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Innovative Solutions in Financial Crisis: *JPMorgan Chase Bank v. Charter Comm'cns Operating, LLC (In re Charter Comm'cns)*

AMY EDGY FERBER, DANIEL M. SYPHARD AND JENNIFER L. SEIDMAN

This article provides a summary and analysis of JPMorgan Chase Bank v. Charter Comm'cns Operating, LLC (In re Charter Comm'cns).

Before the global financial crisis of 2008, borrowers were able to borrow at historically low interest rates with few financial covenants in their deal documents. After the crash of September 2008 and its ensuing financial fallout, many financially distressed borrowers sought to preserve the economic value of their existing loans by reinstating their secured credit on preexisting terms while restructuring their other obligations. Lenders, faced with the potential for staggering defaults and borrowers with greatly diminished credit profiles, became increasingly hostile to such restructuring strategies.

This article provides a summary and analysis of *JPMorgan Chase Bank v. Charter Comm'cns Operating, LLC (In re Charter Comm'cns).*[1] In deciding whether to approve the debtors' (as defined below) prenegotiated plan of reorganization — which was hammered out during the throes of the global financial crisis — the *Charter* court was faced with complex issues relating to

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reinstatement of secured debt, the definition of certain terms under Section 13(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the statutory requirements for plan confirmation, all of which will be discussed below.

SUMMARY OF *CHARTER COMMUNICATIONS*

Prior to its bankruptcy, Charter Communications, Inc. ("CCI" and, together with its affiliated debtors, "Charter" or the "debtors") was the nation's fourth largest cable television company. Finding itself in great economic distress in the midst of the financial crisis, Charter began reviewing restructuring alternatives in order to avoid a free-fall into bankruptcy. After examining its options, Charter decided to negotiate and file a prenegotiated bankruptcy case, central to which was the reinstatement of approximately $11.4 billion in senior secured debt.[2]

Prior to filing, Charter negotiated its recapitalization with an informal committee of bondholders known as the "Crossover Committee." In essence, Charter's restructuring strategy was to (i) convince bondholders to convert their debt to equity and agree to invest in the reorganized capital structure, (ii) leave senior secured debt in place in order to take advantage of existing (and favorable) interest rates and terms and (iii) negotiate a settlement with Paul Allen ("Allen"), the co-founder of Microsoft and controlling shareholder of Charter, to ensure that Charter would not breach certain "change of control" provisions under its senior debt instruments.

On March 27, 2009, Charter filed for protection under Chapter 11 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). In connection with the filing, Charter also filed the Plan. As discussed above, the terms of the Plan included the reinstatement of the senior secured debt. JPMorgan Chase Bank ("JPMorgan"), as syndicate agent for the senior secured lenders (the "Secured Lenders"), contested Charter's Plan through the filing of an adversary proceeding (the "Adversary Proceeding") and a confirmation objection (the "Confirmation Objection"). The Adversary Proceeding and the Confirmation Objection each asserted that various non-monetary defaults under Charter's senior credit agreement (the "Senior Credit Agreement") precluded reinstatement of the senior secured debt. In both plead-

ings, JPMorgan alleged that the following prepetition defaults had occurred: (i) certain designated holding companies identified in the Senior Credit Agreement (the "Designated Holding Companies") were unable to pay their debts as they became due, in violation of Section 8(g)(v) of the Senior Credit Agreement; and (ii) an acceleration of the debt of the Designated Holding Companies as a result of the filing of the bankruptcy cases caused a cross-acceleration default on all of the debtors' outstanding notes under Section 8(f) of the Senior Credit Agreement. JPMorgan further alleged that confirmation and consummation of the Plan would result in a "change of control" in violation of Section 8(k) of the Senior Credit Agreement. Ultimately, the court confirmed the Plan over JPMorgan's Confirmation Objection, and entered judgment for Charter with respect to the Adversary Proceeding.[3]

OBJECTION TO REINSTATEMENT OF SENIOR SECURED DEBT

In order to reinstate senior secured debt under Section 1124 of the Bankruptcy Code, a plan must, among other things, cure most defaults that have occurred under the financing documentation and reinstate the original maturity applicable to the debt.[4] Reinstatement may be rendered impossible by the prior occurrence of non-monetary defaults that cannot be cured. In *Charter*, JPMorgan alleged that such defaults had occurred under the Senior Credit Agreement, thereby forestalling Charter's ability to reinstate the Secured Lenders' debt under Section 1124 of the Bankruptcy Code.

