Statutory Research Conundrum: 11 U.S.C. § 507(a)(7) in the United States Bankruptcy Code

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Abstract

This article will review early Bankruptcy Laws, examine technical amendments for 11 U.S.C. § 507(a)(7) and analyze the findings.

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Introduction

In researching the legislative intent of 11 U.S.C. § 507(a)(7) in the United States Bankruptcy Code, I examined a conundrum of technical amendments in order to determine which statute added the Bankruptcy Code section.

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Bankruptcy is a legal status of a person that cannot repay their debts. In support of bill number H.R. 4160 in the 79th Congress[1], Congressman Clarence Eugene Hancock[2] (R) from New York described bankruptcy within the symbiotic relationship of creditor and debtor. He said that, "whenever the relationship of debtor and creditor exists, some may always be found who either cannot or will not meet their obligations. Such persons are either unfortunate or dishonest."[3]

Equally important to the relationship between creditor and debtor are the laws that govern them. In an article titled *State Sovereignty in Bankruptcy After Katz*, author Thomas E. Plank discusses the relationship between creditors and debtors in early American history before bankruptcy laws. Thomas Plank says that, "bankruptcy law at the time of the adoption of the Constitution consisted of a wide variety of statutory procedures that sought the optimum adjustment of the relationship between an insolvent debtor and his or her creditors[4]." The author continues by explaining that bankruptcy laws mitigated the relationship between creditors and debtors. He says,

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[1] H.R. 4160, 79th Cong. (1946). The bill was named Referees' Salary Bill and established the salary of bankruptcy referees. See 51 Com. L. J. 147 (1946) and 52 Com. L. J. 85 (1947) for a brief summary of the bill.

See 91 Cong. Rec. 10013 (1945) for a modest summary of early bankruptcy laws starting from the Roman Law of the Twelve Tablets in the 5th Century BC, which was said to have protected creditors and allowed physical harm to punish debtors in Bankruptcy.

See also David S. Kennedy, Erno Lindner, *The Bankruptcy Amendatory Act of 1938, The Legacy of the Honorable Walter Chandler*, 41 U. MEM. L. REV. 769 (2011) for summary about early Roman and English bankruptcy laws.

[2] Wikipedia http://en.wikipedia.org/wiki/Clarence_E._Hancock (last visited March 18, 2013)

[3] 91 CONG. REC. 10013 (1945). Congressman Hancock would leave office and die within a year of making his speech in the 1945 Congressional debate of H.R. 4160, 79th Cong. (1946) (Govtrack.us http://www.govtrack.us/congress/members/clarence_hancock/405028 (last visited March 18, 2013) (Wikipedia http://en.wikipedia.org/wiki/Clarence_E._Hancock (last visited March 18, 2013). H.R. 4160, 79th Cong. (1946) passed legislation and became Public Law 464, 79th Congress. The enactment of Public Law 464, 79th Congress gave bankruptcy referees a salary and other stipulations to administer bankruptcy cases. The American legal system used bankruptcy referees to administer bankruptcy cases before we had bankruptcy judges. See Charles Seligson, *Bankruptcy*, 1945 ANN. SUR. AM. L. 778-814 (1945) for an analysis of court cases decided by bankruptcy referees in 1945.

[4] Thomas E. Plank, State Sovereignty in Bankruptcy After Katz, 15 ABI L. REV. 59 at 62 (2007).

"bankruptcy laws replaced ... individualistic creditor collection proceeding with a collective proceeding in which all of the creditors could participate and pursuant to which the debtor obtained different forms of relief. In the eighteenth century, these bankruptcy laws consisted of (1) the English Bankrupt Acts, (2) the English Insolvency Acts, and (3) a great variety of American acts that used a variety of features of the first two groups and added innovations of their own[5]." This article will review early bankruptcy laws in order to establish a common background, examine the technical amendments of 11 U.S.C. § 507(a)(7) and analyze the findings.

