

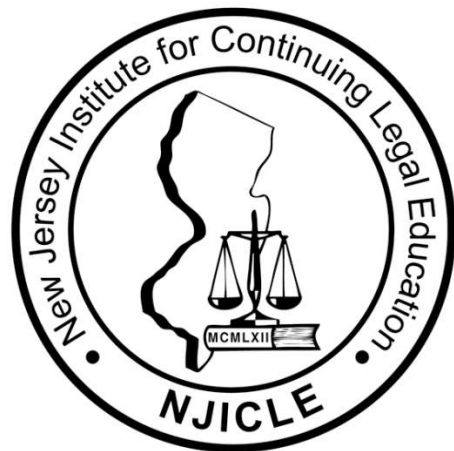
2026 FEDERAL PRACTICE BENCH-BAR SYMPOSIUM

2026 Seminar Material

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2026 FEDERAL PRACTICE BENCH-BAR SYMPOSIUM

Keynote

Honorable Renée Marie Bumb, Chief U.S.D.J.
*United States District Court for the District of
New Jersey (Camden)*

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Honorable Ann Marie Donio, U.S.M.J.
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Honorable Michael A. Hammer, U.S.M.J.

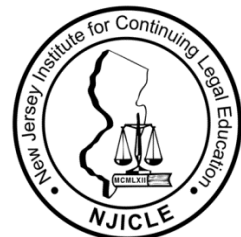
Honorable Sharon A. King, U.S.M.J.
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Federal Criminal Practice Primer

Federal Criminal Practice Primer

PowerPoint Presentation

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Settlement and Civil Case Management

Settlement and Civil Case Management

in the District of New Jersey

PowerPoint Presentation

Amy Walker Wagner, Esq.

Honorable Tonianne J. Bongiovanni, U.S.M.J.

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The Interplay Between Federal Civil Procedure and State Court Litigation

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

BRADLEY HEPPNER,

Defendant.

25 Cr. 503 (JSR)

MEMORANDUM

JED S. RAKOFF, U.S.D.J.:

At a pretrial conference in this matter held on February 10, 2026, the Court, after hearing the arguments of counsel, granted from the bench the Government's motion for a ruling that certain written exchanges that defendant Bradley Heppner had with a generative artificial intelligence ("AI") platform were not protected from Government inspection by either the attorney-client privilege or the work product doctrine. See ECF No. 22 ("Gov't Mot."). This Memorandum sets forth the reasons for the Court's ruling.

I. Background and Procedural History

Generative artificial intelligence tools have become increasingly prevalent across various domains of human activity. It has reliably been estimated, for instance, that more than half of United States households have adopted AI in some form. See Bond, Trends - Artificial Intelligence (2025), https://www.bondcap.com/report/pdf/Trends_Artificial_Intelligence.pdf at 59 (accessed February 12, 2026). Only three years after its release, one prominent AI platform is being used by more than 800 million people worldwide every week. Id. at 55. Yet the implications of AI for the law are only beginning to be explored.

Thus, the Court's ruling in this case appears to answer a question of first impression nationwide: whether, when a user communicates with a publicly available AI platform in connection with a pending criminal investigation, are the AI user's communications protected by attorney-client privilege or the work product doctrine?¹ For the reasons that follow, the answer is no.

On October 28, 2025, a grand jury in this District returned an indictment charging Heppner with securities fraud, wire fraud, conspiracy to commit securities fraud and wire fraud, making false statements to auditors, and falsifying corporate records. ECF No. 3. The indictment was unsealed on November 4, 2025, see ECF No. 4, and Heppner was arrested the following day in the Northern District of Texas. On November 10, 2025, Heppner pleaded not guilty before this Court to all the charges against him and was released on bond. See ECF Nos. 16, 18. Trial is set to commence April 6, 2026. See ECF No. 16.

The charges against Heppner arise from his alleged misconduct as an executive of several corporate entities, including the publicly traded company GWG Holdings, Inc. ("GWG"). See generally ECF No. 3. At a high level, the indictment charges that Heppner defrauded GWG's investors out of more than \$150 million by making false representations about, and causing GWG to enter into undisclosed self-serving

¹ The Court is unaware of, and the parties have not identified, any case to date that has presented this issue. Most published decisions involving generative artificial intelligence have had to do with attorneys' misuse of that technology. That set of concerns is plainly not present here.

transactions concerning, two privately held companies that Heppner controlled, Beneficient Company Group, L.P. and Highland Consolidated L.P. See id. ¶¶ 1-3.

In connection with Heppner's arrest on November 4, 2025, agents with the Federal Bureau of Investigation executed a search warrant at Heppner's home and seized numerous documents and electronic devices. See Gov't Mot. at 3; ECF No. 23-1 at 1. Heppner's counsel later represented to the Government that among the seized materials were approximately thirty-one documents that memorialize communications that Heppner had with the generative AI platform "Claude," which is operated by the private company Anthropic. See Gov't Mot. at 3; ECF Nos. 23-1 23-2. According to Heppner's counsel, the documents represent communications between Heppner and Claude that took place "in 2025, after Mr. Heppner had received a grand jury subpoena [and] after it was clear with discussions with the government that Mr. Heppner was the target of this investigation." Transcript, February 10, 2026 ("Tr.") at 4. Without any suggestion from counsel that he do so, Heppner "prepared reports that outlined defense strategy, that outlined what he might argue with respect to the facts and the law that we anticipated that the government might be charging." Id. Thus, counsel asserted, Heppner "was preparing these reports in anticipation of a potential indictment." Id.

In exchanges with the Government, Heppner, through his counsel, asserted privilege over these documents (the "AI Documents"), arguing that (1) Heppner had inputted into Claude, among other things,

information that Heppner had learned from counsel; (2) Heppner had created the AI Documents for the purpose of speaking with counsel to obtain legal advice; and (3) Heppner had subsequently shared the contents of the AI Documents with counsel. See Gov't Mot. at 3-4, 11; ECF Nos. 23-2, 23-4, 23-5. Heppner's counsel conceded, however, that counsel "did not direct [Heppner] to run Claude searches." ECF No. 23-5. Pursuant to a "Privilege Protocol Stipulation," the Government and Heppner's counsel agreed that the Government would segregate the AI Documents and not inspect them pending the resolution of Heppner's claims of privilege, and Heppner's counsel listed the AI Documents in Heppner's privilege log. See Gov't Mot. at 3-4 & n.1; ECF Nos. 23-1, 23-2.

On February 6, 2026, the Government moved, in writing, for a ruling that the AI Documents are protected by neither the attorney-client privilege nor the work product doctrine. Gov't Mot. The Court heard oral argument on the Government's motion at the pretrial conference held on February 10, 2026, and, as noted, orally granted the motion.

II. Attorney-Client Privilege

It is well established that the attorney-client privilege attaches to, and protects from disclosure, "communications (1) between a client and his or her attorney (2) that are intended to be, and in fact were, kept confidential (3) for the purpose of obtaining or providing legal advice." United States v. Mejia, 655 F.3d 126, 132 (2d

Cir. 2011).² Courts construe the attorney-client privilege narrowly because it operates as an exception to the rule that "all relevant proof is essential" for a complete record and for "confidence in the fair administration of justice." In re Six Grand Jury Witnesses, 979 F.2d 939, 943 (2d Cir. 1992). See also, e.g., Calvin Klein Trademark Tr. v. Wachner, 198 F.R.D. 53, 55 (S.D.N.Y. 2000).

Applying these principles here, the AI Documents lack at least two, if not all three, elements of the attorney-client privilege. First, the AI Documents are not communications between Heppner and his counsel. Heppner does not, and indeed could not, maintain that Claude is an attorney. "In the absence of an attorney-client relationship, the discussion of legal issues between two non-attorneys is not protected by attorney-client privilege." E.g., In re OpenAI, Inc., Copyright Infringement Litig., 802 F. Supp. 3d 688, 699 (S.D.N.Y. 2025). Because Claude is not an attorney, see ECF No. 23-6, that alone disposes of Heppner's claim of privilege.

The Court is aware that some commentators have argued that whether Claude is an attorney is irrelevant because a user's AI inputs, rather than being communications, are more akin to the use of other Internet-based software, such as cloud-based word processing applications. But the use of such applications is not intrinsically privileged in any case, and the argument that Claude is like any other form of software

² Except where otherwise indicated, all quotations in this Memorandum omit citations, quotation marks, footnotes, brackets, ellipses, and other alterations in source material.

only cuts against the invocation of privilege because all “[r]ecognized privileges” require, among other things, “a trusting human relationship,” such as, in the attorney-client context, a relationship “with a licensed professional who owes fiduciary duties and is subject to discipline.” See Ira P. Robbins, Against an AI Privilege, JOLT Dig., Harvard L. Sch. (Nov. 7, 2025), <https://jolt.law.harvard.edu/digest/against-an-ai-privilege>. No such relationship exists, or could exist, between an AI user and a platform such as Claude.

Second, the communications memorialized in the AI Documents were not confidential. This is not merely because Heppner communicated with a third-party AI platform but also because the written privacy policy to which users of Claude consent provides that Anthropic collects data on both users’ “inputs” and Claude’s “outputs,” that it uses such data to “train” Claude, and that Anthropic reserves the right to disclose such data to a host of “third parties,” including “governmental regulatory authorities.” See Anthropic, Privacy Policy (as of February 19, 2025), <https://www.anthropic.com/legal/archive/a2eecf43-807a-4a53-89dd-04c44c351138>. The policy clearly puts Claude’s users on notice that Anthropic, even in the absence of a subpoena compelling it to do so, may “disclose personal data to third parties in connection with claims, disputes[,] or litigation.” Id. More generally, as another court in this District recently observed, AI users do not have substantial privacy interests in their “conversations with [another publicly accessible AI platform] which users voluntarily disclosed” to the platform and which the platform “retains in the normal course

of its business.” In re OpenAI, Inc., Copyright Infringement Litig., No. 25 MD 3143, ECF No. 1021 at 3 (Jan. 5, 2026). For these reasons, Heppner could have had no “reasonable expectation of confidentiality in his communications” with Claude. See Mejia, 655 F.3d at 132-34. And the AI Documents are not like confidential notes that a client prepares with the intent of sharing them with an attorney because Heppner first shared the equivalent of his notes with a third-party, Claude. Cf. United States v. DeFonte, 441 F.3d 92, 95-96 (2d Cir. 2006) (per curiam).

Third, Heppner did not communicate with Claude for the purpose of obtaining legal advice. This issue perhaps presents a closer call because Heppner’s counsel asserts that Heppner communicated with Claude for the “express purpose of talking to counsel.” ECF No. 23-5. But, as Heppner’s counsel also conceded, Heppner did not do so at the suggestion or direction of counsel. See id. (noting that counsel “did not direct [Heppner] to run Claude searches”). Had counsel directed Heppner to use Claude, Claude might arguably be said to have functioned in a manner akin to a highly trained professional who may act as a lawyer’s agent within the protection of the attorney-client privilege. Cf. United States v. Adlman, 68 F.3d 1495, 1498-99 (2d Cir. 1995) (citing United States v. Kovel, 296 F.2d 918 (2d Cir. 1961)). But because Heppner communicated with Claude of his own volition, what matters for the attorney-client privilege is whether Heppner intended to obtain legal advice from Claude, not whether he later shared Claude’s outputs with counsel. And Claude disclaims providing legal

advice. Indeed, when the Government asked Claude whether it could give legal advice, it responded that "I'm not a lawyer and can't provide formal legal advice or recommendations" and went on to recommend that a user "should consult with a qualified attorney who can properly assess your specific circumstances." ECF No. 23-6 at 1-2.

Thus, the communications between Heppner and Claude were not privileged at the time they took place.³ Moreover, even assuming that Heppner intended to share these communications with his counsel and eventually did so, it is black-letter law that non-privileged communications are not somehow alchemically changed into privileged ones upon being shared with counsel. Thus, because the AI Documents "would not be privileged if they remained in [Heppner's] hands," they did not "acquire protection merely because they were transferred" to counsel. See Gould, Inc. v. Mitsui Min. & Smelting Co., Ltd., 825 F.2d 676, 679-80 (2d Cir. 1987).

III. Work Product Doctrine

Related to but distinct from the attorney-client privilege, the work product doctrine, "[a]t its core[,] . . . shelters the mental processes of the attorney, providing a privileged area within which

³ At oral argument, Heppner's counsel suggested in passing that the AI Documents may be privileged because they "incorporated information that we had conveyed to Mr. Heppner over the course of our representation." Tr. at 3. But even if certain information that Heppner input into Claude was privileged, he waived the privilege by sharing that information with Claude and Anthropic, just as if he had shared it with any other third party. Further, in light of Anthropic's privacy policy discussed above, Heppner had no reasonable expectation that the inputs would not be shared with other third parties.

he can analyze and prepare his client's case." United States v. Nobles, 422 U.S. 225, 238 (1975). The doctrine "provides qualified protection for materials prepared by or at the behest of counsel in anticipation of litigation or for trial." In re Grand Jury Subpoenas Dated March 19, 2002, and August 2, 2002, 318 F.3d 379, 383 (2d Cir. 2003). As with the attorney-client privilege, the work product doctrine is not "lightly created nor expansively construed," id. (quoting United States v. Nixon, 418 U.S. 683, 710 (1974)), and the Second Circuit has repeatedly held that the doctrine's purpose "is not generally promoted by shielding from discovery materials in an attorney's possession that were prepared neither by the attorney nor his agents," id. (citing Matter of Grand Jury Subpoenas Dated Oct. 22, 1991, and Nov. 1, 1991, 959 F.2d 1158 (2d Cir. 1992)). The doctrine's availability in reference to materials in the possession of a client "depends upon the existence of a real, rather than speculative, concern that the thought processes of [the client's] counsel in relation to pending or anticipated litigation would be exposed." Matter of Grand Jury Subpoenas, 959 F.2d at 1167 (quoting Gould, 825 F.2d at 680).

The AI Documents do not merit protection under the work product doctrine because, even assuming, arguendo, that they were prepared "in anticipation of litigation," In re Grand Jury Subpoenas, 318 F.3d at 383, they were nevertheless not "prepared by or at the behest of counsel," id., nor did they reflect defense counsel's strategy, see Matter of Grand Jury Subpoenas, 959 F.2d at 1167. As to the former, Heppner's counsel confirmed that the AI Documents "were prepared by

the defendant on his own volition.” Tr. at 5. That means that Heppner was not acting as his counsel’s agent when he communicated with Claude. As to the latter, counsel conceded that while the AI Documents did “affect” counsel’s strategy going forward, they did not “reflect” counsel’s strategy at the time that Heppner created them. See id.

At oral argument, Heppner resisted these conclusions by relying on two authorities. The first, Federal Rule of Criminal Procedure 16(b)(2)(A), is inapplicable on its face. That rule provides that, where the Government provides a defendant with pretrial discovery and the defendant thereby becomes obligated to satisfy the Government’s pretrial discovery requests, the defendant’s obligation does not extend to “discovery or inspection of reports, memoranda, or other documents made by the defendant, or the defendant’s attorney or agent, during the case’s investigation or defense.” Id. Here, however, the AI Documents were seized from Heppner, at the time of his arrest, pursuant to a search warrant the validity of which Heppner’s counsel does not challenge. See Gov’t Mot. at 3. The Government did not request them, and Heppner did not produce them, in pretrial discovery.

Heppner’s second authority is Shih v. Petal Card, Inc., 565 F. Supp. 3d 557 (S.D.N.Y. 2021). In that case, a Magistrate Judge in this District authorized the plaintiff to withhold certain communications that she had with an individual who was then her lawyer, and later became her husband, that the plaintiff prepared in anticipation of litigation or for trial. The court held that the work product doctrine protected such communications, “regardless of whether [the

lawyer/husband] was acting as her counsel at the time, and without showing that another attorney 'directed the work.'" Id. at 574.

Shih, of course, is not binding on this Court, and this Court respectfully disagrees with its holding. As relevant here, the court in Shih principally concluded that the work product doctrine is not limited to materials prepared by or at the direction of an attorney. Id. But that conclusion undermines the policy animating the work product doctrine, which, as one of the cases cited in Shih explains, is "to preserve a zone of privacy in which a lawyer can prepare and develop legal theories and strategy 'with an eye toward litigation.'" Parneros v. Barnes & Noble, Inc., 332 F.R.D. 482, 492 (S.D.N.Y. 2019) (quoting United States v. Adlman, 134 F.3d 1194, 1996 (2d Cir. 1998) (quoting, in turn, Hickman v. Taylor, 329 U.S. 495, 510-11 (1947))); see Shih, 565 F. Supp. 3d at 574 (citing Parneros). While it is true that the work product doctrine may apply to materials generated by non-lawyers, the Second Circuit has repeatedly stressed that the purpose of the doctrine is to protect lawyers' mental processes. See, e.g., In re Grand Jury Subpoenas, 318 F.3d at 383-85 (extensively describing doctrine's rationale and applying it to material "prepared by or for counsel"); Adlman, 134 F.3d at 1197 (similar); Adlman, 68 F.3d at 1500-02 (similar); Matter of Grand Jury Subpoenas, 959 F.2d at 1166 (doctrine "generally does not shield from discovery documents that were not prepared by the attorneys themselves, or their agents"); see also Bice v. Robb, 511 F. App'x 108, 110 (2d Cir. 2013) (summary

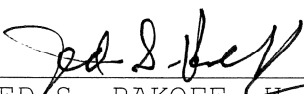
order) (declining to extend protection to documents "not the work product of an individual acting as [plaintiffs'] attorney").

Here, there is no dispute that Heppner acted on his own when he created the AI Documents. See ECF No. 23-5 (noting that defense counsel "did not direct [Heppner] to run Claude searches"); Tr. at 5 (confirming same). Because the AI Documents were not prepared at the behest of counsel and did not disclose counsel's strategy, they do not merit protection as work product.

IV. Conclusion

Generative artificial intelligence presents a new frontier in the ongoing dialogue between technology and the law. Time will tell whether, as in the case of other technological advances, generative artificial intelligence will fulfill its promise to revolutionize the way we process information. But AI's novelty does not mean that its use is not subject to longstanding legal principles, such as those governing the attorney-client privilege and the work product doctrine. Because Heppner's use of Claude fails to satisfy either of these rules, the AI Documents do not merit the protections Heppner has claimed.

New York, NY
February 17, 2026


JED S. RAKOFF, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
EDWARD S. KIEL
UNITED STATES DISTRICT JUDGE

MITCHELL H. COHEN BUILDING
& U.S. COURTHOUSE
4TH & COOPER STREETS
CAMDEN, NJ 08101
856-757-5057

RULES AND PREFERENCES

The following shall apply to civil matters assigned to District Judge Edward S. Kiel. Failure to comply with the terms of the following rules and procedures may result in sanctions pursuant to Federal Rule of Civil Procedure (“Rule”) 16(f) and Rule 37.

1. Communications with the Court. All communications to the Court shall be by CM/ECF or by telephone. Absent permission from Chambers or as otherwise provided herein, the Court will not accept or consider communications by fax, mail, or email. Judge Kiel permits communications with his law clerks only as to questions regarding Chambers’ procedures and not as to any substantive matters.

2. Adjournment Requests. Conferences and hearings, whether telephonic or in-person, are normally scheduled with ample notice to the parties. Accordingly, adjournment requests must be made no later than five business days before the scheduled conference or hearing and shall indicate whether all parties consent.

3. Copies. Two copies of all filed papers exceeding 40 pages per individual document shall be provided to Chambers by mail. Exhibits to any papers should be separated with corresponding exhibit tabs.

4. Electronic Submissions. All parties, with the exception of *pro se* parties, shall electronically file all documents. All filed papers shall be in a text-searchable PDF format as required by Local Civil Rule 5.21(h). Parties are directed to ensure that all supporting documents to a filing are docketed as attachments to the primary document. For example, a notice of motion filed at ECF No. 10, should have the supporting brief filed at ECF No. 10-1 and any further supporting documents at 10-2, 10-3, et. cetera.

5. Pro se Filings. All filings by *pro se* parties shall be mailed or filed directly with the Clerk’s Office. Documents mailed to the courthouse must be addressed to the Clerk’s Office, NOT Judge Kiel. *Pro se* parties are directed to the Procedural Guide for Pro Se Litigants found at: http://www.njd.uscourts.gov/sites/njd/files/ProSePacket_1.pdf.

6. Motion Practice.

Pre-answer Motion Procedure. In an effort to resolve cases expeditiously, a party must submit a pre-motion letter, not to exceed three single-spaced pages, requesting leave to file the following motions: (i) motion to dismiss; (ii) motion for a more definite statement; (iii) motion to remand; (iv) motion for change of venue; (v) or motion for judgment on the pleadings. The letter must set forth the basis for the anticipated motion and include citations to relevant authority. Within seven days after receipt of this letter, all adversaries must submit a written response, not to exceed three single-spaced pages. No party may submit a reply unless directed by the Court. Affidavits and exhibits are not permitted unless directed by the Court. A proffer by the attorney, however, of the contents of any such affidavit(s) and/or exhibit(s) shall suffice.

Failure to file a pre-motion letter may result in the motion being administratively terminated.

A party's submission of a pre-motion letter will toll that party's time to file its motion (or answer) through the date of the Court's decision as to whether leave will be granted. The Court reserves the right to hold a conference to determine whether leave will be granted.

This procedure does not apply to cases in which the pre-answer motions listed above are filed solely by or against *pro se* litigant(s) only, or in bankruptcy or social security appeals.

Motions for Summary Judgment. Parties may not file an early motion for summary judgment (i.e., prior to the close of fact discovery) without leave from either Judge Kiel or the Magistrate Judge. When seeking leave from Judge Kiel, the moving party must first submit a letter, no longer than three pages, summarizing the party's substantive argument. Within seven days of the moving party's letter, the party opposing the motion must submit a letter, no longer than three pages, summarizing the party's substantive argument in opposition.

Parties may not incorporate by reference, in their briefs, their numbered statements of material facts (L.Civ.R. 56.1(a)) or responses thereto

as a substitute for a statement of facts. In other words, briefs submitted as to motions for summary judgment must include a detailed statement of facts.

Extensions of Time to a Deadline. Extension requests shall be made by letter application, which shall indicate whether all parties consent.

Motion Day. The purpose of a motion's return date or "motion day" is to determine the briefing schedule for that motion. Unless otherwise notified by the Court, Judge Kiel decides all motions on the papers and no appearances are required on the motion day.

7. RICO Cases. In all matters in which the complaint contains a RICO claim, pursuant to 18 U.S.C. §§ 1961—1968, plaintiff(s) must file a RICO Case Statement within 30 days of filing the complaint, in accordance with Appendix O of the Local Civil Rules & Appendices found at: <http://www.njd.uscourts.gov/LocalRules.html>.

8. Patent Cases. Judge Kiel does not permit the filing of summary judgment motions in ANDA patent cases. A party may, however, submit a letter to the Court, not to exceed three single-spaced pages, seeking a waiver of this rule if the party believes that a summary judgment motion would assist the Court in expeditiously resolving the case and would resolve more than mere tangential issues. The letter must set forth the basis for the proposed motion for summary judgment, with citations to relevant authority, and the issue(s) expected to be resolved by the motion. Within seven days after receipt of this letter, all adversaries must submit a written response, not to exceed three single-spaced pages. No party may submit a reply unless directed by the Court.

9. Class Action Cases. It is Judge Kiel's practice to conduct a preliminary settlement approval hearing in advance of the final settlement approval hearing required by Rule 23(e). At the preliminary approval hearing the parties shall be prepared to address, in a reasonably comprehensive manner, all of the factors the Court will consider at the final approval hearing, including but not limited to the factors enumerated in Rule 23(e), *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975), and *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998).

[Link to New Jersey Judiciary Guidance on the Use of AI:](#)

[Artificial Intelligence - Use in the Courts](#)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

	:	
	:	Civil Action No.
	:	
Plaintiff(s)	:	Hon.
	:	
v.	:	JOINT PROPOSED DISCOVERY PLAN
	:	
	:	
Defendant(s)	:	
	:	
	:	

1. Set forth the name of each attorney appearing, the firm name, address and telephone number and facsimile number of each, designating the party represented.

2. Set forth a brief description of the case, including the causes of action and defenses asserted. _____

3. Have settlement discussions taken place? Yes _____ No _____
 - (a) What was plaintiff's last demand?
 - (1) Monetary demand: \$ _____
 - (2) Non-monetary demand: _____
 - (b) What was defendant's last offer?
 - (1) Monetary offer: \$ _____
 - (2) Non-monetary offer: _____

4. The parties [have _____ have not _____] met pursuant to Fed. R. Civ. P. 26(f).

5. The parties [have _____ have not _____] exchanged the information required by Fed. R. Civ. P. 26(a)(1). If not, state the reason therefor. _____
6. Explain any problems in connection with completing the disclosures required by Fed R. Civ. P. 26(a)(1). _____
7. The parties [have _____ have not _____] filed disclosures of third-party litigation funding. See Local Civil Rule 7.1.1.
8. The parties [have _____ have not _____] conducted discovery other than the above disclosures. If so, describe. _____
9. Proposed joint discovery plan:
 - (a) Discovery is needed on the following subjects: _____
 - (b) Discovery [should _____ should not _____] be conducted in phases or be limited to particular issues. Explain: _____
 - (c) Proposed schedule:
 - (1) Fed. R. Civ. P. 26 Disclosures _____.
 - (2) E-Discovery conference pursuant to L. Civ. R. 26.1(d) _____.
 - (3) Service of initial written discovery _____.
 - (4) Maximum of _____ Interrogatories by each party to each other party.
 - (5) Maximum of _____ depositions to be taken by each party.
 - (6) Motions to amend or to add parties to be filed by _____.
 - (7) Factual discovery to be completed by _____.
 - (8) Plaintiff's expert report due on _____.
 - (9) Defendant's expert report due on _____.
 - (10) Expert depositions to be completed by _____.
 - (11) Dispositive motions to be served within _____ days of completion of discovery.
 - (d) Set forth any special discovery mechanism or procedure requested.

- (e) A pretrial conference may take place on _____.
- (f) Trial date: _____ (_____ Jury Trial; _____ Non-Jury Trial).
10. Do you anticipate any special discovery needs (i.e. videotape/telephone depositions, problems with out-of-state witnesses or documents, etc)? Yes ____ No _____. If so, please explain _____.
11. Do you anticipate any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced? Yes _____ No _____.
- If so, how will electronic discovery or data be disclosed or produced? Describe any agreements reached by the parties regarding same, including costs of discovery, production, related software, licensing agreements, etc.
- _____
12. Do you anticipate entry of a Discovery Confidentiality Order? See L.Civ.R. 5.3(b) and Appendix S _____.
13. Do you anticipate any discovery problem(s) not listed above? Describe. Yes _____ No _____.
14. State whether this case is appropriate for voluntary arbitration (pursuant to Local Civil Rule 201.1 or otherwise) or mediation (pursuant to Local Civil Rule 301.1 or otherwise). If not, explain why and state whether any such procedure may be appropriate at a later time (i.e., after exchange of pretrial disclosures, after completion of depositions, after disposition or dispositive motions, etc.) _____.
15. Is this case appropriate for bifurcation? Yes _____ No _____
16. An interim status/settlement conference (with clients in attendance) should be held in _____.
17. We [do _____ do not _____] consent to the trial being conducted by a Magistrate Judge.
18. Identify any other issues to address at the Rule 16 Scheduling Conference.
- _____

Attorney(s) for Plaintiff(s) / Date

Attorney(s) for Defendant(s) / Date

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APPENDIX R. Guidelines for Litigation Conduct

Introduction

The widely-perceived, accelerating decline in professionalism - often denominated "civility" - has been the subject of increasing concern to the profession for many, years. Twice since 1988, the American Bar Association has urged adoption of, and adherence to, civility codes. What has been lacking, however, is an ABA-endorsed model code. The GUIDELINES FOR LITIGATION CONDUCT fill that void.

These GUIDELINES are consensus-driven and state nothing novel or revolutionary. They are purely aspirational and are not to be used as a basis for litigation, liability, discipline, sanctions or penalties of any type. The GUIDELINES are designed not to promote punishment but rather to elevate the tenor of practice - to set a voluntary, higher standard, "in the hope that," in the words of former ABA President John J. Curtin, ⁴⁶some progress might be made towards greater professional satisfaction."

The GUIDELINES FOR LITIGATION CONDUCT are modeled on the Standards for Professional Conduct adopted by the United States Court of Appeals for the Seventh Circuit, a set of proven aspirational standards. Chief United States District Judge Marvin E. Aspen of Chicago, architect of the Seventh Circuit Standards, has accurately observed that civility in the legal profession is inextricably linked to the manner in which lawyers are perceived by the public - and, therefore, to the deteriorating public confidence that our system of justice enjoys.

Deteriorating civility, in former ABA President Lee Cooper's words, "interrupts the administration of justice. It makes the practice of law less rewarding. It robs a lawyer of the sense of dignity and self-worth that should come from a learned profession. Not least of all, it ... brings with it all the problems ... that accompany low public regard for lawyers and lack of confidence in the justice system."

The problem of incivility is more pervasive, and insidious, than its impact on the legal profession alone. As Justice Anthony M. Kennedy has stressed:

Civility is the mark of an accomplished and superb professional, but it is more even than this. It is an end in itself. Civility has deep roots in the idea of respect for the individual.

The decline in civility is not limited to the legal profession, but this profession has been in the forefront of those addressing this problem. These GUIDELINES are offered in this spirit.

Gregory P. Joseph
Chair, 1997-1998
Section of Litigation
American Bar Association

Guidelines for Litigation Conduct

August 1998

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling our duty to represent a client vigorously as lawyers, we will be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner.

A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality, and protection against unjust and improper criticism or attack.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

The following Guidelines are designed to encourage us, judges and lawyers, to meet our obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which, are hallmarks of a learned profession dedicated to public service.

We encourage judges, lawyers and clients to make a mutual and firm commitment to these Guidelines.

We support the principles espoused in the following Guidelines, but under no circumstances should these Guidelines be used as a basis for litigation or for sanctions or penalties.

Lawyers' Duties to Other Counsel

1. We will practice our profession with a continuing awareness that our role is to zealously advance the legitimate interests of our clients. In our dealings with others we will not reflect the ill feelings of our clients. We will treat all other counsel, parties, and witnesses in a civil and courteous manner, not only in court, but also in all other written and oral communications. We will refrain from acting upon or manifesting bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status toward any participant in the legal process.

2. We will not, even when called upon by a client to do so, abuse or indulge in offensive conduct directed to other counsel, parties, or witnesses. We will abstain from disparaging personal remarks or acrimony toward other counsel, parties, or witnesses. We will treat adverse witnesses and parties with fair consideration.
3. We will not encourage or knowingly authorize any person under our control to engage in conduct that would be improper if we were to engage in such conduct.
4. We will not, absent good cause, attribute bad motives or improper conduct to other counsel.
5. We will not lightly seek court sanctions.
6. We will in good faith adhere to all express promises and to agreements with other counsel, whether oral or in writing, and to all agreements implied by the circumstances or local customs.
7. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide other counsel the opportunity to review the writing. As drafts are exchanged between or among counsel, changes from prior drafts will be identified in the draft or otherwise explicitly brought to other counsel's attention. We will not include in a draft matters to which there has been no agreement without explicitly advising other counsel in writing of the addition.
8. We will endeavor to confer early with other counsel to assess settlement possibilities. We will not falsely hold out the possibility of settlement to obtain unfair advantage.
9. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.
10. We will not use any form of discovery or discovery scheduling as a means of harassment.
11. Whenever circumstances allow, we will make good faith efforts to resolve by agreement objections before presenting them to the court.
12. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.
13. We will not request an extension of time solely for the purpose of unjustified delay or to obtain unfair advantage.
14. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.

15. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel.
16. We will promptly notify other counsel and, if appropriate, the court or other persons, when hearings, depositions, meetings, or conferences are to be canceled or postponed.
17. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided our clients' legitimate rights will not be materially or adversely affected.
18. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity, unless the rules provide otherwise.
19. We will take depositions only when actually needed. We will not take depositions for the purposes of harassment or other improper purpose.
20. We will not engage in any conduct during a deposition that would not be appropriate in the presence of a judge.
21. We will not obstruct questioning during a deposition or object to deposition questions unless permitted under applicable law.
22. During depositions we will ask only those questions we reasonably believe are necessary, and appropriate, for the prosecution or defense of an action.
23. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary, and appropriate, for the prosecution or defense of an action. We will not design production requests to place an undue burden or expense on a party, or for any other improper purpose.
24. We will respond to document requests reasonably and not strain to interpret requests in an artificially restrictive manner to avoid disclosure of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents, or to accomplish any other improper purpose.
25. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are necessary, and appropriate, for the prosecution or defense of an action, and we will not design them to place an undue burden or expense on a party, or for any other improper purpose.
26. We will respond to interrogatories reasonably and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information, or for any other improper purpose.

27. We will base our discovery objections on a good faith belief in their merit and will not object solely for the purpose of withholding or delaying the disclosure of relevant information, or for any other improper purpose.

28. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.

29. We will not ascribe a position to another counsel that counsel has not taken.

30. Unless permitted or invited by the court, we will not send copies of correspondence between counsel to the court.

31. Nothing contained in these Guidelines is intended or shall be construed to inhibit vigorous advocacy, including vigorous cross-examination.

Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.

2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.

3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.

5. We will not knowingly misrepresent, mis-characterize, misquote, or mis-cite facts or authorities in any oral or written communication to the court.

6. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

7. Before dates for hearings or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

8. We will act and speak civilly* to court marshals, clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are an integral part of the judicial system.

Courts' Duties to Lawyers

1. We will be courteous, respectful, and civil to lawyers, parties, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to insure that all litigation proceedings are conducted in a civil manner.

2. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

3. We will be punctual in convening all hearings, meetings, and conferences; if delayed, we will notify counsel, if possible.

4. In scheduling all hearings, meetings and conferences we will be considerate of time schedules of lawyers, parties, and witnesses.

5. We will make all reasonable efforts to decide promptly all matters presented to us for decision.

6. We will give the issues in controversy deliberate, impartial, and studied analysis and consideration.

7. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice.

8. We recognize that a lawyer has a right and a duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments and to make a complete and accurate record.

9. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

10. We will do our best to insure that court personnel act civilly toward lawyers, parties, and witnesses.

11. We will not adopt procedures that needlessly increase litigation expense.

12. We will bring to lawyers' attention uncivil conduct which we observe.

Judges' Duties to Each Other

1. We will be courteous, respectful, and civil in opinions, ever mindful that a position articulated by another judge is the result of that judge's earnest effort to interpret the law and the facts correctly.
2. In all written and oral communications, we will abstain from disparaging personal remarks or criticisms, or sarcastic or demeaning comments about another judge.
3. We will endeavor to work with other judges in an effort to foster a spirit of cooperation in our mutual goal of enhancing the administration of justice.

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APPENDIX S. CONFIDENTIALITY ORDER

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

Plaintiff,

vs.

Defendant.

Civil Action No. ____ Civ. ____ (XXX)

CONFIDENTIALITY ORDER

It appearing that discovery in the above-captioned action is likely to involve the disclosure of confidential information, it is ORDERED as follows:

1. Any party to this litigation and any non-party providing information in this action (hereinafter “non-party”) shall have the right to designate as “Confidential” and subject to this Order any information, document, or thing, or portion of any document or thing: (a) that contains trade secrets, competitively sensitive technical, marketing, financial, sales or other confidential business information, or (b) that contains private or confidential personal information, or (c) that contains information received in confidence from third parties, or (d) which the producing party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure and Local Civil Rule 5.3. Any party to this litigation or non-party covered by this Order, who produces or discloses any Confidential material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: “CONFIDENTIAL” or “CONFIDENTIAL – SUBJECT TO CONFIDENTIALITY ORDER” (hereinafter “Confidential”).

2. Any party to this litigation and any non-party shall have the right to designate as “Attorneys’ Eyes Only” and subject to this Order any information, document, or thing, or portion of any document or thing that contains highly sensitive business or personal information, the disclosure of which is highly likely to cause significant harm to an individual or to the business or competitive position of the designating party. Any party to this litigation or any non-party who is covered by this Order, who produces or discloses any Attorneys’ Eyes Only material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the foregoing or similar legend: “ATTORNEYS’ EYES ONLY” or “ATTORNEYS’ EYES ONLY – SUBJECT TO CONFIDENTIALITY ORDER” (hereinafter “Attorneys’ Eyes Only”).

3. All Confidential and Attorneys’ Eyes Only material shall be used by the receiving party solely for purposes of the prosecution or defense of this action, shall not be used by the receiving party for any business, commercial, competitive, personal or other purpose, and shall not be disclosed by the receiving party to anyone other than those set forth in Paragraph 4 with respect

to Confidential material, or set forth in Paragraph 6 with respect to Attorneys' Eyes Only material, unless and until the restrictions herein are removed either by written agreement of counsel for the parties, or by Order of the Court. It is, however, understood that counsel for a party may give advice and opinions to his or her client solely relating to the above-captioned action based on his or her evaluation of Confidential and Attorneys' Eyes Only material, provided that such advice and opinions shall not reveal the content of such Confidential and Attorneys' Eyes Only material except by prior written agreement of counsel for the parties, or by Order of the Court.

