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Impact of Insolvency on Cryptocurrency, Smart Contracts and Initial Coin Offerings

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Feature

By Alan Rosenberg

Are Debts Stemming from ICOs Dischargeable in Bankruptcy?

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Step aside, initial public offerings (IPOs):[1] Initial coin offerings (ICOs) are the newest and most exciting way for budding companies to raise money. For those who are new to the world of cryptocurrency,[2] an ICO is "a way for start-ups or online projects to raise money without selling stock or going to venture capitalists — essentially a new form of crowdfunding."[3] By utilizing ICOs, entrepreneurs raise capital during the early stages of business development without giving up equity. Sounds great, doesn't it?

Unfortunately, not all that glitters turns into gold, and ICOs are no different. Like any investment opportunity, if an ICO goes awry, lawsuits and other administrative actions will undoubtedly be filed. When litigation intensifies and judgments are entered, corporations and corporate officers might also find themselves in bankruptcy.

Debtors with ICO-related debts might be in store for a shocking surprise. Depending on the nature of the ICO and the rights bestowed upon its investors, certain ICO-related debts might be nondischargeable in bankruptcy.

Primer: What Exactly Is an ICO?

An ICO "involve[s] the opportunity for individual investors to exchange currency such as U.S. dollars or cryptocurrencies in return for a digital asset labeled as a coin or token."[4] Unlike IPOs, which sell stock in a company, the "coins" or "tokens" purchased from ICOs are typically (but not always) designed to purchase the goods or services being created by the issuing company.[5] Nevertheless, ICOs "take many different forms, and the rights and interests [that] a coin is purported to provide the holder can vary widely."[6]

To the extent that an ICO offers investors the opportunity to share in future profits of a company, an ICO might resemble a securities offering — thus implicating the application of securities laws. Jay Clayton, chairman of the Securities and Exchange Commission (SEC), uses the following as an example:

> [A] token that represents a participation interest in a book-of-the-month club may not implicate our securities laws, and may well be an efficient way for the club's operators to fund the future acquisition of books and facilitate the distribution of those books to token holders. In contrast, many token offerings appear to have gone beyond this construct and are more analogous to interests in a yet-to-be-built publishing house with the authors, books and distribution networks all to come. It is especially troubling when the promoters of these offerings emphasize the secondary market trading potential of these tokens. Prospective purchasers are being sold on the potential for tokens to increase in value — with the ability to lock in those increases by reselling the tokens on a secondary market — or to otherwise profit from the tokens based on the efforts of others. These are key hallmarks of a security and a securities offering.[7]

To the extent that an ICO resembles a securities' offering or the tokens themselves resemble securities, the issuing company's failure to comply with applicable securities' laws could result in fines, penalties and judgments. These ICO-related debts would potentially become nondischargeable under § 523(a)(19) of the Bankruptcy Code.

Section 523(a)(19): Inadvertently Making ICO Debts Nondischargeable Since 2002

In the early 2000s, presumably before anyone uttered the phrase "initial coin offering," the financial world was rocked by a barrage of financial scandals.[8] In the wake of these events, the "zeal for corporate governance reform gained unexpected momentum and resulted in the surprisingly quick enactment of the Sarbanes-Oxley Act to correct

1 An IPO "is the first time that the stock of a private company is offered to the public." *See* "Initial Public Offering," *Investopedia, available at* investopedia.com/terms/i/ipo.asp (defining initial public offerings) (unless otherwise specified, all links in this article were last visited on May 21, 2018).

2 "Cryptocurrencies are a form of virtual currency" that "act[s] as an alternative to traditional currency, based upon a technology known as a 'blockchain.'" Alexander B. Lindgren, "Blockchain Regulation: Growing Pains of a Financial Revolution," *Orange County Law.*, October 2017, at 38.

3 Nathaniel Popper, "An Explanation of Initial Coin Offerings," *N.Y. Times*, Oct. 27, 2017.

4 SEC Statement on Cryptocurrencies and Initial Coin Offerings, SEC Chairman Jay Clapton, Dec. 11, 2017, at ¶ 4.

5 *See* Popper, *supra* n.3 (noting that "new tokens are usually designed so that they can be used only on a computing service the programmers are building").

6 *See* SEC Statement, *supra* n.4.

