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TIME LIMITATIONS FOR OBJECTING TO CLAIMS: THE INTERPLAY BETWEEN SECTIONS 502(D) AND 546(A) OF THE BANKRUPTCY CODE

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It is common lore among bankruptcy trustees and lawyers that a bankruptcy trustee[1] has an unlimited time period under the Bankruptcy Code (the Code) to file objections to claims. Indeed, neither Section 502(a) of the Code[2] nor Federal Rule of Bankruptcy Procedure 3007[3] contains time limitations within which an objection to a claim must be filed.[4] However, creative creditors'

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1. *See* 11 U.S.C. § 1107 (1988) (providing debtor-in-possession in Chapter 11 proceeding with powers and duties of trustee).

2. According to § 502(a): "A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under Chapter 7 of this title, objects." 11 U.S.C. § 502(a) (1988).

3. Rule 3007 provides:

> An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

FED. R. BANKR. P. 3007.

4. *E.g.*, *In re* Kolstand, 928 F.2d 171, 174 (5th Cir.), *cert. denied*, 112 S. Ct. 419 (1991); *In re* Stoecker, 143 B.R. 118, 131 (Bankr. N.D. Ill.), *aff'd*, 143 B.R. 879 (N.D. Ill. 1992), *aff'd in part*, 5 F.3d 1022 (7th Cir. 1993); *see* 8 COLLIER ON BANKRUPTCY ¶ 3007.03[5] (Lawrence P. King ed., 15th ed. 1993) (noting that Rule 3007 does not impose time limit for lodging claim objections).

attorneys have fashioned arguments that the two-year limitations period placed on avoidance actions[5] by Section 546(a)[6] of the Code applies to claim objection proceedings brought under Section 502(d).[7] Because courts have held that the limitations period of Section 546(a) applies to claim objection proceedings,[8] creditors who have received preferential or fraudulent transfers are potentially allowed to take a disproportionately large share of a bankruptcy estate to the detriment of other creditors.

This Article will address the principal arguments raised by both creditors and trustees regarding the applicability of Section 546(a) to a claim objection based upon Section 502(d). The issue addressed is of extreme importance to Chapter 7 trustees who are forced to rely upon information provided by debtors—information which is often incomplete. Because the Code mandates that trustees act "in the best interests of parties in interest,"[9] trustees may lack sufficient resources to fully investigate (let alone pursue) all possible voidable transfers. Further, the trustee may not have the resources to commence objections to claims, even those based on Section 502(d), until after the limitations period of Section 546(a) has lapsed. Therefore, the ability of a trustee to object to a claim

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5. Avoidance actions are causes of action to avoid and recover transfers pursuant to §§ 544, 545, 547, 548, or 553 of the Code. *See* 11 U.S.C. §§ 544, 545, 547, 548, 553 (1988) (authorizing avoidance actions for unauthorized transfer of property, improper statutory liens, preferential transfers, and fraudulent transfers).

6. Section 546(a) provides:

> An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of—
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> (1) two years after the appointment of a trustee under section 702, 1104, 1163, 1302, or 1202 of this title; or
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> (2) the time the case is closed or dismissed.

11 U.S.C. § 546(a) (1988).

7. *In re* Marketing Assocs. of Am., Inc., 122 B.R. 367, 369 (Bankr. E.D. Mo. 1991). Section 502(d) of the Bankruptcy Code provides:

> Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

11 U.S.C. § 502(d) (1988).

8. *See, e.g., Marketing Assocs.*, 122 B.R. at 369–70 (finding § 502(d) objection inapplicable because § 546(a) precludes such avoidance).

9. 11 U.S.C. § 704 (1988).

may be affected by a court's interpretation of the applicability of Section 546(a) to a claim objection brought under Section 502(d).

I. THE PROOF OF CLAIM PRIMER

Under the Code, a bankruptcy proceeding is initiated by a voluntary petition filed by a debtor pursuant to Section 301 or an involuntary petition filed by the appropriate number of eligible creditors against a debtor pursuant to Section 303.[10] The commencement of a bankruptcy case creates a bankruptcy estate consisting of essentially all of the debtor's property.[11] To share in the bankruptcy estate, the creditor must file a proof of claim, or the trustee or debtor-in-possession must file a proof of claim on the creditor's behalf.[12] As a general matter, a proof of claim is similar to a complaint initiating a lawsuit; a proof of claim consists of a written statement setting forth a creditor's claim[13] for recovery against the debtor's estate.[14] Unlike a complaint, however, a properly filed proof of claim is "prima facie evidence of the validity and

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10. *Id.* §§ 301, 303.

11. *See, e.g.*, 11 U.S.C. § 541 (1988 & Supp. II 1990) (delineating property of estate); *In re* Kazi, 985 F.2d 318, 320 (7th Cir. 1993) (stating that estate consists of property in which debtor has legal or equitable interest); *In re* Axona Int'l Credit & Commerce, Ltd., 88 B.R. 597, 606 (Bankr. S.D.N.Y. 1988) (finding that involuntary filing by foreign representative creates estate), *aff'd*, 115 B.R. 442 (S.D.N.Y. 1990).

12. *See* 11 U.S.C. §§ 501-502 (1988) (outlining procedural requirements of claims by creditors); *In re* Glick, 136 B.R. 654, 656 (Bankr. W.D. Va. 1991) (citing § 501(a)); Wilson v. Allegheny Int'l, Inc., 134 B.R. 282, 284 (N.D. Ill. 1991) (citing §§ 501-502). In a case filed under Chapter 7 or Chapter 11 of the Code, only a creditor whose claim is not listed on the debtor's schedules, or whose claim is listed on the debtor's schedules as disputed, contingent, or unliquidated, must file a proof of claim. FED. R. BANKR. P. 3003(c)(2); *see* ITT Commercial Fin. Corp. v. Dilkes (*In re* Analytical Systems, Inc.), 933 F.2d 939, 941–42 (11th Cir. 1991) (noting that improperly scheduled claim also requires creditor to file proof of claim).

