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Unanimous Lender Consent Provisions May Not Provide the Protection Expected

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August 21, 2009

Credit agreements typically provide that any amendment permitting the release of "all or substantially all" of the collateral requires the unanimous consent of the lenders. Many market participants expect that this provision requires that all lenders consent to the agent or other lenders agreeing to release liens on their collateral. Contrary to this perception, however, three courts have recently concluded that this amendment provision does not apply when the agent exercises remedies against the collateral consistent with the rights originally granted to the agent by the lenders, as such an exercise does not require an amendment to the credit agreement. Authors Nicholas A. Whitney and Keith N. Sambur provide a brief summary of the issues and the courts' opinions.

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