



AMERICAN
BANKRUPTCY
INSTITUTE

2019 Hon. Eugene R. Wedoff Seventh Circuit Consumer Bankruptcy Conference

Seventh Circuit Case Law Update

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CASE LAW UPDATE

ABI

Hon. Eugene R. Wedoff

Seventh Circuit Consumer Bankruptcy Conference

October 14, 2019

Nathan E. Curtis
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Hon. Andrea McCord

PROPERTY OF THE ESTATE / EXEMPTIONS

In re Steenes, 918 F.3d 563

This was the consolidation of two distinct issues: The City of Chicago objected to the form confirmation order used in the Northern District of Illinois because it caused debtors' property to remain in the bankruptcy estate after confirmation, without the debtor requesting that or making some finding that the property was necessary. The City also sought to have post-confirmation parking tickets and fines paid as administrative expenses as long as a debtor's vehicle remained in the estate.

The Seventh Circuit held that the bankruptcy court could not use a form confirmation order that automatically left the debtor's property in the estate. The Court, however, did not rule on whether the City's position that they would have an administrative claim for post-confirmation tickets. The Court granted Steenes' petition for rehearing and will rule on the administrative expense issue.

NOTE after ruling on the administrative claim issue, the Court will hear argument on a related issue; whether a plan that proposes that a debtor's property will remain in the estate is permissible.

In re Fulton, 18-2527 (June 19, 2019):

This was a consolidation of four cases from four different judges. In each, the City had impounded Debtor's vehicle for tickets and refused to return it based on a recent ordinance that gave the city a possessory lien on all impounded vehicles. The City argued it needed to maintain possession in order to keep its lien, and that the Court should overturn *Thompson v. GMAC*.

The Court refused to overturn *Thompson*, holding that the city does not lose its possessory lien if it is forced to relinquish possession, and that the proper remedy for the city is to file a motion to seek adequate protection.

In re Jaffe, 18-2726 (August 5, 2019):

Creditor sued Debtor for legal malpractice, obtained a default judgment and recorded the judgment against Debtor's residence, which was held in tenancy by the entirety. Debtor filed a Chapter 7 in 2015, and listed Creditor as having a debt secured by a judgment lien on his residence. Debtor claimed exemptions under both the Illinois Homestead statute and the Illinois Tenancy by the Entireties statute. Debtor filed a motion to avoid creditor's lien. The bankruptcy court denied the motion and the district court reversed.

The Seventh Circuit held that under Illinois law, judgment liens attach to all interests in real estate, and in addition to holding a present interest in tenancy by the entireties, an individual such as Debtor also holds several contingent future interests in the property: "(a) an interest as a tenant in common in the event of a divorce, (b) an interest as a joint tenant in the event that another homestead is established, and (c) a survivorship interest in the entire property in the event of the other tenant's death." 765 ILCS 1005/1c. Although Debtor's homestead interest would be exempt from attachment of a judgment lien, and the current tenancy interest would also be exempt under

735 ILCS 5/12-112, the tenancy by entireties statute does not mention any contingent future interests, and therefore, they are not protected. Therefore, the judgment lien could not be avoided.

***In re Hernandez*, 918 F.3d 563 (7th Cir. 2019)**

In *In re Hernandez*, 918 F.3d 536 (7th Cir. 2019), the Court certified a question of statutory interpretation to the Illinois Supreme Court as to whether the Illinois Worker's Compensation Act, as amended, allows health-care provider creditors to reach the proceeds of workers' compensation claims. The debtor in *Hernandez*, who sustained an on-the-job injury, filed a chapter 7 bankruptcy and disclosed as one of her assets her pending worker's compensation claim which she valued at \$31,000.00. She also listed unsecured debts owed to several health-care providers who provided care to her for her job-related injury. The debtor claimed an exemption of the entirety of her worker's compensation claim by citing section 21 of the Illinois Workers' Compensation Act (the general exemption statutes of Illinois do not mention available exemptions for workers' compensation claims or awards), which bankruptcy courts previously interpreted as an exemption. See *In re McClure*, 175 B.R. 21 (Bankr. N.D. Ill. 1994). Pursuant to relevant portions of section 21, "No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment, or garnishment, or be held liable in any way for any lien, debt, penalty or damages." 820 Ill. Comp. Stat. 305/21. Two days after filing her petition, the debtor settled her claim with her employer for \$30,566.33, without first consulting with the trustee. The health-care providers then objected to the debtor's claimed exemption, arguing that recent amendments to the Illinois Workers' Compensation Act (the amendments included imposing a new fee schedule and billing procedure for health care providers seeking remuneration) empowered them to reach the settlement. The health care providers also argued that because the settlement was the product of fraud, the bankruptcy court should disallow the exemption. After a hearing, the bankruptcy court summarily denied the exemption but did not issue a written opinion. The debtor appealed to the district court which affirmed the bankruptcy court's decision. The district court focused exclusively on the interplay between Section 21 of the Workers' Compensation Act and the amendments to the Act, and rejected the debtor's argument that the care provider's interpretation of the amendments as "not reasonable," because it would undermine a key purpose of the amended Act, which was to ensure payment for care providers. The debtor moved to alter or amend the district court's judgment which the district court denied. The debtor then appealed to the Seventh Circuit.

Upon review of the Illinois exemption statutes, Section 21 of the Illinois Workers' Compensation Act, and the amendments to the Act, the Court certified the question to the Illinois Supreme Court because it found that there were no dispositive Illinois Supreme Court opinions clarifying the boundaries of the Act or even classifying it as an exemption. The Court further found that applying the Illinois interpretive rules, the Court could see plausible arguments on both sides. The Court was genuinely uncertain about a question of Illinois law that was key to a correct disposition of the case, and the case concerned a matter of vital public concern or was an issue likely to recur in other cases.

