

UNITED STATES SUPREME COURT

2013 CASE REVIEW

LOU JONES BREAKFAST

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Thomas L. Shriner, Jr., Esq.
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
414-297-5601
tshriner@foley.com

Peter C. Blain, Esq.
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
414-298-8129
pblain@reinhartlaw.com

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I. *Bullock v. BankChampaign, N.A.*, 133 S. Ct. 1754 (2013).

A. Facts.

1. Bullock was appointed trustee of his father's insurance trust. The trust documents permitted the trustee to borrow money from the cash surrender value in the policies in the trust at a fixed rate of interest. Bullock borrowed money first at the request of his father, again to finance a purchase of a mill with his mother, and finally to purchase some real property, also with his mother. On each occasion, the loans were repaid with interest.
2. He was sued by his siblings for breach of fiduciary duty. The state court found that while the conduct constituted an innocent breach of fiduciary duty, the court nonetheless imposed a constructive trust on Bullock's interest in the trust and entered a judgment in the amount of the benefits he received from the loans.
3. When he was unable to pay the judgment, Bullock filed for bankruptcy. BankChampaign filed an objection to discharge, asserting that the breach of fiduciary duty gives rise to defalcation under section 523(a)(4) of the Bankruptcy Code.

B. Issue. Does the term "defalcation" as used in section 523(a)(4) require a finding of scienter or reckless conduct of the kind set forth in the Model Penal Code?

C. Discussion.

1. The court noted the split in the Circuits regarding the meaning of "defalcation." Compare *Bullock v. BankChampaign, N.A.*, 670 F.3d 1160 (11th Cir. 2012) (objective recklessness), and *In re Baylis*, 313 F.3d 9 (1st Cir. 2002) (extreme recklessness), with *In re Sherman*, 658 F.3d 1009 (9th Cir. 2011) (includes innocent acts of failure to fully account for money received in trust), and *In re Uwimana*, 274 F.3d 806 (4th Cir. 2001) (innocent mistakes resulting in misappropriation).
2. The court then concluded that legal definitions of the term "defalcation" are unhelpful in considering the issue.
3. The court noted that the terms "fraud," "embezzlement" and "larceny" all require a culpable, rather than an innocent, state of mind, citing *Neal v. Clark*, 95 U.S. 704 (1877).

4. Applying the principle of *noscitur a sociis* (a word is known by the company it keeps), the court found that defalcation similarly requires a culpable state of mind or substantial and unjustifiable reckless conduct by a fiduciary.
5. The court distinguished defalcation from fraud (a false statement or omission), larceny (a taking of another's property) and embezzlement (conversion).
6. Exceptions to discharge, found the court, "should be confined to those plainly expressed" (citation omitted), and observed that some circuits have interpreted the term for many years without administrative or other practical difficulties. *See Baylis*, 313 F.3d at 9.
7. Finally, the court, noting the need for a uniform interpretation of the term defalcation, found defalcation as used in section 523 requires a finding of scienter or reckless conduct of the kind set forth in the Model Penal Code.

II. *Executive Benefits Insurance Agency v. Arkison (In re Bellingham Insurance Agency, Inc.)*, 702 F.3d 553 (9th Cir. 2012).

A. Facts.

1. Prepetition, the debtor transferred commissions it received to a long-time employee and a newly created entity, Executive Benefits. The Chapter 7 trustee filed a fraudulent conveyance action under Section 548 of the Code and state law against Executive Benefits, which had not filed a proof of claim in the case.
2. The defendant filed a motion to withdraw the reference and demanded a jury trial, but asked the district court to stay its consideration of the motion to enable the bankruptcy court to rule on the trustee's motion for summary judgment filed in the bankruptcy court.
3. The bankruptcy court granted summary judgment, which was affirmed by the district court.
4. The defendant appealed and for the first time moved to vacate the bankruptcy court's judgment, arguing that the bankruptcy court lacked subject matter jurisdiction under *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

B. Issues.

1. Can a bankruptcy court enter a final order in a fraudulent conveyance action arising under the Bankruptcy Code as a core proceeding described in 28 U.S.C. § 157(b)(2)(H) where the defendant has not filed a proof of claim?

2. Can a bankruptcy court issue findings of fact and conclusions of law in a core but unconstitutional proceeding?
3. Can a bankruptcy court enter a final order in such a proceeding where the defendant impliedly consents to the bankruptcy court's jurisdiction?

