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Capmark: Clarifying Insider Status for Market Participants

November 24, 2014 | Articles & Books

Being deemed an “insider” has important ramifications for creditors in bankruptcy. For example, the otherwise-applicable 90-day preference period expands to one year for insiders. When facing equitable-subordination claims, special scrutiny applies to the conduct of an insider, and a lower burden of proof applies to proving that the insider engaged in inequitable conduct. Insider status is also relevant to determining a creditor’s intent to defraud in a fraudulent-transfer proceeding. Moreover, under the laws of certain states, transfers to insiders, including transfers satisfying past debts, might be deemed constructively fraudulent. Thus, insider status can materially affect a creditor’s risk and recovery profile in any case.