



Avoidance Action Update

Quarterly Newsletter

Volume 1, Issue 2 - 2016

The second quarter of 2016 has come and gone, a time in which courts across the country issued a variety of helpful preference action decisions. Among others, the Third Circuit addressed an issue of first impression under 547(c)(9), while the Bankruptcy Court for the Western District of Texas ruled on the application of the ordinary course of business defense where the preference defendant experienced an ownership change immediately pre-preference period. Those opinions and more are analyzed via the links below.

As always, stay tuned to the Blog for continued coverage of avoidance action jurisprudence and some exciting new features being launched in the coming months.

Evan T. Miller, publisher of the Blog, can be reached with any questions or comments at emiller@bayardlaw.com and (302) 429-4227.

Judge Houle (Bankr. C.D. Cal.) Addresses the Impact of Substantive Consolidation On Fraudulent Transfer Defenses in *In re Empire Land, LLC*

April 18, 2016

By [Evan T. Miller, Esq.](#)

Applying the “dominion test” to a series of allegedly fraudulent transfers and rejecting the relevance of the estates’ substantive consolidation to the transferee’s defense. **This decision is currently on appeal in the United States District Court for the central District of California.*

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Third Circuit Addresses Issue of First Impression in Finding the Payee Irrelevant for Purposes of Applying Section 547(c)(9)’s Aggregate Value Threshold in *In re Net Pay Solutions, Inc.*

May 19, 2016

By [Evan T. Miller, Esq.](#)

Rejecting a Chapter 7 trustee’s argument that, because all payments were made to the same payee, he could avoid multiple small-dollar payments to the IRS that Debtor made on behalf of multiple clients. Issue of first impression for the Third Circuit.

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Seventh Circuit Reverses Bankruptcy and District Courts in Delineating the Ordinary Course of Business’s Baseline of Dealings Requirement in *In re Sparrer Sausage Co.*

June 21, 2016

By [Evan T. Miller, Esq.](#)

Seventh Circuit finding that a proper “baseline of dealings” for establishing an ordinary course of business defense should capture closer to 88% of historical period transfers rather than the 64% figure used by the bankruptcy court.

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Does a Recent Change of Ownership Impact a Preference Defendant’s Ordinary Course of Business Defense? Judge Davis (Bankr. W.D. Tex.) Provides an Answer in *In re Sterry Industries, Inc.*

June 30, 2016

By [Evan T. Miller, Esq.](#)

Finding that where a preference defendant experiences an ownership change immediately pre-preference period, the ordinary course of business comparison should be between the preference period and the historical period *under the new owner.*

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CATEGORIES THIS QUARTER

Elements (11 U.S.C. § 547(b))	1 post
Fraudulent Transfer – Actual Fraud (11 U.S.C. § 548(a)(1)(A))	1 post
Fraudulent Transfer – Constructive Fraud (11 U.S.C. § 548(a)(1)(B))	1 post
Ordinary Course of Business – Objective (11 U.S.C. § 547(c)(2)(B))	1 post
Ordinary Course of Business – Subjective (11 U.S.C. § 547(c)(2)(A))	2 posts
State Fraudulent Transfer (11 U.S.C. § 544)	1 post
Subsequent New Value (11 U.S.C. § 547(c)(4))	1 post

TAGS THIS QUARTER

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26 U.S.C. § 7501	1 post	Incomnet	1 post
Average-lateness	1 post	Increase in Days-to-Pay	1 post
Bankruptcy Court for the Central District of California	1 post	Initial transferee	1 post
Bankruptcy Court for the District of Delaware	1 post	Judge Davis	1 post
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