

ResCap Court Holds That Debt Issued in Fair Value Exchanges Will Not be Discounted for OID in Bankruptcy

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On September 15, 2013, Judge Martin Glenn of the United States Bankruptcy Court for the Southern District of New York issued an opinion in the Residential Capital (“ResCap”) bankruptcy that will provide greater certainty to creditors of distressed entities that agree to fair value debt-for-debt exchanges. In addition to other issues he addressed, Judge Glenn found that original issue discount (“OID”) created in a fair value debt-for-debt exchange for tax purposes will not be disallowed as unmatured interest for bankruptcy purposes. Judge Glenn’s findings on the treatment of exchange-related debt fill in a gap in the case law left by the Second Circuit’s *Chateaugay* decision, and may positively impact the market for distressed debt as well as the ability of distressed borrowers to refinance their debt going forward.

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