The First Reported Bankruptcy Law in England, 1542

The 1542 English bankruptcy law[6] treated people convicted of bankruptcy very nearly like criminals and confined them perpetually to debtor's prison. For example, in an article titled *The Bankruptcy Amendatory Act of 1938, The Legacy of the Honorable Walter Chandler*, David S. Kennedy writes that the 1542 English Act "referred to the debtor as "the offender" … and had no discharge provisions, and it had all the characteristics of a criminal statute."[7]

Examination of Section 1 of the 1542 English Act[8], An acte againste suche persones as doo make Bankrupte, shows that imprisonment was one of the sanctioned punishments of people convicted of Bankruptcy. Section 1 reads, "[creditors] shall have power and auctoryte by virtue of the Acte to take … the bodies of suche offendoures [debtors who cannot pay their debts] …wheresoever they maie be had … by imprisonment of theyre bodies …"[9] Likewise, the punishment of imprisonment also extended to any person who helped debtors charged with Bankruptcy. Section 4 reads that, "…allso everye psone and psones that shall willinglie helpe to ayde imbesill or convey any suche psone or psones, …shall suffre suche peynes by imprysonement of theyre bodyes, or paie suche fine to our Soveraigne Lorde the King his heyres or successoures …"[10] The absence of any mention of discharge suggests that

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[5] Id. at 62-63.

[6] An acte againste suche persones as doo make bankrupte, 3 STATUTES OF THE REALM 899-901 (1542).

[7] David S. Kennedy, Erno Lindner, *The Bankruptcy Amendatory Act of 1938, The Legacy of the Honorable Walter Chandler*, 41 U. MEM. L. REV. 769 (2011).

[8] 3 Statutes of the Realm 899 (1542).

[9] Id. at 900.

[10] Id. at 901.

there wasn't a discharge provision[11]. Review of England's first bankruptcy law in 1542 shows that the conviction of unpaid debts resulted in being perpetually incarcerated.

Skip forward two centuries and 18th century bankruptcy laws in England included and then repealed capital punishment as the penalty for fraudulent bankruptcy, and establish a provision that discharged debts as well[12]. In an article titled, *The Last Bankrupt Hanged: Balancing Incentives In the Development Of Bankruptcy Law*, author Emily Kadens explores the duality between the 1706 English statute that discharged people from their debts but sentenced people convicted of fraudulent bankruptcy to death. She writes that the law "made a capital offense in 1706 by the Act of 4 & 5 Anne, the crime of fraudulent bankruptcy was statutorily defined as a debtor's failure to cooperate fully with his creditors by appearing before the bankruptcy commissioners and disclosing all of his assets after becoming a bankrupt." She also writes that "the death penalty was abolished for such post-bankruptcy crime in 1820 ...by contrast, discharge of debt, which was also introduced in the 1706 Act of Anne, is recognized as a crucial pivot point in the history of bankruptcy."[13]

As a result of the enforcement of early English bankruptcy laws, the fear of debtor's prison and physical harm became one of the catalysts that pushed some people to relocate to the British Colonies in North America. Congressman Hancock reported that, "shiploads of [England's] citizens … to go forth from the mother country and start life anew amid the hazards and dangers of the pioneer settlements of North America."[14] Debtor's prison and physical harm made Bankruptcy stigmatizing.

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[11] See David S. Kennedy, Erno Lindner, *The Bankruptcy Amendatory Act of 1938, The Legacy of the Honorable Walter Chandler*, 41 U. MEM. L. REV. 769 (2011).

[12] See Emily Kadens, *The Last Bankrupt Hanged: Balancing Incentives In the Development Of Bankruptcy Law*, 59 DUKE L.J. 1229 (2010) for a detailed account of the "Thomas Pitkin Affair" in 1705; a scandal that pushed Parliament to react by ruling for capital punishment against people convicted of fraudulent bankruptcy. The capital punishment provision for fraudulent bankruptcy was repealed in 1820; see Id. At page ---.

[13] Emily Kadens, *The Last Bankrupt Hanged: Balancing Incentives In the Development Of Bankruptcy Law*, 59 DUKE L.J. 1229 (2010).

[14] 91 CONG. REC. 10013 (1945)

The First Reported Bankruptcy Law in the United States, 1800

In contrast, in the United States, the first bankruptcy law had provisions that could be read as protecting creditors[15] and debtors[16], and, more importantly for Robert Morris, the bankruptcy law had a provision that discharged people from debtor's prison[17]. History remembers Robert Morris as one of the "Financiers" of the American Revolution[18]. He was also one of the writers and signers of the Declaration of Independence and he was a personal friend of George Washington[19]. Whittled down from historic figure to a man who couldn't pay his debts, Robert Morris' creditors squatted on his property waiting to be repaid. They "lit bonfires on [his] lawn" to keep warm for a year waiting for him to repay them[20]. Robert Morris was in trouble.

