

Haynes, Lanea

Subject: FW: Bankruptcy reorganization - exchange of debt for equity

From: Gillis, Diana L.
Sent: Wednesday, June 14, 2017 1:37 PM
To: [REDACTED] Walsh, Kathryn E.
Cc: Jones, Robert L.; Shaffer, Kristin; Carson, Timothy; Whitehead, Nora
Subject: RE: Bankruptcy reorganization - exchange of debt for equity

[REDACTED],

The vulture fund exception would preclude the use of 802.63 if the LLC is created and the debt is transferred after the announcement of an intention to file for bankruptcy. We do not see how the debt would be excluded under 801.11(e) in determining LLC's assets.

-Diana

From: [REDACTED]
Sent: Wednesday, June 14, 2017 11:44 AM
To: Gillis, Diana L.; Walsh, Kathryn E.
Cc: Jones, Robert L.
Subject: FW: Bankruptcy reorganization - exchange of debt for equity

Diane,

Not certain that you received the attached email. The question is whether an LLC formed by first lienholders to aggregate their holdings can rely of the 802.63 exemption when the debt it holds is exchanged for equity of the debtor. The LLC will be its own ultimate parent and will only hold debt of the debtor.

The first lienholders acquired debt of the debtor prior to the debtor's announcement of its intention to file for bankruptcy and their direct exchange of debt for equity of the debtor qualifies for exemption under 802.63. The question is whether the exchange of first lien debt for equity by the newly formed LLC qualifies for the 802.63 exemption if the LLC is formed after the debtor announces its intention to file for bankruptcy.

The first lien holders may also extend dip financing to the debtor after the debtor announces its intention to file for bankruptcy. Does the exchange of this debt also qualify for exemption?

Also, if the vulture fund exemption precludes the application of 802.63, can the debt of the target be excluded under Section 801.11(e) in determining the LLC's total assets? I recall that you indicated that the debt cannot be excluded under 801.11(e) but I wanted to confirm this is still your position.

Thanks for your help,

[REDACTED]

[REDACTED]