**Title:** Problems in Preferential Transfers

**Subtitle:**

**Meta Description:** Problems in Preferential Transfers

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**Formatted Content:**

**Raw Content:** <div dir="ltr" style="text-align: left;">
<div>
<div style="margin-bottom: 0px; margin-top: 0px; text-align: center;"><span style="color: #c1070e; font-family: Verdana, Geneva; font-size: 12pt;"><strong>--</strong></span><span style="color: #c1070e; font-family: Verdana, Geneva; font-size: 12pt;"><strong>Velocity Express Begins to Sue Customers-- </strong></span></div>
<div style="color: #cc3300; font-family: Verdana, Geneva; margin-bottom: 0px; margin-top: 0px; text-align: center;"></div>
<div style="margin-bottom: 0px; margin-top: 0px; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;">One of the more problematic aspects of business bankruptcy is the institution of the "</span><span class="removed\_link" title="http://www.avvo.com/legal-guides/ugc/what-you-should-know-about-preferential-transfers---part-one"><span style="font-family: Georgia, 'Times New Roman', serif;">preferential transfer</span></span><span style="font-family: Georgia, 'Times New Roman', serif;">" or the "preference" suit.  In essence, </span><span style="font-family: Georgia, 'Times New Roman', serif;">section 547 of the Bankruptcy Code</span><span style="font-family: Georgia, 'Times New Roman', serif;"> makes it actionable for a creditor to (i) receive payment, (ii) on an old debt, (iii) within 90 days before the customer files bankruptcy.  All creditors are at risk of preference suits - inventory suppliers, landlords, and even its lawyers and accountants - as long as they get paid within that 90 day window. </span></div>
<div style="margin-bottom: 0px; margin-top: 0px; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;"> </span></div>
<div style="margin-bottom: 0px; margin-top: 0px; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;">However, what should be of greatest concern to potential defendants is the way that the "mechanics" of bankruptcy court work.  To put it mildly, there is an aspect of "litigation by ambush" to the process.  First of all, service of process in bankruptcy court is made by <span style="text-decoration: underline;">regular</span> mail.  A process server or sheriff is not needed.  Thus, the summons and complaint may sit in your mail room for a while before their importance is recognized.  Second, the answer to the complaint is due within 30 days <span style="text-decoration: underline;">of issuance of the summons</span> and not within 30 days of service.  This then all too often means that you are at or close to the date of defaulting before bringing in counsel.  </span></div>
<div style="margin-bottom: 0px; margin-top: 0px; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;"> </span></div>
<div style="margin-bottom: 0px; margin-top: 0px; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;">With that in mind, please be advised that a new series of bankruptcy preference cases is being filed -- in </span><a href="http://www.deb.uscourts.gov/"><span style="font-family: Georgia, 'Times New Roman', serif;">Delaware bankruptcy court</span></a><span style="font-family: Georgia, 'Times New Roman', serif;"> in the Velocity Express matter.  These will affect a nationwide class of defendants, and you should check in with your staff about the situation, in order to ascertain if you are at risk.  </span></div>
<div style="margin-bottom: 0px; margin-top: 0px; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;"> </span></div>
<div style="margin-bottom: 0px; margin-top: 0px; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;">Here's the "skinny".  In 1999, United Shipping &amp; Technology  began operating as Velocity Express.  At its height, Velocity employed 1,300 employees and 2,400 drivers.  It was a package deliverer, providing customer bulk shipment, pick-up, and delivery services.  In September 2009, Velocity filed bankruptcy.  Ultimately, it sold its assets to an affiliate of Convest Investment Partners and began winding down.  The court-appointed "Wind Down Professional" has now begun filing preference actions against persons who received payments in the last 90 days before bankruptcy.  </span></div>
<div style="margin-bottom: 0px; margin-top: 0px; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;"> </span></div>
<div style="margin-bottom: 0px; margin-top: 0px; text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;">Make sure to monitor your mailrooms and feel free to contact me for a free consultation on these issues.</span></div>
<div style="text-align: justify;"><span style="font-family: Georgia, 'Times New Roman', serif;"> </span></div>
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