In a keynote address at a Bankruptcy Symposium, Gerald F. Munitz summarizes that the Bankruptcy Act of 1800 was enacted to discharge Robert Morris from prison. He states that "there is a touch of humanity in the first of these early bankruptcy laws. The 1800 act was passed almost by unanimous consent of Congress, and John Adams could barely wait to sign the bill. The reason for that unusual process was that the passage of that act enabled a gentleman by the name of Robert Morris to be freed from debtor's prison in

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[15] Section 1 of the Bankruptcy Act of 1800 can be read as protecting creditors by enabling a penalty for debtors convicted of fraudulent bankruptcy. The law labeled a person as being bankrupt if the person willfully avoided repaying their debts. Section 1 of the Act read, "if any merchant, or any person, residing within the United States, … shall with intent unlawfully to delay or defraud his or her creditors, …every such person shall be deemed and adjudged a bankrupt."[15] When someone was found to be bankrupt, the procedures for repaying debt kicked in, including liquidating estates and assets. (2 Stat. 21 1799-1813, the Bankruptcy Act of 1800.)

[16] Section 2 of the Bankruptcy Act of 1800 can be read as protecting debtors. It gave people who were erroneously accused of owing debt the right to sue for damages. Section 2 read, "if such debt shall not be really due, or after such commission taken out it cannot be proved that the party was a bankrupt, the said judge shall, upon the petition of the party aggrieved, … deliver such bond to the said party, who may sue thereon, and recover such damages." (2 Stat. 21 1799-1813, the Bankruptcy Act of 1800.)

[17] COLLIER ON BANKRUPTCY explains that, "[the Bankruptcy Act of 1800] allowed a discharge of … debtor's debts and permitted the release of a debtor from debtor's prison upon surrender of all nonexempt assets."

[18] LAND OF PROMISE: AN ECONOMIC HISTORY OF THE UNITED STATES (2012), page 29.

[19] See Id. At 29.

[20] Morris Weisman, *The Bankruptcy of Robert Morris* 45 COM. L. J. 163 AT 163-165 (1940).

Philadelphia."[21] Accordingly, Morris Weisman says that "had the [Bankruptcy] Act of 1800 not been passed, Morris would have died in prison."[22] As it can be understood in Morris Weisman's statement above, the Bankruptcy Act of 1800 spared the life of Robert Morris.

Moreover, Collier on Bankruptcy abridges all of the Federal bankruptcy laws in American history.[23] Likewise, Kenneth N. Klee offers a detailed account of the legislative history leading up to the enactment of the Bankruptcy Act of 1978, which was a major legislation that renumbered the Bankruptcy Code.[24]

What I Could Not Find

In researching the legislative intent of 11 U.S.C. § 507(a)(7) in the Bankruptcy Code, I examined numerous technical amendments in order to determine which statute added the Bankruptcy Code section. I couldn't find the statute that added section 507(a)(7). This is important because sometimes it is necessary to read the text of the statute that added the Bankruptcy Code section and its corresponding legislative documents. I presume that Congress could have addressed the intent of section 507(a)(7) when they added the text or when they substantially amended it. Especially if subsequent amendments were minor, it is possible that Congress did not address the intent of minor technical changes, but only of substantial amendments instead.

Research Method

Victoria F. Nourse published an article in Yale Law Journal in which she claims that the goal of legislative history research should not be complicated. She states "this analysis requires no lengthy exegesis of the law's full legislative history, focusing instead on statutory history (which, as the history of the statute's text, has always had a better pedigree than

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[21] Gerald F. Munitz , *Keynote Address: Stories in the Development of Bankruptcy Law*, 42 GOLDEN GATE U. L. REV. 539 (2011-2012).

[22] Morris Weisman, *The Bankruptcy of Robert Morris* 45 COM. L. J. 163 AT 163-165 (1940).

[23] William Miller Collier was born in 1867 and passed away in 1956. He wrote the legal treatise Collier on Bankruptcy. The treatise is now updated by legal scholars.

