CRIMINAL EXPOSURE IN BANKRUPTCY CASES

Western District of Virginia's
Annual Bankruptcy Practice Seminar

May 30, 2025

Presenters:

JOHN P. FISHWICK, JR.
Fishwick & Associates PLC

MICHAEL E. HASTINGS
Woods Rogers Vandeventer Black PLC

Criminal Exposure in Bankruptcy Cases

By John P. Fishwick, Jr.[1] and Michael E. Hastings[2]

1. Prosecution of Bankruptcy Crimes

   a. See **Exhibit A** for full text of 18 U.S. Code Chapter 9 Part I - Bankruptcy.

   b. Tax Fraud—26 U.S. Code § 7201, *et seq.* In FY 2023, this crime represented 52% of all criminal referrals from the USTP.[3]

   c. Mail/Wire Fraud—18 U.S. Code §§ 1341 and 1343. In FY 2023, mail/wire fraud represented 23.9% of all criminal referrals from the USTP. In one instance, the UST's Roanoke office uncovered the defendant's receipt of a PPP loan for a non-existent lawn care business and referred the matter to the U.S. Attorney for the Western District of Virginia. The defendant pleaded guilty to one count of wire fraud and admitted making false statements in a second PPP loan application using another person's name to obtain a loan for a nonexistent daycare center.

   d. Concealment of Assets--18 U.S. Code § 152(1), (7). In FY 2023, this crime represented 27.4% of all criminal referrals from the USTP.

   e. False Statements under Oath—18 U.S. Code § 152(2)-(3). In FY 2023, false statements under oath represented 33.8% of all criminal referrals from the USTP.

      Example from Virginia: On December 29, 2014, Philip P. Groggins entered a *Plea Agreement* with the United States of America in the U.S. District Court for the Western District of Virginia, Case. No. 6:14CR21.[4] Pursuant to the Plea Agreement, Mr. Groggins pleaded guilty to two of eight charges contained in the Indictment: (i) Count 6 for willfully failing to collect or pay taxes in violation of 26 U.S.C. § 7202, having a maximum penalty of a $250,000 fine and/or imprisonment for a term of five years, plus a term of supervised release of three years; and (ii) Count 8 for Bankruptcy Fraud, in violation of 18 U.S.C. § 152(3),

[1] Daniel J. Martin of Fishwick & Associates, PLC made substantial contributions to this outline.

[2] The authors would like to recognize and thank the following individuals and their articles, as this outline was derived in part from content contained in the following articles: *Crimes in Bankruptcy*, by Hon. Jennie D. Latta, Carroll L. Andre, and Elisabeth Courson, presented at the 5th Annual Memphis Consumer Bankruptcy Conference; *Avoiding Litigation Pitfalls: An Introduction to the Fifth Amendment Privilege Against Self-Incrimination in Bankruptcy Proceedings*, Allan B. Diamond and Erin E. Jones, ABI Journal, April 2008.

[3] For all statistics provided herein, *See, Report to Congress: Criminal Referrals by the United States Trustee Program Fiscal Year 2023, as required by Section 1175 of the Violence Against Women and Department of Justice Reauthorization Act of 2005*, Public Law 109-162, attached as **Exhibit B**, for national statistics recorded by the USTP in Fiscal Year 2023, available at https://www.justice.gov/ust/media/1384561/dl?inline.

[4] A copy of the *Plea Agreement* is attached as **Exhibit C**.

having a maximum penalty of a fine of $250,000 and/or imprisonment for a term of five years, plus a term of supervised release for five years.

The factual basis for the Plea Agreement is contained in the *Factual Basis* filed by the USA[5] alleges the following facts, among others: from 2007 through 2009, Philip Groggins was the owner and operator of two businesses, one was a homebuilding company, and the other was a golf club located in Bedford County, both of which operated under the name of the Groggins Group. Groggins employed individuals and withheld from their wages and filed Forms 941 with the IRS late. The 941s understated the amount of wages paid and the amount of taxes withheld. In addition, Groggins willfully failed to turn over the taxes withheld, and Groggins engaged in other wage and hour violations with his employees. In addition, Groggins filed a voluntary bankruptcy petition in the Bankruptcy Court for the District of Maryland on April 10, 2014, listing an address in Baltimore, Maryland, when in fact his address was in Fincastle, Virginia. The Maryland bankruptcy case was dismissed on April 16, 2014, after it was learned that the address he listed in the Maryland Bankruptcy did not exist.

On July 13, 2014, Groggins filed a *pro se* Chapter 13 petition in the Bankruptcy Court for the Western District of Virginia. Groggins disclosed an earlier bankruptcy filing in Virginia, but he did not disclose the filing in the Maryland Bankruptcy case. The Chapter 13 Trustee testified that the disclosure of a prior case was a material fact and that he reviews prior filings to determine whether a debtor is entitled to a discharge.

On May 21, 2015, Judge Moon entered the *Judgment in a Criminal Case*, sentencing Mr. Groggins to 27 months of imprisonment on Counts 6 and 8, to be served concurrently, plus three years of supervised release.[6]

f. Perjury/False Statement—These offenses, arising under 18 U.S. Code §§ 1001 and 1623, represented 11.9% of all criminal referrals from the USTP. Though not specific to bankruptcy, they can arise in bankruptcy proceedings, as demonstrated by the case below:

Example from Virginia: In October 2024, a jury convicted 89-year old Richard Hamlett of perjury and making a false statements involving a bankruptcy case he filed to stave off the foreclosure of one of his properties. Specifically, he was found guilty of lying to United States Bankruptcy Judge Paul Black and an FBI agent. On February 26, 2025, he was sentenced to one year of probation for each offense, to be served concurrently, although he has noticed an appeal which remains pending.[7]

g. Bankruptcy Fraud—18 U.S. Code § 157. In FY 2023, bankruptcy fraud schemes represented 29.3% of all criminal referrals from the USTP.

[5] A copy of the *Factual Basis* is attached as **Exhibit D**.
[6] A copy of the *Judgment in a Criminal Case* is attached hereto as **Exhibit E**.
[7] A copy of the *Judgment in a Criminal Case* is attached hereto as **Exhibit F**.

h. Fifth Amendment—The U.S. Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." It may be asserted in bankruptcy proceedings to avoid testifying or, more typically, producing evidence which may later be used against the debtor as an accused in a criminal action, though it is the proponent's burden to show that the privilege applies. *See In re Parast*, 617 B.R. 857, 862-63 (Bankr. D.S.C. 2020). In *Fisher v. United States*, 425 U.S. 391 (1976), the Supreme Court held that the Fifth Amendment privilege could be invoked with respect to producing documents *if the act of production would have testimonial aspects that could be self-incriminating*.

Two elements must be satisfied: (1) the act of producing the documents must have testimonial aspects; and (2) the documents must be self-incriminating.

Producing documents may be testimonial where "compliance with the subpoena tacitly *concedes the existence of the papers* demanded and their *possession or control* by the [party asserting the privilege]," as well as his belief that the papers are those described in the subpoena, *thereby authenticating them* pursuant to Fed. R. Evid. 901. *U.S. v. Doe*, 465 U.S. 605, 613 (1984) (emphasis added). But if each of these considerations is a "foregone conclusion," then the production of the documents would not be testimonial. *Fisher v. U.S.*, 425 U.S. at 411. In other words, would the act of production itself incriminate the party?

To be self-incriminating, it is not necessary for the documents to be incriminating or for the information contained to be directly inculpatory, only that the act of producing such documents "furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime." *U.S. v. Hubbell*, 530 U.S. 27, 38, 120 S. Ct. 2037, 147 L. Ed. 2d 24 (2000).

Use in Rule 2004 examination: To assert the Fifth Amendment in a Rule 2004 examination, the disclosure must be compelled, testimonial and incriminatory,[8] and the witness has the burden of showing that there is reasonable cause to perceive danger of self-incrimination.[9]

Entities do not have privilege: A corporation, partnership or other entity does not have the Fifth Amendment privilege,[10] and the custodian of company records may not invoke the Fifth Amendment privilege as a basis to refuse to produce company records, even if the company records would incriminate the custodian of records.[11]

Use of adverse inferences: Courts may find that a witness's refusal to answer questions on the grounds that the answers are self-incriminatory is evidence that the witness would have answered in a self-incriminatory manner. This is referred to as an "adverse inference." The Second Circuit has adopted the following non-exhaustive list of factors to guide a court as to whether to make an adverse

[8] *In re Cybernetics*, 107 B.R. 821, 827 (Bankr. N.D.N.Y. 1989).
[9] *In re Boughton*, 243 B.R. 830, 835-36 (Bankr. M.D. Fla. 2000).
[10] *Braswell v. United States*, 487 U.S. 99, 105 (1988); *Bellis v. United States* 417
[11] *See Braswell*, 487 U.S. at 110; *Bellis*, 417 U.S. at 88.

inference: (1) the nature of the relationship between the party and the nonparty; (2) the degree to which the party controls the nonparty; (3) the compatibility of interests of the party and nonparty in the outcome of the litigation; and (4) the role of the nonparty witness in the litigation.[12] A court's ability to make an adverse inference is not unlimited, and the court may consider whether an adverse inference is trustworthy under all circumstances and will advance the search for the truth.[13] A court might also consider whether the adverse inference is corroborated by independent and admissible evidence.[14]

Waiver of the Privilege and Immunity: The Fifth Amendment privilege against self-incrimination may be waived by a witness if it is not invoked,[15] and the privilege may be waived when an individual voluntarily offers testimony on his own behalf.[16] A waiver of the privilege against self-incrimination must be made knowingly, voluntarily and intelligently.[17] Voluntary testimony in one proceeding may not constitute a general waiver of the privilege in another proceeding because the privilege attaches separately in each individual case.[18] One bankruptcy court ruled that testimony in a creditors' meeting conducted pursuant to 11 US.C. § 341 is not a waiver of the privilege in a subsequent adversary proceeding because the two are separate proceedings.[19]

i. Attorneys as Defendants

a. Advising a client to perpetrate or assisting the client to perpetrate a bankruptcy crime is itself a federal crime, including under18 U.S. Code § 1505. Violating Title 18 requires the attorney to knowingly and fraudulently advise or assist a client to perpetrate a bankruptcy crime. A mere act of negligence does not constitute a bankruptcy crime.

Examples from Virginia: On July 13, 2021, Bruce H. Matson, a prominent Richmond bankruptcy attorney, entered a *Plea Agreement* wherein Mr. Matson waived indictment and pleaded guilty to a single count Criminal Information, charging Mr. Matson with Obstruction of an Official Proceeding, in violation of 18 U.S.C § 1505, having a maximum penalty of a term of 5 years imprisonment, a fine of $250,000, a special assessment pursuant to 18 U.S.C. § 3031, and a maximum supervised release term of 3 years.[20] The Plea Agreement expressly admitted the facts contained in the Statement of Facts filed by the USA, and which contains a stipulation of facts for sentencing purposes.

[12] *See LiButti v. United States*, 107 F.3d 110, 123 (2d Cir. 1997)
[13] *See LiButti*, 107 F.3d at 124.
[14] *See Leonard v. Coolidge et. al. (In re Nat'l Audit Defense Network)*, 367 B.R. 207, 216-17 (Bankr. D. Nev. 2007).
[15] *See Rogers v. United States*, 340 U.S. 367, 371 (1951).
[16] *See Brown v. United States*, 356 U.S. 148, 155 (1958).
[17] *See Harvey v. Shillinger*, 76 F.3d 1528, 1536 (10th Cir. 1996).
[18] *See United States v. Licavoli*, 604 F.2d 613,623 (9th Cir. 1979).
[19] *In re Gi Yeong Nam*, 245 B.R. 216, 233 (Bankr. E.D. Pa. 2000).
[20] A copy of the *Plea Agreement* is attached hereto as **Exhibit G**.

The *Statement of Facts*[21] contained a stipulation of facts including, without limitation, that between about August 25, 2019, and about November 25, 2019, Mr. Matson "did corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede, the due and proper administration of the law under which a pending proceeding was being had before an agency of the United States, that is the United States Trustee Program." Further, that LandAmerica Financial Group, Inc. (LFG), was one of the largest title insurance companies in the United States, LFG filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Eastern District of Virginia, Richmond Division, in or about November 2009, the Bankruptcy Court approved a Joint Chapter 11 Plan that had been agreed to by the majority of LFG's creditors. The Plan established a liquidating trust (the "LFG Liquidation Trust" or the "Trust") to facilitate the liquidation of LFG's remaining assets and the orderly distribution of those assets to creditors, and Matson was appointed the LFG Liquidation Trustee. In his capacity as Trustee, on or about January 15, Matson used the Trust's tax identification number to open a bank account in the name of the Trust at First Capital Bank (the Fraudulent Trust Account), and in so doing Matson misrepresented that the account was an LFG Liquidation Trust account. In fact, the actual LFG Liquidation Trust's accounts were maintained at Union Bank. Between January 2015 and October 2015, Matson deposited LFG Trust assets into the Fraudulent Trust Account for his own personal use, including separate transfers of $240,000, $3,619.71, and $537,163.62, and Matson changed the address on the account from his office address to is home address.

On or about August 25, 2015, Matson and a financial advisor devised a wind-down budget of $3.1 million, to be used for data retention and storage and professional fees. The wind down budget indicated that Matson would be paid $540,000 in fixed fees over a six-year period. Matson sent the wind down budget to the Trust's Oversight Committee but later inserted into the wind down budget a "Statement of Significant Assumptions" that contained a statement that if the wind down expenses was greater than anticipated, Matson and the financial advisor would waive any unpaid fees. Conversely, "[i]f there are residual funds remaining after six years, after the payment of $100,000 to a 501(c)(3) charitable organization(s), the Oversight Committee has approved the payment by the Liquidation Trustee of additional compensation to the Dissolution Trustee and professionals in his discretion. The paragraph containing the Statement of Significant Assumptions was not included in the communications to the Oversight Committee.

On or about December 1, 2015, Matson's counsel filed a Motion for Final Decree to close the LFG bankruptcy case, with several exhibits, including the wind down budget with the Statement of Significant Assumptions.

[21] A copy of the *Statement of Facts* is attached hereto as **Exhibit H**.

Paragraph 15 of the Motion for Final Decree stated: "All assets of the Terminating Trusts have been distributed according to the terms of the Plans. As provided in the Winddown budge contained in Appendix A-1, Exhibit 8a, to the extent there are any reserved funds remaining, the Terminating Trusts seek authority to pay such residual amounts to a charitable organization under section 501(c)(3) of the Internal Revenue Code." The Bankruptcy Court endorsed and entered the proposed Final Decree, which "ORDERED that the Terminating Trusts are authorized to pay any unused, reserved funds to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code."

Between September 2015 and December 2015, Matson made and caused to be made material misrepresentations and fraudulent omissions to other Trust professionals, LFG creditors, and the Bankruptcy Court so that he could divert residual funds to himself and others after the close of the LFG Bankruptcy Court so that he could divert residual funds to himself and others after the close of the LFG Bankruptcy when he would no longer be subject to scrutiny by LFG creditors and the Bankruptcy Court. In particular, Matson misrepresented both the amount of money actually retained in Trust accounts following the final distribution to creditors, and the amount of money actually needed to wind down the LFG Liquidation Trust.

The Statement of Facts details additional fraudulent transactions, then details the instances of obstruction of justice, including: (i) misrepresenting to the financial advisory firm about the whereabouts of the LFG Liquidation Trust funds withdrawn from the financial advisor's internal accounts, saying that the funds were held in escrow but that he had simply moved the money to a different bank due to high bank fees, and separately misrepresented to the financial advisory firm the nature of the transfer to the former employee, resulting in the financial advisory firm notifying the USTP; (ii) misrepresenting to the Bankruptcy Court that $2.8 million in Trust funds was still held in escrow when it was in fact held in personal bank accounts; (iii) making false and misleading statements to the USTP in response to its inquiry about the disposition of the Trust funds; and (iv) misrepresentations to the Bankruptcy Court concerning the reason for the transfer of the Trust funds. The Statement of Facts stipulates that the "actions taken by the defendant, as described above, were taken willfully and knowingly. The defendant did not take those actions by accident, mistake, or with the belief that they did not violate the law."

On November 22, 2021, the District Court entered the *Judgment in a Criminal Case*[22], acknowledging the guilty plea and indicating that Mr. Matson was adjudged guilty of one count of obstruction of an official proceeding and sentenced Mr. Matson to forty-four (44) months and

[22] A copy of the *Judgment in a Criminal Case* is at **Exhibit I**.

required that he be remanded immediately, sentenced him to three years of supervised release, requiring certain mandatory, standard, and special conditions of supervision, and imposed a $10,000 penalty.

b. Ethical Violation: Advising a client to perpetrate or assisting the client to perpetrate a bankruptcy crime is a clear violation an attorney's ethical obligations and violates several of the Virginia Rules of Professional Responsibility.

i. Rule 1.2

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the objectives of the representation if the client consents after consultation.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

(1) discuss the legal consequences of any proposed course of conduct with a client;

(2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law; and

(3) counsel or assist a client regarding conduct expressly permitted by state or other applicable law that conflicts with federal law, provided that the lawyer counsels the client about the potential legal consequence of the client's proposed course of conduct under applicable federal law.

