



## Proceeds from Insurance Settlement Outside the Scope of Article 9

MARCH 31, 2015 | PUBLICATIONS

The Bankruptcy Appellate Panel for the First Circuit recently held that a creditor holding a perfected security interest in accounts and payment intangibles did not have a perfected security interest in the proceeds of an insurance settlement. *In re Montreal, Maine & Atlantic Ry., Ltd.*, 521 B.R. 703 (B.A.P. 1st Cir. 2014). In this case, the creditor had extended a line of credit to the borrower, which it secured by a security interest in all the borrower's accounts and payment intangibles. The creditor filed a financing statement to perfect its security interest.

The borrower operated a train that derailed, causing significant damage. Following the derailment, the borrower asserted a claim on its commercial property insurance policy for the policy limit of \$7.5 million. The borrower's insurance claim was for damage caused by the derailment, the extra expenses incurred as a result of the derailment, and loss of business income. The insurance company denied payment, asserting that there was not coverage under the policy for the types of claims the borrower filed. The borrower subsequently filed bankruptcy. The insurance company and the borrower eventually came to a settlement agreement, and the insurance company agreed to pay \$3.8 million in full and final satisfaction of any claims arising under the insurance policy. The bankruptcy trustee filed a motion to obtain court approval of the settlement. The creditor objected to the settlement, arguing that the settlement agreement impaired its security interest.

The bankruptcy court found that the creditor did not have a valid security interest in the settlement proceeds. On appeal, the Bankruptcy Appellate Panel for the First Circuit agreed. The court noted that Section 9-1109 of Maine's Uniform Commercial Code states that Article 9 does not apply to a "transfer of an interest in or an assignment of a claim under a policy of insurance." The court found that the settlement arose from the insurance policy, so it was outside the scope of Article 9. Therefore, the financing statement did not perfect any security interest the creditor may have had in the policy. Further, the court found that the creditor did not have an enforceable security interest under Maine common law.

Creditors should be aware that filing a financing statement may not perfect a security interest in insurance settlement proceeds. If you need assistance determining whether your security interest is properly perfected, contact one of the attorneys in our Financial Services Group.

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