



## Financial Recovery Law

### Circuit City Bankruptcy Case: Are You a Preference Target?

**By: Phillip Baxa.** *This was posted Friday, November 19th, 2010*

On November 4, 2010, the [United States Bankruptcy Court for the Eastern District](#) in Richmond, Virginia approved special procedures for the handling of actions to recover voidable preference payments in the [Circuit City bankruptcy](#) case, pursuant to Section 547 of the [U.S. Bankruptcy Code](#). After gaining Court approval of those procedures, Circuit City filed over 500 adversary proceedings seeking to recover allegedly preferential payments that Circuit City made to individuals and entities in the 90 days prior the filing of its bankruptcy case.

The [Virginia bankruptcy and creditors rights lawyers](#) at Sands Anderson have extensive experience in defending parties which have been sued in bankruptcy court to recover [allegedly preferential payments](#). It is our experience that the defenses most commonly available to preference defendants are that the payments were made in the ordinary course of business of the parties; that the payments were contemporaneous exchanges for new value; and that, after the payments were made, the preference defendant gave new value to the Debtor.

Whether a defense applies to a preference claim is a very fact-specific determination, made after a detailed review of the account history between the debtor and the creditor. It is not uncommon for Trustees or debtors-in-possession to file lawsuits against everyone who received a payment in the 90 days prior to the filing of the bankruptcy petition, and to sort out the merits of each claim later.

Experienced bankruptcy attorneys can help your business evaluate applicable defenses to preference suits and claims. Call anyone on our [bankruptcy and creditors rights team](#) for more information.

How many of your business vendors, either upstream or downstream, have experienced financial reversals during the recent economic troubles? Any relief in sight?

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