APPELLATE PROCEDURE

***In Re Wade No. 18-2564* 7th Circuit Court of Appeals (June 2019)**

This matter was heard by the bankruptcy Court for the Northern District of Illinois. The Debtors moved for sanctions against Kreisler Law P.C., alleging the firm violated the automatic stay by placing a lien on their home. The motion was denied under 11 U.S.C. Sec. 362 (c)(3) as this was a successive petition. The judge certified the matter for appeal, due to division by the Bankruptcy Courts over the proper interpretation of Sec, 362 (c)(3) (whether it lifts the entire stay or the “with respect to the debtor” language limits the stay to only non-estate property). The appeal notice was timely filed but the debtors never filed for permission to appeal as required by 8006(g) of the Federal Rules of Bankruptcy Procedure. Kreisler objected and the Court of Appeals dismissed the appeal as 8006(g) is a mandatory claims processing rule.

The Court found that Kreisler properly objected to the violation of 800g(g) and they had a mandatory duty to dismiss the appeal. Further, that the cases cited by the debtors (*In re Turner*, 574 F.3d 349 (7th Cir. 2009) and *Marshall v. Blake*, 885 F.3d 1065 (7th Cir. 2018)) were overruled by the decisions in *Nutraceutical Cor. V. Lambert*, 139 S. Ct. 710 (2019) and *Hamer v. neighborhood Hous. Servs. Of Chi.*, 138 S. Ct. 13 (2017) and any exceptions to 8006(g) and Rule 5(a)(1) of the Federal Rules of Appellate Procedure do not apply as mandatory claim-processing rules are “unalterable” (*Nutraceutical*, 139 S.Ct. at 714) and “must be enforced” (*Hamer*, 138 S.Ct. at 7).

***In Re Francis No. 18-3523* (Non precedential) 7th Circuit Court of Appeals (June 2019)**

The Bankruptcy Court for the Southern District of Indiana denied the debtor’s Motion to Reopen their Chapter 7 in regard to a mortgage foreclosure they claimed violated the injunction on discharged debts. The Court further denied their Motion to Reconsider. The Debtors, 30 days later, filed a Notice of Appeal in the District Court. The District Court dismissed the appeal as untimely in that it was due 14 days after the entry of the Order Denying the Motion to Reconsider. (FED. R. BANKR. P. 8002(a)(1)).

The Court stated that the rules may not be bent for pro se debtors in that equitable exceptions may not be made to jurisdictional requirements. (See *Bowles v. Russell*, 551 U.S. 205, 214 (2007)). They also denied the Creditors request for sanctions for the filing of a frivolous appeal.

BAD FAITH

***In re Whaley*, 772 Fed. Appx. 346*, 2019 U.S. App. LEXIS 18767**; 2019 WL 2578365 (7th Cir. 2019) – Unpublished Opinion**

In *In re Whaley*, 772 Fed. Appx. 346* (N.D. Ill., Aug. 23, 2018), the Court held that dismissal of a Chapter 13 debtor's petition was proper as there was no clear error in the bankruptcy court’s oral finding that the debtor filed his petition in bad faith. The bankruptcy court concluded that the debtor’s failure to produce proof of his income and his tax returns, his failure to file a complete Chapter 13 plan, and his failure to make plan payments, even after he had been given a

continuance to cure the deficiencies, showed that the debtor had no intention of satisfying his debts through his Chapter 13 filing. The bankruptcy court also found that the debtor's actions suggested that the debtor only intended to take advantage of the automatic stay in bankruptcy to forestall collection actions by the city of Chicago for unpaid parking tickets, and to force the city to release an immobilized vehicle used by the debtor. The debtor then filed motions to vacate the dismissal and to reinstate the automatic stay. The debtor, who drove for Uber, also moved for sanctions against the city, asserting that the city violated the automatic stay by failing to notify Uber that the unpaid parking tickets would be resolved through the bankruptcy process (thereby allowing the debtor to retain his permit to drive for Uber). The bankruptcy court declined to reopen the debtor's case and denied the motions, explaining that it could not decide matters related to a dismissed case. The debtor appealed to the district court which affirmed the dismissal of the debtor's case and ruled that the debtor's other motions were moot because his case had been dismissed.

The debtor appealed the decision of the district court, arguing that the district court erred in affirming the dismissal of his case and the denial of his motion for sanctions. On appeal, the debtor's primary argument was that but for the city's violation of the automatic stay, which caused Uber to suspend him from driving for nine days, he would have earned money to make his plan payments. The Court held that there was no abuse of discretion in the dismissal of the debtor's case because even after a continuance, the debtor still had not met his duties pursuant to Section 521 of the Bankruptcy Code, including submitting proof of income and tax returns, nor had he submitted a completed Chapter 13 plan. Moreover, the Court found that the debtor's attempt to add new traffic tickets incurred after the filing of the petition to the bankruptcy estate showed the debtor's intent to avail himself of the automatic stay without meeting his obligations under Section 521. The Court also found that the finding of bad faith by the bankruptcy court was based on more than the debtor's failure to make plan payments, and therefore, the debtor's argument that the city's alleged violation of the automatic stay was the cause of his failure to make payments, was irrelevant.

***In re Lisse*, 921 F.3d 629 (7th Cir. 2019), rehearing denied by *In re Lisse*, 2019 U.S. App. LEXIS 13439 (7th Cir. Wis., May 3, 2019)**

In *In re Lisse*, 921 F.3d 629 (7th Cir. 2019), the Court held that an award of sanctions against an attorney and her client was appropriate under Fed. R. Bankr. P. 8020(a) because the attorney filed her client's Chapter 13 bankruptcy petition for the improper purpose of thwarting the client's creditors and relitigating a state court foreclosure judgment. The Court also found that the sanctions were also warranted under 28 U.S.C.S. § 1927 because the attorney and the debtor's use of use of the automatic stay in 11 U.S.C.S. § 362(a) as a litigation ploy to drag out foreclosure proceedings in another jurisdiction constituted objective bad faith. The Court then held that suspending the attorney from practicing in the Western District of Wisconsin was appropriate as reciprocal discipline where the attorney had been suspended from practice for one year by the Wisconsin Supreme Court. Finally, the Court held that additional sanctions against the attorney were warranted under Fed. R. App. P. 38 where the attorney's arguments on the merits were frivolous, and that the attorney engaged in, and had a previous history of engaging in, meritless and dilatory motion practice before the court.