As the Plan proponent, Charter bore the burden of establishing compliance with the requirements for confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code. As the party objecting to reinstatement under the Plan and as the plaintiff in the Adversary Proceeding, JPMorgan bore the burden of producing evidence to support the occurrence of the alleged defaults under the Senior Credit Agreement that would prevent reinstatement. The court concluded that (i) Charter met its burden of establishing compliance with the requirements for confirmation of the Plan and (ii) JPMorgan failed to produce evidence necessary to establish the alleged non-monetary defaults under the Senior Credit Agreement that would prevent reinstatement.

Charter Was Able to Meet Its Debts as They Came Due

The court first addressed JPMorgan's argument that, at the time when Charter elected to draw down $250 million under the Senior Credit Agreement and move cash from one level of its capital structure to certain of the debtors' Designated Holding Companies to make upcoming scheduled interest payments, the Designated Holding Companies could not pay their debts as they became due in violation of Section 8(g)(v) of the Senior Credit Agreement. In connection with this argument, JPMorgan alleged that (i) Charter's board of directors (the "Board") improperly determined that an adequate surplus existed sufficient to make a distribution through the payment of a dividend to certain of the Designated Holding Companies under Delaware corporate law and (ii) this determination resulted in Charter's default under Section 8(g)(v) of the Senior Credit Agreement.[5]

JPMorgan based these arguments on its reading of Section 8(g)(v) of the Senior Credit Agreement to require the Designated Holding Companies to address their ability to meet identifiable obligations as such obligations became due in the *future*. JPMorgan argued that the debtors' alleged misrepresentations with respect to such covenants, along with a finding of adequate surplus by the Board, constituted contractual defaults under Section 8(g)(v) of the Senior Credit Agreement, and as a result, the Plan could not reinstate the Secured Lenders' debt under Section 1124 of the Bankruptcy Code.

The court rejected JP Morgan's position, concluding that Section 8(g)(v) of the Senior Credit Agreement instead required the Designated Holding Companies to address their obligations as they *presently* became due. Noting that a prospective application of Section 8(g)(v) would prove "unworkable" and "implausible," the court highlighted that no witness presented could identify a single instance where a lender (even JPMorgan) declared an event of default based upon an assessment of what might occur at an unspecified time in the future. Nor could any witness describe definitively how far into the future such a forward-looking obligation should extend. Instead, the court concluded that the most logical and commercially reasonable interpretation of the disputed section was that it required the Designated Holding Companies to pay existing debts as and when they became due.

The court further found that even if Section 8(g)(v) of the Senior Credit Agreement were interpreted as applying prospectively, the evidence presented

was still inconclusive as to the Designated Holding Companies' ability to pay their debts as they became due in the future. The court found that the Board acted reasonably in relying upon its advisors and in determining that there was adequate surplus at the Designated Holding Company level to declare a dividend.[6] Moreover, the court was influenced by the facts that the Designated Holding Companies paid all of their debts as they came due prior to the filing of the Chapter 11 cases and that Charter had other methods of enabling the Designated Holding Companies to pay scheduled future debts. Accordingly, the court overruled JPMorgan's objection based on the alleged default under Section 8(g)(v) of the Senior Credit Agreement.[7]

Cross-Acceleration Default

The court also addressed JPMorgan's argument that a cross-acceleration default occurred under Section 8(f) of the Senior Credit Agreement.

Section 8(f) provided that an event of default would occur if a Designated Holding Company failed to (i) pay any installment of principal on any indebtedness exceeding $200 million and (ii) make an interest payment or caused any other event of default with respect to such indebtedness, if the nonpayment or other event of default resulted in the acceleration of such indebtedness. When certain of the Designated Holding Companies filed bankruptcy petitions, they each had over $200 million in debt governed by indentures. These indentures contained provisions that (i) a bankruptcy filing constituted a default and (ii) outstanding notes would be accelerated upon a bankruptcy default. JPMorgan argued that these accelerations constituted events of default under Section 8(f) of the Senior Credit Agreement for which no cure was provided under the Plan.

