10th Circ. Debtor Ruling May Expand Wire Fraud Law Scope

By **Michael Dearington and Apeksha Vora** (November 20, 2025)

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On Oct. 20, the U.S. Court of Appeals for the Tenth Circuit issued an important decision interpreting the scope of the federal wire fraud statute in two ways.

In U.S. v. Baker,[1] the Tenth Circuit affirmed the defendant's wire fraud conviction based on the theory that he made misrepresentations to an escrow agent to deprive a creditor of its ability to collect on a debt, which the partial dissent called "a significant expansion of the wire-fraud statute."[2]

At the same time, the court reversed a wire fraud conviction related to the same scheme because use of the internet alone, without evidence of an interstate transmission, did not satisfy the interstate commerce element.

For white collar practitioners, the case presents a consequential development at the intersection of federal fraud law and ordinary creditor-debtor relationships, as well as an important reaffirmation of the requirements of the interstate commerce element.

The case also illustrates the frequent need for federal courts to define the contours of the federal wire fraud statute, as its application to novel factual scenarios is not always clear from the language of the statute.

The Alleged Scheme: A Debt Between Brothers

Matthew Baker, the defendant, allegedly owed his brother Shane Baker $445,000 over several years and through multiple loans. The loans were informal and interest-free, and Matthew repeatedly assured Shane he would repay them, but he never did.

In 2019, Matthew asked Shane to allow certain assets to be placed in Shane's name through a new entity, called Cap Fund 783 LLC, to both protect Matthew's assets from government recovery efforts in a separate matter and ensure Shane would be repaid. Shane agreed to the plan, but he remained unaware of the details, including that Matthew registered Cap Fund listing Shane as manager.

In mid-2020, Matthew arranged for Cap Fund to assign its purchase rights in a real estate deal for a $767,000 assignment fee. When the title company, Old Republic National Title Co., refused to wire the proceeds directly to Matthew, he falsely represented that Shane had assigned the fee to him, and then changed the Utah state business records to list himself as Cap Fund's manager.

But the title company already had a copy of the state business records that listed Shane, not Matthew, as Cap Fund's manager. Upon further investigation, the title company discovered that someone had changed the manager listed on the website two days after the property closing and one day after the title company refused to wire the proceeds to Matthew.

The title company called Shane, who informed it of Matthew's debts. Because of the dispute, the title company did not distribute the funds to anyone, and instead filed an interpleader action in state court to determine who should receive the assignment fee.

Among other unrelated charges, Matthew was charged with two counts of wire fraud — one for the phone call with the title company, and one for changing Cap Fund's registration information online. He was convicted of both counts of wire fraud in the U.S. District Court for the District of Utah.

Adoption of Potentially Expansive Theory of Wire Fraud Encompassing Schemes to Avoid Payment of a Debt

At the heart of the case is whether the federal wire fraud statute encompasses schemes to frustrate a creditor's ability to collect a debt, even when the creditor lacks a judgment, perfected security interest or contractual control over specific assets. According to the panel majority, the answer is yes — potentially expanding the scope of the wire fraud statute, at least in the Tenth Circuit.

Relying on the U.S. Supreme Court's recognition that the right to be paid money is property for fraud purposes,[3] the Tenth Circuit held that a creditor's entitlement to collect on a debt can be the object of wire fraud where the defendant undertakes a deceptive scheme to impede collection.

While the majority opinion made clear that mere nonpayment of a debt is not wire fraud, false statements and concealment designed to prevent or frustrate collection could constitute wire fraud.

The panel majority also found that the title company had a property interest, including in certain collateral benefits from escrowed funds, such as bank services, accommodations and interest, among other things. The panel majority thus found that Matthew's alleged scheme to misdirect those funds constituted a fraud to obtain property from the title company. The court thus affirmed one count of wire fraud.

In dissent, U.S. Circuit Judge Gregory A. Phillips cautioned that the majority's opinion adopted a new and expansive theory of wire fraud that was neither presented to the jury nor consistent with Supreme Court guidance emphasizing that the object of the scheme must be property in the victim's hands. In the dissent's view, Matthew's lies targeted the title company's handling of the assignment fee, and any effect on Shane's ability to collect was only an incidental byproduct.

The dissent further questioned whether Shane had an enforceable right "legally due" at the relevant time, pointing to the informal nature of the loans and the absence of definite repayment terms, interest or a judgment.

