Causes of Action: What Is and Is Not Part of the Bankruptcy Estate?

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I. INTRODUCTION

This article examines whether a particular cause of action constitutes property of the estate or belongs to a nondebtor entity. There are divergent views as to how the courts answer this question. The courts are faced with difficult decisions when a cause of action against a third party could have been maintained by the debtor outside bankruptcy under state law or when creditors creatively plead cases that the debtor could not satisfy but, in actuality, seek to recover damages for harm that is common to all creditors. The answer to these questions turns on the interpretation of a particular state’s law.

II. BANKRUPTCY CODE AND APPLICABLE TESTS

Section 541(a)(1) of the Bankruptcy Code provides that property of the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” Causes of action held by a debtor have been considered legal or equitable interests of the debtor pursuant to Code § 541(a)(1) and qualify as property of the debtor’s estate. If the cause of action belongs to the estate, then the trustee has exclusive standing to assert the claim. If the cause of action belongs to the estate’s creditors, then the trustee has no standing to bring the cause of action.

“Whether a particular state-law claim belongs to the bankruptcy estate depends on whether under applicable state law the debtor could have raised the claim as of the commencement of the case.” As to this part of the test, the courts “look to the nature of the injury for which relief is sought and consider the relationship between the debtor and the injury.” If, on the one hand, the cause of action alleges only indirect

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harm to the creditor and if the debtor could have raised the claim for its direct injury under applicable law, then the cause of action belongs to the estate. If, on the other hand, the cause of action does not explicitly or implicitly allege harm to the debtor, then the cause of action could not have been asserted by the debtor as of the commencement of the case and is not property of the estate.

III. RECENT DECISION OF THE FIFTH CIRCUIT COURT OF APPEALS

Most recently, the Fifth Circuit Court of Appeals, in In re Seven Seas Petroleum, Inc., held that claims asserted by bondholders alleged an injury that was not merely derivative of the debtor, and they could not have been brought by the debtor. As a result, they were not property of the estate.

The appellants, a bondholder group, held $30 million in unsecured notes issued by Seven Seas Petroleum, Inc. (Debtor). The Debtor issued the notes as part of a $110 million debt offering in May 1998. The bondholders did not purchase the notes from the Debtor; rather, they purchased the notes in private transactions or on the secondary market in 1999, 2000, and 2002. Before the Debtor filed bankruptcy, it explored oil and gas properties in South America and, as a result, engaged a consulting firm to provide reserve estimates calculated in accordance with the SEC’s “proved reserve” guidelines, which were incorporated into the Debtor’s 10-K report and the prospectus for the $110 million debt offering. The reserve estimates were important to the bondholders for two reasons: (1) the bondholders relied on the estimates when they decided to purchase the unsecured notes, and (2) the Debtor’s ability to issue secured debt senior to the unsecured noteholders was tied to the reserve estimates. The terms of the unsecured notes provided that the Debtor could not issue secured debt exceeding the greater of $25 million or the sum of cash on hand, certain receivables, and 30% of the discounted net present value of reserves.

The Debtor issued $45 million in senior notes in July 2001 after it reported reserves of 47.9 million barrels of oil, with a discounted value of $394 million. The chairman of the Debtor led a group that purchased half the secured notes, while Chesapeake Energy Corporation purchased the other half of the notes. The collateral for the secured notes was substantially all of the Debtor’s assets. Also, the secured notes featured detachable warrants that gave the holders the right to purchase the Debtor’s stock for $1.78 per share, which represented 40% of the Debtor’s common shares. The Debtor’s business continued to deteriorate with a failed exploratory well in Colombia, and the Debtor reported that its assets were worth $49 million with liabilities on the secured notes of $52 million. The Debtor was pushed into an involuntary Chapter 7,
which was then converted to a Chapter 11 in the bankruptcy court for the Southern District of Texas, with the appointment of a trustee.\(^\text{24}\)

The trustee commenced an adversary proceeding against Chesapeake and the Debtor’s management.\(^\text{25}\) The trustee asserted breach of fiduciary duty claims against the Debtor’s management in that it knew that the Debtor was insolvent and arranged a secured debt financing with Chesapeake on terms that were advantageous to the secured note holders but detrimental to the Debtor and other creditors.\(^\text{26}\) Since the $45 million investment was secured by substantially all of the Debtor’s assets, the secured noteholders would profit greatly because the detachable warrants gave them the right to increase their equity stake in the company.\(^\text{27}\) The unsecured creditors and the Debtor faced the most risk because if the Colombia project turned out dry, then the Debtor would face bankruptcy with little assets to pay unsecured creditors.\(^\text{28}\) The trustee and Chesapeake settled, but the trustee continued to pursue claims against the Debtor’s directors on behalf of the estate.\(^\text{29}\)