13. According to § 101(5) of the Code:

> "[C]laim" means—
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> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
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> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5) (Supp. V 1994).

14. FED. R. BANKR. P. 3001(a).

amount of the claim."[15] Further, once filed, a proof of claim is deemed allowed and the claimant may receive distributions from the estate unless a party in interest objects to the proof of claim.[16] In Section 502(b) of the Code, Congress provided for several general objections to claims, including objections based on the unenforceable nature of the claim against the debtor under nonbankruptcy law.[17] However, to rebut the validity of a proof of claim, the objecting party must produce sufficient evidence to rebut the prima facie validity of that proof of claim.[18]

In addition to the bases for objecting to proofs of claim provided in Section 502(b), Congress enacted Section 502(d), which requires a court to disallow the proof of claim of any claimant who has received a voidable transfer unless the claimant has previously returned the transfer to the trustee.[19] As previously noted, neither Section 502(a) of the Code nor Federal Rule of Bankruptcy Procedure 3007 imposes a time limitation for objecting to claims. However, pursuant to Section 546(a) of the Code, a trustee only has two years from the date of appointment to initiate certain voidable

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15. *E.g.*, FED. R. BANKR. P. 3001(f); Lipetzky v. Department of Revenue (*In re* Lipetzky), 66 B.R. 648, 649 (Bankr. D. Mont. 1986). In order for a proof of claim to be legally sufficient and entitled to prima facie validity under Rule 3001(f) of the Rules of Bankruptcy Procedure, it must: "(1) be in writing; (2) make a demand on the debtor's estate; (3) express the intent to hold the debtor liable for the debt; (4) be properly filed; and (5) be based upon facts which would allow, as a matter of equity, to have the document accepted as a proof of claim." *E.g.*, *Glick*, 136 B.R. at 657; First Nat'l Bank v. Circle J Dairy (*In re* Circle J Dairy, Inc.), 112 B.R. 297, 299-300 (W.D. Ark. 1989); *In re* Scholz, 57 B.R. 259, 261 (Bankr. N.D. Ohio 1986).

16. 11 U.S.C. § 502(a) (1988); *see In re* Alderman, 150 B.R. 246, 250 (Bankr. D. Mont. 1993) (holding that First Security Bank's claim was not "deemed allowed" because no proof of claim was filed for bank); *In re* Johnson, 95 B.R. 197, 200 (Bankr. D. Colo. 1989) (explaining "deemed allowed" terminology); *In re* Hermansen, 84 B.R. 729, 734 (Bankr. D. Colo. 1988) (emphasizing that to establish what is allowed, claiming party must resort to § 502(a)).

17. *See* 11 U.S.C. § 502(b)(1) (1988) (authorizing, in addition to normal objections to claims, objections based outside scope of bankruptcy law).

18. *See, e.g.*, California State Bd. of Equalization v. Official Unsecured Creditors' Comm'n (*In re* Fidelity Holding Co., Ltd.), 837 F.2d 696, 698 (5th Cir. 1988) (explaining objecting party's burden of production to rebut claimant's proof of claim); *In re* Chapman, 132 B.R. 132, 143 (Bankr. N.D. Ill. 1991) (emphasizing that objector must produce evidence that rebuts valid proof of claim); *Circle J Dairy*, 112 B.R. at 299 (holding that legal sufficiency of proof of claim may be used as evidence to support objection).

19. *In re* Stoecker, 143 B.R. 118, 131 (Bankr. N.D. Ill.), *aff'd*, 143 B.R. 879 (N.D. Ill. 1992), *aff'd in part*, 5 F.3d 1022 (7th Cir. 1993).

transfer causes of action.[20] Therefore, the issue arises whether the two-year limitations period of Section 546(a) applies to objections to proofs of claim brought pursuant to Section 502(d).

II. A Historical Perspective

To fully analyze the impact of Section 546(a) upon Section 502(d), it is beneficial to review the predecessor statutes under the Bankruptcy Act (the Act) and the judicial interpretations given to those statutes.[21] Prior to the Code's enactment in 1978, Section 57(g) of the Act provided that "[t]he claims of creditors who have received or acquired preferences, liens, conveyances, transfers, assignments or encumbrances, void or voidable under this act, shall not be allowed unless such creditors shall surrender such preferences, liens, conveyances, transfers, assignments or encum-

20. *See* Fitzgerald v. Bertram (*In re* Killian Constr. Co.), 24 B.R. 848, 850 (Bankr. D. Idaho 1982) (finding that permanent qualified trustee has two years from election in which to use avoidance powers); Edleman v. Gleason (*In re* Silver Mill Frozen Foods, Inc.), 23 B.R. 179, 181 (Bankr. W.D. Mich. 1982) (stating that two-year statute of limitations starts to run on date of trustee's election, not date case is filed). The courts are split on the applicability of § 546(a) to debtors-in-possession. *Compare* U.S. Brass & Copper Co. v. Caplan (*In re* Century Brass Products, Inc.), 22 F.3d 37, 39 (2d Cir. 1994) (finding that statutory scheme mandates § 546(a)'s application to debtors-in-possession) *and* Construction Management Servs., Inc. v. Manufacturers Hanover Trust Co. (*In re* Coastal Group Inc.), 13 F.3d 81, 84 (3d Cir. 1994) (analyzing legislative history and concluding that § 546(a) applies to debtor-in-possession) *and* Upgrade Corp. v. Government Tech. Servs., Inc. (*In re* Software Centre Int'l, Inc.), 994 F.2d 682, 683 (9th Cir. 1993) (finding that § 546(a) must be read in conjunction with provisions of entire statute in order to determine applicability) *and* Zilkha Energy Co. v. Leighton, 920 F.2d 1520, 1524 (10th Cir. 1990) (applying § 546(a) to debtors-in-possession) *with* Brin-Mont Chems., Inc. v. Worth Chem. Corp. (*In re* Brin-Mont Chems., Inc.), 154 B.R. 903, 906 (M.D.N.C. 1993) (refusing to apply § 546(a) to debtors-in-possession) *and* Sunbeam-Oster Co. v. Lincoln Liberty Ave., Inc. (*In re* Allegheny Int'l, Inc.), 145 B.R. 823, 829 (W.D. Pa. 1992) (stating that when debtor retains possession and trustee is not appointed, § 546(a) is inapplicable).

