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

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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.

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