

## Snowden White and the Seven Dwarfs

Elf Industries was a fantastically successful maker of Christmas, Chanukah and Kwanza ornaments. Elf operated in central Florida for many years. Unfortunately, the Consumer Product Safety Commission found that if children under the age of one smashed the ornaments with their father's ball-peen hammer, they might cut themselves on the pieces if they were early walkers. Accordingly, the CPSC banned the ornaments.

Having lost most of its sales, Elf Industries filed for Chapter 11 relief in Orlando. The Chapter 11 case lasted 14 months and then the court converted it to a Chapter 7 case. The U.S. Trustee appointed Snowden White as the Trustee. Snowden concluded that Elf Industries' vendors had received what he thought were millions of dollars in voidable preferences and retained the distinguished law firm of A.N.S.W.E.R. For purposes of these questions, Elf Industries' standard terms were 90 days net.

A.N.S.W.E.R. used a very sophisticated method for identifying the defendants. He simply sued everybody who had received anything in the 90 days prior to Elf Industries' bankruptcy. Simply put, he sued the check book. Also, A.N.S.W.E.R. waited until the eve of the second anniversary of the filing of the case to bring his suits; in fact he waited until 30 minutes before midnight to start his filings. The firm did not send out any demand letters.

Question #1. Were Snowden's and A.N.S.W.E.R.'s tactics unprofessional or unethical? Have they invited a Federal Rule of Bankruptcy Procedure 9011 problem? What are the advantages of sending out a demand letter?

*See Fed. R. Bankr. P. 9011.*

Question #2. Snowden sued 'Doc' for \$50,000.00. All of Doc's payments were received on the invoice due date and Doc had advanced \$200,000 in ornament sales on credit after he had received the \$50,000.00 payment and never received a dime. Can Doc recover sanctions against Snowden? A.N.S.W.E.R. If so, can he recover them against Snowden personally or just against Elf Industries' estate?

*See Matter of Excello Press, Inc., 890 F.2d 896 (7th Cir. 1989).*

Question #3. Snowden also sued Sneezy for \$75,000. Sneezy had no ordinary course defense, but Sneezy had advanced \$100,000 in goods on credit after receiving the \$75,000 payment. However, Elf Industries ultimately paid for those goods in full by a transfer that could not be avoided. Can Sneezy maintain a subsequent new value defense?

*See In re BFW Liquidation, LLC, 899 F.3d 1178 (11th Cir. 2018); In re Calumet Photographic, Inc., 594 B.R. 879 (Bankr. N.D. Ill. 2019).*

Question #4. What if, instead of receiving payment for the subsequently delivered goods (which Elf Industries received on the day before its bankruptcy filing), Sneezy asserts a claim for their value under 11 U.S.C. § 503(b)(9) – same result?

*See In re Friedman's Inc.*, 738 F.3d 547 (3d Cir. 2013).

Question #5. Snowden sued Happy for \$1 million dollars in voidable preferences. Snowden's accountant has concluded that any payment made more than five days after or five days before the invoice date is outside of the parties' ordinary course of business.

- a. What method should Snowden have used to determine what constitutes the parties' ordinary course of business?
- b. Is five days too fine?

*See Unsecured Creditors Comm. Of Sparrer Sausage Co., Inc. v. Jason's Foods, Inc.*, 826 F.3d 388 (7th Cir. 2018); *In re Newpage Corp.*, 555 B.R. 444 (Bankr. D. Del. 2016).

Question # 6. Snowden sued Grumpy for \$500,000.00. There is no way that Grumpy's erratic pattern of receiving payments can qualify as ordinary course. However, Grumpy points out that he sells similar ornament materials to Bullwinkle Industries in Frostbite Falls, Minnesota and those creditors who supply Bullwinkle get 1-year terms. Does Grumpy have a chance of winning?

*See Matter of Tolona Pizza Prods. Corp.*, 3 F.3d 1029 (7th Cir. 1993).

Question #7. Snowden sues Sleepy on the thirteen-month anniversary of his appointment. Did he sleep through the statute of limitations?

*See* 11 U.S.C. § 546(a)(1)(B).

Question #8. Could Snowden simply ask the court to extend the statute of limitations for another five years to bring avoidance actions?

*See In re Int'l Admin. Servs., Inc.*, 408 F.3d 689 (11th Cir. 2005); *In re Petters Co., Inc.*, 494 B.R. 413 (Bankr. D. Minn. 2013).

Question #9. Snowden sues Bashful and receives a judgment for \$2 million dollars. Bashful is embarrassed that he is insolvent. However, Bashful really doesn't make the ornament materials; he is a forwarder. Bashful just bought the ornament materials from Dopey in France using Elf's money to pay Dopey. Can Snowden sue Dopey as a subsequent transferee? Dopey does not have a presence in the United States.

*See In re Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC*, 917 F.3d 85 (2d Cir. 2019).

Question # 10. Pre-petition, the Queen and fairest in the land had sued Elf Industries. Elf Industries and the Queen enter into a state court-approved settlement agreement. The terms of payment under the settlement agreement are far different than Elf's normal payment terms, but

Elf sticks to the terms of the settlement agreement **religiously**. Can the Queen assert a defense that the payments are immune from avoidance on public policy grounds?

*See In re Tennessee Chem. Co.*, 112 F.3d 234 (6th Cir. 1997)

Question #11. Snowden sues Prince Charming of Hell, Michigan for \$1,000.00. Is Venue proper?

*See* 28 U.S.C. § 1409(b).