THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: October 31, 2018

G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Craig Grunewald and Wendy Grunewald,	Case No. 14-27529-GMH Chapter 7
Debtors.	

ORDER REOPENING CASE FOR LIMITED PURPOSE ONLY

In June 2014, the debtors commenced this case by filing a joint petition under chapter 13. In April 2015, the debtors converted this case to a case under chapter 7. Later that month, the clerk gave the debtors, the chapter 7 trustee, and all creditors notice that there did not appear to be any assets from which the trustee could pay a dividend. See Fed. R. Bankr. P. 2002(e). That June, the chapter 7 trustee filed a "report of no distribution" confirming that there was "no property available for distribution from the estate over and above that exempted by law." The court granted the debtors a discharge and closed the case that August.

The United States trustee now moves to reopen this case because there "may be

funds available to administer on behalf of the bankruptcy estate." See CM-ECF Doc. No. 57, ¶7. Section 350(b) of the Bankruptcy Code governs requests to reopen closed bankruptcy cases. It provides, "A case may be reopened . . . to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. §350(b).

I

"The decision to reopen a bankruptcy case is within the broad discretion of the bankruptcy court." *Redmond v. Fifth Third Bank*, 624 F.3d 793, 798 (7th Cir. 2010). "[F]actors that a bankruptcy court should consider in deciding whether to reopen a closed case" include but are not limited to "whether the moving party would be entitled to relief if the case were reopened and the length of time it has been closed." *Brown v. UAL Corp. (In re UAL Corp.)*, 809 F.3d 361, 364 (7th Cir. 2015) (citing *Redmond*, 624 F.3d at 798). But "a closed bankruptcy proceeding should not be reopened 'where it appears that to do so would be futile and a waste of judicial resources.'" *Redmond*, 624 F.3d at 803 (quoting *In re Carberry*, 186 B.R. 401, 402 (Bankr. E.D. Va. 1995)).

II

The United States trustee's motion is based on a letter that the former chapter 7 trustee received by email in September 2018, which begins:

> The purpose of this letter is to request that you inform us as to whether the bankruptcy estate of the above-referenced debtor [Wendy Grunewald] is claiming any interest in or rights with respect to the claims the debtor is seeking to settle and the settlement award related thereto that the debtor may receive as part of the settlement of its claims.

CM-ECF Doc. No. 58-1. The letter then notes that Wendy Grunewald brought "a product liability claim against a medical device company for physical injuries [that she] suffered . . . as a result of a pelvic mesh product." *Id.* The United States trustee also attached, as an exhibit to the motion, Wendy Grunewald's contract with her personal-injury attorneys, executed on June 30, 2015. See CM-ECF Doc. No. 58.

The United States trustee correctly notes that "[n]either the lawsuit nor any

potential settlement claim was listed on Ms. Grunewald's bankruptcy schedules." CM-ECF Doc. No. 57, ¶6. Whether that matters, however, turns on whether Wendy Grunewald's personal-injury claim was property of the bankruptcy estate that was created by the commencement of this case. See 11 U.S.C. §541(a). If it was, then it "remains property of the estate" because it was "not abandoned" under 11 U.S.C. §554 and "not administered in the case". §554(d); see §554(c) ("[A]ny property scheduled" but "not otherwise administered at the time of the close of a case is abandoned to the debtor and administered".). But, if the claim was not property of the estate then, it is not an estate asset now, so there is no cause to reopen this case to administer it.

A

Property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. §541(a)(1).* Property of the estate "includes causes of action." *In re Geise*, 992 F.2d 651 (7th Cir. 1993). Whether a cause of action is property of the estate depends on whether the debtor could have asserted the claim—i.e., whether the claim had accrued—as of the commencement of the bankruptcy case. See *In re Wagner*, 530 B.R. 695, 701 (Bankr. E.D. Wis. 2015).