Judge Phillips also disagreed with the panel majority's conclusion that the scheme could be supported by the title company's property interest in the escrowed funds, on the grounds that the government did not present that theory at trial.

Reinforcing Importance of Interstate Commerce Requirement

The court reversed a second count of wire fraud due to the insufficiency of the evidence that could satisfy the wire fraud statute's interstate commerce element, reaffirming the importance of this element.

To prove this element, the government presented evidence that (1) Matthew logged onto Utah's business registration website, (2) the title company employees accessed the website in Utah, and (3) the Utah business registration website is publicly available and can be accessed from anywhere in the U.S. and globally.

In concluding that this evidence was insufficient to satisfy the interstate commerce requirement, the court reasoned that the publicly available nature of the Utah business registration website did not show an interstate transmission relevant to Matthew's scheme: It did "not show that when Matthew modified the information on the website, his communication actually traveled outside Utah."[4]

Thus, the court rested its reversal on the notion that use of the internet alone does not generally satisfy the interstate commerce element, and that the government must introduce evidence that the use of the internet in furtherance of a scheme actually involved interstate transmission.

Practical Implications

The Baker opinion signals that federal fraud law can reach deceptive schemes designed to prevent a creditor from collecting on a debt, even if the creditor has no legally enforceable right to collect the debt — at least in the Tenth Circuit.

That holding could have meaningful implications for cases involving asset concealment, entity manipulation and misstatements to third parties in transactional settings where proceeds could otherwise be used to satisfy personal debt obligations. The Baker opinion could encourage prosecutors in some jurisdictions to view these types of disputes, which might ordinarily be resolved through civil actions, as a predicate to bring criminal fraud charges.

The partial dissent cautions, "After today's decision, a defendant commits wire fraud if he receives money unrelated to his debt and fails to inform the person who lent him money."[5]

Whether other appellate courts agree with this holding, however, remains to be seen. The Supreme Court has frequently cautioned against novel applications of the wire fraud statute in recent decades, including in Ciminelli v. U.S. in 2023,[6] Kelly v. U.S. in 2020,[7] Skilling v. U.S. in 2010,[8] Cleveland v. U.S. in 2000,[9] and McNally v. U.S. in 1987.[10]

As the dissent in Baker points out, the Supreme Court's Cleveland decision held that, "for purposes of the mail fraud statute, the thing obtained must be property in the hands of the victim," which in the Cleveland case did not include video poker licenses fraudulently obtained from regulators.

By analogy, defense counsel may seek to argue that making misrepresentations to avoid repaying a debt does not deprive a defendant of money or property in the hands of the creditor, and thus does not constitute wire fraud.

The Baker court's reversal of the internet-based wire fraud count is also a strong reminder to practitioners that, at least in some jurisdictions, use of the internet alone does not satisfy the interstate commerce element. Rather, the government must prove that the charged use of the wires traveled across state lines, which the government frequently seeks to do by introducing evidence that the wires were transmitted to or from servers across state lines.

While some courts, such as the U.S. Court of Appeals for the First Circuit,[11] have held that use of the internet alone suffices, even in these jurisdictions, defense counsel should, at a minimum, consider preserving the argument that internet use is insufficient given the possibility that the Supreme Court could resolve the circuit split, or that the court could abrogate its prior precedent en banc.

In all, the Baker case continues the trend in which courts of appeals must define the scope of the wire fraud statute, often based on common-law principles of fraud, given that the statute itself does not provide clear guidance on questions like the one in Baker.

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[1] United States v. Baker, 155 F.4th 1188 (10th Cir. 2025).

[2] Id. at 1213 (Phillips, J., concurring in part and dissenting in part).

[3] Id. at 1195 (citing Pasquantino v. United States, 544 U.S. 349 (2005)).

[4] Id. at 1203.

[5] Id. at 1213 (Phillips, J., concurring in part and dissenting in part).

[6] Ciminelli v. United States, 598 U.S. 306 (2023).

[7] Kelly v. United States, 590 U.S. 391 (2020).

[8] Skilling v. United States, 561 U.S. 358 (2010).

[9] Cleveland v. United States, 531 U.S. 12 (2000).

[10] McNally v. United States, 483 U.S. 350 (1987).

[11] See, e.g., United States v. O'Donovan, 126 F.4th 17 (1st Cir. 2025).