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## Seventh Circuit Limits Bankruptcy Safe Harbor Protection

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The safe harbor protection of Bankruptcy Code (“Code”) § 546(e) does not protect “transfers that are simply conducted *through* financial institutions,” held the U.S. Court of Appeals for the Seventh Circuit on July 28, 2016. *FTI Consulting Inc. v. Merit Management Group LP*, 2016 WL 4036408, \*1 (7th Cir. July 28, 2016). Because the debtor’s transfer of funds to the transferee passed through a financial institution acting only as a conduit that was not one of the parties covered by § 546(e) (i.e., “commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency”), the asserted fraudulent transfer was not protected by § 546(e) and was thus recoverable, said the court when reversing the district court’s dismissal of the trustee’s claim. In this article, of counsel Michael Cook and former Schulte lawyer David Hillman discuss the Seventh Circuit’s decision to limit the application of the safe harbor protection in the Bankruptcy Code.

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