

Maximizing Value Along the Fraudulent Transfer Chain: What Must Be Avoided, and Who Must Be Sued?

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Introduction

Section 548 of the Bankruptcy Code (the "Code") authorizes a trustee¹ to avoid transfers that are made with intent to hinder, delay, or defraud creditors.² In addition, section 544(b) of the Code permits a trustee to step into the shoes of an actual unsecured creditor and assert applicable state-law avoidance claims that oftentimes have a longer statute of limitations period than the analog Code provision.³ To qualify as a transferee, the recipient generally must have dominion or control over the transferred assets.⁴ Complicating matters, many fraudulent transfer claims involve not only an initial transferee, but also one or more subsequent transferees.⁵ Section 550 of the Code, then allows a trustee to recover an avoided transfer of property from the initial transferee, the entity for whose benefit the transfer was made, or "***any immediate or mediate transferee***" of the initial transferee.⁶

¹ For purposes of this article, references to a trustee also refer to the debtor and any other post confirmation fiduciary. See 11 U.S.C. § 1107(a).

² 11 U.S.C. § 548(a)(1)(A).

³ 11 U.S.C. § 544(b)(1).

⁴ See *Andreini & Co. v. Pony Express Delivery Servs.*, 440 F.3d1296, 1300 (11th Cir. 2006).

⁵ See, e.g., *Image Masters, Inc. v. Chase Home Fin.*, 489 B.R. 375 (E.D. Pa. 2013); see also *In Re Glob. Prot. USA, Inc.*, 546 B.R. 586 (Bankr. D.N.J. 2016).

⁶ 11 U.S.C. § 550(a)(2) (emphasis added).

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