AMERICAN BANKRUPTCY INSTITUTE

(Ordinary) Course Correction: A Preference Defense Win for Trade Creditors

(Ordinary) Course Correction: A Preference Defense Win for Trade Creditors

By Bruce S. Nathan, Michael Papandrea and Jake A. Rauchberg

Trade creditors recently scored a major win from the U.S. District Court for the District of Delaware. In Center City Healthcare LLC v. Medline Industries Inc.,[1] the Delaware District Court upheld summary judgment for creditor-defendant Medline Industries Inc. In doing so, the district court confirmed that pre-petition collection activity alone does not defeat the objective, industry-based prong of the ordinary-course-of-business (OCB) defense.[2] The decision is particularly notable, since it comes on the heels of another recent ruling by the Delaware Bankruptcy Court in FI Liquidating Trust v. C.H. Robinson Co. Inc. (In re Fred's Inc.), in which the court held that collection pressure resulted in the loss of the objective OCB defense.[3]

The Center City court also held that Risk Management Association (RMA) industry data is admissible and sufficient to prove the objective OCB defense through a days-to-pay analysis.[4] Taken together, the Center City decision offers trade creditors a clearer path in mitigating risk and defending against preference claims under § 547 of the Bankruptcy Code. The decision identifies the industry evidence needed to prove the objective OCB defense and limits the significance of collection efforts when payment timing aligns with industry standards for healthy business relationships between the debtor and trade creditors.

What Is a Preference?

A debtor or trustee can seek to recover payments made to creditors before a bankruptcy filing as a "preference" under § 547(b) of the Bankruptcy Code by proving the following: (1) the debtor transferred property to or for the benefit of a creditor; (2) the transfer was made on account of an antecedent debt owed by the debtor to that creditor; (3) the transfer occurred while the debtor was insolvent, which is presumed during the 90-day period preceding the

bankruptcy filing; (4) the transfer was made to a noninsider creditor during the 90-day preference period; and (5) the transfer enabled the creditor to receive more than it would have received in a hypothetical chapter 7 liquidation of the debtor's assets.

The preference provisions in § 547(b) of the Bankruptcy Code serve two purposes. First, the provisions discourage creditors from racing to dismantle the debtor during its financial decline by allowing the trustee to avoid prebankruptcy transfers made shortly before bankruptcy, thereby giving the debtor an opportunity to work through its difficulties cooperatively with all creditors.5 Second, and more importantly, the preference provisions promote the fundamental bankruptcy policy of equal distribution among creditors.6

The OCB and Subsequent New Value Defenses

Creditors have several affirmative defenses available to reduce or eliminate preference exposure. These defenses encourage creditors to continue doing business with financially distressed companies by protecting creditors that extend credit, such as trade credit, during the 90 days before a bankruptcy filing.

One of the primary affirmative defenses is the subsequent new value defense under § 547(c)(4) of the Bankruptcy Code. This defense prevents a trustee from avoiding a preferential transfer to the extent the creditor later provided the debtor with unsecured new value, such as goods and/or services on unsecured credit terms.7 In effect, the subsequent new value defense reduces preference exposure to the net amount of the transfers minus subsequent new value.

Another important affirmative defense is the OCB defense under § 547(c)(2) of the Bankruptcy Code. The OCB defense requires a creditor to prove that:

- The preference payment satisfied a debt incurred by the debtor in the ordinary course of business between the parties; and
- The payment was made either: (A) in the ordinary course of business or financial affairs between the parties (the "subjective" prong of the OCB defense); or (B) according to ordinary business terms (the "objective" prong of the OCB defense).

Before the 2005 amendments to the Bankruptcy Code, a creditor-defendant had to prove both the objective and subjective prongs of the OCB defense. Following the 2005 amendments, a creditor need only prove either prong.

