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Midway Games Liquidating Trustee Begins Filing Avoidance Actions

Over the last week, the trustee for the liquidating trust of Midway Games Inc., Buchwald Capital Advisors LLC, has begun filing [avoidance actions](#) seeking to recover certain transfers made by Midway to creditors in the months before its February 2009 chapter 11 bankruptcy filing. Midway Games was a major video game publisher before its bankruptcy filing, but utilized bankruptcy protection to sell substantially all of its assets and ultimately confirmed a plan of liquidation in May 2010. Pursuant to that plan of liquidating, the liquidating trust was created to pursue remaining rights of Midway's bankruptcy estate and distribute any proceeds to Midway's remaining creditors.

Thus far, the Buchwald Capital has filed over 40 avoidance actions. Each action seeks to recover pre-bankruptcy transfers made to a specific creditor. The [complaints](#) generally assert five claims against the subject creditors:

- Recovery of certain transfers made in the *90 days prior to the bankruptcy filing* as preferential transfers pursuant to sections 547 and 550 of the Bankruptcy Code
- Recovery of certain transfers made in the *two years prior to the bankruptcy filing* as fraudulent transfers pursuant to section 548 and 550 of the Bankruptcy Code
- Recovery of certain transfers made in the *two years prior to the bankruptcy filing* as fraudulent transfers pursuant to section 544 and 550 of the Bankruptcy Code and sections 1304, 1307 and 1308 of the Delaware Fraudulent Transfer Act
- Recovery of certain transfers made in the *two years prior to the bankruptcy filing* as fraudulent transfers pursuant to section 544 and 550 of the Bankruptcy Code and sections 1305, 1307 and 1308 of the Delaware Fraudulent Transfer Act
- Disallowance of claims filed, or which may be filed, by creditors pursuant to sections 502(d), 506, 544, 547, 548 and 550 of the Bankruptcy Code and rules 3007, 3012, and 7001 of the Federal Rules of Bankruptcy Procedure

The [complaints](#) also allege that Midway (and/or the appropriate affiliate entity) was insolvent during the period of the transfers. In support of that allegation, the complaints allege that Midway generated annual operating losses for every year since 2000 on a consolidated basis and Midway's liabilities exceeded its assets (again, on a consolidated basis) by approximately \$159 million as of December 31, 2008 (\$337.3 million in liabilities versus \$178.3 million in assets). The names of Midway's affiliated entities which are also debtors, from which some of the payments may have been made, are:

- Midway Home Entertainment Inc.
- Midway Amusement Games, LLC
- Midway Interactive Inc.
- Surreal Software Inc.



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- Midway Studios – Austin Inc.
- Midway Studios – Los Angeles Inc.
- Midway Games West Inc.
- Midway Home Studios Inc.
- Midway Sales Company, LLC

Each complaint attaches a schedule of the payments which the liquidating trustee asserts are avoidable as either preferential or fraudulent transfers. To view a list of the complaints filed so far (which will be updated approximately daily to add any new complaints filed), please visit:

http://www.chapter11cases.com/Adversary-Complaints_c_16586.html

Copies of all complaints are also available for purchase through that page.