21. When interpreting the Code, the United States Supreme Court has reminded lower courts that "[w]hen Congress amends the bankruptcy laws, it does not write 'on a clean slate.'" Dewsnup v. Timm, 112 S. Ct. 773, 779 (1992) (quoting Emil v. Hanley, 318 U.S. 515, 521 (1943)). As another court noted, "where the text of the Code does not unambiguously abrogate pre-Code practice, courts should presume that Congress intended it to continue unless the legislative history dictates a contrary result." Bonner Mall Partnership v. United States Bancorp Mortgage Co. (*In re* Bonner Mall Partnership), 2 F.3d 899, 913 (9th Cir. 1993) (relying on *Dewsnup*, 112 S. Ct. at 779). Therefore, the applicable provisions of the Act as interpreted by the courts can be beneficial in interpreting specific Code provisions.

brances."[22] The common purpose of Section 502(d) of the Code and Section 57(g) of the Act was to disallow the claims of creditors who have received voidable transfers until those transfers are surrendered.[23] These sections were not designed to punish creditors who have received voidable transfers, but to give creditors the option to keep the transfers (and hope for inaction by the trustee) or to return the transfers and share equally with other creditors.[24] Indeed, both Section 502(d) and Section 57(g) were designed to foster the restoration of assets to the estate and, as a consequence, to ensure the equality of distribution of the estate's assets by precluding any recipient of a voidable transfer from sharing in any distribution unless the recipient first repays the voidable transfer.[25]

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22. Bankruptcy Act of 1898, Pub. L. No. 62-57, ch. 541, 30 Stat. 544, 560, *amended by* Act of June 22, 1938, ch. 575, 52 Stat. 840, 866, *repealed by* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549.

23. *In re* Stoecker, 143 B.R. 118, 136 (Bankr. N.D. Ill.) (comparing 11 U.S.C. § 502(d) with § 57(g) of Act), *aff'd*, 143 B.R. 879 (N.D. Ill. 1992), *aff'd in part*, 5 F.3d 1022 (7th Cir. 1993).

24. *See* Bernstein v. Alpha Assocs., Inc. (*In re* Frigitemp Corp.), 753 F.2d 230, 232 (2d Cir. 1985) (noting that creditor must surrender preference prior to estate's allowing claim under Act); *Stoecker*, 143 B.R. at 135-36 (discussing majority and minority approaches under Code); Tidwell v. Atlanta Gas Light Co. (*In re* Georgia Steel, Inc.), 38 B.R. 829, 839 (Bankr. M.D. Ga. 1984) (explaining intent of § 502).

25. *Stoecker*, 143 B.R. at 136; *see In re* Chase & Sanborn Corp., 124 B.R. 368, 371 (Bankr. S.D. Fla. 1991) (discussing statutory design assuring "equality of distribution"); *see also In re* Marketing Assocs. of Am., Inc., 122 B.R. 367, 368 (Bankr. E.D. Mo. 1991) (holding that language of statute requires claimholder to return preferential payments). Indeed, § 502(d) works in conjunction with the trustee's avoidance powers to advance two of the principal policies of the Code: (1) preventing the pre-petition "race to the courthouse" to dismember the debtor; and (2) promoting equality of distribution. H.R. REP. NO. 595, 95th Cong., 2d Sess. 177–78 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6138. The House Committee Report described the purpose of § 547 (and implicitly § 502(d)) of the Code in the following manner:

> A preference is a transfer that enables a creditor to receive payment of a greater percentage of his claim against the debtor than he would have received if the transfer had not been made and he had participated in the distribution of assets of the bankruptcy estate. The purpose of the preference section is two-fold. First, by permitting the trustee to avoid pre-bankruptcy transfers that occur within a short period before bankruptcy, creditors are discouraged from racing to the courthouse to dismember the debtor during his slide into bankruptcy. The protection thus afforded the debtor often enables him to work his way out of a difficult financial situation through cooperation with all of his creditors. Second, and more important, the preference provisions facilitate the prime bankruptcy policy of equality of distribution among creditors of the debtor. Any creditor that receives a greater payment than others of his class is required to disgorge so that all may share equally. The operation of the preference section to deter "the race of diligence" of creditors to dismember the debtor before

Section 11(e) of the Act provided a two-year statute of limitations similar to that found in Section 546(a) of the Code. Section 11(e) provided in relevant part:

> A receiver or trustee may, within two years subsequent to the date of adjudication or within such further period of time as Federal or State law may permit, institute proceedings in behalf of the estate upon any claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy.[26]

Section 11(e) barred a trustee from initiating any cause of action created by the Act (for example, actions for preference or turnover) more than two years after adjudication.[27]

Much like the situation currently encountered under the Code, creditors' attorneys attempted to fashion arguments applying Section 11(e) of the Act to a claim objection brought under Section 57(g). However, the courts that analyzed whether the limitations period of Section 11(e) affected Section 57(g) held it inapplicable.[28]

The United States Court of Appeals for the First Circuit, in *In re Cushman Bakery*,[29] appears to have been the first appeals court to address the applicability of Section 11(e) of the Act to claims objections based upon Section 57(g).[30] In *Cushman Bakery*, the

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bankruptcy furthers the second goal of a preference section—that of equality of distribution.

Id. at 6138–39; *see also* Union Bank v. Wolas, 112 S. Ct. 527, 532–33 (1991) (stressing agreement between opposing parties concerning purpose of § 547 based on House Committee Report); *In re* Tolona Pizza Prods. Corp., 3 F.3d 1029, 1032 (7th Cir. 1993) (stating that purpose of preference statute is to prevent debtor from paying one creditor to detriment of others).

26. Bankruptcy Act of 1898, Pub. L. No. 62-57, ch. 541, 30 Stat. 544, 549, *amended by* Act of June 22, 1938, ch. 575, 52 Stat. 840, 849, *repealed by* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549.