(d) A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall

consult with the client regarding the relevant limitations on the lawyer's conduct.

ii. Rule 8.4

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

(d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official;

(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(f) enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before a lawyer regulatory or disciplinary authority.

c. Disclosure of Client's Bankruptcy Crimes: When can (or when must) an attorney disclose a client's bankruptcy fraud?

i. Rule 1.6

(a) A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

(b) To the extent a lawyer reasonably believes necessary, the lawyer may reveal:

(1) such information to comply with law or a court order;

(2) such information to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(3) such information which clearly establishes that the client has, in the course of the representation, perpetrated upon a third party a fraud related to the subject matter of the representation;

(4) such information reasonably necessary to protect a client's interests in the event of the representing lawyer's death, disability, incapacity or incompetence;

(5) such information sufficient to participate in a law office management assistance program approved by the Virginia State Bar or other similar private program;

(6) information to an outside agency necessary for statistical, bookkeeping, accounting, data processing, printing, or other similar office management purposes, provided the lawyer exercises due care in the selection of the agency, advises the agency that the information must be kept confidential and reasonably believes that the information will be kept confidential;

(7) such information to prevent reasonably certain death or substantial bodily harm.

(c) A lawyer shall promptly reveal:

(1) the intention of a client, as stated by the client, to commit a crime reasonably certain to result in death or substantial bodily harm to another or substantial injury to the financial interests or property of another and the information necessary to prevent the crime, but before revealing such information, the attorney shall, where feasible, advise the client of the possible legal consequences of the action, urge the client not to commit the crime, and advise the client that the attorney must reveal the client's criminal intention unless thereupon abandoned. However, if the crime involves perjury by the client, the attorney shall take appropriate remedial measures as required by Rule 3.3; or

(2) information concerning the misconduct of another attorney to the appropriate professional authority under Rule 8.3. When the information necessary to report the misconduct is protected under this Rule, the attorney, after consultation, must obtain client consent. Consultation should include full disclosure of all

reasonably foreseeable consequences of both disclosure and non-disclosure to the client.

(d) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information protected under this Rule.

ii. Attorneys charged with assisting a client in perpetrating a bankruptcy crime may, for example, ethically disclose confidential client information to defend themselves.

iii. If a client states an intent to commit a bankruptcy crime and it is reasonably certain that this crime will result in substantial financial injury, then the attorney may reveal such information as necessary to prevent the crime, provided the attorney advises the client as mandated in Rule 1.6.

1. This is a stringent rule. It requires both a statement of intent from the client (*i.e.*, not merely the attorney's own inferences based on the client's conduct or other statements) as well as a "substantial risk" of financial harm.

2. Even then, information may only be revealed to the extent necessary to prevent the crime. Other client information remains confidential.

2. Effect of Bankruptcy Crimes in Bankruptcy Case

a. Impact on discharge--11 U.S. Code § 727(a)(4)(A) provides that the Court "shall grant the debtor a discharge, unless . . . the debtor knowingly and fraudulently, in or in connection with the case . . . made a false oath or account."[23]

Example from Western District of Virginia:

Robbins v. Groggins (In re Groggins), Case No. 14-71033, AP No. 15-07018), 12/4/2015.[24] Judge Black entered an *Opinion and Order Granting Denial of Discharge* that making procedural, factual and legal findings and conclusions, including that Mr. Robbins was incarcerated in federal prison, appointing a guardian *ad litem*, that Mr. Robbins entered a guilty pleas to Counts 6 and 8 of the indictment, that he was adjudicated guilty, that his guilty plea prohibited him from denying that he knowingly and fraudulently made a false oath on his petition, and that res judicata prevents the Debtor from litigating whether he knowingly and

[23] 11 U.S. Code § 727 provides a number of other grounds for the Court to refuse a discharge, including concealing, destroying, mutilating, falsifying, or failing to keep or preserve any recorded information which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case.

[24] A copy of Judge Black's opinion in *In re Groggins* is at **Exhibit J**.

fraudulently made a false oath. Therefore, Judge Black concluded that there was no genuine issue of material fact in dispute, and that the U.S. Trustee has established grounds sufficient to deny the Debtor's discharge pursuant to 11 U.S.C. § 727(a)(4)(A).

Mr. Groggins appealed Judge Black's *Opinion and Order Granting Denial of Discharge* to the U.S. District Court for the Western District of Virginia. Judge Moon's unpublished *Memorandum Opinion* appears at *Groggins v. Robbins,* Case No. 7:15-cv-690, decided August 30, 2016. [25] Judge Moon affirmed Judge Black's opinion based on collateral estoppel, finding, first, that Mr. Groggins pled guilty to Judge Moon on the criminal judgment, and that the knowing and fraudulent false declaration, certificate, verification, or statement under penalty of perjury in relation to a bankruptcy case that is prohibited by 18 U.S.C. § 152(3) is identical to the "knowing and fraudulently, in or in connection with the case . . . made a false oath or account" as contemplated by 11 U.S.C. § 727(a)(4)(A). Second, Judge Moon that the activity that served as the basis for the criminal conviction served as a prior, actual determination of the issue. Third, the establishment of the failure to disclose the Maryland bankruptcy case was critical and necessary to his criminal case. Fourth, the criminal conviction was a valid and final judgment. Finally, the District Court found that Groggins had a full and fair opportunity to litigate the issue in his criminal case. Therefore, the District Court determined that all of the elements of collateral estoppel were satisfied.

b. Private right of action? At least in the context of 18 U.S.C. § 152(4), courts that have considered whether a violation by a creditor of 18 U.S.C. § 152(4)'s prohibition against "knowingly and fraudulently" presenting a false claim for proof against the estate of a debtor have held that no private right of action exists against an offending creditor. One case in the Fourth Circuit is *Clayton v. Raleigh Federal Sav. Bank,* 194, B.R. 793 (M.D. North Carolina, 1996), wherein the court relied upon the reasoning of *In re Terio*, 158 B.R. 907 (S.D.N.Y. 1993), aff'd 23 F.3d397 (2d Cir. 1994) and held that 18 U.S.C. § 152(4) does *not* create a private cause of action for a debtor against whom a false claim is filed in a bankruptcy case. The court in *Terio* applied the U.S. Supreme Court's four-part test for determining whether a private right of action may arise from a statute that does not expressly provide a private right of action:[26] (1) whether the plaintiff belongs to the class for whose special benefit the statute was enacted, (2) whether explicit or implicit legislative intent to create such a remedy can be found, (3) whether a private right of action is consistent with the underlying purposes of the legislative scheme, and (4) whether a cause of action is not one traditionally relegated.

In *Clayton*, the court found that no private right of action arises from 18 U.S.C. § 152(4) because there is no suggestion of a legislative intent to create a private right. The *Clayton* opinion points out that the legislative history reveals that 18 U.S.C. § 152(4) was enacted to eliminate the previous requirement that proofs of claim be filed under oath because the legislature deemed that too burdensome and expensive for creditors;

[25] A copy of Judge Moon's *Memorandum Opinion* is attached as **Exhibit K**.
[26] *See Cort v. Ash*, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed2d 26 (1975)

however, to eliminate that burden and maintain the presumption of validity the proof of claim has always been afforded, Congress made it a crime to file a false proof of claim. The *Clayton* court also found that implying a private right of action would not be consistent with the overall legislative scheme with respect to bankruptcy proceedings given that the Bankruptcy Code is a "highly intricate and reticulated statutory scheme that does not easily lend itself to the creation of new rights and remedies on the part of private parties" and that the Bankruptcy Code "creates extensive rights readily available to litigants, and there is no reason to believe that additional rights should be created where none are expressed or clearly implied."

In *In re Maple*, 434 B.R. 363 (Bankr. E.D.Va.2010), Judge Huennekens ruled without discussion that "[g]iven that title 18 is the criminal and penal code of the United States, Plaintiffs lack standing to bring an action under 18 U.S.C. §152 and this Court is not the proper court in which such a proceeding should be brought."

On the other hand, crimes committed during the course of bankruptcy proceedings can, in some circumstances, give rise to or overlap with civil claims against the debtor. In *Granfinanciera v. Nordberg*, 492 U.S. 33 (1989), the Supreme Court held that a trustee's suit to avoid allegedly fraudulent transfers and to recover damages under 11 U.S. Code §§ 548 and 550 was a private right of action. Thus, such proceedings proceed before a jury in accordance with the Seventh Amendment.

3. Bankruptcy Crime Referral Process

   a. 28 U.S. Code § 586(a)(3)(F) requires each United States trustee to "supervise the administration of cases and trustees . . . notifying the appropriate United States attorney of matters which relate to the occurrence of any action which may constitute a crime under the laws of the United States and, on the request of the United States attorney, assisting the United States attorney in carrying out prosecutions based on such action."

   b. Similarly, 18 U.S. Code § 3057 requires a "judge, receiver, or trustee having reasonable grounds for believing that any [federal] violation . . . relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so."

   c. 18 U.S. Code § 158 requires the designation of a prosecutor and an FBI agent in each district to address bankruptcy-related crimes.

   d. **Exhibit B** is an example of an annually required report to Congress that, among other things, describes the types and number of allegations referred for criminal prosecution.

4. Using Criminal Prosecution for Debt Collection

   a. 11 U.S. Code § 362 automatically stays lawsuits and other collection-related actions once a bankruptcy petition is filed. Specifically, it stays:

> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under [Title 11 - Bankruptcy];
>
> (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
>
> (4) any act to create, perfect, or enforce any lien against property of the estate;
>
> (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
>
> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
>
> (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

   b. 11 U.S. Code § 362(b)(4), however, provides an exception in the exercise of police powers, with respect to the stays in paragraphs (1), (2), (3), and (6). That exception is for "the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power."

   c. Absent an applicable exception, violating the automatic stay can lead to serious consequences, including punitive damages. *See* 11 U.S. Code § 362(k)(1). Even actions taken in good faith may still result in a judgment for actual damages. *See* 11 U.S. Code § 362(k)(2).

d. 11 U.S. Code § 524 forbids creditors from engaging in lawsuits and other collection-related actions once a bankruptcy is complete and the debt(s) have been discharged. No police power exception, but governments can still exercise police power to prosecute criminal offense related to the bankruptcy proceeding.

e. Does a creditor who files a criminal complaint against a debtor in bankruptcy violate the automatic stay? If a creditor files a criminal action after a debtor has received a discharge, has the creditor violated the discharge injunction?

Both of these questions are answered by Bankruptcy Judge David Warren of the U.S. Bankruptcy Court for the Eastern District of North Carolina in *In re: Kimbler*, 624 B.R. 774 (Bankr.E.D.Va. 2020). In *Kimbler*, the debtor bounced a check for rent to her landlord and before she was able to repay the amount of the check, she filed a Chapter 7 case, *pro se*. After the debtor filed bankruptcy, she notified the landlord in writing and in person that she had filed bankruptcy. Thereafter, the creditor, who did not participate in the bankruptcy case, swore out a warrant with the local magistrate, which resulted in the issuance of a criminal misdemeanor summons. The debtor retained counsel, who sent a "Stay Violation Letter" to the creditor, asserting that the criminal action after the bankruptcy filing for the primary purpose of collecting a dischargeable debt violated the automatic stay. Later the same month, the bankruptcy court issued the discharge of the debtor, entered a final decree, and served a copy of the discharge order on the creditor. The creditor took no action to dismiss the criminal action after the Stay Violation Order or the discharge order.

The Debtor thereafter filed a sanctions motion against the creditor, asserting a violation of the automatic stay and the discharge injunction imposed by § 524 of the Bankruptcy Code, seeking actual and punitive damages, including attorney fees and expenses. The creditor defended by saying that they never received the official notice of the bankruptcy case, that the criminal action was excepted from the automatic stay pursuant to the police power exception of § 362(b)(1), and that they were not notified of the hearings in the criminal action.

Automatic Stay Violation

The decision starts by reciting the language of § 362(a)(1), staying "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." In addition, pursuant to § 362(a)(6), the automatic stay bars "*any act* to collect, assess, or recover a claim against the debtor that arose before the commencement of the case."

Pursuant to § 362(k), "an individual injured by any willful violation of [the automatic stay] shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." "A party seeking to recover damages for violation of the automatic stay must establish three elements: 1)

that a violation of the stay occurred; 2) that the violation was willful; and 3) that the violation caused damages." (citations omitted).

One exception to the automatic stay is the "police power exception" whereby the filing of the bankruptcy petition does not operate as a stay "of the commencement or continuation of a criminal action or proceeding against the debtor." 11 U.S.C. § 362(b)(1). As a result, the state court was not stayed in prosecuting the criminal action against the debtor; however, "the exception provided by §362(b)(1) does not permit a creditor to instigate a criminal proceeding against a debtor if the primary purpose is to recover a dischargeable debt." *In re Kimbler*, 618 B.R. 437, 442 (Bankr. E.D.N.C. 2020).[27] In *Kimbler I*, the court relied upon Judge Thomas Small's explanation that:

> a state may initiate or continue criminal prosecutions regardless of the pendency of a bankruptcy case, and further that it may do so even when the state's—or complaining witness's—primary purpose is the collection of a debt. However, a *creditor* does not have the full protection of § 362(b)(1), and an entity other than the government's prosecuting authority may not commence a criminal action for the primary purpose of recovering a debt that is dischargeable in bankruptcy. If a creditor has already brought its grievance to the attention of law enforcement officials prior to the debtor's bankruptcy filing, those officials may proceed as they deem appropriate and may elect to prosecute, or not.
>
> . . .
>
> The filing of a bankruptcy action should have no impact on whether a prosecuting entity elects to commence or continue a criminal action against a debtor, even if the action is based on a debt that will be dealt with in the bankruptcy case. A bankruptcy filing does, however, preclude a *creditor* from seeking to pursue criminal charges against a debtor for the primary purpose of attempting to recover a debt. Any effort to do so would violate the automatic stay and, potentially, the discharge injunction provisions of §§ 362(a) and 524(a)(2).

In re Byrd, 256 B.R. 246, 251-52 (Bankr. E.D.N.C. 2000). Judge Small reasoned that a disgruntled creditor should not be permitted to resort to criminal processes to collect a debt, because "[t]he bankruptcy proceedings offer ample protections for creditors who are owed monies due to larceny, fraud or other willful injury inflicted by the debtor." *Id.* at 251 (citing 11 U.S.C. §§ 523(a)(2), 523(a)(4), 523(a)(6)). A creditor's criminal referral of a worthless check debt, whether motivated in whole or in part by a hope of getting reimbursed, constitutes a violation of the automatic stay. *In re Heeley*, No. 14-03291-5-DMW, 2014 WL 7012652, at *2 (Bankr. E.D.N.C. Dec. 11, 2014).

[27] This was an earlier adversary proceeding brought in the same case as the subject case but against a different defendant, referred to herein as "*Kimbler I*".

Discharge Injunction Violation

A discharge granted in a bankruptcy case "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any debt as a personal liability of the debtor, whether or not discharge of such debt is waived." 11 U.S.C. § 524(a)(2). In *Kimbler*, the court agreed with Judge Small in Byrd that a creditor's pursuit of criminal charges against a debtor for the purpose of collecting a debt may constitute a violation of this discharge injunction in addition to a violation of the automatic stay. Judge Warren found that the creditor violated the discharge injunction because it failed to request dismissal of the criminal action after receiving the Stay Violation Letter and notice of the debtor's Chapter 7 discharge, and he awarded the debtor compensatory and punitive damages as a result of the violations of the automatic stay and the discharge injunction.

f. Violating the automatic stay or discharge injunction can also run afoul of attorneys' ethical obligations.[28]

i. Rule 3.1

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

1. This rule requires an attorney not to bring a proceeding unless there is a non-frivolous basis in law and fact for doing so.

2. Comment 1 to Rule 3.1 states, "The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure."

3. Violating the automatic stay or discharge injunction may be viewed as an abuse of legal procedures.

ii. Rule 3.3

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

[28] All of the rules in this section refer to the Virginia Rules of Professional Conduct.

(3) fail to disclose to the tribunal controlling legal authority in the subject jurisdiction known to the lawyer to be adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(c) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

(d) A lawyer who receives information clearly establishing that a person other than a client has perpetrated a fraud upon the tribunal in a proceeding in which the lawyer is representing a client shall promptly reveal the fraud to the tribunal.

(e) The duties stated in paragraphs (a) and (d) continue until the conclusion of the proceeding, and apply even if compliance requires disclosure of information protected by Rule 1.6.

iii. Rule 4.1

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of fact or law; or

(b) fail to disclose a fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

1. Rules 3.3 and 4.1 require truthfulness in statements and candor to a tribunal.

2. Suggesting there is a debt when it has been discharged, for instance, could implicate these rules.

iv. Rule 8.4 (reproduced above).

1. This rule prohibits attorneys from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation or that is prejudicial to the administration of justice.

2. Attempting to collect a discharged debt or ignoring the automatic stay may fall under both of these prongs, especially if done knowingly.

EXHIBIT “A”

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 151

§ 151. Definition

Currentness

As used in this chapter, the term "debtor" means a debtor concerning whom a petition has been filed under title 11.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 689; Pub.L. 95-598, Title III, § 314(b)(1), Nov. 6, 1978, 92 Stat. 2676; Pub.L. 103-322, Title XXXIII, § 330008(5), Sept. 13, 1994, 108 Stat. 2143.)

