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NHL Scores Big on Attorneys' Fees Against Nondebtors

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Last fall, the National Hockey League (NHL) enjoyed a big off-ice victory when the U.S. District Court for the District of Arizona found that it was entitled to recover from Jerry and Vickie Moyes and the Jerry and Vickie Moyes Family Trust (collectively, the "Moyes defendants") significant attorneys' fees and expenses (up to \$15 million) incurred by the NHL in connection with the bankruptcy cases of several corporate entities that the Moyes defendants controlled and that comprised the Phoenix Coyotes hockey franchise. Specifically, the court held that the NHL's claims for indemnification (including attorneys' fees and expenses), based on a consent agreement and a separate guaranty into which the NHL and the Moyes defendants had entered in connection with the Moyes defendants' original acquisition of the Phoenix Coyotes, were not pre-empted by the Bankruptcy Code and federal bankruptcy law, and were therefore enforceable against the Moyes defendants. This article examines the recent *NHL v. Moyes* decision in the context of current law addressing the ability of unsecured creditors to recover claims for attorneys' fees and expenses incurred after and in connection with a bankruptcy filing from a debtor, or, as was the case for the NHL in the Coyotes dispute, against nondebtor parties.

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