27. Herget v. Central Nat'l Bank & Trust Co., 324 U.S. 4, 8 (1945).

28. *E.g.*, Farmers & Traders State Bank v. Magill (*In re* Meredosia Harbor & Fleeting Serv., Inc.), 545 F.2d 583, 590 (7th Cir. 1976), *cert. denied*, 430 U.S. 967 (1977); *In re* Cushman Bakery, 526 F.2d 23, 35–36 (1st Cir. 1975), *cert. denied*, 425 U.S. 937 (1976); *In re* Hudson Feather & Down Prods., Inc., 22 B.R. 247, 253 (Bankr. E.D.N.Y. 1982); *In re* REA Holding Corp., 8 B.R. 75, 82 (Bankr. S.D.N.Y, 1980); *In re* Supreme Synthetic Dyers, Inc., 3 B.R. 189, 191 (Bankr. E.D.N.Y. 1980).

29. 526 F.2d 23 (1st Cir. 1975), *cert. denied*, 425 U.S. 937 (1976).

30. *See Cushman Bakery*, 526 F.2d at 35 (noting "that no other federal court of appeals has squarely confronted the question of § 11(e)'s applicability to a trustee's objection to the allowance of a claim").

debtor made preferential payments to two unsecured creditors.[31] More than two years after the debtor was adjudicated a bankrupt, the trustee objected to the creditors' claims pursuant to Section 57(g) of the Act.[32] In response, the claimants argued that the objections were time-barred by Section 11(e).[33]

The *Cushman Bakery* court disagreed with the claimants' argument that Section 11(e) of the Act established a limitations period for claim objections on four separate grounds. Initially, the *Cushman Bakery* court examined the plain language of Section 11(e), which provided in relevant part that the trustee "may, within two years subsequent to the date of adjudication . . . , institute proceedings on behalf of the estate . . . ."[34] The First Circuit reasoned that perhaps the most natural interpretation of Section 11(e)'s language was that the provision referred only to the trustee's institution of a separate legal action to recover an asset on the estate's behalf.[35] The *Cushman Bakery* court further rejected the notion that a claim objection represented the institution of a cause of action for recovery.[36] Therefore, the *Cushman Bakery* court held that the plain language of Section 11(e) did not support the imposition of a limitations period on a claim objection proceeding, even one brought under Section 57(g).[37]

Second, the *Cushman Bakery* court found that the imposition of a statute of limitations on a claim objection proceeding would be inconsistent with the purpose of the Act as a whole.[38] The court noted that the statute of limitations of Section 11(e) commenced to run on the date of adjudication.[39] The court recognized, however, that the bar date for filing proofs of claim, pursuant to Section

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31. *Id.* at 26–27.

32. *Id.* at 27.

33. *Id.*

34. Bankruptcy Act of 1898, Pub. L. No. 62-57, ch. 541, 30 Stat. 544, 549, *amended by* Act of June 22, 1938, ch. 575, 52 Stat. 840, 849, *repealed by* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549.

35. *Cushman Bakery*, 526 F.2d at 35.

36. *Id.* at 35–36.

37. *See id.* (finding that trustee's objection more than two years after date of adjudication did not vest bankruptcy court with jurisdiction over creditor-claimant's voidable preference amounts).

38. *See id.* at 36–37 (concluding that "the primary objective of the allowance process is to ensure that the ultimate distribution of the bankrupt estate comports with the requirements of the Bankruptcy Act").

39. *Cushman Bakery*, 526 F.2d at 36.

57(n) of the Act, was six months from the first meeting of creditors, which had to be held within thirty days of adjudication.[40] In other words, it was possible for a creditor to file a proof of claim seven months after adjudication. Therefore, the *Cushman Bakery* court concluded that "[i]t would, at least, be incongruous to have a two year statute of limitations begin to run before the trustee had any cause to file objections."[41]

Third, the *Cushman Bakery* court observed that situations might arise that would allow a creditor to file a proof of claim more than two years after adjudication.[42] For example, the court noted that pursuant to Section 57(n), creditors whose claims were not filed before the bar date were permitted to file proofs of claim and to share in any surplus remaining after payment of all timely claims.[43] Thus, if Section 11(e) applied to objections to claims, the unintended result would be to absolutely preclude some trustees from objecting to late-filed claims.[44] The *Cushman Bakery* court concluded that the drafters of Section 11(e) could not have intended to prevent the trustee from objecting to claims filed after the statutory deadline.[45]

Finally, the First Circuit noted that a strict limitations period on objections to claims would be inconsistent with the flexibility associated with the claim objection and allowance process:

> This flexibility is exemplified by [Section 2(a)(2)] and [Section 57(k)], which empower the bankruptcy court, upon petition of the

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40. *Id.* A similar situation exists under the Code. The bar date for filing a proof of claim in cases under Chapters 7, 12, and 13 of the Code is 90 days after the first meeting of creditors under § 341. FED. R. BANKR. P. 3002(c). In cases under Chapters 9 and 11 of the Code, the court must set the bar date for filing proofs of claim. FED. R. BANKR. P. 3003(a), (c).

41. *Cushman Bakery*, 526 F.2d at 36.

42. *Id.* Similar situations exist under the Code. The bankruptcy clerk may give notice that a bankruptcy case is a "no asset" case. FED. R. BANKR. P. 2002(e). If the trustee subsequently recovers assets to distribute, the bankruptcy clerk must notify creditors that assets have been discovered and that the bar date for filing proofs of claim is 90 days from the date of notice. FED. R. BANKR. P. 3002(e)(5). Therefore, it is conceivable that a trustee might not recover assets for distribution until two years after his appointment.

43. *Cushman Bakery*, 526 F.2d at 36. The Code provides a similar priority for late-filed proofs of claim. *See* 11 U.S.C. § 726(a)(3) (1988) (placing tardily filed proofs of claims after timely filed unsecured claims).

44. *See Cushman Bakery*, 526 F.2d at 36 (describing that construction as anomalous).

45. *See id.* (holding that § 11(e) should not bar trustee's objections to allowance of claims).

