



Practice Area

BANKRUPTCY PREFERENCE LITIGATION

In recent years, lawsuits seeking the return of “preferential” payments made by bankruptcy debtors have grown into a large, and often hidden, expense for many companies. The Bankruptcy Code permits a trustee or debtor in possession to sue creditors to recover certain payments made to them during the 90 days preceding a bankruptcy filing. Companies that return preferential payments generally receive an unsecured claim against the bankruptcy estate, and often end up recovering only a small portion of their claim at the conclusion of the case.

Debtors’ counsel around the country have begun using the services of sophisticated consultants that specialize in exploiting the preference avoidance provisions of the Bankruptcy Code to generate revenue for the debtor’s estate. Because the amount at issue in each case is often low, and the claims arise in courts all over the country, large companies often retain local counsel and are satisfied to settle the claims for a nominal discount below the amount demanded. When looked at in the aggregate however, the annual cost to a large company of settling these cases can quickly add up to millions of dollars a year.

Carlton Fields’ Bankruptcy and Creditors’ Rights Practice Group has developed a program for defending preference avoidance claims nationwide that has yielded tremendous results for our clients. The program allows us to efficiently handle a large volume of preference cases and dramatically reduce the settlement amounts. We utilize computer analysis to review payment and billing history and uncover defenses, helping to ensure accuracy and reducing expenses. The high volume of cases we handle allows us to minimize defense costs, and use highly trained paralegals and junior associates whenever appropriate. We also provide training for our clients’ in-house legal staff that enables them to participate in the process and further reduce outside counsel expenses.

A recent analysis of our performance for one large client revealed that in less than a year Carlton Fields reduced their average claim payout from 80% of the demand amount to less than 5%, saving the client over \$7 million. The fees paid to Carlton Fields during that period were less than \$50,000. Not every client can expect such dramatic results, but as companies look for ways to reduce expenses, Carlton Fields can help uncover what may be an untapped source for savings.

Please contact Bob Gilbert (561-650-8007 or rgilbert@carltonfields.com) or Jim Baldinger (561.650.8026 or jbaldinger@carltonfields.com) in Carlton Fields’ Bankruptcy and Creditors’ Rights Practice Group for more information.