

Rite Aid Files a Thousand Preference Actions

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Rite Aid is now in its second bankruptcy in less than two years. Despite the failed reorganization efforts of the first bankruptcy, nearly a thousand complaints were recently filed in the Bankruptcy Court for the District of New Jersey seeking to avoid alleged “preference” payments that were made over two years ago. This places many creditors in the difficult position of not receiving distributions on account of unpaid claims and now having to defend against preference claims. Understanding the policies behind preference claims as well as applicable defenses can place preference defendants in the best position to resolve claims efficiently.

Rite Aid commenced its first bankruptcy case on October 15, 2023. After running up \$355 million in professional fees^[1] and discharging billions of dollars owed to Rite Aid’s creditors, including vendors and other contractual counterparties^[2], the company was ultimately turned over to its senior secured lenders. For the most part, unsecured creditors have not received any distributions from the case.

Writing off a claim against a bankrupt corporation like Rite Aid is often considered a cost of doing business. However, all too often the writing off of a claim is not the end. Sometimes the debtor hit you twice by sending you a *Complaint to Avoid and Recover Transfers pursuant to 11 U.S.C. §§ 547*. Preference claims have become common not only in New Jersey where the Rite aid cases were filed, but also in jurisdictions in New York, Delaware, Texas and others.

Preference claims, such as those filed in Rite Aid, are governed by section 547 of the Bankruptcy Code. Section 547 allows a trustee to avoid and claw back payments that were made within ninety (90) days of the petition date (i.e. the preference period). The preference period is extended to one year for those qualifying as an “insider” which often includes family members or business affiliates.

The policy behind preference claims is to prevent an insolvent debtor from preferring some creditors over other creditors. The amounts that are recovered from defendants are brought into the case and theoretically made available for a fairer distribution to creditors. Although often recovered funds go to administrative expenses before being distributed equally to the entire body of unsecured creditors.

All is not without hope for those facing preference claims. Regardless of whether you are in New York, Delaware, Texas or another jurisdiction, there are several enumerated defenses to the avoidance of so-called preference payments under Section 547 of the Bankruptcy Code. The most common are as follows:

- Contemporaneous Exchange for New Value. When a creditor provides new value (typically in the form of goods or services) to the debtor at or near the same time the alleged preferential transfer was made and the payment was intended to be an exchange for new value, the debtor’s estate is not diminished and there is no preference over other creditors.
- Subsequent New Value. When a creditor has provided the debtor with new value (typically in the form of goods or services) to the debtor after the alleged preferential payment was made, the debtor’s estate is not diminished and there is no preference over other creditors (to the extent of the new value provided).
- Ordinary Course of Business. Payments made to a creditor will not be deemed a preference over other creditors if such payments are consistent with the historical course of dealing with such creditor and subject to the ordinary business terms of the industry. This defense protects a creditor that continues doing business with a distressed debtor in the ordinary course; however, any

payments made outside the normal course may be deemed a preference subject to avoidance.

Section 547 also requires a trustee to conduct reasonable diligence prior to commencing an avoidance action. This may be especially relevant to the preference actions filed in the Rite Aid case as RAD Sub-Trust A has filed nearly a thousand avoidance actions in the matter of days ahead of the expiration of the two-year statute of limitations on October 15, 2025. The number of actions that have been filed may raise questions of what due diligence was conducted by the Trust.

Attorneys at White and Williams LLP have been successfully advising financial institutions, tech companies and other business in relation to complex bankruptcy litigation, including the defense of preference and fraudulent transfer actions. In all cases, the focus is on the success and value to our clients. If you have questions or would like additional information regarding defending against of preference actions or fraudulent transfers, or any other bankruptcy matters please contact: Heidi Sorvino, Partner (sorvinoh@whiteandwilliams.com; 212.631.4417), or Jeremiah Vandermark, Counsel (vandermarkjj@whiteandwilliams.com; 212.868.4839).

[1] *Rite Aid's \$355 Million Bankruptcy Bill Ends in Repeat Chapter 11*, Bloomberg, May 13, 2025, <https://www.bloomberg.com/news/newsletters/2025-05-13/rite-aid-s-355-million-bankruptcy-bill-ends-in-repeat-chapter-11>.

[2] *Rite Aid closes all remaining stores after 63 years in business*, CNN, Oct. 4, 2025, <https://www.cnn.com/2025/10/04/business/rite-aid-closes-stores>.

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