

PUBLICATIONS

Eleventh Circuit Reverses *TOUSA* District Court Decision and Holds Lenders Liable for Fraudulent Transfer

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The U.S. Court of Appeals for the Eleventh Circuit has reversed a district court's February 2011 decision that lenders were not liable on a fraudulent transfer claim. In *In re TOUSA, Inc.*, the circuit court rejected the district court's finding that corporate subsidiaries had received "reasonably equivalent value" when they encumbered their assets to secure a loan made to them and their corporate parent. Agreeing with the bankruptcy court's earlier 2009 decision, the court of appeals held that the "bankruptcy court did not clearly err.... [T]he Subsidiaries did not receive reasonably equivalent value for the liens" they had granted to the so-called "Term Lenders." Also, reasoned the court, "the bankruptcy court correctly ruled that the [defendant] Transeastern Lenders [whose loan was repaid] were entities 'for whose benefit' the liens were transferred," thus making them liable to pay the value of the liens, roughly \$403 million.

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