



BANKRUPTCY BLOG

# Are Critical Vendor Payments Protected from Recovery by a Chapter 7 Trustee? Maybe Not.

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To recover a claim under section 547, a Chapter 7 trustee must prove a transfer was made to or for the benefit of a creditor; on account of an antecedent debt; while the debtor was insolvent; within 90 days before the filing of the bankruptcy petition (or between 90 days and one year for transfers to insiders of the debtor; and the creditor would receive more than if the case were a chapter 7 liquidation.

At issue is the final element: would the creditor receive more than if the case were a chapter 7 liquidation. In short if there are not executory contracts being assumed (which require a post-petition cure in missed payments), creditors might face preference trouble when a case is converted from Chapter 11 to Chapter 7 because the creditor received more than it would have received if the case were a chapter 7 liquidation.

See, e.g., *In re Insys Therapeutics, Inc.*, No. 19-11292(JTD), 2021 WL 3083325, at \*5 (Bankr. D. Del. July 21, 2021)

If you have questions about how a Chapter 11 might impact your creditors and how to protect your critical vendors, contact Larry A. Pittman, II at 816.210.9680 or Sharon Stolte at 816.627.5543.