4. Confidential material and the contents of Confidential material may be disclosed only to the following individuals under the following conditions:

- (a) Outside counsel (herein defined as any attorney at the parties' outside law firms, which firms have appeared in the action) and relevant in-house counsel for the parties;
- (b) Outside experts or consultants retained by outside counsel for purposes of this action, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A or such other form as may be agreed by the parties;
- (c) Secretarial, paralegal, clerical, duplicating and data processing personnel of the foregoing;
- (d) The Court and court personnel;
- (e) Any deponent may be shown or examined on any information, document or thing designated Confidential if it appears that the witness authored or received a copy of it, was involved in the subject matter described therein or is employed by the party who produced the information, document or thing, or if the producing party consents to such disclosure;
- (f) Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials; and
- (g) The parties. In the case of parties that are corporations or other entities, "party" shall mean executives who are required to participate in decisions with reference to this lawsuit or are persons necessary for the prosecution or defense of this lawsuit.

5. Confidential material shall be used only by individuals permitted access to it under Paragraph 4. Confidential material, copies thereof, and the information contained therein, shall not be disclosed in any manner to any other individual, until and unless (a) outside counsel for the party asserting confidentiality waives the claim of confidentiality, or (b) the Court orders such disclosure.

6. Attorneys' Eyes Only material and the contents of Attorneys' Eyes Only material may be disclosed only to the following individuals under the following conditions:

- (a) Outside counsel (herein defined as any attorney at the parties' outside law firms, which firms have appeared in the action);
- (b) In-house counsel designated in advance of disclosure by the parties who are necessary for the prosecution or defense of the action;
- (c) Outside experts or consultants retained by outside counsel for purposes of this action, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A or such other form as may be agreed by the parties;
- (d) Secretarial, paralegal, clerical, duplicating and data processing personnel of the foregoing;
- (e) The Court and court personnel;
- (f) Any deponent may be shown or examined on any information, document or thing designated Attorneys' Eyes Only if it appears that the witness authored or received a copy of it, or was employed by the party who produced the information, document or thing, or if the producing party consents to such disclosure;
- (g) Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials; and
- (h) To such other persons as counsel for the producing party agrees or as ordered by the Court.

7. Attorneys' Eyes Only material shall be used only by individuals permitted access to it under Paragraph 6. Attorneys' Eyes Only material, copies thereof, and the information contained therein, shall not be disclosed in any manner to any other individual, until and unless (a) outside counsel for the party asserting confidentiality waives the claim of confidentiality, or (b) the Court orders such disclosure.

8. With respect to any depositions that involve a disclosure of Confidential material or Attorneys' Eyes Only material of a party or non-party, such party or non-party shall designate the transcript as containing Confidential material or Attorneys' Eyes Only material, or both, during the deposition, or within 5 days thereafter, and may have until thirty (30) days after receipt of the deposition transcript within which specifically to inform all other parties or non-parties of which portions of the transcript are to be designated Confidential or Attorneys' Eyes Only, which period may be extended by agreement of the parties. No such deposition transcript shall be disclosed to any individual other than the individuals described in Paragraph 4(a), (b), (c), (d) and (f) for Confidential material, or Paragraph 6 for Attorneys' Eyes Only material, and the deponent during

these thirty (30) days, and no individual attending such a deposition shall disclose the contents of the deposition to any individual other than those described in Paragraph 4(a), (b), (c), (d) and (f), or Paragraph 6 for Attorneys' Eyes Only material, during said thirty (30) days. Upon being informed that certain portions of a deposition are to be designated as Confidential, or Attorneys' Eyes Only, all parties shall immediately cause each copy of the transcript in its custody or control to be appropriately marked and limit disclosure of that transcript in accordance with Paragraphs 4 and 5 or Paragraphs 6 and 7, respectively.

9. If counsel for a party receiving documents or information designated as Confidential or Attorneys' Eyes Only hereunder objects to such designation of any or all of such items, the following procedure shall apply:

(a) Counsel for the objecting party shall serve on the designating party or non-party a written objection to such designation, which shall describe with particularity the documents or information in question and shall state the grounds for objection. Counsel for the designating party or non-party shall respond in writing to such objection within 14 days, and shall state with particularity the grounds for asserting that the document or information is Confidential or Attorneys' Eyes Only. If no timely written response is made to the objection, the challenged designation will be deemed to be void. If the designating party or nonparty makes a timely response to such objection asserting the propriety of the designation, counsel shall then confer in good faith in an effort to resolve the dispute.

(b) If a dispute as to a Confidential or Attorneys' Eyes Only designation of a document or item of information cannot be resolved by agreement, the proponent of the designation being challenged shall present the dispute to the Court initially by telephone or letter, in accordance with Local Civil Rule 37.1(a)(1), before filing a formal motion for an order regarding the challenged designation. The document or information that is the subject of the filing shall be treated as originally designated pending resolution of the dispute.

10. Any document designated "Confidential" or "Attorneys' Eyes Only" by a party or non-party and which is to be filed with the Court shall be filed under seal, in accordance with Local Civil Rule 5.3.

11. If the need arises during trial or at any hearing before the Court for any party to disclose Confidential or Attorneys' Eyes Only material, it may do so only after giving notice to the producing party and as directed by the Court.

12. Data Breach. If a party learns that material that party received in discovery pursuant to this Confidentiality Order has been the subject of a data breach, that party must promptly notify the producing party of the breach, and cooperate with that party to address the breach.

13. The inadvertent or unintentional disclosure of Confidential or Attorneys' Eyes Only material that should have been designated as such, regardless of whether the information, document or thing was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's or non-party's claim that it is Confidential or Attorneys' Eyes Only material, either as to the specific information, document or thing disclosed or as to any other

material or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying in writing counsel for all parties to whom the material was disclosed that the material should have been designated Confidential or Attorneys' Eyes Only within a reasonable time from discovery of the error. Such notice shall constitute a designation of the information, document or thing as Confidential or Attorneys' Eyes Only under this Confidentiality Order.

14. The production of any information, document, or thing in this litigation shall not constitute a waiver of any attorney-client privilege or work-product protection that may be asserted by the producing party either in this case or in any other federal or state proceeding. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). When the production or disclosure of any information, document, or thing protected by attorney-client privilege or work-product protection is discovered by or brought to the attention of the producing party, the treatment of such material shall be in accordance with Federal Rule of Civil Procedure 26(b)(5)(B). That treatment shall be deemed to comply with any obligations the producing party would otherwise have had pursuant to Fed. R. Evid. 502(b) or under the common law. However, nothing herein restricts the right of the receiving party to challenge the producing party's claim of attorney-client privilege or work-product protection after receiving notice of the production or disclosure of any information, document, or thing that is subject to a claim of attorney-client privilege or work-product protection.

15. If a non-party serves a party in this action with a request, subpoena, or order ("demand") for disclosure of Confidential or Attorneys' Eyes Only material, the party receiving the demand, if not prohibited under applicable law, shall promptly deliver a copy of the demand to the designating party's counsel, and shall notify the party who served the request that some or all of the materials sought by the request are subject to this Confidentiality Order. The party receiving the demand shall not disclose any Confidential or Attorneys' Eyes Only material prior to the date specified for disclosure, or prior to resolution of any dispute regarding production of such material in response to the request, whichever is later. In its sole discretion and at its own cost, the designating party may oppose or seek to limit the demand in any legal manner. The party who received the demand shall not oppose or otherwise interfere with the designating party's actions.

16. No information that is in the public domain or which is already known by the receiving party through proper means or which is or becomes available to a party from a source other than the party asserting confidentiality, rightfully in possession of such information on a non-confidential basis, shall be deemed or considered to be Confidential or Attorneys' Eyes Only material under this Confidentiality Order.

17. This Confidentiality Order shall not deprive any party of its right to object to discovery by any other party or on any otherwise permitted ground. This Confidentiality Order is being entered without prejudice to the right of any party to move the Court for modification or for relief from any of its terms.

18. This Confidentiality Order shall survive the termination of this action and shall remain in full force and effect unless modified by an Order of this Court or by the written stipulation of the parties filed with the Court.

19. Upon final conclusion of this litigation, each party or other individual subject to the terms hereof shall be under an obligation to assemble and to return to the originating source all originals and unmarked copies of documents and things containing Confidential or Attorneys' Eyes Only material or to destroy all copies of such material that contain and/or constitute attorney work product as well as excerpts, summaries and digests revealing Confidential or Attorneys' Eyes Only material; provided, however, that counsel may retain complete copies of all transcripts and court filings, including any exhibits attached thereto, for archival purposes, subject to the provisions of this Confidentiality Order. To the extent a party requests the return of Confidential or Attorneys' Eyes Only material from the Court after the final conclusion of the litigation, including the exhaustion of all appeals therefrom and all related proceedings, the party shall file a motion seeking such relief.

IT IS SO ORDERED.

Dated: _____, U.S.M.J.

EXHIBIT A**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Plaintiff,

vs.

Defendant.

Civil Action No. ____ Civ. ____ (XXX)

**AGREEMENT TO BE BOUND BY
CONFIDENTIALITY ORDER**

I, _____, being duly sworn, state that:

1. My address is _____.
2. My present employer is _____ and the address of my present employment is _____.
3. My present occupation or job description is _____.
4. I have carefully read and understood the provisions of the Confidentiality Order in this case signed by the Court, and I will comply with all provisions of the Confidentiality Order.
5. I will hold in confidence and not disclose to anyone not qualified under the Confidentiality Order any Confidential or Attorneys' Eyes Only material or any words, summaries, abstracts, or indices of Confidential or Attorneys' Eyes Only material disclosed to me.
6. I will limit use of Confidential or Attorneys' Eyes Only material disclosed to me solely for purpose of this action.
7. No later than the final conclusion of the case, I will return all Confidential or Attorneys' Eyes Only material and summaries, abstracts, and indices thereof which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____ [Name]

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May 2009

**INSTRUCTIONS AND DIRECTIVES FOR THE ASSISTANCE OF COUNSEL
IN PREPARING THE JOINT FINAL PRETRIAL ORDER
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY, CAMDEN VICINAGE**

1. ADDITIONAL DISCOVERY

When a discovery deadline is set forth in a Scheduling Order or Discovery Order, it is the clear order of the court that all discovery is to be completed within the given time period. Interrogatories and requests to produce should not be served so as to require the answering party to complete them outside the discovery period. Any applications for an extension of the discovery period shall be made **prior to the expiration of the discovery deadline** and shall initially be made to the court via letter request, in accordance with Local Civil Rule 37.1.

2. EXPERT WITNESSES

In any case where a party intends to present expert testimony, the Scheduling Order will set forth dates by which each party must submit the information required by Rule 26(a)(2), Federal Rules of Civil Procedure. Any applications for an extension of the expert report deadlines shall be made **prior to the expiration of the deadline** and shall initially be made to the court via letter request, in accordance with Local Civil Rule 37.1.

Any expert for whom such information is not provided in accordance with the Scheduling Order shall not be permitted to testify at the time of trial.

The Scheduling Order will set forth deadlines by which expert depositions may be conducted, in accordance with Rule 26(b)(4), if the parties choose to take such depositions.

3. JOINT FINAL PRETRIAL ORDER

The Joint Final Pretrial Order must be signed by all counsel and submitted to the United States Magistrate Judge in accordance with the directives in the Scheduling Order. Attorneys who submit a proposed Joint Final Pretrial Order to the court that indicates they have not followed the form and instructions that are provided herewith greatly impede the processing of litigation in this court and create burdens for the court and its staff which are unnecessary. A persistent pattern of conduct in this regard by any attorney will result in the imposition of sanctions.

The Joint Final Pretrial Order is the most important order that is submitted to the court prior to trial. A form of the Joint Final Pretrial Order, with more specific instructions, is attached hereto. It shall be signed by all counsel and shall reflect the effort of all counsel. It is the document that members of the court use for immediate reference to determine the nature of your case.

4. FINAL PRETRIAL CONFERENCE

The date of the Final Pretrial Conference will be set forth in the Scheduling Order and shall be held in accordance with Fed. R. Civ. P. 16(d). If a summary judgment or other dispositive motion is pending before the District Judge at the time of the Final Pretrial Conference, the conference may be postponed until such time as the motion is resolved. Counsel shall inform the Magistrate Judge of such pending motion in advance of the scheduled Final Pretrial Conference date and may request an adjournment.

5. SETTLEMENT CONFERENCES

Settlement conferences will be held prior to the submission of the Joint Final Pretrial Order upon the request of any counsel or upon Order of the court.

6. TRIAL DATE and PRETRIAL SUBMISSIONS TO THE COURT

The trial date set forth by the court is firm. Any application concerning the trial date should be directed to the District Judge assigned to the action.

Counsel are advised that the failure to comply with an order setting forth dates for submission of trial briefs, voir dire questions, and requests to charge or proposed findings of fact and conclusions of law when required may result in the imposition of sanctions.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

(Plaintiffs)

v.

(Defendants)

Civil No. _____

(Indicate Jury or Non-Jury)

JOINT FINAL PRETRIAL ORDER

The following shall constitute the Final Pretrial Order pursuant to Rule 16, Federal Rules of Civil Procedure. This Final Pretrial Order shall govern the conduct of the trial of this case. Amendments to this Order will be allowed only in exceptional circumstances to prevent manifest injustice. See Fed. R. Civ. P. 16(e). Counsel are urged to move to amend in a timely fashion any portion of the Order that must be changed or modified between the filing of the Order and the trial date.

APPEARANCES:

PART I. JURISDICTION and BRIEF SUMMARY OF THE CASE:

Counsel shall specifically set forth the jurisdictional basis of this action, as well as a brief summary of the claims and defenses.

PART II. STIPULATED FACTS:

Stipulated facts shall be set forth in numbered paragraphs.

PART III. EACH PLAINTIFF’S CONTESTED FACTS:

1. Plaintiff intends to prove the following contested facts with regard to liability:
2. Plaintiff intends to prove the following contested facts with regard to damages:

PART IV. EACH DEFENDANT’S CONTESTED FACTS:

1. Defendant intends to prove the following contested facts with regard to liability:
2. Defendant intends to prove the following contested facts with regard to damages:

PART V. WITNESSES and SUMMARY OF TESTIMONY:

Only the witnesses whose names and addresses are listed herein will be permitted to testify at the time of trial. For each witness listed, there must be a description of their testimony. Any objection to a witness must be noted by opposing counsel and for each such witness objected to, the name of the witness and the reason for the objection shall be given.

A. Plaintiff’s Witnesses and Summary of Their Testimony

1. Plaintiff intends to call the following witnesses with regard to liability and anticipates they will testify as follows:
2. Plaintiff intends to call the following witnesses with regard to damages and anticipates they will testify as follows:

B. Defendant’s Objections to Plaintiff’s Witnesses: If there are no objections to any of the witnesses, defendant shall so state that in this portion of the Order. If there are objections to any of plaintiff’s witnesses, they shall be listed here.**C. Defendant’s Witnesses and Summary of Their Testimony**

1. Defendant intends to call the following witnesses with regard to liability and anticipates they will testify as follows:
2. Defendant intends to call the following witnesses with regard to damages and anticipates they will testify as follows:

- D. Plaintiff's Objections to Defendant's Witnesses: If there are no objections to any of the witnesses, plaintiff shall so state that in this portion of the Order. If there are objections to any of defendant's witnesses, they shall be listed here.

PART VI. EXPERT WITNESSES:

Any prior Scheduling Order of the court concerning experts is applicable to this action and the directives of the Scheduling Order shall govern expert testimony in this case. Any expert not listed in this portion of the Final Pretrial Order shall not be permitted to testify at the time of trial. Additionally, the curriculum vitae of every expert expected to testify at the time of trial shall be attached to this Final Pretrial Order. The curriculum vitae or summary of the expert's qualifications may be read into the record at the time the expert takes the stand, and no opposing counsel shall be permitted to question the qualifications of the expert unless the basis of the objection is set forth in this Final Pretrial Order. No expert will be permitted to testify at trial unless all opposing counsel have received the curriculum vitae of the expert and the information required by Fed.R.Civ.P. 26(a)(2) as directed in the Scheduling Order.

If any hypothetical questions are to be put to an expert witness on direct examination, they shall be written in advance and submitted to the court and counsel prior to commencement of trial.

1. Plaintiff's expert witnesses are:
2. Defendant's objection to the qualifications of plaintiff's expert witnesses are:
(The objections shall be referenced to the name of each listed expert.)
3. Defendant's expert witnesses are:
4. Plaintiff's objections to the qualifications of plaintiff's expert witnesses are:
(The objections shall be referenced to the name of each listed expert.)

PART VII. EXHIBITS

In this section of the Final Pretrial Order, counsel should number each proposed exhibit and upon receipt of the exhibit list of an adversary, opposing counsel should prepare a response to this exhibit list indicating as to each exhibit whether there will be an objection and if there is, the nature of the objection. Absent an extraordinary showing of good cause, **ONLY THE EXHIBITS LISTED BELOW SHALL BE INTRODUCED AT THE TIME OF TRIAL.** You are not required to list exhibits that will be used, if at all, only for impeachment purposes.

Counsel are reminded that each such exhibit shall be physically pre-marked

corresponding to the designation below. Copies of exhibit lists shall be provided to the District Judge and the assigned court reporter at the time of trial.

A. Plaintiff's Exhibits

1. Plaintiff intends to introduce the following exhibits into evidence (list by numbers with a description of each exhibit);
2. Defendant objects to the introduction of plaintiff's exhibit (set forth number of exhibit and grounds for objection).

B. Defendant's Exhibits

1. Defendant intends to introduce the following exhibits into evidence (list by number with a description of each exhibit);
2. Plaintiff objects to the introduction of defendant's exhibit (set forth number of exhibit and grounds for objection).

PART VIII. LAW

A. Plaintiff

1. Plaintiff's statement of the legal issues in this case:

B. Defendant

1. Defendant's statement of the legal issues in this case.

PART IX. MISCELLANEOUS

Set forth any additional stipulations of counsel and/or motions on other matters which require action of the court.

Set forth any notice required to be given under Rules 40(b), 609(b), 803(24) and 804(b)(5), Federal Rules of Evidence.

PART X. NON-JURY TRIALS (If applicable)

No later than seven days prior to the scheduled trial date, counsel for each party shall submit to the District Judge, with a copy to opposing counsel, proposed findings of fact and

conclusions of law. There is reserved to counsel the right to submit additional requests during the course of the trial on those matters that cannot reasonably be anticipated.

PART XI. JURY TRIALS (If Applicable)

No later than seven days prior to the scheduled trial date or at such time as the court may direct:

1. Each party shall submit to the District Judge and to opposing counsel a trial brief or memorandum with citations and authorities and arguments in support of the party's position on all issues of law. The trial brief shall be electronically filed.
2. Each party shall submit to the District Judge and to opposing counsel written requests for charges to the jury. Supplemental requests to charge that could not have been anticipated may be submitted any time prior to the arguments to the jury. All requests for charge shall be on a separate page or pages, plainly marked with the name and number of the case; shall contain citations of supporting authorities; shall designate the party submitting same; and shall be numbered in sequence.

If you have the capability, the Proposed Requests for Charge should be submitted on computer disk, Word Perfect format. All proposed requests for charges shall be electronically filed, and a paper copy must also be provided.

3. Each party shall submit to the judge and to opposing counsel proposed voir dire questions.

EACH OF THESE ITEMS IS TO BE FILED PRIOR TO THE FIRST TRIAL DATE EVEN IF THE CASE IS CONTINUED.

COUNSEL ARE ON NOTICE THAT FAILURE TO PROVIDE TIMELY COMPLIANCE WITH THE REQUESTS OF PART X AND XI MAY RESULT IN THE POSTPONEMENT OF TRIAL AND THE ASSESSMENT OF JUROR AND OTHER COSTS AND/OR THE IMPOSITION OF SANCTION.

CONCLUDING CERTIFICATION

We hereby certify by the affixing of our signatures to this Final Pretrial Order that it reflects the efforts of all counsel and that we have carefully and completely reviewed all parts of this Order prior to its submission to the Court. Further, it is acknowledged that amendments to this Joint Final Pretrial Order will not be permitted except where the Court determines that manifest injustice would result if the amendment is not allowed.

Attorney(s) for Plaintiff(s):

Attorney(s) for Defendant(s):

Entry of the foregoing Joint Final Pretrial Order is hereby APPROVED this _____ day of _____, 20__.

[
UNITED STATES MAGISTRATE JUDGE
United States District Court
For the District of New Jersey

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NJSBA & AFBNJ

The Effect of Bankruptcy on State Court Proceedings

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OVERVIEW OF BANKRUPTCY

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Purpose

- a. Provide fresh start to the honest but unfortunate debtor
- b. Individuals and reorganized business debtors are discharged of their debts (with certain exceptions)
- c. Bankruptcy Code provides for equitable distribution of debtor's assets

Types of Bankruptcy Cases**• Chapter 7 (Liquidation)**

- Debtor surrenders all his non-exempt personal & real property to “Trustee” who distributes recovery to creditors pro-rata.
- In practice majority of Ch. 7 cases are “No-Asset” cases where debtor can discharge unsecured debt while retaining real & personal property.

• Chapter 13 (Individual Debt Adjustment)

- Debtor pays creditors, at a minimum, what they would have received in a Ch. 7 case over a period of 3-5 years, while retaining his real & personal property.
- Chapter 13 used primarily by debtors who are in arrears on home mortgage, auto lease or residential lease. Must pay such “secured” creditors in full but may reduce or eliminate unsecured debts.
- The Debtor files a plan in a Chapter 13 case. To get a distribution under the plan, the creditor must file a proof of claim within the time allowed by the Federal Rules of Bankruptcy Procedure - within 70 days after the filing of the case.

• Chapter 11 (Business Reorganization)

- Debtor stays in control and proposes a plan which, if confirmed, creates a contract that replaces pre-existing obligations

Automatic Stay - The filing of a bankruptcy case creates an automatic stay that is an injunction staying actions taken against the debtor. 11 USC §362(a) states that the filing of the case acts as a stay of:

- the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; §362(a)(1)
- the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; 362(a)(2). Property of the estate is defined by 11 U.S.C. 541(a) and includes and legal or equitable rights of the debtor as of the date of the filing of the petition. Post-petition wages are not property of the estate in Chapter 7 cases but post-petition wages **are** property of the estate in Chapter 13 cases pursuant to 11 U.S.C. §1306(a)(2)
- any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; 362(a)(3)
- any act to create, perfect, or enforce any lien against property of the estate; 362(a)(4)
- any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title; 362(a)(5)
- any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title; 362(a)(6)

Exceptions to the Automatic Stay - 11 U.S.C. §362(b) creates exceptions to the automatic stay many which deal directly with family law issues. Subsection (b) states that the filing of a petition does not operate as a stay

- under subsection (a)
 1. of the commencement or continuation of a civil action or proceeding -
 - (a) for the establishment of paternity;
 - (b) for the establishment or modification of an order for domestic support obligations;

- (c) concerning child custody or visitation;
- (d) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or
- (e) regarding domestic violence
- (2) of the collection of a domestic support obligation from property that is not property of the estate;
- (3) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;
- (4) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;
- (5) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;
- (6) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or
- (7) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

Relief from the Stay

- To obtain relief from the stay, one of the parties must file a motion for relief from the stay, or the debtor and specific creditor can enter a stipulation granting limited relief from the stay.

Extension of Automatic Stay to Third Parties

- Stay applies *only* to the Debtor
- In Chapter 13 only, automatic stay extends to a non-filing co-borrower who is 1) a consumer, and 2) liable on consumer debt with debtor – does not apply to commercial debt or co-borrowers that are not individuals
- In instances, the stay may be extended to third parties (spouse, affiliates, guarantors) upon motion with a showing of extraordinary circumstances

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FAMILY LAW

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FAMILY LAW AND BANKRUPTCY

Discharge

- 11 U.S.C. §523(a)(5) - Debts for Domestic Support Obligations are not dischargeable in a Chapter 7 Case. 11 U.S.C. §101(14A) defines the term Domestic Support Obligations. Generally, any debt owing to a spouse, former spouse or child of the debtor that is in the nature of alimony, maintenance and support of such spouse, former spouse or child of the debtor that is established or subject to establishment on or after the date of the order for relief included in a separation agreement, divorce decree or property settlement agreement or pursuant to an order of a court of record is non-dischargeable.
- 11 U.S.C. §523(a)(15) creates catch all provision and excepts from discharge debts owing to a spouse, former spouse or child of the debtor do not fall within subsection
- 11 U.S.C. §523(a)(15) does not apply in Chapter 13 cases. As a result, equitable distribution awards are dischargeable debts. 11 U.S.C. §523(a)(5) debts are non-dischargeable debts in Chapter 13 cases.

Automatic Stay

- The automatic stay does not prohibit parties from getting divorced, from establishing domestic support obligations, determining custody or visitation or dealing with domestic violence issues.
- The automatic stay does prohibit the Superior Court from equitably distributing property.
- Best practice is to consult a bankruptcy attorney before taking any action that might violate the stay.
- To obtain relief from the stay, one of the parties must file a motion for relief from the stay. The motion requires a certification explaining the cause for vacating the stay to allow the matrimonial case to proceed and complete equitable distribution.
- Alternatively, the parties may be able to enter into a consent order vacating the stay to allow the equitable distribution portion of the case proceed.

Specific Chapter 7 Issues

- In cases where the parties own real property and there is non-exempt equity in the property, 11 U.S.C. 363(h) allows a Chapter 7 Trustee to sell not only the debtor's share of jointly owned real property but also the interests of the non-debtor spouse.
- The Trustee must file an adversary proceeding naming the non-debtor spouse and the Trustee must meet four requirements:
 1. partition is impracticable;
 2. sale of an undivided interest would realize significantly less for the bankruptcy estate.
 3. the benefit to the estate outweighs the detriment to the co-owner;
 4. the property is not used for the production of electric energy or natural gas for heat, light and power

Specific Chapter 13 Issues

- Wages paid to the Debtor are property of the estate so you cannot collect past due child support from wages absent an order granting stay relief.
- To confirm a plan, a Debtor must be current on post-petition Domestic Support Obligations see 11 U.S.C. §1325(a)(8).
- Equitable Distribution awards are dischargeable in Chapter 13 cases.

PERSONAL INJURY

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PERSONAL INJURY CASES AND BANKRUPTCY

Debtor is injured prior to filing bankruptcy and then Debtor files for Bankruptcy

- Debtor must schedule the potential personal injury claim as an asset in the bankruptcy petition.
- Retention of Personal Injury Counsel
 1. 11 U.S.C. §327(e) states:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

- Chapter 7 Case
 1. Chapter 7 Trustee retains the personal injury counsel pursuant to 11 U.S.C. §327(e). Application is filed with the Bankruptcy Court and the Court enters an order approving the personal injury counsel as Special Counsel to prosecute the personal injury case.
 2. Personal Injury counsel takes direction from the Chapter 7 Trustee, not the debtor as the personal injury case is property of the estate being administered by the Trustee.
 3. If case is settled, Trustee files a motion to approve the settlement that includes provision for the personal injury attorney to be paid from the proceeds of any settlement or monies collected.
 4. Debtor's recovery is limited to their claim of exemption under 11 U.S.C. §522(d)(1)(d) in the amount of \$31,575.
 5. Balance of funds received are paid to the bankruptcy estate and creditors are paid based upon claims filed.
 6. Surplus funds after payment of all creditors, Trustees fees and commissions and the personal injury attorneys fees are turned over to the Debtor

- Chapter 13 Case

1. Debtor retains personal injury counsel pursuant to 11 U.S.C. §327(e).
2. Personal injury counsel takes direction from the Debtor.
3. If case is settled, Debtor's counsel files a motion to approve the settlement provision for the personal injury attorney to be paid from the proceeds of any settlement or monies collected.
4. Debtor receives the amount of their claimed exemption. Balance of the proceeds are turned over to the Chapter 13 Trustee to be distributed to creditors pursuant to the Debtor's Chapter 13 plan.

Debtor injured after the filing of the bankruptcy case

- Chapter 7 Case

1. Personal Injury Action is not part of the Chapter 7 estate. Debtor retains attorney and the bankruptcy court approval is not required. Debtor retains 100% of the proceeds of the lawsuit.

- Chapter 13 Case

1. Personal Injury case is property of the bankruptcy estate. Personal injury attorney must be retained and same procedure followed as if the injury occurred before the filing of the bankruptcy case.

Debtor is the Defendant in a Personal Injury Case

1. Automatic Stay - The filing of a bankruptcy case creates an automatic stay that is an injunction staying actions taken against the debtor. 11 USC §362(a) states that the filing of the case acts as a stay of:
 - a. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; §362(a)(1);
 - b. the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; 362(a)(2). Property of the estate is

defined by 11 U.S.C. 541(a) and includes and legal or equitable rights of the debtor as of the date of the filing of the petition.

- c. any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; 362(a)(3)
- d. any act to create, perfect, or enforce any lien against property of the estate; 362(a)(4)
- e. any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title; 362(a)(5)
- f. any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title; 362(a)(6)

2. Relief from the Stay

- a. Personal injury lawsuit cannot proceed until the bankruptcy court grants relief from the automatic stay.
- b. Generally relief from the stay is granted to allow the personal injury case to proceed to the extent there is insurance coverage in place.

3. File a claim

- a. If the Debtor is in a Chapter 13 case or the case is an asset Chapter 7 case, file a claim on behalf of the injured client.

4. Discharge

- a. If injury was a result of willful and malicious conduct on the part of the Debtor, the potential exists to file a dischargeability complaint and have the debt owing to the client declared non-dischargeable.
- b. If the Debtor receives a discharge, injured client likely limited to recover to the extent of insurance in place.

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MORTGAGE AND FORECLOSURE

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MORTGAGES AND FORECLOSURES IN BANKRUPTCY

Mortgages Generally

- There is a common misconception amongst lay people that a person cannot file for bankruptcy if they own a home or have a mortgage.
- Generally speaking, a person enters into a bankruptcy proceeding with their state court rights, and the bankruptcy system allows them the rules within which to organize those rights. *Butner vs. United States*, 440 U.S. 48 (1979).
- The Bankruptcy Code recognizes certain allowances for assets called exemptions, the Debtor chooses the Federal or State exemptions when filing their petition.
- The current federal exemption for equity in real property as of 4/1/2025 is \$31,575 per person pursuant to 11 U.S.C. §522(d)(1).

The Bankruptcy Code contains repeat filing protections for creditors

- The automatic stay goes into effect for only 30 days in a second bankruptcy case pending in one year. The stay is subject to extension prior to expiration by motion. 11 U.S.C. §362(c)(3).
- The automatic stay does not go into effect upon the filing of a third case pending in one year. 11 U.S.C. §362(c)(4).

Mortgages as Secured Debt

- A Note and Mortgage create a secured obligation for which the Mortgagee is entitled to file a secured claim in a bankruptcy proceeding.
- Fed. R. Bankruptcy P. 3001(c)&(d), 3002(c)(6), 3002.1
 1. Heightened Residential Requirements: Form 410A/Claim Supplements
 2. Consequences of failure to file a claim.

Mortgages and Chapter 7 Bankruptcy (Liquidation)

- Chapter 7 Bankruptcy typically will not result in a significant impact on a mortgage unless or until the property is sold by the Debtor or the Trustee.

- There is Supreme Court precedent that a mortgage lien passes through a Chapter 7 proceeding unchanged. *Dewsnup v. Timm*, 502 U.S. 410 (1992).
- A person with overwhelming general unsecured debt with zero non-exempt equity and modest income can file a Chapter 7 proceeding to discharge their debts without negatively impacting their home/mortgage.
- The Chapter 7 Trustee has the authority to step into the debtors' shoes and sell real property for which a person has a large non-exempt equity cushion. 11 U.S.C. 363.

Mortgages and Chapter 13 Bankruptcy

- Chapter 13 bankruptcy allows a borrower to reorganize their affairs, including cure of defaulted mortgage arrears.
- Defendants to a foreclosure can repay mortgage arrears and begin making ongoing payments through a Chapter 13 payment plan lasting 3 to 5 years. 11 U.S.C. §1322.

1. Final Judgment of Foreclosure

- a. The entry of a Final Judgment of Foreclosure in the state court conclusively determines the amounts due on that judgment and the standing of the Mortgagee for the purposes of bankruptcy litigation pursuant to the Rooker Feldman doctrine.

2. Sheriff Sales

- a. The Gavel Rule - The homeowner retains their full rights of ownership subject to the Mortgagee's foreclosure action and/or judgment until the sheriff sale is completed. *In re Connors*, 497 F.3d 314 (3d Cir. 2007). A bankruptcy filed before the sheriff sale is completed will stay the sheriff sale.
- b. Post-Sale Bankruptcy Filing- If the sheriff sale has already occurred but the 10-day redemption period has not expired, the right of redemption is enlarged. The redemption deadline is set as the 60th day from the day the bankruptcy petition was filed. 11 U.S.C. §108(b)(2). Only the redemption period is extended; the debtor does not have a right to reinstate the loan to cure and maintain. Must pay the lender the redemption

amount within the 60-day period.

3. Real Property Sales

- a. Homeowners retain the ability to sell their real estate during a bankruptcy proceeding with the court's approval. 11 U.S.C. §363.

Stay relief litigation occurs in Chapter 13 bankruptcy when the Debtor has failed to perform their obligations under the plan or the Bankruptcy Code.

- Stay relief can be granted for “cause” pursuant to 11 U.S.C. §362(d)(1).
- Prospective *in rem* relief may be granted for bad faith per 11 U.S.C. §362(d)(4).
- Prospective Relief Order must be recorded with the County.
 - Prospective Relief Order expires two years after entry.
 - Relief from the Co-Debtor Stay may be granted per 11 U.S.C. §1301(c).

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Proposed Legislation

United States Code Annotated

Title 11. Bankruptcy (Refs & Annos)

Chapter 1. General Provisions (Refs & Annos)

11 U.S.C.A. § 108

§ 108. Extension of time

Currentness

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under [section 1201](#) or [1301](#) of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 60 days after the order for relief.

(c) Except as provided in [section 524](#) of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under [section 1201](#) or [1301](#) of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of--

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under [section 362](#), [922](#), [1201](#), or [1301](#) of this title, as the case may be, with respect to such claim.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2556; Pub.L. 98-353, Title III, § 424, July 10, 1984, 98 Stat. 369; Pub.L. 99-554, Title II, § 257(b), Oct. 27, 1986, 100 Stat. 3114; Pub.L. 109-8, Title XII, § 1203, Apr. 20, 2005, 119 Stat. 193.)

Notes of Decisions (371)

11 U.S.C.A. § 108, 11 USCA § 108

Current through P.L. 119-1. Some statute sections may be more current, see credits for details.

End of Document

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Proposed Legislation

United States Code Annotated

Title 11. Bankruptcy (Refs & Annos)

Chapter 3. Case Administration (Refs & Annos)

Subchapter IV. Administrative Powers

11 U.S.C.A. § 363

§ 363. Use, sale, or lease of property

Currentness

(a) In this section, “cash collateral” means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in [section 552\(b\)](#) of this title, whether existing before or after the commencement of a case under this title.

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless--

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with [section 332](#), and after notice and a hearing, the court approves such sale or such lease--

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

(2) If notification is required under subsection (a) of section 7A of the Clayton Act in the case of a transaction under this subsection, then--

(A) notwithstanding subsection (a) of such section, the notification required by such subsection to be given by the debtor shall be given by the trustee; and

(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the 15th day after the date of the receipt, by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, of the notification required under such subsection (a), unless such waiting period is extended--

(i) pursuant to subsection (e)(2) of such section, in the same manner as such subsection (e)(2) applies to a cash tender offer;

(ii) pursuant to subsection (g)(2) of such section; or

(iii) by the court after notice and a hearing.

(c)(1) If the business of the debtor is authorized to be operated under [section 721](#), [1108](#), [1183](#), [1184](#), [1203](#), [1204](#), or [1304](#) of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless--

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section--

(1) in the case of a debtor that is a corporation or trust that is not a moneyed business, commercial corporation, or trust, only in accordance with nonbankruptcy law applicable to the transfer of property by a debtor that is such a corporation or trust; and

(2) only to the extent not inconsistent with any relief granted under [subsection \(c\)](#), [\(d\)](#), [\(e\)](#), or [\(f\) of section 362](#).

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or

condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under [section 362](#)).

