

Beneficiary or Creditor?

Where State Constructive
Trust Law and the Bankruptcy
Distribution Scheme Collide

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It is common knowledge that filing a bankruptcy petition affects the rights of creditors to receive payment. A creditor may be entitled to anything from full payment to pennies on the dollar, depending on the creditor's position in the U.S. Bankruptcy Code's distribution scheme and the value of assets in the estate. A creditor's underlying right to payment, however, is not determined by the Bankruptcy Code but by state law.

Constructive trusts created by state law have caused a conundrum for the bankruptcy system, because they appear to either remove assets from the auspices of the bankruptcy estate or create a "super-priority" creditor entitled to certain assets belonging to the estate. Approaches to addressing constructive trusts in bankruptcy vary among the circuits and even among the lower courts. As a result, beneficiaries of the state law-created constructive trust are left wondering whether the debtor's bankruptcy filing leaves them as beneficiaries or alters their status to that of creditors.

For example, consider an investor who gives the middleman money to invest in a specific project. Rather than completing that investment, however, the middleman uses the investor's money to purchase a new car and then files bankruptcy. The investor may assert that he has a constructive trust in the proceeds of the fraud perpetrated against him by the debtor—i.e., a constructive trust in the car. The trustee, however, will argue that the car is property of the bankruptcy estate and should be an asset available for distribution to creditors.

This article will examine the considerations in imposing a constructive trust in a bankruptcy case, detail the interaction between constructive trusts and bankruptcy law, survey the approaches courts take in reconciling these interactions, and provide a practical guide to handling constructive trusts in bankruptcy cases.

The Imposition of Constructive Trusts in Bankruptcy

A constructive trust is an equitable remedy created to redress unjust enrichment. Essentially, when a wrongdoer is unjustly enriched, the wrongdoer is treated as only receiving legal title to whatever proceeds derived from his actions. The equitable interest in the property instead vests to the wrongdoer's victims. Put another way, a constructive trust treats the wrongdoer/recipient of title as if he were a trustee, holding legal title for the benefit of the restitution of the victims. When the wrongdoer files for bankruptcy relief, constructive trust beneficiaries must consider how bankruptcy law interacts with this equitable remedy.

Constructive trusts are governed by state law and, as such, the requirements to impose a constructive trust vary. A constructive trust is an equitable remedy requiring a court to consider all relevant circumstances. While no rigid requirements exist for imposing a constructive trust, generally, to qualify for a constructive trust, a putative beneficiary must: (1) establish a substantive claim of unjust enrichment;¹ (2) show that the enrichment took the form of title to a specific asset; and (3) trace the asset, or proceeds received in exchange for the asset, to property currently held by the defendant.²

Constructive Trusts and the Bankruptcy Code

Beneficiaries of constructive trusts may seek to impose a constructive trust on the apparent assets of the bankruptcy estate so as to exclude those assets from the estate and require a turnover to the beneficiary. Beneficiaries argue that the subject property was never property of the debtor and, as such, should not be available to pay the debtor's creditors. Rather, the property should be returned to its rightful owner—the beneficiary of the constructive trust. Beneficiaries assert this right under 11 U.S.C. § 541(d),³ which recites that "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest ... becomes property of the estate ... only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold."

If successful, the constructive trust beneficiary is in a far improved position. Without a constructive trust, the beneficiary would be an unsecured creditor and required to wait for his piece of the proverbial pie. As a constructive trust beneficiary, however, any property that is subject to the constructive trust is removed from the bankruptcy estate in favor of the beneficiary.

