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Choate Restructuring and Bankruptcy Team Publish Feature Article on Independent Directors and Insider Transactions in the Journal of Corporate Renewal

Members of Choate’s Restructuring and Bankruptcy team, including Jonathan Marshall, Michael Comerford, Luke Barrett, and Alexandra Thomas, have been published in the *Journal of Corporate Renewal’s* May 2026 retail feature story, “Independent Directors & Market Testing: How Proper Process Can Overcome Insider Transaction Objections.”

RETAIL

Independent Directors & Market Testing:
HOW PROPER PROCESS CAN OVERCOME INSIDER TRANSACTION OBJECTIONS

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When a distressed company seeks to sell substantially all its assets to an insider, stakeholders often view the transaction skeptically, which can derail even commercially reasonable deals. A recent unpublished decision from the Bankruptcy Court for the District of Delaware underscores how proper process, including meaningful oversight by an independent fiduciary, can overcome those concerns.

In an extensive oral ruling delivered February 4, 2026, Judge Thomas M. Horan approved the sale of substantially all assets of Norcold LLC (the debtor) to an affiliate of the debtor pursuant to Section 363 of the Bankruptcy Code. The purchased assets included all estate claims and causes of action against the debtor’s insiders. The court’s analysis focused heavily on process, with a particular emphasis on the debtor’s independent manager having complete authority over the sale.

The court reached its unpublished decision by applying principles of Delaware law. Because the level of scrutiny applied to insider transactions varies across jurisdictions, a court applying different substantive law might have reached a different conclusion as to the appropriate standard of

review for the proposed sale. Even so, the decision offers useful guidance for practitioners. Where an insider may be the party willing to provide the greatest value for a debtor’s assets, professionals should consider engaging an independent fiduciary to oversee the process and approve any sale from a corporate governance perspective well before seeking court approval of the transaction.

The Sale Process
 Prior to filing the *Norcold LLC* case, the debtor engaged an experienced, independent investment banker to market and sell all or substantially all its assets. The investment banker contacted 118 potential buyers, consisting of 74 financial sponsors and 44 strategic parties. Twelve parties executed non-disclosure agreements and received data room access. The marketing period lasted approximately 99 days, including roughly 73 days post-petition.

In connection with filing its Chapter 11 case, the debtor determined an indirect affiliate of the debtor would serve as the stalking horse bidder and provide \$13 million in DIP financing to the debtor. At the conclusion of the sale

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The article explores a recent unpublished decision from the U.S. Bankruptcy Court for the District of Delaware, which underscores how proper process – particularly meaningful oversight by an independent fiduciary – can overcome skepticism when a distressed company seeks to sell substantially all its assets to an insider. The full article can be found in [digital publication](https://www.choate.com/digital-publication-of-the-journal-of-corporate-renewal) of the *Journal of Corporate Renewal*, available on the Turnaround Management Association (TMA) website. www.choate.com

Choate's Restructuring and Bankruptcy team is trusted by lenders, insurers, boards, independent directors, and special committees to guide some of the most high profile and complex insolvencies, restructurings, and DIP financings in the U.S. and abroad. Drawing on deep industry experience and seamless collaboration across the firm, our team has received national recognition for its ability to protect clients' interests, manage risk, and maximize recoveries in even the most urgent and contentious situations.

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