JPMorgan further argued that these events of default did not arise under unenforceable *ipso facto*[8] clauses because Section 8(f) of the Senior Credit Agreement related to events of default on the part of the Designated Holding Companies, not on the part of the actual borrower, Charter Communications Operating, LLC ("CCO" or the "Borrower"), under the Senior Credit Agreement. In making this argument, JPMorgan relied upon the premise that where a debtor is solvent, the court's role is to enforce a creditor's rights pursuant to contract terms, including those terms set forth in Section 8(f) of

the Senior Credit Agreement.

The court disagreed and held that Section 8(f) of the Senior Credit Agreement constituted an unenforceable *ipso facto* clause because as an integrated enterprise, the financial conditions of the debtors' affiliates — the Designated Holding Companies and the Borrower — affected each other. The court also observed that JPMorgan itself had historically linked the financial condition of the Charter affiliates and negotiated terms of default and events of default based upon JPMorgan's acknowledgment of this connection. Accordingly, the court held that any defaults under Section 8(f) of the Senior Credit Agreement arose under unenforceable *ipso facto* clauses and, therefore, such defaults were not required to be cured in connection with reinstatement under Section 1124 of the Bankruptcy Code.

The Confirmation of the Plan Did Not Result in a Prohibited "Change of Control" Under the Senior Credit Agreement

The court also addressed JPMorgan's argument that confirmation of the Plan would result in a "change of control" event of default in violation of Section 8(k) of the Senior Credit Agreement.

Section 8(k)(i) of the Senior Credit Agreement provided that an event of default would occur if Allen ceased to hold at least 35 percent of the ordinary voting power for the management of the Borrower under the Senior Credit Agreement. Section 8(k)(ii) further provided that no "person" or "group," as such terms are defined in Sections 13(d) and 14(d) of the Exchange Act, other than Allen, could hold more than 35 percent of the ordinary voting power for the management of the debtors, unless Allen retained an even greater percentage.[9]

The court concluded that because the Borrower and its immediate parent entities had no separate boards of directors or other management and because the directors of the highest-level parent entity managed the Borrower and all of its subsidiaries, the voting power requirement had to be interpreted as requiring the parties to maintain their voting power percentages at the level of the Borrower's ultimate corporate parent, CCI. Upon a review of the evidence, the court held that because Allen retained (i) more than 38.4 percent of the voting power of the shares of CCI on a fully diluted basis and (ii) the

right to appoint four out of eleven directors to the board of reorganized CCI, Allen retained at least 35 percent of the ordinary voting power for the management of the debtors as required by Section 8(k)(i) of the Senior Credit Agreement. Accordingly, the court overruled JPMorgan's objection and held that no "change of control" occurred in violation of Section 8(k)(i) of the Senior Credit Agreement.

Nevertheless, JPMorgan argued that those bondholders who negotiated the Plan with Charter prepetition would aggregate more than 35 percent of the voting rights of the equity in reorganized Charter upon consummation of the Plan, thereby causing a "change of control" event of default to occur in violation of Section 8(k)(ii) of the Senior Credit Agreement. In evaluating this argument, the court noted that if the bondholders constituted a "group" within the meaning of Section 13(d) of the Exchange Act, the applicable "change of control" provision would be triggered, resulting in a denial of confirmation.

Section 13(d) of the Exchange Act defines a "group" as two or more people who "agree" to "act as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of securities of an issuer ...."[10] JPMorgan presented evidence that:

- there was internal bondholder correspondence about a joint effort to control reorganized Charter;
- the bondholders formed an ad hoc committee;
- the bondholders were represented by a single law firm;
- the bondholders unanimously supported the Plan; and
- certain of the bondholders were private equity firms with "loan to own" investment strategies.

JPMorgan also presented evidence regarding the willingness of certain bondholders to appoint another bondholder's member to the board of reorganized Charter even though that bondholder's ownership percentage was below the minimum needed for board representation.

After reviewing the evidence, the court concluded that the existence of a "group" under the Exchange Act must be established by proof of an actual agreement. Stating that there was no evidence of any express or implied

agreement or understanding among the bondholders for purposes of dealing with Charter's equity securities, the court concluded that the bondholders were merely "independent actors brought together in the transaction by the restructuring initiated by the Debtors." As a result, the court held that regardless of the aggregate equity or board power held by the bondholders, Section 8(k)(ii) of the Senior Credit Agreement did not apply to the restructuring transactions set forth in the Plan. Accordingly, the court overruled JPMorgan's objection based on the alleged defaults under Sections 8(k)(i) and 8(k)(ii) of the Senior Credit Agreement.

