

**PUBLICATION UPDATE**

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# Collier on Bankruptcy

Publication 219

Release 131

September 2014

## HIGHLIGHTS

### *Clark v. Rameker.*

- The Supreme Court in *Clark v. Rameker*, 189 L. Ed. 2d 157 (2014), held that an inherited IRA may not be claimed as exempt under section 522(b)(3)(C). Revised Chapter 522 reflects the decision.

### Chapter 13.

- Various chapters covering chapter 13 of the Bankruptcy Code have been revised throughout.

### State Exemptions.

- Updated state exemptions are featured in volumes 12 and 13. In particular, the reader should note dollar amount increases for exemptions in California and Rhode Island.

**Filing Fees.** Revised Chapter 9 reflects the increased miscellaneous administrative fees that were effective June 1, 2014. The administrative fee due upon the filing of a chapter 7, 12 or 13 petition is \$75, and the administrative fee due upon the filing of a chapter 9, 11 or 15 petition is \$550.

**Who May Be a Debtor.** Updated Chapter 109 reflects recent case law pertaining to the eligibility requirements of becoming a debtor under the Bankruptcy Code. *See, e.g., Drawbridge Special Opportunities Fund LP v. Barnet (In re Barnet)*, 737 F.3d 238 (2d Cir. 2013) (a debtor that does not have a domicile, place of business, or property in the United States cannot be a debtor in a chapter 15 case) (§ 109.02); *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032 (9th Cir. 2013) (neither the Bankruptcy Code nor the Bankruptcy Clause of the Constitution requires a debtor to be insolvent) (§ 109.03); *General Lending Corp. v. Cancio*, 505 B.R. 63 (S.D. Fla. 2014) (motion to dismiss that is filed after an unreasonable delay may also be barred by laches) (§ 109.06); *In re England*, 2013 Bankr. LEXIS 2342 (Bankr. M.D. Fla. June 10, 2013) (because eligibility is not jurisdictional and no party had moved to dismiss, court did not dismiss case where it denied section 109(h)(3) deferral) (§ 109.09).

**Involuntary Cases.** Among the material added to Chapter 303 is discussion of *Marciano v. Chapnick (In re Marciano)*,

708 F.3d 1123 (9th Cir. 2013), in which the Ninth Circuit noted that “[t]he Bankruptcy Code does not expressly provide for dismissal of an otherwise proper involuntary petition because of the subjective ‘bad faith’ of the filers” (§ 303.16). New § 303.20[1][e] considers Bankruptcy Rule 1011(a), which provides that “a party in interest to a petition for recognition of a foreign proceeding” may contest an involuntary petition, and questions its legality under 28 U.S.C. § 2075.

**Exemptions—Inherited IRAs.** Section 522(d)(12) allows the debtor to exempt “retirement funds” to the extent that they are exempt from taxation under certain IRS provisions. But the Code does not define “retirement funds,” and an issue has arisen as to whether inherited IRAs can be claimed as exempt. In *Clark v. Rameker*, 189 L. Ed. 2d 157 (2014), the Supreme Court has held that they are not exempt under section 522(d)(12). The Court considered the ordinary meaning of “retirement funds,” which it described as “sums of money set aside for the day an individual stops working.” Based on this meaning of retirement funds and the treatment of an inherited IRA under the Internal Revenue Code, the Court found that an IRA ceases to retain the characteristics of retirement funds when it is inherited by an individual who is not the owner’s surviving spouse (§ 522.09[12]).

**Preferences.** Discussion of “new value” issues has been considerably expanded in revised Chapter 547 with analysis of the decisions in *Friedman’s Liquidating Trust v. Roth Staffing Cos. LP (In re Friedman’s Inc.)*, 738 F.3d 547 (3d Cir. 2013), and *Stoebner v. San Diego Gas & Electric Co. (In re LGI Energy Solutions, Inc.)*, 746 F.3d 350 (8th Cir. 2014) (§ 547.04[4][e]). In *Friedman’s*, the court held that the cutoff date for determining when the new value

remains unpaid under section 547(c)(4)(B) should be the date of the petition rather than the date when the matter is decided or some other date. In *Stoebner*, the court held that the “new value” did not have to come from the transferee but instead could come from the debtor’s creditor that was benefited by the preferential transfers.

