

Briggs Attorneys Prevail in Ponzi Scheme Clawback Rulings

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Kevin Decker and Benjamin Gurstelle recently obtained two important dismissals of litigation against financial institutions facing fraudulent transfer claims arising out of alleged Ponzi schemes.

Decker and Gurstelle prevailed in the first contested dispositive ruling from the court handling the 200+ fraudulent transfer actions arising from the alleged Ponzi scheme run by Thomas J. Petters. Representing two Canada-based lenders in “clawback” litigation filed by the Petters Company, Inc. (PCI) trustee seeking to recover payments made in connection with loans extended to and then repaid by PCI. The Canadian lenders moved to dismiss the suit based on the court’s lack of jurisdiction over their Canada-based company, contending that merely engaging in loan-related transactions with a U.S.-based borrower did not subject the lenders to federal bankruptcy court jurisdiction. The Honorable Gregory F. Kishel, Chief U.S. Bankruptcy Judge, District of Minnesota, agreed and granted the motion to dismiss from the bench.

Decker and Gurstelle also prevailed in the first ever ruling by a Minnesota court concerning the applicable statute of limitations for claims under the Minnesota Uniform Fraudulent Transfer Act (MUFTA). The litigation stemmed from the receivership estate for Corey Johnston and First United Funding (FUF), established in light of Johnson and FUF’s alleged fraud in selling loan participations to banks. The presiding judge, the Honorable Joseph T. Carter, Dakota County District Court, granted the motion to dismiss filed by Decker and Gurstelle, concluding that a MUFTA claim is a statutory cause of action subject to the strict six-year limitations period and that fraudulent conduct by the Ponzi-scheme operator did not toll the limitations period applicable to the lenders.

Decker is a shareholder in the firm’s Business Litigation Section with a wide range of experience in highly complex litigation matters, including merger and acquisition disputes and fraudulent transfer and related claims litigation. He has been named a “Minnesota Rising Star” in *Super Lawyers Magazine* and an “Up and Coming Attorney” by *Minnesota Lawyer*. He also has been an adjunct professor at William Mitchell College of Law where he taught federal jurisdiction.

Gurstelle is an associate in the firm’s Business Litigation Section and received his law degree *magna cum laude* from the University of

Attorneys

Kevin Decker

Practice Areas

Business Litigation

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Minnesota Law School where he was editor for *Law and Inequality: A Journal of Theory and Practice*. After graduating law school he clerked for the Honorable Natalie E. Hudson of the Minnesota Court of Appeals. He joined Briggs in 2010.