C. Discussion.

1. The *Bellingham* court analyzed the holdings of *Stern* and *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989) (dealing with a right to a jury trial), and concluded that there were only three exceptions to the rule of Article III adjudication: territorial courts; military courts; and cases involving "public" rather than "private" rights.
2. Fraudulent transfer claims against a party that did not file a proof of claim, whether arising under state law or the Bankruptcy Code, were private rights that the defendant is entitled to have decided by an Article III court.
3. The court then discussed the "statutory gap" in analyzing whether a bankruptcy court can issue findings of fact and conclusions of law in core but unconstitutional proceedings. While the court can issue a final order in core proceedings that are constitutional, and is empowered to issue findings and conclusions in noncore proceedings, there is no express Congressional grant of authority to issue findings and conclusions in matters that are core but unconstitutional.
4. The court concluded that because Congress granted the power to "hear and determine" all matters enumerated in 28 U.S.C. § 157(b)(2), it clearly intended bankruptcy courts to be able to wield the more modest power of issuing findings and conclusions. Only the power to enter final judgments is abrogated.
5. In reaching this conclusion, it specifically disagreed with *Ortiz v. Aurora Health Care, Inc. (In re Ortiz)*, 665 F.3d 906 (7th Cir. 2011), which held that the bankruptcy court had no authority to issue findings and conclusions in core proceedings. The Ninth Circuit said *Ortiz* was dicta and not thoroughly reasoned.
6. Finally, the court concluded that a party could impliedly waive its rights to have a private right heard by an Article III court, and that the Executive Benefits waived the right in this action.
7. Implied waiver can occur when a litigant fails to timely object or where, as in *Bellingham*, a litigant affirmatively consented to a proceeding before the bankruptcy court until it received an adverse decision.

D. Circuit Split.

1. *Waldman v. Stone*, 698 F.3d 910 (6th Cir. 2012).
 - (a) The court considered a judgment by a bankruptcy court finding that a third party had perpetrated "one of the most egregious frauds the court had ever encountered" on a Chapter 11 debtor. *Id.* at 916.
 - (b) At issue on appeal was whether a party that had not raised subject matter jurisdiction below can waive its right to an adjudication by an Article III court, where the bankruptcy court lacked constitutional authority to enter a judgment.
 - (c) The *Waldman* court found that the defendant's objection to subject matter jurisdiction "implicates not only his personal rights, but also the structural principle advanced by Article III. That principle is not [defendant's] to waive." *Id.* at 918. It therefore can be raised at any time.
 - (d) The attempt by Congress to confer Article III power outside of Article III, said the court, neither serves the system of checks and balances nor preserves the integrity of judicial decision making.
2. Regarding the ability of a bankruptcy court to issue findings and conclusions in a core but unconstitutional proceeding, the petitioner cited *Ortiz* as creating a circuit split on this issue as well.

E. The Supreme Court granted the petition for certiorari on June 24, 2013.

III. *Law v. Siegel (In re Law)*, No. 09-60046, 2011 WL 2181198 (9th Cir. June 6, 2011).

A. Facts.

1. The debtor filed a Chapter 7 proceeding and listed his home, valued at \$363,000, as the sole asset. The home was encumbered by a \$147,000 first mortgage to a bank and a \$156,000 second mortgage to Lin's Mortgage and Associates.
2. The debtor claimed California's \$75,000 homestead exemption, to which the trustee did not object.
3. During the case, the trustee commenced an investigation into the validity of the second mortgage, which spawned years of litigation, including a dozen appeals to the Bankruptcy Appellate Panel and several appeals to the Ninth Circuit, and which cost the estate over \$450,000 in administrative expenses.

