# From the Bench: A Roadmap for Navigating Preference Defenses

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By Albena Petrakov

Port Elizabeth Terminal & Warehouse Corp., a major marine terminal and warehousing operator serving the Port of New York and New Jersey, filed for Chapter 11 on November 14, 2025, in the Bankruptcy Court for the District of New Jersey against the backdrop of a continued freight recession. Whether this downturn reflects a sector-specific correction or signals a broader economic slowdown amid weakened consumer demand, suppliers of goods and services should take this moment to revisit their exposure to preference claims — particularly when customers show signs of financial distress.

A recent decision by Judge Walrath underscores the importance of this review. *Miller v. Industrial Finishes & Systems Inc.* (In re Calplant I LLC), 23-50690 (Bankr. D. Del. Oct. 27, 2025). The court held that a $72,978.53 payment made just four days before CalPlant's Chapter 11 filing was an avoidable preference under 11 U.S.C. § 547(b). The vendor argued that the payment qualified either as (1) a contemporaneous exchange for new value, or (2) a payment made in the ordinary course of business. The court rejected both defenses.

**Case Background**

CalPlant I, LLC operated a facility converting rice farming byproducts into medium-density fiberboard. The defendant, Industrial Finishes & Systems ("IFS"), supplied materials under a 2019 consignment agreement. Under this arrangement, IFS shipped supplies to CalPlant, which used them as needed. Title transferred only upon use, after which CalPlant reported usage and IFS issued invoices payable within 30 days. On September 30, 2021, IFS invoiced CalPlant for $72,978.53; payment was received on October 1, 2025 just days before the bankruptcy filing.

IFS contended it was not a creditor as of September 30, 2021 because its right to payment arose only after invoicing, and there was no antecedent debt. The court disagreed, emphasizing that creditor status does not hinge on invoice issuance or proof of claim filing. The Bankruptcy Code (the "Code") defines a creditor as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." Under the Code, a "claim" includes any right to payment — contingent or otherwise — and a "debt" is a liability on such a claim.

While the Code does not define "antecedent," the court found its meaning is well-established: "earlier; preexisting; previous." Thus, the court concluded that a transfer is made on account of an antecedent debt if the creditor had a right to payment of that debt before the debtor made the transfer. Thus, the right to payment arose when CalPlant used the supplies, even if invoicing occurred later. This interpretation significantly broadens exposure for vendors operating under delayed billing. The usage in September preceded the transfer date regardless of whether the transfer occurred on September 30 when the debtor initiated the electronic transfer, on October 1 when IFS received the funds.

With respect to the new value defense, the decision underscores that the vendor must show actual new value given at or after the transfer — not just business convenience. As to ordinary course defense, the court demands specific industry data, not general statements about internal practices.

This decision reinforces the need for vendors dealing with distressed customers to proactively manage preference risk. It is important to monitor payment timing closely and avoid deviations from historical patterns, particularly when payments are made earlier than usual. Consistency in timing can help demonstrate that transactions occurred in the ordinary course of business. Additionally, vendors should document industry standards and maintain supporting data, as this information is critical for establishing an ordinary course defense if challenged.