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Fifth Circuit Rejects Breach of Fiduciary Duty and Fraudulent Transfer Claims

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“Officers and directors of [an operating corporate debtor] have fiduciary duties to the corporation — not the corporation’s creditors” under Texas law, held the U.S. Court of Appeals for the Fifth Circuit in *In re ATP Oil & Gas Corp.* In affirming the district court’s dismissal of a Chapter 7 bankruptcy trustee’s complaint, the Fifth Circuit rejected the trustee’s breach of fiduciary claims against officers and directors for permitting “the payment of ... stock dividends at the time of [the debtor’s] impending bankruptcy” in 2012 and for authorizing “the payment of cash bonuses to certain ... officers” in the two years prior to bankruptcy. The decision can be read to rely on the trustee’s failure to plead enough facts to make his case, but relevant case law shows why breach of fiduciary duty claims are generally hard to win. In this article, of counsel Michael Cook explains the court’s decision and discusses relevant fiduciary duty case law.

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