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Blockchain Law

Heads I win, tails you lose? Courts wrestle with crypto price volatility

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Courts are often called upon to make rulings driven by the value of an asset. But how should courts proceed when the value of a crypto asset fluctuates over time? The price volatility of cryptocurrency can make this a key concern in proceedings involving crypto assets. Two recent court decisions, one in bankruptcy and the other in a criminal proceeding, explore how courts may approach making value-based decisions about price-volatile crypto assets.

Clawbacks in bankruptcy

When a company files for bankruptcy, federal law allows the bankruptcy estate to claw back certain payments and other transfers of property that the company made within specified periods before the filing, so that the recovered assets can be distributed fairly among all creditors.

The Bankruptcy Code authorizes the bankrupt estate to recover "the property transferred, or, if the court so orders, the value of such property." 11 U.S.C. §550(a). In most cases, that choice matters little, because the property at issue has held relatively stable value over time, including while the litigation plays out.

But this is not always true when cryptocurrency is involved. Between the time when a crypto holder first sought to withdraw coins from an account on a platform that later filed for bankruptcy and the date when a court finally enters judgment, the value of those coins could surge, crater, or collapse.

Ten years ago, in the bankruptcy case *In re Hashfast Techs. LLC v. Lowe (In re Hashfast Techs. LLC)*, Adv. No. 15-3011DM, No. 14-30725DM, 2016 BL 57406 (Bankr. N.D. Cal. Feb. 22, 2016), the court held that Bitcoin was not simply the equivalent of United States dollars but rather constituted "property" that a bankruptcy estate could claw back under §550 of the Bankruptcy Code. However, *Hashfast* reserved for another day the issue of whether the bankruptcy trustee could recover the Bitcoin themselves or only their monetary value, and, if the latter, as of what date in the face of a volatile market.

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A decade later, in the Celsius bankruptcy proceedings, *In re Celsius Network, LLC*, 2026 WL 1999187 (Bankr. S.D.N.Y. July 10, 2026), Chief Bankruptcy Judge Martin Glenn of the United States Bankruptcy Court for the Southern District of New York found himself called upon to take up these issues as a matter of first impression.

The Celsius bankruptcy

Celsius was a cryptocurrency lending platform that froze customer accounts in 2022 and collapsed into bankruptcy. Celsius's Litigation Administrator (the person appointed to pursue claims on behalf of the bankruptcy estate) is now pursuing thousands of "avoidance actions," i.e., clawback suits under §550 against former customers and various defaulting insiders to recover various crypto assets that had been transferred out of the estate, the value of which may have appreciated or depreciated over time.

Judge Glenn faced two questions regarding the value of the cryptocurrency in question. First, is the Litigation Administrator entitled to recover the cryptocurrency itself, or only its monetary value? Second, if the monetary value may be recovered, at what point in time should that value be measured? Judge Glenn wrote that he was charting new ground: he was "not aware of another court that has ruled on the valuation of appreciating digital assets in the context of avoidance actions."

Overview of Judge Glenn's framework

Judge Glenn declined to identify one single moment at which to fix value for all situations, or a rule dictating for all situations whether the actual assets or just their value should be recovered. Instead, he built what he called a "framework" turning on "whether the Transferred Assets have appreciated or depreciated in value since the date of transfer," and whether they "remain in the possession of a defendant" or have been sold.

Under this framework, the value of the transferred assets is measured differently depending on whether they have appreciated or depreciated since the date of transfer. Specifically:

- "For depreciating assets [i.e., assets that have lost value since the date of transfer], whether or not a Defendant is still in possession of the asset, the Litigation Administrator may recover the transfer-date value."
- "For appreciating assets [i.e., assets that have gained value since the date of transfer] that are in the possession of a Defendant, the Litigation Administrator may recover the asset itself." The same would apply to assets whose value had not changed.
- "For appreciating assets that have been sold by the Defendant, the Litigation Administrator may recover the sale price of the asset. The Defendants bear the burden of demonstrating (i) that the asset was sold and (ii) the price at which it was sold. If a Defendant cannot meet this burden, the Litigation Administrator may recover the judgment-date value of the asset [i.e., the value of the asset on the date the court enters judgment]."

Additionally, because the Bankruptcy Code's single-satisfaction rule prevents a plaintiff from collecting more than once on the same avoided transfer and limits the estate to a single recovery, Judge Glenn made explicit that the Litigation Administrator may pursue either the asset itself or its monetary equivalent but "is not entitled to recover both from a defendant" (citing 11 U.S.C. §550(d)).