7 *Id.*

8 An author coined 2002 as the "Year of the Scandal," noting the financial scandals at Enron, WorldCom, Tyco and other companies. *See* Jake Ulick, "2002: Year of the Scandal," CNN Money (Dec. 17, 2002), *available at* money.cnn.com/2002/12/17/news/review_scandals/index.htm.

systemic weaknesses in corporate governance structures."[9] The Sarbanes-Oxley Act also included a supplement to the Bankruptcy Code: 11 U.S.C. § 523(a)(19)(A).[10]

Section 523(a)(19)(A) "renders debts nondischargeable when they arise in connection with a violation of state or federal securities law."[11] The application of § 523(a)(19) requires a relatively simple analysis:

> Essentially, a debtor cannot discharge his or her debt if two conditions are satisfied: first, the debt must stem from a violation of securities laws or a fraud in connection with the purchase or sale of a security, and second, the debt must be memorialized in a judicial or administrative order or settlement agreement.[12]

Some courts have extended 11 U.S.C. § 523(a)(19) to debts imposed on a debtor as a result of a third party's conduct.[13] In other words, a violation of securities laws by a corporate *entity* could render the debt of a corporate *officer* nondischargeable if the debt arises from that securities violation.[14]

If an ICO-related securities' judgment is entered against a debtor pre-petition, the bankruptcy court's task is easy. If the judgment at issue indicates that the debtor's ICO-related activities violated securities laws, the debt stemming from that judgment would almost certainly be nondischargeable. However, if a debtor files for bankruptcy *before* the entry of a judgment, the bankruptcy court's analysis is more complicated.

In that situation, the bankruptcy court must make its own determination as to whether a debtor's ICO-related activities are violative of applicable securities laws. Moreover, some bankruptcy courts have held that the court can determine the liability and damages for alleged securities violations, then make its own dischargeability determination under § 523(a)(19).[15] Because it does not appear that any U.S. bankruptcy court has undertaken such an analysis in the context of ICOs, we must look to other authorities for guidance.

The DAO: A Modern Day Example

On July 25, 2017, the SEC released its "Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO" (hereinafter the "report"). It analyzed whether a decentralized autonomous organization (DAO)[16] and its affiliates violated federal securities laws through their ICO. The DAO operated

> as a for-profit entity that would create and hold a corpus of assets through the sale of DAO Tokens to investors, which assets would then be used to fund "projects." The holders of DAO Tokens stood to share in the anticipated earnings from these projects as a return on their investment in DAO Tokens. In addition, DAO Token holders could monetize their investments in DAO Tokens by re-selling DAO Tokens on a number of web-based platforms ... that supported secondary trading in The DAO Tokens.[17]

Unfortunately, a hacker stole approximately one-third of the DAO's assets before the DAO could fund any projects. The theft prompted an investigation that "raised questions regarding the application of U.S. federal securities laws to the offer and sale of DAO Tokens, including the threshold question [of] whether DAO Tokens are securities."[18] The SEC eventually found that DAO tokens were securities, likening them to investment contracts.[19]

In conducting its analysis, the SEC applied the *Howey* test, set forth by U.S. Supreme Court in *SEC v. W.J. Howey Co.*,[20] to determine whether an investment scheme qualifies as an investment contract. The *Howey* test requires the court to determine "whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others."[21] In applying the *Howey* test, the SEC found that (1) investors in the DAO invested money, albeit in the form of virtual currency; (2) as evident from its promotional materials, investors in the DAO expected to share in profits generated from proposed projects; (3) the investors' profits were to be derived from the managerial efforts of others; and (4) although investors were given the right to vote on the acceptance of revenue-generating projects, their rights were limited and did not equate to the significant managerial efforts or control exercised by the promoters of the DAO.[22] Because the DAO tokens were deemed securities and there was no applicable exemption, the DAO was required to register the offer and sale of DAO tokens with the SEC.[23]

Conclusion

According to the SEC, "[c]ompanies and individuals are increasingly considering [ICOs] as a way to raise capital or participate in investment opportunities."[24] Although ICOs possess certain characteristics that can make them more

9 Kathleen F. Brickey, "From Enron to Worldcom and Beyond: Life and Crime After Sarbanes-Oxley," 81 *Wash. U.L.Q.* 357, 359 (2003).

10 11 U.S.C. § 523(a)(19) excepts from discharge any debt that:
(A) is for —
(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or
(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and
(B) results, before, on, or after the date on which the petition was filed, from —
(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;
(ii) any settlement agreement entered into by the debtor; or
(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

11 *Tripodi v. Welch*, 810 F.3d 761, 766 (10th Cir. 2016).

12 *Id.* (citations omitted).