FRAUD / DENIAL OF DISCHARGE

***In Re Chlad*, 922 F.3d 856, 7th Circuit Ct. Of Appeals (May 2019)**

Monik Chlad and her husband filed a joint petition for bankruptcy under chapter 7 seeking to discharge approximately \$5 million in debt. Two creditors (Chapmand and Semy Investments, Ltd.) brought adversary proceedings, objecting to discharge, alleging the filings omitted material information to the debtor's financial condition under 11 USC sec. 727(a)(4). The Bankruptcy court denied discharge finding the omissions reflected materially false statements made with fraudulent intent. The District Court affirmed the decision and the Debtor, Chlad appealed.

The omissions underlying the appeal include: Chlad did not disclose real estate located in Chicago that secured mortgages; Chlad failed to report an executed promissory note for over \$800,000 in favor of Edgewood bank; Chlad failed to disclose a shareholder lien of over one million dollars she received from the real estate company she owned three years prior to the bankruptcy and which was paid off just before filing; Chlad failed to declare 2 jointly owned bank accounts; Chlad failed to report child support payments and rental income of over \$4000 a month she was receiving; Chlad failed to disclose she used the alternate name of "Monika" in her business affairs including bank accounts and tax returns.

At the bench trial Chlad testified her omissions were innocent mistakes and blamed her bankruptcy attorney for some of them (he did admit to some partial mistakes). The testimony showed she managed her own financial affairs, had hired someone to inventory her assets (including the items not listed) and had met multiple times with her attorney who advised her of the consequences of making misstatements. The court found that the omissions and misstatements were material, she knew them to be false and denied discharge.

On appeal, the court reviewed the bankruptcy court for 'clear error' (See, *In Re Krehl*, 86 F3d 737, 743, 7th Circuit 1996). They looked at sec 727 (a)(4)'s requirements that a false statement be made "knowingly" and "fraudulently". They found both in evaluating Chlad's admission and her active role in her financial affairs. They found she showed a pattern of omissions that evinced a reckless disregard for the truth. Further, that the omissions were material and the bankruptcy Court was affirmed.

***In Re Chicago Management Consulting Group (Fox v. Hathaway)* 7th Circuit Court of Appeals (July 2019)**

Frank Novak committed suicide in February of 2012, leaving his company Chicago Management Consulting Group (CMCG) to his friend Debra Comess. Soon after she initiated a chapter 7 Bankruptcy proceeding for the company. The Trustee (FOX) discovered numerous transfers from CMCG to Comess and another friend of Novak, Julia Hathaway and sought to reclaim those transfers for the estate as he believed them to be fraudulent. The bankruptcy court found the transfers to be voidable on the basis of actual and constructive fraud and also entered sanctions against Hathaway on discovery violation issues.

The District Court affirmed the Bankruptcy Court, Comess settled her case and Hathaway appealed. In the appeal, Hathaway asserted that the bankruptcy judge committed clear error in regards to the exhibits used on the company's insolvency issue, challenged the finding that CMCG did not receive reasonably equivalent value in return for its transfers, challenged the finding that

the company did not have “creditors” under the Illinois Uniform Fraudulent Transfers Act (IUFTA) at the time of the transfers, and disputed the sanctions ruling.

In analyzing the insolvency issue (part of the constructive fraud component of sec. 548), the Court of Appeals affirmed the judge’s finding that CMCG was insolvent at the time of the transfers based on accounting records showing the company’s liabilities exceeded its assets and found no clear error.

Regarding the claim that the company did not receive equivalent value for its transfers (another part of proving constructive fraud) under 548 and IUFTA, Hathaway claimed she provided labor value and submitted invoices (very vague ones) as her evidence. In its findings, the Bankruptcy Court cited evidence that the transfers were gratuitous, including a \$119.10 transfer for personal cosmetics, personal gifts ranging from flowers to perfume, and yoga mats and equipment for her yoga studio. Hathaway agreed that she thought these were personal gifts but thought they were from Novak and not the company. The Court of Appeals refused to reweight the evidence and did not find clear error.

In regard to her challenge of the finding that the transfers were voidable under sec.548 and the IUFTA, Hathaway failed to adequately challenge the company’s tax obligations or credit card debt, unsecured claims that allowed the trustee to step into the shoes of the unsecured creditors and avoid any transfer that would be voidable under state law (a trigger of IUFTA).

In regard to the sanctions, the court found them reasonable as they were related to the trustee’s efforts to litigate discovery problems caused by Hathaway.

In re Calvert, 913 F.3d 697

Debtor owned a business and after an unsuccessful unionization attempt, he laid off most of his workforce. The National Labor Relations Board held that he violated the National Labor Relations Act by discriminating against workers for exercising their rights, and the business was ordered to pay backpay. Debtor attempted to shut his business down and move to two new corporate entities but the NLRB then held him personally liable for the backpay. Debtor filed a Chapter 7 and the MLRB filed an adversary seeking to hold the debt as nondischargeable under 523(a)(6) as arising from a willful and malicious injury. Debtor conceded willfulness but denied malicious intent. The NLRB argued that collateral estoppel precluded the malice question from being litigated.

The Seventh Circuit held that in order to find that issue preclusion applied, the NLRB was required to identify actual findings in its proceeding that would be entitled to preclusive effect and then compare them with the standard for finding malice under 523(a)(6). The NLRB simply argued that collateral estoppel applied because Section 158(a)(3) of the NLRA and 523(a)(6) of the Code both ask the same general questions. However, this is not sufficient to find collateral estoppel.