> trustee, to reconsider allowed or disallowed claims and allow them or disallow them at any time before the estate has been closed. Although these provisions do not clearly suggest that [Section 11(e)] is inapplicable to trustee objections to the allowance of a claim, they do suggest that the primary objective of the allowance process is to ensure that the ultimate distribution of the bankrupt estate comports with the requirements of the Bankruptcy Act. Since a strict time limitation upon the filing of objections would be inconsistent with the attainment of that goal, these sections support the conclusion that [Section 11(e)] should not operate as a bar to the consideration of the trustee's objections to the allowance of a claim.[46]

Based upon these four reasons, the *Cushman Bakery* court held that Section 11(e) of the Act did not place a limitations period on a claim objection brought under Section 57(g).[47]

The Seventh Circuit also had an opportunity to review the applicability of Section 11(e) to a claim objection in *Farmers & Traders State Bank of Meredosia v. Magill (In re Meredosia Harbor & Fleeting Service, Inc.)*.[48] In *Meredosia Harbor*, the debtor was indebted to two banks for a total of $300,000. Within a month prior to the bankruptcy filing, the debtor granted the banks a lien to secure the debt.[49] During the course of administering the estate, the trustee sold the banks' collateral. Two and one-half years after the debtor was adjudicated a bankrupt, the banks filed petitions for turnover of the proceeds from the sale, and the trustee responded by alleging that the lien was voidable as a preference. The bankruptcy referee disallowed the banks' claims.[50]

On appeal, the bank[51] argued that the trustee could not avoid the lien as a preference because that objection was time-barred by

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46. *Id.* (footnote omitted). The Bankruptcy Rules provide similar flexibility in the claim objection and allowance procedure. *See* FED. R. BANKR. P. 3008 (authorizing court to reconsider order allowing or disallowing claim at any time).

47. *See Cushman Bakery*, 526 F.2d at 37 (concluding that court should consider merits of trustee's objections).

48. 545 F.2d 583 (7th Cir. 1976), *cert. denied*, 430 U.S. 967 (1977).

49. *Meredosia Harbor*, 545 F.2d at 585.

50. *Id.* at 586.

51. Only one of the banks, Farmers & Traders State Bank of Meredosia, asserted its rights on appeal.

Section 11(e) of the Act.[52] The *Meredosia Harbor* court dismissed the bank's argument and held:

> Section 11(e) is not applicable here where the trustee filed no suit on behalf of the debtor. Rather, the lienholders asserted their claims against the trustee. As the bankruptcy referee observed, Section 11(e) does not come into play when [the trustee] defends money in his hands from creditors whose claims would be preferential if successful. The trustee's defense was in the nature of recoupment and therefore not barred by Section 11(e).[53]

Therefore, the *Meredosia Harbor* court agreed with the *Cushman Bakery* court and held that Section 11(e) did not apply to a claim objection.

III. The Conflicting Cases Under the Bankruptcy Code

Under the Bankruptcy Act, the First and Seventh Circuits agreed that the limitations period of Section 11(e) did not apply to claims objections under Section 57(g). In 1978, Congress modernized the bankruptcy laws by enacting the Bankruptcy Code.[54] In the modernization, Sections 546(a) and 502(d) of the Code superseded Sections 11(e) and 57(g) of the Act respectively.[55] Notwithstanding Congress's renovation of the bankruptcy laws, the courts have split on the applicability of Section 546(a) to a claim objection proceeding under Section 502(d).[56]

Two United States Bankruptcy Court decisions, *In re Marketing Associates of America, Inc.*[57] and *In re Stoecker*,[58] represent oppo-

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52. *See Meredosia Harbor*, 545 F.2d at 590 (identifying bank's objections as affirmative defenses).

53. *Id.* at 590. As a general rule, limitations do not apply to defenses to litigation. *See, e.g.*, Federal Deposit Ins. Corp. v. Palermo, 815 F.2d 1329, 1339–40 (10th Cir. 1987) (applying Oklahoma law stating that limitations will not bar claim based on fraud if claim accrued over two years prior to suit); Bayound v. Nassour, 688 S.W.2d 198, 199 (Tex. App.—Eastland 1985, writ ref'd n.r.e.) (holding that, in suit to dissolve corporation, defense is not barred by limitations).

54. H.R. Rep. No. 595, 95th Cong., 2d Sess. 3 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 5965.

55. *See In re* Stoecker, 143 B.R. 118, 134 (Bankr. N.D. Ill.) (noting striking similarity between § 546(d) of Code and § 11(e) of Act as well as between § 502(d) of Code and § 57(g) of Act), *aff'd*, 143 B.R. 879 (N.D. Ill. 1992), *aff'd in part*, 5 F.3d 1022 (7th Cir. 1993).

56. *Compare Stoecker*, 143 B.R. at 138 (holding § 546(a) inapplicable to objections under § 502(d)) *with In re* Marketing Assocs. of Am., Inc., 122 B.R. 367, 371 (Bankr. E.D. Mo. 1991) (denying trustee's request to disallow claim under § 502(d)).

57. 122 B.R. 367 (Bankr. E.D. Mo. 1991).

site ends of the spectrum concerning the applicability of the two-year limitations period contained within Section 546(a) of the Code to claims objections brought pursuant to Section 502(d). The facts of these two cases are not distinguishable. In each case, a trustee, more than two years after being appointed, objected to a creditor's proof of claim pursuant to Section 502(d).[59] In *Marketing Associates*, the court held that Section 546 barred the trustee from objecting to the creditor's claim based Section 502(d).[60] In contrast, the *Stoecker* court held that "the statute of limitations period prescribed in [Section] 546(a) does not apply to claims objections based on [Section] 502(d)."[61]

Ironically, even though they reached different results, both the *Marketing Associates* court and the *Stoecker* court began by analyzing the plain language of the Code.[62] Both courts agreed that Section 502(d) requires the bankruptcy court to disallow the claim of the recipient of a voidable transfer unless the recipient has returned the transfer to the trustee.[63] In addition, both courts agreed

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58. 143 B.R. 118 (Bankr. E.D. Mo.), *aff'd*, 143 B.R. 879 (N.D. Ill. 1992), *aff'd in part*, 5 F.3d 1022 (7th Cir. 1993).