4. Ultimately, the bankruptcy court determined that the debtor had perjured himself twice. Prepetition, he drafted a note and a mortgage to Lili Lin of California, an acquaintance of the debtor, and asked her to hold the money realized from the mortgage for him. She refused to sign the documents, but they were nonetheless recorded.
 5. Thereafter, a letter was received by the county indicating that Ms. Lin desired to commence a foreclosure action. Ms. Lin indicated she did not send the letter.
 6. Later, the debtor presented Ms. Lin with a packet of documents purporting to transfer the note and mortgage to the debtor's brother, which Ms. Lin also refused to sign.
 7. The debtor filed a motion to compel payment of the exempt amount. The trustee filed a motion to surcharge the debtor's exempt property. During this dispute, one Lili Lin of China, who had never visited the United States, appeared by counsel. The debtor said it was really this Lili Lin who held the mortgage.
 8. The bankruptcy court granted the trustee's motion but the BAP reversed and remanded to determine the validity of the mortgage in light of Lili Lin's (China) appearance.
 9. The bankruptcy court again granted the trustee's motion. The BAP affirmed and the Ninth Circuit affirmed in an unpublished opinion.
 10. The debtor filed a motion for leave to proceed *In Forma Pauperis* and filed a petition for certiorari.
 11. The trustee, in his response to the petition, correctly observed that it was difficult to determine what the petitioner asked the Supreme Court to review, upon what grounds and the bases of the relief sought.
- B. Issue. Using its equitable powers, may a bankruptcy court surcharge a debtor's exemptions that were not timely objected to?
- C. Circuit Split.
1. *Latman v. Burdette*, 366 F.3d 774 (9th Cir. 2004).
 - (a) The court affirmed the decisions by the bankruptcy court and the district court authorizing a surcharge of the debtors' exemptions for failing to disclose certain funds in their Chapter 7 case.
 - (b) The debtors contended that the surcharge exceeded the equitable powers of the bankruptcy court.

- (c) The court found that the surcharge remedy prevented a fraud on the bankruptcy court. The surcharge remedy, said the court, did not punish the debtors, but instead ensured that only the proper amounts of exemptions were claimed.
- (d) Although not specifically relying on section 105(a) of the Code, the court held that equitably surcharging the debtors' exemptions protected the integrity of the bankruptcy process and ensured that the debtors exempted no more property than they were entitled to under the Code.

2. *Scrivner v. Mashburn*, 535 F.3d 1258 (10th Cir. 2008).

- (a) The court reversed the bankruptcy court's decision, affirmed by the Ninth Circuit BAP, to surcharge exemptions to recover certain post-petition distributions on prepetition property the debtors did not claim as exempt, but refused to turn over to the Chapter 7 trustee.
- (b) The court began its analysis by stating that a bankruptcy court may not exercise its equitable powers under section 105(a) of the Code in a manner that is inconsistent with other, more specific provisions of the Code.
- (c) Except for the limited exceptions allowing surcharge of exemptions under sections 522(c) and (k), if a debtor claims an exemption that is not objected to by a party in interest, that property is exempt.
- (d) The Code provides specific remedies for failing to turn over property of the estate, including denial of discharge under section 727(a)(2) or dismissal of the case under section 707(a).
- (e) The court concluded that because the surcharge of exempt property is inconsistent with the Code's provisions governing exemptions and debtor misconduct, such a surcharge is beyond the scope of a bankruptcy court's equitable authority under section 105(a). The court relied upon *United States v. Sutton*, 786 F.2d 1305 (5th Cir. 1986), which held that section 105(a) does not authorize the bankruptcy courts to create substantive rights.

3. *Malley v. Agin*, 693 F.3d 28 (1st Cir. 2012).

- (a) The debtor wrongly concealed \$25,000 of the proceeds from the sale of his former marital house. The bankruptcy court denied the debtor's discharge and surcharged the debtor's exemption.

- (b) Citing *Scrivner*, the debtor argued that the statutory enumeration excludes what is left out, and that the surcharge of exemptions was beyond the court's equitable powers under section 105(a).
- (c) Justice Souter, sitting by designation and writing for the court, was not persuaded. Section 105, he stated, speaks of action necessary or appropriate to carry out the provisions of the Code. There could not be a clearer example of foiling abuse of process than a surcharge order mitigating the effect of fraud. If section 105(a) was not meant to be used in a case like this, said Justice Souter, it is hard to see what use Congress had in mind for it.
- (d) The court endorsed *Latman* and further said its decision was authorized by *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007), wherein the court denied a Chapter 7 debtor's motion to convert his case to a Chapter 13 proceeding, even though section 706(a) says a debtor may do so at any time.