COLLIER ON BANKRUPTCY has a legislative history section for the Bankruptcy Laws. This puts legislative documents for Bankruptcy laws in one place.

[24] Kenneth N. Klee, *Legislative History of the New Bankruptcy Law*, 28 DEPAUL L. REV. 941-960 (1979).

legislative history). All this analysis requires is looking at the bills passed by the House and the Senate and finding that the key statutory term was added at conference."[25] She also explains that the legislative history research process is rightly done backwards. She writes, "later textual decisions trump earlier ones. Put in the simplest terms, legislative history should be read in reverse."[26] In other words, legislative history research correctly begins at the last amendment and moves backward.

My legislative history research method had several steps. I scanned Collier on Bankruptcy. Then, I researched the statutes from the last amendment and moved back from that point. If the amendments were not substantial, then I kept reading back through all of the amendments back to the statute that added section 507 (a)(7). The goal was to find corresponding committee reports or other legislative documents to see if Congress had expressed their intent for the section in question.

Lastly, if I was unable to find explicit legislative intent, I could also analyze the amendments to see if legislative intent could be inferred from the changes, but the indirect method of finding implied legislative intent may be subjective at best.[27] I presumed that Congress might have addressed the intent

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[25] Victoria F. Nourse, *A Decision Theory Of Statutory Interpretation: Legislative History By the*

Rules, 122 YALE L.J. 90 (2012).

[26] See Id. at page 98.

[27] E.g., Jeffrey A. Pojanowski, reports that there has been a scholarly debate between legislative history and textualism for approximately 30 years. He writes that, "starting in the early 1980s, founding textualists emphasized empirical challenges to the use of legislative history and the coherence of invoking a legislative body's "intent" or "purpose." In response, textualism's critics drew on public choice theory to defend a moderated use of legislative history and to shore up the cogency and reliability of appeals to congressional intent and purpose." He continues by stating that textualism, according to these criticisms, was premised on bad political science and was internally contradictory in its use of external sources." Jeffrey A. Pojanowski, *Statutes in Common Law Courts*, 91 TEX. L. REV. 479 (2013).

See also, scholars have noted that Justice Scalia has a fundamental belief in textualism, "Justice Scalia insisted that a strong version of textualism was the only legitimate methodology for statutory interpretation, and rejected as illegitimate reliance on most forms of legislative history as guides to statutory meaning."

But see, William K. Kelley writes that "Numerous scholars produced reams of work challenging Justice Scalia's methodology. Others took textualism and defended and refined it. Although the Court has continued to rely on legislative history, the dominant interpretive norm on the Court—even among those Justices, like Justice Breyer, who defend the use of legislative history where they deem it appropriate—

of section 507(a)(7) when they added the text or the when they substantially amended it. Nevertheless, these research steps provided the direction toward finding legislative intent of 11 U.S.C. § 507(a)(7) in the Bankruptcy Code.

Resources

The most useful sources of for researching legislative history in the United States Bankruptcy Code section is Collier on Bankruptcy, HeinOnline's Legislative Library[28], USCCAN[29], and Google[30]. Except for Google, which is a powerful secondary source, those sources are equipped with selective compiled legislative histories[31]. However I began by examining the Bankruptcy Code section, reviewing the source field, and the legislative notes.

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has come to focus keenly on the text of the statutes at issue." William K. Kelley, 80 GEORGE WASHINGTON L. REV. 1601 (2012)."

Contra., in *A Dialogue on Statutory and Constitutional Interpretation*, Justice Scalia answers several questions about the debate and stands by his support of textualism. Justice Scalia says, "I, frankly, don't care what the legislators' purpose is beyond that which is embodied in the duly enacted text ... We are governed by the laws that the Members of Congress enact, not by their unenacted intentions. And if they said "up" when they meant "down" and you could prove by the testimony of 100 bishops that that's what they meant, I would still say, too bad. Again, we are governed by laws, and what the laws say is what the laws mean." 80 GEORGE WASHINGTON L. REV. 1610 (2012).

[28] Heinonline's Legislative Library is a tremendously helpful source of legislative information. The only drawback is that it is not comprehensive and includes only selective laws.

[29] U.S.C.C.A.N. is a reliable source of legislative history. It contains the legislative history of most laws. However, it is published by Thompson Reuters, which means Westlaw and Westlaw is expensive.

