

**ALERTS**

## Buyer Beware: Purchaser of Assets in UCC Article 9 Foreclosure Sale May Be Subject to Claims of Debtor's Unsecured Creditors

**March 22, 2011**

The Second Circuit Court of Appeals held that a secured creditor who purchases a debtor's assets in an out-of-court foreclosure sale under the Uniform Commercial Code ("UCC") and continues to operate the debtor's business may be liable for the debtor's debts. *Call Center Technologies, Inc. v. Grand Adventures Tour & Travel Publishing Corporation, Interline Travel & Tour, Inc.*, Docket No. 09-1224 (2d Cir. Mar. 11, 2011) ("*Interline*").

The Second Circuit reversed the lower court's grant of summary judgment in favor of the foreclosing lender because the issue of successor liability is fact-specific and the lower court erred by granting judgment as a matter of law. *Id.* at 1. A foreclosure conducted in accordance with the UCC will not automatically insulate the purchaser, as a matter of law, from a state law successor liability claim, even though under Section 9-617 of the UCC a sale of collateral after default discharges the security interest of the foreclosing creditor and "any subordinate security interest or other subordinate lien." UCC Section 9-617(a)(3). This decision means that a potential asset purchaser in an out-of-court foreclosure sale (whether it be the secured creditor through a credit bid or other independent party) must consider whether an unsecured creditor may seek to collect unpaid liabilities of the debtor from the purchaser, on the grounds that "the purchaser is a 'mere continuation' of the seller."

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