The constructive trust may also provide protection from the trustee's strong-arm powers. Section 544(a) confers on the trustee the substantive right to bring certain property transferred by the debtor prior to the bankruptcy filing back into the estate.⁴ In response to a trustee or debtor-in-possession's action under § 544(a), a constructive trust beneficiary could assert that the property transferred to him was only held in trust by the debtor and thus was never actually property belonging to the debtor.⁵ Therefore, no property was transferred within the meaning of § 544(a). As one commentator has characterized the tension: "To be able to object that the trustee is trying to rob Peter to pay Paul, Peter must be able to insist on the distinction between himself as an owner and Paul as a mere creditor."⁶

Quality Holstein Leasing

In 1985, the Fifth Circuit Court of Appeals considered whether property subject to a constructive trust was nonetheless reachable by the trustee's strong-arm powers—or, as the court framed it: “[w]hether § 544 overrides the exclusionary effect of § 541 in the instance of a valid constructive trust created under state law.”⁷ In *Quality Holstein Leasing Inc. vs. McKenszie*, 752 F2d 1009 (5th Cir. 1985), the Fifth Circuit found that, when state law impresses property that a debtor holds with a constructive trust in favor of another, and the trust attaches prior to the petition date, the trust beneficiary normally may recover its equitable interest in the property through bankruptcy. Any other holding, the court concluded, would allow the bankruptcy estate to benefit from property the debtor did not own. Therefore, as a general rule, *Quality Holstein Leasing* finds that § 541(d) prevails over the trustee's strong-arm powers.

Several courts have since posited that *Quality Holstein Leasing* was superseded by amendments to § 541(d). Since the amendments to § 541(d), the Fifth Circuit nonetheless continues to cite favorably to *Quality Holstein Leasing* in holding that, because § 541(d) excludes property subject to a constructive trust from the bankruptcy estate, § 541(d) prevails against the trustee's strong-arm powers under § 544.⁸

Omegas Group

Quality Holstein Leasing adopts a bright line rule that, if properly asserted, a constructive trust beneficiary will *always* trump a trustee's strong-arm powers. Many courts have disagreed with this rule and the Fifth Circuit's reasoning, but none has done so more emphatically than the Sixth Circuit Court of Appeals in *Omegas Group*.⁹ The *Omegas Group* court flatly rejected the imposition of constructive trusts in bankruptcy, finding that “[c]onstructive trusts are anathema to equities of bankruptcy since they take from the estate, and thus directly from competing creditors, not from the offending debtor.”

The Sixth Circuit agreed that while property rights in bankruptcy are determined by reference to state law, once that determination is made, federal bankruptcy law dictates to what extent that interest is property of the estate. The *Omegas Group* Court found that § 541(d) does not permit a putative beneficiary of a constructive trust to impose the remedy of a constructive trust to get ahead of other unsecured creditors and the trustee. The imposition of a constructive trust, rather, would thwart the policy of ratable distribution. The correct remedy for a party injured by the debtor's wrongful conduct is a nondischargeability action. The *Omegas Group* Court also noted that, had the property already been impressed with a constructive trust in a separate proceeding pre-petition, those beneficiaries would be entitled to priority as a secured creditor by virtue of the judgment.

The *Omegas Group* opinion is a resounding rejection of the application of constructive trusts in bankruptcy. Its rejection applies to both constructive trusts adjudicated pre-petition—which would only render the beneficiaries secured creditors—and those trusts urged post-petition. Therefore, in *Omegas Group*, property subject to a constructive trust *always* remains property of the estate, although it might be subject to a security interest. As property of the estate, the trustee may assert any avoidance action that may be applicable.

Circuit Survey – Finding the Middle Ground

Quality Holstein Leasing and *Omegas Group* represent polar opposites in the application of constructive trusts in bankruptcy law. Under *Quality Holstein Leasing*, a constructive trust benefi-

ciary will always prevail; under *Omegas Group*, a constructive trust beneficiary can never prevail. Some courts have followed one of the two bright-line rules, but others find some middle ground. One such middle ground posits that while a constructive trust may be properly asserted in bankruptcy, a beneficiary's interest is nonetheless subject to the trustee's strong-arm powers under § 544. Whether the trustee can successfully avoid the constructive trust beneficiary's interest, under this middle ground approach, is a question of state law.