Shortly after the bankruptcy filing, the bondholders sued the consulting firm for negligent misrepresentation and Texas state securities law claims.\(^\text{30}\) The bondholders alleged that the consulting firm owed them a duty to use reasonable care in calculating the reserve estimates, that the bondholders relied on the reserve estimates, and that, as a result, they lost almost all of their investment in the unsecured notes.\(^\text{31}\)

After the Debtor’s plan was confirmed, the bondholders amended their state-court complaint to include Debtor’s directors and Chesapeake, alleging that the secured debt transaction was structured in a way that minimized the risk to the secured noteholders and gave them opportunity to capture the upside of the Colombia exploratory well deal and that, without the reserve estimates, the Debtor would have been limited to issuing $25 million in secured debt.\(^\text{32}\) The bondholders charged the Debtor’s management and Chesapeake with conspiracy to defraud as well as aiding and abetting fraud.

The bankruptcy court dismissed the bondholders’ claims, ruling that the claims were property of the Debtor’s bankruptcy estate and that the bondholders did not have the right to assert claims on behalf of the estate.\(^\text{33}\) The district court affirmed without explicitly concluding that the bondholders’ claims against Chesapeake were property of the estate but rather on jurisdictional and estoppel grounds.\(^\text{34}\)

The bondholders appealed, and the narrow issue before the Fifth Circuit Court of Appeals was whether the claims belonged to the bondholders or the estate.

The Fifth Circuit first examined the nature of the injury for which relief was sought by the bondholders. The court concluded that the claims
alleged more than an injury that was merely a derivative injury of the Debtor. The court explained that if Chesapeake knew that the reserve estimates were false and used them to induce the bondholders to purchase or refrain from selling the unsecured notes, then there was a direct injury to the bondholders that was independent of any injury to the Debtor. The court failed to see what direct injury the Debtor might have suffered on account of the wrongdoing that the bondholders alleged.

The court furthermore held that the aiding and abetting fraud claim, which sought to hold Chesapeake liable for giving assistance to the Debtor in publishing false reserve estimates upon which the bondholders relied to their detriment, was also an allegation of a direct injury to the bondholders.

The Fifth Circuit Court of Appeals next examined whether, under applicable state law, the Debtor could have raised either claim (conspiracy to defraud and aiding and abetting fraud) as of the commencement of the bankruptcy case. The court explained that the underlying wrong is fraud in connection with the purchase of bonds in the secondary market and that the Debtor would not have been in a position to assert the bondholders’ reliance on any alleged misrepresentation or to claim to have suffered damages because of the reliance, as would be necessary to state a claim based on the particular fraud of which the bondholders complained. The court applied the same reasoning to the aiding and abetting fraud claims.

The Fifth Circuit summarized that the claims brought by the bondholders were alleged injuries that not merely derivative of an injury to the Debtor and could not have been asserted by the Debtor as of the petition date and, therefore, were not property of the estate. The court noted, however, that its decision did not pass on the merits of the claims or whether the bondholders’ allegations are sufficient to state causes of action under Texas law and to recover on such allegations.

IV. DIFFERENT CONCLUSIONS BY DIFFERENT COURTS

The lower courts have developed different grounds as to whether a cause of action is part of the estate and may be asserted by the trustee.

FOURTH CIRCUIT

In Steyr-Daimler-Puch of America Corp. v. Pappas, the Fourth Circuit held that a bankruptcy trustee could bring an alter-ego claim because an alter-ego claim, under Virginia state law, is property of the corporation so that it becomes property of the bankruptcy estate which the trustee has control over pursuant to § 541(a)(1) of the Code. In Steyr, SDPA, a creditor that sold goods to the debtors, alleged that the debtors were “alter egos” of directors and officers. The issue before
the court of appeals was whether the “alter ego” claim could be brought by the trustee or whether it was personal to the creditors.47

