

Court Clarifies Discharge of Judgments for Willful Intellectual Property Infringement Through Bankruptcy

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An intellectual property (IP) rights owner who seeks to enforce his/her rights against an infringer must consider a potential risk that has nothing to do with the subject matter of the IP: whether the infringer/debtor may discharge a money judgment for willful infringement in bankruptcy proceedings. IP owners will have a much better chance at protecting their judgments from being discharged in bankruptcy if they begin their infringement actions with a plan to ensure that they obtain the factual and legal findings necessary to satisfy the standard required for a debt to not be discharged in bankruptcy.

'Willful and Malicious Injury' Under the Bankruptcy Code

Section 523(a)(6) of the Bankruptcy Code provides that an individual debtor may not discharge a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." To determine whether a debtor may discharge a particular debt under that section, bankruptcy courts analyze two separate and distinct issues: "willfulness" and "maliciousness." A "willful" injury under § 523(a)(6) is a "deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Kawaahau v Geiger*, 523 U.S. 57 (1998). In order for an injury to be deemed "malicious," a four-part test must be met. There must be: (1) a wrongful act, (2) done

Counsel involved in any IP dispute should pay heed to Barboza, and consider the ability to enforce a settlement or judgment in a subsequent bankruptcy case. IP owners and their counsel should take steps from the beginning of the dispute to protect themselves.

intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.

If the IP owner cannot establish both prongs of the foregoing test and the infringer/debtor is otherwise eligible for a discharge, the infringer will be able to discharge its liability on the infringement judgment through bankruptcy. This result would leave an IP owner with no means of enforcing the judgment. By contrast, a finding that the infringement debt is not dischargeable in bankruptcy will leave the IP owner with its judgment intact.

Unfortunately for IP owners, the two-part standard utilized by bankruptcy courts to establish dischargeability under § 523(a)(6) does not mirror the standards required for establishing willful patent, copyright or trademark infringement. Thus, the factual findings and legal determinations underlying the infringement judgment do not satisfy the requirements under the bankruptcy standard. As a result, if the infringer/debtor seeks bankruptcy protection, the IP owner could find its hard-earned judgment for willful infringement significantly devalued, maybe even rendered valueless.

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Judgments for Willful Infringement of Copyrights

A copyright owner will be able to secure enhanced damages if the court finds that the infringement was “willful.” Under the Copyright Act, willfulness can be found in cases where the defendant’s conduct was intentional or reckless. The willfulness standard under the Copyright Act does not require a separate finding of “maliciousness,” nor does it actually require a “willful” act by the infringer, as that term is understood under the Bankruptcy Code. Indeed, willfulness under the Copyright Act can be based upon acts that are “merely” reckless. Therefore, a finding of willful infringement under the Copyright Act will not necessarily provide a basis for establishing either the “willful” or “malicious” prong of the test under the Bankruptcy Code.

In re Barboza

A recent decision of the Court of Appeals for Ninth Circuit highlights the potential difficulties facing IP owners as creditors seeking to prevent their infringement judgments from being discharged by the infringer/debtor in a bankruptcy case.

In *In re Barboza*, 545 F. 3d. 702 (9th Cir. 2009), the Ninth Circuit reversed an order of the Bankruptcy Appellate Panel that had affirmed a bankruptcy court’s holding that a judgment for a willful copyright infringement was nondischargeable under the Bankruptcy Code. The debtors operated a business for the duplication, distribution and sale of Spanish-language films. The debtors purchased a large quantity of videotapes of the films from Million Dollar Video Corp. The plaintiff, which held an exclusive right to manufacture, sell and distribute the films, sent the debtors a notice of its rights. The debtors nevertheless continued to sell the existing copies of the films, made an additional 500 copies and began selling them as well. The plaintiff sued the debtors for copyright infringement in a federal district court in California (the district court action).

After a jury trial on the merits, the jury in the district court action was instructed that, under the standard for willful copyright infringement, the plaintiff was only required to prove by a preponderance of the evidence that the defendants knew they were infringing the plaintiff’s copyrights or acted with a reckless disregard as to whether they were doing so. The jury returned a verdict of willful copyright infringement, but the jury made no specific

finding as to the basis for its finding of willful copyright infringement.