First Circuit

The First Circuit Court of Appeals recognizes that through the imposition of a constructive trust, a beneficiary can establish rights in property superior to those of the estate. Courts in the First Circuit reason that constructive trust beneficiaries do not gain an impermissible priority over other creditors, but rather § 541(d) recognizes that property ostensibly belonging to the estate may in reality be subject to superior rights.¹⁰

While the First Circuit recognizes the imposition of constructive trusts post-petition, it also acknowledges that a constructive trust beneficiary's rights could also be superseded by the trustee. The First Circuit has assumed arguendo that the trustee's strong-arm powers can extinguish a nondebtor's equitable interest.¹¹ Unlike *Quality Holstein Leasing*, in the First Circuit, the trustee still can assert strong-arm powers under § 544 over property subject to a constructive trust. Applicable state law will determine whether the trustee will prevail over an unperfected constructive trust interest.

Second Circuit

The Second Circuit Court of Appeals takes the view that the effect of a constructive trust in bankruptcy is profound—it removes the property from the debtor's estate and places the constructive trust beneficiary ahead of other creditors with respect to the trust res.¹² Thus, it is not the debtor who generally bears the burden of a constructive trust in bankruptcy; it is the debtor's general creditors. While the Second Circuit identifies its obligation to apply state constructive trust law, it notes that this duty does not diminish the need to act very cautiously to minimize conflict with the goals of the Bankruptcy Code.¹³ As such, the Second Circuit applies state constructive trust law stringently but, nonetheless, will impose a constructive trust post-petition.

Despite its stringent application of state constructive trust law, the Second Circuit has held that a trustee's strong-arm powers cannot be used to avoid a constructive trust, even if a bona fide purchaser has priority over such a claim. The Second Circuit reasoned that once a constructive trust is imposed, the property held in trust is not considered property of the bankruptcy estate. Like in *Quality Holstein Leasing*, in the Second Circuit, even if a bona fide purchaser would trump the constructive trust beneficiary under state law, a trustee is nonetheless barred from asserting that interest against property that is not part of the bankruptcy estate.¹⁴

Third Circuit

The Third Circuit Court of Appeals excludes those funds that the debtor holds in a constructive trust from the bankruptcy estate.¹⁵ To determine whether a debtor held property in a constructive trust, courts in the Third Circuit look to state law. Courts in the Third Circuit consistently reject the idea that constructive trusts are incompatible with bankruptcy law.

In *Universal Bonding*, the Third Circuit found that the Bankruptcy Code's limitation on the scope of the estate under § 541(d) prevails over the trustee's strong-arm powers.¹⁶ This is seemingly in line with *Quality Holstein Leasing*. Nonetheless, in a 2004 Delaware bankruptcy court decision, the bankruptcy court noted that *Universal Bonding's* assertion was mere dicta and that the issue was not before the Third Circuit. Rejecting *Quality Holstein Leasing*, that bankruptcy court reasoned that: "§ 541(d) actually provides that property held in trust does not become property of the estate under §§ 541(a)(1) or (2)."¹⁷ Looking to district and bankruptcy courts in the Third Circuit, § 544(a) appears to permit the trustee to bring constructive trust property into the estate through his strong-arm powers, and the success of such an action is determined by state law.¹⁸

If successful, the constructive trust beneficiary is in a far improved position. Without a constructive trust, the beneficiary would be an unsecured creditor and required to wait for his piece of the proverbial pie.

Fourth Circuit

The Fourth Circuit Court of Appeals is skeptical of constructive trusts in bankruptcy.

While courts have used § 541(d) to impose constructive trusts ... § 541(d) is not an "equitable panacea" justifying the imposition of a constructive trust whenever a debtor's misconduct caused a creditor to suffer.... Constructive trusts, therefore, cannot arise by post hoc rationalizations provided by putative beneficiaries who are displeased because they are merely general, unsecured creditors. The party seeking to impose a constructive trust must "establish... that his funds can be traced to the account or property over which he seeks to impose a constructive trust...." If the trust ... "funds ha[ve] been dissipated or so mingled and merged with the general assets of the insolvent estate as not to be separable or distinguishable therefrom, there is no identification, and the *cestui que trust* has no claim other than as a general creditor."¹⁹

Therefore, in the Fourth Circuit, constructive trusts are not favored. Nonetheless, courts in the Fourth Circuit may impose a constructive trust post-petition, if adequately proven.