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if--

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(g) Notwithstanding subsection (f) of this section, the trustee may sell property under subsection (b) or (c) of this section free and clear of any vested or contingent right in the nature of dower or curtesy.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if--

(1) partition in kind of such property among the estate and such co-owners is impracticable;

(2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;

(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and

(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

(i) Before the consummation of a sale of property to which subsection (g) or (h) of this section applies, or of property of the estate that was community property of the debtor and the debtor's spouse immediately before the commencement of the case, the debtor's spouse, or a co-owner of such property, as the case may be, may purchase such property at the price at which such sale is to be consummated.

(j) After a sale of property to which subsection (g) or (h) of this section applies, the trustee shall distribute to the debtor's spouse or the co-owners of such property, as the case may be, and to the estate, the proceeds of such sale, less the costs and expenses, not including any compensation of the trustee, of such sale, according to the interests of such spouse or co-owners, and of the estate.

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(l) Subject to the provisions of [section 365](#), the trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11, 12, or 13 of this title may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.

(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(n) The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

(o) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in [section 433.1 of title 16 of the Code of Federal Regulations](#) (January 1, 2004), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.

(p) In any hearing under this section--

(1) the trustee has the burden of proof on the issue of adequate protection; and

(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2572; Pub.L. 98-353, Title III, § 442, July 10, 1984, 98 Stat. 371; Pub.L. 99-554, Title II, § 257(k), Oct. 27, 1986, 100 Stat. 3115; Pub.L. 103-394, Title I, § 109, Title II, §§ 214(b), 219(c), Title V, § 501(d)(8), Oct. 22, 1994, 108 Stat. 4113, 4126, 4129, 4144; Pub.L. 109-8, Title II, §§ 204, 231(a), Title XII, § 1221(a), Apr. 20, 2005, 119 Stat. 49, 72, 195; Pub.L. 111-327, § 2(a)(13), Dec. 22, 2010, 124 Stat. 3559; Pub.L. 116-54, § 4(a)(6), Aug. 23, 2019, 133 Stat. 1086.)

[Notes of Decisions \(1692\)](#)

11 U.S.C.A. § 363, 11 USCA § 363

Current through P.L. 119-1. Some statute sections may be more current, see credits for details.

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Proposed Legislation

United States Code Annotated

Title 11. Bankruptcy (Refs & Annos)

Chapter 13. Adjustment of Debts of an Individual with Regular Income (Refs & Annos)

Subchapter II. The Plan

11 U.S.C.A. § 1322

§ 1322. Contents of plan

Currentness

(a) The plan--

(1) shall provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

(2) shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under [section 507](#) of this title, unless the holder of a particular claim agrees to a different treatment of such claim;

(3) if the plan classifies claims, shall provide the same treatment for each claim within a particular class; and

(4) notwithstanding any other provision of this section, may provide for less than full payment of all amounts owed for a claim entitled to priority under [section 507\(a\)\(1\)\(B\)](#) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

(b) Subject to subsections (a) and (c) of this section, the plan may--

(1) designate a class or classes of unsecured claims, as provided in [section 1122](#) of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

(3) provide for the curing or waiving of any default;

(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

(5) notwithstanding paragraph (2) of this subsection, provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

(6) provide for the payment of all or any part of any claim allowed under [section 1305](#) of this title;

(7) subject to [section 365](#) of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(8) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity;

(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under [section 1328\(a\)](#), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and

(11) include any other appropriate provision not inconsistent with this title.

(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law--

(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law; and

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to [section 1325\(a\)\(5\)](#) of this title.

(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than--

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$825 [originally “\$525”, adjusted effective April 1, 2022]¹ per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 5 years.

(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than--

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$825 [originally “\$525”, adjusted effective April 1, 2022]¹ per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.

(e) Notwithstanding subsection (b)(2) of this section and [sections 506\(b\) and 1325\(a\)\(5\)](#) of this title, if it is proposed in a plan to cure a default, the amount necessary to cure the default, shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

(f) A plan may not materially alter the terms of a loan described in [section 362\(b\)\(19\)](#) and any amounts required to repay such loan shall not constitute “disposable income” under [section 1325](#).

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2648; Pub.L. 98-353, Title III, §§ 316, 528, July 10, 1984, 98 Stat. 356, 389; Pub.L. 103-394, Title III, §§ 301, 305(c), Oct. 22, 1994, 108 Stat. 4131, 4134; Pub.L. 109-8, Title II, §§ 213(8), (9), 224(d), Title III, § 318(1), Apr. 20, 2005, 119 Stat. 53, 65, 93; Pub.L. 111-327, § 2(a)(43), Dec. 22, 2010, 124 Stat. 3562.)

ADJUSTMENT OF DOLLAR AMOUNTS

<For adjustment of dollar amounts specified in subsec. (d)(1)(C), (2)(C) of this section by the Judicial Conference of the United States, effective Apr. 1, 2022, see note set out under [11 U.S.C.A. § 104](#).>

<By notice published Feb. 4, 2022, 87 F.R. 6625, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (d)(1)(C) and (2)(C) of this section, effective Apr. 1, 2022, as follows:>

<Adjusted \$750 (each time it appears) to \$825 (each time it appears).>

<By notice published Feb. 12, 2019, 84 F.R. 3488, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (d)(1)(C) and (2)(C) of this section, effective Apr. 1, 2019, as follows:>

<Adjusted \$700 (each time it appears) to \$750 (each time it appears).>

<By notice published Feb. 22, 2016, 81 F.R. 8748, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (d)(1)(C) and (2)(C) of this section, effective Apr. 1, 2016, as follows:>

<Adjusted \$675 (each time it appears) to \$700 (each time it appears).>

<By notice published Feb. 21, 2013, 78 F.R. 12089, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (d)(1)(C) and (2)(C) of this section, effective Apr. 1, 2013, as follows:>

<Adjusted \$625 (each time it appears) to \$675 (each time it appears).>

<By notice published Feb. 25, 2010, 75 F.R. 8747, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (d)(1)(C) and (2)(C) of this section, effective Apr. 1, 2010, as follows:>

<Adjusted \$575 (each time it appears) to \$625 (each time it appears).>

<By notice published Feb. 14, 2007, 72 F.R. 7082, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (d) of this section, effective Apr. 1, 2007, as follows:>

<Adjusted \$525 (each time it appears) to \$575 (each time it appears).>

[Notes of Decisions \(1531\)](#)

Footnotes

¹ See Adjustment of Dollar Amounts notes set out under this section and [11 U.S.C.A. § 104](#).

11 U.S.C.A. § 1322, 11 USCA § 1322

Current through P.L. 119-1. Some statute sections may be more current, see credits for details.



KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 11. Bankruptcy (Refs & Annos)
Chapter 13. Adjustment of Debts of an Individual with Regular Income (Refs & Annos)
Subchapter II. The Plan

11 U.S.C.A. § 1325

§ 1325. Confirmation of plan

Currentness

(a) Except as provided in subsection (b), the court shall confirm a plan if--

(1) The plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan--

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that--

(I) the holder of such claim retain the lien securing such claim until the earlier of--

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under [section 1328](#); and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if--

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan;

(7) the action of the debtor in filing the petition was in good faith;

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by [section 1308](#).

For purposes of paragraph (5), [section 506](#) shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in [section 30102 of title 49](#)) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

(2) For purposes of this subsection, the term “disposable income” means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended--

(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of “charitable contribution” under [section 548\(d\)\(3\)](#)) to a qualified religious or charitable entity or organization (as defined in [section 548\(d\)\(4\)](#)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(3) Amounts reasonably necessary to be expended under paragraph (2), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with [subparagraphs \(A\) and \(B\) of section 707\(b\)\(2\)](#), if the debtor has current monthly income, when multiplied by 12, greater than--

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$825 [originally “\$525”, adjusted effective April 1, 2022]¹ per month for each individual in excess of 4.

(4) For purposes of this subsection, the “applicable commitment period”--

(A) subject to subparagraph (B), shall be--

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than--

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus \$825 [originally “\$525”, adjusted effective April 1, 2022)¹ per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

CREDIT(S)

(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2649; Pub.L. 98-353, Title III, §§ 317, 530, July 10, 1984, 98 Stat. 356, 389; Pub.L. 99-554, Title II, § 283(y), Oct. 27, 1986, 100 Stat. 3118; Pub.L. 105-183, § 4(a), June 19, 1998, 112 Stat. 518; Pub.L. 109-8, Title I, § 102(g), (h), Title II, § 213(10), Title III, §§ 306(a), (b), 309(c)(1), 318(2), (3), Title VII, § 716(a), Apr. 20, 2005, 119 Stat. 33, 53, 80, 83, 93, 129; Pub.L. 109-439, § 2, Dec. 20, 2006, 120 Stat. 3285; Pub.L. 111-327, § 2(a)(44), Dec. 22, 2010, 124 Stat. 3562; Pub.L. 116-136, Div. A, Title I, § 1113(b)(1)(B), (2)(A)(ii), Mar. 27, 2020, 134 Stat. 311, 312; Pub.L. 116-260, Div. N, Title III, § 320(e), (f)(2)(A)(v), Dec. 27, 2020, 134 Stat. 2016, 2017.)

ADJUSTMENT OF DOLLAR AMOUNTS

<For adjustment of dollar amounts specified in subsec. (b)(3) and (4) of this section by the Judicial Conference of the United States, effective Apr. 1, 2022, see note set out under 11 U.S.C.A. § 104.>

<By notice published Feb. 4, 2022, 87 F.R. 6625, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b)(3) and (4) of this section, effective Apr. 1, 2022, as follows:>

<Adjusted \$750 (each time it appears) to \$825 (each time it appears).>

<By notice published Feb. 12, 2019, 84 F.R. 3488, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b)(3) and (4) of this section, effective Apr. 1, 2019, as follows:>

<Adjusted \$700 (each time it appears) to \$750 (each time it appears).>

<By notice published Feb. 22, 2016, 81 F.R. 8748, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b)(3) and (4) of this section, effective Apr. 1, 2016, as follows:>

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<Adjusted \$625 (each time it appears) to \$675 (each time it appears).>

<By notice published Feb. 25, 2010, 75 F.R. 8747, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b)(3) and (4) of this section, effective Apr. 1, 2010, as follows:>

<Adjusted \$575 (each time it appears) to \$625 (each time it appears).>

<By notice published Feb. 14, 2007, 72 F.R. 7082, the Judicial Conference of the United States adjusted the dollar amounts in provisions specified in subsec. (b) of this section, effective Apr. 1, 2007, as follows:>

<Adjusted \$525 (each time it appears) to \$575 (each time it appears).>

[Notes of Decisions \(2335\)](#)

Footnotes

¹ See Adjustment of Dollar Amounts notes set out under this section and [11 U.S.C.A. § 104](#).

11 U.S.C.A. § 1325, 11 USCA § 1325

Current through P.L. 119-1. Some statute sections may be more current, see credits for details.

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Superseded by Statute as Stated in [In re Minkina](#), 1st Cir.(Mass.), August 24, 2023

99 S.Ct. 914

Supreme Court of the United States

William E. BUTNER, Petitioner,

v.

UNITED STATES et al.

No. 77-1410.

|

Argued Nov. 27, 1978.

|

Decided Feb. 21, 1979.

Synopsis

Second mortgagee petitioned for certiorari review of the decision of [the United States Court of Appeals for the Fourth Circuit, 566 F.2d 1207](#), reversing a decision of the United States District Court for the Western District of North Carolina. The Court of Appeals held that it had no right to rents collected during the period between mortgagor's bankruptcy and the foreclosure sale of the mortgaged property. The Supreme Court, Mr. Justice Stevens, held that question of whether a security interest in property extends to rents and profits derived from the property was one resolvable by reference to state law, not some federal rule of equity, and the Court would not consider that state-law issue.

Affirmed.

West Headnotes (2)

[1] Bankruptcy **Effect of state law, in general**

In bankruptcy proceedings, question of whether security interest in property extended to rents and profits derived from that property was resolvable by reference to state law, not some federal rule of equity.

[3304 Cases that cite this headnote](#)**[2] Federal Courts** **Scope and Extent of Review**

On certiorari review of dispute between bankruptcy trustee and second mortgagee over right to rents collected during period between mortgagor's bankruptcy and foreclosure sale of mortgaged property, Supreme Court would not consider state-law issue, on ground that federal judges who deal regularly with questions of state law in their respective districts and circuits were in better position to determine how local courts would dispose of such issues.

[1195 Cases that cite this headnote](#)****914 *48 Syllabus***

In Chapter XI arrangement proceedings under the Bankruptcy Act, petitioner acquired a second mortgage on certain North Carolina real estate to secure a \$360,000 indebtedness but received no express security interest in the rents earned by the property. The bankruptcy judge thereafter appointed an agent to collect the rents and apply them to the payment of taxes, insurance, interest, and principal payments due on the first and second mortgages. The mortgagor was later adjudicated a bankrupt, at which time the first and second mortgages were in default, and the trustee was ordered to collect and retain all rents. The bankrupt's properties were ultimately sold to petitioner for \$174,000, that price being paid by reduction of the estate's indebtedness to petitioner from \$360,000 to \$186,000. At the sale date the trustee had accumulated almost \$163,000 in rents which petitioner unsuccessfully sought to have applied to the balance of the second mortgage indebtedness, the bankruptcy judge ruling that the \$186,000 balance due petitioner should be treated as a general unsecured claim. The District Court reversed. Though recognizing that under North Carolina law a mortgagor is deemed the owner of the land subject to the mortgage and during his possession is entitled to rents and profits, even after default, the court viewed the agent's appointment during the arrangement proceedings as tantamount to the appointment of a receiver which satisfied the state-law requirement of a change of possession, giving the mortgagee an interest in the rents which no further action after the bankruptcy adjudication was required to preserve. The Court of Appeals reversed, reinstating the disposition of the bankruptcy judge. The appellate court held that the bankruptcy adjudication had terminated the state-court receivership status ****915** arising out of the appointment of the agent to collect rents,

and that because petitioner had made no request *during the bankruptcy* for a sequestration of rents or for the appointment of a receiver, petitioner had not taken the kind of action North Carolina law required to give a mortgagee a security interest in the rents collected after the bankruptcy adjudication. *Held*: Apart from certain special provisions, the Bankruptcy Act generally leaves the determination of property rights in the assets of a bankrupt's estate to ***49** state law. The law of the State where the property is located accordingly governs a mortgagee's right to rents during bankruptcy, and a federal bankruptcy court should take whatever steps are necessary to ensure that a mortgagee is afforded in federal bankruptcy court the same protection he would have under state law had no bankruptcy ensued. Though the general principle of the applicability of state law to determine property rights in a bankrupt's assets was applied by both the District Court and the Court of Appeals (and those courts properly did not follow the minority federal equity rule under which a mortgagee is afforded a secured interest in rents even if state law would not recognize any such interest until after foreclosure), those courts disagreed about the requirements of North Carolina law. However, that state-law issue as such will not be reviewed by this Court. Pp. 916–919.

[566 F.2d 1207](#), affirmed.

Attorneys and Law Firms

J. Steven Brackett, Hickory, N.C., for petitioner.

Allan A. Ryan, Jr., Washington, D.C., for respondent the United States.

Joe N. Cagle, Hickory, N.C., for respondents, Cagle et al.

Opinion

Mr. Justice STEVENS delivered the opinion of the Court.

A dispute between a bankruptcy trustee and a second mortgagee over the right to the rents collected during the period between the mortgagor's bankruptcy and the foreclosure sale of the mortgaged property gave rise to the question we granted certiorari to decide. [436 U.S. 955, 98 S.Ct. 3067, 57 L.Ed.2d 1120](#). That question is whether the right to such rents is determined by a federal rule of equity or by the law of the State where the property is located.

On May 14, 1973, Golden Enterprises, Inc. (Golden), filed a petition for an arrangement under Chapter XI of the

Bankruptcy Act. [11 U.S.C. §§ 701–799](#). In those proceedings, the bankruptcy judge approved a plan consolidating various liens on North Carolina real estate owned by Golden. As a result, petitioner acquired a second mortgage securing an indebtedness of \$360,000.¹ Petitioner did not, however, receive any express security interest in the rents earned by the property.

On April 18, 1974, the bankruptcy judge granted Golden's motion to appoint an agent to collect the rents and to apply them as directed by the court. The order of appointment provided that the money should be applied to tax obligations, payments on the first mortgage, fire insurance premiums, and interest and principal on the second mortgage. There is no dispute about the collections or payments made pursuant to that order.

The arrangement plan was never confirmed. On February 14, 1975, Golden was adjudicated a bankrupt, and the trustee in bankruptcy was appointed. At that time both the first and second mortgages were in default. The trustee was ordered to collect and retain all rents “to the end that the same may be applied under this or different or further orders of [the bankruptcy] [c]ourt.” App. 342a–343a.

After various alternatives were considered, and after the District Court refused ****916** to confirm a first sale, the properties were ultimately sold to petitioner on November 12, 1975, for \$174,000. That price was paid by reducing the estate's indebtedness to petitioner from \$360,000 to \$186,000.

As of the date of sale, a fund of \$162,971.32 had been accumulated by the trustee pursuant to the February 14 court order that he collect and retain all rents. On December 1, ***51** 1975, petitioner filed a motion claiming a security interest in this fund and seeking to have it applied to the balance of the second mortgage indebtedness. The bankruptcy judge denied the motion, holding that the \$186,000 balance due to petitioner should be treated as a general unsecured claim.

The District Court reversed. It recognized that under North Carolina law, a mortgagor is deemed the owner of the land subject to the mortgage and is entitled to rents and profits, even after default, so long as he retains possession. But the court viewed the appointment of an agent to collect rents during the arrangement proceedings as tantamount to the appointment of a receiver. This appointment, the court concluded, satisfied the state-law requirement of a change of possession giving the mortgagee an interest in the rents;

no further action after the adjudication in bankruptcy was required to secure or preserve this interest.

The Court of Appeals reversed and reinstated the disposition of the bankruptcy judge. *Golden Enterprises, Inc. v. United States*, 566 F.2d 1207. The court acknowledged that the agent appointed to collect rents before the bankruptcy was equivalent to a state-court receivership, but held that the adjudication terminated that relationship. Because petitioner had made no request *during the bankruptcy* for a sequestration of rents or for the appointment of a receiver, petitioner had not, in the court's view, taken the kind of action North Carolina law required to give the mortgagee a security interest in the rents collected after the bankruptcy adjudication. One judge dissented, adopting the position of the District Court. *Id.*, at 1211.

I

We did not grant certiorari to decide whether the Court of Appeals correctly applied North Carolina law. Our concern is with the proper interpretation of the federal statutes governing the administration of bankrupt estates. Specifically, it is our purpose to resolve a conflict between the Third and *52 Seventh Circuits on the one hand, and the Second, Fourth, Sixth, Eighth, and Ninth Circuits on the other, concerning the proper approach to a dispute of this kind.

The courts in the latter group regard the question whether a security interest in property extends to rents and profits derived from the property as one that should be resolved by reference to state law.² In a few States, sometimes referred to as "title States," the mortgagee is automatically entitled to possession of the property, and to a secured interest in the rents.³ In most **917 States, the mortgagee's right to rents is *53 dependent upon his taking actual or constructive possession of the property by means of a foreclosure, the appointment of a receiver for his benefit, or some similar legal proceeding.⁴ Because the applicable law varies from State to State, the results in federal bankruptcy proceedings will also vary under the approach taken by most of the Circuits.

The Third and Seventh Circuits have adopted a federal rule of equity that affords the mortgagee a secured interest in the rents even if state law would not recognize any such interest until after foreclosure.⁵ Those courts reason that since the bankruptcy court has the power to deprive the mortgagee of his state-law remedy, equity requires that the right to rents not be dependent on state-court action that may be precluded by

federal law.⁶ Under this approach, no affirmative steps *54 are required by the mortgagee—in state or federal court—to acquire or maintain a right to the rents.

II

[1] We agree with the majority view.

The constitutional authority of Congress to establish "uniform Laws on the subject of Bankruptcies throughout the United States"⁷ would clearly encompass a federal statute defining the mortgagee's interest in the rents and profits earned by property in a bankrupt estate. But Congress has not chosen to exercise its power to fashion any such rule. The Bankruptcy Act does include provisions invalidating certain security interests as fraudulent, or as improper preferences over general creditors.⁸ Apart **918 from these provisions, however, Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law.⁹

*55 Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding. Uniform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving "a windfall merely by reason of the happenstance of bankruptcy." *Lewis v. Manufacturers National Bank*, 364 U.S. 603, 609, 81 S.Ct. 347, 350, 5 L.Ed.2d 323. The justifications for application of state law are not limited to ownership interests; they apply with equal force to security interests, including the interest of a mortgagee in rents earned by mortgaged property.¹⁰

The minority of courts which have rejected state law have not done so because of any congressional command, or because their approach serves any identifiable federal interest. Rather, they have adopted a uniform federal approach to the question of the mortgagee's interest in rents and profits because of their perception of the demands of equity. The equity powers of the bankruptcy court play an important part in the *56 administration of bankrupt estates in countless situations in which the judge is required to deal with particular, individualized problems. But undefined considerations of equity provide no basis for adoption of a uniform federal rule

affording mortgagees an automatic interest in the rents as soon as the mortgagor is declared bankrupt.

In support of their rule, the Third and Seventh Circuits have emphasized that while the mortgagee may pursue various state-law remedies prior to bankruptcy, the adjudication leaves the mortgagee “only such remedies as may be found in a court of bankruptcy in the equitable administration of the bankrupt’s assets.” *Bindseil v. Liberty Trust Co.*, 248 F. 112, 114 (CA3 1917).¹¹ It does not follow, however, that “equitable administration” requires that all mortgagees be afforded an automatic security interest in rents and profits when state law would deny such an automatic benefit and require the mortgagee to take some affirmative action before his rights are recognized. What does follow is that the federal bankruptcy court should take whatever steps are necessary to ensure that the mortgagee is afforded in federal bankruptcy court the same protection he would have under state law if no bankruptcy had ensued. This is the majority view, which we adopt today.

The rule of the Third and Seventh Circuits, at least in some circumstances, affords the mortgagee rights that are not his as a matter of state law. The rule we adopt avoids this inequity because it looks to state law to define the security interest **919 of the mortgagee. At the same time, our decision avoids the opposite inequity of depriving a mortgagee of his state-law security interest when bankruptcy intervenes. For while it is argued that bankruptcy may impair or delay the mortgagee’s exercise of his right to foreclosure, and thus his acquisition of a security interest in rents according to the law *57 of many States, a bankruptcy judge familiar with local practice should be able to avoid this potential loss by sequestering rents or authorizing immediate state-law foreclosures. Even though a federal judge may temporarily delay entry of such an order, the loss of rents to the mortgagee normally should be no greater than if he had been proceeding in a state court: for if there is a reason that persuades a federal judge to delay, presumably the same reason would also persuade a state judge to withhold foreclosure temporarily. The essential point is that in a properly administered scheme in which the basic federal rule is that state law governs, the

primary reason why any holder of a mortgage may fail to collect rent immediately after default must stem from state law.

III

[2] Recognizing that the bankruptcy frustrated petitioner’s right to take possession of the mortgaged property and thereby to establish his right to rents as a matter of North Carolina law, the Court of Appeals assumed that a request to the bankruptcy judge for sequestration of rents, for the appointment of a receiver, or for permission to proceed with a state-court foreclosure would have satisfied the state-law requirement. Since none of these steps was taken during the bankruptcy, the Court of Appeals held that petitioner had no right to the rents.

The dissenting judge in the Court of Appeals, as well as the District Judge, felt that the action taken during the arrangement proceedings, coupled with informal requests for abandonment of the property during the bankruptcy, was sufficient to comply with North Carolina law. Neither of these judges, however, based his analysis on the federal rule followed in the Third and Seventh Circuits. They merely disagreed with the majority about the requirements of North Carolina law.

In this Court the parties have argued the state-law question at great length, each stressing different aspects of the *58 record. We decline to review the state-law question. The federal judges who deal regularly with questions of state law in their respective districts and circuits are in a better position than we to determine how local courts would dispose of comparable issues.¹²

The judgment is affirmed.

It is so ordered.

All Citations

440 U.S. 48, 99 S.Ct. 914, 59 L.Ed.2d 136, 19 C.B.C. 481, Bankr. L. Rep. P 67,046

Footnotes

- * The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.
- 1 Originally, the second mortgage was held by petitioner along with Robert L. McKaughn, Jr., and Jack Sipe Construction Co. Subsequently, McKaughn and the Sipe Construction Co. assigned all of their rights in the indebtedness and deeds of trust to petitioner, thus making him the sole second mortgagee.
- 2 See *In re Brose*, 254 F. 664, 666 (CA2 1918) (“The general rule is that the mortgagee is not entitled to the rents and profits of the mortgaged premises until he takes actual possession, or until possession is taken, in his behalf, by a receiver, . . . or until, in proper form, he demands and is refused possession.’ This general rule the federal courts will follow, except in cases where it appears that the law of the state where the premises are situated applies a different rule”) (quoting *Freedman’s Savings & Trust Co. v. Shepherd*, 127 U.S. 494, 502–503, 8 S.Ct. 1250, 1254, 32 L.Ed. 163); *Tower Grove Bank & Trust Co. v. Weinstein*, 119 F.2d 120, 122 (CA8 1941) (“In this circuit the law is settled that the construction of mortgages is governed by local state law”); *In re Hotel St. James Co.*, 65 F.2d 82 (CA9 1933); *In re American Fuel & Power Co.*, 151 F.2d 470, 481 (CA6 1945). See also *Fidelity Bankers Life Ins. Co. v. Williams*, 506 F.2d 1242, 1243 (CA4 1974). See generally 4A W. Collier, *Bankruptcy* ¶ 70.16, pp. 157–165 (14th ed. 1975); Hill, *The Erie Doctrine in Bankruptcy*, 66 Harv.L.Rev. 1013 (1953).
- 3 In some title States, the mortgagee’s right to rents and profits may be exercised even prior to default, see *Me.Rev.Stat.Ann.*, Tit. 33, § 502 (1964); in all events, the right at least attaches upon default, see *Uvalda Naval Stores Co. v. Cullen*, 165 Ga. 115, 117, 139 S.E. 810, 811 (1927). See generally R. Kratovil, *Modern Mortgage Law and Practice* § 294, p. 204 (1972); Comment, *The Mortgagee’s Right to Rents and Profits Following a Petition in Bankruptcy*, 60 Iowa L.Rev. 1388, 1390–1391 (1975).
- North Carolina has been classified as a “title” State, Comment, *The Mortgagee’s Right to Rents After Default*, 50 Yale L.J. 1424, 1425 n. 6 (1941), although it does not adhere to this theory in its purest form. Under its case law, a mortgagee is entitled to possession of the mortgaged property upon default, and need not await actual foreclosure. Such possession might be secured either with the consent of the mortgagor or by an action in ejectment. But so long as the mortgagor does remain in possession, even after default, he—not the mortgagee—appears to be entitled to the rents and profits. See *Brannock v. Fletcher*, 271 N.C. 65, 155 S.E.2d 532 (1967); *Gregg v. Williamson*, 246 N.C. 356, 98 S.E.2d 481 (1957); *Kistler v. Development Co.*, 205 N.C. 755, 757, 172 S.E. 413, 414 (1934) (“In the absence of a stipulation to the contrary a mortgagor of real property who is permitted to retain possession is entitled to the rents and profits. *Credle v. Ayers*, 126 N.C. 11, 35 S.E. 128. As between the mortgagor and the mortgagee equity makes the mortgage a charge upon the rents and profits when the mortgagor is insolvent and the security is inadequate . . . but the prevailing rule is that a mortgagee is not entitled to rents until entry is made or a suit for foreclosure has begun”).
- 4 See *Tower Grove Bank & Trust Co. v. Weinstein*, *supra*; *Central States Life Ins. Co. v. Carlson*, 98 F.2d 102 (CA10 1938); 4A Collier, *supra*, n. 2, at 157–158.
- 5 See *Bindseil v. Liberty Trust Co.*, 248 F. 112 (CA3 1917); *In re Pittsburgh-Duquesne Development Co.*, 482 F.2d 243 (CA3 1973); *In re Wakey*, 50 F.2d 869 (CA7 1931).
- 6 See, e. g., *Central Hanover Bank & Trust Co. v. Philadelphia & Reading Coal & Iron Co.*, 99 F.2d 642, 645 (CA3 1938):

“It is settled in this circuit that in a bankruptcy proceeding a mortgage creditor is entitled without prior demand to the net income of the mortgaged property from the date of adjudication if it is needed to pay the amount due him. . . . This is because the bankruptcy proceeding has taken from the Debtor the possession of his

property and in so doing has deprived the mortgage creditor of his ordinary remedy to reach the property mortgaged and its income. It, therefore, follows upon equitable principles, as Judge Woolley pointed out in *Bindseil v. Liberty Trust Co.*, *supra*, . . . ‘that after insolvency has taken the debtor’s property out of his hands, its income or product belongs to the lien creditor, who has thus become its virtual owner; and that such income or product issuing from mortgaged property, should not be diverted from the mortgage creditor who has a lien to general creditors who have no lien.’ ”

7 U.S.Const., Art. I, § 8, cl. 4.

8 See 1 U.S.C. §§ 96(a) and (b) (authorizing trustee to void as preferences certain transfers made by the bankrupt within four months of bankruptcy); §§ 107(a) and (d) (invalidating certain liens obtained through judicial proceedings within four months of bankruptcy and certain fraudulent transfers made within one year of bankruptcy); § 110(c) (authorizing trustee to strike down secret liens and transfers); § 110(e) (invalidating any transfer deemed fraudulent under federal or state law). See generally 3 Collier, *supra*, n. 2, ¶ 60.01, pp. 743–746.

9 “The Federal Constitution, Article I, § 8, gives Congress the power to establish uniform laws on the subject of bankruptcy throughout the United States. In view of this grant of authority to the Congress it has been settled from an early date that state laws to the extent that they conflict with the laws of Congress, enacted under its constitutional authority, on the subject of bankruptcies are suspended. While this is true, state laws are thus suspended only to the extent of actual conflict with the system provided by the Bankruptcy Act of Congress. *Sturges v. Crowninshield*, 4 Wheat. 122, 4 L.Ed. 529; *Ogden v. Saunders*, 12 Wheat. 213, 6 L.Ed. 606.

“Notwithstanding this requirement as to uniformity the bankruptcy acts of Congress may recognize the laws of the state in certain particulars, although such recognition may lead to different results in different States. For example, the Bankruptcy Act recognizes and enforces the laws of the states affecting dower, exemptions, the validity of mortgages, priorities of payment and the like. Such recognition in the application of state laws does not affect the constitutionality of the Bankruptcy Act, although in these particulars the operation of the act is not alike in all the states.” *Stellwagen v. Clum*, 245 U.S. 605, 613, 38 S.Ct. 215, 217, 62 L.Ed. 507.

10 Conversely, the federal statutory basis for voiding fraudulent and preferential transfers in order to protect general creditors applies to both security interests and other interests in property.

11 See also *Central Hanover Bank & Trust Co. v. Philadelphia & Reading Coal & Iron Co.*, *supra*; *In re Wakey*, *supra*.

12 See *The Tungus v. Skovgaard*, 358 U.S. 588, 596, 79 S.Ct. 503, 508, 3 L.Ed.2d 524; *United New York & New Jersey Sandy Hook Pilots Assn. v. Halecki*, 358 U.S. 613, 615, 79 S.Ct. 517, 518, 3 L.Ed.2d 541. See also *Bishop v. Wood*, 426 U.S. 341, 345–346, 96 S.Ct. 2074, 2077–2078, 48 L.Ed.2d 684.



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Disagreement Recognized by [Bank of America, N.A. v. Caulkett](#), U.S.,
June 1, 2015

112 S.Ct. 773

Supreme Court of the United States

Aletha **DEWSNUP**, Petitioner

v.

Louis L. **TIMM** et al.

No. 90–741.

|

Argued Oct. 15, 1991.

|

Decided Jan. 15, 1992.

Synopsis

Chapter 7 debtor commenced adversary proceeding to determine validity and extent of note and trust deed held on debtors' real property. The United States Bankruptcy Court for the District of Utah, [87 B.R. 676](#), [Glen E. Clark](#), Chief Judge, ruled that debtors could not redeem real property, which had been or would be abandoned to them, by paying to secured creditors the fair market value of property, and one debtor appealed. The District Court summarily affirmed, and debtor appealed. The Court of Appeals, [908 F.2d 588](#), affirmed, and debtor petitioned for writ of certiorari, which was granted. The Supreme Court, Justice [Blackmun](#), held that Chapter 7 debtor could not “strip down” creditors' lien on real property to judicially determined value of collateral.

Affirmed.

Justice [Scalia](#) filed dissenting opinion in which Justice [Souter](#) joined.

Justice [Thomas](#) took no part in the consideration or decision of this case.

Procedural Posture(s): On Appeal.

West Headnotes (10)

[1] **Bankruptcy** 🔑 Liens securing claims not allowed

“Allowed secured claim,” within meaning of Bankruptcy Code provision which allows avoidance of lien to extent that it secures claim against debtor that is not “allowed secured claim,” need not be defined by reference to another provision, which states that an allowed claim of creditor secured by lien on property in which estate has interest is secured claim to extent of value of such creditor's interest in estate's interest in such property and is unsecured claim to extent that value of such creditor's interest is less than amount of such allowed claim. Bankr.Code, [11 U.S.C.A. § 506\(a, d\)](#).

[476 Cases that cite this headnote](#)

[2] **Bankruptcy** 🔑 Liens securing claims not allowed

Chapter 7 debtor could not “strip down” creditors' lien on real property to judicially determined value of collateral, where creditors' claim was secured by lien and had been fully allowed. Bankr.Code, [11 U.S.C.A. §§ 502, 506\(d\)](#).

[647 Cases that cite this headnote](#)

[3] **Bankruptcy** 🔑 Liens and Transfers; Avoidability

Creditor's lien stays with real property until foreclosure, despite debtor's bankruptcy filing. Bankr.Code, [11 U.S.C.A. § 506\(d\)](#).

[172 Cases that cite this headnote](#)

[4] **Bankruptcy** 🔑 Amount secured; partial security

Any increase during bankruptcy over judicially determined valuation of property subject to mortgage rightly accrues to benefit of creditor, not to benefit of debtor and not to benefit of other unsecured creditors whose claims have been allowed and who had nothing to do with mortgagor-mortgagee bargain.

[117 Cases that cite this headnote](#)

[5] **Bankruptcy** 🔑 Liens securing claims not allowed

Creditor's acquiescence in bankruptcy proceeding did not allow creditor's lien to be "stripped down" to judicially determined value of real property collateral. Bankr.Code, 11 U.S.C.A. § 506(d).

301 Cases that cite this headnote

[6] **Bankruptcy** 🔑 Liens and Transfers; Avoidability

Under Bankruptcy Act of 1898, lien on real property passed through bankruptcy unaffected. Act July 1, 1898, § 67, subd. d, 30 Stat. 544.

136 Cases that cite this headnote

[7] **Bankruptcy** 🔑 Liens securing claims not allowed

Apart from reorganization proceedings, no provision of bankruptcy statute prior to enactment of Bankruptcy Code permitted involuntary reduction of amount of creditor's lien for any reason other than payment on debt. Bankr.Act, § 216(1, 10), 11 U.S.C.(1976 Ed.) § 616(1, 10).

31 Cases that cite this headnote

[8] **Bankruptcy** 🔑 Mortgages and pledges

Congress must have enacted Bankruptcy Code with full understanding of practice that mortgagee cannot be compelled to relinquish property to mortgagor free of lien unless debt is paid in full.

84 Cases that cite this headnote

[9] **Bankruptcy** 🔑 Construction and Operation

Congress does not write "on a clean slate" when it amends bankruptcy laws.

116 Cases that cite this headnote

[10] **Statutes** 🔑 Plain, literal, or clear meaning; ambiguity

When statutory language is unambiguous, silence in legislative history cannot be controlling.

76 Cases that cite this headnote

****774 Syllabus ***

***410** Petitioner **Dewsnup**, the debtor in a case under Chapter 7 of the Bankruptcy Code, filed an adversary proceeding, contending that the debt of approximately \$120,000 that she owed to respondents exceeded the fair market value of the land securing the debt and that, therefore, the Bankruptcy Court should reduce respondents' lien on the land to the land's fair market value pursuant to 11 U.S.C. § 506(d), which provides that a lien is void "[t]o the extent that [it] secures a claim against the debtor that is not an allowed secured claim." **Dewsnup** reasoned that respondents would have such an "allowed secured claim" only to the extent of the judicially determined value of their collateral, since, under § 506(a), "[a]n allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property." The court determined that the then value of the land in question was \$39,000, but refused to grant the requested relief and entered a judgment of dismissal with prejudice. The District Court and the Court of Appeals affirmed.

Held: Section 506(d) does not allow **Dewsnup** to "strip down" respondents' lien to the judicially determined value of the collateral, because respondents' claim is secured by a lien and has been fully allowed pursuant to § 502 and, therefore, cannot be classified as "not an allowed secured claim" for purposes of the lien-voiding provision of § 506(d). Pp. 776–779.