D. Amici Briefs.

- 1. A number of amici submitted extensive briefs.
- 2. The Government's Brief.
 - (a) The United States filed a brief supporting the conclusion of *Latman* and *Malley*, but asking the Supreme Court to deny certiorari because there was no split in the circuits upon the precise issue in controversy.
 - (b) *Law*, argued the government, was the first decision to use section 105(a) of the Code to surcharge the debtor's exempt property in order to compensate the estate for administrative expenses caused by the debtor's abusive litigation conduct. This made the issue at hand distinct from that presented in *Latman*, *Scrivner* and *Malley*.
 - (c) The United States concluded by arguing the *Law* decision was authorized by a bankruptcy court's equitable power to sanction litigation misconduct, citing *Marrama*.
- 3. Brief of Bankruptcy Law Scholars.
 - (a) Twenty-one law professors filed a brief as amici curiae supporting the *Scrivner* rationale.
 - (b) They argued that section 105(a) is tethered to the rest of the Bankruptcy Code and cannot be read in isolation. The power to issue orders that are necessary and appropriate is limited to issuing orders necessary and appropriate to carry out the specific

provisions of the Code. Section 105(a) is not a free-ranging grant of authority to do equity.

- (c) The professors then turned to a detailed discussion of section 522. They cited sections 522(g)(1)(B), and (n)-(q) as the only provisions under the Code that limit exemptions. Using section 105(a) to create exceptions to exemptions beyond these, argued the professors, is not carrying out the provisions of the Code, but instead contravening them.
- (d) Moreover, section 522(l) provides that unless a party in interest objects, the property claimed on such list is exempt. The Supreme Court in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992) held that courts have no authority to allow an objection to exemptions beyond the 30-day period for objections provided in Federal Rule of Bankruptcy Procedure 4003(b)(1), even if the exemption is claimed in bad faith.
- (e) There are specific remedies, argued the professors, to sanction wrongful conduct including denial of discharge pursuant to section 727(a) and the imposition of criminal penalties under 18 U.S.C. §§ 152, 157.
- (f) The professors concluded by stating examples of circumstances when use of section 105(a) is appropriate.

E. The petition for certiorari was granted on June 17, 2013.

IV. *United States v. Quality Stores, Inc. (In re Quality Stores, Inc.)*, 693 F.3d 605 (6th Cir. 2012).

A. Facts.

1. Quality Stores, one of the nation's largest agricultural specialty retailers, closed its stores and distribution centers, terminated the employment of all of its employees, and made payments to all of its employees whose employment was involuntarily terminated.
2. The payments were made pursuant to a prepetition severance plan and a post-petition severance plan designed to encourage employees to defer job searches.
3. The government took the position that the payments constituted wages for Federal Insurance Compensation Act ("FICA") purposes. While the debtor collected and paid the tax, it took the position that the payments constituted supplemental unemployment compensation benefits ("SUB"), and that the payments were not taxable under FICA, claiming it was due a refund.

4. The debtor filed an action in bankruptcy court seeking to recover the paid taxes, plus interest. The bankruptcy court held the debtor was not liable for the taxes and was entitled to a refund of over \$1 million for FICA taxes previously paid.
5. The government filed a motion for reconsideration, which the bankruptcy court granted. On rehearing, the bankruptcy court ratified its prior decision.
6. On appeal, the district court affirmed. The government appealed and the Sixth Circuit also affirmed.

B. Issue.

1. Noting that over \$1 billion of tax revenue turned on the issue, the government framed the issue as follows: Whether severance payments made to employees whose employment was involuntarily terminated are taxable under the FICA.
2. In its brief in opposition to the government's petition for certiorari, the debtor argued the government stated the issue too broadly. It would state the issue as follows: Whether SUB paid to an employee pursuant to a plan to which the employer is a party, because of the employee's involuntary separation from employment resulting from a reduction in force, discontinuance of a plant or operation, or other similar condition constituted wages for the purposes of FICA.

C. Discussion.

1. The *Quality* court noted that the question of whether SUB payments constitute wages is a complex one. Back pay granted to an employee under the National Labor Relations Act constituted wages taxable under FICA, while other payments may not. In addition, the court said it generally favored interpreting FICA definitions broadly and inclusively.
2. However, the court noted that even though SUB payments are treated as if they were "wages" for income tax purposes, I.R.C. § 3402(o) (26 U.S.C. § 3402(o)) defining SUB payments is entitled "**Extension of withholding of certain payments *other than wages***"(emphasis added).
3. The court then observed that both I.R.C. § 3402(o)(2)(A) and Treas. Reg. § 31.3401(a)-(b)(14)(ii) set forth a five-part test for what constitutes a SUB payment: (a) an amount paid to an employee; (b) pursuant to an employer's plan; (c) because of an employee's involuntary separation from employment, whether temporary or permanent; (d) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions; and (e) included in the employee's gross income. The court found all payments made by Quality to its former employees,

whether pursuant to the pre- or post-petition plans, met this five-part test to qualify as SUB payments.

