

Preference Due Diligence in the Crypto Winter

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In an article published by the *New York Law Journal*, Insolvency and Restructuring associate Michael Rosella explored how US Bankruptcy Code due diligence requirements could be applied to preference claims in Chapter 11 cases involving cryptocurrency.

The article examines Sections 547(b) and 550 of the US Bankruptcy Code, which collectively allow a debtor to claw back certain payments made to non-insiders in the 90 days prior to the bankruptcy filing and to insiders in the year before a filing. Michael, along with his co-author Dan McElhinney, Managing Director at Stretto, note that the Small Business Reorganization Act of 2019 raised the bar on the due diligence needed to pursue such litigation, requiring the debtor to assess "known or reasonably knowable affirmative defenses" before moving forward.

The article covered disagreement in the courts as to general pleading requirements and discussed divergent opinions as to whether due diligence requirements included in the 2019 legislation constitute an element of a preference claim that must be pled in a complaint in order to avoid dismissal.

Michael and his co-author parse the reasoning in the courts and the import for cryptocurrency debtors, highlighting measures that cryptocurrency debtors should take to comply with the pleading and due diligence requirements.

["Preference Due Diligence in the Crypto Winter,"](#) *New York Law Journal*, September 16, 2022*

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