18 U.S.C.A. § 151, 18 USCA § 151
Current through P.L. 119-4. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 152

§ 152. Concealment of assets; false oaths and claims; bribery

Currentness

A person who--

(1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor;

(2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;

(3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;

(4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;

(5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;

(6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;

(7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;

(8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or

(9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor,

shall be fined under this title, imprisoned not more than 5 years, or both.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 689; Pub.L. 86-519, § 2, June 12, 1960, 74 Stat. 217; Pub.L. 86-701, Sept. 2, 1960, 74 Stat. 753; Pub.L. 94-550, § 4, Oct. 18, 1976, 90 Stat. 2535; Pub.L. 95-598, Title III, § 314(a), (c), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub.L. 100-690, Title VII, § 7017, Nov. 18, 1988, 102 Stat. 4395; Pub.L. 103-322, Title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub.L. 103-394, Title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4138; Pub.L. 104-294, Title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

Notes of Decisions (1026)

O'CONNOR'S COMMENTS

United States Sentencing Guidelines
§2B1.1 (basic economic offenses)

§2B4.1 (basic economic offenses)

§2J1.3 (offenses involving administration of justice)

18 U.S.C.A. § 152, 18 USCA § 152
Current through P.L. 119-4. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 153

§ 153. Embezzlement against estate

Currentness

(a) Offense.--A person described in subsection (b) who knowingly and fraudulently appropriates to the person's own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor shall be fined under this title, imprisoned not more than 5 years, or both.

(b) Person to whom section applies.--A person described in this subsection is one who has access to property or documents belonging to an estate by virtue of the person's participation in the administration of the estate as a trustee, custodian, marshal, attorney, or other officer of the court or as an agent, employee, or other person engaged by such an officer to perform a service with respect to the estate.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 690; Pub.L. 95-598, Title III, § 314(a)(1), (d)(1), (2), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub.L. 103-322, Title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub.L. 103-394, Title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4139; Pub.L. 104-294, Title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

Notes of Decisions (22)

O'CONNOR'S COMMENTS

United States Sentencing Guidelines
§2B1.1 (basic economic offenses)

18 U.S.C.A. § 153, 18 USCA § 153
Current through P.L. 119-4. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 154

§ 154. Adverse interest and conduct of officers

Currentness

A person who, being a custodian, trustee, marshal, or other officer of the court--

(1) knowingly purchases, directly or indirectly, any property of the estate of which the person is such an officer in a case under title 11;

(2) knowingly refuses to permit a reasonable opportunity for the inspection by parties in interest of the documents and accounts relating to the affairs of estates in the person's charge by parties when directed by the court to do so; or

(3) knowingly refuses to permit a reasonable opportunity for the inspection by the United States Trustee of the documents and accounts relating to the affairs of an estate in the person's charge,

shall be fined under this title and shall forfeit the person's office, which shall thereupon become vacant.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 690; Pub.L. 95-598, Title III, § 314(a)(2), (e)(1), (2), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub.L. 103-322, Title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147; Pub.L. 103-394, Title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4139; Pub.L. 104-294, Title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

Notes of Decisions (2)

18 U.S.C.A. § 154, 18 USCA § 154
Current through P.L. 119-4. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 155

§ 155. Fee agreements in cases under title 11 and receiverships

Currentness

Whoever, being a party in interest, whether as a debtor, creditor, receiver, trustee or representative of any of them, or attorney for any such party in interest, in any receivership or case under title 11 in any United States court or under its supervision, knowingly and fraudulently enters into any agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate, shall be fined under this title or imprisoned not more than one year, or both.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 690; May 24, 1949, c. 139, § 4, 63 Stat. 90; Pub.L. 95-598, Title III, § 314(f)(1), (2), Nov. 6, 1978, 92 Stat. 2677; Pub.L. 103-322, Title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

Notes of Decisions (4)

O'CONNOR'S COMMENTS

United States Sentencing Guidelines
§2B1.1 (basic economic offenses)

18 U.S.C.A. § 155, 18 USCA § 155
Current through P.L. 119-4. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 156

§ 156. Knowing disregard of bankruptcy law or rule

Currentness

(a) Definitions.--In this section--

(1) the term "bankruptcy petition preparer" means a person, other than the debtor's attorney or an employee of such an attorney, who prepares for compensation a document for filing; and

(2) the term "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under title 11.

(b) Offense.--If a bankruptcy case or related proceeding is dismissed because of a knowing attempt by a bankruptcy petition preparer in any manner to disregard the requirements of title 11, United States Code, or the Federal Rules of Bankruptcy Procedure, the bankruptcy petition preparer shall be fined under this title, imprisoned not more than 1 year, or both.

CREDIT(S)

(Added Pub.L. 103-394, Title III, § 312(a)(1)(B), Oct. 22, 1994, 108 Stat. 4140; amended Pub.L. 109-8, Title XII, § 1220, Apr. 20, 2005, 119 Stat. 195.)

18 U.S.C.A. § 156, 18 USCA § 156
Current through P.L. 119-4. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 157

§ 157. Bankruptcy fraud

Currentness

A person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so--

(1) files a petition under title 11, including a fraudulent involuntary petition under section 303 of such title;

(2) files a document in a proceeding under title 11; or

(3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title,

shall be fined under this title, imprisoned not more than 5 years, or both.

CREDIT(S)

(Added Pub.L. 103-394, Title III, § 312(a)(1)(B), Oct. 22, 1994, 108 Stat. 4140; amended Pub.L. 109-8, Title III, § 332(c), Apr. 20, 2005, 119 Stat. 103; Pub.L. 111-327, § 2(b), Dec. 22, 2010, 124 Stat. 3562.)

Notes of Decisions (14)

18 U.S.C.A. § 157, 18 USCA § 157
Current through P.L. 119-4. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 9. Bankruptcy

18 U.S.C.A. § 158

§ 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

Currentness

(a) In general.--The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

(b) United States Attorneys and Agents of the Federal Bureau of Investigation.--The individuals referred to in subsection (a) are--

(1) the United States attorney for each judicial district of the United States; and

(2) an agent of the Federal Bureau of Investigation for each field office of the Federal Bureau of Investigation.

(c) Bankruptcy investigations.--Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

(d) Bankruptcy procedures.--The bankruptcy courts shall establish procedures for referring any case that may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.

CREDIT(S)

(Added Pub.L. 109-8, Title II, § 203(b)(1), Apr. 20, 2005, 119 Stat. 49.)

18 U.S.C.A. § 158, 18 USCA § 158
Current through P.L. 119-4. Some statute sections may be more current, see credits for details.

End of Document

EXHIBIT “B”

U.S. Department of Justice
Executive Office for United States Trustees

Report to Congress:

Criminal Referrals by the United States Trustee Program Fiscal Year 2023

(As required by Section 1175 of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Public Law 109-162)

July 2024

Table of Contents

EXECUTIVE SUMMARY

The Director of the Executive Office for United States Trustees (EOUST) is required to submit an annual report to Congress under the provisions of Section 1175 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162). Section 1175 states:

> The Director of the Executive Office for United States Trustees shall prepare an annual report to the Congress detailing—(1) the number and types of criminal referrals made by the United States Trustee Program; (2) the outcomes of each criminal referral; (3) for any year in which the number of criminal referrals is less than for the prior year, an explanation of the decrease; and (4) the United States Trustee Program's efforts to prevent bankruptcy fraud and abuse, particularly with respect to the establishment of uniform internal controls to detect common, higher risk frauds, such as a debtor's failure to disclose all assets.

The United States Trustee Program (USTP or Program) made 2,255 bankruptcy and bankruptcy-related criminal referrals during Fiscal Year (FY) 2023. The five most common allegations contained in the FY 2023 referrals involved tax fraud, false oaths or statements, a bankruptcy fraud scheme, concealment, and mail or wire fraud. Of the 2,255 criminal referrals, as of July 3, 2024, formal criminal charges had been filed in connection with 13 of the referrals, 1,346 of the referrals remained under review or investigation, 889 of the referrals were declined for prosecution, and seven were administratively closed.

In FY 2023, the USTP continued to strengthen its partnerships with law enforcement through participation on bankruptcy fraud working groups; through the development and presentation of joint training programs; and by assisting in the investigation and prosecution of bankruptcy and bankruptcy-related crimes, including serving as Special Assistant United States Attorneys (SAUSAs), consulting on bankruptcy law, and testifying as expert, process, or fact witnesses. The Program also continued to receive valuable information through its Internet "Hotline," which offers a convenient means for individuals to report suspected bankruptcy abuse and fraud.

INTRODUCTION

Section 1175 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. 109-162) requires the Director of the EOUST to submit a "report to Congress detailing—(1) the number and types of criminal referrals made by the United States Trustee Program; (2) the outcomes of each criminal referral; (3) for any year in which the number of criminal referrals is less than for the prior year, an explanation of the decrease; and (4) the United States Trustee Program's efforts to prevent bankruptcy fraud and abuse, particularly with respect to the establishment of uniform internal controls to detect common, higher risk frauds, such as a debtor's failure to disclose all assets."

The Program is the component of the Department of Justice whose mission is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public. It consists of 21 regions with 89 field offices nationwide and an Executive Office in Washington, D.C. Each field office is responsible for carrying out numerous administrative, regulatory, and litigation responsibilities under title 11 (the Bankruptcy Code) and title 28 of the United States Code.[1/]

The USTP refers matters that "relate to the occurrence of any action which may constitute a crime" to the United States Attorneys' offices (USAOs) for investigation and prosecution and assists the U.S. Attorneys in "carrying out prosecutions based on such action." 28 U.S.C. § 586(a)(3)(F). In addition, 18 U.S.C. § 158 requires designation of a prosecutor and a Federal Bureau of Investigation (FBI) agent in each district to address bankruptcy-related crimes, affirming the importance of the partnership between the USTP and law enforcement in protecting the integrity of the bankruptcy system.

I. NUMBER AND TYPES OF CRIMINAL REFERRALS

The Program tracks criminal referrals using its internal automated Criminal Enforcement Tracking System (CETS). Program personnel enter information into CETS as each case

[1/] The Program has jurisdiction in all federal judicial districts except those in Alabama and North Carolina.

progresses and review the status of all referrals at least once every six months. The system is designed to provide an accurate measure of criminal enforcement actions, assist in trend identification, and facilitate management improvements.

In FY 2023, the USTP made 2,255 bankruptcy and bankruptcy-related criminal referrals. Each referral may be sent to multiple agencies, but it is counted only once in CETS. Similarly, each referral may contain multiple allegations. The breadth of allegations involved in criminal referrals is evident in Table 1, with referral allegations in 46 separate categories. The five most common allegations contained in the FY 2023 criminal referrals involved tax fraud (52.0 percent), false oaths or statements (33.8 percent), a bankruptcy fraud scheme (29.3 percent), concealment (27.4 percent), and mail or wire fraud (23.9 percent).

Table 1: Criminal Referrals by Type of Allegation[1]

Type of Allegation	Referrals	
	Number	Percent[2]
Tax Fraud [26 U.S.C. § 7201, et seq.]	1,173	52.0%
False Oath/Statement [18 U.S.C. § 152(2) and (3)]	763	33.8%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	660	29.3%
Concealment [18 U.S.C. §§ 152(1) and (7)]	618	27.4%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	539	23.9%
Federal Program Fraud	432	19.2%
CARES Act Fraud	420	18.6%
Concealment/Destruction/Withholding of Documents [18 U.S.C. § 152(8) and (9)]	318	14.1%
Bank Fraud [18 U.S.C. § 1344]	284	12.6%
Identify Theft or Use of False/Multiple SSNs	284	12.6%
Perjury/False Statement	268	11.9%
Destruction, Alteration, or Falsification of Documents in Federal Investigations and Bankruptcy [18 U.S.C. § 1519]	84	3.7%
Conspiracy [18 U.S.C. § 371]	66	2.9%
Mortgage/Real Estate Fraud	51	2.3%
Forged Documents	49	2.2%
Money Laundering [18 U.S.C. §§ 1956 and 1957]	41	1.8%
State Law Violation	34	1.5%
Embezzlement [18 U.S.C. § 153]	29	1.3%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	26	1.2%
Serial Filer	20	0.9%
Obstruction of Justice	18	0.8%

Internet Fraud	18	0.8%
Crypto Assets	15	0.7%
Disregard of Bankruptcy Law/Rule by BPP [18 U.S.C. § 156]	15	0.7%
False Claim [18 U.S.C. § 152(4)]	15	0.7%
Credit Card Fraud/Bust-Out	14	0.6%
Corporate Bust-Outs/Bleed-Out	9	0.4%
Threat of Violence	9	0.4%
Investor Fraud	9	0.4%
Criminal Contempt [18 U.S.C. § 402]	8	0.4%
Corporate Fraud	6	0.3%
Theft of Mail [18 U.S.C. § 1708]	5	0.2%
Misuse of Seals of Courts; Seals of Departments or Agencies [18 U.S.C. §§ 505/506]	4	0.2%
Drug Offense	4	0.2%
Insurance Fraud	4	0.2%
Terrorism	3	0.1%
Health Care Fraud [18 U.S.C. § 1347]	2	0.1%
Bribery [18 U.S.C. § 152(6)]	2	0.1%
Professional Fraud	2	0.1%
Racketeer Influenced and Corrupt Organizations Act	2	0.1%
Immigration Offense	1	<0.1%
Travel with Intent to Engage in Illegal Sexual Conduct [18 U.S.C. § 2423]	1	<0.1%
Impersonation of Federal Employee [18 U.S.C. § 912]	1	<0.1%
Extortion	1	<0.1%
Potential Violation of Restitution Order	1	<0.1%
Arson	1	<0.1%

[1] Allegation information can change over time. Table 1 reflects information contained within CETS as of July 3, 2024.
[2] Percent based on 2,255 referrals. One referral often contains more than one allegation, so the sum of the percentages for referrals will exceed 100 percent.

II. OUTCOMES OF CRIMINAL REFERRALS

Table 2 shows the collective outcome/disposition of the 2,255 criminal referrals made by the Program during FY 2023 as of July 3, 2024.[2/] Of those referrals, 1,346 are under review by the USAOs (40.1 percent) or with an investigative agency (19.6 percent), 13 referrals (0.6 percent) resulted in formal charges, 889 referrals (39.4 percent) were declined for prosecution, and seven referrals (0.3 percent) were administratively closed.[3/]

Table 2: Outcome/Disposition of FY 2023 Referrals[1]

Outcome/Disposition	Referrals	
	Number	Percent[2]
Under Review in U.S. Attorney's Office	904	40.1%
With Investigative Agency	442	19.6%
Formal Charges Filed (Case Active)	6	0.3%
Formal Charges Filed (Case Closed)	7	0.3%
- - At least One Conviction or Guilty Plea	7	
- - At least One Pre-trial Diversion	0	
- - At least One Dismissal	1	
- - At least One Acquittal	0	
Prosecution Declined by United States Attorney	889	39.4%
Administratively Closed	7	0.3%

[1] Outcome and disposition information will change over time. The information contained within Table 2 reflects information contained within CETS as of July 3, 2024.

[2] Rounded percent based on 2,255 referrals.

[2/] The Program is not the source of official disposition information. CETS is designed primarily to track referrals made by the USTP to United States Attorneys. While Program staff work with local USAOs to update disposition information semi-annually, delays in reporting, as well as differences in tracking systems, may result in reporting variances between the agencies.

[3/] Administratively closed referrals may still be under review or investigation by agencies (other than USAOs) that historically have not provided updates to the USTP on referrals. After a referral has been open for a period of time and if the Program is not able to verify the outcome or disposition, the referral is administratively closed in CETS. Referrals that are administratively closed may be reopened at a later date.

The 13 cases referenced in Table 2 in which formal charges were filed between October 1, 2022, and July 3, 2024, are prosecutions that originated from an FY 2023 referral as derived from CETS.[4/] It is important to note that white-collar criminal referrals like those made by the Program often require significant time and resources to investigate. As a result, it generally takes more than two years before there is a reportable action in CETS. Therefore, it is reasonable that a high percentage of cases referred in FY 2023 are still under investigation or review.

III. USTP EFFORTS TO PREVENT BANKRUPTCY FRAUD AND ABUSE

The USTP is committed to identifying and referring for investigation and prosecution bankruptcy fraud and bankruptcy-related crimes. The EOUST's Office of Criminal Enforcement oversees and coordinates the Program's enforcement efforts and has strengthened its ability to detect, refer, and assist in the prosecution of criminal violations. Through issuing guidance and resource materials, participating in working groups, collaborating with its law enforcement partners, and providing extensive training, the USTP has established the necessary systems to detect fraud schemes and to combat fraud and abuse that threaten the integrity of the bankruptcy system.

The following are some highlights of the Program's criminal enforcement efforts in FY 2023.

Bankruptcy Fraud Working Groups. The Program participates in nearly 60 local bankruptcy fraud working groups throughout the country. Members of these working groups include representatives from the USAOs, FBI, United States Postal Inspection Service, Internal Revenue Service-Criminal Investigation, and offices of the Inspector General for the Social Security Administration, the Department of Housing and Urban Development, the United States Secret Service, and the Federal Housing Finance Agency. Working groups provide an effective forum for consultation between the USTP and its law enforcement partners and allow the

[4/] Table 2 reflects only disposition information related to referrals the USTP made in FY 2023. It does not reflect the entirety of prosecutions with bankruptcy charges brought by the Department of Justice in FY 2023. The USTP recorded an additional 34 prosecutions that resulted from referrals made in prior fiscal years.

Program to draw on the collective experience and expertise of the groups to investigate and effectively address fraud and abuse in the bankruptcy system.

One example of a successful collaboration involved the Western District of Louisiana, where a businessman was sentenced to 24 months in prison followed by two years of supervised release after pleading guilty in April 2023 to concealment of assets. The defendant admitted that in his chapter 11 case, he knowingly and fraudulently concealed from creditors his sole ownership of a limousine company by failing to disclose that asset in his bankruptcy documents and monthly operating reports filed with the bankruptcy court. The U.S. Trustee's Shreveport office referred the conduct and provided substantial assistance to the U.S. Attorney and law enforcement in coordination with its working group partners.

