



**A CLOSER LOOK AT RECENT EXEMPTION
DEVELOPMENTS:
LAW V. SIEGEL AND LIEN AVOIDANCE**

Presented By:



And

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Panelists:

Lawrence R. Ahern, III
Partner, Brown and Ahern



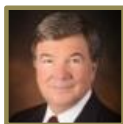
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Panelists:

William Houston Brown
Adviser to Academy and
United States Bankruptcy Judge, Retired
Partner, Brown and Ahern



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Surcharge Chronology

- *Latman v. Burdette*, 366 F.3d 774 (9th Cir. 2004)
- *In re Scrivner*, 535 F.3d 1258 (10th Cir. 2008), *cert. denied*, 556 U.S. 1126 (2009)
- *Malley v. Agin*, 693 F.3d 28 (1st Cir. 2012)
- ***Law v. Siegel***, 134 S. Ct. 1188 (2014)
 - See Brown and Ahern, Supreme Court Grants Certiorari on Exemption Surcharge, Norton Bankruptcy Law Adviser (June 2013)
 - *In re Franklin*, ___ B.R. ___, 2014 WL 960874 (Bankr. C.D. Ill. March 12, 2014)



Law v. Siegel: What Happened?

- California Chapter 7
- Home: \$363k value, \$75k Calif. homestead, \$147k mortgage
- Bogus second mortgage
- Trustee incurred \$500k attorney's fee pursuing fraudulent transfer theory
- Supreme Court: no surcharge exception to exemption scheme



Law v. Siegel: What's Left?

- Timely objection to exemption
- Claim objection
- State-law remedies for debtor misconduct
 - Civil
 - Criminal
- Discharge objection
 - Monetary sanctions
 - Rule 9011, other
 - Post-petition obligations, non-dischargeable



Section 522(f) Avoidance

- **"Impairment"** of exemption by
 - judicial lien
 - Non-possessory, non-purchase-money security interest in household goods, etc.
- **Amount** of avoidance
 - Proposed standard Chapter 13 plan Ex. A = avoidance calculator



Reopening/Amending - Split

- **Majority:** OK unless debtor bad faith or creditor prejudice, e.g.:
- *In re Green*, 2013 WL 4055846 (B.A.P. 9th Cir. Aug. 12, 2013)
- *In re Ervin*, 2013 WL 1867989 (Bankr. D.S.C. May 12, 2013)
- *In re Wilding*, 475 F.3d 428 (1st Cir. 2007)
- *In re Goswami*, 304 B.R. 386, 392, 393 (B.A.P. 9th Cir. 2003)



Reopening/Amending – Cont'd

- **Minority:**
- *In re Bartlett*, 326 B.R. 436 (Bankr. N.D. Ind. 2005)
- *In re Clear*, 1992 WL 1359570 (N.D. Ind. May 26, 1992)
 - Rule 1009: petition, list, schedule or statement amended by debtor *before the case is closed*



Other Avoidance Developments

- **State exception to homestead did not prevent § 522(f) lien avoidance**
– *In re Moore*, 495 B.R. 1 (BAP 8th Cir. 2013).
- **Chapter 7 trustee's abandonment**
– *In re Ramos*, 498 B.R. 1 (BAP 1st Cir. 2013).



522(f) Developments – Cont'd

- **Post-redemption period**
– *In re Chastagner*, 498 B.R. 376 (Bankr. S.D. Ga. 2013)
- **Debtor must have valid exemption that could be asserted**
– *In re Anderson*, 2012 WL 1110056 (Bankr. D. Mont. Apr. 2, 2012)



522(f) Developments – Cont'd

- **Application of § 522(f) partially**
– *In re Young*, 471 B.R. 715 (Bankr. E.D. Tenn. 2012)
- **Judicial lien in former spouses' separate cases**
– *In re White*, 470 F. App'x. 538 (8th Cir. 2012)
– *In re Kuiken*, 484 B.R. 766 (B.A.P. 9th Cir. 2013)



522(g) & (h) Developments

- **Creditor required to return exempt social security benefits**
 - *In re Hernandez*, 483 B.R. 713 (B.A.P. 9th Cir. 2012)
- **§ 522(h) more limited than § 522(g)**
 - (h) excludes §§ 510(c)(2), 542, 543 and 551
 - *In re Hernandez*, 483 B.R. 713 (B.A.P. 9th Cir. 2012)



522(g) & (h) – Cont'd

- **Chapter 13 debtor had strong-arm standing under 522(h)**
 - *In re McCarthy*, 501 B.R. 89 (B.A.P. 8th Cir. 2013)
- **Debtor's avoidance subject to defenses vs. trustee**
 - *In re Sandoval*, 470 B.R. 195 (Bankr. D.N.M. 2012)
 - *In re Maus*, 282 B.R. 836 (Bankr. N.D. Ohio 2002)
 - *In re Pierce*, 504 B.R. 506 (B.A.P. 9th Cir. 2014)



522(g) & (h) – Cont'd

- **Judgment lien avoidable against debtor's interest in entireties property?**
- General rule
 - *In re Alvarez*, 733 F.3d 130 (4th Cir. 2013)
- Maryland homestead exception
 - *In re Raskin*, 505 B.R. 684 (Bankr. D. Md. Feb. 12, 2014)





BROWN & AHERN national practice limited to mediation & alternative dispute resolution (ADR), and legal consulting with firms & professionals on commercial & bankruptcy issues, expert testimony, speaking, teaching, and writing.



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available at**

ConsiderChapter13.org

