

TOUSA, Inc. – District Court Quashes Infamous Fraudulent Transfer Decision

February 14, 2011 | Client Update

On February 11, 2011, the U.S. District Court for the Southern District of Florida quashed a 2009 Bankruptcy Court decision that had ordered certain lenders of Florida-based homebuilder TOUSA, Inc. to disgorge, as fraudulent transfers, as much as \$480 million in debt repayments and interest. This significant decision overrules many aspects of a highly controversial Bankruptcy Court decision that (among other things) imposed onerous due diligence obligations on lenders in respect of the repayment of undisputed antecedent claims. It has also led to a dramatic increase in creative fraudulent transfer litigation as creditors' committees and other "out of the money" constituencies have sought to expand the reach of the Bankruptcy Court's ruling to fit other facts. As discussed in this update, these efforts to expand the reach of the Bankruptcy Court's decision may well subside in light of the District Court's comprehensive holding.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Donald S. Bernstein

+1 212 450 4092
donald.bernstein@davispolk.com

Timothy Graulich

+1 212 450 4639
timothy.graulich@davispolk.com

Marshall S. Huebner

+1 212 450 4099
marshall.huebner@davispolk.com

Ben Kaminetzky

+1 212 450 4259
ben.kaminetzky@davispolk.com

Daniel G. Kelly, Jr.

+1 650 752 2001
dan.kelly@davispolk.com

Elliot Moskowitz

+1 212 450 4241
elliot.moskowitz@davispolk.com

Brian M. Resnick

+1 212 450 4213
brian.resnick@davispolk.com

Damian S. Schaible

+1 212 450 4580
damian.schaible@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

Related materials

[021411_Tousa.pdf](#)