In another example, the Central District of Illinois Bankruptcy Fraud Working Group, which is coordinated by the U.S. Trustee for Region 10, collaborated with the USAO and others in the case of a former chapter 7 debtor who was sentenced in April 2023 to 10 months in prison and was ordered to pay more than $59,000 in restitution after pleading guilty to making a false statement in bankruptcy and misappropriating federal program funds. The defendant, a former pastor and operator of a not-for-profit charitable corporation, admitted to making a false statement when he claimed in his 2020 bankruptcy documents and under oath at his section 341 meeting of creditors that he had been paid $42,900 in 2019 from his church when he received tens of thousands more. Additionally, the defendant admitted to misappropriating more than $25,000 of grant funds from the U.S. Department of Housing and Urban Development that were intended to fund summer programs for low-income students and using more than $31,000 in federal student loans for non-educational expenses, including gambling. During the Program's Peoria office's civil investigation, the defendant and his wife waived their chapter 7 discharge. The U.S. Attorney's press release recognized the U.S. Trustee's referral and the substantial assistance provided by the Program.

Special Assistant United States Attorneys (SAUSAs). Nearly two dozen Program attorneys in field offices across the country are designated as SAUSAs to assist USAOs in the investigation and prosecution of bankruptcy and bankruptcy-related crimes.

For example, in the Northern District of Illinois, a Trial Attorney from the USTP's Chicago office served as a SAUSA in the separate prosecutions of a brother and sister, both attorneys, stemming from the brother's part in a conspiracy that diverted more than $8 million from a Chicago bank. After the bank collapsed because of insolvency, federal regulators

attempted to collect on the money as well as properties that the brother received through the embezzlement scheme. The brother then filed a chapter 11 bankruptcy case, but the court removed him as debtor in possession and appointed a chapter 11 trustee over the estate on the U.S. Trustee's motion; the court later converted the case to chapter 7. During his bankruptcy case, the brother, with his sister's assistance, concealed from the bankruptcy court, the trustee, and creditors multiple assets, including interests in real estate and more than $550,000 in cash and negotiable instruments. As part of the scheme, the sister assisted the brother in hiding about $357,000 in cashier's checks, money orders, and other checks—all payable to the brother—by depositing them into her attorney trust account before eventually withdrawing $241,800 from the account as cash. After the bankruptcy trustee discovered the trust account activity and requested turnover of the funds, the sister produced fabricated client ledgers and backdated retention agreements to falsely assert that the funds were fees that she had earned, and she gave false testimony to the same effect. The U.S. Trustee referred the matters and provided substantial support to law enforcement. The sister pleaded guilty to one count of concealing assets from a bankruptcy trustee in 2022 and, in June 2023, was sentenced to 37 months in prison followed by two years of supervised release and was ordered to pay $357,492 in restitution. In March 2023, after a nearly four-week-long trial, a jury found the brother guilty of conspiring to embezzle funds from and to alter records of a financial institution, aiding and abetting embezzlement from a financial institution, engaging in a bankruptcy fraud scheme, concealing property belonging to a bankruptcy estate, and tax fraud. The brother is awaiting sentencing.

In the Eastern District of Michigan, a Trial Attorney in the USTP's Detroit office served as a SAUSA in a matter referred by the Program in which the defendant, a real estate investor, was sentenced in July 2023 to 78 months in prison followed by three years of supervised release after pleading guilty to wire fraud and withholding recorded information in his chapter 7 bankruptcy. The defendant engaged in a sophisticated real estate fraud scheme that he ran before, during, and after his bankruptcy case. The defendant and others working with him made numerous fraudulent misrepresentations to obtain funds from primarily international investors purportedly for investments in real property in the United States. To keep investor money flowing in, the defendant provided false and fraudulent information, including fake deeds, wiring instructions, bank statements, leases, and inspection reports. The defendant also used a fake name to communicate with investors. During his bankruptcy case, the defendant knowingly and fraudulently withheld from the chapter 7 trustee recorded information pertaining to his assets and

financial affairs, and in response the U.S. Trustee filed a successful civil complaint objecting to the defendant's discharge of debts.

Other Staff Support. Nationally, the EOUST's Office of Criminal Enforcement regularly coordinates with USAOs and other members of law enforcement on cases referred by the Program. Staff at the field office level also are frequently relied on to provide substantial post-referral assistance. The following examples illustrate the types of support the Program provides to its law enforcement partners.

In July 2023, a former chapter 7 debtor pleaded guilty to one count of wire fraud in connection with false statements he made in applications for two Paycheck Protection Program (PPP) loans for businesses that he never operated. The U.S. Trustee's Roanoke office referred the matter to the U.S. Attorney for the Western District of Virginia after uncovering the defendant's receipt of a PPP loan for a nonexistent lawn care business. As part of his guilty plea, the defendant admitted that he did not operate a business and that he used the loan proceeds for unauthorized purposes, including significant gambling and other personal expenses. The defendant also admitted to making false statements in a second PPP loan application using another person's name to obtain a loan for a nonexistent day care business. The Roanoke office provided substantial assistance to law enforcement.

Another example of assistance involved a matter referred by the USTP's Madison office to law enforcement in the Western District of Wisconsin that resulted in a successful prosecution. In July 2023, the defendant was sentenced to three years of probation after earlier pleading guilty to one count of bankruptcy fraud. As part of his plea agreement, the defendant acknowledged that he lied in his chapter 7 bankruptcy schedules and at the section 341 meeting of creditors to conceal his ownership of two collector vehicles—including a 1969 Dodge Charger replica of the General Lee from "The Dukes of Hazzard." In imposing sentence, the district judge noted that the bankruptcy system, like many government institutions, "depends critically on the honesty" of those who engage with it. The judge also said that although three years of probation was the "just sentence" given the defendant's health and financial circumstances, a prison term may be required in other bankruptcy fraud cases to "amplify" the general deterrence message. The U.S. Trustee previously obtained a waiver of the defendant's discharge of debts and assisted law enforcement during the investigation.

In addition to the support provided on matters that are referred by the Program, in FY 2023, staff also responded to more than 200 requests for assistance from USAOs, the FBI,

and other law enforcement agencies on matters not originating from a Program referral. In one such matter, the USTP's Baltimore office supported the USAO for the District of Maryland in its successful prosecution of a defendant who pleaded guilty to one count of conspiracy to commit bank fraud and wire fraud and two counts of violating the International Emergency Economic Powers Act. The defendant, a former Department of Transportation employee, operated a business through which he illegally purchased and imported various foreign currencies, including the Iranian rial, and marketed them to customers in the United States. In 2018, the defendant filed a chapter 11 reorganization case, but after the U.S. Trustee successfully objected to the disclosure statement for the debtor's plan of reorganization, the defendant consented to the conversion of the case to a chapter 7 liquidation. During the criminal investigation, USTP staff consulted with the USAO on bankruptcy law and provided information and documents relating to the defendant's bankruptcy case. As part of his plea, the defendant admitted to testifying falsely at his section 341 meeting of creditors that he had stopped importing Iranian currency after U.S. Customs and Border Protection seized one of his shipments and that he had closed his currency-selling business. In truth, the defendant had recruited an associate during his bankruptcy case to help him continue to import and sell foreign currencies while avoiding detection. After the defendant was indicted, the USTP's Baltimore office filed a complaint to revoke his discharge alleging the defendant made false oaths in the bankruptcy, and the defendant stipulated to revocation of his discharge. In July 2023, the defendant was sentenced to 24 months in prison followed by two years of supervised release.

The USTP also assists prosecutions through testimony. For example, the Assistant U.S. Trustee from the USTP's Seattle office testified on the bankruptcy process during the nine-day trial of a defendant who was convicted on 26 counts of conspiracy, bankruptcy fraud, and mail and wire fraud. The defendant and his wife operated a Ponzi scheme under the guise of a "work-at-home" email marketing business. The couple used more than $3 million from the business to buy four properties, a yacht, and several cars before the scheme collapsed. When the defendant filed a chapter 11 case for the company to stop collection efforts by defrauded investors, he failed to reveal that the couple had stolen funds from the business and had transferred assets purchased with the money to various trusts. In total, the couple attempted to conceal more than $3.3 million in assets. After the U.S. Trustee filed a motion to convert the case to chapter 7, the debtor entity made the same request, which the court granted. In September 2019, the wife pleaded guilty to one count of bankruptcy fraud and was sentenced to 38 months in prison

followed by 36 months of supervised release and was ordered to pay $2,359,914 in restitution. After his conviction in December 2022, the defendant did not appear for sentencing and was a fugitive for several months before he was arrested and returned to the Western District of Washington. He was charged in a second indictment in November 2023 for failing to appear and pleaded guilty to that charge in January 2024. The defendant was sentenced in May 2024 to 156 months in prison for his fraud convictions, followed by an additional 16 months for absconding before his original sentencing hearing, and ordered to serve 36 months of supervised release upon completion of his prison term. The district court also ordered the defendant to pay nearly $11 million dollars in restitution.

Training. During FY 2023, the Program sponsored more than 50 bankruptcy and bankruptcy-related fraud training programs that reached about 2,900 federal, state, and local law enforcement personnel; private bankruptcy trustees; USTP staff; and members of the bar and other professional associations throughout the country. Each program is customized to maximize impact, and a variety of educational formats are utilized, including in-person presentations, online meeting technology, and video teleconferences. For example, bankruptcy fraud-related training was provided to FBI White Collar and Legal Squads in Honolulu and Seattle, and USTP staff received instruction on elder and virtual currency fraud.

Bankruptcy Fraud Internet "Hotline." In FY 2023, the USTP documented nearly 400 Hotline submissions from the public via its National Bankruptcy Fraud Hotline email box (USTP.Bankruptcy.Fraud@usdoj.gov). The Hotline offers a convenient means for individuals to report suspected bankruptcy fraud and provide supporting documentation and factual information that may be useful in pursuing allegations. In FY 2023, more than 100 referrals were based on a Hotline submission made in either FY 2023 or a prior fiscal year. While not all submissions rise to the level of a criminal referral, they may lead to a civil enforcement action.

SUMMARY

The United States Trustee Program's criminal enforcement program remained robust in FY 2023 through the actions described in this report. By detecting and referring fraud schemes, collaborating with its law enforcement partners, and providing specialized training, the USTP continues to prioritize its enforcement efforts to combat fraud and abuse and to protect the integrity of the bankruptcy system.

EXHIBIT “C”

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Case No. 6:14CR21**
	:	
PHILIP B. GROGGINS	:	

PLEA AGREEMENT

I have agreed to enter into a plea agreement with the United States of America, pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms and conditions of this agreement are as follows:

A. CHARGE(S) TO WHICH I AM PLEADING GUILTY AND WAIVER OF RIGHTS

1. The Charges and Potential Punishment

My attorney has informed me of the nature of the charge(s) and the elements of the charge(s) that must be proved by the United States beyond a reasonable doubt before I could be found guilty as charged.

I will enter a plea of guilty to Counts 6 and 8 of the Indictment. CPHN TWA

Count ~~One~~ Six charges me with willfully failing to collect or pay taxes, in violation of 26 U.S.C. § 7202. The maximum statutory penalty is a fine of $250,000 and/or imprisonment for a term of five years, plus a term of supervised release of three years. TWA CPHN

Count Eight charges me with Bankruptcy Fraud, in violation of 18 U.S.C. § 152(1). The maximum statutory penalty is a fine of $250,000 and/or imprisonment for a term of five years, plus a term of supervised release of five years.

I understand restitution may be ordered, my assets may be subject to forfeiture, and fees may be imposed to pay for incarceration and supervised release. In addition, a $100 special assessment, pursuant to 18 U.S.C. § 3013, will be imposed per felony count

Defendant's Initials: PBG

of conviction. I further understand my supervised release may be revoked if I violate its terms and conditions. I understand a violation of supervised release increases the possible period of incarceration.

I am pleading guilty as described above because I am in fact guilty and because I believe it is in my best interest to do so and not because of any threats or promises. There has been no promise made whatsoever by any agent or employee of the United States to me as to what the final disposition of this matter will be.

2. Waiver of Constitutional Rights Upon a Plea of Guilty

I acknowledge I have had all of my rights explained to me and I expressly recognize I have the following constitutional rights and, by voluntarily pleading guilty, I knowingly waive and give up these valuable constitutional rights:

a. The right to plead not guilty and persist in that plea;
b. The right to a speedy and public jury trial;
c. The right to assistance of counsel at that trial and in any subsequent appeal;
d. The right to remain silent at trial;
e. The right to testify at trial;
f. The right to confront and cross-examine witnesses called by the government;
g. The right to present evidence and witnesses in my own behalf;
h. The right to compulsory process of the court;
i. The right to compel the attendance of witnesses at trial;
j. The right to be presumed innocent;
k. The right to a unanimous guilty verdict; and
l. The right to appeal a guilty verdict.

B. SENTENCING PROVISIONS

1. General Matters

I understand the determination of what sentence should be imposed, within the confines of any applicable statutory minimums and maximums, is in the sole discretion of the Court subject to its consideration of the United States Sentencing Guidelines ("guidelines" or "U.S.S.G") and the factors set forth at 18 U.S.C. § 3553(a). I understand I will have an opportunity to review a copy of my presentence report in advance of my sentencing hearing and may file objections, as appropriate. I will have an opportunity at my sentencing hearing to present evidence, bring witnesses, cross-examine any witnesses the government calls to testify, and argue to the Court what an appropriate sentence

Defendant's Initials: _____

should be.

I understand I will not be eligible for parole during any term of imprisonment imposed. I have discussed sentencing issues with my attorney and realize there is a substantial likelihood I will be incarcerated.

I understand the Court is not bound by any recommendation or stipulation and may sentence me up to the statutory maximum. I understand I will not be allowed to withdraw my plea of guilty if the Court disregards the stipulations and/or recommendations set forth in the plea agreement. I understand the government will object to any sentence below the guideline range.

2. Sentencing Guidelines

I stipulate and agree that all matters pertaining to any of the counts of the charging document(s), including any dismissed counts, are relevant conduct for purposes of sentencing.

I understand guideline sections may be applicable to my case and the United States and I will be free to argue whether these sections should or should not apply; to the extent the arguments are not inconsistent with the stipulations, recommendations and terms set forth in this plea agreement.

The United States agrees to recommend a sentence within the applicable guideline range.

The United States will not object to any alternatives to incarceration available in the applicable guideline range.

I agree to accept responsibility for my conduct. If I comply with my obligations under this plea agreement and accept responsibility for my conduct, the United States will recommend the Court grant me a two-level reduction in my offense level, pursuant to U.S.S.G. § 3E1.1(a) and, if applicable, at sentencing, will move that I receive a one-level reduction in my offense level, pursuant to U.S.S.G. § 3E1.1(b). However, I stipulate that if I fail to accept responsibility for my conduct or fail to comply with any provision of this plea agreement, I should not receive credit for acceptance of responsibility.

3. Substantial Assistance

I understand the United States retains all of its rights pursuant to Fed. R. Crim. P.

Defendant's Initials: _____

35(b), U.S.S.G. §5K1.1 and 18 U.S.C. § 3553(e). I understand even if I fully cooperate with law enforcement, the United States is under no obligation to make a motion for the reduction of my sentence. I understand if the United States makes a motion for a reduction in my sentence, the Court, after hearing the evidence, will determine how much of a departure, if any, I should be given.

4. Cooperation With The Internal Revenue Service

I agree to make accessible all available, books, records and documents to the Internal Revenue Service for use in computing my taxes, interest and penalties for the quarterly periods from at least September 30, 2007 through at least December 31, 2009 and my personal tax returns. I understand that the standard of proof in criminal and civil cases is substantially different, with the standard of proof in a criminal prosecution being much higher. I understand that the United States will recommend that the payment of taxes, penalties and interest shall be included as a condition of Supervised Release. I further understand that my failure to make good faith efforts toward payment of my tax liability, with whatever means I have at my disposal, may be a violation of this agreement, as well as a violation of a condition of my Supervised Release and that the United States Attorney will be free to refile any criminal charges and/or to bring any new criminal charges and to prosecute me on those charges. I will execute any documents necessary to release the funds I have in any repository, bank, investment or other financial institution in order to make partial or total payment toward the amount of taxes, penalties and interest assessed by the Internal Revenue Service. I agree that the any amount of loss referred in this Agreement, in the Presentece Investigative Report or at my Sentencing Hearing does not bind the Internal Revenue Service and that the Internal Revenue Service may be able to prove greater loss resulting from my conduct in future civil claims and/or civil suits.

I understand that the United States will recommend that as a condition of supervised release that: I will be required to obey all Internal Revenue Service laws and regulations, as well as being required to file tax true and correct tax returns during the period of supervised release in a timely fashion and file or amend any tax returns for prior years; and to cooperate fully with the Internal Revenue by providing books, records, and other information to allow for the accurate ascertainment and assessment of taxes and paying all taxes, penalties and interest due and owing consistent with a program devised by the IRS or the Probation Office

5. Monetary Obligations

a. Special Assessments, Fines and Restitution

Defendant's Initials: _____

I understand persons convicted of crimes are required to pay a mandatory assessment of $100.00 per felony count of conviction. I agree I will submit to the U.S. Clerk's Office, a certified check, money order, or attorney's trust check, made payable to the "Clerk, U.S. District Court" for the total amount due for mandatory assessments prior to entering my plea of guilty.

I agree to pay restitution for the entire scope of my criminal conduct, including, but not limited to, all matters included as relevant conduct. In addition, I agree to pay any restitution required by law, including, but not limited to, amounts due pursuant to 18 USC §§ 2259, 3663, and/or 3663A. I understand and agree a requirement I pay restitution for all of the above-stated matters will be imposed upon me as part of any final judgment in this matter.