The Fourth Circuit first examined the two sources from which a bankruptcy trustee’s power arises: first, the rights of the debtor pursuant to § 541,48 and second, the bankruptcy trustee obtains power from the rights of the creditors of the debtor under Code § 544.49 The court explained that federal bankruptcy law turns to state law for the definition of which interests are rights of the debtor and which belong to the debtor’s creditors.50 The Fourth Circuit did not address the § 544 issue because an alter-ego claim under Virginia state law is property of the estate under § 541(a)(1), and therefore, the trustee could bring the alter-ego claim.51 Under Virginia state law, according to the court, “a corporation has an equitable interest in the assets of an alter ego because the corporation and the alter ego are ‘one and the same.’”52 The Fourth Circuit explained that Code § 541(a)(1) brings into the estate the rights of the debtor to proceed against its alter ego and to claim its equitable interest in the assets of the alter ego.53 As a result, the trustee succeeded to those rights, and therefore, the Fourth Circuit affirmed the district court’s dismissal of the creditor’s alter ego complaint against the debtors.54

SPLIT WITHIN THE SEVENTH CIRCUIT

The Seventh Circuit Court of Appeals has held in different cases that the trustee may bring an alter-ego claim either when it is a claim of the debtor that passes into the estate to the trustee and when the alter-ego claim is available to all creditors and the trustee has the power under Code § 544 to bring such a general claim on behalf of all the creditors.55 In Koch, the Seventh Circuit Court of Appeals indicated that the trustee may bring the alter-ego claim under either power.56 The oil company creditors asserted their right to bring an alter-ego claim against the debtor.57 The Seventh Circuit affirmed the district court’s dismissal of the creditor’s complaint for lack of standing because Illinois and Indiana state law provided that the trustee had exclusive standing to bring an alter-ego claim on behalf of the debtor.58 However, the court explained that the trustee could only bring claims common to all creditors of the debtor and could not avoid personal claims of creditors that are individual to that creditor.59 The court further explained that a cause of action is “personal” if the creditor:

is harmed and no other claimant or creditors has an interest in the cause. But allegations that could be asserted by any creditor could be brought by the trustee as a representative of all the creditors. If the liability is to all creditors of the corporation without regard to
the personal dealings between such officers and such creditors, it is a general claim.\textsuperscript{60}

In \textit{Koch}, the oil company creditors alleged no harm to themselves personally and no loss in their individual capacities.\textsuperscript{61} The court found that the oil companies showed no harm from the actions of the debtor or the debtor’s management.\textsuperscript{62}

Moreover, in an earlier decision in \textit{Matter of Kaiser}, the Seventh Circuit Court of Appeals found that an alter-ego claim is available to all creditors and that the trustee has the power under § 544 to bring such a general claim on behalf of all creditors.\textsuperscript{63}

\textbf{EIGHTH CIRCUIT COURT}

In \textit{Mixon v. Anderson (In re Ozark Restaurant Corp.)}, the court first concluded that, under Arkansas state law, a corporation could not bring an alter-ego claim against its principals.\textsuperscript{64} Therefore, the claim was not part of the bankruptcy estate, and the trustee could not bring it as representative of the estate.\textsuperscript{65} The Eighth Circuit then considered whether the trustee could bring the claim as representative of creditors because the court read § 544 as not granting the trustee power to assert general causes of action on behalf of the estate’s creditors.\textsuperscript{67}

\textbf{SECOND CIRCUIT}

In \textit{St. Paul Fire and Marine Insurance Co. v. Pepsico, Inc.},\textsuperscript{68} the Second Circuit Court of Appeals examined whether the bankruptcy trustee had standing to assert alter-ego claims against third parties.\textsuperscript{69} The court explained that whether rights belong to the debtor or individual creditors is determined by state law.\textsuperscript{70} The court explained that claims of the debtor may only be brought by the trustee because “[i]f a claim is a general one, with no particularized injury arising from it, and if that claim could be brought by any creditor of the debtor, the trustee is the proper person to assert the claim, and the creditors are bound by the outcome of the trustee’s action.”\textsuperscript{71} The court proceeded to apply this reasoning to the facts of the case in explaining that if the claims by the creditor:

are not against the debtor but are against a third party...[t]he claims, if proved, would have the effect of bringing the property of the third party into the debtor’s estate, and thus would benefit all creditors. It therefore would be illogical to distinguish between this type of claim against a third party and a claim against the debtor.\textsuperscript{72}

The creditor also brought an alter-ego claim against the parent of the subsidiary, and the issue became whether the trustee or the individual
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The creditor had standing to assert the alter-ego claim. The court held that the creditor did not have standing to bring the alter-ego claim because the alter-ego claim was property of the estate, the injury was a generalized one, was already being litigated by the trustee and the committee, and the individual creditor did not have standing to assert the alter-ego claim outside of bankruptcy.