OVERPAYMENT OF BENEFITS IS NOT A DSO

In re Dennis, 18-2899 (June 27, 2019):

Debtors each owed a debt to the Illinois Department of Human Services. Devan Dennis owed a debt for overpayments made to her daycare provider under the Illinois Child Care Assistance

Program. In 2018 she filed a Chapter 13 and DHS filed a claim requesting priority status as a domestic support obligation under §507(a)(1)(B). Dennis objected to the claim, arguing that it was a general unsecured claim. The bankruptcy court agreed. Tyeane Halbert owed a debt for overpayments made to her under the Supplemental Nutrition Assistance Program. She paid a portion of the balance owed and in 2015, DHS intercepted the rest from her tax refund. In 2016, she filed Chapter 7 and claimed the seized funds as exempt. She filed an adversary complaint to recover the funds as an avoidable transfer under §547(b). DHS objected saying it could not be avoided because under §547(c)(7) it was a DSO. The bankruptcy court found in favor of the Debtor as a payment that should not have been paid, rather than as a DSO.

The Seventh Circuit rejected DHS' argument that the payments were DSO's because the funds were intended for support, and therefore they retained DSO status. The Court held that DHS's definition would expand DSO far beyond what was intended. The debts were payments that should not have been made in the first place, so they were simply unsecured debts.

CONTEMPT STANDARD FOR VIOLATION OF A DISCHARGE ORDER:

***Taggart v. Lorenzen* 139 S.Ct. 1795, U.S. Supreme Court (June 2019)**

Holding that a court may hold a creditor in civil contempt for violating a bankruptcy court's discharge order if there is "no fair ground of doubt" as to whether the creditor's conduct was lawful.

Bradley Taggart owned an interest in an Oregon company. The company and the other owners sued Taggart for breach of contract. Before trial, Taggart filed a Chapter 7 bankruptcy proceeding and received a discharge order under § 524(a) of the Bankruptcy Code (11 U.S.C. § 524(a)). After the discharge order was issued, the Oregon state court entered judgment against Taggart in the prebankruptcy suit and awarded attorney's fees to the Respondent's that they incurred after Taggart filed his bankruptcy petition. Taggart asked the bankruptcy court to hold the plaintiffs in civil contempt for violating the discharge order. The bankruptcy court determined that the plaintiffs had not violated the discharge order in seeking post-petition attorney's fees because Taggart had "returned to the fray" in the state-court litigation, thus making him potentially liable for post-petition attorney's fees under Ninth Circuit precedent. (They cited *In Re Ybarra*, 424 F.3d 1018(2005), for the proposition that if a discharged debtor returns to state court following discharge ("the fray") he would be liable for post-petition fees.) Taggart appealed to the district court, which held that Taggart had not returned to the fray and that the plaintiffs had violated the discharge order in seeking post-petition attorney's fees.

The bankruptcy court, on remand, held the plaintiffs in civil contempt for violating the discharge order under a standard akin to "strict liability", holding that the company was "aware of the discharge" order and "intended the actions" that violated the discharge order and imposing monetary sanctions against the plaintiffs. The Bankruptcy Appellate Panel of the Ninth Circuit vacated the contempt sanctions, and the Ninth Circuit Court of Appeals affirmed. The Court of Appeals applied a different standard than the bankruptcy court concluding that a creditor's "good-faith belief" that the discharge order "does not apply to its claims precludes a finding of contempt,

even if the creditor's belief was unreasonable". They concluded that the plaintiffs had a good-faith belief that the discharge order did not apply to their claims and that civil contempt sanctions were improper. Taggert was granted certiorari by the Supreme Court

The Supreme Court needed to determine the legal standard for holding a creditor in contempt when the creditor attempts to collect a debt in violation of a discharge order. The Court concluded that the Court of Appeals erred in applying a subjective standard for civil contempt. The Court held that a court may hold a creditor in civil contempt for violating a discharge order where there is not a "fair ground of doubt" as to whether the creditor's conduct might be lawful under the discharge order. The Court emphasized that this is an objective standard, not a subjective one. They concluded that statutes specifying that the discharge order "operates as an injunction" (§ 524 of the Bankruptcy Code) and § 105 of the Bankruptcy Code allows the court to issue any "order" or "judgment" that is "necessary or appropriate" to carry out other bankruptcy provisions including civil contempt orders. Further, the Court found that contempt may be appropriate when a creditor violates the discharge order based on an objectively unreasonable understanding of the discharge order.

The Court vacated the Ninth Circuit's judgment for using the subjective standard and remanded for further proceedings consistent with the standard announced in the Court's opinion.

RESPA

***Moore v. Wells Fargo Bank, N.A.*, 908 F.3d 1050 (7th Cir. 2018)**

In *Moore v. Wells Fargo Bank, N.A.*, 908 F.3d 1050 (7th Cir. 2018), the plaintiffs, a married couple sued Wells Fargo Bank as the husband's mortgage servicer pursuant to the Real Estate Settlement Procedures Act (RESPA), and a similar Wisconsin statute, 12 U.S.C.S. § 2601 *et seq.*, and Wis. Stat. § 224.77. The plaintiffs alleged that Wells Fargo failed to respond adequately to their "qualified written request" for information regarding the husband's home mortgage under those laws. The district court granted summary judgment for Wells Fargo. On appeal, the Court affirmed the district court's grant of summary judgment, finding that summary judgment for Wells Fargo was proper, that the husband's claims failed on their merits, and the wife's claims failed for lack of standing because she was not named on the property's title, mortgage, or note.