In a frequently cited bankruptcy case, the court found that § 541(d) does not reference, and has no applicability to, property coming into the bankruptcy estate through the trustee's avoidance powers.²⁰ In the Fourth Circuit, bankruptcy trustees may—and routinely do—use their strong-arm avoidance powers to set aside unperfected security interests and unrecorded conveyances, even though such security interests and conveyances could be enforced against the debtor under state law.²¹

Fifth Circuit

As discussed previously, the seminal case in Fifth Circuit case law on constructive trusts in bankruptcy law is *Quality Holstein Leasing*. Since that decision, the Fifth Circuit has noted that the constructive trust doctrine can wreak havoc with the priority system ordained by the Bankruptcy Code and, as such, bankruptcy courts are generally reluctant to impose constructive trusts without a substantial reason to do so.²² Despite that recognition, the Fifth Circuit continues to find that § 541(d) must prevail over the trustee's strong-arm powers.²³ In sum, *Quality Holstein Leasing* is still applicable; however, the Fifth Circuit is decidedly cautious in imposing the remedy of a constructive trust.

Sixth Circuit

OmeGas Group remains good law in the Sixth Circuit, but the Sixth Circuit Court of Appeals has since tempered its rejection of constructive trusts. Even so, in the Sixth Circuit, property may only be excluded from the bankruptcy estate if a creditor has obtained a judgment pre-petition imposing a constructive trust or if state law clearly gave the creditor a right to conveyance of the property pre-petition.²⁴

Before *OmeGas Group*, the Sixth Circuit Court of Appeals declined to resolve any apparent conflict between § 544 and § 541(d).²⁵ In dicta, the *OmeGas Group* Court stated: "We do not address here property already impressed with a constructive trust by a court in a separate proceeding pre-petition, in which case the claimant would be entitled to priority (although not superpriority to the trustee) as a secured creditor by virtue of the judgment."²⁶ One bankruptcy court, in interpreting *OmeGas Group*, found that the trustee's strong-arm powers should not be available to defeat the interest of a constructive trust beneficiary provided that the constructive trust was declared prior to the filing of the bankruptcy petition.²⁷

Seventh Circuit

Although recognizing that the remedy of a constructive trust should be used sparingly as an "extraordinary remedy," the Seventh Circuit Court of Appeals criticized the *OmeGas Group* decision in *In re Mississippi Valley* for drawing "too sharp a line between constructive trusts and ordinary trusts."²⁸ Rather, the Seventh Circuit relies upon state law for determination of property rights in assets of the debtor's estate. If a constructive trust does exist, the estate may have defenses—some that may not have been available to the debtor—under state law. Additionally, because a constructive trust is an equitable remedy in restitution, the putative beneficiary must be able to trace its interest in specific property. Courts are also directed to look to state law to determine whether the trustee may still draw the assets subject to the constructive trust under § 544 as an ideal lien creditor or a bona fide purchaser. For example, in *Belisle v. Plunkett*, the Seventh Circuit Court of Appeals applied the real estate law of the Virgin Islands and Wisconsin to find that the trustee defeated a constructive trust beneficiary's claim, given the trustee's status as a bona fide purchaser of real estate under § 544.²⁹

Eighth Circuit

In the Eighth Circuit, courts are directed to look to state law to establish whether the right to a constructive trust exists, and the putative beneficiary also must be able to trace his interest in specific property. Although *OmeGas Group* is cited favorably for its recognition of policy considerations by lower courts, the Eighth Circuit Court of Appeals

has not adopted the strict *Omegas Group* rule, and the question of whether a constructive trust exists is decided under state law. The Eighth Circuit has not addressed whether the trustee's strong-arm powers may allow property of the trust to be drawn back into the estate, however.³⁰

Additionally, although the court of appeals has not directly addressed this requirement, lower courts in the Eighth Circuit continue to require the court to weigh the equities of allowing a constructive trust to be imposed versus the equitable remedy afforded by the Bankruptcy Code's ratable distribution scheme.³¹

