

ALERTS

Divided Tenth Circuit Reverses Recharacterization and Equitable Subordination of Insider Secured Loan

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The claim of an insider lender (“L”) who invested “in a venture with substantial risk” and who loaned it additional funds on a secured basis to salvage its business should not be recharacterized as equity or subordinated on equitable grounds, held the U.S. Court of Appeals for the Tenth Circuit on June 12, 2015. *In re Alternate Fuels, Inc.*, 2015 WL 3635366 (10th Cir. June 12, 2015) (2-1) (“*AFI*”). Reversing the bankruptcy court and the Bankruptcy Appellate Panel, the court found that L’s loans did “not meet our criteria for either recharacterization or equitable subordination.” Moreover, L had “satisfied his burden of proof as to the validity and amount of his claim.” The *AFI* decision shows how and why courts have reached inconsistent results in deciding whether to recharacterize secured loans.

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