

## THAMES WATER - COURT OF APPEAL UPHOLDS THE RESTRUCTURING PLAN

On 17 March, the English Court of Appeal dismissed an appeal against the interim restructuring plan proposed by Thames Water, and supported by its Class A creditors (the "**Plan**"). The Plan, which was originally sanctioned (i.e. approved) by the first instance court on 18 February, was therefore confirmed by the Court of Appeal.

### The Appeal

The Plan had faced significant opposition from among its Class B creditors and from a subordinated creditor, Thames Water Ltd (a wholly owned direct subsidiary of the Plan Company). They argued that the Plan was not fair and that the releases included in the Plan, which pertained to potential claims against directors and advisers, were unfair or should be considered "a blot" on the Plan given its interim nature. Additionally, Charlie Maynard MP contended that the Plan was not in the public interest due to its high funding levels and associated costs and suggested that Thames Water should be placed into special water administration instead.

### Plan Upheld Subject to Modification

The Court of Appeal has upheld the first instance decision sanctioning the Plan, subject however, to a modification. The modification, which forms part of the order dismissing the appeal, ensures that the release provisions do not apply to potential claims that any special administrator or insolvency officeholder appointed subsequently to Thames Water Utilities Limited ("**TWUL**") or the Plan Company may have against the directors and advisers of the respective companies in relation to the Plan. This possibility of a modification was mentioned at the end of the appeal hearing by Zacaroli LJ who seemed sympathetic to the objection by the Class B creditors regarding the wide scope of the release provisions for what is an interim plan.

### Next steps: possible further appeal

Although the Court of Appeal has issued its decision, its reasoned judgment is to follow in due course. Press reports suggest that the opposing Class B creditors will continue to explore all available avenues, including considering whether to seek leave to appeal to the Supreme Court. Should the opposing Class B creditors decide to pursue an appeal, it is worth noting that permission to appeal to the Supreme Court is required. Permission is only granted in limited circumstances, specifically where the application raises "*an arguable*

#### Key issues

- The Court of Appeal upholds Thames Water's restructuring plan, dismissing all appeals.
- The Class B creditors are considering whether to appeal further, which if pursued, would make this the first restructuring plan to reach the Supreme Court (permission required).
- Thames Water has announced it is taking steps to facilitate interim funding, irrespective of any appeal to the Supreme Court.

*point of law of general public importance which ought to be considered by the Supreme Court at that time, bearing in mind that the matter will already have been the subject of judicial decision and may have already been reviewed on appeal."* It is possible that this will be the first restructuring plan case to reach the Supreme Court, should the opposing Class B creditors or other interested parties decide to pursue an appeal.

## **Access to Interim Funding**

In anticipation of any potential appeal, Thames Water has announced a parallel consent and waiver requests to seek a waiver from 75% or more of the super senior creditors of certain conditions precedent to the super senior funding relating to the appeal period. Creditors are required to vote in favour of by 31 March 2025. Whilst the waiver is in force, this would allow £1.5 billion of super senior interim funding to be drawn in tranches according to the Company's liquidity needs irrespective of whether any appeal is in fact pursued.

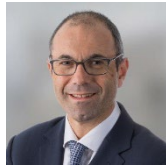
Additionally, in order to facilitate the waivers, yesterday TWUL launched proposals under its security trust and intercreditor deed ("**STID Proposals**") seeking the consent of a majority of the Class A creditors to defer the reserving of cash for debt service during any further appeal, and to provide for a reclassification of the super senior funding as Class A debt in the event a further appeal is successful. It is understood that the Class A creditors are also discussing amongst themselves whether to enter into supportive turnover arrangements where those participating Class A creditors would agree to turn over recoveries to the super senior creditors if a further appeal is successful. To the extent that they agree to do so, TWUL has agreed to pay a conditional fee equal to 0.25% of those participating Class A creditors' outstanding principal. The conditional fee would only be payable to those Class A creditors who enter turnover arrangements prior to 28 March 2025 and in the event that permission for further appeal is granted.

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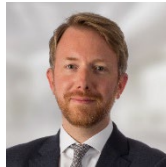
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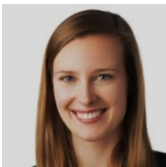
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