[30] I have also used a combination of Thomas.loc.gov , GAO.gov, GPO's Federal Digital System (FDsys), Heinonline's Congressional Library, and Google to fill in the gaps.

[31] The CRS report Legislative History Resource Material is an excellent choice to read a list of legislative history sources are available. Additionally, a source that I have saved to my favorites and read severl times is Federal Legislative History Research: A Practitioner's Guide to Compiling the Documents. The sources are important because they are the access point to analyzing legislative documents for intent, which is helpful when you are researching legislative intent for a section in the Bankruptcy Code.

Legislative Examination

I read the Bankruptcy Code section.

11 U.S.C. § 507(a)(7) reads, "(7) Seventh, allowed unsecured claims of individuals, to the extent of $2,751 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided."[32]

I read the credits for the Bankruptcy Code Section.

Credits: "(Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2583; Pub.L. 98-353, Title III, §§ 350, 449, July 10, 1984, 98 Stat. 358, 374; Pub.L. 101-647, Title XXV, § 2522(d), Nov. 29, 1990, 104 Stat. 4867; Pub.L. 103-394, Title I, § 108(c), Title II, § 207, Title III, § 304(c), Title V, § 501(b)(3), (d)(11), Oct. 22, 1994, 108 Stat. 4112, 4123, 4132, 4142, 4145; Pub.L. 109-8, Title II, §§ 212, 223, Title VII, §§ 705, 706, Title XIV, § 1401, Title XV, § 1502(a)(1), Apr. 20, 2005, 119 Stat. 51, 62, 126, 214, 216; Pub.L. 111-203, Title XI, § 1101(b), July 21, 2010, 124 Stat. 2115; Pub.L. 111-327, § 2(a)(15), Dec. 22, 2010, 124 Stat. 3559.)"[33]

December 2010 Statute

I reviewed the December 2010 amendment[34].

Pub. Law 111-327, 111th Congress, 124 Stat. 3557, Bankruptcy Technical Corrections Act of 2010.

Section 507(a)(7) was not amended. Instead, a minor amendment to section 507(a)(8) was made[35].

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[32] Westlaw Next, last visited 3/13/13

[33] Westlaw Next, last visited 3/13/13

[34] I scanned the 2010 amendment. Pub. Law 111-327, 111th Congress, 124 Stat. 3557

[35] The December 2010 amendment reads: "in section 507(a)(8)(A)(ii) by striking the period at the end and inserting ``; or",'' Accessed from http://www.gpo.gov/fdsys/pkg/PLAW-111publ327/html/PLAW-111publ327.htm

July 2010 Statute

I reviewed the July 2010 amendment[36].

Pub. Law 111-203, 111th Congress, 124 Stat. 2114, Dodd-Frank Wall Street Reform and Consumer Protection Act.

Section 507(a)(7) was not amended. Instead, a minor amendment to section 507(a)(2) was made[37].

2005 Statute

I reviewed the 2005 amendment[38].

Pub. Law 109-8, 109the Congress, 119 Stat. 51, Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Section 507(a)(7) was amended. The statute strikes 507(a)(7), makes a technical correction that renumbers section 507(a)(1) – (6) to being section 507(a)(2) – (7), and adds a new section 507(a)(1)[39].

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[36] I scanned the 2010 amendment. Pub. Law 111-203, 111th Congress, 124 Stat. 2114.

[37] The July 2010 amendment reads: "Conforming Amendment.--Section 507(a)(2) of title 11, United States Code, is amended by inserting ``unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343)," after ``this title,"." Accessed http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm *[37]

[38] I scanned through the 2005 amendment. Pub. Law 109-8, 109the Congress, 119 Stat. 51

[39] The 2005 amendment reads: "Section 507(a) of title 11, United States Code, is amended--

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as so redesignated, by striking ``First" and inserting ``Second";

(4) in paragraph (3), as so redesignated, by striking ``Second" and inserting ``Third";

(5) in paragraph (4), as so redesignated-- (A) by striking ``Third" and inserting ``Fourth"; and (B) by striking the semicolon at the end and inserting a period;

1994 Statute

I reviewed the 1994 amendment[40].

Public Law 103-394, 108 Stat. 4112, Bankruptcy Reform Act of 1994.