13 *See, e.g., In re Lunsford*, 848 F.3d 963, 968 (11th Cir. 2017) (noting that "[t]he text and structure of section 523(a)(19)(A) unambiguously prevent discharge of debts 'for the violation' of securities laws irrespective of debtor conduct").

14 *Id.* (stating that "section 523(a)(19)(A) precludes discharge regardless of whether the debtor violated securities laws as long as the securities violation caused the debt").

15 *See, e.g., In re Sato*, 512 B.R. 241, 251 (Bankr. C.D. Cal. 2014) (finding that "[t]he more expanded view holds that the bankruptcy court can determine the liability, damages, and dischargeability of the debt for securities violations and securities fraud and issue its own judgment to satisfy § 523(a)(19)(B)") (citations omitted); *In re Chan*, 355 B.R. 494, 505 (Bankr. E.D. Pa. 2006) (finding that "it is perfectly appropriate for either the bankruptcy court or another court to make a dischargeability determination under § 523(a)(19)").

16 A DAO "is a term used to describe a 'virtual' organization embodied in computer code and executed on a distributed ledger or blockchain." *See* "Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO," Exchange Act Release No. 81207, P.1 (July 25, 2017).

17 *See* report, *id.*

18 *Id.*

19 *Id.* at p. 11 (July 25, 2017) (noting that "an investment contract is an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others") (citations omitted).

20 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946).

21 *SEC v. Edwards*, 540 U.S. 389, 393 (2004) (citing *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946)).

22 Report, *supra* n.16 at p. 11-15.

23 *Id.* at p. 16.

24 "Initial Coin Offerings (ICOs)," U.S. Securities and Exchange Commission, *available at* sec.gov/ICO.

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Are Debts Stemming from ICOs Dischargeable in Bankruptcy?

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attractive than traditional capital-raising activities, the traits of an individual ICO might require its issuer to comply with securities laws.

Moreover, if an ICO is deemed to be a securities offering, it must be registered and accepted by the SEC.[25] Absent registration and acceptance by the SEC, the ICO issuer and its officers might be subject to fines, penalties or judgments — debts that might ultimately be deemed nondischargeable in bankruptcy. Accordingly, ICO issuers must carefully determine whether their particular ICO implicates securities laws, and if so, they must ensure strict compliance therewith. Otherwise, the debt stemming from an ICO might equate to a nondischargeable IOU to the U.S. government or other creditors. abi

25 This feat does not yet appear to have been accomplished by any ICO. However, in March 2018, the Praetorian Group (a cryptocurrency real estate investment vehicle) filed paperwork with the SEC to register a $75 million ICO as a security offering. If accepted by the SEC, the Praeotorian Group will hold the first SEC-registered ICO. *See* Molly Jane Zuckerman, "Praetorian Group Files to be First ICO to Sell Registered Security Tokens in U.S.," *Cointelegraph* (March 9, 2018), *available at* cointelegraph.com/news/praetorian-group-files-to-be-first-ico-to-sell-registered-security-tokens-in-us.

Feature

By Eric (Rick) S. Rein and John Guzzardo

The Trustee and the Bitcoin

Identifying and Recovering International Cryptocurrency Assets

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Cryptocurrency has been all the rage recently in the financial and legal news. Everyone has or knows someone who owns bitcoin (the most common form of cryptocurrency), but what exactly is cryptocurrency? Specifically, is cryptocurrency an asset, capable of being recovered by a bankruptcy trustee? This article will explore what exactly cryptocurrency is (in its current form), whether it is an asset available to be recovered, and what worldwide strategies a trustee can employ to recover cryptocurrency as an asset of the bankruptcy estate.

What Is Cryptocurrency?

At its most basic level, cryptocurrency is a string of computer-generated code, identified in a public decentralized ledger called a "blockchain." This line of code is accessed by an owner's unique passcode: a secret and private key giving access to the owner's "virtual wallet" (an account where cryptocurrencies are held). The interface is functionally similar to traditional banking portals for customers. However, if a user loses his/her private key, the wallet would be forever inaccessible because it is impossible to recover a lost key. Ownership and use of cryptocurrency is, for the most part, anonymous.

Cryptocurrency takes many forms with many names such as Bitcoin (the most well known), Ethereum, Komodo and KodakCoin. There are more than 1,500 of these alternative currencies that operate outside the control of any central bank or sovereign treasury department. Exchange platforms such as BitConnect and Bitfinex maintain the virtual wallets and facilitate transfers, and the structures of these platforms vary.

