Establishing the Bases and Extent of the Principle of "Adequate Protection" for Secured Creditors in Philippine Corporate Rehabilitation Proceedings

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This Note attempts to answer if the right of under secured and fully secured creditors to post–petition interest as part of their adequate protection exists and, if it does exist, in what manner it should be given, keeping in mind the rehabilitation process provided by the Interim Rules of Procedure on Corporate Rehabilitation.

The Author provides a history of bankruptcy and rehabilitation, citing pertinent American and Philippine laws and jurisprudence, and contrasts the advantages and liabilities of secured and unsecured creditors, stating that it is the latter type of creditor that needs adequate protection in developing countries. Then, the Author discusses the procedure and effects of a stay order and summarizes jurisprudence which tackled issues with regard to its application.

The prevailing view on adequate protection is based on the unconstitutional impairment thesis. The Author thus re-examines such thesis in light of the State's exercise of police power and the non–impairment clause, focusing on the conflicts of such thesis with the takings clause and the issue of compensability.

Considering the goal of adequate protection is the maintenance of the status quo, the strict application of *In re Timbers of Inwood Forest Associates Ltd,* which ruled that under secured and fully secured creditors are not entitled to payment of post–petition interest as part of their adequate protection, should be followed.

The Author additionally recommends that post–petition interest should be treated as a "superpriority" administrative expense and adequate protection for depreciation of property should be paid immediately.