Section 507(a)(7) was amended. The statute makes a technical amendment changing the dollar amount from $900 to $1800, renumbering section 507(a)(7) – 507(a)(9), and adding a new section 507(a)(7)[41].

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(6) in paragraph (5), as so redesignated, by striking ``Fourth'' and inserting ``Fifth'';

(7) in paragraph (6), as so redesignated, by striking ``Fifth'' and inserting ``Sixth'';

(8) in paragraph (7), as so redesignated, by striking ``Sixth'' and inserting ``Seventh''; and

(9) by inserting before paragraph (2), as so redesignated, the following:

``(1) First:

``(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable non-bankruptcy law.

``(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable non-bankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable non-bankruptcy law.

``(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.''.

[40] I scanned the 1994 amendment. Public Law 103-394, 108 Stat. 4112, Bankruptcy Reform Act of 1994

1990 Statute

I reviewed the 1990 amendment[42]

Public Law 101-647, 104 Stat. 4867, Crime Control Act of 1990.

Section 507(a)(7) was not amended. Instead, section 507(a)(8) is added[43].

1984 Statute

I reviewed the 1984 Amendment[44], searching for Section 507(a)(7).

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[41] The amended statute reads: "(c) PRIORITIES- Section 507(a) of title 11, United States Code, is amended--

(1) in paragraph (4)(B)(i) by striking `$2,000' and inserting `$4,000',

(2) in paragraph (5) by striking `$2,000' and inserting `$4,000', and

(3) in paragraph (6) by striking `$900' and inserting `$1,800'."

The amended statute also reads "(c) PRIORITY OF CLAIMS- Section 507(a) of title 11, United States Code, is amended--

(1) in paragraph (8) by striking `(8) Eighth' and inserting `(9) Ninth',

(2) in paragraph (7) by striking `(7) Seventh' and inserting `(8) Eighth', and

(3) by inserting after paragraph (6) the following:

`(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt--

`(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

`(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.'."

[42] I scanned the 1990 amendment- cite it Public Law 101-647, 104 Stat. 4867, Crime Control Act of 1990

[43] The amended statute reads: "(d) COMMITMENTS TO MAINTAIN THE CAPITAL OF FEDERALLY INSURED DEPOSITORY INSTITUTIONS- Section 507(a) of title 11, United States Code, is amended by adding at the end the following new paragraph:

`(8) Eighth, allowed unsecured claims based upon any commitment by the debtor to the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Director of the Office of Thrift Supervision, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution.'." Citation here

Pub. Law 98–353, 98 Stat. 358, Bankruptcy Amendments and Federal Judgeship Act of 1983.

Section 507(a)(7) was amended. The statute renumbers section 507(a)(5) – (7) and adds a new section 507(a)(5)[45].

1978 Statute

I reviewed the 1978 Statute[46], looking for section 507(a)(7).

Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2583, A bill to establish a uniform law on the subject of bankruptcies.

The 1978 statute reads from Section 507(a)(6) to section 508[47].

On face value, I could determine that the most recent amendment to section 507(a)(7) was made in 2005, the oldest amendment to the section was made in 1984, and section 507(a)(7) was not in the 1978 statute. I went to Google.

Google

Google's first search result was a link to the full text Section in the Bankruptcy Code on Cornell Legal Institute[48]. The notes section on Cornell's website lists the amendments, which I had already reviewed. I also read the legislative statements on Cornell's website, but, unfortunately, it doesn't mention 507(a)(7). Instead, as previously stated, the amendments are listed, and the only piece that comes close is a reference is to the seventh point out of eight points in a discussion to the sixth priority[49] It was time to think.

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[44] I scanned the 1984 Amendment. 98 Stat. 358

[45] 11 U.S.C. 507(a)(5)

[46] I scanned the 1978 Statute. 92 Stat. 2583

[47] 11 U.S.C. 507(8)

[48] Cornell Legal Institute: http://www.law.cornell.edu/

[49] This reference is to the seventh point out of eight points in discussing the sixth priority. It reads, "Seventh. Excise taxes on transactions for which a return, if required, is last due, under otherwise applicable law or under any extension of time to file the return, within 3 years before the petition was filed, or thereafter. If a return is not required with regard to a particular excise tax, priority is given if the transaction or event itself occurred within 3 years before the date on which the title 11 petition

Aha! Moment

Aha! It was a technical amendment, corrected in the Bankruptcy Code but still left as it was published in the Statutes at Large. The Bankruptcy Code shows the corrected text. The session law shows the Act as it was enacted for that session of Congress only. The session law makes no prediction of what will come of the statute in the future, and only legislative history research can trace back to see when the section was added and amended. Unfortunately, if the legislative process involves several amendments and technical corrections that renumber, remove, add and amend the statute, it can make legislative history research in the Bankruptcy Code challenging.

