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Split Ninth Circuit Requires Default Interest to Cure Default

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A Chapter 11 debtor “cannot nullify a preexisting obligation in a loan agreement to pay post-default interest solely by proposing a cure,” held a split panel of the U.S. Court of Appeals for the Ninth Circuit on Nov. 4, 2016. Reversing the bankruptcy court, the court’s majority relied on a 1994 amendment of Bankruptcy Code §1123(d) (“ ... the amount necessary to cure [a] default [under a reorganization plan] shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law”). In effect, the amended §1123(d) overruled the Ninth Circuit’s earlier “holding that a debtor who cures a default, thus ‘nullify[ing] all consequences of’ that default, may repay arrearages at the pre-default interest rate.” In this article, of counsel Michael Cook discusses the Ninth Circuit’s decision and its impact on Chapter 11 debtors.

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