59. *Stoecker*, 143 B.R. at 124; *Marketing Assocs.*, 122 B.R. at 368.

60. *See Marketing Assocs.*, 122 B.R. at 369 (declining trustee's request to invoke § 502(d) as defense).

61. *Stoecker*, 143 B.R. at 123; *see also* Committee of Unsecured Creditors v. Commodity Credit Corp. (*In re* KF Dairies, Inc.), 143 B.R. 734, 737 (Bankr. 9th Cir. 1992); *In re* Chase & Sanborn Corp., 124 B.R. 368, 370–71 (Bankr. S.D. Fla. 1991); *In re* Minichello, 120 B.R. 17, 20 (Bankr. M.D. Pa. 1990); *In re* Eye Contact, Inc., 97 B.R. 990, 991–93 (Bankr. W.D. Wis. 1989); *In re* Tesmetges, 87 B.R. 263, 270 (Bankr. E.D.N.Y.), *aff'd*, 95 B.R. 19 (E.D.N.Y. 1988); *In re* Larsen, 80 B.R. 784, 790 (Bankr. E.D. Va. 1987); *In re* Mid Atlantic Fund, Inc., 60 B.R. 604, 611 (Bankr. S.D.N.Y. 1986).

62. *See Stoecker*, 143 B.R. at 130–31 (beginning court's analysis with text of §§ 502(d) and 546(a)); *Marketing Assocs.*, 122 B.R. at 368 (initiating discussion by citing § 502(d) of Code). The United States Supreme Court has counseled that lower courts should interpret a statute according to its literal terms unless such a reading would produce an outcome demonstrably at odds with congressional intent. United States v. Ron Pair Enters., Inc., 489 U.S. 235, 242 (1989).

63. *See Stoecker*, 143 B.R. at 135 (finding that most bankruptcy courts preclude claims unless assets have been returned); *Marketing Assocs.*, 122 B.R. at 368 (requiring claimholder to "play by the rules" and return preferential transfers). Section 502(d) provides:

> Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

that Section 546(a) bars a trustee from initiating voidable transfer causes of action more than two years after appointment.[64] Despite their initial agreement with respect to the meaning of Sections 502(d) and 546(a), the *Stoecker* and *Marketing Associates* courts diverged in their analysis of Section 546(a)'s impact on Section 502(d).

In *Marketing Associates*, the court considered important the language of Section 502(d) which requires that the transfer be "avoidable" and that the recipient be "liable" for the transfer.[65] The *Marketing Associates* court reasoned that the plain meaning of Section 502(d) requires the trustee to bring a timely adversary proceeding to set aside and recover the avoidable transfer before the trustee may invoke the provisions of Section 502(d).[66] The court further reasoned that a transfer is not avoidable, nor are recipients liable for an avoidable transfer, if the trustee does not bring an action to avoid the transfer within the limitations period of Section 546(a).[67] Consequently, the court held that if the Section 546(a) limitations period has passed, the trustee is precluded from objecting to a claim pursuant to Section 502(d).[68]

The claimants before the *Stoecker* court seized upon and attempted to expand the reasoning of *Marketing Associates* that relied on specific language in Sections 502(d) and 546(a). First, the claimants argued that under Section 502(d), a claim must be disallowed if the claimant holds a transfer that is recoverable under 11 U.S.C. §§ 542, 543, 550, or 553 or is avoidable under 11 U.S.C.

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11 U.S.C. § 502(d) (1988).

64. *See Stoecker*, 143 B.R. at 131 (noting that trustee could not object to claims under § 547), *Marketing Assocs.*, 122 B.R. at 368 (indicating that trustee must object within two years under § 546(a)). For clarity, once again § 546(a) provides:

> An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of—
>
> (1) two years after the appointment of a trustee under section 702, 1104, 1163, 1302, or 1202 of this title; or
>
> (2) the time the case is closed or dismissed.

11 U.S.C. § 546(a) (1988).

65. *See Marketing Assocs.*, 122 B.R. at 369 (finding that transfer was "avoidable" and recipient was not "liable" because limitation time had expired).

66. *See id.* (agreeing with creditor that timely preference action is required).

67. *See id.* (arguing that time limitation precludes preference action, which prohibits creditor from being held liable).

68. *Id.*

§§ 522(f), 522(h), 544, 547, 548, 549, or 724(a).[69] Thus, the claimants contended that Section 502(d) allows the trustee to object to a claim only if the trustee can sue to establish liability under one of the provisions enumerated in Section 502(d).[70] A second argument raised by the claimants focused on the language of Section 502(d), which requires the claimants to return any amount for which they are liable under 11 U.S.C. §§ 522(i), 542, 543, 550, or 553.[71] The claimants asserted that if the Section 546(a) limitations period had run, then the trustee could not avoid, establish liability for, or recover a transfer, and therefore was precluded from objecting to the claim under Section 502(d).[72]

The *Stoecker* court declined to adhere to the claimants' position that the court must first avoid the transfer before the claim could be disallowed.[73] According to the court, a transfer is avoidable if it meets all the requirements of Section 547.[74] The court believed that the claimants sought to incorporate Section 546(a)'s time element into Section 502(d), but found that the statute did not support this interpretation.[75] Specifically, the *Stoecker* court reasoned:

> [Section 546(a)] however, has nothing to do with the essential elements necessary to establish an avoidable preferential transfer. Rather, it limits the time after a trustee is appointed during which a trustee must file an adversary proceeding to avoid a transfer. The time within which such suit must be filed, however, in no way establishes any essential element of such transfer as preferential under section 547(b)(1)-(5). Therefore, a literal reading of section 502(d) would permit a trustee to object to payment of a dividend on a claim held by a creditor retaining a preference, so long as that preference meets all of the elements of section 547, whether or not the time limit prescribed by section 546(a) has expired. Significantly, the express language of section 502(d) never once references section 546(a). If such a limitations period on claim objections under section 502(d)

69. *Stoecker*, 143 B.R. at 132.