Similarly, in In re Enron Corp., the court examined whether the shareholders had standing to sue on a breached merger agreement from which a party walked away when Enron’s financial troubles became known or if the claims were derivative and belonged to the estate. Before Enron filed for bankruptcy, it signed a merger agreement with a rival energy company, Dynegy, which later withdrew from the agreement as Enron’s financial affairs worsened. Enron’s shareholders sued Dynegy to enforce the rights specifically awarded to them by the agreement. The bankruptcy court enjoined the lawsuit pursuant to the automatic stay finding that the shareholders did not have standing to sue and that their claims were derivative and belonged to Enron.

The district court first turned to state law to determine whether the shareholders’ claim belonged to the estate and could only be asserted by the trustee. The court looked to Texas law that governed the merger agreement. As a general rule under Texas law, the corporation, not its shareholders, has the right to sue the wrongdoer if it suffers damages. Texas law provided an exception to the general rule where “a corporate shareholder may have an action for personal damages ‘where the wrongdoer violates a duty arising from contract or otherwise and owing directly by him to the stockholder.’” The court explained that, in order to “determine that [if] the Enron shareholders have an individual right to sue, it must determine [under state law] that the Merger Agreement makes the shareholders personal and independent beneficiaries of the Agreement.”

By virtue of the merger agreement, third-party beneficiaries, including shareholders, had the right to enforce the provisions of the agreement that benefited them. The court then reasoned that, under contract law, Dynegy’s withdrawal from the agreement constituted a repudiation, which triggered the shareholders’ right as third-party beneficiaries to claim damages for breach of the provision of the agreement that benefited them.

Next, the court explained that it had to look to the “nature of the wrong” in order to determine whether the shareholders could bring their own direct action. The court found that the shareholders’ injuries were “distinct and separate” from Enron’s because Enron was to benefit from the merger agreement by having its debts assumed while the shareholders were to benefit by becoming shareholders of Dynegy. The court found these to be distinct and separate benefits, and thus the injuries sustained by their loss were separate and distinct.
OTHER NOTABLE DECISIONS

If a harm alleged is derivative of harm suffered by the debtor and the debtor could have maintained the action outside of bankruptcy, the estate will have the exclusive right to pursue it.

For instance, in *National American Insurance Company v. Ruppert Landscaping Co., Inc.*, the Fourth Circuit Court of Appeals held that sureties of the debtor, as individual creditors of the debtor, lacked standing to pursue claims that were similar in nature and purpose to fraudulent conveyance claims that might be brought by the trustee. The sureties of the debtor sued the purchaser of the debtors’ assets for successor liability, tortuous interference with contract, and statutory and common law conspiracy. The Fourth Circuit found that the sureties’ claims and the trustee’s claims had the same “underlying focus.”

The Sureties’ causes of action are thus so similar in object and purpose to claims that the trustee could bring in bankruptcy court that the Sureties lack standing to pursue these claims in district court. Until the trustee has abandoned his potential fraudulent conveyance action, the Sureties cannot proceed with their claims in district court.

The Fourth Circuit made a policy point as well:

To all selected creditors to artfully plead their way out of bankruptcy court would unravel the bankruptcy process and under an ordered distribution of the bankruptcy estate... The goal of bankruptcy is to consolidate the proceeding and avoid piecemeal litigation—a goal that would be sacrificed by permitting the district court to entertain the merits of the Sureties’ suits. Reserving the action for the trustee maintains the integrity of the bankruptcy proceeds and ensures that individual creditors cannot hijack the bankruptcy process.

In addition, the Eleventh Circuit Court of Appeals, in *In re Icarus Holding, LLC*, examined the issue of whether a debtor may bring an alter-ego claim against one of its principals. The debtor filed a complaint against its former principals while a separate creditor also sued the debtor’s principal alleging that the principal was the alter-ego of the debtor and thus personally liable for the debtor’s debts. The Eleventh Circuit explained that since standing to assert an alter-ego claim is based on state law, Georgia law had to be examined. The court explained that if a cause of action, such as an alter-ego claim, is property of the estate under § 541(a), any similar extraneous lawsuits brought by individual creditors would be subject to the automatic stay under § 362(a)(3). The court reasoned that it must look to Georgia law to determine wheth-
er the debtor is allowed to bring an alter-ego claim against its former principal, making it property of the estate, or the separate creditor action subject to the automatic stay.\textsuperscript{101}