Based on the verdict, the jury awarded statutory damages of \$75,000 per film. The judgment for the plaintiff in the district court action, including legal fees, was approximately \$893,000. The result was everything that the plaintiff had wished for, but the plaintiff soon discovered that saving its judgment from discharge in bankruptcy would prove to be just as difficult as winning the judgment in the first place.

In an attempt not to pay the judgment, the debtors filed for Chapter 7 bankruptcy in the U.S. Bankruptcy Court for the Southern District of California. In response, the plaintiff filed a complaint with the bankruptcy court seeking a determination that the judgment could not be discharged under § 523(a)(6) of the Code based on the judgment entered in the district court action. The plaintiff moved for summary judgment that the debt was not dischargeable because of the finding in the district court action that the infringement was willful. The bankruptcy court agreed, finding that because the evidence clearly showed that the defendants knew of the plaintiff’s rights, the copyright infringement was a willful injury under § 523(a)(6) of the Bankruptcy Code.

After the Bankruptcy Appellate Panel affirmed, the defendants appealed to the Ninth Circuit, which reversed. The Ninth Circuit began its analysis by noting that the Supreme Court had specifically limited the standard for finding “willfulness” in dischargeability litigation involving personal injury claims. *See Geiger*, 523 U.S. at 60-61 (1998) (holding that debts resulting from recklessly or negligently inflicted injuries are not sufficient to be considered “willful” injuries under § 523(a)(6)). The Ninth Circuit also found that the standard for “willfulness” under § 523(a)(6) of the Bankruptcy Code requires a “deliberate” or “intentional” injury. After analyzing the facts of the *Barboza* case, the Ninth Circuit held that summary judgment was not proper because the bankruptcy court had no way to determine whether the jury had found the willful infringement based on a reckless disregard or a knowing violation of the copyright.

In particular, the Ninth Circuit held that since the debtors had introduced evidence that the films had actually been ordered, duplicated and distributed by a disgruntled relative of theirs, not by the debtors, the jury could have based its willful infringement verdict on recklessness. Based

on this material issue of fact alone, the Ninth Circuit determined that a remand was required.

The Ninth Circuit also found that the bankruptcy court erred when it failed to separately examine whether the copyright infringement was “malicious” under § 523(a)(6). The appeals court further held that the bankruptcy appellate panel erred when it based its finding of malice completely on the conclusion that the debtors’ actions were willful. According to the Ninth Circuit, the malicious injury requirement must be decided separately from the willful injury requirement.

Thus, the viability of the plaintiff’s judgment for willful copyright infringement remained in doubt and the plaintiff would have to continue to incur expenses to preserve the judgment.

Applicability to Judgments for Willful Infringement of Trademarks and Patents

The potential for an IP owner to face challenges similar to that faced by the plaintiff in *Barboza* is the same in patent and trademark infringement cases.

In *In re Seagate Technology, LLC*, the Federal Circuit, sitting *en banc*, clarified that in patent cases:

[T]o establish willful infringement, a patentee must show by clear and convincing evidence that the infringer acted despite an objectively high likelihood that its action constituted infringement of a valid patent... The state of mind of the accused infringer is not relevant to this objective inquiry. If this threshold objective standard is satisfied, the patentee must also demonstrate that this objectively-defined risk (determined by the record developed in the infringement proceeding) was either known or so obvious that it should have been known to the accused infringer.

In re Seagate Technology, LLC, 497 F.3d 1360, 1371 (Fed. Cir. 2007). Thus, in patent cases, much like in the copyright context, willfulness can be based upon intentional behavior or recklessness. *Id.* at 1370 (“The term willful is not unique to patent law, and it has a well-established meaning in the civil context. For instance, our sister circuits have employed a recklessness standard for enhancing statutory damages for copyright infringement. ... Although the statute does not define willful, it has

consistently been defined as including reckless behavior.”) In addition, the patent willfulness analysis does not specifically refer to or require a specific finding of maliciousness.

Similarly, a trademark owner may obtain a finding of willful trademark infringement in cases of recklessness or gross negligence. *See e.g. N.A.S. Import, Corp. v. Chenson Enters., Inc.*, 968 F.2d 250, 252 (2d Cir. 1992) (an infringement may be willful if the defendant “had knowledge that its actions constitute an infringement”). Actual knowledge is not required, and constructive knowledge will suffice. Thus, knowledge need not be proven directly, but may be inferred from the defendant’s conduct.