Bases for these principles

Where did this framework come from? Judge Glenn's opinion walked through the bases for each of its key provisions.

When value falls: Following the settled ground of transfer-date recovery

Judge Glenn began by noting the purpose of Section 550 of the Bankruptcy Code, which courts uniformly say is to restore the estate to the financial condition it would have enjoyed had the transfer never occurred. See *In re Andrew Velez Constr., Inc.*, 373 B.R. 262, 274 (Bankr. S.D.N.Y. 2007). When property has lost value in the transferee's hands, requiring the estate to accept either the diminished asset or its reduced current price would force the estate to absorb a loss that the estate did not cause. Courts in such situations accordingly look to the asset's value as it stood on the date of transfer.

When the asset still exists but has lost value, the court must decide whether to order return of the asset itself or a dollar recovery instead. Judge Glenn identified three considerations bearing on that choice: "whether the value of the property (1) is contested; (2) is not readily determinable; or (3) is not diminished by conversion or depreciation."

Because cryptocurrency trades on large, international platforms, its dollar value at any given moment is neither contested nor hard to determine. The Celsius Litigation Administrator himself termed such value "easily ascertainable" and "not… subject to dispute." With these two considerations pointing toward a monetary recovery, the real question was when to measure that value.

Citing the governing principle that "courts have routinely noted that the purpose of section 550 is to restore the financial condition of the debtor that it would have enjoyed if the transfer had never occurred," Judge Glenn grounded his analysis in what he called "the restorative principles underpinning section 550," which "permit the Plaintiff to recover the transfer-date value of the Transferred Assets."

When an asset has lost value, looking to the transfer-date value is not a mere arbitrarily chosen benchmark but rather is the measure that best fulfills the statute's restorative purpose. The court drew upon a decades-long line of cases involving more traditional assets in support of this conclusion.

For example, bankruptcy courts have looked to transfer-date value for a depreciated oil-and-gas lease, *In re Brown*, 118 B.R. 57, 60–61 (Bankr. N.D. Tex. 1990), for a yacht that burned after it was transferred, *In re Baker*, 17 B.R. 392, 395 (Bankr. W.D.N.Y. 1982), and for a software that was worthless by the time judgment arrived, *In re First Software Corp.*, 107 B.R. 417, 423-24 (D. Mass. 1989). The same principle has been followed with respect to the declining value of collateral subject to avoidable liens. *In re Sabine Oil & Gas Corp.*, 547 B.R. 503, 573 (Bankr. S.D.N.Y.), aff'd, 562 B.R. 211 (S.D.N.Y. 2016).

Judge Glenn cited the leading bankruptcy treatise as stating the rule plainly: where conversion diminishes the property's value, the court should let the trustee recover the value rather than the depleted asset. See 5 Collier on Bankruptcy ¶ 550.02[3] (*Alan N. Resnick & Henry J. Sommer eds.*, 16th ed. 2026).

As Judge Glenn concluded:

> "Ordering the return of a depreciating asset or its judgment-date value would be inappropriate as the return of a depreciating asset or its current value would not restore the Debtor to the financial condition that it would have enjoyed if the transfer had never occurred. Rather, the return of depreciating Transferred Assets would thrust the loss incurred entirely onto Celsius's bankruptcy estate."

A depreciating cryptocurrency thus is, for bankruptcy avoidance purposes, no different from a burned yacht or now-worthless software.

When value rises: The limits of using a real property analogy

The depreciation side of the framework rested on well-settled ground. Appreciation was a different and "more complicated" matter. Judge Glenn wrote that he was "not aware of another court that has ruled on the valuation of appreciating digital assets in the context of avoidance actions."

The Celsius Litigation Administrator made an argument based on situations involving appreciated real property. He pointed to *In re Brun*, 360 B.R. 669 (Bankr. C.D. Cal. 2007), where the court observed that a trustee "typically has the ability to recover the property transferred," permitting the estate to capture any appreciation. He thus argued that permitting him to recover the appreciation "makes sense" because the trustee "typically has the ability to recover the property transferred, which would allow the estate to benefit from any appreciation" (quoting *Brun*, 360 B.R. at 675).

Judge Glenn rejected the analogy. Real property, he wrote, "is traceable, illiquid, non-speculative, and… often recoverable," whereas "[d]igital assets are volatile, and highly liquid, enabling individuals to instantaneously purchase, sell, or otherwise transfer large sums of digital assets."

As Judge Glenn observed, the Litigation Administrator "may not 'typically have the ability to recover the property transferred' as many [transferees] are no longer in possession of the Transferred Assets." A body of law built on the premise that the very asset can be handed back, he said,

is a "poor analogue" to an asset designed to change hands in milliseconds.