For example, Bitfinex utilized multi-signature segregated wallets, where both the owner of the account, the exchange platform and a third-party vendor held separate keys — all of which were necessary in order to authorize fund transfers.[1] These exchanges often reside outside the U.S., making their reach by trustees difficult. Some exchanges maintain the identity and contact information of their customers, but this is not currently the norm. However, these exchanges could (and should) have traditional bank account information whenever their customers "cash in" or "cash out" of the cryptocurrencies.

How Does Cryptocurrency Work?

Any blockchain transfer occurs through the blockchain protocol. A transaction is initiated by the transferor (using his/her private key) to broadcast to other holders of the decentralized ledger that he/she is decreasing their virtual wallet and correspondingly increasing the virtual wallet of the transferee. The other members of the network verify and confirm the transaction, which is then recorded on the blockchain ledger.

While each transaction of each particular cryptocurrency unit is recorded on the blockchain, there is (typically) no online record that identifies the person associated with any particular address. An analogy of this in practice would be a wall of glass post office boxes, where each box is a virtual wallet. Anyone can see the cryptocurrencies inside and watch the transactions taking place among the boxes, but you cannot determine who owns any particular box and, unless you have the key, you cannot access the box.

How Is Cryptocurrency Defined as an Asset?

For purposes of recovery, including avoidance actions under Chapter 5 of the Code, it is necessary to define the asset to determine ownership rights and security interests.

Is It a Security?

The Securities and Exchange Commission (SEC) has not approved any exchange-traded products (such as ETFs) holding cryptocurrency-related assets for listing or trading. The SEC has also never registered an initial coin offering (ICO), but the court in *SEC v. Shavers* held that Ponzi scheme Bitcoin "investments" could be considered securities under federal securities laws because the Bitcoin itself was a "currency" — giving the SEC jurisdiction to prosecute claims.[2] Trustees could benefit from this classification as, under Article 8, if cryptocurrency is a "security," it would not be perpetually encumbered by previous creditors' security interests.

Is It a Commodity?

The Commodity Futures Trading Commission (CFTC) has designated Bitcoin as a commodity and announced that fraud and manipulation involv-

1 *See, e.g.*, L. Chambers, "The Keepers of the Keys: Remedies and Legal Obligations Following Misappropriations of Cryptocurrency," 11 JIBFL 673A (Dec. 1, 2016).

2 2013 U.S. Dist. Lexis 110018 (E.D. Tex. Aug. 6, 2013).

ing Bitcoin traded in interstate commerce and the regulation of commodity futures fall directly under its authority. The CFTC permitted the CME and CBOE to launch Bitcoin futures. The CFTC also approved a platform for the trading and clearing of virtual currency derivatives.

If cryptocurrencies are deemed commodities, there are fewer protections extended under the Bankruptcy Code. The Code affords commodity transactions significant protection only if the transactions contract constitutes a "forward contract," providing for the commodity's delivery two days in advance of the contract's maturity date.[3]

Is It a Currency?

On its face, virtual currencies do not meet the Uniform Commercial Code (UCC) definition of "money" under 1-201(b)(24), since they are not authorized or adopted by a government. However, courts have found that bitcoins are "funds" under 18 U.S.C. § 1960 for actions involving conspiracy with the operation of an unlicensed money-transmitting business. For example, the *United States v. Murgio* court reasoned that bitcoins are funds because they can be accepted "as payment for goods and services" or are bought "directly from an exchange with [a] bank account."[4] Therefore, they "function as 'pecuniary resources' and are 'used as a medium of exchange' and 'a means of payment.'"[5]

If classified as currency, cryptocurrency transfers would receive beneficial protections under the Bankruptcy Code as swap agreements.[6] Under §§ 362(b), 546(g) and 560, the Code protects swaps from avoidance as constructive fraudulent transfers and from the constraints of the automatic stay. Thus, under this interpretation, cryptocurrency traders would receive the same protections as though they were exchanging U.S. dollars and euros.

At least one bankruptcy judge has concluded that Bitcoin is not currency for the purposes of a trustee's recovery of avoidable transfers. In *Hashfast Technologies LLC*, a trustee sought the return of the value of Bitcoin that a debtor paid to a promotor.[7] The court concluded that Bitcoin was property for purposes of § 550(a) of the Bankruptcy Code, but were not U.S. dollars.

Is It a General Intangible Under Article 9?