(a) The contrasting positions of the parties and their *amici* demonstrate that § 506(d) and its relationship to other Code provisions are ambiguous. Pp. 776–777.

(b) Although not without its difficulty, the position espoused by respondents and the United States as *amicus curiae*—that the words "allowed secured claim" in § 506(d) need not be

112 S.Ct. 773, 116 L.Ed.2d 903, 60 USLW 4111, 25 Collier Bankr.Cas.2d 1297...

read as an indivisible term of art defined by reference to § 506(a), but should be read term-by-term to refer to any claim that is, first, allowed, and, second, secured—generally is the better of the several approaches argued in this case. Were this Court writing on a clean slate, it might be **775 inclined to agree with Dewsnup that the quoted words must take the same meaning in § 506(d) as in § 506(a). However, the practical effect of Dewsnup's argument is to freeze the creditor's secured interest at the judicially determined *411 valuation in contravention of the pre-Code rule that liens on real property pass through bankruptcy unaffected. Congress must have enacted the Code with a full understanding of the latter rule, and, given the statutory ambiguity here, to attribute to Congress the intention to grant a debtor the broad new remedy against allowed claims to the extent that they become “unsecured” for purposes of § 506(a) without mentioning the new remedy somewhere in the Code or in the legislative history is implausible and contrary to basic bankruptcy principles. Pp. 777–779.

908 F.2d 588 (CA10 1990), affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, STEVENS, O'CONNOR, and KENNEDY, JJ., joined. SCALIA, J., filed a dissenting opinion, in which SOUTER, J., joined, *post*, 779. THOMAS, J., took no part in the consideration or decision of the case.

Attorneys and Law Firms

Timothy B. Dyk, Washington, D.C., for petitioner.

Richard G. Taranto, Washington, D.C., for respondents.

Ronald J. Mann, Washington, D.C., for U.S., as amicus curiae, supporting respondent.

Opinion

Justice BLACKMUN delivered the opinion of the Court.

We are confronted in this case with an issue concerning § 506(d) of the Bankruptcy Code, 11 U.S.C. § 506(d).¹ May *412 a debtor “strip down” a creditor's lien on real property to the value of the collateral, as judicially determined, when that value is less than the amount of the claim secured by the lien?

I

On June 1, 1978, respondents loaned \$119,000 to petitioner Aletha Dewsnup and her husband, T. LaMar Dewsnup, since deceased. The loan was accompanied by a Deed of Trust granting a lien on two parcels of Utah farmland owned by the Dewsnups.

Petitioner defaulted the following year. Under the terms of the Deed of Trust, respondents at that point could have proceeded against the real property collateral by accelerating the maturity of the loan, issuing a notice of default, and selling the land at a public foreclosure sale to satisfy the debt. **776 See also Utah Code Ann. §§ 57–1–20 to 57–1–37 (1990 and Supp.1991).

*413 Respondents did issue a notice of default in 1981. Before the foreclosure sale took place, however, petitioner sought reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101 *et seq.* That bankruptcy petition was dismissed, as was a subsequent Chapter 11 petition. In June 1984, petitioner filed a petition seeking liquidation under Chapter 7 of the Code, 11 U.S.C. § 701 *et seq.* Because of the pendency of these bankruptcy proceedings, respondents were not able to proceed to the foreclosure sale. See 11 U.S.C. § 362 (1988 ed. and Supp. II).

In 1987, petitioner filed the present adversary proceeding in the Bankruptcy Court for the District of Utah seeking, pursuant to § 506, to “avoid” a portion of respondents' lien. App. 3. Petitioner represented that the debt of approximately \$120,000 then owed to respondents exceeded the fair market value of the land and that, therefore, the Bankruptcy Court should reduce the lien to that value. According to petitioner, this was compelled by the interrelationship of the security-reducing provision of § 506(a) and the lien-voiding provision of § 506(d). Under § 506(a) (“An allowed claim of a creditor secured by a lien on property in which the estate has an interest... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property”), respondents would have an “allowed secured claim” only to the extent of the judicially determined value of their collateral. And under § 506(d) (“To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void”), the court would be required to void the lien as to the remaining portion of respondents' claim, because the remaining portion was not an “allowed secured claim” within the meaning of § 506(a).

The Bankruptcy Court refused to grant this relief. *In re Dewsnup*, 87 B.R. 676 (1988). After a trial, it determined that the then value of the land subject to the Deed of Trust was \$39,000. It indulged in the assumption that the property had been abandoned by the trustee pursuant to § 554, *414 and reasoned that once property was abandoned it no longer fell within the reach of § 506(a), which applies only to “property in which the estate has an interest,” and therefore was not covered by § 506(d).

The United States District Court, without a supporting opinion, summarily affirmed the Bankruptcy Court’s judgment of dismissal with prejudice. App. to Pet. for Cert. 12a.

The Court of Appeals for the Tenth Circuit, in its turn, also affirmed. *In re Dewsnup*, 908 F.2d 588 (1990). Starting from the “fundamental premise” of § 506(a) that a claim is subject to reduction in security only when the estate has an interest in the property, the court reasoned that because the estate had no interest in abandoned property, § 506(a) did not apply (nor, by implication, did § 506(d)). *Id.*, at 590–591. The court then noted that a contrary result would be inconsistent with § 722 under which a debtor has a limited right to redeem certain personal property. *Id.*, at 592.

Because the result reached by the Court of Appeals was at odds with that reached by the Third Circuit in *Gaglia v. First Federal Savings & Loan Assn.*, 889 F.2d 1304, 1306–1311 (1989), and was expressly recognized by the Tenth Circuit as being in conflict, see 908 F.2d, at 591, we granted certiorari. 498 U.S. 1081, 111 S.Ct. 949, 112 L.Ed.2d 1038 (1991).

II

As we read their several submissions, the parties and their *amici* are not in agreement in their respective approaches to the problem of statutory interpretation that confronts us. Petitioner-debtor takes the position that §§ 506(a) and 506(d) are complementary and to be read together. Because, under § 506(a), a claim is secured only to the extent of the judicially determined value of the real property on which the lien is fixed, a debtor **777 can void a lien on the property pursuant to § 506(d) to the extent the claim is no longer secured and thus is not “an allowed secured claim.” In other words, § 506(a) bifurcates classes of claims allowed under § 502 into secured *415 claims and unsecured claims; any

portion of an allowed claim deemed to be unsecured under § 506(a) is not an “allowed secured claim” within the lien-voiding scope of § 506(d). Petitioner argues that there is no exception for unsecured property abandoned by the trustee.

Petitioner’s *amicus* argues that the plain language of § 506(d) dictates that the proper portion of an undersecured lien on property in a Chapter 7 case is void whether or not the property is abandoned by the trustee. It further argues that the rationale of the Court of Appeals would lead to evisceration of the debtor’s right of redemption and the elimination of an undersecured creditor’s ability to participate in the distribution of the estate’s assets.

Respondents primarily assert that § 506(d) is not, as petitioner would have it, “rigidly tied” to § 506(a), Brief for Respondents 7. They argue that § 506(a) performs the function of classifying claims by true secured status at the time of distribution of the estate to ensure fairness to unsecured claimants. In contrast, the lien-voiding § 506(d) is directed to the time at which foreclosure is to take place, and, where the trustee has abandoned the property, no bankruptcy distributional purpose is served by voiding the lien.

In the alternative, respondents, joined by the United States as *amicus curiae*, argue more broadly that the words “allowed secured claim” in § 506(d) need not be read as an indivisible term of art defined by reference to § 506(a), which by its terms is not a definitional provision. Rather, the words should be read term-by-term to refer to any claim that is, first, allowed, and, second, secured. Because there is no question that the claim at issue here has been “allowed” pursuant to § 502 of the Code and is secured by a lien with recourse to the underlying collateral, it does not come within the scope of § 506(d), which voids only liens corresponding to claims that have *not* been allowed and secured. This reading of § 506(d), according to respondents and the United States, gives the provision the simple and sensible function *416 of voiding a lien whenever a claim secured by the lien itself has not been allowed. It ensures that the Code’s determination not to allow the underlying claim against the debtor personally is given full effect by preventing its assertion against the debtor’s property.²

Respondents point out that pre-Code bankruptcy law preserved liens like respondents’ and that there is nothing in the Code’s legislative history that reflects any intent to alter that law. Moreover, according to respondents, the “fresh start” policy cannot justify an impairment of respondents’ property

rights, for the fresh start does not extend to an *in rem* claim against property but is limited to a discharge of personal liability.

III

The foregoing recital of the contrasting positions of the respective parties and their *amici* demonstrates that § 506 of the Bankruptcy Code and its relationship to other provisions of that Code do embrace some ambiguities. See 3 Collier on Bankruptcy, **778 ch. 506 and, in particular, ¶ 506.07 (15th ed.1991). Hypothetical applications that come to mind and those advanced at oral argument illustrate the difficulty of interpreting the statute in a single opinion that would apply to all possible fact situations. We therefore focus upon the *417 case before us and allow other facts to await their legal resolution on another day.

[1] [2] We conclude that respondents' alternative position, espoused also by the United States, although not without its difficulty, generally is the better of the several approaches. Therefore, we hold that § 506(d) does not allow petitioner to “strip down” respondents' lien, because respondents' claim is secured by a lien and has been fully allowed pursuant to § 502. Were we writing on a clean slate, we might be inclined to agree with petitioner that the words “allowed secured claim” must take the same meaning in § 506(d) as in § 506(a).³ But, given the ambiguity in the text, we are not convinced that Congress intended to depart from the pre-Code rule that liens pass through bankruptcy unaffected.

1. The practical effect of petitioner's argument is to freeze the creditor's secured interest at the judicially determined valuation. By this approach, the creditor would lose the benefit of any increase in the value of the property by the time of the foreclosure sale. The increase would accrue to the benefit of the debtor, a result some of the parties describe as a “windfall.”

[3] [4] We think, however, that the creditor's lien stays with the real property until the foreclosure. That is what was bargained for by the mortgagor and the mortgagee. The voidness language sensibly applies only to the security aspect of the lien and then only to the real deficiency in the security. Any increase over the judicially determined valuation during bankruptcy rightly accrues to the benefit of the creditor, not to the benefit of the debtor and not to the benefit of other

unsecured creditors whose claims have been allowed and who had nothing to do with the mortgagor-mortgagee bargain.

[5] Such surely would be the result had the lienholder stayed aloof from the bankruptcy proceeding (subject, of course, to *418 the power of other persons or entities to pull him into the proceeding pursuant to § 501), and we see no reason why his acquiescence in that proceeding should cause him to experience a forfeiture of the kind the debtor proposes. It is true that his participation in the bankruptcy results in his having the benefit of an allowed unsecured claim as well as his allowed secured claim, but that does not strike us as proper recompense for what petitioner proposes by way of the elimination of the remainder of the lien.

[6] 2. This result appears to have been clearly established before the passage of the 1978 Act. Under the Bankruptcy Act of 1898, a lien on real property passed through bankruptcy unaffected. This Court recently acknowledged that this was so. See *Farrey v. Sanderfoot*, 500 U.S. 291, 111 S.Ct. 1825, 1829, 114 L.Ed.2d 337 (1991) (“Ordinarily, liens and other secured interests survive bankruptcy”); *Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S.Ct. 2150, 2154, 115 L.Ed.2d 66 (1991) (“Rather, a bankruptcy discharge extinguishes only one mode of enforcing a claim—namely, an action against the debtor *in personam*—while leaving intact another—namely, an action against the debtor *in rem*”).⁴

**779 [7] 3. Apart from reorganization proceedings, see 11 U.S.C. §§ 616(1) and (10) (1976 ed.), no provision of the pre-Code *419 statute permitted involuntary reduction of the amount of a creditor's lien for any reason other than payment on the debt. Our cases reveal the Court's concern about this. In *Long v. Bullard*, 117 U.S. 617, 620–621, 6 S.Ct. 917, 918, 29 L.Ed. 1004 (1886), the Court held that a discharge in bankruptcy does not release real estate of the debtor from the lien of a mortgage created by him before the bankruptcy. And in *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 55 S.Ct. 854, 79 L.Ed. 1593 (1935), the Court considered additions to the Bankruptcy Act effected by the Frazier–Lemke Act, 48 Stat. 1289. There the Court noted that the latter Act's “avowed object is to take from the mortgagee rights in the specific property held as security; and to that end ‘to scale down the indebtedness’ to the present value of the property.” 295 U.S., at 594, 55 S.Ct., at 865. The Court invalidated that statute under the Takings Clause. It further observed: “No instance has been found, except under the Frazier–Lemke Act, of either a statute or decision compelling the mortgagee to relinquish the property to the

mortgagor free of the lien unless the debt was paid in full.”
Id., at 579, 55 S.Ct., at 858.

[8] Congress must have enacted the Code with a full understanding of this practice. See [H.R.Rep. No. 95–595](#), p. 357 (1977), U.S.Code Cong. & Admin. News 1978, pp. 5787, 6313 (“Subsection (d) permits liens to pass through the bankruptcy case unaffected”).

[9] [10] 4. When Congress amends the bankruptcy laws, it does not write “on a clean slate.” See [Emil v. Hanley](#), 318 U.S. 515, 521, 63 S.Ct. 687, 690–691, 87 L.Ed. 954 (1943). Furthermore, this Court has been reluctant to accept arguments that would interpret the Code, however vague the particular language under consideration might be, to effect a major change in pre-Code practice that is not the subject of at least some discussion in the legislative history. See [United Savings Assn. of Texas v. Timbers of Inwood Forest Associates, Ltd.](#), 484 U.S. 365, 380, 108 S.Ct. 626, 634, 98 L.Ed.2d 740 (1988). See also [Pennsylvania Dept. of Public Welfare v. Davenport](#), 495 U.S. 552, 563, 110 S.Ct. 2126, 2133, 109 L.Ed.2d 588 (1990); [United States v. Ron Pair Enterprises, Inc.](#), 489 U.S. 235, 244–245, 109 S.Ct. 1026, 1032–1033, 103 L.Ed.2d 290 (1989). Of course, where the language is unambiguous, silence in the legislative history cannot *420 be controlling. But, given the ambiguity here, to attribute to Congress the intention to grant a debtor the broad new remedy against allowed claims to the extent that they become “unsecured” for purposes of § 506(a) without the new remedy’s being mentioned somewhere in the Code itself or in the annals of Congress is not plausible, in our view, and is contrary to basic bankruptcy principles.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

Justice THOMAS took no part in the consideration or decision of this case.

Justice SCALIA, with whom Justice SOUTER joins, dissenting.

With exceptions not pertinent here, § 506(d) of the [Bankruptcy Code](#) provides: **780 “To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void....” Read naturally and in accordance with other provisions of the statute, this

automatically voids a lien to the extent the claim it secures is not both an “allowed claim” and a “secured claim” under the Code. In holding otherwise, the Court replaces what Congress said with what it thinks Congress ought to have said—and in the process disregards, and hence impairs for future use, well-established principles of statutory construction. I respectfully dissent.

I

This case turns solely on the meaning of a single phrase found throughout the Bankruptcy Code: “allowed secured claim.” [Section 506\(d\)](#) unambiguously provides that to the extent a lien does not secure such a claim it is (with certain exceptions) rendered void. See [11 U.S.C. § 506\(d\)](#). Congress did not leave the meaning of “allowed secured claim” to speculation. [Section 506\(a\)](#) says that an “allowed claim” *421 (the meaning of which is obvious) is also a “secured claim” “to the extent of the value of [the] creditor’s interest in the estate’s interest in [the securing] property.” (Emphasis added.) (This means, generally speaking, that an allowed claim “is secured only to the extent of the value of the property on which the lien is fixed; the remainder of that claim is considered unsecured.” [United States v. Ron Pair Enterprises, Inc.](#), 489 U.S. 235, 239, 109 S.Ct. 1026, 1029, 103 L.Ed.2d 290 (1989).) When § 506(d) refers to an “allowed secured claim,” it can only be referring to that allowed “secured claim” so carefully described two brief subsections earlier.

The phrase obviously bears the meaning set forth in § 506(a) when it is used in the subsections of § 506 other than § 506(d)—for example, in § 506(b), which addresses “allowed secured claim[s]” that are oversecured. Indeed, as respondents apparently concede, see Brief for Respondents 40; Tr. of Oral Arg. 29–30, even when the phrase appears outside of § 506, it invariably means what § 506(a) describes: the portion of a creditor’s allowed claim that is secured after the calculations required by that provision have been performed. See, e.g., [11 U.S.C. § 722](#) (permitting a Chapter 7 debtor to redeem certain tangible personal property from certain liens “by paying the holder of such lien the amount of the *allowed secured claim* of such holder that is secured by such lien”); § 1225(a)(5) (prescribing treatment of “*allowed secured claim[s]*” in family farmer’s reorganization plan); § 1325(a)(5) (same with respect to “*allowed secured claim[s]*” in individual reorganizations). (Emphases added.) The statute is similarly consistent in its use of the companion phrase “*allowed unsecured claim*” to describe (with respect

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to a claim supported by a lien) that portion of the claim that is treated as “unsecured” under § 506(a). See, e.g., 11 U.S.C. § 507(a)(7) (fixing priority of “allowed unsecured claims of governmental units”); § 726(a)(2) (providing for payment of “allowed unsecured claim[s]” in Chapter 7 liquidation); § 1225(a)(4) (setting standard for treatment *422 of “allowed unsecured claim[s]” in Chapter 12 plan); § 1325(a)(4) (setting standard for treatment of “allowed unsecured claim[s]” in Chapter 13 plan). (Emphases added.) When, on the other hand, the Bankruptcy Code means to refer to a secured party's entire allowed claim, i.e., to both the “secured” and “unsecured” portions under § 506(a), it uses the term “allowed claim”—as in 11 U.S.C. § 363(k), which refers to “a lien that secures an allowed claim.” Given this clear and unmistakable pattern of usage, it seems to me impossible to hold, as the Court does, that “the words ‘allowed secured claim’ in § 506(d) need not be read as an indivisible term of art defined by reference to § 506(a).” *Ante*, at 777; see *ante*, at 777–778. We have often invoked the “‘normal rule of statutory construction that “‘identical words used in different parts of the same act are intended to have the same meaning.’” ’” *Sullivan v. Stroop*, 496 U.S. 478, 484, 110 S.Ct. 2499, 2504, 110 L.Ed.2d 438 (1990) (quoting **781 *Sorenson v. Secretary of Treasury*, 475 U.S. 851, 860, 106 S.Ct. 1600, 1606–1607, 89 L.Ed.2d 855 (1986) (quoting *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87, 55 S.Ct. 50, 51–52, 79 L.Ed. 211 (1934) (quoting *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433, 52 S.Ct. 607, 608–609, 76 L.Ed. 1204 (1932))).) That rule must surely apply, *a fortiori*, to use of identical words in the same section of the same enactment.

The Court makes no attempt to establish a textual or structural basis for overriding the plain meaning of § 506(d), but rests its decision upon policy intuitions of a legislative character,¹ and upon the principle that a text which is “ambiguous” *423 (a status apparently achieved by being the subject of disagreement between self-interested litigants) cannot change pre-Code law without the *imprimatur* of “legislative history.” Thus abandoning the normal and sensible principle that a term (and especially an artfully defined term such as “allowed secured claim”) bears the same meaning throughout the statute, the Court adopts instead what might be called the one-subsection-at-a-time approach to statutory exegesis. “[W]e express no opinion,” the Court amazingly says, “as to whether the words ‘allowed secured claim’ have different meaning in other provisions of the Bankruptcy Code.” *Ante*, at 778, n. 3. “We ... focus upon the case before us and allow other facts to await their legal resolution on another day.” *Ante*, at 778.

II

As to the meaning of this single subsection (considered, of course, in a vacuum), the Court claims to be embracing “respondents' alternative position,” *ante*, at 778, which is that “the words ‘allowed secured claim’ in § 506(d) need not be read as an indivisible term of art defined by reference to § 506(a),” *ante*, at 777; and that “secured claim” (for purposes *424 of § 506(d) alone) simply connotes an allowed claim that is “secured” in the ordinary sense, i.e., that is backed up by a security interest in property, whether or not the value of the property suffices to cover the claim. The Court attributes this position to the United States as well, *ante*, at 777, n. 2, but the Government's position is in fact different—and significantly so, since it *does* (as proper statutory interpretation ought to do) give the phrase “allowed secured claim” a uniform meaning. I must describe the Government's theory and explain why it does not work.

**782 The distinctive feature of the United States' approach is that it seeks to avoid invalidation of the so-called “underwater” portion of the lien by focusing *not* upon the phrase “allowed secured claim” in § 506(d), but upon the prior phrase “secures a claim.” (“To the extent that a lien *secures a claim* against the debtor that is not an allowed secured claim, such lien is void.” (Emphasis added.)) Under the Government's textual theory, this phrase can be read to refer not merely to the *object* of the security, but to its *adequacy*. That is to say, a lien only “secures” the claim in question up to the value of the security that is the object of the lien—and only up to *that* value is the lien subject to avoidance under § 506(d).² This interpretation succeeds in giving the *425 phrase “allowed secured claim,” which appears later in § 506(d), a meaning compatible with that compelled by § 506(a). But that is its only virtue.

To begin with, the interpretation renders some of the language in § 506(d) surplusage. If the phrase “[t]o the extent that a lien *secures a claim*” describes only that portion of a claim that is secured by actual economic value, then the later phrase “is not an allowed *secured claim*” should instead have read simply “is not allowed.” For the phrase “allowed secured claim” *itself* describes a claim that is *actually* secured in light of § 506(a)'s calculations. Another reading of § 506(d)'s opening passage is available, one that does not assume such clumsy draftsmanship—and that employs, to boot, a much more natural reading of the phrase “lien secures a claim.”

The latter ordinarily describes the relationship between a lien and a claim, not the relationship between the value of the property subject to the lien and the amount of the claim. One would say that a “mortgage secures the claim” for the purchase price of a house, even if the value of the house was inadequate to satisfy the full amount of the claim. In other words, “[t]o the extent that a lien *secures* a claim” means in § 506(d) what it ordinarily means: “to the extent a lien provides its holder with a right to retain property in full or partial satisfaction of a claim.” It means that *426 in § 506(d) just as it means that in § 506(a), see 11 U.S.C. § 506(a) (“An allowed claim of a creditor *secured* by a lien ... is a secured claim to the extent ...”) (emphasis added), and just as it means that elsewhere in the Bankruptcy Code, see, e.g., § 362(a)(5) (“to the extent that such lien *secures* a claim”); § 363(k) (“lien that *secures* an allowed claim”). An unnatural meaning should be disfavored at any time, but particularly when it produces a redundancy. See *Montclair v. Ramsdell*, 107 U.S. 147, 152, 27 L.Ed. 431 (1883).

Of course *respondents'* interpretation also creates a redundancy in § 506(d). If a “secured claim” means only a claim for which a **783 lien has been given as security (whether or not the security is adequate), then the prologue of § 506(d) can be reformulated as follows: “To the extent that a lien secures a claim against the debtor that is not an allowed claim secured by a lien, such lien is void....” Quite obviously, the phrase “secured by a lien” in that reformulation is utterly redundant and absurd—as is (on respondents' interpretation) the word “secured,” which bears the same meaning. In other words, both the United States' interpretation and respondents' interpretation create a redundancy: the former by making both parts of the § 506(d) prologue refer to *adequate* security, and the latter by making both parts refer to *security plain-and-simple*. Only when one gives the words in the first part of the prologue (“[t]o the extent that a lien secures a claim”) their natural meaning (as the Government does not) *and* gives the words in the second part of the prologue (“allowed secured claim”) their previously established statutory meaning (as the respondents do not) does the provision make a *point* instead of a *redundancy*.

Moreover, the practical consequences of the United States' interpretation would be absurd. A secured creditor holding a lien on property that is completely worthless would not face lien avoidance under § 506(d), *even if the claim secured by that lien were disallowed entirely*. The same would be true of a lien on property that has *some* value but is obviously *427 inadequate to cover all of the disallowed claim: the

lien would be voided only to the extent of the property's value at the time of the bankruptcy court's evaluation, and could be asserted against any increase in the value of the property that might later occur, in order to satisfy the disallowed claim. Unavoided liens (or more accurately, potentials of unavoidable liens, since no one knows whether or when future evaluations of the relevant property will exceed that of the bankruptcy court) would impede the trustee's management and settlement of the estate. It would be difficult, for example, to sell overencumbered property subject to outstanding liens pursuant to 11 U.S.C. § 363(b) or (c), since any postsale appreciation in the property could be levied upon by holders of disallowed secured claims. And in a sale of debtor property “free and clear” of the liens attached to it, see 11 U.S.C. § 363(f)(3), the undisturbed portion of the disallowed claimant's lien might attach to the proceeds of that sale to the extent of the collateral's postpetition appreciation, preventing the trustee from distributing some or all of the sale proceeds to creditors holding allowed claims. If possible, we should avoid construing the statute in a way that produces such absurd results.

III

Although the Court makes no effort to explain why petitioner's straightforward reading of § 506(d) is textually or structurally incompatible with other portions of the statute, respondents and the United States do so. They point out, to begin with, that the two exceptions to § 506(d)'s nullifying effect both pertain to *the disallowance of claims*, and not to *the inadequacy of security*, see 11 U.S.C. §§ 506(d)(1) and (2)—from which they conclude that the applicability of § 506(d) turns only on the allowability of the underlying claim, and not on the extent to which the claim is a “secured claim” within the meaning of § 506(a). But the fact that the statute makes no exceptions to invalidation by reason of inadequate security in no way establishes that such (plainly *428 expressed) invalidation does not exist. The premise of the argument—that if a statute qualifies a noun with two adjectives (“allowed” and “secured”), and provides exceptions with respect to only one of the adjectives, then the other can be disregarded—is simply false. The most that can be said is that the two exceptions in § 506(d) do not *contradict* the United States' and respondents' interpretation; but they in no way suggest or support it.

Respondents and the United States also identify supposed inconsistencies between **784 petitioner's construction of

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§ 506(d) and other sections of the Bankruptcy Code; they are largely illusory. The principal source of concern is § 722, which enables a Chapter 7 debtor to “redeem” narrow classes of exempt or abandoned personal property from “a lien securing a dischargeable consumer debt.” The price of redemption is fixed as “the amount of the *allowed secured claim* of [the lienholder] that is secured by such lien.” (Emphasis added.) This provision, we are told, would be largely superfluous if § 506(d) automatically stripped liens securing undersecured claims to the value of the collateral, *i.e.*, to the value of the allowed secured claims.

This argument is greatly overstated. Section 722 is necessary, and not superfluous, because § 506(d) is not a *redemption* provision. It reduces the value of a lienholder's equitable interest in a debtor's property to the property's liquidation value, but it does not insure the debtor an opportunity to “redeem” the property at that price, *i.e.*, to “free [the] property ... from [the] mortgage or pledge by paying the debt for which it stood as security.” Black's Law Dictionary 1278 (6th ed. 1990). Congress had good reason to be solicitous of the debtor's right to redeem personal property (the exclusive subject of § 722), since state redemption laws are typically less generous for personalty than for real property. Compare, *e.g.*, Utah Code Ann. § 57–1–31 (1990) with Uniform Commercial Code § 9–506, 3A U.L.A. 370 (1981). The most that can be said regarding § 722 is that petitioner's *429 construction of § 506(d) would permit a more concise formulation: Instead of describing the redemption price as “the amount of the allowed secured claim ... that is secured by such lien” it would have been *possible* to say simply “the amount of the claim ... that is secured by such lien”—since § 506(d) would automatically have cut back the lien to the amount of the allowed secured claim. I would hardly call the more expansive formulation a redundancy—not when it is so far removed from the section that did the “cutting back” that the reader has likely forgotten it.

Respondents and their *amicus* also make much of the need to avoid giving Chapter 7 debtors a better deal than they can receive under the other chapters of the Bankruptcy Code. They assert that, by enabling a Chapter 7 debtor to strip down a secured creditor's liens and pocket any post-petition appreciation in the property, petitioner's construction of § 506(d) will discourage debtors from using the preferred mechanisms of reorganization under Chapters 11, 12, and 13. This evaluation of the “finely reticulated” incentives affecting a debtor's behavior rests upon critical—and perhaps erroneous—assumptions about the meaning of provisions

in the reorganization chapters. Respondents assume, for example, that a debtor in Chapter 13 cannot strip down a mortgage placed on the debtor's home; but that assumption may beg the very question the Court answers today. True, § 1322(b)(2) provides that Chapter 13 filers may not “modify the rights of holders of secured claims” that are “*secured only by a security interest in real property that is the debtor's principal residence.*” (Emphasis added.) But this can be (and has been) read, in light of § 506(a), to prohibit modification of the mortgagee's rights only with respect to the portion of his claim that is deemed secured under the Code, see, *e.g.*, *In re Hart*, 923 F.2d 1410, 1415 (CA10 1991); *Wilson v. Commonwealth Mortgage Corp.*, 895 F.2d 123, 127 (CA3 1990). If petitioner's construction of § 506(d) were applied consistently in this fashion to the Code's various chapters, *430 see 11 U.S.C. § 103(a) (providing that “chapters 1, 3, and 5 ... [shall] apply in a case under chapter 7, 11, 12, or 13”), Chapter 7 would not appear unduly attractive. In any event, reorganization contains other enticements to lure a debtor away from Chapter 7. It not only permits him to maintain control over his personal and business assets, but affords a broader discharge from prepetition *in personam* liabilities. Compare, *e.g.*, 11 U.S.C. § 523 (listing numerous exceptions to Chapter 7 discharge) with 11 U.S.C. § 1328(a) **785 (listing two exceptions to Chapter 13 discharge). Compare, *e.g.*, *Kelly v. Robinson*, 479 U.S. 36, 50, 107 S.Ct. 353, 361, 93 L.Ed.2d 216 (1986) (restitution obligations imposed in criminal judgments nondischargeable in Chapter 7) with *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 563–564, 110 S.Ct. 2126, 2133–2134, 109 L.Ed.2d 588 (1990) (such restitution obligations dischargeable in Chapter 13).

Finally, respondents and the United States find it incongruous that Congress would so carefully protect secured creditors in the context of reorganization while allowing them to be fleeced in a Chapter 7 liquidation by operation of § 506(d). This view mistakes the generosity of treatment that creditors can count upon in reorganization. There, no more than under Chapter 7, can they demand the benefit of postevaluation increases in the value of property given as security. See 11 U.S.C. §§ 1129(b)(2)(A) and 1325(a)(5) (permitting “cram-down” of reorganization plan over objections of secured creditors if creditors are to receive payments equal in present value to the cash value of the collateral, and if creditors retain liens securing such payments).³

***431 IV**

I must also address the Tenth Circuit's basis for the decision affirmed today (alluded to by the Court, *ante*, at 776, but not discussed), that § 506 does not apply to property abandoned by the bankruptcy trustee under § 554, see 11 U.S.C. § 554. Respondents' principal argument before us was a modified (and less logical) version of the same basic point—viz., that although § 506(a) applies to abandoned property, § 506(d) does not. I can address the point briefly, since the plain-language obstacles to its validity are even more pronounced than those raised by the Court's approach.

The Court of Appeals' reasoning was as follows: § 506(d) effects lien stripping only with respect to property subject to § 506(a); but by its terms § 506(a) applies only to property “in which the estate has an interest”; since “[t]he estate has no interest in, and does not administer, abandoned property,” § 506(a), and hence § 506(d), does not apply to it. *In re Dewsnup*, 908 F.2d 588, 590–591 (CA10 1990). The fallacy in this is the assumption that the application of § 506(a) (and hence § 506(d)) can be undone if and when the estate ceases to “have an interest” in property in which it “had an interest” at the outset of the bankruptcy proceeding. The text does not read that way. Section 506 automatically operates upon all property in which the estate has an interest at the time the bankruptcy petition is filed.⁴ Once § 506(a)'s grant of secured-creditor rights, and § 506(d)'s elimination of the right to “underwater” liens and liens securing unallowed claims have occurred, they cannot be undone by later abandonment of the property. Nothing in the statute expressly permits such an unraveling, and it would be absurd to imagine it. If, upon the collateral's abandonment, the claim bifurcation *432 accomplished by § 506(a) were nullified, the status of the creditor's allowed **786 claim—i.e., whether (and to what extent) it is “secured” or “unsecured” for purposes of the bankruptcy distribution—would be impossible to determine. Instead, the claim would have to be treated as either completely “secured” or completely “unsecured,” neither of which disposition would accord with the Code's distribution principles. The former would deprive the secured claimant of a share in the distribution to general creditors altogether. See 11 U.S.C. § 726 (providing for distribution of property of the estate to unsecured claimants). The latter (treating the claim as completely unsecured) would permit the lienholder to share in the pro rata distribution to general creditors to the full amount of his allowed claim (rather than simply to the amount of the § 506(a)-defined “unsecured

claim”) while reserving his *in rem* claim against the security. Respondents' variation on the Tenth Circuit's holding avoids these alternative absurdities only by embracing yet another textual irrationality—asserting that, even though the language that is the *basis* for the “abandonment” theory (the phrase “in which the estate has an interest”) is contained in § 506(a), and only applies to § 506(d) through § 506(a), nonetheless only the effects of § 506(d) and *not* the effects of § 506(a) are undone by abandonment. This hardly deserves the name of a theory.

V

As I have said, the Court does not trouble to make or evaluate the foregoing arguments. Rather, in Part II of its opinion it merely describes (uncritically) “the contrasting positions of the respective parties and their *amici*” concerning the meaning of § 506(d), *ante*, at 777, and concludes, because the positions are contrasting, that there is “ambiguity in the text,” *ante*, at 778. (This mode of analysis makes every litigated statute ambiguous.) Having thus established “ambiguity,” the Court is able to summon down its *deus ex machina*: “the pre-Code rule that liens pass through bankruptcy *433 unaffected”—which cannot be eliminated by an ambiguous provision, at least where the “legislative history” does not mention its demise. *Ante*, at 778.

We have, of course, often consulted pre-Code behavior in the course of interpreting gaps in the express coverage of the Code, or genuinely ambiguous provisions. And we have often said in such cases that, absent a textual footing, we will not presume a departure from longstanding pre-Code practice. See, e.g., *Midlantic Nat. Bank v. New Jersey Dept. of Environmental Protection*, 474 U.S. 494, 501, 106 S.Ct. 755, 759–760, 88 L.Ed.2d 859 (1986); *Kelly v. Robinson*, 479 U.S., at 46–47, 107 S.Ct., at 359–360. But we have *never* held pre-Code practice to be determinative in the face of what we have here: contradictory statutory text. To the contrary, where “the statutory language plainly reveals Congress' intent” to alter pre-Code regimes, *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S., at 563, 110 S.Ct., at 2133, we have simply enforced the new Code according to its terms, without insisting upon “at least some discussion [of the change from prior law] in the legislative history,” *ante*, at 779.

For an illustration of just how plainly today's opinion is at odds with our jurisprudence, one need only examine our most recent bankruptcy decision, *Union Bank v. Wolas*, 502

112 S.Ct. 773, 116 L.Ed.2d 903, 60 USLW 4111, 25 Collier Bankr.Cas.2d 1297...

U.S. 151, 112 S.Ct. 527, 116 L.Ed.2d 514 (1991). There also the parties took “contrasting positions” as to the meaning of the statutory text, but we did not shrink from finding, on the basis of our own analysis, that no ambiguity existed. There also it was urged upon us that the interpretation we adopted would overturn pre-Code practice with “no evidence in the legislative history that Congress intended to make” such a change. *Wolas*, *supra*, 502 U.S., at 157, 112 S.Ct., at 531. We found it unnecessary to “dispute the accuracy of [that] description of the legislative history ... in order to reject [the] conclusion” that no change had been effected. “The fact,” we said, “that **787 Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning.” *434 *Id.*, 502 U.S., at 157, 112 S.Ct., at 530, 531. And “the fact that Congress carefully reexamined and entirely rewrote the preference provision in 1978 supports the conclusion that the text of § 547(c)(2) as enacted reflects the deliberate choice of Congress.” *Id.*, 502 U.S., at 159, 112 S.Ct., at 532. What was true of the preference provision in *Wolas* is also true of the secured claims provisions at issue in the present case: Congress’ careful reexamination *and entire rewriting* of those provisions supports the conclusion that, regardless of whether pre-Code practice is retained or abandoned, the text means precisely what it says. Indeed, the rewriting here is so complete that, no matter how deeply one admires and venerates “pre-Code law,” it is impossible to interpret § 506(d) in a manner that entirely preserves it—and the Court itself, for all its protestation of fealty, does not do so. No provision of the former Bankruptcy Act, nor any pre-Code doctrine, purported to invalidate—across the board—liens securing claims disallowed in bankruptcy, see 11 U.S.C. § 107 (1976 ed.); see also 4 Collier on Bankruptcy ¶ 67 (14th ed. 1978), yet that is precisely what § 506(d), as interpreted by the Court today, accomplishes.