Wendy Grunewald's claim arose under state tort law, so the court looks to the law of Wisconsin, where she resided when she filed for bankruptcy, to determine when it accrued. See *Koch Ref. v. Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339, 1344 (7th Cir.

* While this case was pending under chapter 13, property of the estate also included "all property of the kind specified in [§541] that the debtor[s] acquire[d] after the commencement of the case but before the case [was] . . . converted to a case under chapter 7". 11 U.S.C. §1306(a)(1). When the debtors converted this case to a case under chapter 7, property of the estate was limited to "property of the estate, as of the date of filing of the petition, that remain[ed] in the possession of or [was] under the control of the debtor[s] on the date of conversion", unless "the debtor[s] convert[ed]" the case "in bad faith," in which case "the property of the estate . . . consist[s] of the property of the estate as of the date of conversion." 11 U.S.C. §348(f)(1)(A) & (2). Nothing in the record suggests that the Grunewalds converted this case in bad faith, but whether they did is an issue that the United States trustee may pursue in seeking to show that this case should be reopened to permit the administration of assets not yet administered or abandoned.

1987) ("State law determines whether property is an asset of the debtor."); see also *Butner v. United States*, 440 U.S. 48, 54–55 (1979) ("Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law.").

Under Wisconsin law, "tort claims . . . accrue on the date the injury is discovered or with reasonable diligence should [have been] discovered, whichever occurs first." *Hansen v. A.H. Robins, Inc.*, 335 N.W.2d 578, 583 (Wis. 1983). More specifically, a tort claim does not accrue "until the plaintiff discovers or with reasonable diligence should have discovered that he or she has suffered actual damage due to wrongs committed by a particular, identified person." *Pritzlaff v. Archdiocese of Milwaukee*, 533 N.W.2d 780, 785 (Wis. 1995). "Until that time, plaintiffs are not capable of enforcing their claims either because they do not know that they have been wronged or because they do not know the identity of the person who has wronged them." *Id.* (citations omitted).

B

The United States trustee's motion and the exhibits attached to it do not establish that Wendy Grunewald's personal-injury claim had accrued—that is, that she knew or with reasonable diligence would have known that she was wrongly harmed and by whom—by the time she and her husband commenced this case. Indeed, the United States trustee's filings suggest little, if anything, more than that, about a year after the Grunewalds commenced this case, Wendy Grunewald retained counsel to represent her in pursuing her claim and that, more than three years later, the former chapter 7 trustee received a letter about a "settlement award" that Wendy Grunewald "may receive as part of the settlement of [that] claim[]." CM-ECF Doc. No. 58-1. Thus, the United States trustee has not shown that Wendy Grunewald's claim (or any funds to which she may be entitled or that she may have received in settlement of that claim) is an estate asset.

Still, the motion does not preclude the possibility that the claim *is* property of the bankruptcy estate that the former chapter 7 trustee did not administer because the debtors did not list it on their schedules. In other words, there remains the possibility

that the bankruptcy estate contains a previously undisclosed and unadministered asset, and that is sufficient cause to reopen this case to the limited extent necessary to determine whether the case should be reopened further to administer the asset.

III

For the foregoing reasons,

IT IS ORDERED that this case is reopened for the limited purpose of determining whether Wendy Grunewald's personal-injury claim, and any proceeds from it, is property of the bankruptcy estate.

IT IS FURTHER ORDERED that the court will hold a preliminary hearing on this matter on **November 19, 2018, at 2:30 p.m.** Participants may appear either in person (in Room 133 of the United States Courthouse, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202) or by phone (by calling the court conference line at 1-888-684-8852 and entering access code 7183566 before the scheduled time). The parties should be prepared to address any discovery necessary for the resolution of the motion, a date for an evidentiary hearing on whether Wendy Grunewald's personal-injury claim is property of the estate, and any other potential pretrial issues.

IT IS FURTHER ORDERED that the clerk will mail a copy of this order directly to the debtors.

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