The court reasoned that, in order to bring an exclusive alter-ego action under § 541, a trustee’s claim should be a (i) general claim that is common to all creditors and (ii) be allowed by state law.\textsuperscript{102} Based on the two-part test, the Eleventh Circuit found that the creditors only asserted a general cause of action and no personal damages unique to them.\textsuperscript{103} The claim alleged by the separate creditor was general to all the creditors of the corporation without regard to the personal dealings of the officers and the creditors.\textsuperscript{104} The assertion was that the debtor’s principal took the corporation’s assets and used them for himself.\textsuperscript{105} The court held that an alter-ego action under these facts could be brought by all creditors of the debtor and that the separate creditor did not show unique or personal harm. Thus the principal caused direct harm to the corporation and indirect harm to the separate creditors. Therefore, the first factor was met.\textsuperscript{106} As to the second factor, the Eleventh Circuit certified the question to the Georgia Supreme Court because the Georgia courts were divided on whether the state law allows a corporation to bring this type of alter-ego action.\textsuperscript{107}

The Sixth Circuit Court of Appeals, in \textit{Honigman v. Comerica Bank (In re Van Dresser Corp.)},\textsuperscript{108} had to determine the proper ownership of a creditor’s claims. Daniel Honigman, a shareholder and creditor of the debtor corporation, Van Dresser, sued the debtor’s bank (Comerica Bank), a bank officer, and the president of the debtor’s parent corporation.\textsuperscript{109} The complaint against the president of the debtor’s parent corporation alleged that the president, with the assistance of the bank, looted the parent out of $2.7 million, causing it and the subsidiaries to file bankruptcy.\textsuperscript{110} The trustees were proceeding against the bank officer and president of the debtor’s parent corporation.\textsuperscript{111} The defendants in the \textit{Honigman} action removed it to the bankruptcy court in which the debtor’s bankruptcy case was pending and moved to dismiss the case on the theory that it involved derivative harm to the debtor and thus belonged to the estate.\textsuperscript{112}

The Sixth Circuit Court of Appeals explained that Michigan state law permitted Honigman and the debtor to assert actionable claims but held that, since the loss to be recovered was common to both of the corporations and Honigman and could provide duplicative recovery, the claims of the debtor precluded Honigman’s suit.\textsuperscript{113}

\textbf{V. CONCLUSION}

The cases discussed in this article illustrate the wide range of methods and reasons as to how causes of action are treated in bankruptcy cases. The issue of whether a cause of action is or is not part of the bankruptcy estate depends
on the particular state law at issue in the case. Therefore, a state law analysis, as well as a bankruptcy law analysis, must be performed in order to resolve whether a cause of action is or is not part of the bankruptcy estate.