It is even more instructive to compare today’s opinion with our decision a few years ago in *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989), which involved another subsection of § 506 itself. The issue was whether § 506(b) made post-petition interest available even to those oversecured creditors whose liens were nonconsensual. The Court of Appeals had held that it did not, because such a disposition would alter the pre-Code rule and there was no “legislative history” to support the change. We disagreed. The opinion for the Court began “where all such inquiries must begin: with the language of the statute itself.” *Id.*, at 241, 109 S.Ct., at 1030. We did not recite the contentions of the parties and declare “ambiguity,” but

entered into our own careful consideration of “[t]he natural reading of the [relevant] phrase,” the “grammatical structure of the statute,” and the “terminology used throughout the Code.” *Id.*, at 241 and 242, n. 5, 109 S.Ct., at 1030 and 1031, n. 5. Having *435 found a “natural interpretation of the statutory language [that] does not conflict with any significant state or federal interest, nor with any other aspect of the Code,” *id.*, at 245, 109 S.Ct., at 1032–1033, we deemed the pre-Code practice to be irrelevant. And whereas today’s opinion announces the policy judgment that “[a]ny increase over the judicially determined valuation during bankruptcy rightly accrues to the benefit of the creditor,” *ante*, at 778, in *Ron Pair* we were undeterred by the fact that our result was “arguably somewhat in tension with the desirability of paying all creditors as uniformly as practicable,” 489 U.S., at 245–246, 109 S.Ct., at 1033. “Congress,” we said, “expressly chose to create that alleged tension.” *Id.*, at 246, 109 S.Ct., at 1033. Almost point for point, today’s opinion is the methodological antithesis of *Ron Pair*—and I have the greatest sympathy for the Courts of Appeals who must predict which manner of statutory construction we shall use for the next Bankruptcy Code case.

* * *

The principal harm caused by today’s decision is not the misinterpretation of § 506(d) of the Bankruptcy Code. The disposition that misinterpretation produces brings the Code closer to prior practice and is, as the Court irrelevantly observes, probably fairer from the standpoint of natural justice. (I say irrelevantly, because a bankruptcy law has little to do with natural justice.) The greater and more enduring damage of today’s opinion consists in its destruction of predictability, in the Bankruptcy Code and elsewhere. By disregarding well-established and oft-repeated principles of statutory construction, it renders those principles less secure and the **788 certainty they are designed to achieve less attainable. When a seemingly clear provision can be pronounced “ambiguous” *sans* textual and structural analysis, and when the assumption of uniform meaning is replaced by “one-subsection-at-a-time” interpretation, innumerable statutory texts become worth litigating. In the bankruptcy field *436 alone, for example, unfortunate future litigants will have to pay the price for our expressed neutrality “as to whether the words ‘allowed secured claim’ have different meaning in other provisions of the Bankruptcy Code.” *Ante*, at 778, n. 3. Having taken this case to resolve uncertainty regarding one provision, we end by spawning confusion regarding scores of others. I respectfully dissent.

All Citations

502 U.S. 410, 112 S.Ct. 773, 116 L.Ed.2d 903, 60 USLW 4111, 25 Collier Bankr.Cas.2d 1297, 22 Bankr.Ct.Dec. 750, Bankr. L. Rep. P 74361A

Footnotes

- * The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

- 1 Section 506 provides in full:

“(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

“(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

“(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.

“(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

“(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

“(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.”

- 2 Respondents expressly stated in their brief and twice again at oral argument that they adopted as an alternative position the United States' interpretation of § 506(d). Brief for Respondents 40, n. 33; Tr. of Oral Arg. 14, 20. In dissent, however, Justice SCALIA contends that respondents have not taken the same position as the United States on this issue. According to the dissent, the United States has taken the position that “a lien only ‘secures’ the claim in question up to the value of the security that is the object of the lien—and only up to *that* value is the lien subject to avoidance under § 506(d).” *Post*, at 782. In fact, the United States says: “Under [petitioner's] reading, Section 506(d) would operate to reduce the creditor's lien to the value of the allowed secured claim described in Section 506(a). In our view, this reading makes no sense.” Brief for United States as *Amicus Curiae* 5.

112 S.Ct. 773, 116 L.Ed.2d 903, 60 USLW 4111, 25 Collier Bankr.Cas.2d 1297...

- 3 Accordingly, we express no opinion as to whether the words “allowed secured claim” have different meaning in other provisions of the Bankruptcy Code.
- 4 Section 67 d of the [1898 Act](#), 30 Stat. 544, 564, made this explicit:

“Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this Act.”

The Court, with respect to this statute, has said: “Section 67 d ... declares that liens given or accepted in good faith and not in contemplation of or in fraud upon this act, shall not be affected by it.” [City of Richmond v. Bird](#), 249 U.S. 174, 177, 39 S.Ct. 186, 187–188, 63 L.Ed. 543 (1919).

This precise statutory language did not appear in a reorganization of the section in the Chandler Act of 1938, 52 Stat. 840. A respected bankruptcy authority convincingly explained that this was done not to remove the rule of validity but because “the draftsmen of the 1938 Act desired generally to specify only what should be *invalid*.” 4B Collier on Bankruptcy ¶ 70.70, p. 771 (14th ed. 1978) (emphasis in original). The alteration had no substantive effect. [Oppenheimer v. Oldham](#), 178 F.2d 386, 389 (CA5 1949).

- 1 For example: “That is what was bargained for by the mortgagor and the mortgagee.... Any increase over the judicially determined valuation during bankruptcy rightly accrues to the benefit of the creditor.... [W]e see no reason why [the lienholder’s] acquiescence in [the bankruptcy] proceeding should cause him to experience a forfeiture of the kind the debtor proposes.... [T]he benefit of an allowed unsecured claim... does not strike us as proper recompense for what petitioner proposes by way of the elimination of the remainder of the lien.” *Ante*, at 778.

Apart from the fact that these policy judgments are inappropriate, it is not at all clear that evisceration of § 506(d) is even necessary to effectuate them. The feared “windfall” to the debtor may be prevented by 11 U.S.C. § 551, which preserves liens avoided under § 506(d) and other provisions of the Code “for the benefit of the estate,” *i.e.*, for the benefit of the general unsecured creditors. See Note, An Individual Debtor’s Right to Avoid Liens Under [Section 506\(d\) of the Bankruptcy Code](#), 12 *Cardozo L.Rev.* 263, 280–281 (1990). See also *In re Ward*, 42 B.R. 946, 952–953 (Bkrcty.Ct. MD Tenn.1984). And the creditor whose lien has been stripped may even prevail over the other unsecured creditors by reason of 11 U.S.C. § 363(k), which permits such an undersecured creditor to apply the entire amount of his allowed claim (secured and unsecured) against the purchase price of the collateral at the trustee’s foreclosure sale. This appears to enable the lien-stripped creditor (at least in the context of a trustee-managed foreclosure sale) to use his “unsecured claim” to capture any postevaluation appreciation in the collateral. See Carlson, Undersecured Claims Under [Bankruptcy Code Sections 506\(a\) and 1111\(b\)](#): Second Looks at Judicial Valuations of Collateral, 6 *Bankr.Dev.J.* 253, 272–279 (1989). I would leave these questions for resolution on remand.

- 2 The Court’s insistence that the positions put forward by respondents and the United States are one and the same, see *ante*, at 778, n. 3, is simply mistaken. The following excerpts from the Government’s brief, among others, are compatible only with the theory (which is not respondents’) that the phrase “lien secures a claim” in § 506(d) means “lien is adequate security for a claim”:

“On its face, [§ 506(d)] appears to take one set of circumstances—where ‘a lien secures a claim’—and carve out of it a lesser and included set of circumstances—where that secured claim ‘is not an *allowed* secured claim.’ Liens in the carved-out set are void....

“According to petitioner, what the provision means is that a lien securing an unsecured claim is void. But the provision is triggered only ‘[t]o the extent that a lien secures a claim,’ and if a lien secures a claim the claim is not, at least in common parlance, unsecured.... [I]t is inconsistent to say—as petitioner urges—that the prime situation at which the provision is directed is one where, because the collateral is worth less than the amount of the claim, the lien in fact *fails* to secure the claim. Under petitioner’s reading, a provision that applies ‘[t]o the extent that a lien secures a claim’ actually applies *only* to the extent that the lien does *not* secure the claim.” Brief for United States as *Amicus Curiae* 9 (emphasis in original) (footnote omitted).

It is of little consequence, however, whether the Government espoused this position or not. In either event, it is a *possible* interpretation (more plausible, I think, than the one the Court adopts) that merits consideration by those concerned with text.

- 3 The election available to a secured creditor under § 1111(b)(2) to treat his undersecured claims as fully secured in a Chapter 11 reorganization notwithstanding § 506(a) does not affect this analysis, for an electing creditor is guaranteed under the reorganization plan only “property of a value, as of the effective date of the plan, that is not less than the value of such holder’s interest in the estate’s interest in the property that secures such claims.” 11 U.S.C. § 1129(a)(7)(B). In other words, “the present value of such payments [to the § 1111(b)(2) elector] need only equal the value of the secured creditor’s interest in its collateral.” 5 Collier on Bankruptcy ¶ 1111.02, pp. 1111–25 to 1111–26, n. 23 (15th ed. 1990).
- 4 The estate “has an interest,” of course, even in its overencumbered property. See 11 U.S.C. § 541(d) (providing that property for which the debtor holds legal title alone is “property of the estate” to the extent of that legal title). See also § 541(a)(1) (defining the bankruptcy estate to include “all legal or equitable interests of the debtor in property as of the commencement of the [bankruptcy] case”).



KeyCite Yellow Flag - Negative Treatment

Declined to Extend by [In re Gonzalez](#), Bankr.E.D.Pa., May 19, 2016

497 F.3d 314

United States Court of Appeals,
Third Circuit.**In re:** Vincent J. **CONNORS**, Debtor.
Vincent J. **Connors**, Appellant.

No. 06–3321.

|
Argued: June 27, 2007.|
Opinion Filed: Aug. 3, 2007.**Synopsis**

Background: Following expiration of 60–day postpetition grace period, entity that had purchased Chapter 13 debtor's residence at prepetition foreclosure sale filed motion for stay relief so that it could tender balance of purchase price and receive deed. Debtor opposed motion. Finding that debtor no longer had the right to cure the default on his mortgage, the United States Bankruptcy Court for the District of New Jersey granted the motion. Debtor appealed. The District Court, [Dennis M. Cavanaugh, J.](#), 2006 WL 1722609, affirmed, and debtor appealed.

[Holding:] The Court of Appeals, [Barry](#), Circuit Judge, held that pursuant to the unambiguous language of the section of the Bankruptcy Code permitting a Chapter 13 plan to provide for the curing of a debtor's home mortgage default until the residence is sold at a foreclosure sale, a Chapter 13 debtor does not have the right to cure a default on a mortgage secured by the debtor's principal residence between the time the residence is sold at a foreclosure sale and the time the deed is delivered.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (15)

[1] Bankruptcy Conclusions of law; de novo review

Court of Appeals' review of a district court's order affirming a bankruptcy court decision is plenary.

9 Cases that cite this headnote

[2] Bankruptcy Conclusions of law; de novo review**Bankruptcy** Clear error

In reviewing a bankruptcy court's decision, the Court of Appeals applies the same standards as the district court, examining the bankruptcy court's legal conclusions de novo and reviewing its factual findings for clear error.

8 Cases that cite this headnote

[3] Bankruptcy Accelerated maturity; effect of foreclosure

Pursuant to the unambiguous language of the section of the Bankruptcy Code permitting a Chapter 13 plan to provide for the curing of a debtor's home mortgage default until the residence is sold at a foreclosure sale, a Chapter 13 debtor does not have the right to cure a default on a mortgage secured by the debtor's principal residence between the time the residence is sold at a foreclosure sale and the time the deed is delivered. 11 U.S.C.A. § 1322(c)(1).

16 Cases that cite this headnote

[4] Bankruptcy Accelerated maturity; effect of foreclosure

“Gavel rule” permits a Chapter 13 debtor to cure a default on a home mortgage only until the gavel falls at a foreclosure sale. 11 U.S.C.A. § 1322(c)(1).

9 Cases that cite this headnote

[5] Bankruptcy 🔑 Accelerated maturity; effect of foreclosure

Pursuant to the “deed-delivery rule,” a residence is not “sold” within the meaning of the section of the Bankruptcy Code permitting a Chapter 13 plan to provide for the curing of a debtor's home mortgage default until the residence is sold at a foreclosure sale, and the debtor has the right to cure a default, until the deed is delivered to the winning bidder. 11 U.S.C.A. § 1322(c)(1).

10 Cases that cite this headnote

[6] Bankruptcy 🔑 Accelerated maturity; effect of foreclosure

Phrase “a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law,” as used in section of the Bankruptcy Code permitting a Chapter 13 plan to provide for the curing of a debtor's home mortgage default until the residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law, refers to a foreclosure sale that complies with state-law procedures. 11 U.S.C.A. § 1322(c)(1).

11 Cases that cite this headnote

[7] Bankruptcy 🔑 Construction and Operation

Where the Bankruptcy Code does not define a term, the court must give it its ordinary meaning.

1 Case that cites this headnote

[8] Bankruptcy 🔑 Accelerated maturity; effect of foreclosure

Term “foreclosure sale,” as used in section of the Bankruptcy Code permitting a Chapter 13 plan to provide for the curing of a debtor's home mortgage default until the residence is sold at a foreclosure sale, means the foreclosure auction. 11 U.S.C.A. § 1322(c)(1).

3 Cases that cite this headnote

[9] Mortgages and Deeds of Trust 🔑 Bids

Under New Jersey law, the successful bid at a foreclosure auction is generally irrevocable, and the bidder acquires equitable title that is not subject to defeasance except under narrow circumstances.

1 Case that cites this headnote

[10] Mortgages and Deeds of Trust 🔑 Defects and irregularities

Mortgages and Deeds of Trust 🔑 Time for Redemption

Mortgages and Deeds of Trust 🔑 Annulment of foreclosure sale

Under New Jersey law, if, within ten days of a foreclosure sale, the mortgagor files objections that are judicially sustained, or exercises the right of redemption, the purchaser may lose equitable title. N.J.R. 4:65–5.

2 Cases that cite this headnote

[11] Mortgages and Deeds of Trust 🔑 Conveyance to Purchaser

Under New Jersey law, delivery of the deed following a foreclosure sale conveys legal title.

3 Cases that cite this headnote

[12] Mortgages and Deeds of Trust 🔑 Time for Redemption

Under New Jersey law, in rare circumstances, as when the mortgagor has received insufficient notice of foreclosure proceedings, the right to redeem may be asserted even after delivery of the deed.

[13] Bankruptcy 🔑 Limitations and time to sue; computation

Bankruptcy 🔑 Accelerated maturity; effect of foreclosure

So-called gavel rule, which permits a Chapter 13 debtor to cure a default on a home mortgage only until the gavel falls at a foreclosure sale, does not cut off the debtor's state-law post-sale remedies; those remedies may continue past the

date of the foreclosure sale by operation of the section of the Code providing the trustee a 60-day extension of a statutory grace period under certain circumstances. 11 U.S.C.A. §§ 108(b), 1322(c)(1).

3 Cases that cite this headnote

[14] **Bankruptcy** 🔑 Limitations and time to sue; computation

When a bankruptcy petition is filed before the expiration of a statutory grace period, if need be the section of the Bankruptcy Code governing extension of time can extend the grace period for 60 days from the date of the filing of the petition. 11 U.S.C.A. § 108(b).

3 Cases that cite this headnote

[15] **Bankruptcy** 🔑 Accelerated maturity; effect of foreclosure

Section of the Bankruptcy Code permitting a Chapter 13 plan to provide for the curing of a debtor's home mortgage default until the residence is sold at a foreclosure sale was added to the Code to make explicit that a debtor's right to cure a default on a mortgage secured by his or her principal residence continues at least until the "foreclosure sale," and may continue beyond that date if state law provides additional cure rights. 11 U.S.C.A. § 1322(c)(1).

7 Cases that cite this headnote

Attorneys and Law Firms

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Before: BARRY, FUENTES, and JORDAN, Circuit Judges.

OPINION OF THE COURT

BARRY, Circuit Judge.

This bankruptcy appeal presents a question on which New Jersey federal bankruptcy and district courts have been divided for more than ten years: whether, under 11 U.S.C. § 1322(c)(1), a Chapter 13 debtor has the right to cure a default on a mortgage secured by the debtor's principal residence between the time the residence is sold at a foreclosure sale and the time the deed is delivered. Having finally been given the opportunity to break what is a virtual tie between the New Jersey federal courts, we hold that § 1322(c)(1) does not afford the debtor that right.

I.

On August 21, 2002, Appellant Vincent J. Connors executed a \$252,000 note and mortgage on his residence at 41 Lakeridge Drive, Matawan, New Jersey, in favor of the predecessor in interest of Appellee Deutsche Bank National Trust Co. ("Deutsche Bank"). Connors subsequently defaulted on the note, causing Deutsche Bank to foreclose on March 4, 2004. At a foreclosure sale on November 10, 2004, the property was sold to Appellee 41 Lakeridge LLC ("Lakeridge") for \$330,000; Lakeridge tendered the required 20% deposit.

On November 14, 2004, Connors filed a voluntary petition under Chapter 13 of the Bankruptcy Code. The filing triggered an automatic stay of proceedings under 11 U.S.C. § 362. Two weeks later, on November 30, 2004, Connors filed a Chapter 13 Plan, which proposed to cure his pre-petition arrears on the mortgage. He did not, however, exercise his statutory right to object to the foreclosure sale or redeem within 60 days of the filing of his Chapter 13 petition, as is permitted under N.J. Ct. R. 4:65–5 and 11 U.S.C. § 108(b), respectively.

On January 19, 2005, the 60-day period having expired, Lakeridge filed a motion to lift the automatic stay to permit it to tender the balance of the purchase price and receive the deed. **Connors** opposed the motion. The Bankruptcy Court held a hearing and granted the motion, explaining, in its March 9, 2005 letter opinion, that **Connors** no longer had the right to cure the default on his mortgage under 11 U.S.C. § 1322(c)(1), and that his right to redeem under state law had expired. Before Lakeridge could tender the balance and receive the deed, however, the Court granted a stay pending **Connors's** appeal.

The District Court affirmed. Noting a “schism” among New Jersey courts regarding whether § 1322(c)(1) creates a right to cure a default that expires upon delivery of the deed, the Court held that *318 the right to cure expires at the foreclosure sale, and that § 1322(c)(1) “allows the debtor to exercise only what additional remedy applicable state law provides.” (App. at 7.) Because **Connors's** state-law rights had expired, the Court held, the Bankruptcy Court appropriately granted Lakeridge's motion to lift the automatic stay. This appeal followed.

II.

The Bankruptcy Court had jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334(b), over **Connors's** Chapter 13 petition. The District Court had jurisdiction, pursuant to 28 U.S.C. § 158(a), over **Connors's** appeal from the Bankruptcy Court's order lifting the automatic stay. See *United States v. Pelullo*, 178 F.3d 196, 200 (3d Cir.1999) (holding that order lifting automatic stay in bankruptcy proceeding is appealable); *In re Comer*, 716 F.2d 168, 172 (3d Cir.1983) (holding that bankruptcy court's order lifting automatic stay “is final in the sense that it completes litigation on the question and subjects the property to a foreclosure action in state court”). We have jurisdiction, pursuant to 28 U.S.C. §§ 158(d) and 1291 and Federal Rule of Appellate Procedure 6(b), over **Connors's** appeal from the District Court's final order affirming the order of the Bankruptcy Court.

[1] [2] Our review of the District Court's order is plenary. *In re Brannon*, 476 F.3d 170, 173 (3d Cir.2007). We apply the same standards as the District Court, examining the Bankruptcy Court's legal conclusions *de novo* and reviewing its factual findings for clear error. *In re United Healthcare Sys., Inc.*, 396 F.3d 247, 249 (3d Cir.2005).

III.

The sole question we must decide is whether, under 11 U.S.C. § 1322(c)(1), a Chapter 13 debtor has the right to cure a default on a mortgage secured by the debtor's principal residence between the time the residence is sold at a foreclosure sale and the time the deed is delivered.

A. The Unambiguous Language of § 1322(c)(1) Supports the “Gavel Rule”

[3] Section 1322 of the Bankruptcy Code sets forth the minimum requirements for a mandatory Chapter 13 Plan. 11 U.S.C. § 1322; S. Rep. 95–989, at 141 (1978), 1978 U.S.S.C.A.N. 5787. Subsection (b)(3) broadly permits the plan to “provide for the curing or waiving of any default,” and subsection (b)(5) permits the plan to “provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due.” 11 U.S.C. § 1322(b)(3), (5). Subsection (c)(1) limits the broad sweep of subsections (b)(3) and (b)(5) by providing, in relevant part, as follows:

[A] default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold at a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law....

11 U.S.C. § 1322(c)(1).

[4] [5] Since the enactment of subsection (c)(1) as part of the Bankruptcy Reform Act of 1994, New Jersey bankruptcy and district courts have disagreed over whether (c)(1) gives a Chapter 13 debtor the right to cure a default on a home mortgage between the time the residence is sold at a foreclosure sale and the time the deed is delivered. One line of cases *319 holds that § 1322(c)(1) guarantees the right to cure a default on a home mortgage only until the gavel falls at a foreclosure sale.¹ Courts frequently refer to this view

as the “gavel rule.” The other line of cases maintains that a residence is not “sold” within the meaning of § 1322(c)(1), and the debtor has the right to cure a default, until the deed is delivered to the winning bidder.² This view is commonly known as the “deed-delivery rule.”

[6] We start with the language of the statute. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989); *Idahoan Fresh v. Advantage Produce, Inc.*, 157 F.3d 197, 202 (3d Cir.1998). Some courts have found ambiguity in the phrase, “that is conducted in accordance with applicable nonbankruptcy law.” In *Simmons*, for instance, the Court found the phrase ambiguous because “it is not readily apparent whether Congress intended the phrase to apply only to the event of sale, or to the entirety of the sale process, including the giving of a deed.” 202 B.R. at 201. We are unpersuaded that the phrase is ambiguous; indeed, to find ambiguity would be to deny the words their plain meaning. The word “that” is a relative pronoun that restricts and, therefore, modifies, the preceding noun, “foreclosure sale.” Thus, when the statute refers to “a foreclosure sale that is conducted in accordance with applicable nonbankruptcy law,” it clearly refers to a foreclosure sale that complies with state-law procedures. See *New Castle County v. Hartford Acc. & Indem. Co.*, 970 F.2d 1267, 1270 (3d Cir.1992) (“[T]he question is not whether there is an ambiguity in the metaphysical sense, but whether the language has only one reasonable meaning when construed, not in a hypertechnical fashion, but in an ordinary, common sense manner.”). We agree with those decisions that have reached this conclusion without resorting to legislative history. See, e.g., *Cain*, 423 F.3d at 620; *Hric*, 208 B.R. at 25; see also *Simmons*, 202 B.R. at 203 (finding that canons of statutory construction, as well as “common sense,” mandated the same reading, but also considering legislative history).³

[7] We must also determine what it means for a residence to be “sold at a foreclosure sale.” Deconstructing this phrase further, we must determine the *320 meaning of “foreclosure sale”—a term that Appellees contend is synonymous with the foreclosure auction, but that **Connors** insists refers to the entire foreclosure process, terminating with the delivery of a deed. The Bankruptcy Code does not define “foreclosure sale,” so we must give it its ordinary meaning. *Liberty Lincoln–Mercury, Inc. v. Ford Motor Co.*, 171 F.3d 818, 822 (3d Cir.1999).

[8] Outside of cases applying the deed-delivery rule, the term “foreclosure sale” is broadly understood to mean the

foreclosure auction. First, the preposition “at” in “sold at a foreclosure sale” signifies a discrete event, rather than an ongoing process. See *Chisholm*, 2005 WL 1522232, at *3. Second, at least one New Jersey bankruptcy court has taken judicial notice of the fact that New Jersey foreclosure practitioners refer to the foreclosure auction as the “sale.” *Hric*, 208 B.R. at 25. Third, the New Jersey statute setting forth the procedures governing sheriffs' sales specifically refers to the auction as the “foreclosure sale.” See N.J.S.A. § 2A:50–64 (requiring the successful bidder to deposit 20 percent of the purchase price “immediately upon the conclusion of the foreclosure sale”). Fourth, New Jersey rules governing sheriffs' sales treat “sale” as synonymous with the auction, and distinguish between the “sale” and the delivery of the deed. See N.J. Ct. R. 4:65–2 (requiring notice to be served “at least 10 days prior to the date set for sale”); 4:65–4 (specifying the place of the “sale”); 4:65–5 (permitting objections to be served “within 10 days after the sale,” and permitting courts to dispose of such objections and direct the sheriff to deliver the deed); 4:65–6 (requiring sheriff to file with the court “a report of any sale made,” and authorizing a subsequent judicial confirmation hearing at which the court may order delivery of the deed). And, fifth, the Supreme Court of New Jersey consistently refers to the foreclosure auction as the “foreclosure sale.” See, e.g., *Panetta v. Equity One, Inc.*, 190 N.J. 307, 920 A.2d 638, 648 (2007); *BTD–1996 NPC I L.L.C. v. 350 Warren L.P.*, 170 N.J. 90, 784 A.2d 1214, 1223 (2001); *Conklin v. Hannon Weisman*, 145 N.J. 395, 678 A.2d 1060, 1063 (1996). There is no doubt that “foreclosure sale,” as it is commonly understood, signifies the foreclosure auction. See, e.g., *Cain*, 423 F.3d at 620; *Hric*, 208 B.R. at 25; *Simmons*, 202 B.R. at 203.

[9] [10] [11] [12] Some courts have found ambiguity arising from a perceived conflict between the terms “sold” and “foreclosure sale.” These courts have reasoned that, in New Jersey, a residence is not “sold” until the deed is delivered, and the deed is not delivered until after the foreclosure sale. See, e.g., *Chisholm*, 2005 WL 1522232, at *4; *Randall*, 263 B.R. at 203; *Downing*, 212 B.R. at 463; *Ross*, 191 B.R. at 621. The terms “sold” and “foreclosure sale” are not in conflict. In New Jersey, the successful bid at a foreclosure auction is generally irrevocable, see *Simmons*, 202 B.R. at 204,⁴ and the bidder acquires equitable title that is not subject to defeasance except under narrow circumstances. If, for instance, within ten days of the foreclosure sale, the mortgagor files objections that are judicially sustained, N.J. Ct. R. 4:65–5, or exercises the right of redemption, *Hardyston Nat'l Bank of Hamburg v. Tartamella*, 56 N.J. 508,

267 A.2d 495, 498 (1970), the purchaser may lose equitable title. *Simmons*, 202 B.R. at 204; see also *Ziyambe*, 200 B.R. at 796 (“Under New Jersey law, ... title to the property is indefeasibly vested in the successful bidder unless objection to the sale is filed within ten days.”). Although delivery of the deed *321 conveys legal title, *Randall*, 263 B.R. at 203, the delivery itself has been described as “a ministerial act, routinely performed, which does not affect the redemption rights of the parties.” *Ziyambe*, 200 B.R. at 796.⁵ Numerous courts have concluded, accordingly, that a residence is “sold” at the foreclosure auction. See, e.g., *In re Townsville*, 268 B.R. 95, 118–19 (Bankr.E.D.Pa.2001); *In re Denny*, 242 B.R. 593, 598–99 (Bankr.D.Md.1999); *Hric*, 208 B.R. at 25; *Ziyambe*, 200 B.R. at 796–97. For purposes of § 1322(c)(1), we conclude likewise.

[13] [14] The gavel rule does not, of course, cut off the debtor's state-law post-sale remedies. Those remedies may continue past the date of the foreclosure sale by operation of another provision of the Bankruptcy Code, 11 U.S.C. § 108(b). Section 108(b) provides, in relevant part, as follows:

[I]f applicable nonbankruptcy law ... fixes a period within which the debtor ... may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 60 days after the order for relief.

11 U.S.C. § 108(b). We have interpreted this provision to mean that “when a bankruptcy petition is filed before the expiration of a statutory grace period, if need be § 108(b) can extend the grace period for 60 days from the date of the filing of the petition.” *Counties Contracting & Constr. Co. v. Constitution Life Ins. Co.*, 855 F.2d 1054, 1059 (3d Cir.1988).⁶ Under New Jersey law, the applicable grace period is the ten-day period to object, pursuant to N.J. Ct. R. 4:65–5, or redeem, pursuant to *Hardyston*. When a Chapter 13 petition is filed during the ten-day period, this period is extended to 60 days from the filing of the petition by operation of § 108(b). *Connors*, therefore, had 60 days from the filing of his petition to object or redeem. When he failed to do so, Lakeridge's equitable title was no longer subject to defeasance.

We hold, therefore, that under the unambiguous language of 11 U.S.C. § 1322(c)(1), a Chapter 13 debtor does not have the right to cure a default on a mortgage secured by the debtor's principal residence between the time the residence is sold at a foreclosure sale and the time the deed is delivered.

B. The Legislative History behind § 1322(c)(1) and Policy Considerations Lend Further Support for the Gavel Rule

[15] Although, given the foregoing, it is unnecessary to examine the legislative *322 history of § 1322(c)(1), we briefly do so here because it is consistent with the statutory language. Subsection (c)(1) was added to the Bankruptcy Code to make explicit that a debtor's right to cure a default on a mortgage secured by his or her principal residence continues at least until the “foreclosure sale,” and may continue beyond that date if state law provides additional cure rights. *H.R. Rep. 103–835*, at 52 (1994), reprinted in 1994 U.S.S.C.A.N. 3340, 3361. Until our decision in *In re Roach*, 824 F.2d 1370 (3d Cir.1987), all of the federal courts of appeals had recognized that a debtor's right to cure a default on a home mortgage continued at least until the time of the foreclosure sale. *H.R. Rep. 103–835*, at 52, reprinted in 1994 U.S.S.C.A.N. at 3361. In *Roach*, however, we held that a debtor's right to cure expired at the foreclosure judgment, an event that preceded the foreclosure sale. *Roach*, 824 F.2d at 1378–79. Congress added subsection (c)(1) to overrule *Roach* and establish a uniform time—the “foreclosure sale”—for expiration of a debtor's federal right to cure.

Proponents of the deed-delivery rule tend to place great emphasis on a statement in the legislative history suggesting Congress's intent to “allow [] the debtor to cure home mortgage defaults at least *through completion* of a foreclosure sale under applicable nonbankruptcy law.” *H.R. Rep. 103–835*, at 52, reprinted in 1994 U.S.S.C.A.N. at 3361 (emphasis added). They reason that under state law, a foreclosure sale has not been “completed” until delivery of the deed. See, e.g., *Chisholm*, 2005 WL 1522232, at *4–5; *Randall*, 263 B.R. at 203; *Downing*, 212 B.R. at 466; *Ross*, 191 B.R. at 621; *Macavia*, 1995 Bankr.LEXIS 2103, at *7–8. It is by no means evident from the word “completion” in this one fragment of legislative history, however, that Congress intended “foreclosure sale” to refer to the entire state-law foreclosure process. Viewed in the context of Congress's express intent to overrule the aberrant *Roach* holding, it is eminently more plausible that Congress intended to set the expiration of a debtor's federal right to cure at the foreclosure

sale, thus restoring the uniformity that existed pre-*Roach*. The foreclosure sale is, thus, “completed” with the fall of the gavel and the vesting of equitable title in the winning bidder. See *Cain*, 423 F.3d at 621.

That the federal right to cure expires at the foreclosure sale finds support in the statement of Senator Charles Grassley when speaking on behalf of the bill that was ultimately enacted:

Title III of the bill will assist homeowners. Some homeowners attempt to prevent their homes from being foreclosed upon, even though a bankruptcy court has ordered a foreclosure sale. There may be several months between the court order and the foreclosure sale. Section 301 will preempt conflicting State laws, and permit homeowners to present a plan to pay off their mortgage debt until the foreclosure sale actually occurs.

140 Cong. Rec. S14,462 (1994). Senator Grassley was an original co-sponsor of the Senate bill, which would have permitted the debtor to cure a default so long as he or she “possesses any legal or equitable interest, including a right of redemption,” at the time the petition was filed. *S. Rep. 103–168*, at 21 (1993). This is precisely the interpretation that **Connors** now urges, and Congress's rejection of the Senate bill in favor of the current language of § 1322(c)(1) is telling.

The gavel rule also makes sense as a matter of policy. In *In re McCarn*, 218 B.R. 154, 160 (10th Cir. BAP 1998),

a bankruptcy appellate panel in the Tenth *323 Circuit acknowledged that the foreclosure sale, in contrast to the delivery of the deed, must be preceded by notice to the debtor. Such notice affords the debtor ample opportunity to protect his or her interests by filing a bankruptcy petition before the foreclosure sale and exercising the right to cure under § 1322(c)(1). See also *Simmons*, 202 B.R. at 203–04. To the extent that debtors' rights are not sufficiently protected, states remain free to provide them with additional post-sale remedies by virtue of § 108(b). See, e.g., *Justice v. Valley Nat'l Bank*, 849 F.2d 1078, 1082 (8th Cir.1988). Meanwhile, the gavel rule protects purchasers by avoiding an interpretation that turns § 1322(c)(1) into a federal vehicle for divesting them of property rights acquired at foreclosure sales. Increased uncertainty of ownership may also translate to lower foreclosure bids, a factor that New Jersey courts consider when confirming foreclosure sales. See *N.J. Ct. R. 4:65–5* (permitting court to confirm sale if it “is satisfied that the real estate was sold at its highest and best price at the time of the sale”).

IV.

We, therefore, hold that under 11 U.S.C. § 1322(c)(1), a Chapter 13 debtor does not have the right to cure a default on a mortgage secured by the debtor's principal residence between the time the residence is sold at a foreclosure sale and the time the deed is delivered. We will, accordingly, affirm.

All Citations

497 F.3d 314, 58 Collier Bankr.Cas.2d 569, Bankr. L. Rep. P 80,985

Footnotes

- 1 **Connors v. Deutsche Bank Nat'l Trust Co.**, No. Civ. A. 05–2236, 2006 WL 1722609, at *2 (D.N.J. June 20, 2006); *In re Maricic*, No. 02–37500, slip op. (Bankr.D.N.J.2002); *In re Mangano*, 253 B.R. 339, 344–45 (Bankr.D.N.J.2000); *In re Veltre*, No. 99–40669, 2000 Bankr.LEXIS 1409, at *4–6 (Bankr.D.N.J. May 31, 2000); *In re Hric*, 208 B.R. 21, 26 (Bankr.D.N.J.1997); *In re Simmons*, 202 B.R. 198, 203, 205–06 (Bankr.D.N.J.1996); *In re Ziyambe*, 200 B.R. 790, 794 (Bankr.D.N.J.1996); *In re Little*, 201 B.R. 98, 105 (Bankr.1996). The Sixth Circuit has also adopted this view. See *In re Cain*, 423 F.3d 617, 619 (6th Cir.2005).

- 2 *Chisholm v. Cendant Mortgage Corp.*, No. Civ. 04–6398, 2005 WL 1522232, at *1 (D.N.J. June 27, 2005); *In re Randall*, 263 B.R. 200, 201 (D.N.J.2001); *In re Downing*, 212 B.R. 459, 467 (Bankr.D.N.J.1997); *In re Ross*, 191 B.R. 615, 621 (Bankr.D.N.J.1996); *In re Macavia*, No. 95–34118, 1995 Bankr.LEXIS 2103, at *7–8 (Bankr.D.N.J.1995).
- 3 **Connors** asks us to consider *Wright v. Union Central Life Insurance Co.*, 304 U.S. 502, 58 S.Ct. 1025, 82 L.Ed. 1490 (1938), a case in which the Supreme Court upheld the constitutionality of a provision of the Bankruptcy Code that extended any state-law right of redemption that a debtor possessed at the time he or she filed a petition in bankruptcy. That holding is inapplicable here because § 1322(c)(1) does not purport to extend any state-law right; it simply recognizes a federal right to cure that extends until the property is “sold at a foreclosure sale.” The provision that did extend **Connors's** state-law right to redeem, § 108(b), expired 60 days after he filed his petition.
- 4 Cf. N.J.S.A. § 2A:61–16 (allowing purchaser relief from bid if defect of title renders title unmarketable, or if title is subject to lien or encumbrance).
- 5 In rare circumstances, as when the mortgagor has received insufficient notice of foreclosure proceedings, the right to redeem may be asserted even after delivery of the deed. *Mercury Capital Corp. v. Freehold Office Park, Ltd.*, 363 N.J.Super. 235, 832 A.2d 369, 378 n. 10 (N.J.Sup.Ct. Ch. Div.2003) (citing cases relying on the inherent equity power of the Chancery Court). An equity of redemption that continues beyond the delivery of the deed would undermine any suggestion that the delivery of the deed is the only true “point of finality” in the foreclosure process. Cf. *Chisholm*, 2005 WL 1522232, at *5. A “finality” requirement, moreover, has no basis in the language of the statute.
- 6 Some courts suggest that § 108(b) extends the state-law grace period by an *additional* 60 days. See, e.g., *Ross*, 191 B.R. at 617–18. We are bound by our holding in *Counties Contracting* that the 60–day period runs from the filing of the petition.