The husband initially purchased the home with a 30-year adjustable rate mortgage serviced by Wells Fargo. The wife used an inheritance from her mother to help her husband purchase the home, but she was never named as a title owner of the property, and she was not a party to the note and mortgage on the home. The plaintiffs' RESPA claims arose after years of struggling to keep up with mortgage payments to Wells Fargo. After several failed loan modification agreements between the husband and Wells Fargo, a failed chapter 13 case, and judgment of foreclosure having been entered in favor of Wells Fargo, the husband sent a letter to Wells Fargo explaining the history of the loan and the foreclosure action from his point of view. Most relevant to RESPA, the letter asked 22 wide-ranging questions about his mortgage account, including asking for the identities of who owned his mortgage, details on how payments were applied during the entire history of the loan, the creation of his escrow account, a list of all charges and late fees, and "an identification

of each and every modification, forbearance, forgiveness, reinstatement, or other debt-relief or mortgage-relief type program, whether in-house or government-mandated, for which I have ever been considered by any servicer or lender, including the dates on which such program or plan was considered.” Upon its receipt of the letter, Wells Fargo immediately treated it as a qualified written request under RESPA, and a representative of Wells Fargo contacted Mr. Moore and told him it would respond within RESPA’s 30-business-day deadline. However, knowing that a sheriff’s sale was scheduled for the home approximately two weeks after the response deadline, the plaintiffs decided to continue their efforts in both the state and federal courts to avoid losing their home. Two days before the deadline for Wells Fargo to respond, the plaintiffs filed a motion in the state court foreclosure action titled “Defendant’s Counterclaims Maturing After Pleading,” in an effort to reopen the state court foreclosure case. The plaintiffs sought damages, costs, and fees and an indefinite stay of the sheriff’s sale while they litigated their counterclaims. The state court did not stay the sale indefinitely but did delay the sale while it heard the matter. At the same time, the plaintiffs also filed the present action in federal court, alleging that Wells Fargo violated RESPA and Wisconsin law by failing to respond to their qualified written request because they were “going to use the responses to plan their next steps” regarding the sheriff’s sale, but instead had to fight the foreclosure action with “no answers.” The plaintiffs also claimed that Wells Fargo’s lack of a response caused them to suffer emotional distress at the prospect of losing their home unfairly and without knowing whether the lender had a right to foreclose.

On the day of the deadline for Wells Fargo to respond, Wells Fargo contacted the husband and told him that a response would be mailed that day. The response was a three page letter with 58 pages of attachments and addressed most of the husband’s questions to some degree, with the exception of the questions regarding modification of the mortgage loan. The state court dismissed the plaintiffs’ new counterclaims as untimely and the sheriff’s sale was eventually held. The plaintiffs then again filed a bankruptcy to stop the sale of the house. The district court granted Wells Fargo’s motion for summary judgment in the federal court case, finding that the plaintiffs had not provided any evidence that Wells Fargo had actually violated RESPA or the Wisconsin statute. The district court concluded that even if Wells Fargo had failed to answer every one of the husband’s questions completely, the plaintiffs had failed to show how that failure had caused them any harm. The plaintiffs then appealed the district court’s grant of summary judgment to Wells Fargo.

On appeal, the Court first considered whether the plaintiffs had standing before addressing the merits of the plaintiffs’ RESPA and state law claims. The Court found that the wife had no standing to bring claims under RESPA or Wisconsin law because she was not named on the property’s title or the mortgage or the note, nor did she file bankruptcy jointly with her husband and was not a party to any of the loan modification. While the Court found that the husband had standing to bring his claims, it also found that even if the servicer’s incomplete response violated RESPA, the husband did not show that he suffered any harm. The Court found that the fees the husband paid an attorney to review the response was not actual damage under 12 U.S.C. § 2605, and that he failed to show that his emotional distress was connected to the alleged violation of RESPA or Wisconsin law. Finally, the Court found that the husband’s claims under Wis. Stats. § 224.77 were barred by the Rooker-Feldman doctrine as a finding in the mortgagor’s favor would require the court to contradict the state court’s judgment of foreclosure.



H. R. 2336

One Hundred Sixteenth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and nineteen*

An Act

To amend title 11, United States Code, with respect to the definition of “family farmer”.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Family Farmer Relief Act of 2019”.

SEC. 2. DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended by striking “\$3,237,000” each place that term appears and inserting “\$10,000,000”.

SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*



H. R. 2938

One Hundred Sixteenth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and nineteen*

An Act

To exempt from the calculation of monthly income certain benefits paid by the Department of Veterans Affairs and the Department of Defense.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Honoring American Veterans in Extreme Need Act of 2019" or the "HAVEN Act".

SEC. 2. DEFINITION OF CURRENT MONTHLY INCOME.

Section 101(10A) of title 11, United States Code, is amended by striking subparagraph (B) and inserting the following:

"(B)(i) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent); and

"(ii) excludes—

"(I) benefits received under the Social Security Act (42 U.S.C. 301 et seq.);

"(II) payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;

"(III) payments to victims of international terrorism or domestic terrorism, as those terms are defined in section 2331 of title 18, on account of their status as victims of such terrorism; and

"(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title."

SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of

H. R. 2938—2

PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*



H. R. 3304

One Hundred Sixteenth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and nineteen*

An Act

To exempt for an additional 4-year period, from the application of the means-test presumption of abuse under chapter 7, qualifying members of reserve components of the Armed Forces and members of the National Guard who, after September 11, 2001, are called to active duty or to perform a homeland defense activity for not less than 90 days.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Guard and Reservists Debt Relief Extension Act of 2019”.

SEC. 2. NATIONAL GUARD AND RESERVISTS DEBT RELIEF AMENDMENT.

Section 4(b) of the National Guard and Reservists Debt Relief Act of 2008 (Public Law 110-438; 122 Stat. 5000) is amended by striking “11-year” and inserting “15-year”.

SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*



H. R. 3311

One Hundred Sixteenth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and nineteen*

An Act

To amend chapter 11 of title 11, United States Code, to address reorganization of small businesses, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Business Reorganization Act of 2019”.

SEC. 2. REORGANIZATION OF SMALL BUSINESS DEBTORS.