Pepper Points

As *Barboza* demonstrates, judgments based on claims for willful copyright infringement are not necessarily non-dischargeable in bankruptcy. Instead, the facts and holdings surrounding settlement or trial of the claims may determine whether a judgment is non-dischargeable. Counsel involved in any IP dispute should pay heed to *Barboza*, and consider the ability to enforce a settlement or judgment in a subsequent bankruptcy case.

IP owners and their counsel should take steps from the beginning of the dispute to protect themselves. When pleading a cause of action for willful infringement, the complaint should include sufficient factual allegations to satisfy the Bankruptcy Code as well as the particular willfulness standard at issue. The prayer for relief in the complaint should also specifically request that the court make the necessary findings and legal holdings in order to support both the willfulness and maliciousness prongs of the non-dischargeability standard. The allegations and relief sought in the complaint become even more important when the judgment ultimately obtained is a default judgment.

In addition to carefully drafting the initial pleadings, counsel for an IP owner should ensure that the non-dischargeability standard requirements are met throughout the course of the litigation. For example, counsel should include the requisite factual findings and legal holdings in any documents used to resolve a dispute pursuant to the terms of a settlement agreement. Also, when presenting evidence and crafting jury instructions in willful infringement cases, an IP owner should consider

introducing sufficient evidence and including additional jury instructions to satisfy the Bankruptcy Code's definitions of "willful" and "malicious." The evidence presented and subsequent jury instructions would address willfulness under the trademark, copyright, and patent statutes, and separately address "willful and malicious injury" under the requirements of the Bankruptcy Code.

Addressing requirements necessary to support a finding that the infringement was "willful" and "malicious" under the Bankruptcy Code from the very beginning of the dispute may eliminate the risk that a judgment for willful infringement will be discharged through bankruptcy. If these issues are not addressed from the outset and considered throughout the proceeding, an IP owner risks

losing its infringement judgment or, at the very least, being required to relitigate the issues in the bankruptcy court in order to obtain the necessary findings of willfulness and maliciousness.

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New Light Shed by Fourth Circuit on Bankruptcy 'Safe Harbors' for Commodity Forward Contracts

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Decision Important for Energy Industry and for Avoidance Litigation

The Fourth Circuit Court of Appeals recently has confirmed that the Bankruptcy Code definition of a commodity "forward contract" includes a supply contract that contemplates the physical delivery of a commodity, in this case, natural gas, without a requirement that the contract be traded on a financial market or settled through a financial exchange. The decision is important to the energy industry. It also is important to bankruptcy preference litigation, in general, because payments made pursuant to "commodity forward contracts" are exempt from preference recapture pursuant to Bankruptcy Code §546(e), even if made within 90 days prior to bankruptcy. When coupled with the broad statutory definitions of "commodity" and "forward contract," the Fourth Circuit decision could help pave the way for payments made pursuant to many kinds of supply contracts to be treated as exempt from preference recapture.

In the energy industry, transactions involving the sale of millions of dollars of product are routine. When a customer files for bankruptcy, it can have an enormous impact on the financial health of the non-debtor. To mitigate some of the harm, Congress enacted special safe harbor provisions that exempt the exercise of certain rights under specified

The Fourth Circuit held that a supply "contract" that contemplates the physical delivery of a commodity and is not to be traded on a financial market can be a "commodity forward contract."

agreements such as forward contracts, swaps, repurchase agreements and other types of risk mitigating vehicles from various provisions of the Code including, *inter alia*, the automatic stay, preference and fraudulent conveyance provisions. One lingering concern industry participants have held is whether contracts that involve the physical delivery of product and are not traded on an exchange nevertheless fall within the safe harbor scheme. In a recent decision, *In re National Gas Distributors LLC*, 556 F.3d 247 (4th Cir. 2009), the Fourth Circuit Court of Appeals has attempted to answer that question.

The National Gas Distributors LLC Decision

During the year before its Chapter 11 filing, National Gas Distributors LLC had entered into several contracts for the supply and physical delivery of natural gas. The contracts were on standard forms generated by the North American Energy Standards Board and declared themselves to be a “forward contract.” Negotiated terms included future delivery of natural gas during specified time periods, with performance to commence two days after any contract was executed. The contracts required the parties to sell and deliver gas at a fixed price. If a party breached its obligation, it had to pay the difference between the contract price and the market price.