Under yet another perspective, UCC § 9-102(a)(42), a general intangible is defined to include payment intangibles. If virtual currencies are general intangibles, the secured party is left to perfect its security interest by filing a UCC-1 financing statement. This leaves the secured party with a perfected security interest, but no fast mechanism to prevent a borrower from transferring its virtual currencies after a default or other triggering event.

Under the current system, a creditor who perfects by filing remains susceptible to unauthorized transfers of pledged virtual currency. To compound the problem, most virtual currencies are transferred between parties in an anonymous fashion that, in all likelihood, make it impossible for the creditor to identify the recipient or take possession of the transfers. Further, a general intangible cannot be perfected by use of a contract agreement because virtual currency is not held in a deposit account.

This leads to other problems for transferees of virtual currencies. UCC §§ 9-315(a) and 9-332 provide that a security interest travels with a general intangible to transferees and subsequent transferees unless the secured party authorizes the disposition free of the security interests. While lenders can easily authorize such dispositions for ordinary course operations, it is impossible for transferees to know what liens, if any, are attached to the cryptocurrencies it stands to receive.

> **In order to assist in the trustee's administration of virtual currency assets, courts will not only need to apply new remedies, but expand existing ones.**

What Are the Recovery Issues?

Bankruptcy trustees have an affirmative duty to investigate a debtor's finances and gather and liquidate property of the estate for the benefit of the creditors.[8] In the fast-evolving industry of cryptocurrency, trustees face challenges of identifying who holds the assets and is securing them. If data is on a cloud server, it might be in another jurisdiction halfway around the world. It is also easy for a debtor to transfer cryptocurrency to a recipient address owned by someone outside the court's jurisdiction, including overseas. There are limited ways for a trustee to identify either the owner or location of a transferee's cryptocurrency address. In some cases, the debtor can honestly state that he/she does not know the identity of the individual who received his/her cryptocurrency transfers.

Identifying the Holder

With a cooperative debtor (or adverse party), the private key will simply be turned over to the trustee at the § 341 meeting in order to access the virtual wallet and liquidate the cryptocurrency through the exchange platform. In cases where the debtor attempts to conceal the existence of a virtual wallet, a trustee might be able to discover evidence from the debtor's "traditional" financial records (account or credit card statements) of the debtor "cashing in" or "cashing out" on that platform. At that point, the trustee could leverage his/her rights under the Bankruptcy Code and the court's contempt powers to coerce compliance (*i.e.*, a U.S. court could compel a debtor to turn over the account or transaction information). Without the complete private key, no court or legal authority can manipulate ownership of a blockchain asset — but arrest and incarceration can be utilized on the key-holder.[9]

3 *See* 11 U.S.C. § 101(25)(A).
4 209 F. Supp. 3d 698, 707 (S.D.N.Y. 2016).
5 *Id.*; *see also United States v. Mansy*, 2017 U.S. Dist. Lexis 71786 (D. Me. May 11, 2017); *United States v. Faiella*, 39 F. Supp. 3d 544 (S.D.N.Y. 2014).
6 *See* 11 U.S.C. § 101(53B)(A)(i)(I) and (III).
7 *Hashfast Tech. LLC v. Lowe (In re Hashfast Tech. LLC)*, Adv. No. 15-3011 DM (Bankr. N.D. Cal. Feb. 19, 2016).
8 *See, e.g.*, 11 U.S.C. §§ 704, 1302 and 1304.
9 *See Lawrence v. Goldberg (In re Lawrence)*, 279 F.3d 1294, 1300 (11th Cir. 2002) (with respect to an offshore account).

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Fortunately, in most cases, the debtor will have adequate incentive to reveal its cryptocurrency. Under § 727 of the Bankruptcy Code, a debtor might be completely denied discharge if he/she transfers or conceals cryptocurrency, or destroys any associated records.[10] Clearing trustees' obstacles to identifying other account-holders or transfer recipients is a much more difficult task. Typically, offshore fiduciaries maintain the servers, private keys and/or wallets. Absent jurisdictional authority, U.S. courts are powerless to compel the fiduciary to turn over assets.

Foreign Discovery and Seizure

For asset-protection planning purposes, cryptocurrency accounts function similarly to offshore banking accounts prior to the IRS's crackdown of anonymous personal foreign accounts. A U.S. citizen can now open and maintain a crypto-financial account that has the creditor-protection features of anonymity and location outside the geographical jurisdiction of domestic courts. There are three equitable remedies that exist under English common law that could be flexibly applied to overcome the obstacles of identifying holders and recipients of cryptocurrency regardless of the international nature of the transaction.