Collier on Bankruptcy indicates that some of the frustration in completing legislative history research comes from the legislative process. The treatise states that, "unfortunately, proper evaluation of the legislative history of a statute is often confusing even when Congress follows simple legislative procedures. As the history of Pub. L. No. 95-598 indicates above, the new bankruptcy law was not enacted by a simple legislative procedure."[50] The statutory history of Section 507(a)(7) was confusing, however, I was sure that the statute that added the Section was within the amendments. It had to be. It was time to put the puzzle together.

Analysis

In researching the legislative intent of Section 507(a)(7) in the Bankruptcy Code, I had examined a conundrum of technical amendments and corrections that renumbered the section in order to determine which statute added the Bankruptcy Code section. I had reviewed each statute in the source field. I could determine that the most recent amendment was also the most recent substantial amendment; to be sure the 2005 amendment was not simple a technical correction, but I was bewildered by the elusiveness of the statute that added section 507(a)(7).

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was filed. All Federal, State or local taxes generally considered or expressly treated as excises are covered by this category, including sales taxes, estate and gift taxes, gasoline and special fuel taxes, and wagering and truck taxes."

[50] COLLIER ON BANKRUPTCY, Sixteenth Edition, Copyright 2012, Matthew Bender & Company, Inc., a member of the LexisNexis Group. App. Pt. 4 Bankruptcy Reform Act of 1978, App. Pt. 4(b) Legislative History of the New Bankruptcy Law, II. Using Legislative History to Interpret the Law, B-4b COLLIER ON BANKRUPTCY

The result of my research showed that section 507(a)(7) began as section 507(a)(5)[51] in 1978. Section 507(a)(5) was renumbered and becomes section 507(a)(6)[52] in 1984. In 1994, paragraph the dollar amount is changed and section 507(a)(7) is added new in 1994. Section 507(a)(7) was then removed in 2005. Additionally in 2005, section 507(a)(5) is renumbered and becomes section 507(a)(6), and section 507(a)(6) is renumbered and becomes section 507(a)(7).

Starting with the 1978 statute, when incorporating the amendments into the text, the conundrum unfolds and reveals section 507(a)(7) as it can be read in the Bankruptcy Code today. There were several technical amendments and corrections that renumbered and adjusted the Bankruptcy Code section.

Report

The latest substantial amendment to 11 U.S.C. 507(a)(7) was in 2005. Additionally, the latest dollar amount was adjusted per 11 U.S.C. 104[53] in the amount of $2,775, on Feb. 12, 2013[54]. Nevertheless, section 507(a)(7) is addressed in the April 8, 2005 H.Rep. 109-31(1). I also searched the legislative documents associated with the 1994 amendment since a substantial amendment to the law was made in 1994. At last, I had the information needed to compile a legislative history and report my findings.

Conclusion

Technical corrections in the United States Bankruptcy Code are common. Collier on Bankruptcy summarizes all of the early American Bankruptcy Acts and technical corrections enacted in the 20th and 21st century. Some of the technical corrections were made to Section 507(a) and specifically to Section 507(a)(7) as well. For example, Collier writes that "The 1984 amendments were deficient in that they did not make conforming changes in section 1129(a)(9) that were necessitated by amendments to section 507(a)." Collier continues, "In 1984, a new fifth priority was added to section 507(a) for the benefit of certain farmers and fishermen, resulting in a renumbering of the existing paragraphs (5) and (6) to (6) and (7) of section 507(a). Thus, what was contained in section 1129(a)(9)(B) should have had section 507(a)(6) added to it, and the reference in section 1129(a)(9)(C) to

[51] 11 U.S.C. 507(a)(5).
[52] 11 U.S.C. 507(a)(6).
[53] 11 U.S.C. 104
[54] 11 U.S.C. § 104. Adjustment of dollar amounts. 78 F.R. 12089.

section 507(a)(6) should have been changed to section 507(a)(7). This inadvertence was not corrected until the 1986 amendments became effective[55]." Of course, other technical amendments and corrections were made to the Bankruptcy Code outside of the scope of Section 507, and this shows that the Bankruptcy Code in general has had a history of technical amendments and corrections.