I further agree to make good faith efforts toward payment of all mandatory assessments, restitution and fines, with whatever means I have at my disposal. I agree failure to do so will constitute a violation of this agreement. I will execute any documents necessary to release the funds I have in any repository, bank, investment, other financial institution, or any other location in order to make partial or total payment toward the mandatory assessments, restitution and fines imposed in my case.

I fully understand restitution and forfeiture are separate financial obligations which may be imposed upon a criminal defendant. I further understand there is a process within the Department of Justice whereby, in certain circumstances, forfeited funds may be applied to restitution obligations. I understand no one has made any promises to me that such a process will result in a decrease in my restitution obligations in this case.

I understand and agree, pursuant to 18 U.S.C. §§ 3613 and 3664(m), whatever monetary penalties are imposed by the Court will be due immediately and subject to immediate enforcement by the United States as provided for by statute. I understand if the Court imposes a schedule of payments, that schedule is only a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

I agree to grant the United States a wage assignment, liquidate assets, or complete any other tasks which will result in immediate payment in full, or payment in the shortest time in which full payment can be reasonably made as required under 18 U.S.C. § 3572(d).

I agree the following provisions, or words of similar effect, should be included as

Defendant's Initials: _____

conditions of probation and/or supervised release: (1) "The defendant shall notify the Financial Litigation Unit, United States Attorney's Office, in writing, of any interest in property obtained, directly or indirectly, including any interest obtained under any other name, or entity, including a trust, partnership or corporation after the execution of this agreement until all fines, restitution, money judgments and monetary assessments are paid in full" and (2) "The Defendant shall notify the Financial Litigation Unit, United States Attorney's Office, in writing, at least 30 days prior to transferring any interest in property owned directly or indirectly by Defendant, including any interest held or owned under any other name or entity, including trusts, partnership and/or corporations until all fines, restitution, money judgments and monetary assessments are paid in full."

The parties will also jointly recommend that as a condition of probation or supervised release, Defendant will notify the Financial Litigation Unit, United States Attorney's Office, before Defendant transfers any interest in property owned directly or indirectly by Defendant, including any interest held or owned under any other name or entity, including trusts, partnership and/or corporations. See 18 U.S.C. § 3664(k), (n).

Regardless of whether or not the Court specifically directs participation or imposes a schedule of payments, I agree to fully participate in inmate employment under any available or recommended programs operated by the Bureau of Prisons.

I agree any payments made by me shall be applied fully to the non-joint and several portion of my outstanding restitution balance until the non-joint and several portion of restitution is paid in full, unless the Court determines that to do so would cause a hardship to a victim of the offense(s).

b. <u>Duty to Make Financial Disclosures</u>

I understand in this case there is a possibility substantial fines and/or restitution may be imposed. In order to assist the United States as to any recommendation and in any necessary collection of those sums, I agree, if requested by the United States, to provide a complete and truthful financial statement to the United States Attorney's Office, within 30 days of the request or 3 days prior to sentencing, whichever is earlier, detailing all income, expenditures, assets, liabilities, gifts and conveyances by myself, my spouse and my dependent children and any corporation, partnership or other entity in which I hold or have held an interest, for the period starting on January 1st of the year prior to the year my offense began and continuing through the date of the statement. This financial statement shall be submitted in a form acceptable to the United States Attorney's office.

From the time of the signing of this agreement or the date I sign the financial

Defendant's Initials: _____

statement, whichever is earlier, I agree not to convey anything of value to any person without the authorization of the United States Attorney's Office. I agree to take and pass a polygraph examination conducted by a qualified law enforcement examiner selected by the United States Attorney's Office, if requested to do so, concerning the accuracy of my financial statement.

c. Understanding of Collection Matters

I understand:

1. as part of the judgment in this case I will be ordered to pay one or more monetary obligations;
2. payment should be made as ordered by the Court;
3. I must mail payments, by cashier's check or money order, payable to the "Clerk, U.S. District Court" to: 210 Franklin Road, S.W. Room 540, Roanoke, Virginia 24006; and include my name and court number on the check or money order;
4. interest (unless waived by the Court) and penalties must be imposed for late or missed payments;
5. the United States may file liens on my real and personal property that will remain in place until monetary obligations are paid in full, or until liens expire (the later of 20 years from date of sentencing or release from incarceration);
6. if I retain counsel to represent me regarding the United States' efforts to collect any of my monetary obligations, I will immediately notify the United States Attorney's Office, ATTN: Financial Litigation Unit, P.O. Box 1709, Roanoke, Virginia 24008-1709, in writing, of the fact of my legal representation; and
7. I, or my attorney if an attorney will represent me regarding collection of monetary obligations, can contact the U.S. Attorney's Office's Financial Litigation Unit at 540/857-2259.

C. ADDITIONAL MATTERS

1. Waiver of Right to Appeal

Knowing that I have a right of direct appeal of my sentence under 18 U.S.C. § 3742(a) and the grounds listed therein, I expressly waive the right to appeal my sentence on those grounds or on any ground. In addition, I hereby waive my right of appeal as to any and all other issues in this matter and agree I will not file a notice of appeal. I am

Defendant's Initials: _____

knowingly and voluntarily waiving any right to appeal. By signing this agreement, I am explicitly and irrevocably directing my attorney not to file a notice of appeal. ***Notwithstanding any other language to the contrary, I am not waiving my right to appeal or to have my attorney file a notice of appeal, as to any issue which cannot be waived, by law.*** I understand the United States expressly reserves all of its rights to appeal. **I agree and understand if I file any court document (except for an appeal based on an issue that cannot be waived, by law, or a collateral attack based on ineffective assistance of counsel) seeking to disturb, in any way, any order imposed in my case such action shall constitute a failure to comply with a provision of this agreement.**

2. **Waiver of Right to Collaterally Attack**

I waive any right I may have to collaterally attack, in any future proceeding, any order issued in this matter, unless such attack is based on ineffective assistance of counsel, and agree I will not file any document which seeks to disturb any such order, unless such filing is based on ineffective assistance of counsel. **I agree and understand that if I file any court document (except for an appeal based on an issue not otherwise waived in this agreement; an appeal based on an issue that cannot be waived, by law; or a collateral attack based on ineffective assistance of counsel) seeking to disturb, in any way, any order imposed in my case, such action shall constitute a failure to comply with a provision of this agreement.**

3. **Information Access Waiver**

I knowingly and voluntarily agree to waive all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. §552, or the Privacy Act of 1974, 5 U.S.C. §552a.

4. **Waiver of Witness Fee**

I agree to waive all rights, claims or interest in any witness fee I may be eligible to receive pursuant to 28 U.S.C. § 1821, for my appearance at any Grand Jury, witness conference or court proceeding.

5. **Abandonment of Seized Items**

By signing this plea agreement, I hereby abandon my interest in, and consent to

Defendant's Initials: _____

the official use, destruction or other disposition of each item obtained by any law enforcement agency during the course of the investigation, unless such item is specifically provided for in another provision of this plea agreement. I further waive any and all notice of any proceeding to implement the official use, destruction, abandonment, or other disposition of such items.

6. Deportation

I understand that, if I am not a citizen of the United States, I may be subject to deportation from the United States as a result of my conviction for the offense(s) to which I am pleading guilty.

7. Admissibility of Statements

I understand if I withdraw my plea(s) of guilty, any statements I make (including this plea agreement, and my admission of guilt) during or in preparation for any guilty plea hearing, sentencing hearing, or other hearing and any statements I make or have made to law enforcement agents, in any setting (including during a proffer), may be used against me in this or any other proceeding. I knowingly waive any right I may have under the Constitution, any statute, rule or other source of law to have such statements, or evidence derived from such statements, suppressed or excluded from being admitted into evidence and stipulate that such statements can be admitted into evidence.

8. Additional Obligations

I agree not to commit any of the following acts:

- attempt to withdraw my guilty plea;
- deny I committed any crime to which I have pled guilty;
- make or adopt any arguments or objections to the presentence report that are inconsistent with this plea agreement;
- obstruct justice;
- fail to comply with any provision of this plea agreement;
- commit any other crime;
- make a false statement; or
- fail to enter my plea of guilty when scheduled to do so, unless a continuance is agreed to by the United States Attorney's Office and granted by the Court.

D. REMEDIES AVAILABLE TO THE UNITED STATES

Defendant's Initials: _____

I hereby stipulate and agree that the United States Attorney's office may, at its election, pursue any or all of the following remedies if I fail to comply with any provision of this agreement: (a) declare this plea agreement void; (b) refuse to dismiss any charges; (c) reinstate any dismissed charges; (d) file new charges; (e) withdraw any substantial assistance motion made, regardless of whether substantial assistance has been performed; (f) refuse to abide by any provision, stipulations, and/or recommendations contained in this plea agreement; or (g) take any other action provided for under this agreement or by statute, regulation or court rule.

In addition, I agree if, for any reason, my conviction is set aside, or I fail to comply with any obligation under the plea agreement, the United States may file, by indictment or information, any charges against me which were filed and/or could have been filed concerning the matters involved in the instant investigation. I hereby waive my right under Federal Rule of Criminal Procedure 7 to be proceeded against by indictment and consent to the filing of an information against me concerning any such charges. I also hereby waive any statute of limitations defense as to any such charges.

The remedies set forth above are cumulative and not mutually exclusive. The United States' election of any of these remedies, other than declaring this plea agreement void, does not, in any way, terminate my obligation to comply with the terms of the plea agreement. The use of "if" in this section does not mean "if, and only if."

E. GENERAL PROVISIONS

1. Limitation of Agreement

This agreement only binds the United States Attorney's Office for the Western District of Virginia. It does not bind any state or local prosecutor, other United States Attorney's Office or other office or agency of the United States Government, including, but not limited to, the Tax Division of the United States Department of Justice, or the Internal Revenue Service of the United States Department of the Treasury. These individuals and agencies remain free to prosecute me for any offense(s) committed within their respective jurisdictions.

2. Effect of My Signature

I understand my signature on this agreement constitutes a binding offer by me to enter into this agreement. I understand the United States has not accepted my offer until it signs the agreement.

Defendant's Initials: _____

3. Effective Representation

I have discussed the terms of the foregoing plea agreement and all matters pertaining to the charges against me with my attorney and am fully satisfied with my attorney and my attorney's advice. At this time, I have no dissatisfaction or complaint with my attorney's representation. I agree to make known to the Court no later than at the time of sentencing any dissatisfaction or complaint I may have with my attorney's representation.

4. Waiver of Claims

I agree to make known to the Court no later than at the time of sentencing any claim of misconduct or claim of an ethical, civil or criminal violation by any government attorney, agent, employee, or contractor. I hereby waive my right to make any such claim I fail to bring to the Court's attention prior to sentencing.

5. Final Matters

I understand the Court is not bound by any recommendations or stipulations contained in this agreement and may sentence me up to the maximum provided by law.

I understand if the sentence is more severe than I expected, I will have no right to withdraw my guilty plea.

I understand a thorough presentence investigation will be conducted and sentencing recommendations independent of the United States Attorney's Office will be made by the presentence preparer, which the Court may adopt or take into consideration. I understand any calculation regarding the guidelines by the United States Attorney's Office or by my attorney is speculative and is not binding upon the Court, the Probation Office or the United States Attorney's Office. No guarantee has been made by the United States Attorney's Office regarding the effect of the guidelines on my case.

I understand the prosecution will be free to allocute or describe the nature of this offense and the evidence in this case and, in all likelihood, will recommend I receive a substantial sentence.

I understand the United States retains the right, notwithstanding any provision in this plea agreement, to inform the Probation Office and the Court of all relevant facts, to address the Court with respect to the nature and seriousness of the offense(s), to respond

Defendant's Initials: _____

to any questions raised by the Court, to correct any inaccuracies or inadequacies in the presentence report and to respond to any statements made to the Court by or on behalf of the defendant.

I willingly stipulate there is a sufficient factual basis to support each and every material factual allegation contained within the charging document(s) to which I am pleading guilty.

I understand this agreement does not apply to any crimes or charges not addressed in this agreement. I understand if I should testify falsely in this or in a related proceeding I may be prosecuted for perjury and statements I may have given authorities pursuant to this agreement may be used against me in such a proceeding.

I understand my attorney will be free to argue any mitigating factors on my behalf; to the extent they are not inconsistent with the terms of this agreement. I understand I will have an opportunity to personally address the Court prior to sentence being imposed.

This writing sets forth the entire understanding between the parties and constitutes the complete plea agreement between the United States Attorney for the Western District of Virginia and me, and no other additional terms or agreements shall be entered except and unless those other terms or agreements are in writing and signed by the parties. This plea agreement supersedes all prior understandings, promises, agreements, or conditions, if any, between the United States and me.

I have consulted with my attorney and fully understand all my rights. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it. I have not been coerced, threatened, or promised anything other than the terms of this plea agreement, described above, in exchange for my plea of guilty. Being aware of all of the possible consequences of my plea, I have independently decided to enter this plea of my own free will, and am affirming that agreement on this date and by my signature below.

Date: 12/25/14

Philip B. Groggins, Defendant

I have fully explained all rights available to my client with respect to the offenses listed in the pending charging document(s). I have carefully reviewed every part of this plea agreement with my client. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Defendant's Initials: _____

If I will continue to represent my client regarding the United States' efforts to collect any monetary obligations, I will notify the United States Attorney's Office, ATTN: Financial Litigation Unit, P.O. Box 1709, Roanoke, Virginia 24008-1709, in writing, of the fact of my continued legal representation within 10 days of the entry of judgment in this case.

Date: 11/25/14

Larry W. Shelton

Larry Shelton, Esq.
Counsel for Defendant

Date: 11/25/2014

C. Patrick Hogeboom III

C. Patrick Hogeboom III
Assistant United States Attorney
WA State Bar No. 16598

Defendant's Initials: _____

EXHIBIT “D”

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Case No. 6:14CR21**
	:	
PHILIP B. GROGGINS	:	

FACTUAL BASIS

If this matter were to go to trial, the United States of America would prove beyond a reasonable doubt with admissible and relevant evidence the following:

From 2007 through 2009, the Defendant PHILIP GROGGINS was the owner and operator of two businesses. One business built houses and the other one developed a golf club located in Bedford County Virginia, which is within the Western District of Virginia. GROGGINS operated both entities under the name of the Groggins Group, a Schedule C business.

During the relevant years, GROGGINS employed individuals and withheld from their wages Social Security taxes, Medicare taxes, and income taxes. GROGGINS filed Forms 941 with the Internal Revenue Service late. The Forms 941 understated the amount of wages paid and the amount of taxes that had been withheld from his employees' wages. In addition, GROGGINS willfully failed to pay over a portion of the withheld taxes that he reported on the Forms 941.

MM, GROGGINS office assistant testified in the Grand Jury that she started working for the Groggins Group in late 2006. She stated that: she knew nothing about payroll matters; she was trained by GROGGINS in the accounting of wages and withholding taxes, as well as the preparation of Forms 941 and W-2; and that

everything she did was done at GROGGIN's direction. MM prepared payroll checks for GROGGINS' signature, but GROGGINS did not sign the checks until he checked the hours worked by each employee. He maintained a notebook in which he kept track of the number of hours worked by each employee. The notebook was separate and apart from the time cards maintained by MM.

When contacted by IRS Agents, MM provided copies of the Forms W-2 that she prepared. When compared with the Forms W-2 filed with the Internal Revenue Service, it was determined that GROGGINS had under reported wages and the amount of taxes withheld. MM discovered that GROGGINS was not paying over the Social Security withholdings when she retired and had her benefits delayed due to the fact that the Social Security Administration had no record of her employment with the Goggins Group.

Several other Groggins Group employees, including supervisors, stated that GROGGINS controlled each and every financial aspect of the Groggins Group. He made all decisions regarding: the hiring and firing of workers; the payment of their wages; and the payment of their withholdings to the IRS. In addition, GROGGINS paid the employees for overtime with a separate check, which the investigation determined that no taxes were withheld from overtime wages. Once an employee worked in excess of 40 hours a week, the employee was treated as a subcontractor. However, the IRS has no record of any Form 1099s being filed reporting the overtime payments.

An analysis of Groggins Group and IRS records was performed by the IRS Special Agent. Ex. 1. That analysis determined the amount of employment taxes that GROGGINS failed to pay over, as well as the amount he was required to match.

On April 10, 2014, GROGGINS filed a Petition with the United States Bankruptcy Court for the District of Maryland. The Petition listed the street address as 801 Mount Pleasant St, Baltimore, MD, 21202. However, at the time of filing, GROGGINS resided in Fincastle, Virginia. The case was dismissed on April 16, 2014. A search of the public records determined that no such street address existed in the State of Maryland.

On July 23, 2014, GROGGINS filed a pro se Chapter 13 Petition for Bankruptcy in the Bankruptcy Court for the Western District of Virginia. The Petition required a listing of all prior Bankruptcy cases filed in the last eight years. Although GROGGINS acknowledged an earlier Bankruptcy filing in the Western District of Virginia, he failed to disclose that he had previously filed in the District of Maryland. GROGGINS signed the Petition under penalties of perjury.

The Bankruptcy Trustee for the Western District of Virginia testified that the disclosure of a prior bankruptcy filing within 8 years is a material fact. The Trustee reviews prior filings to determine whether the debtor is entitled to a Discharge and frequent Bankruptcy filings may result in the loss of the benefit of an Automatic Stay.

An Automatic Stay requires all creditors to stop all collection activity.