CHARTER MET THE REQUIREMENTS UNDER SECTION 1129 OF THE BANKRUPTCY CODE

The CCI Noteholders argued that the Plan did not meet the confirmation standards set forth in Section 1129 of the Bankruptcy Code. Specifically, the CCI Noteholders argued that the Plan did not treat the CCI Noteholders fairly with respect to their proposed distribution when compared to the settlement payment to be received by Allen. In this regard, the CCI Noteholders made a number of objections, all of which the court overruled for the reasons discussed below.

The Plan Was Proposed in Good Faith

The CCI Noteholders objected on the basis that the Plan was not proposed in good faith under Section 1129(a)(3) of the Bankruptcy Code.

On this issue, the court noted extensive testimony that several of the debtors' directors supported the Plan because they believed it maximized value and that the Plan resulted from arm's-length negotiations. Accordingly, the court disagreed with the CCI Noteholders and held that the Plan was proposed in good faith and was not proposed by any means forbidden by law.

The Debtors' Liquidation Analysis Set Forth in the Plan Was Credible

The CCI Noteholders also objected to the debtors' liquidation analysis on the ground that they would receive a greater distribution under a hypothetical Chapter 7 liquidation than under the Plan. Specifically, the CCI

Noteholders argued that (i) the debtors' liquidation analysis was flawed because it did not include certain sources or "add-ons" from which the CCI Noteholders might receive additional recoveries in a hypothetical Chapter 7 liquidation, (ii) the debtors overvalued the new preferred stock to be distributed to the CCI Noteholders under the Plan and (iii) the debtors' liquidation analysis did not properly value or allocate the NOLs under the Plan.[11]

For several reasons, the court disagreed with the CCI Noteholders' contention that they would receive more under a hypothetical Chapter 7 liquidation than in the Plan. First, the court found that the "add-ons" might have no value, as admitted by the CCI Noteholders' expert. Second, the court concluded that the CCI Noteholders' valuation of the new preferred stock was questionable. Finally, the court held that generally, NOLs are deemed to belong to the operating entity that generated them, and because CCI was not an operating company, the value of the NOLs should not accrue to the CCI Noteholders. Accordingly, the court concluded that the CCI Noteholders would receive a greater distribution under the Plan than in a hypothetical Chapter 7 liquidation and overruled the CCI Noteholders' objection based on Section 1129(a)(7) of the Bankruptcy Code.

The Debtors Provided a Reasonable Explanation for the Plan's Classification Scheme

Section 1129(a)(10) of the Bankruptcy Code provides that, if a class of claims is impaired under a Chapter 11 plan, at least one class of impaired claims under such plan must vote to accept the plan. The CCI Noteholders asserted that the debtors failed to establish that at least one impaired class accepted the Plan as required pursuant to Section 1129(a)(10) of the Bankruptcy Code. They argued that the 10 different impaired classes of claims that voted for the Plan with respect to various debtors should not be counted for purposes of Section 1129(a)(10) because the classes were artificially gerrymandered solely for the purpose of obtaining the approval of one impaired class.

The court rejected the CCI Noteholders' allegation of gerrymandering, finding that the debtors provided a reasonable explanation for the Plan's classification scheme. The court held that the separate classes of general unsecured creditors under the Plan were based on the different legal rights and the distinct

payment expectations of each class. As a result, the court held that the requirement of Section 1129(a)(10) of the Bankruptcy Code was satisfied.

At Least One Class of Impaired Claims Voted to Accept the Plan as to All Debtors

The CCI Noteholders separately argued that the Plan did not satisfy Section 1129(a)(10) of the Bankruptcy Code, and thus could not be confirmed, because the CCI Noteholders constituted the only impaired class of creditors of CCI and the CCI Noteholders did not support the Plan. The court disagreed, holding that compliance with Section 1129(a)(10) of the Bankruptcy Code is tested on a per-plan basis, not separately as to each debtor. Thus, the CCI Noteholders' argument failed. The court also overruled the CCI Noteholders' related objection that the Plan should not be confirmed because a CCI plan would have been defeated if it were separate from the joint Plan.