The subjective prong requires a showing that a debtor's payment to a creditor defendant was "ordinary in relation to other business dealings between that creditor and that debtor."8 Accordingly, the court's analysis is fact-specific and requires the court to evaluate the ordinariness of the parties' relationship over time.9 Also, the subjective OCB defense may be lost where the trustee proves that the debtor made the alleged preference payments in response to "unusual" collection pressure from the creditor rather than in the ordinary course of the parties' dealings.10

The objective prong requires the court to determine whether the challenged transfer was "made according to ordinary business terms."11 In the Third Circuit, where the Center City case is pending, "ordinary business terms" are those that prevail in healthy, rather than financially distressed, creditor/debtor relationships.12

The objective test "focuses on general norms within the creditor's industry."13 Courts have generally found that this "is 'not an exacting standard.'"14 A trade creditor is afforded "considerable latitude" in defining the relevant industry for comparison purposes, and even deviations from industry norms may be protected as long as they are not so extreme as to be deemed "unusual."15 As a result, a transfer is protected by the objective OCB defense if it falls within the broad range of credit practices prevailing in the relevant industry. And because the objective version of the defense is based on industry terms rather than the defendant's past practices with the debtor, the defendant's collection efforts should be irrelevant to the objective OCB defense — as reinforced by the recent decision in Center City.

Background Regarding the Center City Decision

In Center City, the debtors, operators of two Philadelphia hospitals, sought to avoid and recover more than $4.3 million in pre-petition transfers to Medline Industries Inc., a medical-supply vendor. Medline moved for summary judgment, arguing that $1.3 million of the transfers were protected by the objective ordinary-course-of-business defense under § 547(c)(2)(B) and the remaining $3 million was shielded by the subsequent new-value defense under § 547(c)(4).16 To support its ordinary-course defense, Medline relied on expert testimony comparing the debtors' "days-to-pay" data against Risk Management Association (RMA) industry data.17

The debtors argued in response that the RMA data was inadmissible hearsay and that the expert's methodology was unreliable because he performed no independent analysis of the data beyond identifying which payments fell within the RMA range. The debtors further

contended that a days-to-pay analysis alone was insufficient, asserting that Medline's extraordinary collection efforts during the preference period, including imposing onerous terms following the debtors' acquisition of the hospitals, should defeat the ordinary-course defense.18

The bankruptcy court granted summary judgment for Medline on all counts.19 It held the RMA data admissible under the market-reports hearsay exception and the expert's methodology sufficiently reliable under the Third Circuit's "accommodating" standard.20 Judge Walrath ruled that Medline's collection activity, even if extraordinary or unusual, was irrelevant to the objective ordinary-course defense, rejecting the debtors' effort to import subjective-prong considerations.21 The court further found that the new-value defense eliminated all remaining preference liability, even crediting the debtors' claimed deductions.22 The debtors appealed.

The District Court's Center City Holding

On appeal, the Delaware District Court affirmed the bankruptcy court's grant of summary judgment. The court rejected the suggestion that Medline's pre-petition collection efforts disqualified it from relying on the objective ordinary-course defense and held that the defense may be established based entirely on a days-to-pay analysis using RMA industry-specific data to establish the objective ordinariness of transactions.23 The court found Medline's evidence — showing that the industry's "days to pay" range was 28-76 days and that $1.3 million in transfers fell within that range — was consistent with the Third Circuit's "accommodating" standard for establishing ordinary business terms.24

The district court also addressed the admissibility and reliability of RMA data, upholding the bankruptcy court on both fronts. On admissibility, the court agreed that RMA data qualifies under Federal Rule of Evidence 803(17) as a "Market Report[ ] and Similar Commercial Publication[ ]," supported by undisputed testimony that credit professionals routinely consult RMA data to assess market terms.25 On reliability, the court noted that numerous courts have accepted RMA data as a proper basis for establishing industry norms.26 The court dismissed the debtors' contention that RMA's disclaimer, describing its data as "general guidelines and not as absolute industry norms," undermined reliability, observing that the same RMA materials describe the data as "the industry standard for comparison financial data" and that Third Circuit precedent does not demand proof of "some single, uniform set of industry-wide credit terms."27

The district court further rejected the argument that Medline's pre-petition collection efforts — including demanding a parent guaranty, requiring wire payments, and modifying payment and shipping terms — disqualified Medline from relying on the objective ordinary-course defense. The court observed that the debtors offered no evidence that Medline's conduct was "so idiosyncratic as to fall outside the broad range" of industry norms.[28] Even assuming that "extraordinary collection activity" may defeat an objective ordinary-course defense, the debtors failed to present expert evidence that Medline's collection practices were outside industry norms.

