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MARCH 1-3, 2017

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Assessing Fraud in Fraudulent Transfer Litigation

March 3, 2017

Presented by Michael Vitti

Introduction

- Debates over fraud take center state in many fraudulent transfer lawsuits.
- It is often difficult to credibly argue that a creditor (especially a creditor with no preexisting exposure to the debtor) knowingly lends to an insolvent debtor.
- The best way to discredit the use of loans as a contemporaneous indicator of solvency often is to establish that lenders would not have lent the money if they knew the true state of the debtor's financial condition.

Need to Guard Against Hindsight Bias

- We know the debtor subsequently filed for bankruptcy
- Debate is over whether the debtor's insolvency was foreseeable
  - Sometimes the clues can be pieced together (e.g., The Sixth Sense)
  - Other times are more like Monday Morning Quarterbacking (e.g., questioning Pete Carroll's decision to pass instead of hand off to Marshawn Lynch in the Super Bowl)