**Commodity Broker Liquidation.** Updated Chapters 760 through 766 contain revisions of the analysis pertaining to commodity broker liquidations. The updates reflect changes to the laws and regulations governing cleared swaps, which are now protected under subchapter IV of chapter 7 as a result of Dodd-Frank Act amendments, as well as CFTC customer protection regulations that became effective during 2013 and 2014. The revisions also reflect recent developments in the high-profile *MF Global* and *Peregrine Financial* commodity broker liquidation cases.

**Chapter 13.** The chapter 13 material relating to trustees (§ 1302), property of the estate (§ 1306), plan confirmation (§ 1325) and effect of confirmation (§ 1327) has been updated. In addition, the chapter 13 overview chapter has been updated throughout. Recent appellate decisions referenced in the revised chapters include the following: *Bell v. Thornburg*, 743 F.3d 84 (5th Cir. 2014) (if, in an action brought in state court against a chapter 13 trustee, the trustee invokes a defense based on having acted under the authority of the United States trustee, the trustee may be able to remove the action to a federal court under section 1442(a)(1) of title 28 of the United States Code) (§ 1302.06); *Santander Consumer USA, Inc. v. Brown (In re Brown)*, 746 F.3d 1236 (11th Cir. 2014) (debtor could provide for bifurcation of claim secured by collateral to be surrendered using replacement value standard of section 506(a)(2)) (§ 1325.06); *Brown v. Gore (In*

*re Brown*), 742 F.3d 1309 (11th Cir. 2014) (record supported denial of confirmation of plan filed as mechanism to pay attorney's fees, but no per se test can be applied) (§ 1325.04); *Weyandt v. Federal Home Loan Mortg. Corp. (In re Weyandt)*, 2013 U.S. App. LEXIS 23191 (3d Cir. Nov. 18, 2013) (no standing for debtor to exercise avoiding powers when there would be no benefit to the estate) (§ 1300.22); *In re Dyer*, 2013 Bankr. LEXIS 928 (B.A.P. 6th Cir. Mar. 14, 2013) (confirmation could not be denied on basis that automatic stay had terminated as to debtor under section 362(c)(3)) (§§ 1325.01, 1325.04); *Carroll v. Logan*, 735 F.3d 147, 70 C.B.C.2d 1111 (4th Cir. 2013) (acquisition of an asset, as well as an increase in income, may justify plan modification, at least if the asset is liquid and nonexemptible) (§ 1325.11).

**State Exemptions.** Updated state exemptions, including those of California, the District of Columbia, Ohio, Puerto Rico and Rhode Island, are found in volumes 12 and 13. In addition, the Case Highlights chapter as been revised to reflect recent caselaw. In particular, following the U.S. Supreme Court's decision in *Law v. Siegel*, 188 L. Ed. 2d 146 (2014), the continued viability of cases that deny an exemption on equitable grounds or because of bad

faith must be reassessed. As the Court emphasized: "[F]ederal law provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Code." 188 L. Ed. 2d 146, 155.

**COLLIER MONOGRAPH: Debt Adjustments for Municipalities Under Chapter 9 of the Bankruptcy Code.** This *Collier* monograph examines chapter 9, the powerful restructuring tool available to financially challenged municipalities and public corporations. Lead authors Francis J. Lawall and J. Gregg Miller provide a thorough and practical exploration of all aspects of chapter 9, including its purpose and alternatives (§§ 1–2), comparison to chapter 11 (§ 3), prepetition planning (§ 4), eligibility to file under the chapter (§ 5), the commencement of the case (§ 6), the ins and outs of operating while in chapter 9 (§ 7) and the reduction of liabilities and exiting from chapter 9 (§ 8). Appendix A sets forth a brief history of chapter 9, and Appendix B lists the various state authorizing statutes. Author Francis J. Lawall is a partner at Pepper Hamilton LLP, and author J. Gregg Miller is of counsel at the firm. Both are resident in the firm's Philadelphia office. To order, call 800.223.1940; Pub. no. 01739, ISBN 9780769848426; \$150; one softbound volume.

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