Ninth Circuit

In the Ninth Circuit, the fact that state law would impose a constructive trust is not dispositive of whether the trust should interfere with the Bankruptcy Code's distribution scheme. Rather, courts in the Ninth Circuit are directed to weigh the equitable remedy of a constructive trust against bankruptcy's equitable policy of ratable distribution. Further, where a state court decree has not yet recognized the trust, the Ninth Circuit Court of Appeals directs courts to "act

The Fifth Circuit has noted that the constructive trust doctrine can wreak havoc with the priority system ordained by the Bankruptcy Code and, as such, bankruptcy courts are generally reluctant to impose constructive trusts without a substantial reason to do so.

very cautiously in exercising such a relatively undefined equitable power in favor of one group of potential creditors at the expense of other creditors, for ratable distribution among all creditors is one of the strongest policies behind the bankruptcy laws." Thus, constructive trust beneficiaries must convince the court of the equity of imposing the trust versus preserving ratable distribution under the Bankruptcy Code.³²

Tenth Circuit

In the Tenth Circuit, a bankruptcy court may impose a constructive trust post-petition on property in the debtor's possession on the petition date. Courts are directed to determine whether a constructive trust should be imposed pursuant to applicable state law and require the putative beneficiary to trace its interest in specific property. If a putative beneficiary establishes entitlement to a constructive trust under state law, the Tenth Circuit Court of Appeals also directs courts to consider the equities of imposing the trust, given the debtor's bankruptcy filing.³³

For example, in *In re Foster*, the Tenth Circuit Court of Appeals declined to recognize a constructive trust created as a result of fraud—even where the proceeds could be traced. The court found that imposing the trust in a bankruptcy case where a debtor's creditors were almost entirely similarly situated fraud victims would

be inequitable. Likewise, in *Sholer v. Carmichael*, the Tenth Circuit Bankruptcy Appellate Panel held that imposing a constructive trust resulting merely from "unjust enrichment" under state law would thwart the purpose of bankruptcy and found that a putative beneficiary's relationship with the debtor was simply as a creditor.³⁴

Eleventh Circuit

The Eleventh Circuit Court of Appeals has not squarely addressed the tension between § 541's definition for property of the estate and § 544's strong-arm powers afforded the trustee. In *In re General Coffee Corp.*, the Eleventh Circuit set up the analysis but declined to answer the ultimate question. In that case, the court determined that, applying state law, a constructive trust came into existence pre-petition but ultimately concluded that the outcome in this case would be the same whether giving deference to § 541 or § 544, because the court determined that a constructive trust beneficiary would have the same rights as a beneficiary to an express trust. As such, an express trust beneficiary would have priority over the trustee's status as a judicial lienholder or execution creditor.³⁵

In the absence of guidance from the circuit, the lower courts of the Eleventh Circuit have cited *Omegas* variably—some courts have rejected *Omegas* outright, while others have cited to its policy considerations favorably.³⁶

D.C. Circuit

The D.C. Circuit Court of Appeals has held that, in general, "if the debtor held property in trust for another, the debtor's trustee in bankruptcy holds the property subject to the same trust."³⁷ Thus, in the D.C. Circuit, courts look to the applicable state law or the law of the District of Columbia to determine whether a constructive trust exists and tracing of the proceeds must occur.³⁸ In *In re Auto-Train Corp.* the district court held that funds placed in a separate account for reimbursement of a purchase to a third party constituted a constructive trust under applicable law and declined to allow the trustee to avoid payments to the third party as preferential transfers.

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This case presents a stark difference from facts addressed by the bankruptcy court in *In re Millennium Productions Inc.*, wherein the court found that a creditor was merely attempting to invoke the equitable remedy of a constructive trust where the creditor failed to insist upon a security agreement as the condition of his loan to the debtor.³⁹ Interestingly, in *In re Millennium Productions Inc.*, the bankruptcy court stated, as dicta, that it would find that a trustee could trump the constructive trust as a hypothetical judgment lien creditor and would reject the holding of *Quality Holstein* in that regard. Additionally, that bankruptcy court also cited favorably to *Omegas Group* but recognized its limited application where a constructive trust arises by operation of law pre-petition, even if its existence is not declared until post-petition.

