

MEMO# 6884

April 27, 1995

BANKRUPTCY COURT DECISION CONCERNING RIGHTS OF ORANGE COUNTY NOTE HOLDERS

April 27, 1995 TO: MONEY MARKET FUNDS AD HOC COMMITTEE No. 3-95 SEC RULES
MEMBERS No. 31-95 CREDITOR'S RIGHTS SUBCOMMITTEE RE: BANKRUPTCY COURT
DECISION CONCERNING RIGHTS OF ORANGE COUNTY NOTE HOLDERS

_____ The United States Bankruptcy Court for the Central District of California has ruled that the holders of certain tax-exempt notes issued by Orange County do not have a lien on the County's revenues acquired after the date it filed for bankruptcy protection. A copy of the court's decision is attached. The holders of certain tax anticipation notes (TRANS) issued by Orange County petitioned the court to lift the automatic stay to file a complaint in state court to force the County to set aside certain revenues for payment on the notes. The note holders asserted, among other things, that unless the County was required to set aside such funds, it would have insufficient revenues to pay the note holders on the July 1, 1995 maturity date. In denying the note holders' motion, the court determined that they had a security interest, rather than a statutory lien. Under Section 552(a) of the Bankruptcy Code, a security interest acquired prior to the filing of a bankruptcy petition does not reach property acquired by the debtor once the petition is filed. In contrast, a statutory lien continues to apply to such property. The fundamental difference between a security interest (which is a lien created by an agreement) and a statutory lien is the consent of the debtor to the granting of the lien. After analyzing the relevant documents (i.e., the resolution adopted by the County's Board of Supervisors authorizing the County to issue the TRANS, the contract between the County and the underwriter, and the TRANS), the court concluded that an agreement between the parties, and not the statute, created the lien. Accordingly, the court found that the note holders do not have an interest in the County's post-petition revenues. Amy B.R. Lancellotta Associate Counsel Attachment