WEST VIRGINIA CODE: §31b-14-608

§31B-14-608. Application of §31B-14-404 after merger.

(a) A creditor's right that existed under §31B-14-404 of this code immediately before a merger under §31B-14-604 of this code may be enforced after the merger in accordance with the following rules:

(1) A creditor's right that existed immediately before the merger against the surviving company, a continuing protected series, or a relocated protected series continues without change after the merger.

(2) A creditor's right that existed immediately before the merger against a non-surviving company:

(A) May be asserted against an asset of the non-surviving company which vested in the surviving company as a result of the merger; and

(B) Does not otherwise change.

(3) Subject to subsection (b), the following rules apply:

(A) In addition to the remedy stated in paragraph (1) of this section, a creditor with a right under §31B-14-404 which existed immediately before the merger against a non-surviving company or a relocated protected series may assert the right against:

(i) An asset of the surviving company, other than an asset of the non-surviving company which vested in the surviving company as a result of the merger;

(ii) An asset of a continuing protected series; or

(iii) An asset of a protected series established by the surviving company as a result of the merger;

(iv) If the creditor's right was against an asset of the non-surviving company, an asset of a relocated series; or

(v) If the creditor's right was against an asset of a relocated protected series, an asset of another relocated protected series.

(B) In addition to the remedy stated in paragraph (2) of this section, a creditor with a right that existed immediately before the merger against the surviving company or a continuing protected series may assert the right against:

(i) An asset of a relocated protected series; or

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(ii) An asset of a non-surviving company which vested in the surviving company as a result of the merger.

(b) For the purposes of subsection (a)(3) of this section and §31B-14-404(b)(1)(A), (2)(A), and (3)(A) of this code, the incurrence date is deemed to be the date on which the merger becomes effective.

(c) A merger under §31B-14-604 of this code does not affect the manner in which §31B-14-404 of this code applies to a liability incurred after the merger.

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