

Bankruptcy Code Amendments Regarding Preference Litigation Examined by Jones in *The Bankruptcy Strategist*

In the News
01.08.2024

Stinson LLP Partner [Brad Jones](#) authored an article for Law.com's *The Bankruptcy Strategist*, "Three Things Trustees Should Know About Due Diligence in Preference Litigation," examining the development of case law in preference litigations following a 2019 amendment to Section 547 of the Bankruptcy Code.

"Through the Small Business Reorganization Act of 2019, Congress made preference litigation more difficult by amending 11 U.S.C. § 547(b) to impose a new due diligence requirement on plaintiffs bringing preference litigation," Jones writes. "Since 2019, courts have struggled with the interpretation of this amendment to Section 547, specifically whether the due diligence requirement is an element of a preference claim that must be adequately pleaded in the plaintiff's complaint."

Jones provides takeaways for plaintiffs to consider as they prepare their complaints:

1. Most courts have declined to dismiss preference suits for failing to meet the due diligence requirements, but there remains significant uncertainty.
2. Plaintiffs should send a demand letter before filing litigation.
3. Plaintiffs should plan for the due diligence requirement in considering the applicable statute of limitations.

"Dedicating a little time to planning, plaintiffs should easily meet these threshold requirements—and defendants, in most instances, will want to use their limited resources to develop other defenses."

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Jones's bankruptcy litigation practice focuses on advising debtors, creditors and trustees of their rights and remedies. He handles fraudulent transfer, preference, and other recovery disputes in hearings before U.S. bankruptcy courts and defends appeals to district and appellate courts. He also represents parties in commercial disputes outside of bankruptcy.

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