The Plan Was Fair and Reasonable and Did Not Violate the Absolute Priority Rule

Finally, the CCI Noteholders alleged that Charter failed to satisfy the "cramdown" requirements set forth in Section 1129(b) of the Bankruptcy Code. The CCI Noteholders argued that the Plan was not fair or reasonable because it: (i) treated the CCI Noteholders differently than other general unsecured creditors; (ii) provided the debtors with certain tax benefits that rightfully belonged to CCI only; and (iii) provided Allen, as an equity holder, a distribution under the Plan in violation of the absolute priority rule.[12]

The court overruled these objections and held that the Plan satisfied the requirements of Section 1129(b) of the Bankruptcy Code. The court held that the Plan did not unfairly discriminate against the CCI Noteholders because: (i) they were not similarly situated with the other general unsecured creditors; (ii) the NOLs belonged to the operating company (not CCI); and (iii) Allen was not receiving a recovery on account of his equity interests in CCI, but rather was receiving consideration for his cooperation as provided under the Settlement. Accordingly, the court held that the Plan was fair and equitable and did not violate the absolute priority rule.

DISPOSITION OF THE CASE AND COURT OBSERVATIONS

In summary, the court overruled the Confirmation Objection, confirmed Charter's Plan and entered judgment for Charter in the Adversary Proceeding. The Secured Lenders' debt was reinstated with the preexisting pricing structure and maturity dates set forth in the Senior Credit Agreement. Furthermore, the Settlement between Allen and Charter was approved.

In confirming the Plan, the court noted that the Plan was negotiated at a time when the credit markets were in the "financial equivalent of cardiac arrest" and there were few financing alternatives available to the debtors. Though it emphasized that Charter's "relative difficulty or ease of obtaining such replacement financing" played no part in its decision, the court acknowledged that the reinstatement of the senior secured debt was vital to the debtors' restructuring efforts, highlighted Charter's sterling prepetition payment history and pointed out that the Secured Lenders openly admitted that their goal was to obtain an increased interest rate that would reflect the cost of new financing in the post-global-credit-crisis market.

PRACTICE TIPS

The following practice tips are suggested as a result of the court's ruling in *Charter*.

No Prospective Defaults

One of the main issues the *Charter* court examined was whether a financing agreement that declares an event of default if a borrower "shall generally not, or shall be unable to…pay its debts as they become due" should be interpreted as relating to an actual inability to pay obligations presently or to an anticipated inability to pay obligations in the future. As discussed above, the court concluded that the provision related only to the payment of present obligations. Based on the court's analysis, to the extent that lenders wish that such declarations of events of default be forward looking, the provisions should include detailed frameworks for measuring a borrower's inability to pay obligations in the future and include strict timelines and ratios for assessing the same.

Fact-Specific Determination of "Group"

The court also addressed the issue of what constitutes a "group" of creditors under the Exchange Act. The court concluded that the Crossover Committee did not constitute a "group" for this purpose; rather, the court found that each of the bondholders was "similarly motivated to make the best of a currently distressed investment." Creditors should note that the court's decision in this regard was very fact-specific. *Charter* may have been decided differently on this point if there were more facts identifying an actual or implied agreement among the bondholders to work as a "group" or if evidence suggested the bondholders had purchased their claims in a concerted effort to acquire equity securities of the debtors.

Ipso facto Provisions May Be Broadly Construed

The court concluded that the financial conditions of the Designated Holding Companies and the Borrower were so intertwined that the cross-default provisions in the Senior Credit Agreement constituted unenforceable *ipso facto* clauses under Section 365(c) of the Bankruptcy Code. Accordingly, lenders should be mindful that a cross-default provision triggered by an affiliate's bankruptcy may be broadly construed to constitute an *ipso facto* clause that is unenforceable under the Bankruptcy Code.

Section 1129 Compliance — Per Plan Versus Per Debtor

Finally, the court held that it is appropriate to test compliance with the impaired class acceptance requirement of Section 1129(a)(10) of the Bankruptcy Code on a per-plan basis, not on a per-debtor basis. As such, the court concluded that the debtors' Plan satisfied Section 1129(a)(10). Despite the court's holding in this regard, the statutory language and case law precedent regarding this issue remain unclear.

NOTES

[1] 419 B.R. 221 (Bankr. S.D.N.Y. 2009).