United States Code Annotated

Federal Rules of Bankruptcy Procedure (Refs & Annos)

Part III. Claims; Plans; Distributions to Creditors and Equity Security Holders

Federal Rules of Bankruptcy Procedure, Rule 3002

Rule 3002. Filing a Proof of Claim or Interest

Currentness

(a) Need to File. Unless [Rule 1019\(c\)](#), [3003](#), [3004](#), or [3005](#) provides otherwise, every creditor must file a proof of claim--and an equity security holder must file a proof of interest--for the claim or interest to be allowed. A lien that secures a claim is not void solely because an entity failed to file a proof of claim.

(b) Where to File. The proof of claim or interest must be filed in the district where the case is pending and in accordance with [Rule 5005](#).

(c) Time to File. In a voluntary Chapter 7 case or in a Chapter 12 or 13 case, the proof of claim is timely if filed within 70 days after the order for relief or entry of an order converting the case to Chapter 12 or 13. In an involuntary Chapter 7 case, a proof of claim is timely if filed within 90 days after the order for relief is entered. These exceptions apply in all cases:

(1) ***Governmental Unit.*** A governmental unit's proof of claim is timely if filed within 180 days after the order for relief. But a proof of claim resulting from a tax return filed under § 1308 is timely if filed within 180 days after the order for relief or within 60 days after the tax return is filed. On motion filed by a governmental unit before the time expires and for cause, the court may extend the time to file a proof of claim.

(2) ***Infant or Incompetent Person.*** In the interests of justice, the court may extend the time for an infant or incompetent person--or a representative of either--to file a proof of claim, but only if the extension will not unduly delay case administration.

(3) ***Unsecured Claim That Arises from a Judgment.*** This paragraph (3) applies if an unsecured claim arises in favor of an entity or becomes allowable because of a judgment to recover money or property from that entity or a judgment that denies or avoids the entity's interest in property. The claim may be filed within 30 days after the judgment becomes final. But the claim must not be allowed if the judgment imposes a liability that is not satisfied--or a duty that is not performed--within the 30 days or any additional time set by the court.

(4) ***Claim Arising from a Rejected Executory Contract or Unexpired Lease.*** A proof of claim for a claim that arises from a rejected executory contract or an unexpired lease may be filed within the time set by the court.

(5) ***Notice That Assets May Be Available to Pay a Dividend.*** The clerk must, by mail, give at least 90 days' notice to creditors that a dividend payment appears possible and that proofs of claim must be filed by the date set forth in the notice if:

(A) a notice of insufficient assets to pay a dividend had been given under [Rule 2002\(e\)](#); and

(B) the trustee later notifies the court that a dividend appears possible.

(6) *Claim Secured by a Security Interest in the Debtor's Principal Residence.* A proof of a claim secured by a security interest in the debtor's principal residence is timely filed if:

(A) the proof of claim and attachments required by [Rule 3001\(c\)\(2\)\(C\)](#) are filed within 70 days after the order for relief; and

(B) the attachments required by [Rule 3001\(c\)\(1\)](#) and (d) are filed as a supplement to the holder's claim within 120 days after the order for relief.

(7) *Extending the Time to File.* On a creditor's motion filed before or after the time to file a proof of claim has expired, the court may extend the time to file by no more than 60 days from the date of its order. The motion may be granted if the court finds that the notice was insufficient to give the creditor a reasonable time to file.

CREDIT(S)

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 23, 1996, eff. Dec. 1, 1996; Apr. 23, 2008, eff. Dec. 1, 2008; Apr. 27, 2017, eff. Dec. 1, 2017; Apr. 11, 2022, eff. Dec. 1, 2022; Apr. 2, 2024, eff. Dec. 1, 2024.)

ADVISORY COMMITTEE NOTES

Subdivision (a) of this rule is substantially a restatement of the general requirement that claims be proved and filed. The exceptions refer to Rule 3003 providing for the filing of claims in chapter 9 and 11 cases, and to Rules 3004 and 3005 authorizing claims to be filed by the debtor or trustee and the filing of a claim by a contingent creditor of the debtor.

A secured claim need not be filed or allowed under § 502 or § 506(d) unless a party in interest has requested a determination and allowance or disallowance under § 502.

Subdivision (c) is adapted from former Bankruptcy Rule 302(e) but changes the time limits on the filing of claims in chapter 7 and 13 cases from six months to 90 days after the first date set for the meeting of creditors. The special rule for early filing by a secured creditor in a chapter 13 case, in former Rule 13-302(e)(1) is not continued.

Although the claim of a secured creditor may have arisen before the petition, a judgment avoiding the security interest may not have been entered until after the time for filing claims has expired. Under Rule 3002(c)(3) the creditor who did not file a secured claim may nevertheless file an unsecured claim within the time prescribed. A judgment does not become final for the purpose of starting the 30 day period provided for by paragraph (3) until the time for appeal has expired or, if an appeal is taken, until the appeal has been disposed of. [In re Tapp, 61 F.Supp. 594 \(W.D.Ky.1945\)](#).

Paragraph (1) is derived from former Bankruptcy Rule 302(e). The governmental unit may move for an extension of the 90 day period. Pursuant to § 501(c) of the Code, if the government does not file its claim within the proper time period, the debtor or trustee may file on its behalf. An extension is not needed by the debtor or trustee because the right to file does not arise until the government's time has expired.

Paragraph (4) is derived from former chapter rules. See, e.g., Rule 11-33(a)(2)(B). In light of the reduced time it is necessary that a party with a claim arising from the rejection of an executory contract have sufficient time to file that claim. This clause allows the court to fix an appropriate time.

Paragraph (5) of subdivision (c) is correlated with the provision in Rule 2002(e) authorizing notification to creditors of estates from which no dividends are anticipated. The clause permits creditors who have refrained from filing claims after receiving notification to be given an opportunity to file when subsequent developments indicate the possibility of a dividend. The notice required by this clause must be given in the manner provided in Rule 2002. The information relating to the discovery of assets will usually be obtained by the clerk from the trustee's interim reports or special notification by the trustee.

Provision is made in Rule 2002(a) and (h) for notifying all creditors of the fixing of a time for filing claims against a surplus under paragraph (6). This paragraph does not deal with the distribution of the surplus. Reference must also be made to § 726(a)(2)(C) and (3) which permits distribution on late filed claims.

Paragraph (6) is only operative in a chapter 7 case. In chapter 13 cases, the plan itself provides the distribution to creditors which is not necessarily dependent on the size of the estate.

1987 Amendments

Subdivision (a) is amended by adding a reference to Rule 1019(4). Rule 1019(4) provides that claims actually filed by a creditor in a chapter 11 or 13 case shall be treated as filed in a superseding chapter 7 case. Claims deemed filed in a chapter 11 case pursuant to § 1111(a) of the Code are not considered as filed in a superseding chapter 7 case. The creditor must file a claim in the superseding chapter 7 case.

1991 Amendments

Subdivision (a) is amended to conform to the renumbering of subdivisions of Rule 1019. Subdivision (c) is amended to include chapter 12 cases. Subdivision (c)(4) is amended to clarify that it includes a claim arising from the rejection of an unexpired lease.

1996 Amendments

The amendments are designed to conform to §§ 502(b)(9) and 726(a) of the Code as amended by the Bankruptcy Reform Act of 1994.

The Reform Act amended § 726(a)(1) and added § 502(b)(9) to the Code to govern the effects of a tardily filed claim. Under § 502(b)(9), a tardily filed claim must be disallowed if an objection to the proof of claim is filed, except to the extent that a holder of a tardily filed claim is entitled to distribution under § 726(a)(1), (2), or (3).

The phrase “in accordance with this rule” is deleted from Rule 3002(a) to clarify that the effect of filing a proof of claim after the expiration of the time prescribed in Rule 3002(c) is governed by § 502(b)(9) of the Code, rather than by this rule.

Section 502(b)(9) of the Code provides that a claim of a governmental unit shall be timely filed if it is filed “before 180 days after the date of the order for relief” or such later time as the Bankruptcy Rules provide. To avoid any confusion as to whether a governmental unit's proof of claim is timely filed under § 502(b)(9) if it is filed on the 180th day after the order for relief, paragraph (1) of subdivision (c) provides that a governmental unit's claim is timely if it is filed not later than 180 days after the order for relief.

References to “the United States, a state, or subdivision thereof” in paragraph (1) of subdivision (c) are changed to “governmental unit” to avoid different treatment among foreign and domestic governments.

GAP Report on Rule 3002. After publication of the proposed amendments, the Bankruptcy Reform Act of 1994 amended sections 726 and 502(b) of the Code to clarify the rights of creditors who tardily file a proof of claim. In view of the Reform Act, proposed new subdivision (d) of Rule 3002 has been deleted from the proposed amendments because it is no longer necessary. In addition, subdivisions (a) and (c) have been changed after publication to clarify that the effect of tardily filing a proof of claim is governed by § 502(b)(9) of the Code, rather than by this rule.

The amendments to § 502(b) also provide that a governmental unit's proof of claim is timely filed if it is filed before 180 days after the order for relief. Proposed amendments to Rule 3002(c)(1) were added to the published amendments to conform to this statutory change and to avoid any confusion as to whether a claim by a governmental unit is timely if it is filed on the 180th day.

The committee note has been re-written to explain the rule changes designed to conform to the Reform Act.

2008 Amendments

Subdivision (c)(1) is amended to reflect the addition of [§ 1308 to the Bankruptcy Code](#) in 2005. This provision requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so. Subdivision (c)(1) provides additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case. The amendment also allows the governmental unit to move for additional time to file a proof of claim prior to expiration of the applicable filing period.

Subdivision (c)(5) of the rule is amended to set a new period for providing notice to creditors that they may file a proof of claim in a case in which they were previously informed that there was no need to file a claim. Under Rule 2002(e), if it appears that there will be no distribution to creditors, the creditors are notified of this fact and are informed that if assets are later discovered and a distribution is likely that a new notice will be given to the creditors. This second notice is prescribed by Rule 3002(c)(5). The rule is amended to direct the clerk to give at least 90 days' notice of the time within which creditors may file a proof of claim. Setting the deadline in this manner allows the notices being sent to creditors to be more accurate regarding the deadline than was possible under the prior rule. The rule previously began the 90 day notice period from the time of the mailing of the notice, a date that could vary and generally would not even be known to the creditor. Under the amended rule, the notice will identify a specific bar date for filing proofs of claim thereby being more helpful to the creditors.

Subdivision (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient, under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with § 1514(d), added to the Code by the 2005 amendments, and requires that the rules and orders of the court provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code.

Other changes are stylistic.

2017 Amendments

Subdivision (a) is amended to clarify that a creditor, including a secured creditor, must file a proof of claim in order to have an allowed claim. The amendment also clarifies, in accordance with § 506(d), that the failure of a secured creditor to file a proof of claim does not render the creditor's lien void. The inclusion of language from § 506(d) is not intended to effect any change of law with respect to claims subject to setoff under § 553. The amendment preserves the existing exceptions to this rule under Rules 1019(3), 3003, 3004, and 3005. Under Rule 1019(3), a creditor does not need to file another proof of claim after conversion of a case to chapter 7. Rule 3003 governs the filing of a proof of claim in chapter 9 and chapter 11 cases. Rules 3004 and 3005 govern the filing of a proof of claim by the debtor, trustee, or another entity if a creditor does not do so in a timely manner.

Subdivision (c) is amended to alter the calculation of the bar date for proofs of claim in chapter 7, chapter 12, and chapter 13 cases. The amendment changes the time for filing a proof of claim in a voluntary chapter 7 case, a chapter 12 case, or a chapter 13 case from 90 days after the § 341 meeting of creditors to 70 days after the petition date. If a case is converted to chapter 12 or chapter 13, the 70-day time for filing runs from the order of conversion. If a case is converted to chapter 7, Rule 1019(2) provides that a new time period for filing a claim commences under Rule 3002. In an involuntary chapter 7 case, a 90-day time for filing applies and runs from the entry of the order for relief.

Subdivision (c)(6) is amended to expand the exception to the bar date for cases in which a creditor received insufficient notice of the time to file a proof of claim. The amendment provides that the court may extend the time to file a proof of claim if the debtor fails to file a timely list of names and addresses of creditors as required by Rule 1007(a). The amendment also clarifies that if a court grants a creditor's motion under this rule to extend the time to file a proof of claim, the extension runs from the date of the court's decision on the motion.

Subdivision (c)(7) is added to provide a two-stage deadline for filing mortgage proofs of claim secured by an interest in the debtor's principal residence. Those proofs of claim must be filed with the appropriate Official Form mortgage attachment within 70 days of the order for relief. The claim will be timely if any additional documents evidencing the claim, as required by Rule 3001(c)(1) and (d), are filed within 120 days of the order for relief. The order for relief is the commencement of the case upon filing a petition, except in an involuntary case. See § 301 and § 303(h). The confirmation of a plan within the 120-day period set forth in subdivision (c)(7)(B) does not prohibit an objection to any proof of claim.

2022 Amendments

Rule 3002(c)(6) is amended to provide a single standard for granting motions for an extension of time to file a proof of claim, whether the creditor has a domestic address or a foreign address. If the notice to such creditor was “insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim,” the court may grant an extension.

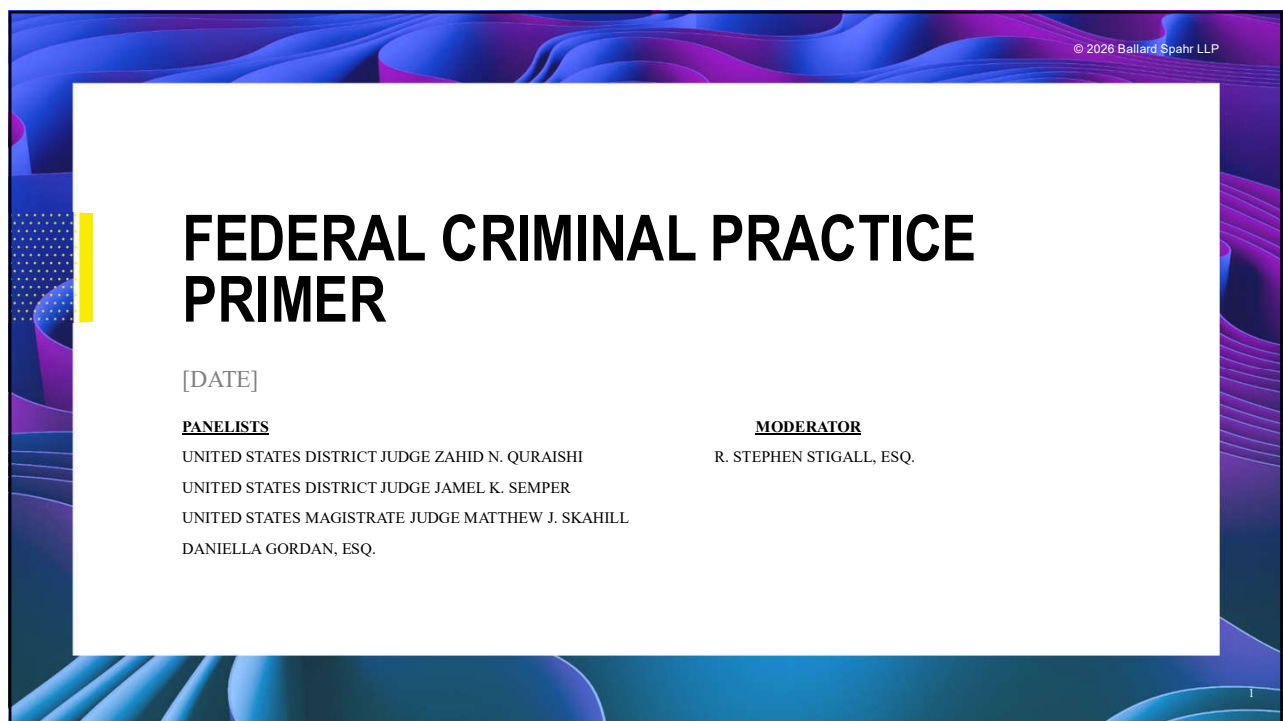
2024 Amendments

The language of Rule 3002 has been amended as part of the general restyling of the Bankruptcy Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

[Notes of Decisions \(601\)](#)

Fed.Rules Bankr.Proc. Rule 3002, 11 U.S.C.A., FRBP Rule 3002
Including Amendments Received Through 3-1-2025

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FEDERAL CRIMINAL PRACTICE PRIMER

[DATE]

PANELISTS

UNITED STATES DISTRICT JUDGE ZAHID N. QURAISHI
UNITED STATES DISTRICT JUDGE JAMEL K. SEMPER
UNITED STATES MAGISTRATE JUDGE MATTHEW J. SKAHILL
DANIELLA GORDAN, ESQ.

MODERATOR

R. STEPHEN STIGALL, ESQ.

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PANELISTS



United States District
Judge Zahid N. Quraishi



United States District
Judge Jamel K. Semper



United States District
Magistrate Judge Matthew J. Skahill



Daniella Gordan, Esq.

MODERATOR



R. Stephen Stigall
Partner

2

PRE-CHARGING: FEDERAL INVESTIGATION

- Generally, Two Types of Cases
 - Reactive
 - Investigative Cases



REACTIVE CASES

- Crime committed
- Probable cause arrest
- Depending on the type of crime, jurisdiction, cooperation (or lack thereof) among prosecuting authorities, prosecution will be by:
 - Locals (District Attorney, County Prosecutor)
 - State (State Attorney General)
 - Federal (United States Attorney's Offices/DOJ)



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JOINT JURISDICTION: LOCAL/STATE COULD HAVE CHARGED ATTEMPTED MURDER; FEDERAL CHARGED EXPLOSIVES



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■ ARSON/ATTEMPTED MURDER OR EXPLOSIVES

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■ ARSON/ATTEMPTED MURDER OR EXPLOSIVES

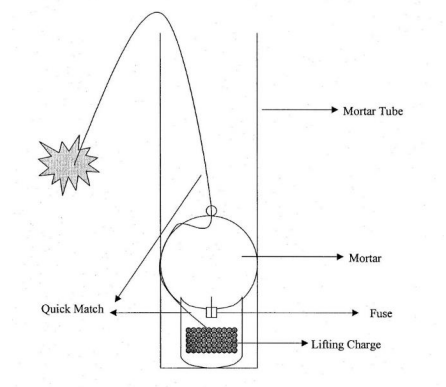
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LEAD DEFENDANT – 23 YEARS' IMPRISONMENT

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REACTIVE CASES

- Drug crimes
- Many immigration crimes – illegal reentries
- Firearms
 - Felon in possession
 - Gun trafficking
- Violent crimes
 - Bank robbery
 - Hobbs Act robbery





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INVESTIGATIVE CASES

- Health Care Fraud
 - FDCA violations
 - False claims/mail fraud/wire fraud
- Foreign Corrupt Practices Act violations
- Securities fraud
 - Market manipulation
 - Insider trading
- Export control violations
- Public Corruption

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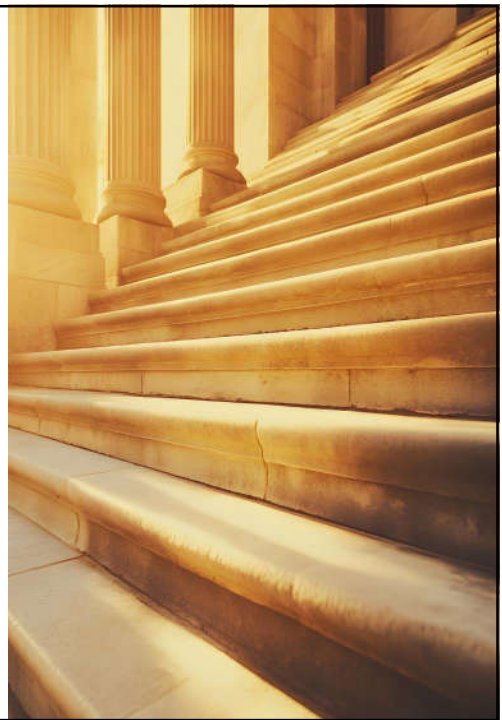
■ INVESTIGATIVE CASES

- Criminal antitrust
- Government procurement fraud
- Environmental crimes
- Tax fraud
- Election law violations
- Labor violations
- Other financial fraud/money laundering



INVESTIGATIVE CASES – TYPICAL STEPS

- Agent/law enforcement officer suspects criminal wrongdoing
- Prior to involving prosecutor, agent may:
 - Issue administrative subpoenas
 - Conduct witness interviews
 - Engage in trash pulls
 - Obtain mail covers
 - Make surreptitious, consensual recordings
 - Work with confidential informants/cooperating witnesses
- Basically, evidence-gathering with little to no protections



■ INVESTIGATIVE CASES – TOOLS

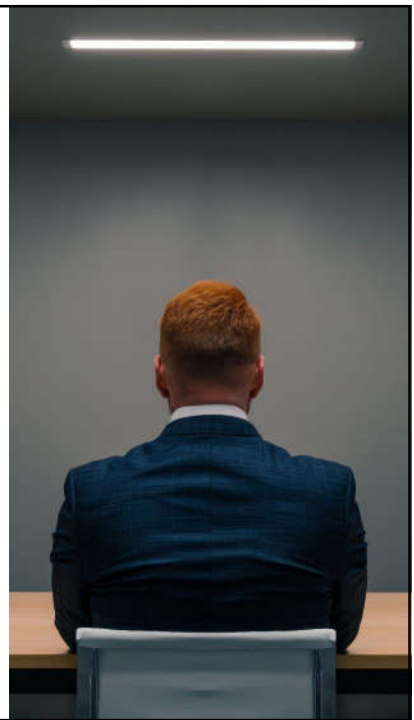
- ADMINISTRATIVE SUBPOENAS
 - Phone records
 - Medical billing records
 - Educational/financial aid records
 - Credit reports
 - Utilities
 - ISPs
 - Passenger manifests
- Will be upheld if the subpoena was issued for a lawfully authorized purpose and sought information relevant to the agency's inquiry. United States v. Powell, 379 U.S. 48, 57 (1964)



■ INVESTIGATIVE CASES – TOOLS

- WITNESS INTERVIEWS

- “Knock and talks”
- “Friendly interview”
- No Miranda warnings b/c it is not custodial interrogation
- Typically uncounseled
- When clients are most vulnerable





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INVESTIGATIVE CASES – TOOLS

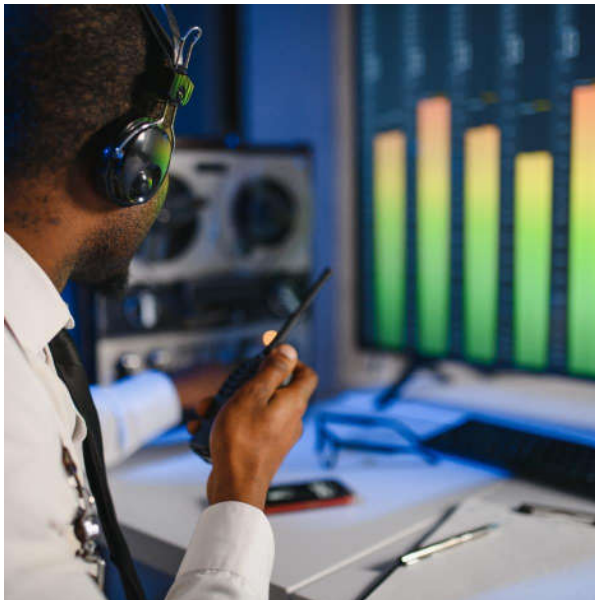
- TRASH PULLS
 - Searching items left in garbage
 - “Dumpster diving”
 - Can help develop probable cause to search premises
 - Federal law -- no warrant required. California v. Greenwood, 486 U.S. 35 (1988).
 - Some states – warrant required. State v. Hempele, 120 N.J. 182 (1990)

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■ INVESTIGATIVE CASES – TOOLS

- MAIL COVERS
 - Allows law enforcement to apply to U.S. Postal Service to make a nonconsensual record of any data appearing on the outside of any sealed or unsealed mail matter
 - 30 day terms
 - Renewable for 30-day periods up to 120 continuous days
 - Further extensions past 120 days allowed
 - Can help develop probable cause
 - 33 C.F.R. § 233.3





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INVESTIGATIVE CASES – TOOLS

- SURREPTITIOUS, CONSENSUAL RECORDINGS
 - Interception by electronic device of any wire, oral, or electronic communication where one of the parties to the communication has given prior consent to the monitoring or recording
 - Warrant not required.
 - Party providing consent may be government agent.
 - Phone calls/video-recorded meetings.
 - 18 U.S.C. § 2511(2)(c) – (e)

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INVESTIGATIVE CASES – TOOLS

- CONFIDENTIAL
INFORMANTS/COOPERATING
WITNESSES
 - Confidential informants typically “inform” law enforcement about criminality, do not participate in undercover operations, and likely will not testify
 - Cooperating witnesses typically “work” with law enforcement in an undercover operation



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■ INVESTIGATIVE CASES – STEPS

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- Law enforcement/agent presents case to prosecuting authority
- Prosecutor and agent/law enforcement work cooperatively to develop the investigation
- Prosecutor may direct:
 - Issuance of grand jury subpoenas
 - Pen register/trap and trace
 - Search warrants
 - Wiretaps



■ INVESTIGATIVE CASES – GJ SUBPOENAS

- Governed by Fed. R. Crim. P. 6 – usually do not require court approval
- Non-testimonial matters:
 - Handwriting exemplars
 - Voice exemplars
 - Submit to the taking of photographs
- Documents:
 - bank records
 - phone records
 - subscriber information from ISPs
 - medical records



GJ SUBPOENAS – 5TH AMENDMENT ISSUES

- 5th Amendment applies (but not for business entities – Braswell v. U.S., 487 U.S. 99 (1988))
- Prosecutor must generally honor advance assertion of 5th Amendment if target and attorney state in writing, signed by both, that the target will refuse to testify on 5th Amendment grounds – USAM § 9-11.154
- DOJ policy to append “Advice of Rights” form to subpoenas issued to targets and subjects – USAM § 9-11.151
- GJ conducting investigation of possible violations of criminal laws involving X
 - You may refuse to answer any question if a truthful answer to the question would tend to incriminate you
 - Anything you do say may be used against you by the GJ or in a subsequent legal proceeding
 - If you have retained counsel, the GJ will permit you a reasonable opportunity to step outside the grand jury room to consult with counsel if you so desire

GJ SUBPOENAS – MISCELLANEOUS ISSUES

- Motions to quash: e.g., attorney-client privilege, work-product, lack of particularity, 1st Amendment issues; technical defects in service or issuance of subpoena
- 4th Amendment challenges very difficult
- Immunity (courts cannot grant/gov't must initiate the process)
 - Informal – letter immunity
 - Formal – 18 U.S.C. §§ 6003, 6004, 6005
 - Person may be compelled to testify under 18 U.S.C. § 6002
- Act of production privilege – although document's contents have no 5th Amendment privilege, the act of producing them may incriminate. *U.S. v. Doe*, 465 U.S. 605 (1984).
 - Applies to individuals and closely-held business entities

INVESTIGATIVE CASES – PEN REGISTER/TRAP & TRACE

- Pen register – captures numbers dialed from a phone
- Trap & trace – captures numbers dialed into a phone
- No content
- 18 U.S.C. §§ 3121 –3127
- *Ex parte* application/order to Magistrate Judge
- Standard below probable cause
 - Must demonstrate specific and articulable facts to show that the information likely to be obtained is relevant to an on-going criminal investigation

INVESTIGATIVE CASES – SEARCH WARRANTS

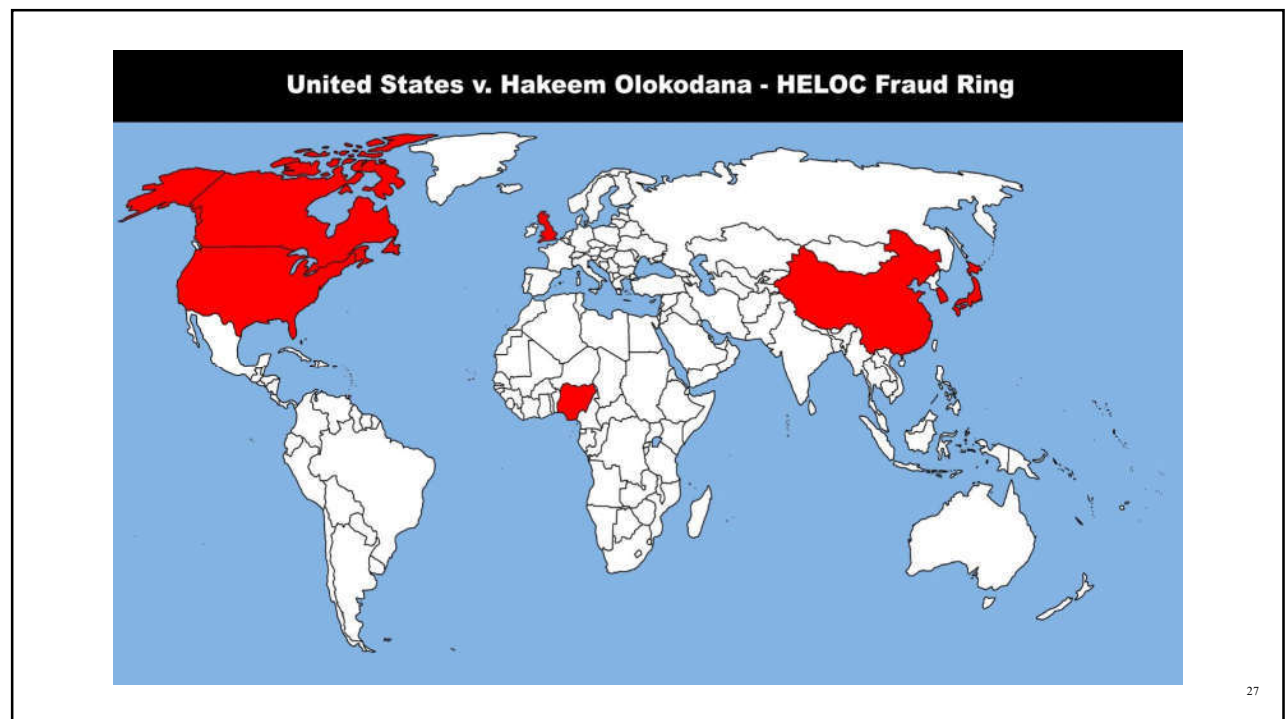
- Governed by Fed. R. Crim. P. 41
- Ex parte application/order to Magistrate Judge
- To be valid, warrant must
 - Be issued by a neutral and detached Magistrate Judge
 - Be based on probable cause
 - Particularly describe the place to be searched and the item to be seized
- Standard – probable cause to believe that evidence, fruits, or instrumentalities of crime are located at/on the particularly-described person, place, or thing

SEARCH WARRANT EXECUTION – WHERE AGENTS MAY SEARCH

- Express or implied authorization – warrant must have expressly or impliedly authorized a search of the place or thing
 - E.g., warrant to search residence impliedly authorizes search of receptacles on the premises controlled by occupants such as mailboxes and garbage cans
- Plausible location of the evidence
 - Documents – search permitted almost everywhere
- Reasonable intensity – intensity of the search, its thoroughness, destructiveness, and length must be reasonable

SEARCH WARRANT EXECUTION – WHAT AGENTS MAY SEIZE

- Items listed in warrant
- Unlisted items observed in “plan view”
 - Item discovered while agents were conducting a lawful search for listed evidence
 - When agents seized the item, they had probable cause to believe it was evidence or would aid in the apprehension of a criminal
- Computers/tablets/phones/electronics
 - If authorized, may seize the electronic
 - Or image a copy on which agents will later perform searches

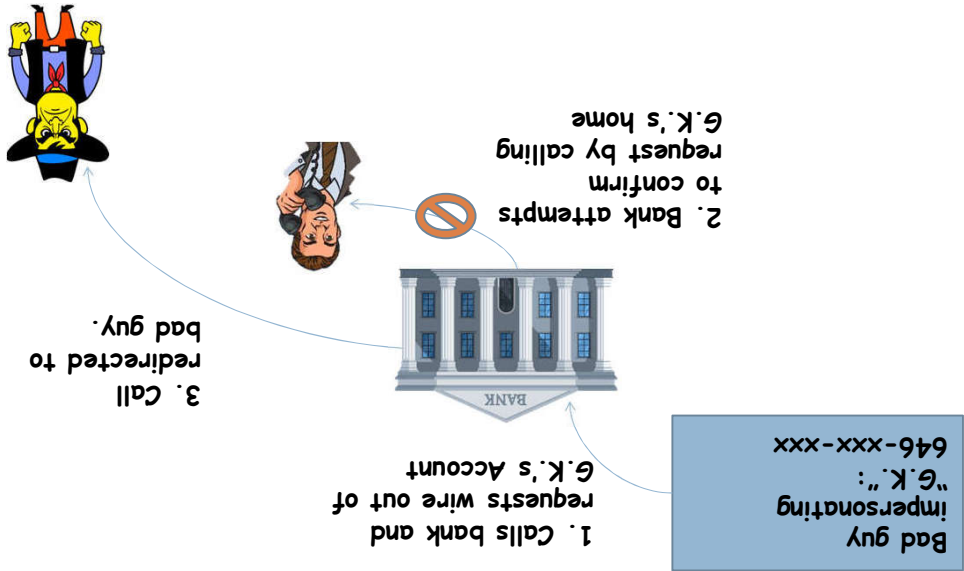


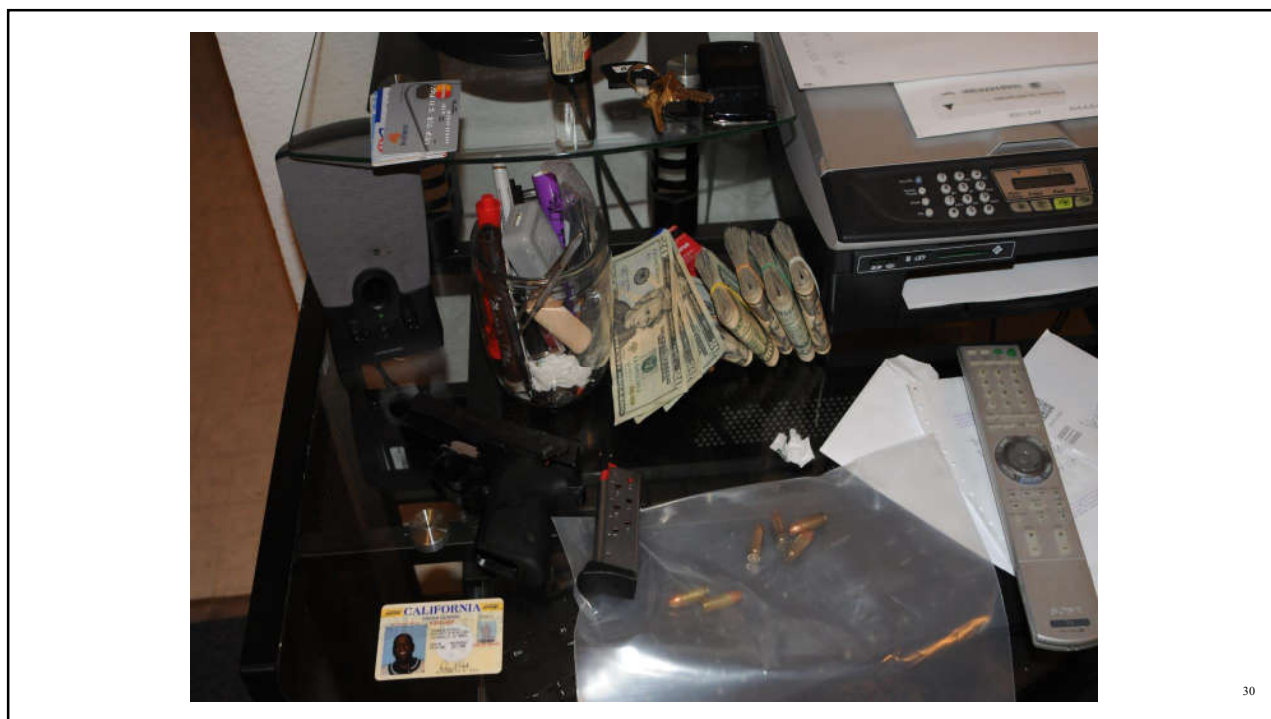
HOME EQUITY LINE OF CREDIT FRAUD – DEFENDANTS' USE OF INTERSTATE WIRES

- Phone in other names
 - Switching Phones
- Hiding IP Addresses
- Working away from the house



GETTING AROUND SECURITY MEASURES









PHONES SEIZED DURING SEARCH

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RESULTS?

