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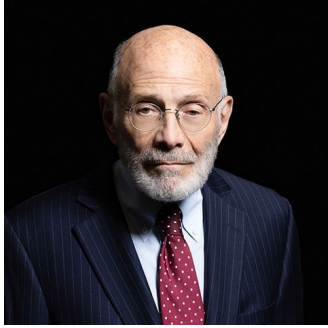
## **Ninth Circuit Allows Bankruptcy Courts to Recharacterize Loans as Equity, Applying State Law**

**July/August 2013**

The U.S. Court of Appeals for the Ninth Circuit recently held in *In re Fitness Holdings International, Inc.* that a bankruptcy court “has the authority to determine whether a transaction creates a debt or an equity interest for purposes of [Bankruptcy Code] § 548, and that a transaction creates a debt if it creates a ‘right to payment’ under state law.” The court agreed with five other circuits, but explicitly followed the reasoning of the Fifth Circuit’s recent *In re Lothian Oil, Inc.* decision. In this article, SRZ business reorganization partner Michael L. Cook discusses the Ninth Circuit’s decision.

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## Related People



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