Considerations for the Practitioner

Given the varying state of constructive trust application in bankruptcy on not only the circuit level but among lower courts as well, the practitioner will want to address a number of questions considering the facts of the case and the law of the jurisdiction.

1. Are you in an Omegas Group circuit?

If you are in a circuit that has adopted or follows *Omegas Group* strictly, then a judicially created post-petition constructive trust may never be imposed by the bankruptcy court. Additionally, a constructive trust created pre-petition by court order is simply a secured claim under the Bankruptcy Code's ratable distribution scheme. Thus, in circuits following *Omegas Group*, property subject to a constructive trust *always* remains property of the estate, and the analysis ends there.

2. If you are in a non-Omegas Group circuit, does your claim meet the elements for a constructive trust under applicable state law?

If the answer to this question is no, then a constructive trust is simply not in existence, and the putative beneficiary remains a creditor of the estate.

3. If state law creates a constructive trust, can you trace your claim to specific property?

If the answer to this question is no, then the

putative beneficiary remains a creditor of the estate because the constructive trust may only impose an equitable remedy on specific and traceable property. If the answer to this question is "in part," then the putative beneficiary will have an equitable claim to the traced property but will remain a creditor for the untraceable portion.

4. If you can trace your claim to specific property, does the law of your jurisdiction allow the trustee to draw the property back into the estate using the strong-arm powers of § 544?

Recall that, in some jurisdictions, the trustee is permitted to draw property back into the estate—notwithstanding that it is not part of the estate to begin with under § 541—as an ideal lien creditor or bona fide purchaser of real property. If, under state law, the trustee would maintain priority over the trust beneficiary, the putative beneficiary may once again be rendered a mere creditor of the estate.

5. Even if the beneficiary maintains priority over the trustee, does the equitable remedy of a constructive trust outweigh the Bankruptcy Code's equitable distribution scheme?

In the end, bankruptcy courts in your jurisdiction may be afforded the discretion to preserve the Bankruptcy Code's scheme of equitable distribution where a constructive trust would thwart the purpose of the Bankruptcy Code. Therefore, an examination of the facts of your case, the position of the estate's other creditors, and the assets available for distribution will be necessary to determine the likelihood that a court will permit a beneficiary of a constructive trust to prevail—thus diminishing what originally appeared to be available for distribution to the creditor body upon filing.

Conclusion

As with most legal questions, the answer to whether a state law constructive trust creates a beneficiary or a creditor in bankruptcy is: it depends. The lack of uniformity in approaches by the circuits and lower courts alike leave practitioners to evaluate the particularities of each case. Whether you are a trustee seeking to utilize your strong-arm powers under § 544 or a putative beneficiary of a constructive trust seeking to recover property held by the debtor, our best advice

is this: consider the approach in your circuit; consider the law in your state; and most important, consider the equities of your case. ☺