(a) IN GENERAL.—Chapter 11 of title 11, United States Code, is amended by adding at the end the following:

“SUBCHAPTER V—SMALL BUSINESS DEBTOR
REORGANIZATION

“§ 1181. Inapplicability of other sections

“(a) IN GENERAL.—Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) of this title do not apply in a case under this subchapter.

“(b) COURT AUTHORITY.—Unless the court for cause orders otherwise, paragraphs (1), (2), and (4) of section 1102(a) and sections 1102(b), 1103, and 1125 of this title do not apply in a case under this subchapter.

“(c) SPECIAL RULE FOR DISCHARGE.—If a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title.

“§ 1182. Definitions

“In this subchapter:

“(1) DEBTOR.—The term ‘debtor’ means a small business debtor.

“(2) DEBTOR IN POSSESSION.—The term ‘debtor in possession’ means the debtor, unless removed as debtor in possession under section 1185(a) of this title.

“§ 1183. Trustee

“(a) IN GENERAL.—If the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in cases under this subchapter, and if such individual qualifies as a trustee under section 322 of this title, then that individual shall serve as trustee in any case under this subchapter. Otherwise, the United States trustee shall appoint one disinterested person

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to serve as trustee in the case or the United States trustee may serve as trustee in the case, as necessary.

“(b) DUTIES.—The trustee shall—

“(1) perform the duties specified in paragraphs (2), (5), (6), (7), and (9) of section 704(a) of this title;

“(2) perform the duties specified in paragraphs (3), (4), and (7) of section 1106(a) of this title, if the court, for cause and on request of a party in interest, the trustee, or the United States trustee, so orders;

“(3) appear and be heard at the status conference under section 1188 of this title and any hearing that concerns—

“(A) the value of property subject to a lien;

“(B) confirmation of a plan filed under this subchapter;

“(C) modification of the plan after confirmation; or

“(D) the sale of property of the estate;

“(4) ensure that the debtor commences making timely payments required by a plan confirmed under this subchapter;

“(5) if the debtor ceases to be a debtor in possession, perform the duties specified in section 704(a)(8) and paragraphs (1), (2), and (6) of section 1106(a) of this title, including operating the business of the debtor;

“(6) if there is a claim for a domestic support obligation with respect to the debtor, perform the duties specified in section 704(c) of this title; and

“(7) facilitate the development of a consensual plan of reorganization.

“(c) TERMINATION OF TRUSTEE SERVICE.—

“(1) IN GENERAL.—If the plan of the debtor is confirmed under section 1191(a) of this title, the service of the trustee in the case shall terminate when the plan has been substantially consummated, except that the United States trustee may reappoint a trustee as needed for performance of duties under subsection (b)(3)(C) of this section and section 1185(a) of this title.

“(2) SERVICE OF NOTICE OF SUBSTANTIAL CONSUMMATION.—Not later than 14 days after the plan of the debtor is substantially consummated, the debtor shall file with the court and serve on the trustee, the United States trustee, and all parties in interest notice of such substantial consummation.

“§ 1184. Rights and powers of a debtor in possession

“Subject to such limitations or conditions as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all functions and duties, except the duties specified in paragraphs (2), (3), and (4) of section 1106(a) of this title, of a trustee serving in a case under this chapter, including operating the business of the debtor.

“§ 1185. Removal of debtor in possession

“(a) IN GENERAL.—On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case, or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter.

“(b) REINSTATEMENT.—On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor in possession.

“§ 1186. Property of the estate

“(a) INCLUSIONS.—If a plan is confirmed under section 1191(b) of this title, property of the estate includes, in addition to the property specified in section 541 of this title—

“(1) all property of the kind specified in that section that the debtor acquires after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first; and

“(2) earnings from services performed by the debtor after the date of commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13 of this title, whichever occurs first.

“(b) DEBTOR REMAINING IN POSSESSION.—Except as provided in section 1185 of this title, a plan confirmed under this subchapter, or an order confirming a plan under this subchapter, the debtor shall remain in possession of all property of the estate.

“§ 1187. Duties and reporting requirements of debtors

“(a) FILING REQUIREMENTS.—Upon electing to be a debtor under this subchapter, the debtor shall file the documents required by subparagraphs (A) and (B) of section 1116(1) of this title.

“(b) OTHER APPLICABLE PROVISIONS.—A debtor, in addition to the duties provided in this title and as otherwise required by law, shall comply with the requirements of section 308 and paragraphs (2), (3), (4), (5), (6), and (7) of section 1116 of this title.

“(c) SEPARATE DISCLOSURE STATEMENT EXEMPTION.—If the court orders under section 1181(b) of this title that section 1125 of this title applies, section 1125(f) of this title shall apply.

“§ 1188. Status conference

“(a) IN GENERAL.—Except as provided in subsection (b), not later than 60 days after the entry of the order for relief under this chapter, the court shall hold a status conference to further the expeditious and economical resolution of a case under this subchapter.

“(b) EXCEPTION.—The court may extend the period of time for holding a status conference under subsection (a) if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable.

“(c) REPORT.—Not later than 14 days before the date of the status conference under subsection (a), the debtor shall file with the court and serve on the trustee and all parties in interest a report that details the efforts the debtor has undertaken and will undertake to attain a consensual plan of reorganization.

“§ 1189. Filing of the plan

“(a) WHO MAY FILE A PLAN.—Only the debtor may file a plan under this subchapter.

“(b) DEADLINE.—The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension

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is attributable to circumstances for which the debtor should not justly be held accountable.

“§ 1190. Contents of plan

“A plan filed under this subchapter—

“(1) shall include—

“(A) a brief history of the business operations of the debtor;

“(B) a liquidation analysis; and

“(C) projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization;

“(2) shall provide for the submission of all or such portion of the 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; and

“(3) notwithstanding section 1123(b)(5) of this title, may modify the rights of the holder of a claim secured only by a security interest in real property that is the principal residence of the debtor if the new value received in connection with the granting of the security interest was—

“(A) not used primarily to acquire the real property; and

“(B) used primarily in connection with the small business of the debtor.

