

Articles

"Fraudulent Conveyances: Bankruptcy Court for the Southern District of New York Adopts Third Circuit's 'Public Markets' Test"

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Abstract

On Aug. 31, 2007, the U.S. Bankruptcy Court for the Southern District of New York (Hon. James M. Peck, presiding) issued its "Opinion Regarding Insolvency and Unreasonably Small Capital" in the *Iridium* case. *Statutory Committee of Unsecured Creditors v. Motorola Inc.* (In re Iridium Operating LLC), 373 B.R. 283 (Bankr. S.D.N.Y. 2007). Therein, the court adopts the public market valuation principles set forth by the Third Circuit in *VFB LLC v. Campbell Soup Co.*, 482 F.3d 624 (3d Cir. 2007). For publicly-traded companies that file for bankruptcy within the Third Circuit or in the Southern District of New York, it will be much harder to prove insolvency or unreasonably small capital if, at the time of the transfers in question, the debtor had a positive market cap.