- 8 Arrested
- No Bail
- 8 Convicted
- Sentences: Up to 12 years

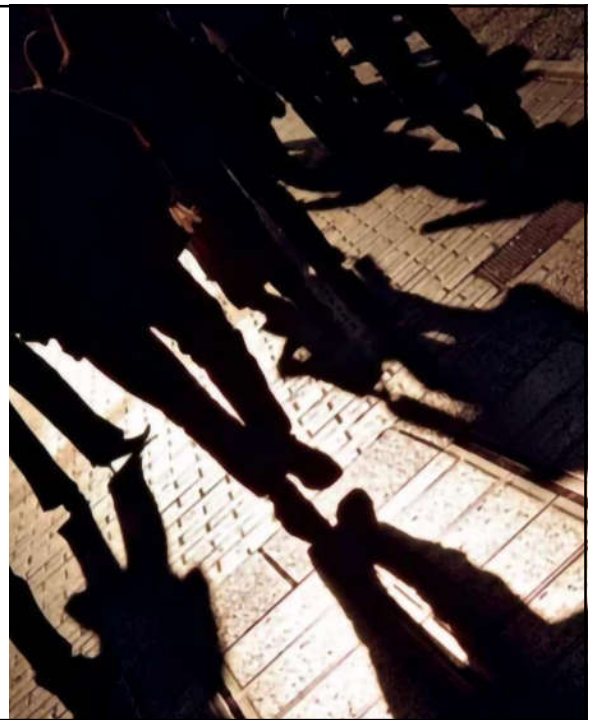


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■ THE MOORS

- Fraud on Banks/Financial Institutions and Others
- “Sovereign Citizen Movement”
- Redemption Scheme
- \$17 Million In Fake Money Orders Passed
- 9 Arrested
- 5 Convicted At Trial; 4 Convicted by Guilty Plea
- Sentences Up To 15 ½ Years
- Majority of evidence obtained by searches



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INVESTIGATIVE CASES – WIRE TAPS

- Governed by 18 U.S.C. §§ 2510 - 2522
- *Ex parte* application/order to District Judge
- Stringent requirements; the failure of any may result in suppression

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WIRE TAPS – JURISDICTIONAL REQUIREMENTS

- Application must be approved by designated government official
- Federal authorities may intercept electronic communications for investigations of any felony – 18 U.S.C. § 2516(3)
- For wire or oral intercepts, however, authorities are limited to investigations of long and wide-ranging list of specific crimes – 18 U.S.C. § 2516(1)(a) – (s)

WIRE TAPS – JURISDICTIONAL REQUIREMENTS

- Even if crime is not specifically listed, but the government had a bona fide investigation of a listed offense, the court will admit wiretap evidence in prosecution for non-listed offenses
- E.g., United States v. Rajaratnam, No. 09-cr-1184-RJH, Mem. and Order (S.D.N.Y. Nov. 29, 2010)
 - Defendants charged with 17 counts of securities fraud and conspiracy to commit securities fraud, neither of which is listed in wire tap statute
 - But government's investigation was for wire and mail fraud, which are listed, and therefore court did not suppress

WIRE TAPS – DOCUMENTARY REQUIREMENTS

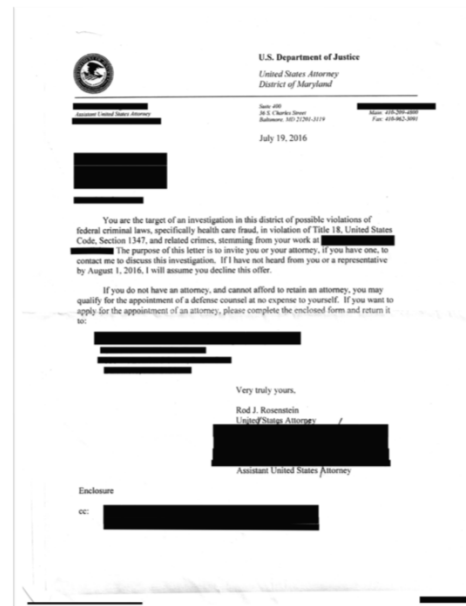
- Application made in writing and under oath, except in emergency situations
- Application must establish PC for the person, crime, conversation, communication, and time period
- Application must demonstrate necessity/exhaustion of all alternate forms of investigation
- Application must reveal all previous surveillance requests involving persons or facilities named in the instant application

WIRE TAPS – EXECUTIONAL REQUIREMENTS

- Only authorized personnel may conduct surveillance
- Minimization
 - Law enforcement must minimize irrelevant conversations
- Sealing
 - Recording must be made in a manner that reduces the risk of alteration and then sealed under judicial supervision
- Notification
 - Government must notify all persons named in the application that were subjected to electronic surveillance; Judge can alter time frame

TARGET LETTERS

- Issuance of Target Letter
 - Invites target to speak with AUSA/Agent with counsel
 - AUSA can apply to have counsel appointed for target if indigent
 - DOJ policy – AUSA must have good faith belief that AUSA could prove case against target beyond a reasonable doubt



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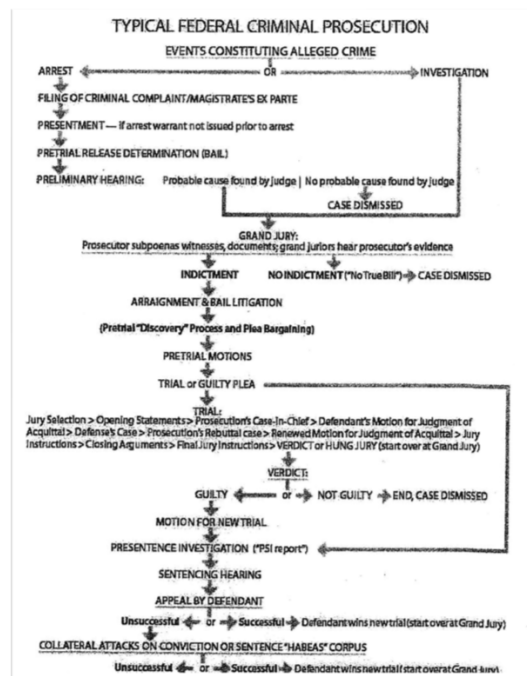
42

ISSUANCE OF TARGET LETTER

- If client retained counsel before issuance of target letter, counsel has much better chance of preventing charges altogether through White Papers/Power Point/other presentations to government
- Can still make pitch to government post-target letter, but much harder
- Typically, upon issuance of target letter, client will plead guilty pursuant to negotiated plea agreement, either cooperating or non-cooperating
- No bail issues upon issuance of target letter because there is no presentment to judicial officer
- One advantage of proceeding in this manner: upon guilty plea, assuming client commits no crimes post-target letter issuance and appears for guilty plea, client will have much better chance of being released upon guilty plea
 - Client's burden to prove not a flight risk or danger to community, 18 U.S.C. § 3143, because client is convicted upon entry of guilty plea

INVESTIGATIVE CASES – GJ SUBPOENAS

- Testimony
 - Target – a putative defendant
 - Subject – person whose conduct is within the scope of GJ investigation
 - Witness – all others
 - Attorney not permitted in GJ room
 - Hearsay permitted. U.S. v. Calandra, 414 U.S. 338 (1974)
 - Failure to present exculpatory evidence not required/will not result in dismissal of indictment.
U.S. v. Williams, 504 U.S. 36 (1992)



ISSUANCE OF COMPLAINT

- Supported by affidavit sworn to by duly authorized federal law enforcement officer
- Summons or arrest warrant: presentment before Magistrate
- Presentment
 - Advise defendant of rights
 - Determine condition(s) of release/detention
 - Set schedule for further proceedings





**DNJ – FEDERAL CRIMINAL
COMPLAINT**

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA :
 :
v. : **CRIMINAL COMPLAINT**
 :
THE UNIVERSITY OF MEDICINE : **Mag. No. 05-3134 (PS)**
AND DENTISTRY OF NEW JERSEY :

I, Eric Rubenstein, being duly sworn, state the following is true and correct to the best of my knowledge and belief. Beginning as early as May 2001 and continuing through at least November 2004 in Essex County, in the District of New Jersey, and elsewhere, the defendant THE UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY did knowingly and willfully execute and attempt to execute a scheme and artifice to defraud Medicaid, a health care benefit program, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money owned by and in the custody and control of Medicaid, in connection with the delivery of, and payment for, health care benefits, items and services, which scheme is set forth in substance in Attachment A, in violation of Title 18, United States Code, Sections 1347 and 2.

I further state that I am a Senior Special Agent with the Department of Health and Human Services, Office of Inspector General, and that this complaint is based on the

ISSUANCE OF COMPLAINT – RELEASE/DETENTION

- Statute favors release unless drugs/serious violent crime involved. 18 U.S.C. § 3142
- Release can be on condition or combination of conditions
 - OR bond, bond secured by cash/property, travel restrictions, surrender travel documents, PTS reporting, EM
- Detention
 - Flight – government's burden to prove by preponderance
 - Danger to community – government's burden to prove by clear and convincing evidence

ISSUANCE OF COMPLAINT – PRELIMINARY HEARING

- Timing – Fed. R. Crim. P. 5.1(c)
 - If defendant in custody – within 14 days of initial appearance.
 - If defendant not in custody – within 21 days of initial appearance
- Proceedings
 - Government may put up witnesses or give attorney-proffer
 - May cross-x adverse witnesses
 - Government must produce testifying witness's Jencks (prior statements) under Fed. R. Crim. P. 26.2(a)–(d) and (f)
 - Defendant may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired.
 - If Magistrate finds PC to believe an offense has been committed and the defendant committed it, the Magistrate Judge must promptly require the defendant to appear for further proceedings
 - If Magistrate does not find PC, Magistrate must discharge the defendant
- Reality
 - Most defendants waive PH
 - Most AUSAs will seek an indictment from GJ rather than participating in PH to avoid Jencks disclosures/creation of additional Jencks which defense can use to cross witnesses at trial



CONTINUANCES

Case 2:21-cr-00807-MCA Document 97 Filed 11/30/23 Page 1 of 3 PageID: 267

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon. Madeline Cox Arleo
v. : Crim. No. 21-807 (MCA)
CARMELO G. GARCIA : ORDER FOR CONTINUANCE

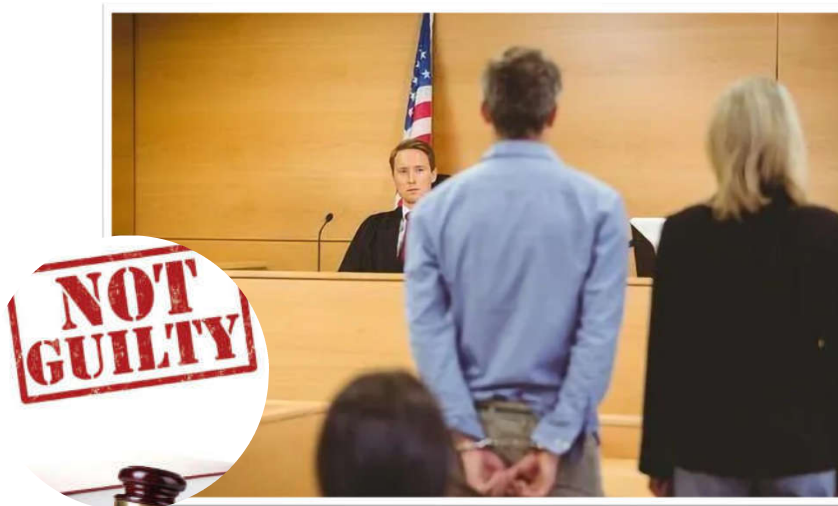
This matter having come before the Court on the joint application of Philip R. Sellinger, United States Attorney for the District of New Jersey (by Elaine K. Lou, Assistant U.S. Attorney), and defendant Carmelo G. Garcia (Robert G. Stahl, Esq., and Laura K. Gasiorowski, Esq. appearing), for an order granting a continuance of the proceedings in the above-captioned matter from December 1, 2023, through and including February 1, 2024, to permit defense counsel the reasonable time necessary for effective preparation in this matter and to allow the parties to continue plea negotiations; the defendant being aware that he has the right to have this matter brought to trial within 70 days from the filing date (and making public) of the indictment, or from the date of his appearance before a judicial officer of this Court, whichever date last occurs, pursuant to Title 18, United States Code, Section 3161(c)(1); and nine prior continuances having been entered; and the defendant, through his attorney, having consented to such continuance; and it appearing that the defendant waives such rights; and exclusions of time from the Speedy Trial Act having been ordered for the period of December 29, 2021, through and including January 31, 2022, due to the COVID-19 pandemic, pursuant to the Standing Order 2021-11, for the reasons referenced therein; and for good and sufficient cause shown,

INDICTMENT

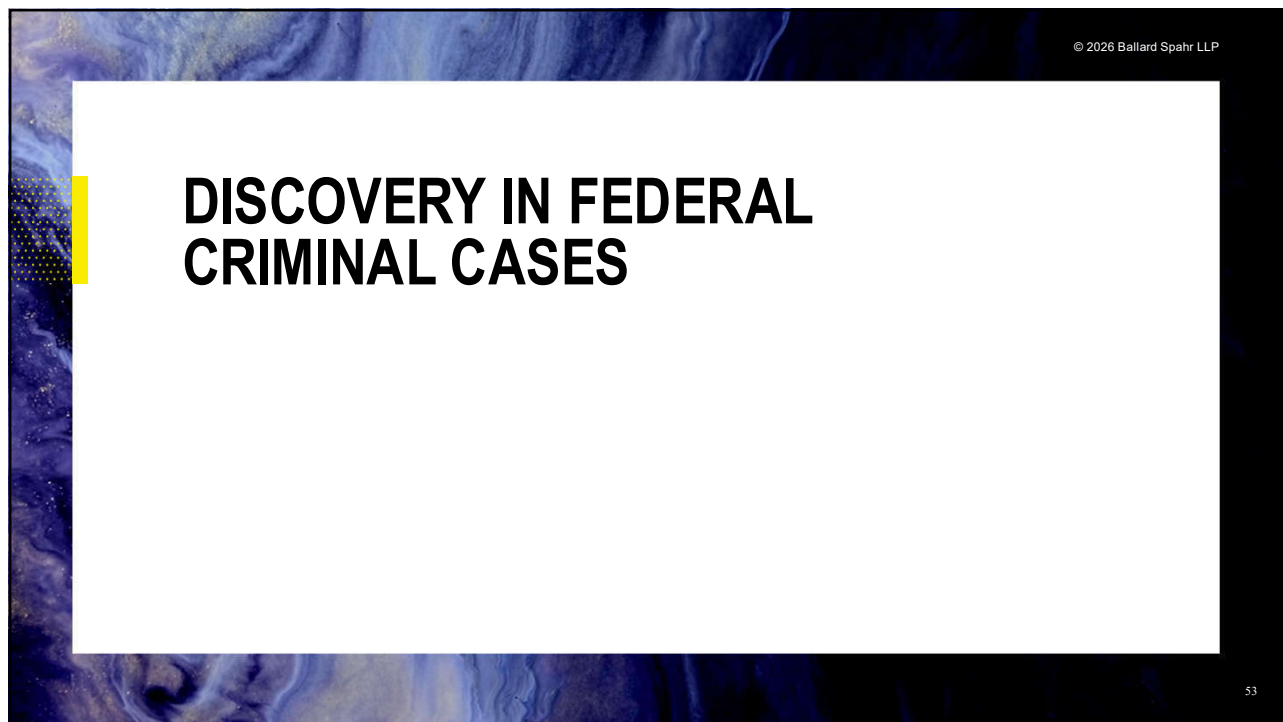
- AUSA may go directly to GJ from investigation or after issuance of complaint
- *Ex parte* proceeding before GJ
- H/S permitted; encouraged
- AUSA presents evidence and prepares Indictment for GJ consideration
- All proceedings are recorded but defense will only get transcript of witness testimony in discovery/Jencks unless defense alleges GJ irregularities (burden practically impossible)
- GJ returns a “true bill” or “no bill”
 - No bill = no case
 - True bill = GJ found PC to believe that crime was probably committed and named defendant(s) probably committed it

ARRAIGNMENT

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DISCOVERY IN FEDERAL CRIMINAL CASES

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OVERVIEW OF DISCOVERY OBLIGATIONS

- Rule 16 – Rule governing Criminal Discovery
- Jencks* Act – Prior statements of witnesses
- Brady* – Potentially exculpatory information
- Giglio* – Cross-examination/Impeachment evidence

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 RULE 16

- Government's Disclosures
 - Defendant's Oral Statement
 - Defendant's Written or Recorded Statement
 - Organizational Defendant
 - Person making statement could legally bind organization re: subject of the statement based on person's position
 - Person making statement was personally involved in the alleged conduct constituting the offense and could legally bind the organization based on position
 - Defendant's Prior Record
 - Documents and Objects
 - Reports of Examinations and Tests
 - Expert Witnesses

 RULE 16

- What Government Does Not Have to Disclose
 - Internal government reports, memoranda, or other documents made by government attorney or government agent in connection with investigating or prosecuting case
 - Grand jury transcripts EXCEPT if required as the basis of a pretrial motion (R. 12(h), is a statement of the defendant (R. 16(a)), or is a statement of a government witness the government intends to testify at trial (R. 26.2)
- Defendant's Disclosures – if the defendant intends to use the item in its case in chief at trial
 - Documents and objects
 - Reports of Examination and Tests
 - Expert Witnesses

 RULE 16

- What Defendant Does Not Have to Disclose
 - Reports, memos, other documents made by defendant, attorney, or agent during investigation or defense
 - Statement made to defendant, attorney, or agent by defendant, government or defense witness, prospective government or defense witness
- Continuing Duty to Disclose
- Regulating Discovery
 - Sanctions for not timely disclosing can, among other things, result in Judge prohibiting the party from introducing that material as evidence at trial

FED. R. CRIM. P. 16 – SUPPLEMENTS

- As previously noted, other Rules of Criminal Procedure may supplement Rule 16 Discovery
 - *E.g.*, Fed. R. Crim. P. 12(b)(3) – Motions that must be made before trial
 - Defect in instituting prosecution
 - Improper venue
 - Preindictment delay
 - Selective or vindictive prosecution
 - Error in grand jury proceedings
 - Defect in the indictment
 - Improper joinder
 - Failure to state an offense
 - Suppression of evidence
 - Severance of charges or defendants under Rule 14
 - Rule 16 violations
- Disclosure may be necessary of items that may ordinarily not be required so that defense can file such motions

ALSO CONSIDER JURISDICTIONS WITH OPEN FILE DISCOVERY

STANDARD DISCOVERY LETTER

Dear [DEFENSE ATTORNEY]:

This letter provides discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure and the Court's Standing Discovery Order, and seeks reciprocal discovery.

Disclosure By the Government

1. I am enclosing copies of the following: [THE ITEMS REQUIRED BY RULE 16(a) ARE SUMMARIZED BELOW.]
 - a. [SUBSTANCE OF ANY OTHER RELEVANT ORAL STATEMENT MADE BY DEFENDANT IN RESPONSE TO INTERROGATION BY ANY PERSON THEN KNOWN BY DEFENDANT TO BE A GOVERNMENT AGENT IF THE GOVERNMENT INTENDS TO USE THE STATEMENT AT TRIAL. [FED. R. CRIM. P. 16(a)(1)(A).]]
 - b. [RELEVANT WRITTEN OR RECORDED STATEMENTS MADE BY DEFENDANT. [FED. R. CRIM. P. 16(a)(1)(B)(i).]]
 - c. [PORTION OF WRITTEN RECORD CONTAINING SUBSTANCE OF ANY RELEVANT ORAL STATEMENT MADE BY DEFENDANT IN RESPONSE TO INTERROGATION BY ANY PERSON THEN KNOWN TO DEFENDANT TO BE A GOVERNMENT AGENT. [FED. R. CRIM. P. 16(a)(1)(B)(ii).]]
 - d. [DEFENDANT'S GRAND JURY TESTIMONY. [FED. R. CRIM. P. 16(a)(1)(B)(iii).]]
 - e. [PRIOR RECORD OF DEFENDANT. [FED. R. CRIM. P. 16(a)(1)(D).]]

Disclosure by the Defendant

The Government hereby requests reciprocal discovery under Fed. R. Crim. P. 16(b). Specifically, we request that you allow inspection and copying of: (1) any books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items that are in the defendant's possession, custody, or control and which the defendant intends to use in the defendant's case-in-chief at trial; and (2) any results or reports of any physical or mental examination and of any scientific test or experiment that is in the defendant's possession or control and which the defendant intends to use in the defendant's case-in-chief at trial or which was prepared by a witness whom the defendant intends to call at trial. We further request that you disclose a written summary of testimony you intend to use under Fed. R. Evid. 702, 703, and 705 as evidence at trial. This summary should describe the opinions of the witness, the bases and reasons therefor, and the witness's qualifications.

Pursuant to Fed. R. Crim. P. 26.2, the Government also requests that the defendant disclose prior statements of witnesses the defendant will call to testify. We request that such material be provided on the same basis upon which we agree to supply the defendant with Section 3500 material relating to Government witnesses.

Pursuant to Fed. R. Crim. P. 12.1(a), the Government hereby demands written notice within ten days if the defendant intends to offer a defense of alibi. The offense occurred on [DATE] at approximately [TIME] in the vicinity of [place]. [OR, "on the dates, and at the times and places specified in the Indictment in this case."]

JENCKS ACT

18 U.S.C. SECTION 3500

- (a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.
- (b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.
- (c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.
- (d) If the United States elects not to comply with an order of the court under subsection (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.
- (e) The term "statement", as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—
 - (1) a written statement made by said witness and signed or otherwise adopted or approved by him;
 - (2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or
 - (3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.



JENCKS ACT

18 U.S.C. SECTION 3500

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- Jencks
 - Witness's statements
 - In the Government's possession
 - Relates to the subject matter of the witness's testimony
- Timing: Rule vs. Practice
- Common examples:
 - Interview reports/recordings
 - Agent notes/drafts/logs
 - Agent emails, text messages, or other communication

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THERE ARE 3 REQUIREMENTS FOR A *BRADY* VIOLATION

Under *Brady*, the government has a duty to disclose “evidence that is favorable to the defense and material to the defendant’s guilt or punishment.” *Smith v. Cain*, 565 U.S. 73, 75 (2012). To prove a *Brady* violation, the defendant must show: (1) the government failed to disclose evidence; (2) that evidence must have been favorable to the defendant; and (3) that evidence must have been material. Evidence is “material” only if there is a reasonable probability that its disclosure would have led to a different outcome at trial, and so undermines confidence in the verdict. *Turner v. United States*, 137 S. Ct. 1885, 1893, 198 L.Ed.2d 443 (2017).



BRADY V. MARYLAND
373 U.S. 83 (1963)

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RULE:

Prosecutors “must disclose information that is inconsistent with any element of any crime charged . . . or that establishes a recognized affirmative defense, *regardless of whether the prosecutor believes such information will make the difference between conviction and acquittal[.]*” JM 9-5001.

CONSTITUTIONAL BASIS: ?

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 **BRADY**

- Form of information is not relevant
- Prompt disclosure is required (and there is an ongoing duty to disclose)
- Not limited to admissible evidence

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MATERIALITY REQUIREMENT OF BRADY

US v. Agurs, 427 U.S. 97 (1976) – no *Brady* violation if the evidence is not material.

- Woman convicted of 2nd degree stabbing murder of man/victim who brought a knife to the hotel room.
- Prosecution failed to disclose victim's prior convictions for unlawful possession of weapons/knives.
- *Brady violation?* Why or why not?

 GIGLIO V. UNITED STATES, 405 U.S. 150 (1972)**RULE:**

Information that “casts a substantial doubt upon the accuracy of any evidence” including testimony,” or that “might have a significant bearing on the admissibility of prosecution evidence . . . regardless of whether it is likely to make the difference between conviction and acquittal[.]” JM-9-5001.

 GIGLIO V. UNITED STATES, 405 U.S. 150 (1972)**PERTAINS TO “IMPEACHMENT EVIDENCE”**

- Credibility: false or inconsistent statements
- Promises/benefits
- Bias
- Prior crimes or misconduct
- Ability to perceive or recall

FORM OF EVIDENCE DOES NOT MATTER

- Immunity letters, immunity oral promises, witness tells government about drug usage at the time of criminal conduct charged in indictment, witness’s prior rap sheet, etc.

CHALLENGING SEARCH WARRANTS

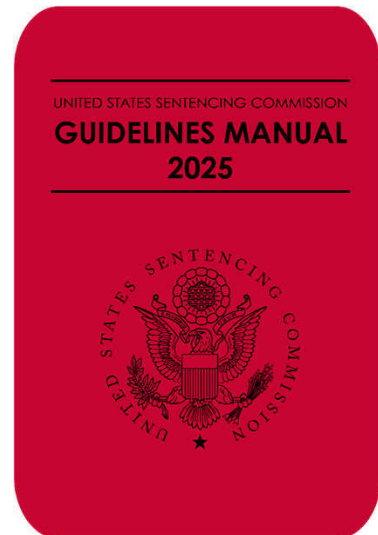
- Motions to suppress
 - Fed. R. Crim. P. 12(b)(3)(C); 41(h)
 - Staleness
 - Evidence seized outside the scope of the warrant
 - Application contained materially false statements – *Franks v. Delaware*, 438 U.S. 154 (1978)
- Motion for return of property
 - Fed. R. Crim. P. 41(g) – person aggrieved by the unlawful search/seizure of property or deprivation of property

CHALLENGING WIRE TAPS

- Motion to suppress
- Unenumeration argument. But see Rajaratnam
- Probable cause
- Necessity challenges
- Minimization challenges
- Application (or more often the “re-up”) contained materially false statements – Franks v. Delaware, 438 U.S. 154 (1978)
- Agents mis-describe/misrepresent substance of calls
- Sealing challenges

GUILTY PLEAS

- Impact of U.S.S.G.
 - While advisory only, heavily influence plea negotiations
- Various types in federal court
 - No plea agreement
 - Plea agreement with factual stipulations
 - Plea agreement with stipulations to U.S.S.G.
 - Plea agreement with carve-outs to U.S.S.G.
 - Fed. R. Crim. P. 11(c)(1)(C)



GUILTY PLEAS

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- AUSA prepares “plea memo” for the Court
- Advises:
 - The charging document
 - Statutory maximum penalties
 - Summarizes plea agreement
 - Suggests factual basis questions
- Defense counsel and defendant should review before AUSA submits plea memo to Court



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GUILTY PLEAS – RULE 11
FORM

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Mag./Crim. No. _____

v.

APPLICATION FOR PERMISSION
TO ENTER PLEA OF GUILTY

(Defendant with Counsel)

(Defendant's Name)

_____, hereby certifies as follows:
(Defendant's Name)

1. My full name is _____ and I request that all proceedings against me be held in that name.

2. I understand that the Constitution and laws of the United States guarantee me the right to be represented by a lawyer at every stage in these proceedings, including any trial on these charges, and that if I cannot afford to hire a lawyer, the Court will provide one for me.

3. I have a lawyer who is representing me in this proceeding. My lawyer's name is _____ I am satisfied that I have had enough time to discuss this matter with my lawyer.

4. English ☐ [IS] ☐ [IS NOT] my native language. My formal education stopped after [grade] _____. I am presently ☐ [UNEMPLOYED] ☐ [EMPLOYED] as a _____ (occupation).

5. I have taken ☐ [NO] ☐ [THE FOLLOWING] drugs or medication within the past seventy-two hours: _____.

6. I ☐ [HAVE] ☐ [HAVE NEVER] been a patient in a mental hospital or institution. I ☐ [DO] ☐ [DO NOT] believe that at the present time I am mentally ill or mentally incompetent in any respect.

7. I received a copy of the ☐ [COMPLAINT] ☐ [INDICTMENT] ☐ [INFORMATION] before being called upon to plead. I have read and discussed it with my lawyer. I understand that the substance of the charge(s) against me is that I: _____.

**WAIVER OF INDICTMENT – IF
PLEA TO CRIMINAL INFORMATION**

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UNITED STATES DISTRICT COURT

for the

District of

United States of America

v.

Defendant

Case No.

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date:

Defendant's signature

Signature of defendant's attorney

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title

 TRIAL

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- Know EACH judge's individual preferences and practices
- Understand EACH judge's jury selection procedure
- Work with Court's IT department in advance for visual presentations
- Know the Federal Rules of Evidence
- Be prepared to submit written work product for most procedures – e.g., motions in limine
- 3d Circuit Model Criminal Instructions
- BE PREPARED and DON'T WASTE TIME

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PRE-SENTENCE REPORTS

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY		DRAFT
UNITED STATES OF AMERICA	)	
vs.	)	PRESENTENCE INVESTIGATION REPORT
[redacted]	)	Docket No. 0312 3:21CR00515-1
Prepared For:	THE HONORABLE PETER G. SHERIDAN Senior United States District Judge	
Prepared By:	PATRICIA C. JENSEN U.S. Probation Officer Trenton, New Jersey (609) 989-2071 patricia_jensen@njp.uscourts.gov	
Assistant U.S. Attorney	Defense Counsel	
Sarah A. Sulkowski	Robert S. Stigall (Retained)	
970 Broad Street	700 East Gate Drive, Suite 330	
Newark, NJ 07102	Mount Laurel, NJ 08054-0015	
973-297-2086	(856) 761-3458	
sarah.sulkowski@usdoj.gov	stigalls@ballardspahr.com	
Sentence Date:	02/16/2022	
Offense:	Count One: [redacted]	
	Count Two: [redacted]	
	11/21/2019	
Arrest Date:	11/21/2019: Released on \$100,00 non-surety bond	
Release Status:	None	

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PRE-SENTENCE REPORTS

- Prepared by U.S. Probation Officer
- Careful study of the defendant; his/her history and characteristics; prior record, if any; offense of conviction; U.S.S.G. calculation with recommended sentencing range; options for sentencing
- Client will sit for interview with P.O. Counsel may attend
- If conviction by guilty plea, defendant must provide statement to award “acceptance of responsibility” points
- Will note whether either party is seeking a “variance” above or below the recommended Guidelines range

SENTENCING

- After disclosure of Final PSR, parties submit their respective sentencing memoranda
 - Written advocacy is critical!
 - Defense should include letters of support
 - Do NOT include facts not already set forth in PSR
 - Argue the Section 3553(a) factors, and for departures and variances (*see infra*)
- Be aware of D.N.J's Protocol for Disclosure of Sentencing Materials – on District's website in Local Rules



SENTENCING – U.S.S.G.

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SENTENCING TABLE						
(in months of imprisonment)						
Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life

 SENTENCING – U.S.S.G.

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- While advisory only, imperative to understand how they work
- Offense-level calculation
- Criminal History calculation
- Sentencing range
- Zones A, B, C, D
 - Imprisonment not required
 - Probation with condition that substitutes period of imprisonment
 - Imprisonment and Supervised Release with condition that substitute period of imprisonment
 - Imprisonment

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S.G. – COMMON PROVISIONS

- § 1B.1.3 (relevant conduct)
- Chapter 2 (offense conduct)
- §§ 3B1.1, 3B1.2, 3B1.3 (role in the offense)
- § 3C1.1 (obstruction of justice)
- §§ 3D1.1 – 1.5 (multiple counts)
- § 3E1.1 (acceptance of responsibility)
- Chapter 4 (criminal history)

SENTENCING

- Fed. R. Crim. P. 32
- Governed by factors set forth in 18 U.S.C. § 3553(a)
- Although U.S.S.G. are advisory, Court must nevertheless calculate Guidelines range, and apply any applicable departures
 - Departures are sentences outside of the guideline range authorized by specific policy statements in the Guidelines Manual
- When fashioning appropriate sentence, Court may apply variances
 - Variances are sentences outside of the guideline range that are not imposed within the guidelines framework

 SENTENCING

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- Have family, friends, colleagues in attendance for support
- Consider having persons speak on behalf of defendant
- Defendant's right to speak in mitigation of sentence
- If either party is trying to establish the applicability of a Guideline or contested fact, that party's burden of proof is by a preponderance
- If there were victims, government will often call them at sentencing to make a victim impact statement
 - Victim's impact statement will also be included in PSR

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SENTENCING

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- In addition to imprisonment/probation, Court's sentence may include:
 - Fine
 - Restitution
 - Term of supervised release (with conditions)
- Court's sentence will include:
 - Special assessment (per count)



SENTENCING

- Pronouncement of Sentence is typically followed by:
 - Request by defense for location for service of sentence (Court may only recommend to BOP. Not binding on BOP)
 - A decision on detention/bail
 - Note: Upon conviction, burden shifts to Defendant to show why s/he is not a flight risk or danger 18 U.S.C. § 3143
- Pronouncement of Sentence is always followed by:
 - Advising Defendant of right to appeal conviction and/or sentence, subject to any waiver negotiated in plea agreement (if applicable)

POST-SENTENCING ISSUES

- Must file Notice of Appeal within 14 days after entry of Judgment of Conviction

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AN UNFILED JUDICIAL DOCUMENT UNDER FEDERAL RULES 15 AND 16

UNITED STATES DISTRICT COURT
District of New Jersey

UNITED STATES OF AMERICA
v. [REDACTED]
Defendant.

CASE NUMBER [REDACTED]

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, [REDACTED] was represented by ROBERT STEPHEN STIGALL.

The defendant pleaded guilty to count(s) 1 and 2 of the INFORMATION on 6/30/2021. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date of Offense	Count Number(s)
[REDACTED]	[REDACTED]	1/1/2017 - 11/20/2019	1
[REDACTED]	[REDACTED]	1/1/2017 - 11/20/2019	2

As pronounced on February 16, 2022, the defendant is sentenced as provided in pages 1 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must pay to the United States a special assessment of \$200.00 - \$100.00 on each of count(s) 1 and 2, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material change in economic circumstances.

Signed this 22nd day of February, 2022.

[Signature]

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BUREAU OF PRISONS – DESIGNATIONS

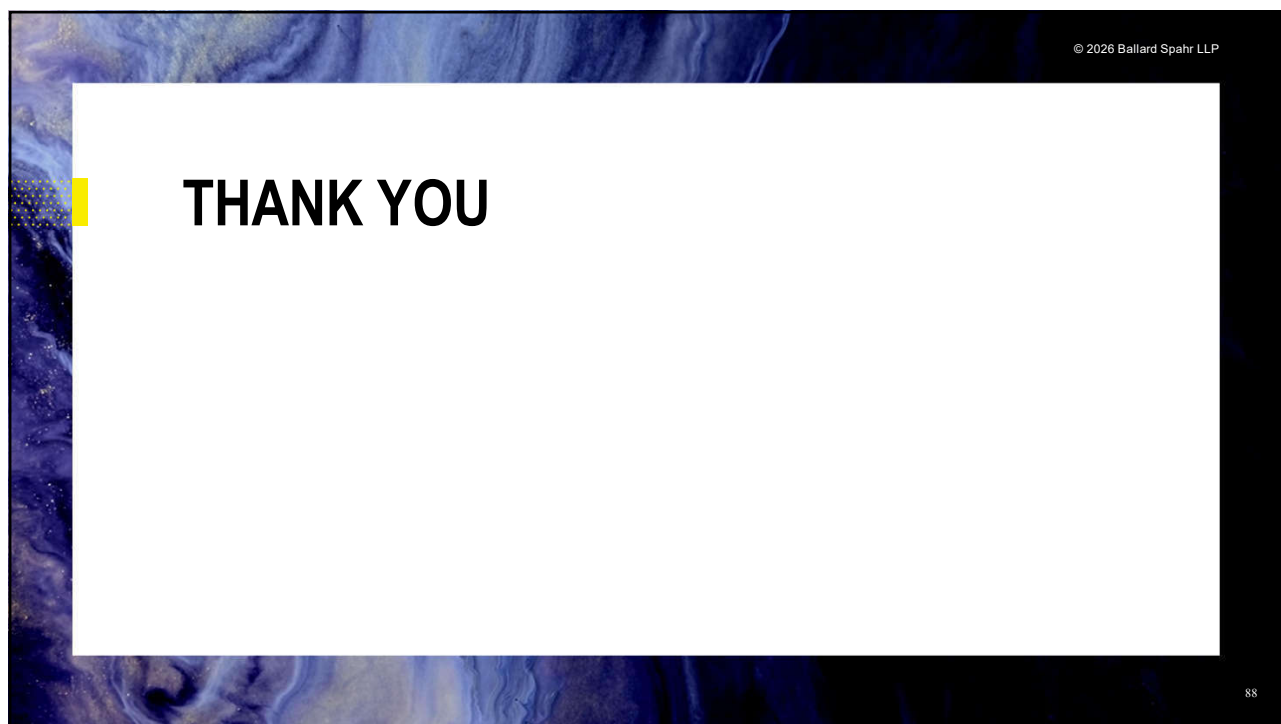
- If Defendant has not been detained, BOP will issue letter designating institution to which Defendant must report for service of sentence
- Be aware that institution may be far from Defendant's home
- The letter also designates the time by which the Defendant must surrender
 - Do NOT be late
 - If Defendant is late, BOP may strip "good time credit" (approximately 52 days off sentence per year of imprisonment imposed)

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QUESTIONS?