“§ 1191. Confirmation of plan

“(a) TERMS.—The court shall confirm a plan under this subchapter only if all of the requirements of section 1129(a), other than paragraph (15) of that section, of this title are met.

“(b) EXCEPTION.—Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

“(c) RULE OF CONSTRUCTION.—For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:

“(1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title.

“(2) As of the effective date of the plan—

“(A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

“(B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.

“(3)(A)(i) The debtor will be able to make all payments under the plan; or

“(ii) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and

“(B) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

“(d) DISPOSABLE INCOME.—For purposes of this section, the term ‘disposable income’ means the income that is received by the debtor and that is not reasonably necessary to be expended—

“(1) for—

“(A) the maintenance or support of the debtor or a dependent of the debtor; or

“(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or

“(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

“(e) SPECIAL RULE.—Notwithstanding section 1129(a)(9)(A) of this title, a plan that provides for the payment through the plan of a claim of a kind specified in paragraph (2) or (3) of section 507(a) of this title may be confirmed under subsection (b) of this section.

“§ 1192. Discharge

“If the plan of the debtor is confirmed under section 1191(b) of this title, as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, except any debt—

“(1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or

“(2) of the kind specified in section 523(a) of this title.

“§ 1193. Modification of plan

“(a) MODIFICATION BEFORE CONFIRMATION.—The debtor may modify a plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of sections 1122 and 1123 of this title, with the exception of subsection (a)(8) of such section 1123. After the modification is filed with the court, the plan as modified becomes the plan.

“(b) MODIFICATION AFTER CONFIRMATION.—If a plan has been confirmed under section 1191(a) of this title, the debtor may modify the plan at any time after confirmation of the plan and before substantial consummation of the plan, but may not modify the plan so that the plan as modified fails to meet the requirements of sections 1122 and 1123 of this title, with the exception of subsection (a)(8) of such section 1123. The plan, as modified under this subsection, becomes the plan only if circumstances warrant the modification and the court, after notice and a hearing, confirms the plan as modified under section 1191(a) of this title.

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“(c) CERTAIN OTHER MODIFICATIONS.—If a plan has been confirmed under section 1191(b) of this title, the debtor may modify the plan at any time within 3 years, or such longer time not to exceed 5 years, as fixed by the court, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1191(b) of this title. The plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan, as modified, under section 1191(b) of this title.

“(d) HOLDERS OF A CLAIM OR INTEREST.—If a plan has been confirmed under section 1191(a) of this title, any holder of a claim or interest that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless, within the time fixed by the court, such holder changes the previous acceptance or rejection of the holder.

“§ 1194. Payments

“(a) RETENTION AND DISTRIBUTION BY TRUSTEE.—Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor after deducting—

“(1) any unpaid claim allowed under section 503(b) of this title;

“(2) any payment made for the purpose of providing adequate protection of an interest in property due to the holder of a secured claim; and

“(3) any fee owing to the trustee.

“(b) OTHER PLANS.—If a plan is confirmed under section 1191(b) of this title, except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

“(c) PAYMENTS PRIOR TO CONFIRMATION.—Prior to confirmation of a plan, the court, after notice and a hearing, may authorize the trustee to make payments to the holder of a secured claim for the purpose of providing adequate protection of an interest in property.

“§ 1195. Transactions with professionals

“Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title, by a debtor solely because that person holds a claim of less than \$10,000 that arose prior to commencement of the case.”

(b) CLERICAL AMENDMENT.—The table of subchapters at the beginning of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

“SUBCHAPTER V—SMALL BUSINESS DEBTOR REORGANIZATION

“1181. Inapplicability of other sections.

“1182. Definitions.

“1183. Trustee.

“1184. Rights and powers of a debtor in possession.

“1185. Removal of debtor in possession.

“1186. Property of the estate.

“1187. Duties and reporting requirements of debtors.

“1188. Status conference.

“1189. Filing of the plan.

“1190. Contents of plan.

“1191. Confirmation of plan.

- “1192. Discharge.
- “1193. Modification of plan.
- “1194. Payments.
- “1195. Transactions with professionals.”.

SEC. 3. PREFERENCES; VENUE OF CERTAIN PROCEEDINGS.

(a) PREFERENCES.—Section 547(b) of title 11, United States Code, is amended by inserting “, based on reasonable due diligence in the circumstances of the case and taking into account a party’s known or reasonably knowable affirmative defenses under subsection (c),” after “may”.

(b) VENUE OF CERTAIN PROCEEDINGS.—Section 1409(b) of title 28, United States Code, is amended by striking “\$10,000” and inserting “\$25,000”.

SEC. 4. CONFORMING AMENDMENTS.

- (a) TITLE 11.—Title 11, United States Code, is amended—
- (1) in section 101—
 - (A) in paragraph (51C), by inserting “and has not elected that subchapter V of chapter 11 of this title shall apply” after “is a small business debtor”; and
 - (B) in paragraph (51D)—
 - (i) in subparagraph (A)—
 - (I) by striking “or operating real property or activities incidental thereto” and inserting “single asset real estate”; and
 - (II) by striking “for a case in which” and all that follows and inserting “not less than 50 percent of which arose from the commercial or business activities of the debtor; and”; and
 - (ii) in subparagraph (B)—
 - (I) by striking the period at the end and inserting a semicolon;
 - (II) by striking “does not include any member” and inserting the following: “does not include—
“(i) any member”; and
 - (III) by adding at the end the following:
“(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or
“(iii) any corporation that—
“(I) is subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); and
“(II) is an affiliate of a debtor.”;
 - (2) in section 103—
 - (A) by redesignating subsections (i) through (k) as subsections (j) through (l), respectively; and
 - (B) by inserting after subsection (h) the following:
“(i) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 in which a small business debtor elects that subchapter V of chapter 11 shall apply.”;
 - (3) in section 322(a), by inserting “1183,” after “1163,”;
 - (4) in section 326—
 - (A) in subsection (a), by inserting “, other than a case under subchapter V of chapter 11” after “7 or 11”; and