Endnotes

- ¹ The types of unconscionable or unethical conduct that will serve as a basis of unjust enrichment vary. Some states require a confidential relationship between the wrongdoer and putative beneficiary, while others require only the wrongful acquisition or retention of a res by a party who is not entitled to it.
- ² Emily Sherwin, *Why In Re Omegas Group Was Right: An Essay on the Legal Status of Equitable Rights*, 92 B.U. L. REV. 885, 886–87 (2012).
- ³ All references to statutes in this article are to Title 11 of the U.S. Code (2012).
- ⁴ Richard Lieb and Siu Lan Chan, *The Constructive Trust Remedy in Bankruptcy Cases*, ANN. SURV. OF BANKR. LAW 2 (1996).
- ⁵ Robert J. Keach, *The Continued Unsettled State of Constructive Trusts in Bankruptcy: Of Butner, Federal Interests and the Need for Uniformity*, 103 COM. L.J. 411, 411–12 (1998).
- ⁶ Andrew Kull, *Restitution in Bankruptcy: Reclamation and Constructive Trust*, 72 AM. BANKR. L.J. 265, 286 (1998).
- ⁷ *Vineyard v. McKenzie (In re Quality Holstein Leasing)*, 752 F.3d 1009 (5th Cir. 1995).
- ⁸ See, e.g., *Sandoz v. Bennett (In re Emerald Oil Co.)*, 807 F.2d 1234, 1238 (5th Cir. 1987); *Haber Oil Co. Inc. v. Swinehart (In re Haber Oil)*, 12 F.3d 426, 436 (5th Cir. 1994).
- ⁹ *XL/DataComp Inc. v. Wilson (In re Omegas Group Inc.)*, 16 F.3d 1443, 1451 (6th Cir. 1994).
- ¹⁰ *In re Reider*, 177 B.R. 412 (Bankr. D.Me. 1994).
- ¹¹ *Abbound v. The Ground Round Inc. (In re The Ground Round Inc.)*, 482 F.3d 15, n. 4 (1st Cir. 2007).
- ¹² *In re Flanagan*, 503 F.3d 171 (2d Cir. 2007).
- ¹³ *Superintendent of Ins. for the State of N.Y. v. Ochs (In re First Central Fin. Corp.)*, 377 F.3d 209 (2d Cir. 2004).
- ¹⁴ *Chem. Bank v. Coan*, 2 F. App'x 180, 184 (2d Cir. 2001).
- ¹⁵ *In re ABC Learning Centres Ltd.*, 728 F.3d 301 (3d Cir. 2013).
- ¹⁶ *Universal Bonding Ins. Co. v. Gittens &*

Sprinkle Enter. Inc., 960 F.3d 366, 372 (3d Cir. 1992).

¹⁷*In re DVI Inc.*, 306 B.R. 496, 502 (Bankr. D. Del. 2004).

¹⁸*Mullins v. Burtch (In re Paul J. Paradise & Assoc. Inc.)*, 249 B.R. 360, 366 (D. Del. 2000).

¹⁹*Schrider v. Schlossberg (In re Greenbelt Rd. Second Ltd. P'ship)*, 39 F.3d 1176 (4th Cir. 1994) (internal citations omitted).

²⁰*Mayer v. United States (In re Reasonover)*, 236 B.R. 219, 227 (Bankr. E.D. Va. 1999).

²¹*USBC Bank USA v. Gold (In re Taneja)*, 427 B.R. 109, 116 (Bankr. E.D. Va. 2010).

²²*In re Haber Oil*, 12 F.3d at 436.

²³*In re Emerald Oil Co.*, 807 F.2d at 1238.

²⁴*In re Nat. Century Fin. Enterprises Inc.*, 423 F.3d 567, 576 (6th Cir. 2005).

²⁵*Craig v. Seymour (In re Crabtree)*, 871 F.2d 36, 38 (6th Cir. 1989).

²⁶*In re Omegas Group Inc.*, 16 F.3d at 1451.

²⁷*Gurley v. Mills (In re Gurley)*, 222 B.R. 124, 136 (Bankr. W.D. Tenn. 1998).

²⁸*In re Mississippi Valley Livestock Inc.*, 745 F.3d 299 (7th Cir. 2014).

²⁹*Belisle v. Plunkett*, 877 F.2d 512 (7th Cir. 1989).

³⁰*Ferris, Baker Watts Inc. v. Stephenson (In re MJK Clearing, Inc.)*, 371 F.3d 397 (8th Cir. 2004); *Chiu v. Wong*, 16 F.3d 306 (8th Cir. 1994).

³¹See, e.g., *In re Living Hope Southeast LLC*, 505 B.R. 237 (Bankr. E.D. Ark. 2014).

³²*In re North Am. Coin & Currency Ltd.*, 767 F.2d 1573 (9th Cir. 1985); see also *In re Advent Mgmt. Corp.*, 178 B.R. 480 (9th Cir. B.A.P. 1995).

³³*U.S. Dept. of Energy v. Seneca Oil Co. (In re Seneca Oil Co.)*, 906 F.2d 1445 (10th Cir. 1990).

³⁴*In re Foster*, 275 F.3d 924 (10th Cir. 2001); *Sholer v. Carmichael (In re PKR, PC)*, 220 B.R. 114 (10th Cir. B.A.P. 1998).

