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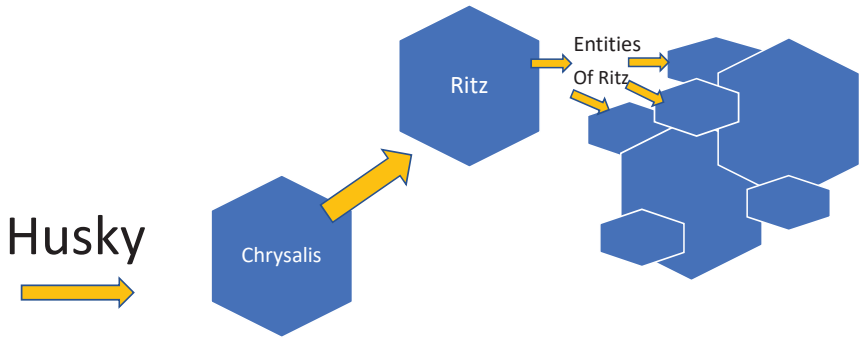
Just How Far Can Bankruptcy Pre-Planning Go? Husky and Beyond

Hon. Eduardo V. Rodriguez
U.S. Bankruptcy Court,
Southern District of Texas, McAllen, TX

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In re Husky, 136 S.Ct. 1581 (2016)

Creditor, a seller of electronic device components, brought adversary proceeding against Chapter 7 debtor, the individual who was in financial control of the company that had purchased components from creditor, seeking to pierce corporate veil in order to hold debtor personally liable on corporate debt, and to except debt from discharge on, inter alia, a "false pretenses, false representation, or actual fraud" theory.



Husky sells goods to Chrysalis, controlled by Ritz, who did not remit payment to Husky. Ritz transfers assets of Chrysalis to other entities controlled by him. Bad actor?

In re Husky, 136 S.Ct. 1581 (2016)

Held **:** The term "actual fraud" in § 523(a)(2)(A) encompasses fraudulent conveyance schemes, even when those schemes do not involve a false representation.

In re Husky, The Aftermath

Husky expands the potential universe of nondischargeability claims under § 523(a)(2)(A) to include situations where a debtor's actual fraud does not involve a misrepresentation.

Husky's holding is narrow, in that it simply holds that a misrepresentation is not required to establish actual fraud under § 523(a)(2).

In re Husky, The Aftermath

However, it raises numerous questions concerning the scope of the discharge exception of § 523(a)(2)(A), and suggests that this provision may cover a much broader range of conduct than was previously understood.

The factual situation in *Husky* is quite common: fraudulent transfers are frequently encountered in bankruptcy litigation. They are avoidable under § 548 and can also result in the loss of the discharge pursuant to § 727(a)(2) if made within one year of the bankruptcy filing.

However, they have not typically triggered nondischargeability under § 523.

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