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(B) in subsection (b), by inserting “subchapter V of chapter 11 or” after “In a case under”;

(5) in section 347—

(A) in subsection (a)—

(i) by inserting “1194,” after “726,”; and

(ii) by inserting “subchapter V of chapter 11,” after “chapter 7,”; and

(B) in subsection (b), by inserting “1194,” after “1173,”;

(6) in section 363(c)(1), by inserting “1183, 1184,” after “1108,”;

(7) in section 364(a), by inserting “1183, 1184,” after “1108,”;

(8) in section 523(a), in the matter preceding paragraph (1), by inserting “1192” after “1141,”;

(9) in section 524—

(A) in subsection (a)—

(i) in paragraph (1), by inserting “1192,” after “1141,”; and

(ii) in paragraph (3), by inserting “1192,” after “523,”;

(B) in subsection (c)(1), by inserting “1192,” after “1141,”; and

(C) in subsection (d), by inserting “1192,” after “1141,”;

(10) in section 557(d)(3), by inserting “1183,” after “1104,”;

(11) in section 1102(a), by striking paragraph (3) and inserting the following:

“(3) Unless the court for cause orders otherwise, a committee of creditors may not be appointed in a small business case or a case under subchapter V of this chapter.”; and

(12) in section 1146(a), by inserting “or 1191” after “1129”.

(b) TITLE 28.—Title 28 United States Code, is amended—

(1) in section 586—

(A) in subsection (a)(3), by inserting “(including subchapter V of chapter 11)” after “7, 11”;

(B) in subsection (b), by inserting “subchapter V of chapter 11 or” after “cases under” the first place it appears;

(C) in subsection (d)(1), by inserting “subchapter V of chapter 11 or” after “cases under” each place that term appears; and

(D) in subsection (e)—

(i) in paragraph (1), by inserting “subchapter V of chapter 11 or” after “cases under”;

(ii) in paragraph (2), by inserting “subchapter V of chapter 11 or” after “cases under” each place that term appears; and

(iii) by adding at the end the following:

“(5) In the event that the services of the trustee in a case under subchapter V of chapter 11 of title 11 are terminated by dismissal or conversion of the case, or upon substantial consummation of a plan under section 1183(c)(1) of that title, the court shall award compensation to the trustee consistent with services performed by the trustee and the limits on the compensation of the trustee established pursuant to paragraph (1) of this subsection.”;

(2) in section 589b—

(A) in subsection (a)(1), by inserting “subchapter V of chapter 11 and” after “cases under”; and

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(B) in subsection (d)—

(i) in the matter preceding paragraph (1), by inserting “subchapter V of chapter 11 and” after “trustees under”; and

(ii) in the undesignated matter following paragraph (8), by inserting “subchapter V of chapter 11 and” after “cases under”; and

(3) in section 1930(a)(6)(A), by inserting “, other than under subchapter V,” after “chapter 11 of title 11”.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

SEC. 6. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

HAVEN Act – Frequently Asked Questions

Question: What does the Honoring American Veterans in Extreme Need Act of 2019 (“HAVEN Act” or the “Act”) do?

Answer: The Act excludes certain benefits paid to veterans or their family members from the definition of Current Monthly Income (“CMI”) found in the Bankruptcy Code. 11 U.S.C. § 101(10A). The types of compensation excluded from CMI under the Act include, but are not limited to, the following:

- Disability and death benefits paid by the Veterans Administration under title 38 of the United States Code.
- Monthly special compensation for catastrophic injuries or illnesses paid to servicemembers under 37 U.S.C. § 439.
- Any combat-related special compensation paid by the Department of Defense under 10 U.S.C. § 1413a.
- Disability severance pay paid by the Department of Defense under 10 U.S.C. § 1212.
- Any payment by the Department of Defense to a survivor in connection with the death of a member of the uniformed services. *See* 10 U.S.C. §§ 1431-1456.
- Disability-related military retired pay paid by the Department of Defense to a servicemember retired under 10 U.S.C. §§ 1201-1202, 1204-1205, except that such payments are excluded from CMI only to the extent that they exceed the military retired pay that the servicemember would have received if the servicemember had retired without a disability.

It should be noted, however, that certain benefits to current servicemembers are included in the CMI calculation, for example monthly special compensation from DOD, and retirement pay for people on the temporary disability retired list.

Question: How does the Act affect enforcement under section 707(b)(2) of the Bankruptcy Code and the determination of whether the presumption of abuse arises for veterans or their family members filing for chapter 7 relief under the Bankruptcy Code?

Answer: Veterans or their family members who file for bankruptcy relief under chapter 7 should exclude income covered by the Act from the calculation of CMI. The calculation of CMI is the starting point for determining whether a chapter 7 bankruptcy case is presumed abusive under section 707(b)(2).

Question: How does the Act affect chapter 13 cases?

Answer: Veterans and their family members who file for bankruptcy relief under chapter 13 should exclude income covered by the Act from the calculation of CMI, which may affect the determination of projected disposable income available for a chapter 13 plan.

Question: Will the USTP require debtors to produce documentation to support any veterans' benefits that they exclude from the calculation of CMI?

Answer: The USTP will limit its requests for documents related to income excluded from CMI under the HAVEN Act so as to not unduly burden debtors. The USTP does not routinely request from debtors documents not otherwise required by the Bankruptcy Code or Rules without a specific need for additional information.

Question: How does the Act affect the USTP's enforcement under section 707(b)(3) of the Bankruptcy Code (bad faith and the totality of the circumstances), and the determination of a debtor's actual ability to repay creditors?

Answer: By modifying the definition of "current monthly income," the HAVEN Act does not directly impact section 707(b)(3)'s provisions providing for dismissal of cases based on the debtor's bad faith or under the totality of the circumstances.