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10th Circuit Shields 1st-Time Payment from Preference Attack

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A “first-time transaction can qualify” for the ordinary course of business exception to the preference recovery provision of the Bankruptcy Code, held the U.S. Court of Appeals for the Tenth Circuit on Aug. 10, 2015. *In re C.W. Mining Co.*, 2015 U.S. App. Lexis 13981 (10th Cir. Aug. 10, 2015).

Affirming the lower courts, the Tenth Circuit explained that Bankruptcy Code Section 547(c)(2)(A) “refers to the ‘ordinary course of business ... of the debtor and the transferee,’ not *between* the debtor and the transferee.” *Id.* at *10 (emphasis in original). In this article, Michael L. Cook discusses the Tenth Circuit’s decision and addresses how a first-time transaction may satisfy the requirements for an ordinary course of business defense.

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