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### *Trustee Recovers Tuition Payment*

Fraudulent transfer law has its origins in the Statute of 13 Elizabeth enacted by Parliament in 1571. The preamble to that statute explains its purpose: “For the avoiding of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, bonds, suits, judgments and executions, as well of lands and in tenements, as of goods and chattels, more commonly used and practised in these days than hath been seen or heard of heretofore; which feoffments, gifts, grants etc have been and are devised and contrived of malice, fraud, covin, collusion or guile to the end, purpose and intent to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, etc; not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining and chevisance between man and man, without the which no commonwealth or civil society can be maintained or continued.” Although originally directed at actual fraud, the reach of fraudulent transfer law has expanded over the centuries to include what is referred to as “constructive fraud”.

Despite the name reflecting its origins, today, a fraudulent transfer does not require any fraudulent or improper intent. The federal bankruptcy statute permits a trustee to recover from the recipient a transfer made by the debtor prior to commencement of the bankruptcy case if (a) the transfer was made with actual intent to hinder, delay or defraud a creditor, or (b) (1) the debtor was insolvent at the time of the transfer; and (2) the debtor did not receive reasonably equivalent value in exchange.

A recurring issue in the application of fraudulent transfer law in bankruptcy cases involves college tuition paid by parents for the education of their children. If the parents’ financial situation deteriorates (perhaps due to

paying college tuition) to the point that the parents file a petition for relief under the bankruptcy laws, bankruptcy trustees frequently seek to recover the tuition payments from the educational institution. Most bankruptcy courts hold that the parents do not receive any value in exchange for their tuition payments, because they are not legally required to provide their children with a college education. The tuition payment is simply a gift to the adult child.

A Maryland bankruptcy judge recently decided when the University of Maryland, College Park, had sufficiently full control of the tuition payment so as to be considered the recipient rather than merely a holder of funds. Because under the university’s tuition rules, the student was entitled to a refund of some or all of the tuition payment for a course if he withdrew prior to a certain date, the judge opined that tuition paid by the parents for courses from which their son did not withdraw was property of the university and subject to recovery by the bankruptcy trustee. However, tuition paid by the parents for courses from which their son withdrew and received a refund did not become property of the university and could not be recovered by the trustee. Rather, the trustee would have to seek recovery from the student as the ultimate recipient of his parents’ tuition payment.



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