Respectfully submitted,

TIMOTHY J. HEAPHY
United States Attorney

By: C. Patrick Hogeboom III
C. Patrick Hogeboom, III
Assistant United States Attorney

SEEN AND AGREED:

Date: 12/29/14

PHILIP B. GROGGINS
Defendant

Date: 12/29/14

Larry W. Shelton
Larry Shelton, Esq.
Attorney for PHILIP B. GROGGINS

EXHIBIT “E”

AO 245B (Rev. 09/19 - VAW Additions 08/22) Judgment in a Criminal Case Sheet 1

UNITED STATES DISTRICT COURT
Western District of Virginia

UNITED STATES OF AMERICA
V.
RICHARD HAMLETT

JUDGMENT IN A CRIMINAL CASE

Case Number: DVAW724CR000008-001

Case Number:

USM Number: 06862-511

Beatrice Diehl, Nia Vidal, Wesley Martinez, FPD
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☒ was found guilty on count(s) 3 and 4 of the indictment after a plea of not guilty,

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §1623(a)	Perjury	6/26/2023	3
18 U.S.C. §1001(a)(2)	False Statement	9/26/2023	4

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) 1 and 2 of the indictment

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

2/26/2025
Date of Imposition of Judgment

/s/ Elizabeth K. Dillon
Signature of Judge

Elizabeth K. Dillon, Chief United States District Judge
Name and Title of Judge

3/4/2025
Date

DEFENDANT: RICHARD HAMLETT
CASE NUMBER: DVAW724CR000008-001

PROBATION

You are hereby sentenced to probation for a term of :

One (1) year; consisting of one (1) year as to each of counts 3 and 4 to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*

4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*
7. ☐ You must make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. *(check if applicable)*
8. You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.
10. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: RICHARD HAMLETT
CASE NUMBER: DVAW724CR000008-001

STANDARD CONDITIONS OF SUPERVISION

As part of your probation, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of the time you were sentenced, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: RICHARD HAMLETT
CASE NUMBER: DVAW724CR000008-001

SPECIAL CONDITIONS OF SUPERVISION

1) The defendant shall pay any special assessment and fine that is imposed by this judgment.

2) The defendant shall provide the probation officer with access to any requested financial information.

3) The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.

4) The defendant shall reside in a residence free of firearms, ammunition, destructive devices, and dangerous weapons.

5) The defendant shall submit his person, property, house, residence, vehicle, papers, or office to searches conducted by a United States probation officer. Failure to submit to searches may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct searches pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation.

DEFENDANT: RICHARD HAMLETT
CASE NUMBER: DVAW724CR000008-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assssment**
TOTALS	$ 200.00 ($100 each count)	$	$ 200.00 ($100 each count)	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS		

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: RICHARD HAMLETT

Judgment - Page 6 of 6

CASE NUMBER: DVAW724CR000008-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, the total criminal monetary penalties are due immediately and payable as follows:

A ☒ Lump sum payment of $ 200 immediately, balance payable

☐ not later than _____, or

☒ in accordance with ☒ C, ☐ D, ☐ E, ☐ F or, ☐ G below); or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☐ F, or ☐ G below); or

C ☒ Payment in equal monthly (e.g., weekly, monthly, quarterly) installments of $ 25 over a period of months (e.g., months or years), to commence 60 (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ During the term of imprisonment, payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____, or _____ % of the defendant's income, whichever is greater, to commence _____ (e.g., 30 or 60 days) after the date of this judgment; AND payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ during the term of supervised release, to commence _____ (e.g., 30 or 60 days) after release from imprisonment.

G ☐ Special instructions regarding the payment of criminal monetary penalties:

Pursuant to 18 U.S.C.§3612(b)(F), if other than immediate payment is permitted, a requirement that, until the fine or restitution order is paid in full, the defendant shall notify the Attorney General of any change in the mailing address or residence of the defendant not later than thirty days after the change occurs.

Any installment schedule shall not preclude enforcement of the restitution or fine order by the United States under 18 U.S.C §§ 3613 and 3664(m).

Any installment schedule is subject to adjustment by the court at any time during the period of imprisonment or supervision, and the defendant shall notify the probation officer and the U.S. Attorney of any change in the defendant's economic circumstances that may affect the defendant's ability to pay.

All criminal monetary penalties shall be made payable to the Clerk, U.S. District Court, 210 Franklin Rd., Suite 540, Roanoke, Virginia 24011.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Any obligation to pay restitution is joint and several with other defendants, if any, against whom an order of restitution has been or will be entered.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

EXHIBIT “F”

AO 245B (Rev. 9/11 - VAW Additions 6/05) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT
Western District of Virginia

UNITED STATES OF AMERICA
V.
PHILIP B. GROGGINS

JUDGMENT IN A CRIMINAL CASE

Case Number: DVAW614CR000021-001

Case Number:

USM Number: 18671-084

Larry W. Shelton
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) Six (6) and Eight (8)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty,

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
26 U.S.C. § 7202	Willful Failure to Collect or Pay Over Taxes	12/31/2009	6
18 U.S.C. § 152(3)	Bankruptcy Fraud	07/23/2014	8

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☒ Count(s) 1, 2, 3, 4, 5, and 7 ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

May 21, 2015
Date of Imposition of Judgment

Signature of Judge

Norman K. Moon, United States District Judge
Name and Title of Judge

May 22, 2015
Date

DEFENDANT: PHILIP B. GROGGINS
CASE NUMBER: DVAW614CR000021-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

27 months (The term consists of 27 months on each of Counts 6 and 8, to be served concurrently.)

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before _____ on _____

☒ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: PHILIP B. GROGGINS
CASE NUMBER: DVAW614CR000021-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

3 years (This term consists of 3 years on each of Counts 6 and 8, all such terms to run concurrently.)

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such no tifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: PHILIP B. GROGGINS
CASE NUMBER: DVAW614CR000021-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall pay any special assessment, fine, and/or restitution that is imposed by this judgment.
2. The defendant shall provide the probation officer with access to any requested financial information.
3. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.
4. The defendant shall file all tax returns with the Internal Revenue Service as required by law and provide the probation office with proof of such filings.
5. The defendant shall cooperate with the Internal Revenue Service to pay all outstanding taxes, interest and penalties.
6. The defendant shall make accessible all available books, records, and documents to the Internal Revenue Service for use in computing taxes, interest and penalties for the quarterly periods from at least September 30, 2007, through at least December 31, 2009, and the defendant's personal tax returns.
7. The defendant shall reside in a residence free of firearms, ammunition, destructive devices, and dangerous weapons.
8. The defendant shall submit to warrantless search and seizure of person and property as directed by the probation officer, to determine whether the defendant is in possession of firearms.

DEFENDANT: PHILIP B. GROGGINS
CASE NUMBER: DVAW614CR000021-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 200.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$0.00	$0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 13, 1996.

DEFENDANT: PHILIP B. GROGGINS

CASE NUMBER: DVAW614CR000021-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, the total criminal monetary penalties are due immediately and payable as follows:

A ☒ Lump sum payment of $ 200.00 immediately, balance payable

☐ not later than _____, or

☐ in accordance ☐ C, ☐ D, ☐ E, ☐ F or, ☐ G below); or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☐ F, or ☐ G below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ During the term of imprisonment, payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____, or _____ % of the defendant's income, whichever is greater, to commence _____ (e.g., 30 or 60 days) after the date of this judgment; AND payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ during the term of supervised release, to commence _____ (e.g., 30 or 60 days) after release from imprisonment.

G ☐ Special instructions regarding the payment of criminal monetary penalties:

Any installment schedule shall not preclude enforcement of the restitution or fine order by the United States under 18 U.S.C §§ 3613 and 3664(m).

Any installment schedule is subject to adjustment by the court at any time during the period of imprisonment or supervision, and the defendant shall notify the probation officer and the U.S. Attorney of any change in the defendant's economic circumstances that may affect the defendant's ability to pay.

All criminal monetary penalties shall be made payable to the Clerk, U.S. District Court, 210 Franklin Rd., Suite 540, Roanoke, Virginia 24011, for disbursement.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Any obligation to pay restitution is joint and several with other defendants, if any, against whom an order of restitution has been or will be entered.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

EXHIBIT “G”

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA v. BRUCE H. MATSON, Defendant.	No. 3:21-cr-79

PLEA AGREEMENT

Raj Parekh, Acting United States Attorney for the Eastern District of Virginia; undersigned counsel for the United States; the defendant, Bruce H. Matson; and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of this Plea Agreement are as follows:

1. Offense and Maximum Penalties

The defendant agrees to waive indictment and plead guilty to a single count Criminal Information, charging the defendant with Obstruction of an Official Proceeding, in violation of 18 U.S.C. § 1505. The maximum penalties for this offense are: a maximum term of 5 years of imprisonment, a fine of $250,000, a special assessment pursuant to 18 U.S.C § 3013, and a maximum supervised release term of 3 years. The defendant understands that any supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the Statement of Facts filed with this Plea

Agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The Statement of Facts, which is hereby incorporated into this Plea Agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(c) of the Sentencing Guidelines.

3. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this Plea Agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

a. the right to plead not guilty and to persist in that plea;

b. the right to a jury trial;

c. the right to be represented by counsel—and, if necessary, have the court appoint counsel—at trial and at every other stage of the proceedings; and

d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

4. Sentencing Guidelines, Recommendations, and Roles

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above, but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may

impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the United States and the defendant will recommend to the Court that the following Sentencing Guidelines provisions apply. The parties agree that Sentencing Guidelines Section 2J1.2 applies to Obstruction of an Official Proceeding, in violation of 18 U.S.C. § 1505. The parties further agree that because the offense involved obstructing the investigation of embezzlement from an estate, in violation 18 U.S.C. § 153, Section 2J1.2(c)(1) requires cross references to Sections 2X3.1 and 2B1.1. Based on the application of and cross references to the aforementioned Sentencing Guidelines Sections, the parties agree the following provisions apply:

U.S.S.G. § 2B1.1(a)	Base Offense Level	6
U.S.S.G. § 2B1.1(b)(1)(J)	Loss Amount Greater than $3,500,000	+18
U.S.S.G. § 2B1.1(b)(9)(B)	Misrepresentation During Bankruptcy Proceeding	+2
U.S.S.G. § 3B1.3	Abuse of Position of Trust	+2

The parties agree, pursuant to Application Note 7 of Section 3C1.1, the 2-point enhancement pursuant to 3C1.1 shall not apply because the defendant was convicted of obstruction of justice covered by Section 2J1.2. The parties further agree that Section 2X3.1(a)(1) requires a six-level reduction from the total offense level.

The United States and the defendant agree that the defendant has assisted the government in the investigation and prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the

government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. If the defendant qualifies for a two-level decrease in offense level pursuant to U.S.S.G. § 3E1.1(a) and the offense level prior to the operation of that section is a level 16 or greater, the government agrees to file, pursuant to U.S.S.G. § 3E1.1(b), a motion prior to, or at the time of, sentencing for an additional one-level decrease in the defendant's offense level.

The United States and the defendant have not agreed on any further sentencing issues, whether related to the Sentencing Guidelines or the factors listed in 18 U.S.C. § 3553(a), other than those set forth above or elsewhere in this Plea Agreement. Accordingly, any such determinations will be made by the Court at sentencing. Any agreement on a Guidelines provision does not limit the parties' arguments as to any other Guidelines provisions or other sentencing factors under Section 3553(a), including arguments for a sentence within or outside the advisory Guidelines range found by the Court at sentencing.

5. Waiver of Appeal, FOIA, and Privacy Act Rights

The defendant also understands that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in 18 U.S.C. § 3742 or on any ground whatsoever other than an ineffective assistance of counsel claim that is cognizable on direct appeal, in exchange for the concessions made by the United States in this Plea Agreement. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any

records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

6. Immunity from Further Prosecution in This District

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the Information or Statement of Facts. This Plea Agreement and Statement of Facts does not confer on the defendant any immunity from prosecution by any state government in the United States.

7. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to 18 U.S.C. § 3613 and 18 U.S.C. § 3572, all monetary penalties imposed by the Court, including restitution, will be due immediately and subject to immediate enforcement by the United States as provided for in Section 3613. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. Until all monetary penalties are paid in full, the defendant will be referred to the Treasury Offset Program so that any federal payment or transfer of returned property to the defendant will be offset and applied to pay the defendant's unpaid monetary penalties. If the defendant is incarcerated, the defendant agrees to participate voluntarily in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments. Defendant agrees to make good-faith efforts toward payment of all monetary penalties imposed by the Court.

8. Special Assessment

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of $100 per felony count of conviction, pursuant to 18 U.S.C. § 3013(a)(2)(A).

9. Payment of Taxes and Filing of Tax Returns

The defendant consents to any motion by the United States under Federal Rule of Criminal Procedure 6(e)(3)(E) to disclose grand jury material to the Internal Revenue Service for use in computing and collecting the defendant's taxes, interest, and penalties, and to the civil and forfeiture sections of the U.S. Attorney's Office for use in identifying assets and collecting fines and restitution. The defendant also agrees to file true and correct tax returns for the year(s) 2018 and 2019 within sixty days and to pay all taxes, interest, and penalties for the year(s) 2018 and 2019 within a reasonable time in accordance with a plan to be devised by the Probation Office. The defendant further agrees to make all books, records, and documents available to the Internal Revenue Service for use in computing defendant's taxes, interest, and penalties for the year(s) 2018 and 2019.

10. Breach of the Plea Agreement and Remedies

This Plea Agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this Plea Agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state, or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

a. The United States will be released from its obligations under this agreement. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement.

b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense.

c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the Statement of Facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines, or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of this Plea Agreement by a preponderance of the evidence.

11. Nature of the Agreement and Modifications

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and the defendant's attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this Plea Agreement or any associated documents filed with the Court, to cause the defendant to plead guilty. Any modification of this Plea

Agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Raj Parekh
Acting United States Attorney

By: Katherine Lee Martin
Katherine Lee Martin
Assistant United States Attorney

By: Kevin S. Elliker
Kevin S. Elliker
Assistant United States Attorney

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal Information. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this Plea Agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: 7/13/21

Bruce H. Matson

Defense Counsel's Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending Information. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this Plea Agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 7/14/21

Danny C. Onorato
Counsel for the Defendant

Date: 7/14/21

Brandon M. Santos
Counsel for the Defendant

U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account

This statement reflects your Special Assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIM. ACTION NO.:	3:21-cr-
DEFENDANT'S NAME:	Bruce H. Matson
PAY THIS AMOUNT:	$100.00

INSTRUCTIONS:

1. **MAKE CHECK OR MONEY ORDER PAYABLE TO:**

   CLERK, U.S. DISTRICT COURT

2. **PAYMENT MUST REACH THE CLERK'S OFFICE BEFORE YOUR SENTENCING DATE.**

3. **PAYMENT SHOULD BE SENT TO:**

	In-Person (9 AM to 4 PM)	By Mail:
Alexandria Cases:	**Clerk, U.S. District Court 401 Courthouse Square Alexandria, VA 22314**	
Richmond Cases:	**Clerk, U.S. District Court 701 East Broad Street, Suite 3000 Richmond, VA 23219**	
Newport News Cases:	**Clerk, U.S. District Court 2400 West Ave., Suite 100 Newport News, VA 23607**	
Norfolk Cases:	**Clerk, U.S. District Court 600 Granby Street Norfolk, VA 23510**	

4. **INCLUDE DEFENDANT'S NAME ON CHECK OR MONEY ORDER.**

5. **ENCLOSE THIS COUPON TO ENSURE PROPER AND PROMPT APPLICATION OF PAYMENT.**

EXHIBIT “H”

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA RICHMOND DIVISION

UNITED STATES OF AMERICA

v.

BRUCE H. MATSON,

Defendant.

Case No. 3:21CR79

STATEMENT OF FACTS

The parties stipulate that the allegations contained in the Criminal Information and the following facts are true and correct, and that had this matter gone to trial, the United States would have proven each of them beyond a reasonable doubt.

1. Between on or about August 25, 2019, and on or about November 25, 2019, within the Eastern District of Virginia and elsewhere, the defendant, BRUCE H. MATSON, did corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede, the due and proper administration of the law under which a pending proceeding was being had before an agency of the United States, that is the United States Trustee Program.

2. The United States Trustee Program is the component of the Department of Justice responsible for overseeing the administration of cases and private trustees under 28 U.S.C. § 586 and 11 U.S.C. § 101, *et seq.* The Program has broad administrative, regulatory and enforcement authority to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public. As such, the Program is an agency of the United States as defined by 18 U.S.C. § 6.

I. Embezzlement from LandAmerica Financial Group Bankruptcy

3. Defendant BRUCE H. MATSON was an attorney who practiced bankruptcy law at the Richmond, Virginia-based law firm LeClairRyan.

4. LandAmerica Financial Group, Inc. (LFG), was one of the largest title insurance companies in the United States. Headquartered in Glen Allen, Virginia, LFG owned numerous subsidiaries that provided additional services related to real estate transactions.

5. In or about November 2008, LFG filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Eastern District of Virginia, Richmond Division, Case No. 08-35994-KRH.

6. In or about November 2009, the Bankruptcy Court approved a Joint Chapter 11 Plan that had been agreed to by the majority of LFG's creditors. The Plan established a liquidating trust (the LFG Liquidation Trust or the Trust) to facilitate the liquidation of LFG's remaining assets and the orderly distribution of those assets to creditors.

7. Defendant BRUCE H. MATSON was appointed the LFG Liquidation Trustee. In that role, MATSON served as the fiduciary responsible for administering the LFG Liquidation Trust.

