

# PUBLICATION

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## Revival of Guaranty and Recovery of Postpetition Attorney's Fees: Two for the Price of One

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### Introduction

Following the U.S. Supreme Court's decision in *Travelers Casualty & Surety Co. of America v. Pacific Gas & Electric Co.*,<sup>1</sup> now on remand to the Ninth Circuit, the Ninth Circuit Bankruptcy Appellate Panel (BAP) jumped in and tackled the issue of unsecured claims for postpetition legal fees and the "intersection of insolvency law principles and guaranty law" in *Centre Insurance Co. v. SNTL Corp. (In re SNTL Corp.)*.<sup>2</sup> More specifically, *SNTL Corp.* considered the following issues: First, whether a creditor's release of a guarantor is still effective when the primary obligor's payment (creating the condition for release) is later deemed a voidable preference; and second, the issue left unresolved by *Travelers*, whether an unsecured creditor may properly include in its claim contractual attorney's fees incurred postpetition.

### Factual Background of *SNTL Corp.*

While the factual background of *SNTL Corp.* is rather complicated, the facts material to the two issues resolved by the Ninth Circuit BAP are straightforward. Superior National Insurance Group (SNIG) guaranteed performance of certain obligations of affiliated insurance companies to Centre Insurance Company (Centre). Following a default, SNIG's affiliates paid \$163.4 million to Centre in return for satisfaction of a \$180 million debt and the release of SNIG from its guaranty. The release agreement contained a provision indicating the release could be revoked by Centre if any payments received by Centre under the agreement were later deemed voidable or preferential transfers.

Thereafter, SNIG filed Chapter 11, the Insurance Commissioner for the State of California placed the affiliates into state insolvency proceedings, and the Commissioner sued Centre seeking the \$163.4 million payment under state preference laws.

Centre's proof of claim in SNIG's Chapter 11 sought in excess of \$180 million and expressly referenced the Commissioner's pending suit against Centre, reserving the right to seek additional amounts if any of the \$163.4 million payment was deemed void or voidable in the Commissioner's suit. Centre then settled the Commissioner's suit in return for repayment of \$110 million of the \$163.4 million it had received from SNIG's affiliates.

In the bankruptcy case, Centre asserted that its payment of \$110 million in settlement of the Commissioner's suit revived SNIG's guaranty liability. Centre also asserted it had the right to include postpetition attorney's fees in its claim based on provisions in the release agreement and related contracts.

A trustee was appointed under SNIG's plan of reorganization and asserted four objections to Centre's proof of claim: (1) Centre's claim had been released and could not be revived absent a judicial determination that the

\$163.4 million payment was preferential; (2) even if such a judicial determination had been made, Centre failed to exercise its right of revocation; (3) § 502(b) of the Bankruptcy Code precluded Centre from reviving claims released prepetition; and (4) as an unsecured creditor, Centre could not assert a claim for postpetition attorney's fees.

The bankruptcy court granted the trustee's summary judgment motion, rejecting Centre's claim under the "revived" guaranty and its claim for postpetition attorney's fees. Centre appealed.