The debtors "essentially argue[d] that where, as here, there was any collection activity at all, the transfers that followed necessarily fall outside of ordinary business terms."[29] The court rejected that position as being "at odds with the proposition that the industry standard is necessarily defined as a range of terms," particularly because the objective standard is "not an exacting" one.[30] As such, the court held that active pre-petition collection efforts do not defeat the objective OCB defense absent evidence that the creditor's conduct falls outside the broad range of industry norms.[31]

The district court also distinguished Fred's, which had applied the Third Circuit's "healthy debtor" principle to reject an objective OCB defense.[32] As discussed in the section below, in Fred's, the Delaware Bankruptcy Court denied the application of the objective OCB defense where the creditor-defendant asserted that tightening credit terms for distressed customers was itself an industry-standard practice. Unlike in Fred's, Medline relied on RMA data reflecting payment timing in healthy creditor/debtor relationships, which was sufficient to support a "days-to-pay" analysis showing that the transfers Medline had received from the debtors were made according to "ordinary business terms."[33]

The district court affirmed summary judgment on the subsequent new-value defense, finding that Medline's evidence of $4 million in new goods supplied to the debtors on credit during the preference period was "more than sufficient to cover the preferential transfers of $3 million remaining after application of the ordinary course of business defense," even after crediting the debtors' claimed deductions.[34]

A Southern District of Ohio Bankruptcy Court reached a similar holding in ASPC, granting summary judgment on the objective OCB defense based on an RMA-data-based days-to-pay analysis.[35] Citing ASPC, the district court in Center City agreed that "the objective ordinary course defense may be satisfied based entirely on a days-to-pay analysis."[36]

In re Fred's Inc.

Following the bankruptcy court's ruling in Center City, Judge Goldblatt addressed the objective OCB defense in Fred's, another Delaware bankruptcy case, where a creditor-defendant asserted the defense after tightening credit terms for a distressed debtor. In this case, during the preference period the creditor-defendant, the debtors' primary logistics provider, significantly reduced the debtors' credit limits and threatened to stop shipping goods unless the debtors immediately paid $300,000.37 The creditor argued that payments extracted through credit pressure should be protected because tightening credit terms was common in the transportation and logistics industry when a customer faces financial distress.38

The court rejected that argument, holding that "ordinary business terms" refers to terms that prevail in ordinary business circumstances, not terms imposed when a debtor runs into financial trouble, and that under Third Circuit precedent, the relevant benchmark is "healthy, not moribund, creditor-debtor relationships."39 Notably, the court distinguished Center City, explaining that Judge Walrath's ruling turned on the disjunctive structure of § 547(c)(2) of the Bankruptcy Code after the 2005 amendments and did not undermine the principle that ordinary business terms should be measured against industry practices when a debtor is financially healthy rather than distressed.40

Key Takeaway

Read together with ASPC and Fred's, Center City provides a strong roadmap for establishing an objective OCB defense using reliable industry data, including RMA-based days-to-pay analyses. And the Center City decision delivers a critical win for trade creditors by confirming that pre-petition collection activity — including tightening credit terms, demanding parent guarantees, and modifying payment and delivery terms — does not automatically defeat the objective OCB defense.

This should provide some comfort to trade creditors that tend to aggressively manage their receivables in real time without being fully influenced by the impact of a potential preference claim down the road. Regardless, creditors should remain mindful of the potential implications that their collection efforts could have for the availability of the subjective OCB defense, and even the objective OCB defense, when dealing with a financially distressed customer.

Bruce Nathan is a partner in Lowenstein Sandler LLP's Bankruptcy & Restructuring Department in New York and a former ABI Board member. Michael Papandrea is a partner in the firm's Bankruptcy & Restructuring Department in Roseland, N.J., a member of ABI's Unsecured Trade Creditors Committee and a 2024 ABI

"40 Under 40" honoree. Jake Rauchberg is an associate in the firm's Bankruptcy & Restructuring Department in New York.