8. As LFG Liquidation Trustee, MATSON retained numerous professionals to assist him in administering the Trust. For example, MATSON retained Company A, a global business consulting firm, to serve as the LFG Liquidation Trust's financial advisor. Individual A was a Managing Director in the Richmond office of Company A who was responsible for the LFG Liquidation Trust engagement. MATSON also retained attorneys at his own law firm LeClairRyan to represent him in his role as Liquidation Trustee.

9. At MATSON's direction, employees of Company A and LeClairRyan regularly interacted regarding the progress of the liquidation. For example, a LeClairRyan employee maintained the Trust's checkbook and made distributions from the account at MATSON's direction. In turn, employees of Company A reviewed the ledger maintained by LeClairRyan (referred to as a Form 2) to track deposits into and expenditures out of Trust accounts. Each bank account associated with the LFG Trust (or with a subtrust representing a former LFG subsidiary) was memorialized in its own Form 2.

10. The Plan also established an Oversight Committee composed of LFG's two largest unsecured creditors. During the course of the liquidation, MATSON sought approval from the Oversight Committee for various decisions and actions, including but not limited to the Trust's annual operating budgets, the liquidation of Trust assets, and distributions from the Trust.

11. In or about January 2015, MATSON used the Trust's tax identification number to open a bank account in the name of the LFG Liquidation Trust at First Capital Bank (the Fraudulent Trust Account), a financial institution headquartered in Glen Allen, Virginia. In doing so, MATSON misrepresented that the account was an LFG Liquidation Trust account. In fact, the actual LFG Liquidation Trust's accounts were maintained at Union Bank, a financial institution headquartered in California.

12. MATSON was the sole signatory on this Fraudulent Trust Account. He did not disclose the existence of this account to any Trust professional. Thus, there was no corresponding Form 2 or official record provided to Trust professionals to track deposits into and expenditures out of this account.

13. Between January 2015 and October 2015, on at least three occasions, MATSON deposited LFG Trust assets into the Fraudulent Trust Account for his own personal use.

14. At the time he opened the Fraudulent Trust Account, on or about January 30, 2015, MATSON deposited his $240,000 fixed fee for LFG Trustee services rendered in 2014. At the exact same time, MATSON also deposited into the Fraudulent Trust Account a $3,619.71 check payable to the LFG Liquidation Trust. This latter deposit constituted a payment to the LFG Trust from a firm that had purchased remnant assets from the Trust with the agreement to regularly pay the Trust a portion of the funds derived from locating and realizing those assets.

15. In or about May 2015, an entity holding $537,163.62 payable to the LFG Liquidation Trust contacted MATSON seeking instructions for how to disburse the money. On or about May 6, 2015, MATSON instructed the entity to wire the money to the Fraudulent Trust Account. Accordingly, on or about May 11, 2015, more than half a million dollars belonging to the LFG Liquidation Trust was wired into the Fraudulent Trust Account. By that time, MATSON had changed the address associated with the Fraudulent Trust Account from his office address to his home address.

16. On or about August 25, 2015, MATSON deposited into the Fraudulent Trust Account a $9,146.89 check payable to the LFG Liquidation Trust—another payment from the remnant-asset firm to the Trust.

17. In or about September 2015, MATSON, Individual A, and other employees of Company A began to prepare in earnest for a final distribution to Trust creditors and the closing of the bankruptcy. The Chapter 11 Plan called for a six-year wind down period to follow the final distribution to creditors. Accordingly, to calculate the amount of the final distribution to creditors, MATSON and his financial advisors first had to determine how much money they needed to reserve for the six-year wind down period.

18. On or about November 30, 2015, MATSON mailed a letter and final report to the Oversight Committee. In this letter, MATSON reported that he would make a final distribution to all LFG creditors equal to 1.3% of total unsecured claims in the first week of December 2015. MATSON also acknowledged that the Chapter 11 Plan required that he retain a vast amount of records for six years.

19. MATSON attached a Wind Down Budget to his November 30, 2015 letter, which specified the amount of money to be retained for the wind down period. According to the Wind Down Budget, "The cash needs for wind down costs on January 1, 2016 are estimated to be $3.1M." The Budget contained two principal costs for the wind down period: (1) data retention and storage; and (2) professional fees.

20. Regarding professional fees, the Budget specifically indicated that MATSON would be paid $540,000 in fixed fees over the six-year wind down period as follows:

2016	2017	2018	2019	2020	2021	**Total**
$120,000	$120,000	$90,000	$90,000	$60,000	$60,000	**$540,000**

21. The Wind Down Budget also listed the LFG Trustee's "ongoing services" for the wind down period, including "Distribution of Remaining Funds, if any, to charity."

22. After sending his letter and final report to the Oversight Committee proposing a 1.3% final distribution and $3.1 million budget for the wind down, at or about 10:00 p.m. on November 30, 2015, MATSON and Individual A drafted the following language to be inserted into the Wind Down Budget's "Statement of Significant Assumptions":

> The LFG Trustee believes this Wind Down budget is reasonable and appropriate given the ongoing requirements to retain records, file tax returns, and respond to inquiries, among others, for six years after the closure of the Trust. See below under "Data Retention Costs" and "Professional Fees" for a detailed list of ongoing services. Despite review and analysis by the financial advisor, costs could be more or could be less. If there are costs incurred (e.g., document retention or professional fees) in excess of amounts budgeted, the Liquidation

> Trustee and/or his professional will waive any unpaid fees to fund those expenses. If there are residual funds remaining after six years, after the payment of $100,000 to a 501(c)(3) charitable organization(s), the Oversight Committee has approved the payment by the Liquidation Trustee of additional compensation to the Dissolution Trustee and professionals in his discretion.

This paragraph was not included in the version of the Wind Down Budget sent to the Oversight Committee on November 30, 2015.

23. The new paragraph also was inconsistent with the draft Motion for a Final Decree and a proposed Final Decree previously prepared by MATSON's counsel. MATSON and Individual A understood the new paragraph contradicted the draft court filings. Indeed, at or about 9:28 a.m. on December 1, 2015, Individual A sent an email to MATSON pointing out the discrepancy and asked, "you ok with that language?" MATSON instructed Individual A not to amend the filings.

24. Accordingly, on or about December 1, 2015, MATSON's counsel filed a Motion for a Final Decree to close the LFG bankruptcy. Counsel attached several exhibits to the Motion, including a spreadsheet detailing the final distributions to unsecured creditors, the final version of the Wind Down Budget (which included the new paragraph not previously provided to the Oversight Committee), and a proposed Final Decree.

25. Paragraph 15 of the Motion for a Final Decree stated: "All assets of the Terminating Trusts have been distributed according to the terms of the Plans. As provided in the Winddown budget contained in Appendix A-1, Exhibit 8a, to the extent there are any reserved funds remaining, the Terminating Trusts seek authority to pay such residual amounts to a charitable organization under section 501(c)(3) of the Internal Revenue Code."

26. On or about December 22, 2015, the Bankruptcy Court endorsed and entered the proposed Final Decree, which "ORDERED that the Terminating Trusts are authorized to pay any

unused, reserved funds to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code."

27. Between in or about September 2015 and in or about December 2015, MATSON made and caused to be made material misrepresentations and fraudulent omissions to other Trust professionals, LFG creditors, and the Bankruptcy Court so that he could divert residual funds to himself and others after the close of the LFG Bankruptcy when he would no longer be subject to scrutiny by LFG creditors and the Bankruptcy Court. In particular, MATSON misrepresented both the amount of money actually retained in Trust accounts following the final distribution to creditors, and the amount of money actually needed to wind down the LFG Liquidation Trust.

28. In 2015, in advance of the closing of the LFG bankruptcy case, MATSON entered into an agreement with LeClairRyan that would entitle MATSON to a share of the total flat fees paid for his work during the wind down period.

29. On or about January 5, 2016, MATSON signed over a $240,000 check from the Fraudulent Trust Account to LeClairRyan. This transfer represented MATSON's payment to LeClairRyan of his 2014 fixed Trustee fee that he had used to open the Fraudulent Trust account.

30. Shortly after the Bankruptcy Court entered the Final Decree, MATSON calculated LeClairRyan's share of the entire amount of his fixed fee for the wind down period, pursuant to the above-described fee agreement. On or about March 7, 2016, MATSON wrote a $225,445 check payable to LeClairRyan from the Fraudulent Trust Account with the memo line of the check reading "LR share LFG Bonus." Then, on or about April 20, 2016, MATSON wrote a $225,445 check payable to Bruce H. Matson from the Fraudulent Trust Account with the memo line of the check reading "LFG Bonus."

31. On or about January 10, 2017, MATSON wrote a $240,000 check payable to Bruce H. Matson, Trustee from the Fraudulent Trust Account. The memo line of the check read "Trustee Fee 2016."

32. Shortly thereafter, on or about January 29, 2017, MATSON was paid $120,000 from the LFG Liquidation Trust for his 2016 fixed fee for the wind down period.

33. In or about February 2017, the original $240,000 check that MATSON used to open the Fraudulent Trust Account in January 2015 appeared on a "stale check report" for the LFG Liquidation Trust account, meaning the Trust's accounting system did not indicate the check had been negotiated. When Trust professionals asked about the check, MATSON falsely claimed that he never cashed the check. Eventually, on or about, February 2, 2018, MATSON was paid another $240,000 from the LFG Liquidation Trust for his 2014 fixed Trustee fee. The memo line of the check read "Jan-Dec 2014." MATSON subsequently deposited this check into an account opened in the name of "Matson Consulting LTD" at South State Bank, a financial institution headquartered in South Carolina.

34. On or about January 3, 2018, MATSON directed the payment of $10,000 and $20,000 bonuses to two LeClairRyan paralegals on checks written from the LFG Liquidation Trust account.

35. On or about November 13, 2018, MATSON directed the issuance of a $350,000 check payable to LeClairRyan from the LFG Liquidation Trust account and directed that the memo line of the check, also reflected on the Form 2 for the LFG Liquidation Trust account, indicate that the payment was a "Case Performance Bonus." In fact, MATSON had entered into an agreement with LeClairRyan that this money would be used for MATSON's own benefit to

repay a loan encumbering a life insurance policy in his name and to increase monthly payments to MATSON under a Transition to Retirement Agreement he had with the law firm.

36. On or about January 9, 2019, MATSON directed a wire transmission of $1.5 million from the LFG Liquidation Trust account to an account controlled by Individual A, who had since left Company A. On the handwritten wire transmission form, MATSON misrepresented the purpose of the wire transmission was "Payment of Fees," which was then added to the Form 2 for the LFG Liquidation Trust account.

37. On or about January 25, 2019, MATSON directed several payments out of the LFG Liquidation Trust Account, including a $100,000 payment to a charity (as prescribed by the language he and Individual A had inserted into the Wind Down Budget); $5,000 payments to each of the two paralegals; and $25,000 to counsel for the Trust.

38. Thereafter, on or about February 13, 2019, MATSON directed the issuance of a $180,000 check payable to "Bruce H. Matson, Trustee" from the LFG Liquidation Trust account, constituting the remainder of his fixed fees for the wind down period through 2021.

39. That same day, MATSON directed the issuance of a $1 million check payable to "Matson Consulting, LTD" from the LFG Liquidation Trust account. Thereafter, MATSON deposited the $1 million check into the Matson Consulting, LTD account at South State Bank. On or about April 2, 2019, MATSON transferred the $1 million he obtained from the LFG Liquidation Trust to a personal investment account at Davenport & Company.

40. On or about April 18, 2019, MATSON directed the issuance of a check for the remaining balance in the LFG Liquidation Trust account ($341,953.32) payable to "Matson Consulting, LTD." Thereafter, MATSON deposited that check into an account in the name of Matson Consulting, LTD, Bruce H. Matson at South State Bank.

II. Embezzlement from Forefront Investments Bankruptcy

41. On or about March 20, 2007, the U.S. Commodity Futures Trading Commission (CFTC) brought an enforcement action against Forefront Investments Corporation d/b/a CFG Trader (Forefront) in the U.S. District Court for the Eastern District of Virginia, Case No. 3:07-cv-152-REP.

42. During those proceedings, the District Court appointed MATSON to act as Receiver for Forefront. On or about February 13, 2008, the District Court authorized MATSON to take Forefront into bankruptcy proceedings.

43. On or about July 1, 2008, MATSON, acting as a "Debtor Designee," filed a Chapter 11 bankruptcy petition on behalf of Forefront in the U.S. Bankruptcy Court for the Eastern District of Virginia, Case No. 08-33077-DOT. During the Forefront Chapter 11 proceeding, MATSON, on behalf of Forefront, commenced an adversarial proceeding against one of Forefront's former executives and obtained a default judgment in the amount of approximately $354,520, plus post-judgment interest and the actual post-judgment costs of collection, including attorney fees. MATSON did not pursue execution of that judgment during the pendency of the Forefront bankruptcy case.

44. On or about June 28, 2011, MATSON, on behalf of Forefront, directed the filing of a Final Account and a Second Final Report and Motion for Final Decree in the Chapter 11 proceeding. In those filings, MATSON represented that the Forefront estate held only $400, but he also noted the estate retained the right to recover funds by executing the $354,520 judgment against the former executive. MATSON represented that, if any recovery were made on that judgment, the first $20,182.80 would be used to satisfy an administrative claim held by LeClairRyan for legal fees with any remaining funds going toward payment of subordinated

unsecured claims. MATSON represented that the Forefront estate had at least one such subordinated unsecured creditor, whose outstanding unpaid claim totaled $90,000.

45. On or about July 25, 2011, the Bankruptcy Court entered a final decree closing the Forefront bankruptcy case.

46. Approximately three years later, in or around March 2015, MATSON presented the judgment as an investment opportunity to his partners at Muirfield Capital, a privately held company that MATSON shared ownership of with four other individuals, including Individual A. The Muirfield Capital partners determined not to "buy" the judgment from the Forefront estate but instead to finance the litigation costs for executing the judgment against the former executive. MATSON intended to hire the law firm of one of his Muirfield Capital partners on a contingent-fee basis to coordinate the litigation, which also would require the hiring of a Florida-based law firm to execute the judgment where the former executive resided. Accordingly, the Muirfield Capital partners agreed to pay $5,000 to cover the initial costs of litigation in exchange for the first $6,500 obtained against the former executive.

47. On or about August 24, 2015, at MATSON's direction, the Florida-based firm registered the judgment in the U.S. Bankruptcy Court for the Southern District of Florida.

48. By on or about August 10, 2016, the Florida-based law firm, working at MATSON's direction, negotiated a settlement of the judgment in the amount of $70,000, which was to be divided as follows: $17,000 to the Florida-based law firm; $6,250 to Muirfield Capital; $23,375 to the Muirfield Capital partner's law firm; and $23,375 to the Forefront estate.

49. MATSON directed that the $23,375 check written for the benefit of Forefront be made payable to "Bruce H. Matson, Trustee." That check was mailed by the Florida-based law firm to the Muirfield Capital partner's law firm in Virginia, on or about August 12, 2016.

50. On or about September 7, 2016, MATSON deposited the $23,375 check into the Fraudulent LFG Trust Account at First Capital Bank.

51. MATSON did not direct the payment of the $23,375 towards the Forefront estate's outstanding debts to LeClairRyan or outstanding unsecured creditor. Instead, MATSON kept and used those funds for his own personal purposes.

52. Accordingly, MATSON misappropriated the following bankruptcy assets to be used for his own personal purposes:

a. A $3,619.71 check payable to the LFG Liquidation Trust deposited into the Fraudulent Trust Account on January 30, 2015;

b. A $537,163.62 wire transmission payable to the LFG Liquidation Trust deposited into the Fraudulent Trust Account on May 11, 2015;

c. A $9,146.89 check payable to the LFG Liquidation Trust deposited into the Fraudulent Trust Account on August 26, 2015; and

d. A $23,375 check belonging to the Forefront estate deposited into the Fraudulent Trust Account on September 7, 2016; and

e. A $240,000 check payable to Bruce H. Matson, Trustee deposited into a Matson Consulting LTD account on February 5, 2018, constituting the duplicative payment of MATSON's 2014 fixed Trustee fee.

53. Additionally, between January 2018 and April 2019, MATSON, with the assistance of Individual A, paid to MATSON, Individual A, and others more than $3.2 million in residual funds from the LFG Liquidation Trust, which depleted the Trust's account. Through these payments, MATSON received more than $1.3 million directly plus the $350,000 paid to LeClairRyan for his own benefit. MATSON directed these payments in addition to the $540,000 fixed fee budgeted to him in the Wind Down Budget. Indeed, the total amount MATSON paid to himself and other Trust professionals in bonuses exceeded the entire $3.1 million supposedly retained for the wind down period.

III. Obstruction of Investigation of Bankruptcy Embezzlement Allegations

54. In or about August 2019, as LeClairRyan was preparing to file its own bankruptcy petition, an employee of Company A learned that there was no more money remaining in the LFG Liquidation Trust account at Union Bank even though there were more than two years left in the wind down period. When asked by Trust professionals about the whereabouts of the LFG Liquidation Trust funds, MATSON mispresented that the money was still held in escrow but that he had simply moved the money to a different bank due to high bank fees and an issue with the Trust's tax identification number. MATSON later misrepresented that he had retained Individual A as a separate financial advisor to supplement the work of Company A and that the $1.5 million wire transfer to Individual A was a portion of the escrow, not a payment. Company A subsequently advised MATSON that it would be notifying the Bankruptcy Court.

55. Before Company A made any notification, on or about August 26, 2019, MATSON and Individual A filed letters with the Bankruptcy Court that contained several false and misleading statements, including MATSON's claim that $2.8 million in Trust funds remained in escrow. In fact, when Matson and Individual A submitted their letters, all the money remained in personal accounts controlled by MATSON and Individual A.