70. *Id.*

71. *Id.* at 131–32.

72. *Id.* at 132.

73. *See Stoecker*, 143 B.R. at 133 (describing avoidance actions and claim objections as separate, distinct proceedings with different rules and procedures).

74. *Id.* at 132.

75. *Id.*

was intended by Congress, it easily could have included a reference to section 502(d) in section 546(a).[76]

Therefore, the *Stoecker* court held that the limitations period of Section 546(a) is inapplicable to Section 502(d).

IV. ANALYSIS OF THE *MARKETING ASSOCIATES* COURT'S REASONING

An analysis of *In re Marketing Associates of America, Inc.*[77] reveals that the decision is flawed in several respects. First, the *Marketing Associates* court erred by overturning pre-Code law without a clear mandate from Congress.[78] Indeed, the legislative history of Section 502(d) of the Code is contrary to the result reached in *Marketing Associates* because Section 502(d) expressly incorporates pre-Code law. Specifically, the legislative history of Section 502(d) provides that "*[s]ubsection (d) is derived from present law.* It requires disallowance of a claim of a transferee of a voidable transfer in toto if the transferee has not paid the amount or turned over the property received as required under the sections under which the transferee's liability arises."[79] Thus, the legislative history of Section 502(d) indicates that pre-Code law is to be followed, not modified. As discussed earlier, the courts that reviewed the predecessor statutes under the Act uniformly rejected the notion that the limitations provision contained within Section 11(e) applied to a claim objection brought under Section 57(g). In reaching its result, the *Marketing Associates* court overturned the cases that interpreted the applicable sections of the Act and, therefore, effectively disregarded a clear congressional mandate.[80]

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76. *Id.*

77. 122 B.R. 367 (Bankr. E.D. Mo. 1991).

78. *Cf.* Dewsnup v. Timm, 112 S. Ct. 773, 779 (1992) (noting reluctance of United States Supreme Court to interpret Code so as to change pre-Code practice without legislative guidance); Bonner Mall Partnership v. U.S. Bancorp Mortgage Co. *(In re* Bonner Mall Partnership), 2 F.3d 899, 913 (9th Cir. 1993) (presuming Congress intended pre-Code practice to continue unless otherwise indicated in legislative history).

79. S. REP. NO. 989, 95th Cong., 2d Sess. 5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5851 (emphasis added).

80. *See Marketing Assocs.*, 122 B.R. at 369 & nn.4–5 (declining to follow cases interpreting § 57(g) of Act). In contrast to *Marketing Associates*, the *Stoecker* court agreed with the reasoning of several pre-Code cases. *See In re* Stoecker, 143 B.R. 118, 135 (Bankr. N.D. Ill.) (summarizing *Cushman Bakery* and *Meredosia Harbor*), *aff'd*, 143 B.R. 879 (N.D. Ill. 1992), *aff'd in part*, 5 F.3d 1022 (7th Cir. 1993). In addition, the *Stoecker* court

Second, the *Marketing Associates* decision is inconsistent with the global purpose of the Code. As previously noted, the Code's overall purpose is to promote equality of distribution among similarly situated creditors.[81] However, a creditor who obtains a preference, by definition, receives a larger distribution than similarly situated creditors.[82] Further, a creditor who receives a fraudulent transfer either has defrauded other creditors or has given the debtor less than reasonably equivalent value for the transfer.[83] As a result of *Marketing Associates*, a creditor who accomplishes a preference or a fraudulent transfer also receives distributions from the bankruptcy estate, a result which further increases the disproportionate distribution of the estate. The effect of *Marketing Associates*, therefore, is clearly inconsistent with the overall purpose of the Code.

Third, the *Marketing Associates* decision causes practical problems for trustees. The Code imposes many duties and obligations upon trustees.[84] The principal duties of a Chapter 7 trustee

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considered the legislative history of the amendments to the Code. *See id.* (concluding that legislative history shows Congress intended no change in claims allowance process).

81. *See, e.g.*, Union Bank v. Wolas, 112 S. Ct. 527, 533 (1991) (referring to legislative history which emphasizes preference section's goal of equality of distribution); *Stoecker* 143 B.R. at 136 (finding that § 502(d) was designed to ensure equality of distribution); *In re* Chase & Sanborn Corp., 124 B.R. 368, 371 (Bankr. S.D. Fla. 1991) (holding that restoring assets to debtor's estate ensures equal distribution).

82. 11 U.S.C. § 547(b)(5) (1988). This section provides:

> (b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property—
>
> . . . .
>
> (5) that enables such creditor to receive more than such creditor would receive if—
>
> (A) the case were a case under chapter 7 of this title;
>
> (B) the transfer had not been made; and
>
> (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

Id.

83. *See id.* § 548(a)(1)–(2) (empowering trustee to avoid transfer if debtor intended to hinder, delay, or defraud creditor or if debtor received less than reasonably equivalent value for transfer).

84. *Id.* § 704. Specifically, this section requires a trustee to:

> (1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest;
>
> (2) be accountable for all property received;
>
> (3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) of this title;
>
> (4) investigate the financial affairs of the debtor;

are to accumulate money for the estate and to distribute the money to the true creditors of the estate.[85] However, in imposing these duties on the trustee, the Code also cautions the trustee to act only "if advisable,"[86] "if a purpose would be served,"[87] or if the action is in "the best interests of parties in interest."[88] Therefore, the express language of the Code does not require the trustee to act, even if the trustee has a legal basis for doing so.

The legislative history of Section 704 of the Code provides trustees with some guidance concerning when they should act:

> The trustee's principal duty is to collect and reduce to money the property of the estate for which he serves, and to close up the estate as expeditiously as is compatible with the best interests of parties in interest. He must be accountable for all property received, and must investigate the financial affairs of the debtor. If a purpose would be served (such as if there are assets that will be distributed), the trustee is required to examine proofs of claims and object to the allowance of any claim that is improper. If advisable, the trustee must oppose the discharge of the debtor, which is for the benefit of general unsecured creditors whom the trustee represents.[89]

As the legislative history indicates, the trustee must weigh a myriad of factors when making a decision to act, whether the decision re-

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(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;
(6) if advisable, oppose the discharge of the debtor;
(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;
(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires; and
(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee.

