Even 'Void' Transfers May Sail into the Bankruptcy Code Safe Harbors

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On the heels of our last client alert on bankruptcy safe-harbor case law developments, yet another court has reemphasized the breadth of the Bankruptcy Code's safe harbors for transactions conducted under qualified financial contracts. In *Opioid Master Disbursement Trust II v. Citadel Securities, LLC et al.,*[1] the U.S. District Court for the District of Delaware[2] recently affirmed the Bankruptcy Court's decision that payments made in connection with stock buybacks executed through broker-dealers are protected by the Bankruptcy Code's Section 546(e) safe harbor even if the underlying transactions are later alleged to be unlawful or void *ab initio* under applicable non-bankruptcy law. This decision reiterates that the Bankruptcy Code's safe harbor protections remain broad and flexible enough to protect transfers even where applicable non-bankruptcy law calls into question the validity or enforceability of the underlying transaction. The precedential value of the decision, however, is limited by its specific and somewhat egregious facts alleged.

Origins of the Dispute

As a result of the Chapter 11 cases of Mallinckrodt Plc, all opioid-related claims against Mallinckrodt were assigned to a Delaware statutory trust that commenced litigation to recover funds fraudulently transferred while Mallinckrodt was insolvent. The Opioid Master Disbursement Trust (the "Trust") sued numerous shareholders (mostly financial institutions) to claw back hundreds of millions of dollars paid for prepetition share repurchases by Mallinckrodt on the basis that these buy backs were fraudulent transfers. The appeal record showed that Mallinckrodt's board had "hatched a plan to prop up the company's share price" by buying back outstanding shares during a three-year period.[*1]Allegedly, these share buy backs had the effect of inflating Mallinckrodt's share prices even though the core business was suffering.[*1].The outflow of money by Mallinckrodt to buy the shares "meant that there was less left over to pay the injured people, companies, and communities who were left holding the bag."[Id.].

In response, the defendants/former shareholders sought refuge from avoidance under the "safe harbor" of Bankruptcy Code Section 546(e), which provides that "the trustee may not avoid a transfer that is a ... settlement payment ... or that is a transfer made ... in connection with a securities contract."11 U.S.C. § 546(e).The defendants contended that Section 546(e)'s protection of "settlement payments" was sufficiently broad to cover the share buy backs by Mallinckrodt.

The Trust argued that Section 546(e) and the Bankruptcy Code safe harbors did not apply at all because under Irish law (which governed the buy backs) share repurchases by an undercapitalized company were considered "void".[*2] The transfers for the share repurchases allegedly could not constitute settlement payments under Section 546(e) because there was no qualifying transaction and the agreements effectuating the share buy-backs were "nullities" under Irish law. [Id.] In other words, without a "valid underlying securities transaction" the Trust asserted that there can be no settlement payment shielded by the safe harbors because "'[v]oid" contracts are 'void ab initio',"' so they are 'nullities' with "no legal effect." [Id.]. Notably, however, the Trust had not brought the avoidance action under Section 548(a)(1)(A) of the Bankruptcy Code, which requires "actual intent

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to hinder, delay, or defraud," even though the record seemed to contain evidence of actual fraud by Mallickrodt's board. In the presence of "actual fraud", Section 546(e)'s safe harbor does not apply.

Rejecting the Trust's arguments, the district court found that notwithstanding that the buybacks were void ab initio under governing Irish law, the payments themselves "were very real". [*4]. Thus, the court ruled that the payments were actual transfers made to complete securities transactions and therefore "settlement payments" and, also protected independently as transfers "in connection with a securities contract" under Section 546(e). In reaching this decision, the district court relied on the Third Circuit's "extremely broad" reading of "settlement payment," emphasizing that the term reaches any payment made to complete an intended securities transaction, including preliminary, partial, interim or final payments. The district court noted that "a payment alone is enough, even if the transaction does not ultimately settle" – or even if there was never any chance that the transaction would be completed. The district court further analogized this dispute to comparable litigation arising in the Madoff Ponzi scheme, where the Second Circuit had held that client payments from the Ponzi scheme constituted "settlement payments" for safe harbor purposes because they were intended to facilitate a securities transaction – even if that transaction ultimately was found to be part of a Ponzi scheme. [*3, citing Picard v. Ida Fishman Revocable Trust (In re Bernard L. Madoff Inv. Sec. LLC), 773 F.3d 411, 422-23 (2d Cir. 2014)].