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2026 Federal Practice Bench-Bar Symposium

Settlement and Civil Case Management
in the District of New Jersey

Moderator

Amy Walker Wagner, Esq., Assistant General Counsel, Litigation, Horizon Blue Cross Blue Shield of New Jersey, Newark

Panel

Hon. Tonianne J. Bongiovanni, U.S.M.J., U.S. District Court for the District of New Jersey

Hon. Ann Marie Donio, U.S.M.J., U.S. District Court for the District of New Jersey

Hon. André M. Espinosa, U.S.M.J., U.S. District Court for the District of New Jersey

Samuel I. Portnoy, Esq., FBT Gibbons, Newark

DISCLAIMER

- The information in these slides and this presentation is not legal advice and should not be considered legal advice.
- This presentation represents the personal opinions of the panelists, not institutions.
- This presentation is offered for informational and educational purposes only.
- This presentation provides only an overview and may not be fully updated to reflect the current state of law in any particular jurisdiction or circumstance as of the time of the presentation.

Overview of Program Objectives

- Management of civil cases in the District of New Jersey
- Timing and frequency of settlement discussion and evaluation
- Practical guidance for litigators on settlement conference procedures and preparation

Civil Case Management in the District of New Jersey

- Roles and responsibilities of the District's magistrate judges
- Active management of schedule and non-dispositive disputes from inception through final pre-trial conference
- Continuous focus on opportunities to facilitate pre-trial resolution via settlement conferences and mediation

Parties Should Be Prepared to Discuss Settlement at Every Court Conference (From Rule 16 Through Final Pre-Trial)

Typical Joint Discovery Plan template:

3. Have settlement discussions taken place? Yes _____ No _____
- (a) What was plaintiff's last demand? (1) Monetary demand: \$ _____ (2) Non-monetary demand: _____
- (b) What was defendant's last offer? (1) Monetary offer: \$ _____ (2) Non-monetary offer: _____

Settlement Conference Expectations and Preparation

- Review Judge's individual rules and preferences
- Many address settlement conference procedures, written submission requirements, and expectations
- Client representatives with settlement authority must attend

Examples:

- Judge Espinosa's Preferences Excerpt: "Settlement conferences. Trial counsel as well as persons with full settlement authority must appear at settlement conferences. Each party shall submit, by email to AME_orders@njd.uscourts.gov, a confidential settlement memorandum of no more than five double-spaced pages no later than five business days before the conference. If trial counsel and clients do not comply with this Order, the settlement conference may be canceled or rescheduled and the noncompliant party and/or attorney may be sanctioned, which may include an assessment of the costs and expenses incurred by those parties who appeared as directed."
- Judge Bongiovanni's Preferences Excerpt: "Unless specifically instructed otherwise by the Court, clients with full settlement authority are required to appear in person at the conference. Counsel alone, even if he possesses full settlement authority, is insufficient. The client must also appear in person unless the Court has specifically instructed otherwise. If submission of a settlement memorandum is required or, even if not required, a settlement memorandum will be submitted, it must be emailed to chambers (tjb_orders@njd.uscourts.gov) at least 3 business days before the scheduled settlement conference and should not exceed 5 pages in length."
- Judge Donio's Preferences Excerpt: "Refer to the document "Order Concerning Settlement Conferences" on the Court's website for guidance."

Settlement Conference Text Order Examples

01/14/2026	view16	TEXT ORDER: Settlement Conference set for 3/3/2026 at 10:30 AM in Trenton - Courtroom 6E before Magistrate Judge Tonianne J. Bongiovanni. Kindly mark your calendars accordingly. Clients with settlement authority, in addition to counsel, must appear at the conference. So Ordered by Magistrate Judge Tonianne J. Bongiovanni on 1/14/2026. (jem) (Entered: 01/14/2026)
02/06/2026	view18	TEXT ORDER: The Settlement Conference set for 3/03/2026 is hereby RESCHEDULED to 3/12/2026 at 11:00 AM in Trenton - Courtroom 6E before Magistrate Judge Tonianne J. Bongiovanni. Clients with settlement authority, in addition to counsel, must appear at the conference. So Ordered by Magistrate Judge Tonianne J. Bongiovanni on 2/06/2026. (jem) (Entered: 02/06/2026)

Additional Practical Guidance and Key Takeaways

Relevant Rules and Resources

DNJ Website - <https://www.njd.uscourts.gov/>

- Great resource that includes judicial preferences, preferred templates, and chambers contact information

DNJ Local Rules - <https://www.njd.uscourts.gov/sites/njd/files/CompleteLocalRules.pdf>

- L. Civ. R. 16.1 - Authority of Magistrate Judges to conduct settlement conferences at the request of the parties or *sua sponte*
- L. Civ. R. 301.1 - Mediation Rules, Processes, and Procedures
- Appendix Q – Guidelines for Mediation - <https://www.njd.uscourts.gov/sites/njd/files/APPQ.pdf>
- Appendix R – Guidelines for Litigation Conduct - <https://www.njd.uscourts.gov/sites/njd/files/AppR.pdf>



Questions?

About the Panelists...

Honorable José R. Almonte, United States Magistrate Judge for the District of New Jersey, was sworn in on February 15, 2022. After graduating from Rutgers Law School in 2004, Judge Almonte clerked for the Honorable Deborah T. Poritz, then Chief Justice of the New Jersey Supreme Court. He began his legal career at Dechert LLP, where he litigated a broad range of matters including securities actions, complex commercial disputes, foreign sovereign debt cases, and white-collar criminal matters.

In 2010, Judge Almonte entered public service as an Assistant United States Attorney for the District of New Jersey, where he prosecuted a wide array of federal offenses, including financial fraud, international narcotics trafficking, gang-related crimes, political corruption, and violent offenses, and tried numerous cases to jury verdict. He later served as head of internal investigations at Stryker Corporation, overseeing global investigative matters, before returning to the U.S. Attorney's Office in 2020. During his tenure, he held leadership roles including Chief of the Special Prosecutions Division and Deputy Chief of the Criminal Division, supervising the National Security, Cyber, and Economic Crimes Units.

Christine Amalfe is a Partner at Gibbons, a national law firm with more than 800 attorneys across 25 offices, where she co-leads the firm's Labor & Employment Practice Group. She is widely recognized as one of the country's leading employment lawyers. She is a Fellow of both the American College of Trial Lawyers and the American College of Employment Lawyers.

Ms. Amalfe is a co-founder of Gibbons P.C.'s internationally recognized women's initiative and has served for more than a decade on the Board of Trustees of the New Jersey State Bar Association. She is currently serving as President for the 2025–2026 term. She represents clients in complex employment litigation, including single-plaintiff, multi-plaintiff, and class actions, and regularly provides counseling and training to corporations, public entities, and educational institutions. Clients commend her ability to combine strategic litigation with practical business-focused advice.

Honorable Andrew B. Altenburg, Jr., United States Bankruptcy Judge for the District of New Jersey, was appointed to the bench on May 19, 2014. Prior to his appointment, Judge Altenburg served as a law clerk to the Honorable Daniel J. Moore, practiced as an associate in private practice, and later operated his own firm, concentrating on bankruptcy law, credit union representation, and debtor-creditor rights.

Judge Altenburg received his B.A., cum laude, from Niagara University and his J.D. from the University of Dayton School of Law. He is admitted to practice in New Jersey and Pennsylvania, as well as multiple federal courts, including the Third Circuit Court of Appeals. He is an active member of the National Conference of Bankruptcy Judges and has served on several of its committees. He is also the court liaison to the Honorable Judith H. Wizmur Bankruptcy *Pro Bono* Project at Rutgers Law School–Camden. A frequent author and speaker, Judge Altenburg has contributed extensively to bankruptcy education and previously served as Editor-in-Chief of several New Jersey ICLE bankruptcy publications.

Honorable Tonianne J. Bongiovanni, U.S.M.J. is a United States Magistrate Judge for the District of New Jersey and sits in Trenton, New Jersey.

Judge Bongiovanni began her career as an investigator for the New Jersey Federal Public Defender's Office. She became an Assistant Federal Public Defender and later became a First Assistant Federal Public Defender. She was appointed to the U.S. District Court subsequently and has also taught at the Seton Hall University School of Law as an adjunct faculty member.

Judge Bongiovanni received her B.S from New Jersey City University and her J.D from Seton Hall University School of Law.

Honorable Renée Marie Bumb, Chief United States District Judge for the District of New Jersey, was nominated by President George W. Bush in 2006 and confirmed by the United States Senate the same year. She took the oath of office on June 15, 2006, and became Chief Judge on February 1, 2023.

Prior to her appointment, Judge Bumb served as Attorney-in-Charge of the Camden Office of the United States Attorney's Office, where she supervised federal prosecutions in southern New Jersey. As an Assistant United States Attorney, she prosecuted public corruption, white-collar fraud, healthcare fraud, and narcotics cases. She began her legal career in private practice and later clerked for the Honorable Garrett E. Brown, Jr. Judge Bumb is a graduate of The Ohio State University, the University of Chicago, and Rutgers School of Law–Newark. She is an active contributor to legal education and currently serves on the Third Circuit's Committee on Model Civil Jury Instructions.

Rebekah R. Conroy is a trial attorney at Stone Conroy who represents businesses and individuals in complex litigation matters. Her practice focuses on business disputes, including contract and franchise litigation, trade secret matters, shareholder disputes, and attorney ethics proceedings. She also defends clients in white-collar criminal matters involving financial fraud, bribery, and related offenses.

Ms. Conroy regularly appears in state and federal courts and serves as President of the Association of the Federal Bar of New Jersey. She is actively involved in *pro bono* work, including service with Trial Lawyers Care representing 9/11 victims and participation in the District of New Jersey's ReNew reentry program.

Ms. Conroy received her J.D. from Benjamin N. Cardozo School of Law and her B.A. from The George Washington University.

Anthony (Jay) DiMarino is a principal of DiMarino, Lehrer & Collazo, P.C., where he focuses on intellectual property litigation, including patent, trademark, copyright, trade secret, and unfair competition matters. An experienced trial attorney, he represents companies of all sizes across a range of industries and frequently serves as local counsel in federal courts in New Jersey and the Eastern District of Pennsylvania.

Mr. DiMarino is President-Elect of the Association of the Federal Bar of New Jersey and is actively involved in *pro bono* work, particularly with the District of New Jersey's ReNew

program. He has built his litigation experience over more than three decades, including work at major regional firms and through his own practice, which he founded in 2006.

Mr. DiMarino received his B.A. in Biology from the University of Pennsylvania and his J.D. from The Dickinson School of Law of The Pennsylvania State University.

Honorable Ann Marie Donio, U.S.M.J. is a United States Magistrate Judge for the District of New Jersey and sits in Camden, New Jersey.

Prior to her appointment Judge Donio was in private practice, where she focused in civil litigation, commercial law and education law. She served on the Supreme Court Committee on Character and the Supreme Court Advisory Committee on Professional Ethics. She has been an adjunct professor at Rutgers Law School-Camden, where she has taught courses in topics including electronic discovery and litigation.

Judge Donio received her law degree, with Highest Honors, from Rutgers University School of Law-Camden, where she was Editor-in-Chief of the *Rutgers Law Journal*. She clerked for the Honorable Joseph H. Rodriguez, United States District Court for the District of New Jersey.

Honorable André M. Espinosa, U.S.M.J. is a United States Magistrate Judge, United States District Court for the District of New Jersey, and sits in Newark, New Jersey.

Judge Espinosa received his B.A. from the University of Kansas, his Masters of Public Affairs and Politics from Rutgers University and his J.D. from Rutgers School of Law.

Scott J. Goldstein is the managing member of the Law Offices of Wenarsky & Goldstein, LLC. He concentrates his practice in bankruptcy, estate planning—particularly for families with special needs children—guardianship, and estate administration. His bankruptcy practice includes representation of debtors in Chapters 7, 11, and 13, as well as related adversary proceedings. Prior to opening his own practice, Mr. Goldstein practiced commercial litigation with firms in northern New Jersey. He is a frequent speaker on bankruptcy topics and is active in professional organizations, including the Association of the Federal Bar of New Jersey, the New Jersey State Bar Association, the New York State Bar Association, and the National Association of Consumer Bankruptcy Attorneys.

Mr. Goldstein received his B.A. from Haverford College and his J.D., *cum laude*, from Duke University School of Law.

Daniella Gordon is Partner in McCarter & English LLP, where she concentrates her practice in representing businesses in a range of white collar matters and commercial disputes, with a special focus on the construction industry. In her construction practice, she represents owners, developers, and all tiers of contractors in construction defect claims, scope of work disputes, and differing site conditions claims, among many other issues. Daniella has successfully prosecuted and defended numerous bid protests at the trial court level and on appeal. She has prevailed at trial in matters involving prompt payment statutes and efforts to pierce the corporate veil. In her white collar practice, Daniella defends businesses and individuals in a wide range of criminal and civil enforcement actions. She has handed numerous subpoena responses and False Claims Act

investigations for companies that contract with the government. She also represents construction companies in matters before the New Jersey Department of Labor involving alleged misclassification and prevailing wage enforcement.

Ms. Gordon serves on the Board of Trustees for the Association of the Federal Bar, and the Association of Criminal Defense Lawyers of New Jersey. She is also a past Co-Chair of the Construction Section of the NJSBA. She is ranked by Chambers & Partners in the area of White Collar Defense and Investigations.

Ms. Gordon received her B.A. from Connecticut College and her J.D. from Rutgers School of Law.

Honorable Christine M. Gravelle, United States Bankruptcy Judge for the District of New Jersey, has served on the bench since 2013 and sits in the Trenton vicinage. She is a member of the National Conference of Bankruptcy Judges and has served on its Rules Committee, and currently serves as judicial liaison to the Lawyers Advisory Committee for the District's Board of Bankruptcy Judges.

Before joining the bench, Judge Gravelle was a partner at Markowitz Gravelle, LLP, where she focused on commercial litigation and bankruptcy matters. She has held numerous leadership roles, including serving as President of the Mercer County Bar Association and as a trustee of both the New Jersey State Bar Association's Bankruptcy Section and Central Jersey Legal Services.

Judge Gravelle received her J.D. from Suffolk University Law School and her undergraduate degree from the University of Massachusetts, Amherst.

Honorable Michael A. Hammer, United States Magistrate Judge for the District of New Jersey, was sworn in on August 12, 2011. He has conducted hundreds of settlement conferences involving complex commercial litigation, intellectual property disputes, antitrust matters, employment claims, civil rights cases, and mass torts.

Prior to joining the bench, Judge Hammer served as an Assistant United States Attorney for thirteen years, including as Chief of the National Security Unit, where he supervised and prosecuted counterterrorism and counter-espionage cases. He also served as Deputy Chief of the Criminal Division and in the Special Prosecutions Division handling public corruption matters. Earlier in his career, he practiced commercial litigation and clerked for federal judges in the District of New Jersey.

Judge Hammer graduated from Seton Hall University School of Law, where he was Editor-in-Chief of the Seton Hall Law Review, and from the University of Michigan.

Honorable Edward S. Kiel, U.S.D.J. is a United States District Judge for the District of New Jersey and sits in Camden, New Jersey.

Judge Kiel received his B.A and B.S.E.E from Rutgers University and his J.D from the University of Notre Dame.

Honorable Sharon A. King, United States Magistrate Judge for the District of New Jersey, was sworn in in April 2021. Prior to her appointment, she was a partner at King & King, LLC, where she focused on civil rights litigation, including police misconduct and wrongful death cases.

Judge King has been active in the legal community, serving on the Lawyers' Advisory Committee for the District of New Jersey and as Chair of the New Jersey State Bar Association's Federal Practice and Procedures Section. She is the recipient of numerous honors, including the Camden County Bar Association's Judge John F. Gerry Award, the Rutgers Law School Black Law Students Association's Champion of Social Justice and Equality Award, and the Gloucester County NAACP Game Changer Award.

Judge King received her J.D. from Rutgers Law School–Camden and her B.S. from Boston University.

Honorable Robert Kirsch, U.S.D.J. is a United States District Judge for the District of New Jersey and sits in Trenton, New Jersey. He was nominated to the Court by President Biden in 2023 and confirmed by the Senate later that year.

Prior to his federal appointment, Judge Kirsch was a New Jersey Superior Court Judge and served in the Family, Civil and Criminal Divisions from 2010-2023. Prior to that he was an Assistant United States Attorney for the District of New Jersey.

Judge Kirsch received his B.A. from Emory University and his J.D. from Fordham University School of Law. He was Law Clerk to the Honorable William J. Zloch, United States District Court for the Southern District of Florida.

Susan M. Leming is a Partner at Brown & Connery LLP, where she concentrates her practice in labor and employment law, class actions, and complex commercial litigation. She represents employers and individuals in employment-related disputes, including discrimination claims and violations of state and federal statutes, and regularly appears before courts and administrative agencies.

Ms. Leming advises employers on preventive strategies, including drafting employment policies, contracts, and restrictive covenants, and provides workplace training on a wide range of issues. She also represents clients in complex commercial and class action litigation involving financial services and regulatory matters. She is the Immediate Past President of the Association of the Federal Bar of New Jersey and has served as a Trustee since 2013.

Ms. Leming received her B.A. degrees in Business Administration and Political Science from Albright College and her J.D. from Villanova University School of Law, where she was Editor-in-Chief of the Villanova Environmental Law Journal. She clerked for the Honorable Marvin E. Schlosser and the Honorable Cornelius P. Sullivan of the Superior Court of New Jersey.

Jemi Goulian Lucey is a Partner in Greenbaum Rowe Smith & Davis LLP in the firm's Iselin, New Jersey, office. She concentrates her practice in employment, higher education and professional negligence law, and represents private and public entities and institutions of higher learning in employment discrimination and retaliation actions, professional negligence matters, Title IX claims and business disputes.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey and the Southern District of New York, the Third Circuit Court of Appeals and the United States Supreme Court, Ms. Lucey has been President of the New Jersey Women Lawyers Association and a Trustee of the Association of the Federal Bar of New Jersey, where she has chaired the Young Lawyers Division. She is Past Chair of the New Jersey State Bar Association's Federal Practice and Procedure Section and has been a member of Trial Attorneys of New Jersey and the Board of Directors of the Historical Society of the United States District Court for the District of New Jersey. A Fellow of the American Bar Foundation, she has also served on the Steering Committee of the firm's Women's Leadership Forum.

Ms. Lucey is a former Lead Barrister of The John C. Liffand American Inn of Court. She has lectured for ICLE, the New Jersey State Bar Association, the National Business Institute and other organizations, and is the co-author of "A Guide to the Pitfalls and Perils of Social Media in the Workplace" (*New Jersey Law Journal*, February 21, 2019). She is the recipient of the Young Lawyer of the Year Award from the Middlesex County Bar Association, the Professional Lawyer of the Year Award from the New Jersey Women Lawyers Association and the New Jersey Commission on Professionalism in the Law, and several other honors.

Ms. Lucey received her B.S. from Wake Forest University and her J.D. from Seton Hall University School of Law. She served as a judicial intern to the Honorable Ronald J. Hedges, United States Magistrate Judge.

Honorable Brian R. Martinotti, United States District Judge for the District of New Jersey, was appointed on July 11, 2016. Prior to his federal appointment, he served as a New Jersey Superior Court Judge from 2002 to 2016, sitting in both the Family and Civil Divisions and handling complex mass tort and multi-county litigation.

Judge Martinotti has presided over numerous multidistrict and multicounty litigations and is widely recognized for his contributions to complex litigation practice. He is a Fellow of the American Bar Association and a member of the American Law Institute, and has received numerous honors, including the Hon. Peter Ciolino Professionalism Award and the Congressman Peter Rodino Medal of Excellence. He frequently lectures and publishes on complex litigation topics.

Judge Martionotti received his J.D., *cum laude*, from Seton Hall University School of Law and his B.S. in Finance from Fordham University.

Rebecca K. McDowell is a bankruptcy and creditors' rights practitioner with extensive experience representing creditors, debtors, and trustees in Chapters 7, 11, and 13 matters. Her practice includes both business and consumer bankruptcy cases, as well as related litigation.

Ms. McDowell earned her B.A. in English from Albion College and her J.D. from Wayne State University Law School. She is admitted to practice in Pennsylvania, New Jersey, and Michigan, as well as multiple United States District Courts.

Honorable Stacey L. Meisel, U.S.B.J. is a United States Bankruptcy Judge, United States Bankruptcy Court for the District of New Jersey, and sits in Newark, New Jersey.

Judge Meisel received her B.A. from Rutgers College and her J.D. from Villanova University School of Law.

Honorable Julien X. Neals, United States District Judge for the District of New Jersey, was sworn in on June 24, 2021. Prior to his appointment, he served as County Counsel and Acting County Administrator for Bergen County and previously held senior leadership roles with the City of Newark, including Business Administrator and Corporation Counsel.

Judge Neals began his legal career as a law clerk in the Superior Court of New Jersey and later became a partner in private practice, focusing on civil rights, commercial, and governmental litigation. He also served as Chief Judge of the Newark Municipal Court.

He received his B.A., *cum laude*, from Morehouse College and his J.D. from Emory University School of Law.

Honorable Christine P. O'Hearn, United States District Judge for the District of New Jersey, was sworn in on October 25, 2021. Prior to her appointment, she spent 28 years at Brown & Connery, LLP, where she rose from associate to partner and focused on complex civil litigation, particularly employment defense.

Judge O'Hearn is certified as a Civil Trial Attorney by the Supreme Court of New Jersey and is a Fellow of the American College of Trial Lawyers. She received her B.A. from the University of Delaware and her J.D. from Temple University Beasley School of Law.

Honorable Evelyn Padin, United States District Judge for the District of New Jersey, previously served as the Senior Managing Partner of the Law Offices of Evelyn Padin, where her practice focused on personal injury and family law litigation and mediation. She also served as a Jersey City Municipal Court Judge and as a judicial law clerk in the Superior Court of New Jersey.

Judge Padin is the first Puerto Rican and Latina President of the New Jersey State Bar Association. She has held numerous leadership roles in state and national bar organizations and has been widely recognized for her contributions to the legal profession and diversity initiatives.

She received her J.D. from Seton Hall University School of Law, her B.A. from Rutgers University, and her M.S.W. from Fordham University.

Honorable Vincent F. Papalia, United States Bankruptcy Judge for the District of New Jersey, was sworn in on December 29, 2014, following a distinguished thirty-year career in private practice. He was a Partner at Saiber LLC, where he led the Bankruptcy and Creditors' Rights Department.

Judge Papalia's practice focused on bankruptcy and foreclosure litigation, representing a wide range of parties in federal, state, and bankruptcy courts. He has served as a court-appointed mediator and held leadership roles in bar associations, including as Chair of the Essex County Bar Association's Debtor-Creditor Committee.

He received his B.B.A. from Pace University and his J.D., cum laude, from Fordham University School of Law, where he was a member of the Law Review.

Honorable Elizabeth A. Pascal, United States Magistrate Judge for the District of New Jersey, has served in Camden since June 2022. Prior to her appointment, she served as a Deputy Chief in the Civil Division of the U.S. Attorney's Office and as an Assistant United States Attorney, handling a wide range of civil defensive and affirmative matters.

Judge Pascal previously served as an attorney advisor with the U.S. Department of Education and as a Deputy Attorney General for the State of New Jersey. She clerked for the Honorable Freda L. Wolfson and Justice Virginia A. Long.

Judge Pascal received her B.S., with highest honors, from Rutgers University and her J.D., with high honors, from Rutgers Law School.

Eric R. Perkins is a partner at Hellring Lindeman Goldstein & Siegal LLP, where he focuses on bankruptcy, insolvency, and creditors' rights matters. He has represented debtors, creditors, committees, and trustees across a wide range of industries, including in cross-border restructurings.

Mr. Perkins has served for approximately thirty years as a Chapter 7 Trustee for the United States Bankruptcy Court for the District of New Jersey. He is active in numerous bar associations and currently serves as Co-Chair of the Trustees and Examiners Subcommittee of the American Bar Association's Business Law Section.

Mr. Perkins received his B.A. from Columbia University and his J.D. from American University Washington College of Law.

Sari B. Placona is Partner in McManimon, Scotland & Baumann, LLC in Roseland, New Jersey. Ms. Placona concentrates her practice in corporate restructuring, bankruptcy, debtor-creditor rights, assignments for the benefit of creditors, and commercial litigation. She represents a broad range of clients, including Chapter 11 and Chapter 7 debtors, trustees, receivers, assignees, and creditors, and her work includes the prosecution and defense of preference and fraudulent conveyance actions. She also serves in fiduciary capacities such as Plan Administrator and Assignee.

Admitted to practice in New Jersey, Ms. Placona began her legal career as a law clerk to the Honorable Ned M. Rosenberg, J.S.C., Retired, in the Superior Court of New Jersey, Essex Vicinage, Civil Division. During law school, she gained experience as a paralegal at Walder Hayden, P.A., served as a member and editor of the *Women's Rights Law Reporter*, earned the Eric R. Neisser *Pro Bono* Program Certificate, and participated in both the Newark Bankruptcy Pro Bono Project and the domestic violence court advocacy program. She has been a frequent lecturer for the New Jersey State Bar Association, the Essex County Bar Association, the New York Institute of Credit, the Turnaround Management Association, and the Annual William H. Gindin Bankruptcy Bench-Bar Conference. Ms. Placona has served as Co-Chair of the Bench-Bar Committee for the Gindin Conference and is a Trustee of the Association of the Federal Bar of New Jersey. She is also a Trustee of Partners for Women and Justice and serves as Co-

Chair of the New Jersey Network of the International Women's Insolvency & Restructuring Confederation.

Ms. Placona received her undergraduate degree from Rutgers University and her J.D. from Rutgers School of Law–Newark.

Samuel I. Portnoy is a Director of Business & Commercial Litigation at FBT Gibbons in Newark, New Jersey, and handles major commercial disputes for a wide range of companies and individuals, from large-cap industry leaders to cutting-edge startups. Co-Chair of the firm's Securities Team, he also focuses in high-stakes breach of contract disputes and professional negligence claims in the financial and legal services industries.

Mr. Portnoy is admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey and the Southern and Eastern Districts of New York, and the Third Circuit Court of Appeals. He is a member of the American, New Jersey State and Essex County Bar Associations as well as the Association of the Federal Bar of New Jersey. A Master of the John C. Lifland American Inn of Court, he is the co-author of "No Damages-for-Delay Provisions: How to Make Them Enforceable" (*New Jersey Law Journal*, 4/23/18).

Mr. Portnoy received his B.A. from the University of Vermont, where he was a member of the National Political Science Honor Society and the recipient of the Vermont Scholar Award; and his J.D., *summa cum laude*, from Brooklyn Law School, where he was Notes & Comments Editor of the *Brooklyn Law Review*, a member of the Moot Court Honor Society and the recipient of the Daniel W. Matheson Memorial Prize and a number of other honors. He was a judicial intern for the Honorable Allan L. Gropper, United States Bankruptcy Court for the Southern District of New York, and clerked for the Honorable Peter W. Hall, United States Court of Appeals for the Second Circuit.

Honorable Zahid N. Quraishi, United States District Judge for the District of New Jersey, was appointed in 2021 and is the first Muslim American to serve as an Article III federal judge. He previously served as a United States Magistrate Judge in New Jersey and was the first Asian American to serve on the federal bench in the state. Prior to his judicial service, Judge Quraishi was Chair of the White Collar Criminal Defense and Investigations Group at Riker Danzig, where he focused on complex criminal defense, internal investigations, and civil litigation.

Judge Quraishi previously served as an Assistant United States Attorney for the District of New Jersey, where he prosecuted cases involving public corruption, financial fraud, narcotics, and firearms offenses. His government service also includes work as an Assistant Chief Counsel with the Department of Homeland Security and as a Captain in the United States Army Judge Advocate General's Corps, where he deployed to Iraq in support of Operation Iraqi Freedom.

Judge Quraishi has received numerous honors from legal and community organizations and has been widely recognized for his leadership and service. He received his J.D. from Rutgers Law School–Newark and served as a judicial law clerk in the Superior Court of New Jersey, Appellate Division.

Jarrett R. Schindler is a Partner in Lowenstein Sandler LLP in Roseland, New Jersey. A member of the firm's White Collar Defense practice, he litigates high-stakes cases in trial and

appellate courts, including contractor disputes, securities fraud litigation, shareholder disputes and constitutional matters.

Mr. Schindler received his B.A., *magna cum laude*, from James Madison University and his J.D. from Georgetown University Law Center, where he was Editor of the Annual Survey of White Collar Crime for the *American Criminal Law Review*.

Anthony P. Seijas, an attorney with Cleary Giacobbe Alfieri Jacobs LLC, concentrates his practice in complex employment, constitutional, and commercial litigation. He represents a wide range of clients, including corporations, municipalities, and developers, in both state and federal courts in New Jersey and regularly handles appellate matters.

Admitted to practice in New Jersey and before the United States District Court for the District of New Jersey and the United States Court of Appeals for the Third Circuit, Mr. Seijas has extensive experience defending employers against discrimination and whistleblower claims, as well as handling contract disputes and intellectual property matters. He has litigated cases under the *Americans with Disabilities Act* and the *Religious Land Use and Institutionalized Persons Act* and has tried numerous matters to conclusion.

Mr. Seijas is a certified mediator and has served as an arbitrator in private binding arbitrations. He received his J.D. from Rutgers School of Law–Camden and his undergraduate degree from Monmouth University.

Honorable Jamel K. Semper, United States District Judge for the District of New Jersey, previously served as an Assistant United States Attorney in the District of New Jersey, where he was Deputy Chief of the Criminal Division and supervised the Violent Crime and Organized Gang Units.

Judge Semper also served as a prosecutor in the Essex County Prosecutor's Office, handling homicide and special prosecutions, and in the Union County Prosecutor's Office. He began his legal career as a judicial law clerk in the Superior Court of New Jersey.

Judge Semper received his J.D. from Rutgers Law School and his B.A. from Hampton University.

Willard C. Shih, a senior member of Lucosky Brookman in Woodbridge, NJ who represents clients in high-stakes, complex business disputes. His clients range from multinational corporations to local business owners, and his practice spans trade secrets and restrictive covenant litigation, business owner disputes, unfair competition claims, and other sophisticated commercial matters.

Certified as a Civil Trial Attorney by the Supreme Court of New Jersey, Mr. Shih is also a Fellow of the American College of Trial Lawyers. He is particularly sought after for disputes involving closely held and family-owned businesses, where litigation may intersect with probate or family court issues and requires both strategic sensitivity and technical precision. He is known for developing practical, results-oriented litigation strategies grounded in a deep understanding of his clients' businesses.

Mr. Shih also has extensive experience defending law firms and other professionals in matters involving professional liability, including claims of negligence, breach of fiduciary duty, and intentional torts. He has significant experience with legal ethics issues and previously served as Chair of the District VIII Ethics Committee, to which he was appointed by the New Jersey Supreme Court.

Active in the legal community, Mr. Shih has served by appointment of the New Jersey Supreme Court on its Civil Practice Committee, Rules of Evidence Committee, and Committee on Complementary Dispute Resolution, and as a Panel Chair of a Fee Arbitration Committee.

Honorable Michael A. Shipp, United States District Judge for the District of New Jersey, was appointed in 2012 after serving as a United States Magistrate Judge. He is recognized for presiding over complex multidistrict litigation and for his commitment to fairness and judicial integrity.

Prior to his judicial service, Judge Shipp practiced law at Skadden, Arps, Slate, Meagher & Flom LLP and served in the New Jersey Department of Law and Public Safety as an Assistant Attorney General and later as Counsel to the Attorney General.

Judge Shipp is an adjunct professor at Seton Hall University School of Law and is active in legal education and community outreach. He received his J.D. from Seton Hall University School of Law, a master's degree from Duke Law School, and his undergraduate degree from Rutgers University.

Honorable Rukhsanah L. Singh, U.S.M.J. is a Magistrate Judge for the United States District Court for the District of New Jersey in Trenton, New Jersey.

Judge Singh serves on civics and diversity committees with the Federal Magistrate Judges Association and within her District. Prior to joining the federal judiciary, she was Assistant General Counsel in Litigation for BASF and served as an Assistant United States Attorney, Civil Division, Eastern District of New York. Prior to that Judge Singh was an associate with Connell Foley LLP. She is an Adjunct Professor at Seton Hall School of Law, where she lectures on a broad range of discovery issues.

Judge Singh received her B.A. from Davidson College and her J.D. from Seton Hall University School of Law. She was a law clerk to the Honorable Joel Pisano, U.S.D.J., United States District Court for the District of New Jersey, and to the Honorable Roberto A. Rivera-Soto, Associate Justice, New Jersey Supreme Court.

Honorable Matthew J. Skahill, United States Magistrate Judge for the District of New Jersey, serves in the Camden Vicinage. Prior to his appointment, he served for many years as an Assistant United States Attorney and was the Attorney-in-Charge of the Camden office.

Judge Skahill has extensive experience prosecuting public corruption, civil rights, narcotics, violent crime, and white collar fraud cases. He also served in leadership roles overseeing the Camden and Trenton branches of the United States Attorney's Office and began his Department of Justice career through the Honors Program.

Judge Skahill received his J.D. from the University of Connecticut School of Law and his B.A. from the College of the Holy Cross.

Honorable William C. Soukas, Judge of the Superior Court of New Jersey, currently serves in the Civil Division handling complex business litigation matters. He previously served in the Family Division.

Before his judicial appointment, Judge Soukas was a partner in private practice focusing on education law, business litigation, and land use matters. He also served as an adjunct instructor at Seton Hall University's Stillman School of Business.

Judge Soukas received his J.D. from Seton Hall University School of Law and his undergraduate degree from Boston College.

Stephen Stigall, a partner focusing on white collar criminal defense and corporate investigations, represents clients in matters involving alleged violations of the *False Claims Act*, *Foreign Corrupt Practices Act*, and other regulatory frameworks. He also advises clients on corporate compliance programs and internal investigations.

Mr. Stigall previously served for more than 15 years as an Assistant United States Attorney in the District of New Jersey, including as Attorney-in-Charge of the Camden office. During his tenure, he led multi-agency investigations and prosecuted high-profile cases involving fraud, corruption, and financial crimes.

He has worked closely with numerous federal agencies and received the Department of Justice Director's Award for Outstanding Performance as an Assistant United States Attorney.

Corinne McCann Trainor, a Partner at Fox Rothschild LLP, concentrates her practice in complex commercial, constitutional, and regulatory litigation. She represents clients across a range of industries, including life sciences, real estate, construction, and financial services, in high-stakes disputes.

She regularly litigates matters involving contract disputes, intellectual property, regulatory challenges, and constitutional claims, and appears in both trial and appellate courts. She also has extensive experience coordinating multidisciplinary legal strategies involving technical experts.

Corinne is active in the legal community and serves in leadership roles with several bar associations and professional organizations. She received her J.D., *cum laude*, from Seton Hall University School of Law and her undergraduate degree from Rutgers University.

G. Glennon Troublefield, a partner in the Litigation and Intellectual Property Departments at Carella Byrne Cecchi Brody Agnello, P.C., focuses his practice on complex civil, corporate, and intellectual property litigation. His work includes patent, trademark, and copyright matters, as well as business and bankruptcy litigation.

A registered patent attorney, Mr. Troublefield represents clients before the United States Patent and Trademark Office and advises on licensing and intellectual property transactions. He is active in bar leadership and has served on committees of the New Jersey Supreme Court.

Mr. Troublefield received his J.D. from Seton Hall University School of Law and his B.S. in Mechanical Engineering from the University of Pittsburgh.

Amy Walker Wagner is Assistant General Counsel, Horizon Blue Cross and Blue Shield of New Jersey, in Newark, New Jersey.

Ms. Wagner serves on the Board of Directors of the New Jersey Life & Health Insurance Guaranty Association and has been a member of the Association of the Federal Bar of New Jersey. She has lectured for ICLE and other professional organizations, and is the co-author of articles which have appeared in professional publications.

Ms. Wagner received her B.A. from Loyola University and her J.D. from Rutgers Law School.

Honorable Leda Dunn Wettre, United States Magistrate Judge for the District of New Jersey, has served on the bench since 2015 and sits in the Newark Vicinage. She holds several leadership roles within the court, including co-chairing the Rules Committee and serving as Mediation Compliance Judge.

Prior to her appointment, Judge Wettre was a litigation partner handling complex commercial matters involving intellectual property, class actions, and employment law. She also served as a law clerk in the United States District Court for the Southern District of New York.

Judge Wettre received her J.D. from Fordham Law School and her undergraduate degree, cum laude, from the University of Pennsylvania.

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