute recoveries.

As multinational corporate structures become increasingly complex, the decision serves as a reminder that substance, rather than form alone, may ultimately determine priority in insolvency proceedings.

The team was led by Steven Perlstein, Zachary Rosenbaum, George Stamatopoulos and Michael Fasano.

The American Lawyer recognized the result, naming the team among its Litigator of the Week Runners-Up and Shout-Outs following the decision.

The decision was reported by: The Wall Street Journal | Bloomberg Law | The Insurer

About Kobre & Kim

Kobre & Kim is a conflict-free global law firm focused on disputes and investigations, often involving fraud and misconduct.

Our team:

- Represents creditors, investors, officeholders, directors, and other stakeholders in high-stakes restructuring, insolvency, and debtor-creditor disputes.
- Combines deep experience in complex credit structures and bankruptcy litigation with courtroom advocacy in state, federal, and bankruptcy courts across the U.S.
- Advises clients pursuing and defending claims involving intercompany debt, equitable subordination, debt recharacterization, fraudulent transfer, and other issues affecting stakeholder recoveries.
- Coordinates cross-border strategies across key financial centers worldwide, with lawyers admitted throughout the U.S., Asia, the UK, EMEA, Latin America, and leading offshore jurisdictions.

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