

## **DEBTOR MUST PAY DEFAULT INTEREST RATE IN ORDER TO CURE UNDER BANKRUPTCY PLAN**

In a win for secured creditors, the Ninth Circuit Court of Appeals recently held that a debtor who sought to cure a pre-petition default of its loan through its Chapter 11 plan must pay the default rate of interest set forth in the note. In *Pacifica L 51 LLC v. New Investments Inc.*, the debtor proposed to pay the outstanding amount due under the note at the pre-default interest rate. This proposal was in accordance with law in the Ninth Circuit, which held that even if a loan agreement provided for a higher post-default interest rate, a debtor who cured a default was entitled to repay at the lower, pre-default rate.

In overruling its prior case, the Court held that while a debtor is permitted to cure a default through a bankruptcy plan and return to pre-default conditions, the debtor is not allowed to avoid a post-default interest rate if that rate was provided for in the loan documents. The Court explained that under the Bankruptcy Code, the amount necessary to cure a default is determined in accordance with the underlying agreement and applicable non-bankruptcy law. Thus, because the note provided for a higher default rate of interest and such a rate was permitted under state law, the debtor could not avoid this obligation.

The Ninth Circuit's holding is consistent with the majority of other circuits, including the Second Circuit (which covers, among other states, Connecticut and New York), which allows creditors to receive the default rate of interest from debtors attempting to cure defaults through their bankruptcy plans.