Id.

85. *See* S. REP. No. 989, 95th Cong., 2d Sess. 93 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5879 (discussing trustee's principal duties to collect and reduce to money estate's property and close up estate as expeditiously as is compatible with parties' best interests).

86. 11 U.S.C. § 704(6) (1988).

87. *Id.* § 704(5).

88. *Id.* § 704(1).

89. S. REP. No. 989, 95th Cong., 2d Sess. 93 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5879.

lates to the sale of assets, the initiation of a lawsuit, or the objection to a claim. These factors include the prospective action's legal and factual merits, its presumptive value to the estate, and its probable cost to the estate.[90] Indeed, one court has noted that in making the decision whether to act, a trustee, "cognizant of his fiduciary role, must avoid spurious lawsuits as well as those which, while having theoretical legal merit, would be unduly expensive, involve undue risk to the estate or likely result in minimal recovery for the estate."[91] Therefore, before acting, a trustee should perform some sort of cost-benefit analysis to ensure that the actions contemplated would benefit the estate.[92]

The cost-benefit analysis also extends to claim objections. As a general matter, if the estate has negligible assets and the claim objection would not benefit the estate, the trustee would violate his fiduciary duty by objecting to a claim.[93] On the other hand, if the creditors are fortunate, the trustee may ultimately sell an asset, collect a judgment, or somehow acquire cash for the estate. Once the trustee obtains cash, the trustee may consider objecting to proofs of claims.[94] One commentator has described the trustee's duty to examine and object to proofs of claims as follows:

> If and when the trustee determines that there are sufficient funds in the estate to pay dividends to other than administrative claimants, the trustee has an obligation under section 704(5) to examine proofs of claims. If the funds on hand are only sufficient to pay priority

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90. *See In re* Haugen Constr. Serv., Inc., 104 B.R. 233, 240 (Bankr. D.N.D. 1989) (delineating factors trustee should consider before acting); *see also In re* Riverside-Linden Inv. Co., 85 B.R. 107, 111 (Bankr. S.D. Cal.) (applying cost-benefit analysis to trustee's decisions), *aff'd sub nom.* Estes & Hoyt v. Crake (*In re* Riverside-Linden Inv. Co.), 99 B.R. 439 (Bankr. 9th Cir. 1989), *aff'd*, 925 F.2d 320 (9th Cir. 1991); *In re* Padget, 119 B.R. 793, 798 (Bankr. D. Colo. 1990) (discussing trustee's duty to investigate claims and object to improper claims).

91. *Haugen Constr. Serv., Inc.*, 104 B.R. at 241 (citing *In re* Acadiana Elec. Serv., Inc., 66 B.R. 164, 165 (Bankr. W.D. La. 1986)).

92. *See* Estes & Hoyt v. Crake (*In re* Riverside-Linden Inv. Co.), 925 F.2d 320, 322 (9th Cir. 1991) (advocating cost-benefit analysis). For example, a trustee should not pursue a preference action unless it would result in a net benefit to the estate. In other words, if an entity received a $300 preference and the potential cost of pursuing the preference exceeds $300, then § 704 dictates that the trustee not pursue the preference, even though the preferential cause of action has legal merit.

93. *See id.* (finding that when cost-benefit analysis shows that only trustee and his professionals will benefit from objecting to claims, objection is unwarranted).

94. *See* 11 U.S.C. § 502(d) (1988) (establishing automatic allowance of claims unless objections are raised).

> wage claims, then only priority wage claims need be checked. If the funds are sufficient to pay a dividend to priority wage and tax claims, then both priority wage and tax claims need be checked. When the funds on hand are sufficient to pay a dividend to all unsecured claims, then all proofs of claim will have to be checked.[95]

Since the trustee has a duty to efficiently manage the bankruptcy estate's resources, the trustee should only object to claims if the estate contains funds and the objections would benefit the estate. Consequently, the trustee will often wait until he is in the process of closing the estate, which may occur two, three, four, or even six years after the trustee's appointment, to examine and object to claims. Thus, by the time of closing, the limitations period of Section 546 has often passed. Indeed, if the bankruptcy clerk's office initially informed creditors that the case was of the "no asset" type, it is possible that proofs of claim would not yet be filed two years after the trustee was appointed. At that point, no basis for objecting to a claim under Section 502(d)—or, for that matter, for any other reason—would exist. Therefore, by the time the trustee determines that it is in the best interest of the estate to object to claims, Section 546, as interpreted in the *Marketing Associates* decision, may preclude the trustee from taking such actions regarding the claims of entities that possess avoidable transfers. The result dictated by *Marketing Associates* is inconsistent with the duty of the trustee to efficiently manage the estate's assets because it forces the trustee, who might otherwise expend estate resources, to object to claims within two years of appointment without adequate notice that this action might benefit the estate.

V. CONCLUSION

By enacting the Bankruptcy Code, Congress established a statutory scheme to foster equal distribution of the assets of financially distressed entities among creditors. Section 502(d) promotes this policy of equal distribution by preventing creditors that have received avoidable transfers from receiving distributions from a bankruptcy estate unless the recipient has previously returned the transfer to the trustee. The *Marketing Associates* case, however, runs afoul of this congressionally created statutory scheme. By im-

95. IRVING SULMEYER, COLLIER HANDBOOK FOR TRUSTEES AND DEBTORS IN POSSESSION ¶ 10.06 (Lawrence P. King ed., 1993).

posing the limitations provision of Section 546(a) on claims objections brought under Section 502(d), the *Marketing Associates* decision enhances the inequitable distribution of estate assets and forces trustees to take actions that may not be in the best interests of creditors. Therefore, courts should disregard the reasoning of *Marketing Associates* and should not apply the limitations deadline of Section 546(a) to claim objections brought under Section 502(d).