Seeking and Objecting to Creditors' Attorneys Fees

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Under-Secured Claims: Hypo

- As a Secured Creditor, you hold an over-secured claim against Director Nick Fury's armory for his team of Avengers, as you were their weapons provider.
- Director Fury and Shield are forced to file Ch.7 bankruptcy due to a mysterious ship crashing into their HQ, and their insurance not covering interdimensional spaceship collisions.
- Moments before filing your secured claim to recover principal, interest, and attorney's fees, a mysterious snap is heard across the Universe, whereby half of his team disappears along with their weapons and armor, suddenly making your claim under secured.
- In the Fifth Circuit, are you still entitled to collection of your attorney's fees as part of your secured-claim?

Question 1: Are You Over-Secured?

- § 506(b) states that an over-secured claimant may recover any reasonable fees, costs, or charges provided by statute or agreement.
  - "To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim. Interest on such claim, and any reasonable fes, costs, or charges provided for under the agreement or state statute under which such claim arose
- The Fifth Circuit has regularly limited recovery of post-petition attorney's fees to over-secured creditors due to the Code's explicit language.
  - *In re Seda France, Inc.*, NO. 10-12948-CAG, 2011 Bankr. LEXIS 2874 (Bankr. W.D. Tex. July 22, 2011).

Over-Secured: Hypo

- In the same scenario, when all seems to be lost and your claim is no longer over secured, by a stroke of luck, suddenly the Avengers "blip" back with their weapons and armor, and everything is back to normal.
- You file your claim for recovery of attorney's fees, and they are a lot!
- May you recover all your attorneys fees if the value of the collateral exceeds the value of your claim?

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