Judge Glenn further noted that even non-digital-asset appreciation cases do not supply the bright-line rule the Litigation Administrator sought. Judge Glenn cited *Integra Realty Res. Inc.*, 354 F.3d 1246 (10th Cir. 2004), where the Tenth Circuit rejected the transfer-date rule announced in *In re Colonial Realty Co.*, 226 B.R. 513, 525-27 (Bankr. D. Conn. 1998), holding that "the only generally applicable rule" is that "the time at which the value is measured depends upon the circumstances of each individual case" (quoting *Integra Realty Res.*, 354 F.3d at 1267).

He also noted that while within the Southern District of New York, *In re Gordos Rest. Corp.*, 643 B.R. 1, 36-37 (Bankr. S.D.N.Y. 2022), had noted "in dicta" that post-transfer appreciation "might" justify a judgment-date award, the court there "found that there was no evidence whether the asset, in this case intellectual property, had either appreciated or depreciated in the three-year period after the transfer."

So-called "windfall" cases, by contrast, cut the other way. Judge Glenn explained that *In re Levesque*, 661 B.R. 731, 777 (Bankr. D.S.C. 2024), refused to hand the estate a transferred ownership interest in a corporation that was "a completely different company than it was [at the time of transfer] and its financial soundness appears attributable to [defendant's] post-transfer efforts as well as events that unraveled post-transfer which were unforeseen" (quoting *Levesque*, 661 B.R. at 777).

Similarly, *In re Seitz*, 400 B.R. 707, 723 (Bankr. E.D. Mo. 2008), declined to pass along an increased equity value because it "include[d] an inflation of the value of the Remaining Interest that the Court is not willing to pass along to the Trustee in the form of a windfall" (quoting *Seitz*, 400 B.R. at 723).

Judge Glenn distinguished these windfall cases from the transfers at issue in *Celsius* on the ground that "the increase in value of the digital assets is not a result of the [transferees'] efforts or improvements, rather it is the result of market forces." The former customers and insiders who received those transfers here could not claim that appreciation was attributable to their own post-transfer conduct.

In addition, said Judge Glenn, awarding the Litigation Administrator the judgment-date value of the assets "would be inequitable" because "[i]t is not clear that even if the Transferred Assets had remained in Celsius's possession, that Celsius [would have] realized their judgment-date value."

That observation laid bare the tension at the core of the appreciation question: If the estate captures every dollar of post-transfer price increase, it would receive a windfall that it otherwise may never have realized. But if the estate recovers nothing beyond transfer-date value, the transferee retains the benefit of speculating with coins that should have remained in the estate. Judge Glenn thus sought in his framework to strike a balance between these two extremes.

Navigating between "windfall" and "wait-and-see"

Judge Glenn fundamentally grounded his framework's treatment of appreciating assets in two competing legislative concerns that shaped Bankruptcy Code §550. First, "Congress sought to avoid a 'wait and see' approach from creditors who seek to profit from holding property that may be subject to wide swings in value due to volatile markets" (quoting 5 Collier on Bankruptcy ¶ 550.02 (16th ed. 2026)).

Congress's concern was that creditors might delay pursuing avoidance claims, hoping to profit from favorable market swings, while leaving transferees in prolonged legal limbo. The Code thus aims to encourage prompt resolution rather than speculative gamesmanship.

But Judge Glenn then identified a competing concern:

> "There will be situations in which the transferee may not be aware of the vulnerability of the transaction, and the court should be able to take this factor into consideration in calculating damages. In other cases, the transferee may knowingly solicit the transaction, and the estate should then be given the benefit of the most favorable recovery." (quoting *House Hearings*).

Viewed against these legislative concerns, Judge Glenn sought to deny the transferee the benefit of post-transfer appreciation, so as to satisfy Congress's anti-speculation concern, while insulating the transferee from post-sale volatility, respecting the concern for innocent transferees,

i.e., those who received the transfer without knowledge that it was voidable and who may have given value in exchange, as distinguished from insiders or parties who knowingly solicited the transaction.

But Judge Glenn also cautioned against overreach in the other direction. Accepting the Litigation Administrator's argument, he wrote, "could expose preference defendants [those transferees who received payments from Celsius before the bankruptcy filing] to what is essentially limitless liability" tied to a market they left long ago. Nor was there evidence that Celsius itself would have held the coins long enough to capture their judgment-date value, and thus using that figure would hand the estate a windfall built on speculation rather than proof.

