



Legal Note – Race for Judgment

Last month we discussed the “choice of law” issue. An additional issue raised by the choice of law question is: If the applicable law is clear, which state court will interpret the law governing a creditor’s claim? The establishment of a court’s jurisdiction to hear the case is based on the contacts of the parties to a particular state. Jurisdiction therefore often falls clearly in one state because all parties, the debt, etc., are based in that state. If, however, the litigants, contracts, trusts, etc. are in different states, the parties may engage in a “race for judgment” in the most favorable jurisdiction.

If, for example, a creditor has the opportunity (based on the contacts of the parties) to file suit in a creditor friendly state, the creditor would be well advised to do so. Depending on the facts of the case, the debtor would likely suffer a liberal interpretation of the law governing his plan. This can occur even though the law governing the applicable protections originates in a state distinct from the state court interpreting the law. The judgment (likely favoring the creditor) will become enforceable in every state pursuant to the Full Faith and Credit Clause of the U.S. Constitution (discussed last month). The potentially adverse interpretation would therefore govern all state courts, even the courts of state whose laws govern the plan.