

Estate Avoidance Actions: Stand in the Trustee's Shoes, or Buy Them?

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Avoidance actions often represent an important source of meaningful recovery for unsecured creditors. Fraudulent transfers and bad actions may have precipitated a debtor's fall into bankruptcy, while preferential transfers may have occurred once a bankruptcy filing was inevitable. Although unsecured creditors may benefit from avoidance of these transfers, the Bankruptcy Code vests the power to bring these actions in the trustee or debtor in possession (DIP), who may not be as incentivized or capitalized to investigate or pursue claims against insiders or important vendors.

Where a trustee is unwilling or unable to bring colorable avoidance actions, courts have permitted creditors to step into the trustee's shoes and pursue these actions on behalf of the estate, which is commonly referred to as "derivative standing."¹ The Eighth Circuit has now definitively ruled that a different — and potentially more lucrative — path is available to unsecured creditors seeking to take matters into their own hands: outright buying the avoidance actions from the estate.

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