

“Avoiding Preference Risk in Collection Matters”



BY MICHAEL A. SIDDON, ESQUIRE

MICHAEL A. SIDDON is a partner at Margolis Edelstein in the Business, Real Estate and Shareholder Practice Group. He is also a member of the Delaware County Chamber of Commerce Business Leadership Committee.

For Immediate Release

Here’s the scenario-you have been chasing after a delinquent account and finally get the debtor to pay up. A few months later, you get sued by the debtor’s Bankruptcy Trustee for the money that the debtor just paid you! Sounds crazy, right? Its called an “Avoidable Preference.”

If you do business with individuals, or businesses, that are on the verge of filing for bankruptcy protection, you may be required to return the payments received from that entity within the 90 days preceding a bankruptcy filing. In today’s economic turmoil, all dealings with financially troubled parties should be approached with an eye toward avoiding preference risk.

The Bankruptcy Code permits the recovery of certain payments made to the debtor’s general creditors within 90 days (or one year if the payments went to “insiders’ of the debtors”) prior to the petition filing date for the bankruptcy. Such payments are considered “preference” payments. The intent is to discourage creditors from engaging in certain collection measures against a potential debtor in the immediate, pre-bankruptcy period.

What happens if you get sued in a preference action?

If you receive a letter or call from debtor’s bankruptcy counsel about a potential preference claim don’t panic and simply refund the money. You may have defenses against repayment. The most common Bankruptcy Code defenses are:

- The contemporaneous exchange for new value defense,
- The subsequent new value defense, and
- The ordinary course of business defense.

While eliminating all preference risk is impossible, especially in collection matters, there are ways to reduce such risk. Furthermore, statutory defenses aside, if a payment received from a debtor is attacked as a preference, a negotiated compromise can oftentimes be reached.

Inquiries or strategies to Avoid Preference Risks, call (215) 931-5828 or msiddons@margolisedelstein.com.

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About the Author-Michael is a partner at Margolis Edelstein, where his primary areas of practice include Real Estate, Business Law, Creditor's Rights, Bankruptcy, Collections, Taxation (particularly real estate assessment appeals, where he has successfully argued over 500 cases before the assessment appeal boards of Delaware, Chester, Montgomery and Berks Counties.) and Estates and Trusts. He is admitted to practice law in the State and Federal Courts of Pennsylvania, New Jersey and the U.S. Tax Court.

Michael serves as chief counsel for the Delchester Wildlife Conservation Group, Ltd. and is a pro bono attorney for Legal Aid of Southeastern Pennsylvania. He is a member of the Knights of Columbus Old Bohemia Council of Middletown Delaware, St. Thomas More Society, Chester County Chamber of Commerce and Delaware County Chamber of Commerce-where he is a member of the Business Leadership Committee.

Originally from Springfield, PA, Michael is a graduate of Malvern Prep and Penn State University. He received his Juris Doctor from Widener University School of Law and his Master of Laws in Taxation from Villanova University School of Law.

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