³⁵*City Nat'l Bank of Miami v. Gen. Coffee Corp. (In re Gen. Coffee Corp.)*, 828 F.2d 699 (11th Cir. 1987).

³⁶See, e.g., *White v. Weatherford (In re Abrass)*, 268 B.R. 665 (Bankr. M.D. Fla. 2001) (finding that Florida law governing conveyances does not permit a permanent interest in real property to be enforced against creditors or subsequent purchasers unless the conveyance is properly recorded and thus, the policy underlying the Trustee's strong-arm

powers stated in *Omegas Group* is consistent with Florida law); *Rosetta Stone Comms. LLC v. Gordon (In re Chambers)*, 500 B.R. 221 (Bankr. N.D. Ga. 2013) (placing the decision to impose a constructive trust in the discretion of the bankruptcy court and noting that most courts require the grounds to "be so clear, convincing, strong and unequivocal as to lead to but one conclusion.") (citations omitted); *Wachovia Bank of Ga. NA v. Vacuum Corp. (In re Vacuum Corp.)*, 215 B.R.277 (Bankr. N.D. Ga. 1997) (same); *In re Poffenbarger*, 281 B.R. 379 (Bankr. S.D. Ala. 2002) (declining to follow *Omegas Group* and finding that Florida law imposed a constructive trust for child support as well as addressed the priority of that constructive trust over the trustee).

³⁷*In re Prof'l Air Traffic Controllers Org.*, 724 F.2d 205, 207 n. 10 (D.C. Cir. 1984).

³⁸See *In re Auto-Train Corp.*, 53 B.R. 990, 995-96 (D. D.C. 1985).

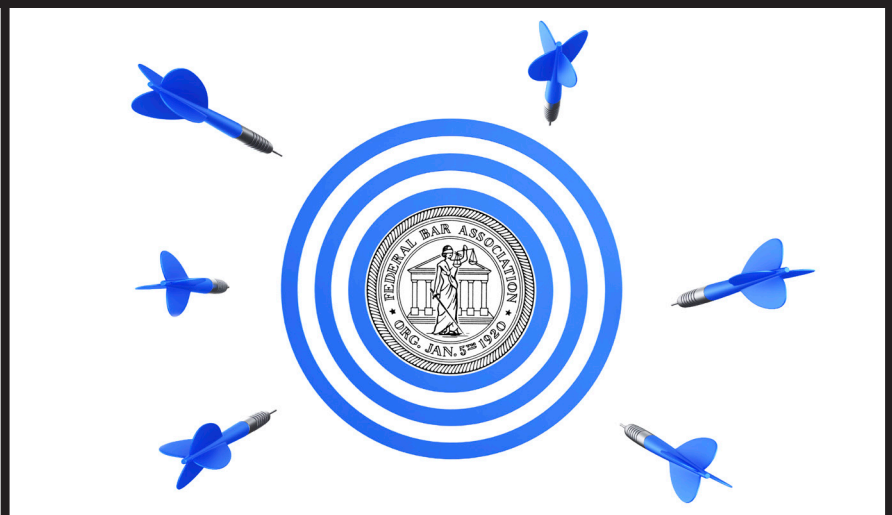
³⁹*In re Millennium Prods. Inc.*, 2002 WL 1290403 (Bankr. D. D.C. 2002).

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made them feel like they were somebody. I wish I had that skill. My mother was amazing that way. So, I learned a lot from my mom," she says. "When we spread my mother's ashes in Colorado, I went to the stream where my mother liked to watch the elk drink. My mother was special. My parents were special. My mom more than my dad, and my dad and I had made peace before he died. When we had a ceremony for my mom, I said, 'Whatever good I am is because of my mom. Any good I have done or any good thing I might do is because of my mom.'"

Judge Jury was reappointed in November 2011 to the Riverside division of the Bankruptcy Court for the Central District of California by the U.S. Court of Appeals of the Ninth Circuit. In 2014, she was appointed to an additional three year term on the Ninth Circuit Bankruptcy Appellate Panel. The San Bernardino Chapter 9 bankruptcy continues, and Judge Jury's appointment to the Bankruptcy Appellate Panel expires in 2017. ☉

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