**RESEARCH REFERENCES:**


West’s Key Number Digest, Bankruptcy 2552-2556

**NOTES**


3. See Goldman, 23-MAR. Am. Bankr. Inst. J. 1; Also see Part IV infra.


6. See Educators Group, 25 F.3d at 1284.

7. See Educators Group, 25 F.3d at 1284.

8. See Seven Seas, 522 F.3d at 584.

9. See Seven Seas, 522 F.3d at 584.

10. See Seven Seas, 522 F.3d at 584; Educators Group, 25 F.3d at 1284.

11. See Seven Seas, 522 F.3d at 584; Educators Group, 25 F.3d at 1284.

12. Seven Seas, 522 F.3d 575.

13. See Seven Seas, 522 F.3d at 586-588.

14. See Seven Seas, 522 F.3d at 578.

15. See Seven Seas, 522 F.3d at 578.

16. See Seven Seas, 522 F.3d at 578.

17. See Seven Seas, 522 F.3d at 578.

18. See Seven Seas, 522 F.3d at 578.

19. See Seven Seas, 522 F.3d at 578-579.

20. See Seven Seas, 522 F.3d at 579.

21. See Seven Seas, 522 F.3d at 579.

22. See Seven Seas, 522 F.3d at 579.

23. See Seven Seas, 522 F.3d at 579.

24. See Seven Seas, 522 F.3d at 579.

25. See Seven Seas, 522 F.3d at 579.

26. See Seven Seas, 522 F.3d at 580.

27. See Seven Seas, 522 F.3d at 580.
28. See Seven Seas, 522 F.3d at 580.
29. See Seven Seas, 522 F.3d at 580.
30. See Seven Seas, 522 F.3d at 580.
31. See Seven Seas, 522 F.3d at 580.
32. See Seven Seas, 522 F.3d at 581.
33. See Seven Seas, 522 F.3d at 582-583.
34. See Seven Seas, 522 F.3d at 583.
35. See Seven Seas, 522 F.3d at 585.
36. See Seven Seas, 522 F.3d at 586.
37. See Seven Seas, 522 F.3d at 586.
38. See Seven Seas, 522 F.3d at 586.
39. See Seven Seas, 522 F.3d at 586.
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41. See Seven Seas, 522 F.3d at 586.
42. See Seven Seas, 522 F.3d at 587.
43. See Seven Seas, 522 F.3d at 587.
44. Steyr, 852 F.2d 132.
45. See Steyr, 852 F.2d at 135.
46. See Steyr, 852 F.2d at 135.
47. See Steyr, 852 F.2d at 135.
48. See Steyr, 852 F.2d at 135.
49. See Steyr, 852 F.2d at 135.
50. See Steyr, 852 F.2d at 135. (citing Butner v. United States, 440 US 48 (1979)).
51. See Steyr, 852 F.2d at 136.
52. See Steyr, 852 F.2d at 136 (citations omitted).
53. See Steyr, 852 F.2d at 136 (citations omitted).
54. See Steyr, 852 F.2d at 136.
56. See Koch, 831 F.2d 1339.
57. See Koch, 831 F.2d at 1341.
58. See Koch, 831 F.2d at 1346.
59. See Koch, 831 F.2d at 1348-1349.
60. See Koch, 831 F.2d at 1348-149 (citations omitted).
61. See Koch, 831 F.2d at 1350.
62. See Koch, 831 F.2d at 1350.
63. Matter of Kaiser, 791 F.2d 73, 75 (7th Cir. 1986).
65. See Ozark, 816 F.2d 1222.
66. See Ozark, 816 F.2d at 1226-1230.
67. See Ozark, 816 F.2d at 1228-1230.
69. See St. Paul Fire and Marine, 884 F.2d at 696.
70. See St. Paul Fire and Marine, 884 F.2d at 700.
71. See St. Paul Fire and Marine, 884 F.2d at 701 (citations omitted).
72. See St. Paul Fire and Marine, 884 F.2d at 701.
73. See St. Paul Fire and Marine, 884 F.2d at 704.
74. See St. Paul Fire and Marine, 884 F.2d at 704-705.
76. See Enron, 292 B.R. at 509.
77. See Enron, 292 B.R. at 509.
78. See Enron, 292 B.R. at 509.
79. See Enron, 292 B.R. at 509.
80. See Enron, 292 B.R. at 511.
81. See Enron, 292 B.R. at 511.
82. See Enron, 292 B.R. at 511.
83. See Enron, 292 B.R. at 511 (citations omitted).
84. See Enron, 292 B.R. at 511-512.
85. See Enron, 292 B.R. at 512.
86. See Enron, 292 B.R. at 513.
87. See Enron, 292 B.R. at 514.
88. See Enron, 292 B.R. at 514.
89. See Enron, 292 B.R. at 514-515.
91. See Ruppert Landscaping, 187 F.3d at 441.
92. See Ruppert Landscaping, 187 F.3d at 441.
93. See Ruppert Landscaping, 187 F.3d at 441.
94. See Ruppert Landscaping, 187 F.3d at 441.
95. See Ruppert Landscaping, 187 F.3d at 441-442.
97. See Icarus Holding, 391 F.3d at 1318.
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99. See Icarus Holding, 391 F.3d at 1318.
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101. See Icarus Holding, 391 F.3d at 1319.
102. See Icarus Holding, 391 F.3d at 1321.
103. See Icarus Holding, 391 F.3d at 1321.
104. See Icarus Holding, 391 F.3d at 1321 (citations omitted).
105. See Icarus Holding, 391 F.3d at 1321.
106. See Icarus Holding, 391 F.3d at 1321.
107. See Icarus Holding, 391 F.3d at 1322.
109. See Van Dresser, 128 F.3d at 946.
110. See Van Dresser, 128 F.3d at 946.
111. See Van Dresser, 128 F.3d at 947.
112. See Van Dresser, 128 F.3d at 947.
113. See Van Dresser, 128 F.3d at 948.