

PUBLICATIONS

Fifth Circuit Vacates DIP Financing Orders

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The U.S. Court of Appeals for the Fifth Circuit, on Sept. 3, 2014, vacated five bankruptcy court and district court Chapter 11 debtor-in-possession (DIP) financing orders due to: 1) the lender's lack of good faith in relying on a third party's shares of stock as collateral; and 2) the bankruptcy court's lack of subject matter jurisdiction to authorize a lien on third party collateral subject to disputed ownership claims. *In re TMT Procurement Corp.*, 2014 WL 4364894 (5th Cir. Sept. 3, 2014). To vacate the orders and hear the appeal, the Fifth Circuit had to reject the debtors' argument that the consolidated appeals were moot because of the lower courts' repeated findings "that the DIP Lender ... extended financing to the Debtors in good faith and was entitled to the full protections of sections 363(m) and 364(e) of the Bankruptcy Code ["Code"]." *Id.* at *3. In this article, SRZ partner Michael L. Cook discusses the court of appeals' decision.

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