

AGENDA

Preference Prosecution and Defense

Freeborn & Peters LLP

September 23, 2011

10:00 to 11:15 a.m.

Elements of a Preference Claim

Statutory Defenses

- Contemporaneous Exchange For New Value - § 547(c)(1)
- Ordinary Course of Business Defense - § 547(c)(2)
- Enabling Loan Exception (Security Interest For New Value) - § 547(c)(3)
- Subsequent New Value Defense - § 547(c)(4)

11:15 to 11:30 a.m.

Break

11:30 a.m. to 12:30 p.m.

Statutory Defenses, cont'd

- The Effect of 11 U.S.C. § 503(b)(9) on the New Value Defense
- No Improvement In Position By A Secured Creditor - § 547(c)(5)
- Small Preference Safe Harbor - § 547(c)(8) and § 547(c)(9)
- Statute of Limitations - § 546
- Venue of Proceedings - 28 U.S.C. § 1409(b)

12:30 to 1:30 p.m.

Lunch Break

1:30 to 2:30 p.m.

Advanced Preference Defenses

- Critical Vendor Designation
- *Twombly/Iqbal* Pleading Requirements
- The Earmarking Doctrine
- Conduit Defense

2:30 to 2:45 p.m.

Break

2:45 p.m. to 4:00 p.m.

Advanced Preference Defenses, cont'd

- Uncollectible Judgment
- Involuntary Bankruptcy Issues
- Assumed Contract Defense
- 100% Plan
- Safe Harbor Provisions of § 546(e) - Settlement Payment by a Financial Institution
- Safe Harbor Provisions of § 546(e) - Forward Contract Merchant
 - Forward Contract Merchant Defined
 - Forward Contract Defined
 - Commodity
 - Commodity Contract
 - Maturity Date
 - Merchant Defined