[2] Without reinstatement, it is likely Charter would have been unable to confirm

its prenegotiated plan of reorganization (the "Plan"). Given the economic situation existing at the time, it is likely Charter would have been unable to obtain exit financing. Even if Charter had been able to obtain such financing, the financing would not have been on nearly as favorable terms as Charter already had in place.

[3] The Law Debenture Trust Company, the indenture trustee for the holders of certain unsecured notes issued by CCI (the Law Debenture Trust Company together with the noteholders it represents, the "CCI Noteholders"), argued that the Plan did not meet the confirmation requirements set forth in Section 1129 of the Bankruptcy Code. The CCI Noteholders' objections are described herein.

[4] 11 U.S.C. § 1124(2).

[5] Arguing that a finding of an adequate surplus would have required the total enterprise value of the debtors to equal not less than $18.7 billion, JPMorgan claimed that, at the time in question, Charter's total enterprise value was much lower than this required amount. In this regard, in September 2009, the debtors conceded that Charter's enterprise value for purposes of the Plan equaled $15.4 billion.

[6] However, the court did find that JPMorgan proved doubt as to the adequacy of surplus and noted that JPMorgan's expert credibly testified that the valuation on November 5, 2008 was less than the $18.7 billion needed for a determination of surplus.

[7] In *Charter*, the court found that sufficient facts were presented in the record to allow the court to defer to the Board's determination. The court noted that under Delaware law, a determination of adequate surplus could only be set aside upon a finding of bad faith or fraud on the part of the Board and inferred that if such bad faith or fraud had been shown, JPMorgan could have prevailed on this point.

[8] Section 365(e) of the Bankruptcy Code prohibits the termination or modification of a contract solely because of a provision in such contract that is conditioned on the insolvency or financial condition of the debtor or the commencement of a case under the Bankruptcy Code. Thus, *ipso facto* clauses are, as a general matter, unenforceable against a debtor.

[9] In an attempt to avoid allegations of default under Section 8(k) of the Senior Credit Agreement, Charter and Allen entered into a settlement agreement whereby Allen agreed to maintain his minimum voting percentage of 35 percent in exchange for the payment of consideration to Allen in the amount of $375 million. In return, Charter avoided triggering certain "change of control" covenants in the Senior Credit Agreement and preserved valuable tax attributes for the debtors, including net operating losses (the "NOLs").

The court was further required to evaluate the settlement between Allen and Charter (the "Settlement") to ensure that it comported with Rule 9019 of the Federal Rules of Bankruptcy Procedure and the related standards set forth in *In re Iridium*

Operating LLC, 478 F.3d 452 (2d Cir. 2007). Upon weighing the costs and benefits of the Settlement, the court held that the Settlement was fair and equitable. The court also held that the Settlement was in the best interests of the estate because the Settlement rendered the Plan feasible and the terms of the Plan were reasonable. Specifically, the court concluded that the Settlement was reasonable because (i) the Settlement was the product of a "spirited negotiation," (ii) the consideration to be paid to Allen ($375 million) was not excessive in comparison to the benefits received by Charter ($3 billion in the form of interest savings and NOLs) and (iii) the Settlement was reviewed and approved by independent directors of the Board.

[10] 15 U.S.C. § 78(m)(d)(3); Rule 13d-5(b)(1).

[11] NOLs are valuable, especially in the bankruptcy context, because an entity can carry forward its losses and thus save on the amount of taxes it must pay. The CCI Noteholders claimed that the NOLs generated through the losses of the operating companies belonged to CCI only, and thus, under a hypothetical Chapter 7 liquidation, only the CCI Noteholders should receive a distribution based upon the value of the NOLs. In contrast, the Plan distributed the value of the NOLs to *all* of Charter's creditors. As such, the CCI Noteholders argued that CCI Noteholders should receive additional distributions under the Plan to compensate them for the value of the NOLs.

[12] The absolute priority rule provides that a class of claims or interests cannot receive a distribution under a plan until all more senior claims and interests have been paid in full. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988) ("[T]he absolute priority rule 'provides that a dissenting class of unsecured creditors must be provided for in full before any junior class can receive or retain any property [under a reorganization] plan.'") (citation omitted). Equity holders, at the bottom of the hierarchy of stakeholders, should therefore not receive a distribution under a plan unless all other creditors have been paid in full under the plan.