- 1 No. AP 21-50920 (MFW), 2025 WL 3205002, at *2 (D. Del. Nov. 17, 2025).
- 2 Id. at *8.
- 3 No. 19-11984 (CTG), 2025 WL 208536, at *1-3 (Bankr. D. Del. Jan. 15, 2025).
- 4 Id. at 9-10.
- 5 In re ASPC Corp., 658 B.R. 455, 464 (Bankr. S.D. Ohio 2024) (quoting Union Bank v. Wolas, 502 U.S. 151, 161 (1991)).
- 6 Id.
- 7 In re Ctr. City Healthcare LLC, 664 B.R. 208, 217-19 (Bankr. D. Del. 2024).
- 8 ASPC, 658 B.R. at 465 (quoting Nathan v. Am. Med. Sec. (In re Advanced Sys. Int'l Inc.), 234 F. App'x 398, 401 (6th Cir. 2007)).
- 9 Ctr. City, 2025 WL 3205002, at *2 (quoting In re Hechinger Inv. Co. of Delaware Inc., 489 F.3d 568, 576-77 (3d Cir. 2007)).
- 10 Id. at *6.
- 11 Id. at *2.
- 12 Id. (citing In re Molded Acoustical Prods. Inc., 18 F.3d 217, 223-24 (3d Cir. 1994)).
- 13 Id. at *5 (quoting In re AES Thames LLC, 2016 WL 11595116, at *6 (Bankr. D. Del. Oct. 28, 2016)).
- 14 Id. (quoting In re Powerwave Techs Inc., 2017 WL 1373252, at *8 (Bankr. D. Del. Apr. 13, 2017)).
- 15 Id. (quoting Molded Acoustical, 18 F.3d at 220).
- 16 Ctr. City, 664 B.R. at 211-12.
- 17 Id. at 213-15.
- 18 Id.

- 19 Id. at 221.
- 20 Id. at 213-14.
- 21 Id. at 217.
- 22 Id. at 216-17.
- 23 Ctr. City, 2025 WL 3205002, at *6.
- 24 Id. at *5-6.
- 25 Id. at *10.
- 26 Id. at *9.
- 27 Id. at *9-10 (quoting Dietz v. Jacobs, 2014 WL 1153502, at *4 (D. Minn. Mar. 21, 2014); Molded Acoustical, 18 F.3d at 224).
- 28 Id. at *7.
- 29 Id. at *8.
- 30 Id.
- 31 Id.
- 32 Id. at 9.
- 33 Id.
- 34 Id. at *10.
- 35 ASPC, 658 B.R. at 467-69.
- 36 Ctr. City, 2025 WL 3205002, at *7 (citing ASPC, 658 B.R. at 467).
- 37 Fred's, 2025 WL 208536, at *2.
- 38 Fred's, 2025 WL 208536, at *1-3.
- 39 Id. at *7-9 (quoting Molded Acoustical, 18 F.3d at 227).
- 40 Id. at *6-7.

Journal Issue

November 2026

Column Name

Last in Line

Citation

XLV ABI Journal 11, 12-13, 52-53, November 2026

Bankruptcy Code

547

Topic Tags

Bankruptcy Litigation

Unsecured Trade Creditors

Cases Discussed

Center City Healthcare, LLC v. Medline Industries, Inc, No. AP 21-50920 (MFW), 2025 WL 3205002 (D. Del. Nov. 17, 2025).

In re Center City Healthcare, LLC, 664 B.R. 208 (Bankr. D. Del. 2024).

FI Liquidating Trust v. C.H. Robinson Co., Inc. (In re Fred's Inc.), No. 19-11984 (CTG), 2025 WL 208536 (Bankr. D. Del. Jan. 15, 2025).

In re ASPC Corporation, 658 B.R. 455 (Bankr. S.D. Ohio 2024).

Journal Authors

Bruce S. Nathan

Jake Andrew Rauchberg

Michael Papandrea

Mobile Banner Image

Not Featured

Links:

[1] https://www.abi.org/abi-journal/archived-issues/november-2026 [2] https://www.abi.org/terms/column/last-line [3] https://www.abi.org/terms/bankruptcy-code/547 [4] https://www.abi.org/terms/journal-article-tags/bankruptcy-litigation [5] https://www.abi.org/terms/journal-article-tags/unsecured-trade-creditors [6] https://www.abi.org/terms/bruce-s-nathan-2 [7]

https://www.abi.org/terms/jake-andrew-rauchberg [8]

https://www.abi.org/terms/michael-papandrea

© American Bankruptcy Institute. All rights reserved. ABI is a (501)(c)(3) non-profit business (52-1295453).