The trustee for National Gas’s Chapter 11 estate apparently believed that the contracts obligated the debtor to sell product below market. Therefore, he commenced adversary proceedings against former customers to avoid the supply contracts and transfers of natural gas made pursuant thereto as fraudulent conveyances and recover the difference in value between the contract price at which the gas had been sold and the prevailing market price. The customers argued that the contracts were “commodity forward agreements,” included in the definition of “swap agreements” under the Code and, therefore, the contracts and transfers were exempt from the trustee’s avoidance powers. Successfully characterizing the underlying contracts as a “swap agreement” would defeat the trustee’s claims pursuant to section 546(g), which shields transfers made in connection with a swap, whereas section 546(e)—a similar safe harbor provision applicable to “forward contracts”—protects only transfers that are margin or settlement payments.

Disagreeing with the customers, the bankruptcy court held that the contracts were not commodity forward agreements. The bankruptcy court reasoned that the contracts were insufficiently tied to the financial market as they were not traded on any financial market nor settled by a financial exchange and thus were nothing more than simple supply contracts. Left as is, the bankruptcy court’s decision would potentially preclude industrial energy consumers and sellers from liquidating a transaction with a bankrupt counterparty, or from realizing against any property posted as collateral, without first obtaining relief from the automatic stay.

On direct, interlocutory appeal, the Fourth Circuit reversed and remanded the case back to the bankruptcy court for further consideration.

The Fourth Circuit noted that Congress had created safe harbor provisions for participants in the financial derivative markets. Without safe harbor provisions, if a party who had entered into a variety of these types of contracts files for bankruptcy, counterparties would find themselves exposed to the automatic stay for extended periods, unable to liquidate their contracts and thereby limit their exposure to market movements. Furthermore, a debtor could “cherry-pick” beneficial contracts, effectively locking in profitable contracts and disposing of unprofitable ones. This potential artificial market behavior could ripple through the commodities market, having the domino effect of potentially spreading a debtor’s insolvency to other market participants and quite possibly threatening the collapse of the entire market.

Keeping the congressional intent in mind, the Fourth Circuit disagreed with the bankruptcy court’s determination that the natural gas contracts were simple supply contracts and not “swap agreements” within the meaning of the safe harbor provisions under the Code. The fact that a contract contemplates the physical delivery of a commodity does not preclude it from being a swap agreement. Even though the contracts provided for the physical supply of gas to customers, they were part of a series of transactions in which the customers hedged their risk of future price fluctuations. Indeed, the court found that the contracts themselves represented a form of hedging by virtue of the present fixing of a price for future delivery of a product. The court also found that while this type of contract is not traded, it potentially could have a direct influence on the financial markets in which natural gas hedges were traded. The court concluded that the natural gas contracts might well fit within the type of contracts that Congress intended to specially treat under the Code.

Although the *National Gas* customers identified the contracts at issue as a “commodity forward agreement,” the Code itself does not contain an express definition of such agreements. The Fourth Circuit reasoned that a “contract” is a type of “agreement.” However, every “agreement” is not necessarily a “contract.” Therefore, a “forward contract” is a subset of “forward agreements.” The Code does define the term “forward contract;” under the Code, a forward contract does not need to be traded on an exchange or in the market, can be negotiated directly with parties and can provide for physical delivery of the commodity. *See also In the Matter of Olympic Natural Gas Co.*, 294 F.3d 737, 741 (5th Cir. 2002) (which held that “forward contracts” do not need to be traded on an exchange or in a market,

may be directly negotiated between the parties and may provide for physical delivery of the commodity). Therefore, a “forward agreement,” being even broader than “forward contract,” should not have restrictions requiring trade on an exchange.

While the Fourth Circuit stopped short of providing a fixed definition of a “commodity forward agreement,” it did identify four characteristics: (1) the subject of a commodity forward agreement must be a commodity (distinguishing a commodity agreement from other supply contracts that attribute a large portion of costs to packaging, marketing, transportation, or other similar costs), (2) in being “forward,” it must require a payment for a commodity at a fixed price to be delivered more than two days after the date of the agreement, (3) the quantity to be delivered and the timing elements in the agreement must be fixed at the time the agreement is entered into by the parties, and (4) there is no requirement that the contract be traded on an exchange or in the financial markets.

