



Avoidance Action Update

Quarterly Newsletter

Volume 1, Issue 1 - 2016

The first quarter of 2016 offered several opinions of note, with topics ranging from actual intent of directors and officers for fraudulent transfers to the continuing development of the ordinary course of business defense. Avoidance Action Update's posts during the first quarter are summarized below. Click the "Read More" link to read the full post.

Stay tuned to the Blog for continued coverage of avoidance action jurisprudence, as well as some exciting new features, such as the upcoming "industry spotlight series."

***In re Lyondell Chemical Co.* 2016 Update – Judge Gerber Finds Pre-Merger D&Os Did Not Possess Actual Intent to Hinder, Delay or Defraud Creditors in Prepetition Leveraged Buyout**

January 15, 2016
By [Evan T. Miller, Esq.](#)

Finding that the Trustee (i) made no allegations with respect to control over directors, or (ii) that a critical mass of directors intended to hinder, delay, or defraud the Debtors' creditors, and (iii) merely raised concerns over whether D&Os breached fiduciary duties, the Court dismissed the fraudulent transfer count.

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Decision by the Bankruptcy Appellate Panel for the First Circuit Provides a Cautionary Tale for Preference Defendants

February 1, 2016
By [Evan T. Miller, Esq.](#)

Court finds that the 547(c)(2) "ordinary course of business" defense cannot be met merely by declaring late payments to be ordinary course; at least some analysis must be provided in support.

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Is Denial of Receipt Enough to Contest Service Under 12(b)(5)? Must a Preference Complaint Allege More Than Recipient, Transfer Date, and Amount to Satisfy *Twombly/Iqbal*? Judge Sontchi Clarifies Delaware's View

February 12, 2016
By [Evan T. Miller, Esq.](#)

Court finds that the mere denial that a served address is incorrect is insufficient for 12(b)(5) purposes, while also holding that merely naming the preference recipient, the amount of the transfer, and date thereof does not comply with *Twombly/Iqbal* and *Fowler*.

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Badges of Fraud and the Imputation of Actual Fraudulent Intent – Chief Judge Shannon (Bankr. D. Del.) Issues Latest Order in Long-Running *Syntax-Brilliant* Fraudulent Transfer Action

February 19, 2016
By [Evan T. Miller, Esq.](#)

Finding actual fraud claim survives a motion to dismiss where there is one alleged "badge of fraud" along with the totality of circumstances at the time. Also discusses the law of the case doctrine, the collapsing doctrine, good faith/548(c), and the imputation of D&O intent to a debtor.

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'Average Payment Time' vs. 'Range of Payment Statistics': Judge Carey (Del.) Weighs in Favor of the Latter in *In re AES Thames, LLC* Preference Dispute

March 18, 2016
By [Evan T. Miller, Esq.](#)

Holding in favor of a preference defendant as to its ordinary course of business defense, finding that the difference in payment timing, "without more . . . should [not] preclude application of the ordinary course of business defense."

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Revised on Remand: Judge Walrath Reduces Defendant's New Value Defense and Awards the Trustee Prejudgment Interest in Remanded Proceeding

March 31, 2016
By [Gregory J. Flasser, Esq.](#)

Finding on remand that prejudgment interest was routinely granted in avoidance actions, but should be calculated from the date the action was commenced, not the date of the last avoidable transfer. Further, rate should be the federal judgment interest rate for the calendar week preceding the filing date of the Complaint.

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CATEGORIES

Contemporaneous Exchange for New Value (11 U.S.C. § 547(c)(1))	1 post
Elements (11 U.S.C. § 547(b))	4 posts
Fraudulent Transfer – Actual Fraud (11 U.S.C. § 548(a)(1)(A))	4 posts
Fraudulent Transfer – Constructive Fraud (11 U.S.C. § 548(a)(1)(B))	2 posts
Liability of Transferee (11 U.S.C. § 550)	3 posts
Ordinary Course of Business – Objective (11 U.S.C. § 547(c)(2)(B))	2 posts
Ordinary Course of Business – Subjective (11 U.S.C. § 547(c)(2)(A))	3 posts
Setoff (11 U.S.C. § 553)	1 post
State Fraudulent Transfer (11 U.S.C. § 544)	2 posts
Subsequent New Value (11 U.S.C. § 547(c)(4))	3 posts

TAGS

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12(b)(5)	1 post	Initial Transferee	1 post
12(b)(6)	2 posts	Judge Carey	1 post
6 Del. C. § 1304	2 posts	Judge Frank	1 post
9(b)	1 post	Judge Gerber	2 posts
Badges of Fraud	1 post	Judge Shannon	1 post
Bankruptcy Appellate Panel	1 post	Judge Sontchi	2 posts
Bankruptcy Court for the District of Delaware	5 posts	Judge Stark	2 posts
Bankruptcy Court for the District of Puerto Rico	1 post	Judge Walrath	1 post
Bankruptcy Court for the Eastern District of Pennsylvania	1 post	Law of the Case	1 post
Bankruptcy Court for the Southern District of New York	2 posts	Leveraged Buyout	2 posts
Bankruptcy Rule 7004	1 post	Natural Consequences	1 post
Board of Directors	2 posts	Owens Corning	1 post
Collapsing Doctrine	1 post	Prejudgment Interest	1 post
Directors/Officers/Shareholders	1 post	Second Circuit	2 posts
District Court of Delaware	2 posts	Setoff	1 post
Dominion and Control	1 post	Shareholders	2 posts
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