4. The court also said the legislative history also supported the conclusion that SUB payments did not constitute wages or remuneration for services.
5. Finding that Quality met the statutory and regulation test for what constituted SUB payments, the court said that the applicable section's title and the legislative history caused the court to conclude that SUB payments were not "wages" for FICA purposes.

D. Circuit Split. *CSX Corp. v. United States*, 518 F.3d 1328 (Fed. Cir. 2008).

1. CSX experienced financial difficulties and made payments to its workforce, including SUB payments. The debtor took the position that the payments were not "wages" for the purposes of FICA.
2. The court noted that I.R.C. § 3402(o) indicated that SUB payments shall be treated as if they were the payment of "wages."
3. However, the court said that saying all payments falling within a particular category shall be treated as if they were a payment of wages did not dictate that none of the payments within the category would otherwise be wages. Saying that for some purposes all men shall be treated as if they were six feet tall does not imply that no men are six feet tall.
4. The court concluded that the text of I.R.C. § 3402(o) does not require that FICA be interpreted to exclude from "wages" all payments that would satisfy the definition of SUB payments under § 3402(o)(2)(A).
5. Based on the foregoing, the court concluded that all payments made to CSX's employees were wages for FICA purposes.

E. The petition for certiorari was granted on October 1, 2013.

V. *Clark v. Rameker (In re Clark)*, 714 F.3d 559 (7th Cir. 2013).

A. Facts.

1. The wife of husband and wife Chapter 7 debtors inherited a \$300,000 IRA from her mother and claimed the funds exempt under section 522(b)(3)(C) and (d)(12) of the Code.
2. In the wife's hands, the funds retained their tax-exempt status, but were subject to required distributions one year after the receipt of the funds and could not be rolled over into the wife's IRA.

3. The trustee objected to the exemption. Bankruptcy Judge Martin denied the exemption, finding that the funds in the inherited IRA did not constitute "retirement funds" in the hands of the debtor.
 4. The district court reversed, finding the question close and believing that close questions should be decided in the debtors' favor. The trustee appealed.
- B. Issue. Are inherited IRA's exempt retirement funds under sections 522(b)(3)(C) and (d)(12) of the Code?
- C. Discussion.
1. Writing for the court, Judge Easterbrook found the issue was not a close one. Funds in an inherited IRA did not represent anyone's retirement funds.
 2. While the funds retained their tax exempt status, they ceased to constitute retirement funds. The funds could not be rolled over into the debtor's IRA and could not be held until the debtor's retirement. Instead they were subject to mandatory distribution to the debtor.
 3. The court said that to be exempt, the funds had to be both tax exempt and retirement funds. Retention of the tax attributes was not enough.
 4. The exemption did not apply to funds that at any time were retirement funds, but rather to the nature of the funds in the hands of the debtor. By way of example, if the mother had withdrawn the funds in her IRA and given them to her daughter, they would not constitute exempt property. Similarly, if the debtor's mother had a home that qualified for a homestead exemption, she would be entitled to the exemption. However, if the daughter inherited the house and rented it out, it would not qualify for the exemption in daughter's bankruptcy. The exemption, reasoned the court, depended on how the debtor used property, not how her mother used it.
- D. Circuit Split. *Chilton v. Moser (In re Chilton)*, 674 F.3d 486 (5th Cir. 2012).
1. The debtors filed a Chapter 7 proceeding and claimed \$170,000 in an inherited IRA as exempt under section 522(d)(12) of the Code. The trustee objected on the grounds that the funds in an inherited IRA are not "retirement funds" within the meaning of section 522.
 2. In the response, the debtors converted the case to a Chapter 13 proceeding. The trustee again objected and the bankruptcy court sustained the trustee's objection. The district court reversed and the trustee appealed.
 3. The Fifth Circuit agreed with Judge Easterbrook that two factors are required for funds to be exempt under section 522(d)(12): First, the funds

must be retirement funds, and second, those funds must be in an account that is tax exempt under the Internal Revenue Code. The court also noted that the term "retirement funds" is not defined in the Bankruptcy Code.

