

CLIENT MEMORANDUM

New York Court Requires Distressed Market Intelligence News Service to Divulge Confidential Sources

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AUTHOR

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Earlier this year, a New York trial court issued a ruling in *Murray Energy Corp. v. Reorg Research, Inc.*¹ requiring Reorg Research (“Reorg”), a company that provides subscription-based market intelligence about distressed companies, to disclose the identities of anonymous sources that had been used for articles that Reorg published about confidential restructuring discussions. The Court rejected Reorg’s position that it was entitled to the protection of New York’s Shield Law,² which protects journalists from divulging their confidential sources, because the Court found that Reorg’s subscription-based articles were not intended to be publicly distributed.

If upheld on appeal, the Court’s ruling could be expected to apply more broadly to other services – including others covering the distressed market – that adopt similar subscription-based business models. Given the reliance that certain distressed investors and their advisors place on these services, the outcome bears watching.

¹ 47 N.Y.S.3d 871 (N.Y. Sup. Ct. Feb. 14, 2017).

² N.Y. Civ. Rights Law § 79-h (McKinney 1990).

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A. Background

The lawsuit stemmed from a series of articles that Reorg published about Murray Energy Corp. (“Murray”), a privately owned coal company, and its ongoing restructuring negotiations with its creditors. The articles relied in part on information obtained from several anonymous sources. Based on the way it controlled its information, Murray believed these sources were likely members of an investor group that had been provided with lender presentations through a secure online data room. All of the investors had been required to sign confidentiality agreements prior to gaining access to the presentations.

When Reorg refused to divulge its sources, Murray sought pre-action discovery under NY CPLR 3102(c) to obtain their identities and communications with Reorg so that Murray could sue the sources for breaching their confidentiality agreements.

B. The Decision

Reorg argued that it was protected by New York’s Shield Law, which codifies and expands the common law reporter’s privilege by protecting “professional journalists” from being held in contempt of court for refusing to disclose their confidential sources.

The Court noted that application of the statute principally turned on whether Reorg’s articles were “news intended for dissemination to the public.” The Court concluded that Reorg’s articles were never intended to be made public because its business model involved providing information to a limited group of high-paying subscribers who were prohibited by their terms of use from sharing such information with non-subscribers.³ The Court concluded that the law’s purpose – to protect the vital function performed by the press of keeping the public informed – would not be served by extending the Shield Law to services like Reorg.

Reorg has appealed the trial court’s decision, and obtained a stay from disclosing its sources in the interim.

³ The Court noted that the case might have been decided differently if Reorg’s alerts had been accessible to the general public for a short period of time, even if they were later archived in a database that was available only to subscribers. *Id.* at 880.

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If you have any questions regarding this memorandum, please contact Rachel C. Strickland (212-728-8544, rstrickland@willkie.com) or the Willkie attorney with whom you regularly work.

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