The district court further rejected precedent that excluded void transactions from the safe harbor protection as not controlling. The issue of whether void payments are protected by Section 546(e)'s safe harbor has only come before a court one other time, based on the district court's own research. In a 2005 decision from the *Enron* bankruptcy cases, the bankruptcy court had found that where a transaction is void under applicable law (in that case, Oregon law), there is no valid underlying securities transaction and thus, no settlement payment for purposes of Section 546(e) and the safe harbor. [*Enron Corp. v. Bear Stearns Int'l. Ltd. (In re Enron Corp.)*, 323 B.R. 857, 876-77 (Bankr. S.D.N.Y. 2005).][3] However, the *Mallinckrodt* district court considered the *Enron* decision to be on "shaky ground"—the rationale being that while void contracts may have no legal effect, they are not "invisible" such that a court still may look to the original terms of the agreement.[*4-5]. Said differently, if the *Enron* reasoning and the Trust's reasoning about the share buybacks being "void", were accurate, then arguably the Trust would have no claim for avoidance to begin with because there would be no payment or contractual obligation to avoid in the first instance.[*6] To the district court, the Trust's argument that the share buybacks were void under Irish law and therefore not subject to the Bankruptcy Code safe harbors put the "cart before the horse" in that the whole point of the Bankruptcy Code's avoidance provisions is to determine what transactions are in fact void.[*5-6]

The district court did note that, although the Trust had alleged "actual intent to hinder, delay, or defraud," it had not brought its claims under Section 548(a)(1)(A) of the Bankruptcy Code, "perhaps because [the] transfers fell outside that section's two-year reach-back period." [*6] Even without delving into a discussion that would have been purely advisory, the district court seemed to imply that a claim based on "actual fraud" against the Mallinckrodt board's egregious conduct that was brought within the statute of limitations may have fared differently.

What the Mallinckrodt Decision Clarifies About the Safe Harbor

The district court's decision in *Mallinckrodt* clarifies that the analysis of what constitutes a "settlement payment" should focus on what the payment does in the settlement chain and not on the ultimate legal status of the contract. For purposes of the Bankruptcy Code's safe harbors, "settlement payment" is a functional concept that includes payments intended to complete a securities transaction, without regard to enforceability of the underlying contract under non-

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bankruptcy law or whether the underlying trade ultimately settles. Even where transactions are later asserted to be void, defendants should not be deprived of safe harbor protection for payments made to complete a settlement process, according to *Mallinckrodt*. This decision should provide comfort to counterparties that unknowingly receive payments, like the share buybacks at issue here, that later are contested as void under applicable non-bankruptcy law.

The decision also is a reminder that safe harbor protection continues to turn on the transfer being made by, to, or for the benefit of a "financial institution," a status readily satisfied in brokered buybacks and typical qualified financial contract structures.[4] Structuring trades and settlements *through* recognized financial intermediaries should be carefully analyzed in order to preserve the protective envelope of Section 546(e), particularly where the dispute may not arise within the Second Circuit where the existing broad interpretation of the Section 546(e) safe harbor carries clear precedential binding effect. Finally, the "in connection with a securities contract" prong of the safe harbor is a robust backstop. Documentation tying the transfer to an agreement or transaction that qualifies as a securities contract provides an independent path to safe-harbor protection.

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[1] 2025 WL 3267606, Civ. No. 1:25-cv-00114-SB (D. Del. Nov. 24, 2025).

[2] The opinion was issued by Judge Stephanos Bibas of the United States Court of Appeals for the Third Circuit, sitting by designation to the Delaware District Court.

[3] The district court also noted that the *Enron* decision was later repudiated by the Second Circuit in *Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.*, 651 F.3d 329, 336–37 (2d Cir. 2011), which disagreed with the *Enron* bankruptcy court's view that the Section 546(e) safe harbor only applies to settlement payments that are "commonly used" within the securities industry.

[4] One important caveat to mention here is that in circumstances not involving qualified counterparties, the Section 546(e) safe harbors may not apply to the extent that the U.S. Supreme Court test set forth in the *Merit* case is not satisfied. *See Merit Management Group v. FTI Consulting*, 583 U.S. 366, 138 S. Ct. 883 (2018) (Section 546(e) safe harbor applies to the ultimate transfer being avoided (the "relevant transfer"), not its intermediate steps, meaning that financial institutions acting as mere conduits may not automatically shield a transaction from avoidance). *But cf. In re Tribune Co. Fraudulent Conveyance Litig.*, 946 F.3d 66 (2d Cir. 2019) (post-*Merit*, concluding that debtor may itself qualify as a "financial institution" covered by the safe harbor, and thus avoid the implications of *Merit*, by retaining a bank or trust company as agent to handle LBO payments, redemptions and cancellations).

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