The framework adopted by Judge Glenn sidesteps both these extremes by asking a simpler question: what did the transferee actually walk away with? A defendant still sitting on appreciated coins gives them back.

A defendant who cashed out owes the sale proceeds. The estate does not get the benefit of price movements that nobody ever locked in. As Judge Glenn explained, defendants "will not receive the benefit of any speculation they engage in" but are also insulated from "the whims of the crypto market long after they have disposed of the Transferred Assets."

Two sides of one coin

What this means in practice is that the framework's symmetry cuts both ways. Transferees cannot profit from appreciation if they still hold the asset, but neither are they penalized for price increases that occur after they sold. Recovery is tied to transferees' actual conduct—what they held or what they received upon sale—not to hypothetical market movements.

The criminal side of the coin

Judge Glenn's framework rests on the principle that a party responsible for an improper transfer should not be able to use cryptocurrency volatility to limit the consequences of that transfer. That principle found a parallel just days later in a different kind of crypto case, on the criminal side.

In *United States v. Kim*, 2026 WL 2059080 (N.D. Cal. July 16, 2026), Judge Charles Breyer ordered restitution against a defendant who "was convicted on thirteen counts of wire fraud and money laundering stemming from a cryptocurrency fraud scheme." The defendant had fraudulently induced lenders to extend cryptocurrency loans. "The Government now seeks to alter the judgment to require Kim to pay restitution to his victims," and the court was charged with prescribing how the restitution amount should be determined, when the cryptocurrency had increased in value since the time of the events.

The governing statute, the Mandatory Victims Restitution Act, requires that, where returning the property is impossible, the court order the defendant to "pay an amount equal to the greater of the value of the property on the date of the damage, loss, or destruction[,] or the value of the property on the date of sentencing" (quoting 18 U.S.C. §3663A(b)(1)(B)(i)). Because the stolen cryptocurrency had appreciated between the date of loss and the date of sentencing, the court held that the statute's "greater of" formula required restitution at the higher, sentencing-date value; the court "cannot award Kim's victims the lesser value of their loss."

The defendant resisted with a windfall argument that would have sounded familiar to the Celsius transferees: victims should recover only what they paid, arguing that "cryptocurrency is a highly speculative asset without inherent value" and thus no one can know what the victims would have done with the coins.

Judge Breyer was unpersuaded. Cryptocurrency trades on efficient, real-time markets, he said, and "[f]air market value will almost always be an accurate measure of the value of a fungible commodity with a viable market." It was "Kim—not the victims"—who "bore the risk that the value of the stolen cryptocurrency would significantly increase." The value of cryptocurrency, the court added, "and really anything," is "what we are willing to exchange for it."

The court thus concluded:

> "[I]t was Kim that 'prevented the victims from taking part in the appreciation of the asset that they lost through the fraud.' It is not a windfall or grossly disproportionate for the victims to be compensated for the amount of cryptocurrency they had before Kim's fraud, even if the *value* of that cryptocurrency has since greatly increased." (Emphasis in original; citations omitted.)

Conclusion

Celsius and *Kim* rest on different statutory foundations. The criminal restitution statute's "greater of" formula is a legislative command guaranteeing victims the benefit of any appreciation. See 18 U.S.C. §3663A(b)(1)(B)(i). The Bankruptcy Code, by contrast, grants the court discretion to order return of "the property transferred, or... the value of such property." 11 U.S.C. § 550(a).

Thus, while Judge Glenn exercised the discretion that the Bankruptcy Code afforded him to construct an equitable framework capping recovery at what the transferee actually realized and shielding transferees from price swings on assets they no longer held, Judge Breyer had no comparable latitude.

While there was thus a divergence in outcome due to these differing statutory bases, both decisions share a similar underlying principle: the wrongdoing party should not be allowed to exploit the price volatility of cryptocurrency to limit the consequences of its own improper transfer.

The question at the heart of both decisions—who bears the risk when a volatile asset swings in value after an improper transfer—will always be with us. Cryptocurrency prices certainly will continue to move over time, up and down, perhaps dramatically, and the gap between the transfer-date and judgment-date values of crypto assets will wax and wane widen as clawback actions and criminal prosecutions work their way through the courts.

Celsius offers a principled starting point: track what actually happened to the asset, not what might have happened. Neither *Celsius* nor *Kim* allowed crypto wrongdoers to hide behind market volatility. As Judge Breyer held in *Kim*, it is the wrongdoer, not the victim, who bears the risk that the value of stolen cryptocurrency will significantly increase. The coin may land on heads or tails, but the party who made the improper transfer does not get to call it.

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