Norwich Pharmacal: One existing remedy is the equitable pre-trial discovery device known as a *Norwich Pharmacal* order, which requires (usually innocent) third parties to disclose information to identify a wrongdoer, trace funds or assist parties in determining whether a cause of action exists.[11] *Norwich Pharmacal* relief does not create a property right but is a means to discover assets and recover information — as a party who becomes involved in the potentially actionable conduct of another is under a duty to disclose information to the victim.

Certain exchange platforms could have identifying "know your customer" information, and proceedings could be initiated against "the Bitcoin holder with key number." Further, if a virtual currency customer "cashed in" or "cashed out" of the exchange, there might be a trail to a traditional financial account that could ultimately serve to identify that customer.

Anton Piller: The second remedy is based on *Anton Piller K.G. v. Manufacturing Processes*, which allows for limited discovery prior to commencement of an action.[12] The party who is a beneficiary of an *Anton Piller* order has certain rights to seize and secure evidence so that the judicial process is not rendered useless. The victim must show that he/she had a business relationship with a defendant who is likely to be in possession of documents that can help prove the claim. The applicant must also be able to plead a strong *prima facie* case with demonstrably serious potential or actual damage. The defendant respondents must possess or control evidence that inculpates them with the underlying claim and that they could destroy that evidence before the typical discovery process can be pursued and completed.

Practically speaking, to obtain an *Anton Piller* order, the matter needs to be replete with bad dealings and dishonesty on the part of the target. There would need to be strong evidence that the foreign holder of the virtual wallet would likely destroy or transfer the evidence and that that evidence is necessary to recover assets of the estate.

Worldwide Injunction: The third equitable remedy is injunctive relief. Courts have granted worldwide injunctions, called *Mareva* injunctions, when the impugned conduct occurs globally.[13] *Mareva* injunctions do not create property rights but freeze assets in the possession of third parties in foreign countries until subsequent adjudication.[14] To obtain a *Mareva* injunction, an applicant must show a good case and a serious risk that the respondent will either remove or dissipate assets to frustrate any judgment ultimately obtained.

In *Google Inc. v. Equustete*, the Supreme Court of Canada recently held that injunctive relief can be ordered against somebody who is not a party to the underlying lawsuit — even if that third party is not guilty of wrongdoing.[15] Google was ordered to stop displaying search results globally for any websites that mislead consumers, opining that as the internet is naturally global, the only way to ensure that the interlocutory injunction attained its objective was to apply it where Google operates: globally.[16] Extending this doctrine, if a third party to the blockchain transaction can be identified, there might be a remedy to enjoin the third-party operations, even if those operations are global.

Conclusion

In order to assist in the trustee's administration of virtual currency assets, courts will not only need to apply new remedies, but expand existing ones. Anti-money-laundering laws and know-your-customer rules requiring the collection of personal data of customers are being imposed on certain cryptocurrency exchanges. However, trustees' challenges of recovery will still require creativity and experience as rules and regulations catch up to this evolving technology. In the meantime, trustees do have potential strategies to act against (1) domestic parties whose identities are known, but whose cryptocurrency holdings are not; and (2) the unknown account-holders or recipients of cryptocurrency transfers by seeking relief through the exchange platforms where they initiate transactions. abi

10 *See* 11 U.S.C. § 727(A)(2)-(3).
11 *Norwich Pharmacal Co. v. Comm. of Custom and Excise* (1973), 3 WLR. 164 (Eng.), 2 All E.R. 943 (Eng.).
12 (1976) 2 WLR 162 (Eng.).
13 *See Mareva Compania Naviera SA v. Int'l Bulk Carriers SA* (1980), 1 All ER 213 (Eng.).
14 *See Cretanor Maritime Co. Ltd. v. Irish Marine Mgmt. Ltd.* (1978), 1 WLR 966 (Eng.).
15 2017 S.C.C. 34.
16 On an unopposed complaint, a U.S. district court held the injunction unenforceable in the U.S. as contrary to the Constitution and legislative immunity to interactive service providers. *Google LLC v. Equustek Sols. Inc.*, Case No. 17-CV-4207, (N.D. Cal. Dec. 14, 2017). The Supreme Court of British Columbia subsequently held its ground and refused to vary the terms of the injunction. *Equustek Sols. Inc. v. Jack*, 2018 BCSC 610 (April 16, 2018).