

## "The Net Short": U.S. and European High-Yield Covenant Trends in Response to Net Short Activism

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On February 15, 2019, the U.S. District Court for the Southern District of New York issued its ruling in the case of Aurelius Capital Master, Ltd. ("Aurelius") against Windstream Services, LLC ("Windstream"). The origins of the case date back to April 2015, when one of Windstream's affiliates spun off and, subsequently, leased back some of its real estate and other assets. Two years after that transaction, Aurelius, a fund that purchased a controlling position in Windstream's 6.375% Senior Notes due 2023 (the "2023 Notes"), challenged the transaction, alleging that the sale and leaseback was not permitted under the 2023 Notes indenture, and issued a notice of acceleration related to the 2023 Notes.

The district court ruled in favor of Aurelius, stating that the transaction resulted in an event of default under the 2023 Notes indenture and that Aurelius' notice of acceleration was valid. This meant that Windstream was consequently in default under a number of its other debt instruments, by virtue of cross-default or cross-acceleration provisions in those instruments, and faced an immediate liquidity crisis with no access to financing to fund its business operations. As a result, on February 25, 2019, Windstream filed for Chapter 11 bankruptcy, despite the fact that at the time it had no operational failures.

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