4. However, the court noted that a majority of courts faced with the issue concluded that the Code did not specifically limit "retirement funds" to funds for the benefit of the debtor's retirement. The court found that retirement funds that others originally set aside for their retirement, like inherited IRA's, can also qualify.
5. The court also noted that under the plain meaning of I.R.C. § 408e, *any* individual retirement account is exempt from taxation. The definition of "individual retirement accounts" in the Internal Revenue Code encompasses inherited IRAs.
6. The court therefore concluded that inherited IRAs fall within the ambit of section 522 and are exempt citing *Doeling v. Nessa (In re Nessa)*, 426 B.R. 312 (BAP 8th Cir. 2010); *Mullen v. Hamlin (In re Hamlin)*, 465 B.R. 863 (BAP 9th Cir. 2012). Both of these cases rely on Code section 522(b)(4)(C), which provides that a direct transfer from an account exempt from taxation under IRC § 408 shall not cease to qualify for the exemption because of the direct transfer.

E. The petition for certiorari is pending.

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RELEVANT STATUTES

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from any debt—

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

11 U.S.C. § 157. Procedures

(b)

(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

§105 Power of the court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

§522 Exemptions

(b)(3)

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

(b)(4)

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510 (c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)

(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file

(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of such Code or a simple retirement account under section 408(p) of such Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed \$1,000,000 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.

(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(3) a burial plot for the debtor or a dependent of the debtor; or

(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.

(p)

(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$125,000 in value in—

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(C) a burial plot for the debtor or a dependent of the debtor; or

(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

(2)

(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior

to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

(q)

(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate \$125,000 if—

(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

(B) the debtor owes a debt arising from—

(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

(iii) any civil remedy under section 1964 of title 18; or

(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

727 Discharge

(a) The court shall grant the debtor a discharge, unless—

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

§707. Dismissal of a case or conversion to a case under chapter 11 or 13

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
- (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521 (a), but only on a motion by the United States trustee.

(b)

26 U.S.C. § 3402(o)

(o) Extension of withholding to certain payments other than wages

(1) General rule

For purposes of this chapter (and so much of subtitle F as relates to this chapter)—

- (A)** any supplemental unemployment compensation benefit paid to an individual,
 - (B)** any payment of an annuity to an individual, if at the time the payment is made a request that such annuity be subject to withholding under this chapter is in effect, and
 - (C)** any payment to an individual of sick pay which does not constitute wages (determined without regard to this subsection), if at the time the payment is made a request that such sick pay be subject to withholding under this chapter is in effect,
- shall be treated as if it were a payment of wages by an employer to an employee for a payroll period.

(2) Definitions

(A) Supplemental unemployment compensation benefits

For purposes of paragraph (1), the term “supplemental unemployment compensation benefits” means amounts which are paid to an employee, pursuant to a plan to which the employer is a party, because of an employee’s involuntary separation from employment (whether or not such separation is temporary), resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, but only to the extent such benefits are includible in the employee’s gross income.

§727 Discharge

(a) The court shall grant the debtor a discharge, unless—

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

§522 Exemptions

(b)(3)

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

(b)(4)

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

(d)

The following property may be exempted under subsection (b)(2) of this section:

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

(c)

Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in paragraph (1) or (5) of section 523 (a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);

(2) a debt secured by a lien that is—

(A)

(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724 (a) of this title; and

(ii) not void under section 506 (d) of this title; or

(B) a tax lien, notice of which is properly filed;

(3) a debt of a kind specified in section 523 (a)(4) or 523 (a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(g)

Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510 (c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)

(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

(k)

Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l)

The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the

debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(n)

For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of such Code or a simple retirement account under section 408(p) of such Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed \$1,000,000 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.

(o)

For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

- (1) real or personal property that the debtor or a dependent of the debtor uses as a residence;
- (2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;
- (3) a burial plot for the debtor or a dependent of the debtor; or
- (4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.

(p)

(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$125,000 in value in—

- (A) real or personal property that the debtor or a dependent of the debtor uses as a residence;
- (B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(C) a burial plot for the debtor or a dependent of the debtor; or
(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

(2)

(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

(q)

(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate \$125,000 if—

(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

(B) the debtor owes a debt arising from—

(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

(iii) any civil remedy under section 1964 of title 18; or

(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.