Additionally, Senate bill number S. 1559, the Bankruptcy Technical Corrections Act of 1996[56] was intended to correct errors in the Bankruptcy Code, as the title of the act suggests. Senator Chuck Grassley (R) from Iowa explains in a 1996 Congressional Debate "I rise today to introduce the Bankruptcy Technical Corrections Act of 1996. This bill will correct technical errors in the bankruptcy code resulting from the 1994 Bankruptcy Reform Act of 1994 as well as pre-existing technical errors. I am introducing the bill with support of Senator Heflin, my good friend from Alabama and the ranking minority on the Courts subcommittee. Mr. President, with one exception, this bill makes purely technical changes in the Code. It is my hope that the bill will pass this body quickly and by unanimous consent.[57]" The need to enact technical corrections to the Bankruptcy Code was resounding. Although the legislature did not pass the bill at that time[58], approximately fourteen years later the Bankruptcy Technical Corrections Act of 2010 was enacted.

The Bankruptcy Technical Corrections Act of 2010 made a long list of technical amendments and corrections to the Bankruptcy Code[59]. As the name suggests, the Act made technical corrections to the Bankruptcy Code[60].

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[55] P 1129.LH History of Section 1129

[56] Senate Bill S. 1559, 104th Congress, Bankruptcy Technical Corrections Act of 1996.

[57] Senator Charles "Chuck" Grassley, CONGRESSIONAL RECORD, Tuesday, February 06, 1996, 104th Congress, 2nd Session, 142 Cong. Rec. 2380 1996.

[58] The record shows that S.1559, Bankruptcy Technical Corrections Act of 1996, did not pass legislation: http://www.govtrack.us/congress/bills/104/s1559

[59] Jean Braucher, AM. BANKR. INST. J., Feb. 2011, at 8, Jean Braucher. ABI Journal, *Legislative Highlights: Technical Corrections have Some Substantive Effects*, AM. BANKR. INST. J., Feb. 2011, at 8 (2011).

[60] See Congress.gov for a summary of the Bankruptcy Technical Corrections Act of 2010 can be read on Congress.gov: http://beta.congress.gov/bill/111th-congress/house-bill/6198?q=%22bankruptcy%20tech-nical%20corrections%22

Congress.gov is in beta form. It will replace Thomas.loc.gov when it is launched. You can attend a live webinar on using Congress.gov for legislative research: http://www.loc.gov/law/opportunities/seminar-orient.php

In an American Banker Institute Journal article, Jean Braucher says that substantive and minor changes were made in the 2010 Act but that some errors still remain. She writes that, "the act changes wording, section numbering and lettering, and even indentation." [61] She continues by stating that, "perhaps most striking are the technical problems not addressed. For example, the famous hanging paragraph of § 1325(a) still hangs without a number or letter designation."[62]

One of the minor results to the quantity of technical amendments and corrections that were made to 11 U.S.C. § 507(a)(7) in the Bankruptcy Code is that the changes made the process of legislative history research puzzling. Whereas, when I think of the amendments to the Bankruptcy Code I know that what is great is that we have a method to amend our laws. I am sure we all can take pride in that. Nevertheless, in researching the legislative intent of 11 U.S.C. § 507(a)(7) in the Bankruptcy Code, I examined a conundrum of technical amendments and corrections in order to determine which statute added the Bankruptcy Code section.

[61] Jean Braucher, AM. BANKR. INST. J., Feb. 2011, at 8, Jean Braucher. ABI Journal, *Legislative Highlights: Technical Corrections have Some Substantive Effects*, AM. BANKR. INST. J., Feb. 2011, at 8 (2011).

[62] Jean Braucher, AM. BANKR. INST. J., Feb. 2011, at 8, Jean Braucher. ABI JOURNAL, *Legislative Highlights: Technical Corrections have Some Substantive Effects*, AM. BANKR. INST. J., Feb. 2011, at 8 (2011).