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Preference Claims Defense Number 2

By: Bill Gray. ***Tuesday, June 26th, 2012***

In our **last post** we outlined the "ordinary course payment" legal defense against a **bankruptcy preference** claim. Now let's look at the "**subsequent new value**" defense in a bit more detail.

Subsequent new value is in the nature of a set off, and is meant to encourage **creditors** to continue to deal with a company that may be close to filing bankruptcy. The defense says that if, after you receive a payment that otherwise qualifies as a preference, you give new "value" to the debtor, you essentially get to deduct the new value from the preference payment.

For example, say you receive a payment of $50,000 from a debtor, and that payment otherwise falls within the definition of preference payment as discussed in our prior posts. But then, after you receive that payment, you give new goods or services to the debtor, and these new goods or services also have a value of $50,000. This "subsequent new value" would protect the prior $50,000 preference payment, and you would not have to return the $50,000 already paid.

In the next post, we'll examine another one of these defenses so your company can be prepared if you are contacted by a trustee wanting a return of payment. If you get confronted with a preference claim, you should contact a Virginia **creditors' rights** lawyer who can explain your rights.