The Fourth Circuit’s decision provided welcome news to the energy markets by creating more clarity regarding whether particular contracts will fall within the safe harbor

provisions. Specifically, physical delivery of product does not appear to be a disqualifying component nor does the contract need to be traded on an exchange. However, the fixed-price component raises a potential red flag. If by “fixed price” the circuit court meant that it could include an index price, then that would comport with how many contracts are structured today. However, if the price must truly be fixed, then many contracts now used may not fall within the definition of a forward agreement or forward contract.

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Addressing Risks of Intermediaries Filing for Bankruptcy in Section 1031 Exchanges

What happens when you engage in a tax-free Section 1031 exchange and your qualified intermediary (QI) declares bankruptcy while holding the proceeds from the sale of your property?¹ According to a Virginia bankruptcy court, unless the exchange agreement is drafted properly, the transaction proceeds held by the QI may become part of its bankruptcy estate, resulting in you becoming a general unsecured creditor.² This was the case for an exchanger with proceeds held in segregated bank accounts of LandAmerica 1031 Exchange Services, Inc. (LandAmerica), acting as its QI, at the time LandAmerica filed for bankruptcy. The court concluded that the language of the exchange agreement disclaimed any interest of the exchanger in the proceeds and held that the use of segregated bank accounts did not give rise to a trust. Thus, the proceeds were treated as part of LandAmerica’s bankruptcy estate.

Forward 1031 Transactions

Under Section 1031 of the Code, no gain or loss is recognized when property is exchanged solely for like-kind property. While this exchange of property may take place simultaneously, the Code allows taxpayers to defer the acquisition of the replacement property for 180 days from the transfer of the relinquished property, which is known as a forward exchange. In forward exchanges, taxpayers typically assign the contract for the sale of their relinquished property to an entity known as a QI, which receives the proceeds and uses them to purchase the replacement property on behalf of the exchanger.

As an alternative to using a QI to hold the proceeds from the sale in exchange, the Treasury Regulations allow the proceeds from the sale of the relinquished property to be held (1) in a qualified escrow account or (2) in a qualified trust. These three options are not mutually exclusive and,

therefore, a QI may hold the proceeds for the exchanger in a qualified trust.³ QIs are an integral part of a Section 1031 exchange because tax-free treatment under the Code prohibits the taxpayer from actually or constructively receiving proceeds from the sale of the relinquished property.

Often, as in the LandAmerica case, exchange agreements include language that seeks to restrict the beneficial interest an exchanger has in the proceeds before the exchange is completed. These restrictions are included so that the exchanger will not be treated as having constructively received the proceeds. In the case described above, LandAmerica acted as the QI and was in possession of the relinquished property proceeds at the time it filed for bankruptcy. The exchange agreement included very restrictive language regarding the exchanger's interest in the proceeds and did not seek to characterize LandAmerica as holding the proceeds in trust for the exchanger. Accordingly, the court treated the relationship as though the exchanger was merely an unsecured creditor of LandAmerica with respect to the exchange proceeds.

In light of the LandAmerica bankruptcy decision, it would be prudent to work with your advisors to insure that your QI holds the exchange proceeds in trust and that the trust relationship is clearly defined in the exchange agreement. When using an institutional QI, such as LandAmerica, this additional protection may come at a price because it will require that the QI act as trustee and therefore bear the burdens associated with acting as a trustee, including fulfillment of its fiduciary duty to the exchanger/beneficiary.

Reverse 1031 Transactions

Another type of 1031 like-kind exchange is a reverse exchange. In a reverse exchange, the replacement property is acquired prior to the sale of the relinquished property and "parked" with an "exchange accommodation titleholder" (an EAT, often the same party as the QI). In order for a reverse exchange to qualify for tax-free treatment under Section 1031, the exchanger cannot actually or constructively receive the replacement property until the relinquished property has been transferred. Accordingly, the EAT acquires and holds the replacement property until the relinquished property is sold by the QI.⁴ IRS Revenue Procedure 2000-37 establishes the following requirements that must be satisfied in order for the EAT, rather than the exchanger, to be treated as the owner of the property before the exchange can be completed:

- the EAT must hold legal title to the property or hold interests in an entity that is disregarded for federal tax purposes (e.g., a single member LLC), which holds legal title to the property
- the EAT must be an entity subject to tax
- the exchanger must intend that the property held by the EAT represent replacement property in an exchange intended to qualify as a tax-free exchange under Section 1031
- the exchanger and the EAT must enter into a written agreement that provides that the EAT is holding the property for the benefit of the exchanger in order to facilitate an exchange under Section 1031 and the agreement must specify that the EAT and exchanger agree to treat the EAT as the beneficial owner of the replacement property for all federal income tax purposes, and
- the exchange must satisfy the timing and identification rules contained in the statute.

As indicated by the first bullet point above, EATs often establish limited liability companies that are special purpose entities (SPEs), which are disregarded for federal income tax purposes, for the purpose of acquiring replacement property.

In some cases, exchangers park the replacement property with the EAT for a period of time after the relinquished property has been transferred. This may occur, for example, if the exchanger wishes to improve the replacement property to increase its value in order to avoid recognizing gain on the exchange (this is known as a "build-to-suit" exchange).⁵ If during a build-to-suit exchange the EAT were to file for bankruptcy, the replacement property would be part of the EAT's bankruptcy estate and the exchanger would have only the rights of a general unsecured creditor, i.e., the same rights the exchangers, described above, had in the proceeds held by LandAmerica. A reverse build-to-suit exchange that uses an SPE, without the fix described below, bears the same risk as a non-SPE reverse build-to-suit exchange because the bankruptcy estate of the EAT may force the SPE to file for bankruptcy thus subjecting the replacement property to the claims of creditors, the automatic stay and other bankruptcy issues.

One potential solution for keeping replacement property held by an EAT during a reverse build-to-suit exchange out of the EAT's bankruptcy estate is to make the SPE "bankruptcy remote" by drafting the governing documents of the SPE in a manner that precludes the SPE from filing for bankruptcy and includes certain other financial and governance controls. More difficult planning considerations

must be made when an EAT does not use an SPE. In either case, you should consult your legal adviser in order to fully address the risk of your EAT or QI filing for bankruptcy.

Protecting Your Proceeds and Property

As described above, the lesson to be learned from the LandAmerica bankruptcy is that all exchange agreements should include terms that protect the cash or property held by a QI or EAT in case that entity or its parent entity files for bankruptcy. The best solution is to insure that (1) any forward exchange agreement defines the relationship between QI and exchanger as one of trustee and beneficiary and (2) any EAT agreement in a build-to-suit exchange requires use of an SPE and the SPE's governing documents are drafted to, among other things, preclude the entity from filing for bankruptcy. However, as noted above, when using an institutional QI such as LandAmerica, the enhanced protection suggested in a forward exchange may come at a cost since it will result in the QI owing the exchanger a fiduciary duty with respect to the property held in trust.

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Endnotes

- 1 All Section references are to sections of the Internal Revenue Code of 1986, as amended (the Code).
- 2 *Millard Refrigerated Servs. v. LandAmerica 1031 Exch. Servs.*, 2009 Bankr. LEXIS 940 (Bankr. E.D. Va. Apr. 15, 2009).
- 3 Because there is a tension between traditional trust requirements and the requirement that an exchanger not be in constructive receipt of proceeds before an exchange is com-

plete, the Treasury Regulations set forth a safe harbor that allows the proceeds to be held in trust for the benefit of the exchanger, but not give rise to constructive receipt.

- 4 In a reverse exchange that uses separate entities as QI and EAT, it is possible that the QI could take possession of the relinquished property proceeds, i.e., until the proceeds can be transferred to the EAT. In the interest of caution, therefore, the QI agreement should provide that the proceeds, if received by the QI, are held by the QI in trust for the exchanger.
- 5 In a non-build-to-suit reverse exchange, the EAT would typically transfer the replacement property to the exchanger simultaneous with the exchanger's transfer of the relinquished property such that the exchanger is never an unsecured creditor with respect to the replacement property. Rather, the exchanger is a debtor of the EAT (because it is required to indirectly purchase the replacement property from the EAT) until it takes possession of the replacement property.

speakers' corner

Robert S. Hertzberg will moderate a panel titled, "Strictly Confidential: The Use (and Abuse) of Confidential Information in Restructuring Discussions" at the INSOL 2009 Eighth World Congress in Vancouver, Canada on June 22.

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