56. The day before MATSON and Individual A filed these letters, on or about August 25, 2019, the U.S. Trustee's Office in Richmond, Virginia, received a report of alleged misappropriation of LFG Trust funds. Thereafter, the U.S. Trustee's Office conducted an inquiry into the allegation as well as the representations MATSON and Individual A made in the letters they filed with the Bankruptcy Court. By virtue of the United States Trustee Program's supervisory authority in Chapter 11 bankruptcy cases, the U.S. Trustee's inquiry constituted a "pending proceeding."

57. In response to the U.S. Trustee's inquiry, MATSON made additional false and misleading statements, including repeating the misrepresentation made in his letter to the Court that LFG Trust funds remained in escrow and that Individual A received a portion of the funds as a "substitute trustee" for the Trust.

58. On or about October 16, 2019, MATSON appeared before the Bankruptcy Court and made more misleading statements, including that he made the questioned disbursements from the LFG Liquidation Trust account because of bank fees, tax identification issues, and to reduce concentration risk.

59. On or about November 25, 2019, the Bankruptcy Court entered an Order appointing a successor Trustee for LandAmerica Financial Group bankruptcy.

60. The actions taken by the defendant, as described above, were taken willfully and knowingly. The defendant did not take those actions by accident, mistake, or with the belief that they did not violate the law.

61. The preceding only includes those facts necessary to establish the defendant's guilt as to the offense to which he is entering a guilty plea. It does not necessarily reference all information known to the government or the defendant about the criminal conduct at issue.

RAJ PAREKH
ACTING UNITED STATES ATTORNEY

By: Katherine Lee Martin

Katherine Lee Martin
Kevin S. Elliker
Assistant United States Attorneys

After consulting with my attorney and pursuant to the plea agreement entered into this day between myself and the United States, I stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

BRUCE H. MATSON
Defendant

I am Bruce H. Matson's attorney. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Danny C. Onorato, Esquire
Counsel for Defendant

Brandon M. Santos, Esquire
Counsel for Defendant

EXHIBIT “I”

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Richmond Division

UNITED STATES OF AMERICA

v.

BRUCE H. MATSON,

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:21cr00079-001

USM Number: 56506-509

Brandon Santos, Esq.
Danny Onorato, Esq.
Richard Cullen, Esq.
Defendant's Attorneys

The defendant pleaded guilty to a One Count Criminal Information.

The defendant is adjudged guilty of these offenses:

Title and Section	Nature of Offense	Offense Ended	Count
18:1505	OBSTRUCTION OF AN OFFICIAL PROCEEDING	11/25/2019	One

The defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 22, 2021
Date of Imposition of Judgment

/s/
John A. Gibney, Jr.
/s/
United States District Judge
Signature of Judge

John A. Gibney, Jr., Senior United States District Judge
Name and Title of Judge

23 November 2021
Date

Case Number: **3:21cr00079-001**
Defendant's Name: **Matson, Bruce H.**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of FORTY-FOUR (44) MONTHS.

The Court makes the following recommendations to the Bureau of Prisons:
1. THAT THE DEFENDANT BE DESIGNATED TO FCI CUMBERLAND.

The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on_____.

☐ as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to_____

at_____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case Number: 3:21cr00079-001
Defendant's Name: Matson, Bruce H.

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of THREE (3) YEARS.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

Case Number: 3:21cr00079-001
Defendant's Name: Matson, Bruce H.

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov

Defendant's Signature _____ Date

Case Number: 3:21cr00079-001
Defendant's Name: Matson, Bruce H.

SPECIAL CONDITIONS OF SUPERVISION

1) The defendant shall not incur new credit card charges or open additional lines of credit without the approval of the probation officer.

2) The defendant shall provide the probation officer with access to requested financial information.

3) The defendant shall participate, at no cost to the defendant, in a program approved by the United States Probation Office for substance abuse, which program may include residential treatment and shall include testing to determine whether the defendant has reverted to the use of drugs or alcohol, at the direction and in the discretion of the probation officer.

4) The defendant shall participate, at no cost to the defendant, in a program approved by the United States Probation Office for mental health treatment, if deemed necessary by the probation officer.

5) The defendant shall waive all rights of confidentiality regarding substance abuse and mental health treatment in order to allow the release of information to the probation officer and authorize communication between the probation officer and the treatment provider.

6) The defendant shall not consume any alcohol.

7) The defendant shall participate in Narcotics Anonymous/Alcoholics Anonymous or a similar secular program. Any program that the defendant chooses as a secular equivalent to NA/AA must be approved by the probation officer and the Court. Within ten days of release, the defendant shall begin attendance in the selected program. The defendant shall attend 30 meetings of the selected program within 90 days. The defendant shall obtain a sponsor in the selected program who agrees to confirm the sponsor relationship with the defendant's probation officer and advise the probation officer if the sponsor relationship ends.

8) The defendant shall pay the balance owed on any court-ordered financial obligations in monthly installments of not less than $ 100, starting 1 days after supervision begins until paid in full.

9) The defendant may not be employed or work as a fiduciary or handle the funds of others.

Case Number: 3:21cr00079-001
Defendant's Name: Matson, Bruce H.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$ N/A	$ 10,000.00	$ N/A	$ N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$	$

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Case Number: **3:21cr00079-001**
Defendant's Name: **Matson, Bruce H.**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☐ Lump sum payment of $_____ due immediately, balance due
☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

EXHIBIT “J”

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

IN RE:	)	
	)	**CHAPTER 7**
PHILIP BUTLER GROGGINS,	)	
	)	**CASE NO. 14-71033**
Debtor.	)	

JUDY A. ROBBINS,	)	
UNITED STATES TRUSTEE	)	
FOR REGION FOUR,	)	
	)	**ADVERSARY PROCEEDING**
Plaintiff,	)	**NO. 15-07018**
	)	
v.	)	
	)	
PHILIP BUTLER GROGGINS,	)	
	)	
Defendant.	)	

OPINION AND ORDER GRANTING DENIAL OF DISCHARGE

The Debtor, *pro se*, filed a voluntary petition under Chapter 13 of the Bankruptcy Code in this Court on July 23, 2014. On May 29, 2015, the Chapter 13 Trustee ("Trustee") filed a Motion to Convert Case to Chapter 7 ("Motion to Convert") pursuant to 11 U.S.C. § 1307(c), alleging, *inter alia*, that the Debtor could not continue in Chapter 13, in part, because the Debtor was sentenced to twenty-seven (27) months imprisonment after having pleaded guilty to one count each of willful failure to collect or pay over taxes pursuant to 26 U.S.C. § 2702 and bankruptcy fraud pursuant to 18 U.S.C. § 152(3). *See* Case No. 14-71033, Docket No. 99, Tr.'s Ex. 9. The Debtor filed a Response on June 19, 2015. Following a hearing on June 22, 2015, the Court granted the Motion to Convert by Memorandum Decision and Order entered on July 24, 2015.

On July 28, 2015, Judy A. Robbins, United States Trustee for Region Four ("U.S. Trustee") filed a Complaint to Deny Discharge ("Complaint") against the Debtor. As the Debtor is currently incarcerated in federal prison, by Order entered September 10, 2015, George I. Vogel, II was appointed guardian ad litem for the Debtor in this case. The U.S. Trustee alleges that, pursuant to the declaration on the petition ("Petition Declaration"), the Declaration Concerning the Debtor's Schedules ("Schedules Declaration"), the Declaration Under Penalty of Perjury By Individual at the end of the Statement of Financial Affairs ("SOFA Declaration"), and the Verification at the end of his Official Form 22C ("Means Test Verification"), the Debtor swore that the information contained in the petition, schedules, SOFA, and Means Test was true and correct. Compl. ¶ 7. Further, the U.S. Trustee alleges that, as provided in 28 U.S.C. § 1746, the declarations contained in the Petition Declaration, Schedules Declaration, SOFA Declaration, and Means Test Verification "had like force and effect as an oath." *Id.*

The U.S. Trustee also alleges that, at the Meeting of Creditors held on October 14, 2014, the Debtor testified that he had filed a prior case in the Western District of Virginia in 2012, but denied having filed any other bankruptcy cases in the eight (8) years preceding the commencement of this case and specifically denied having filed a bankruptcy petition in the District of Maryland. *Id.* at ¶ 8. The Complaint further provides that after the petition date, but prior to the conversion of the case, a federal grand jury indicted the Debtor and charged him in Count 8 of the indictment with:

> knowingly and fraudulently [making] a material false declaration, certificate and verification under penalty of perjury, as permitted under Section 1746 of Title 28, in and in relation to a case under Title 11, Case Number 14-71033, by submitting a Voluntary Petition, in which the defendant fraudulently omitted the fact that he had previously filed bankruptcy in April 2014 in the District of Maryland.

Id. at ¶ 9. On December 29, 2014, the Debtor entered a guilty plea to Counts 6 and 8 of the indictment, and judgment was entered in the U.S. District Court for the Western District of Virginia on May 22, 2015. *See Id.* at ¶ 10; Compl. Ex. 1.

The U.S. Trustee further contends that, under penalty of perjury, the Debtor declared that the information in the petition was true and correct when, in truth and fact, the Debtor knew the petition failed to disclose that the Debtor commenced Chapter 13 case number 14-15723 on April 10, 2014, in the U.S. Bankruptcy Court for the District of Maryland (the "Maryland Case"). Compl. ¶ 14. The U.S. Trustee states that, at the Meeting of Creditors, the Debtor knowingly and fraudulently made false oaths when he stated that he had only filed one other bankruptcy case in the eight (8) years preceding commencement of this case and when the Debtor denied having commenced the Maryland Case. *Id.* at ¶ 15.

In his Answer to the Complaint, filed October 5, 2015, the Debtor admitted all of the allegations contained in the Complaint, except for paragraphs 14 and 15, which he denied, and paragraph 16, to which he responded, "The [D]ebtor's discharge should be granted." Answer ¶¶ 14-16. In response to paragraph 14 of the Complaint, the Debtor responded,

> I did not commence Chapter 13 case number 14-15723 on April 10, 2014 in the Bankruptcy Court for Maryland. I have never been to the Bankruptcy Court for Maryland, and I have never corresponded with the Bankruptcy Court for Maryland. Any filings with this Court, and in particular, case number 14-15723, will not bear my signature.

Id. at ¶ 14. In addition, in response to paragraph 15 of the Complaint, the Debtor responded, "During the meeting of creditors conducted on October 14, 2014, I had no knowledge of Bankruptcy Case Number 14-15723 in the United States Bankruptcy Court for Maryland." *Id.* at ¶ 15.

The U.S. Trustee filed a Motion for Summary Judgment and Exhibits on October 22, 2015, in which the U.S. Trustee argued that the plea agreement signed on November 25, 2014 (the "Plea Agreement"), prohibits the Debtor from denying he knowingly and fraudulently made a false oath on his petition, and that res judicata prevents the Debtor from litigating whether he knowingly and fraudulently made a false oath. *See* Mot. Summ. J. ¶ 8. The Motion for Summary Judgment contained substantially similar facts as those contained in the Complaint.

The Debtor filed his Response to the Motion for Summary Judgment on November 18, 2015. The Debtor admitted that he commenced case number 14-71033 on July 23, 2014, by filing a handwritten, voluntary Chapter 13 petition. *See id.* at ¶ 6(a); Resp. 1. The Debtor also admitted that he signed the petition, and admitted that, while the petition disclosed that the Debtor had commenced one case in the eight (8) years prior to filing the instant case, it did not disclose the Maryland Case. *See* Mot. Summ. J. ¶ 6(b), (c), & (d); Resp. 1. The Debtor further responded that he had no knowledge of the Maryland Case and that he did not make a false oath on his bankruptcy petition filed in the instant case. Resp. 2. However, the Debtor admitted that he signed the Plea Agreement, which rendered him guilty of bankruptcy fraud under 18 U.S.C. § 152(1).

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (citing Fed R. Civ. P. 56(c)). When a party has submitted sufficient evidence to support its request for summary judgment, the burden shifts to the nonmoving party to show that there are genuine issues of material fact. *Emmett v. Johnson*, 532 F.3d 291, 297 (4th Cir. 2008) (citing *Matsushita Elec. Indus. Co. v.*

Zenith Radio Corp., 475 U.S. 574, 586–88 (1986)). However, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986) (emphasis in original). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586 (footnote omitted).

The Court finds the U.S. Trustee has carried her burden and that summary judgment is appropriate in this case. At the hearing on the Motion for Summary Judgment held on November 23, 2015, the U.S. Trustee argued that the Debtor admitted that he was indicted for bankruptcy fraud in the Answer to the Complaint. The U.S. Trustee also noted that the Debtor was adjudicated guilty based on the Plea Agreement, which the Debtor admitted to signing. Finally, the U.S. Trustee argued that res judicata bars the Debtor from relitigating the issue since he previously pled guilty to making a false oath in the Debtor's filed bankruptcy petition. Collateral estoppel may provide the more appropriate analysis. "Courts also have routinely applied collateral estoppel in subsequent civil and criminal actions to establish material facts that were necessary to sustain a prior criminal conviction." *Rosen v. Neilson (In re Slatkin)*, 310 B.R. 740, 746 (C.D. Cal. 2004) (citations omitted), *aff'd*, 222 F. App'x 545 (9th Cir. 2007).

Section 727 of the Bankruptcy Code provides, "(a) The court shall grant a discharge unless . . . (4) the debtor knowingly and fraudulently, in or in connection with the case—(A) made a false oath or account . . . ." 11 U.S.C. § 727(a)(4). In *Block v. Moss (In re Moss)*, 258 B.R. 391, 402 (Bankr. W.D. Mo. 2001), the bankruptcy court stated,

> It is well established that a criminal conviction for a bankruptcy crime that is also a § 727 ground for denial of discharge will preclude the relitigation of the

> common factual issues . . . Specifically applied, a conviction or guilty plea under 18 U.S.C. § 152 for making a false oath in connection with a bankruptcy proceeding bars the relitigation of the factual issues in a subsequent action objecting to a debtor's discharge under § 727(a)(4)(A).

Id. In this case, there is no dispute that the Debtor signed the Plea Agreement filed in the U.S. District Court for the Western District of Virginia on December 29, 2014. On page 2 of the Plea Agreement, the Debtor states that "I am pleading guilty as described above because I am in fact guilty…" Mot. Summ. J. Ex. 7, at 2. Further, in paragraph C(7) of the Plea Agreement, the Debtor states, "I knowingly waive any right I may have under the Constitution, any statute, rule or other source of law to have such statements [including the admission of guilt], or evidence derived from such statements, suppressed or excluded from being admitted into evidence and stipulate that such statements can be admitted into evidence." Mot. Summ. J. Ex. 7, at 9. Finally, in paragraph C(8) of the Plea Agreement, the Debtor confirms that "I agree not to commit any of the following acts: . . . deny I committed any crime to which I have pled guilty." *Id.*

The Debtor, in signing the Plea Agreement, waived his right to challenge that he committed bankruptcy fraud in violation of 18 U.S.C. § 152, and the Debtor is barred from relitigating the issue of whether he knowingly and fraudulently made a false oath in or in connection with this bankruptcy case. The Debtor's current protest that he committed no offense in connection with the false oath is of no avail. Accordingly, the Court finds no genuine issue of material fact is in dispute, and the U.S. Trustee has established grounds sufficient to deny the Debtor's discharge pursuant to 11 U.S.C. § 727(a)(4)(A).

Accordingly, for the forgoing reasons, it is hereby ORDERED that the U.S. Trustee's motion for summary judgment is GRANTED and the Debtor's discharge under 11 U.S.C. § 727 be and hereby is DENIED.

The Clerk is directed to send a copy of this Order to the Debtor, the Chapter 7 Trustee, the Office of the United States Trustee, and all creditors on the mailing matrix.

ENTER this 4th day of December, 2015.

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT “K”

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

PHILIP BUTLER GROGGINS, *Appellant*, v. JUDY A. ROBBINS, U.S. TRUSTEE FOR REGION 4, *Appellee.*	CASE NO. 7:15-cv-00690 MEMORANDUM OPINION JUDGE NORMAN K. MOON

This case is on appeal (dkts. 1 & 1-1) from an order of this District's Bankruptcy Court granting appellee's motion for summary judgment and denying the debtor-appellant a discharge. (Dkt 1-2). On July 23, 2014, Debtor Philip Groggins ("Groggins") filed a Chapter 13 bankruptcy petition, which the Bankruptcy Court later converted to a Chapter 7 petition. (Dkt. 1-2 at 1). Subsequently, Groggins was indicted on—and pled guilty to—bankruptcy fraud in this District, based on his failure to disclose a prior bankruptcy petition filed in Maryland. *See United States v. Groggins*, No. 6:14-cr-00021 (W.D. Va.).

As a result, the United States Trustee ("U.S. Trustee") objected to any bankruptcy discharge. She argued that Groggins' bankruptcy fraud conviction collaterally estopped him from contending that he had not made a false oath in connection with his Virginia bankruptcy case, and thus a discharge was unwarranted. (Dkt. 5-7 at 3-4; dkt. 5-10 at 2-4; *see* 11 U.S.C. 727(a)(4)). The Bankruptcy Court agreed. (Dkt. 1-2). Because the principles of collateral estoppel apply so as to deny Groggins a discharge, the Bankruptcy Court's order will be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

To briefly summarize the background of this case, Groggins filed a bankruptcy petition in Maryland in 2014, which was quickly dismissed. He then filed a bankruptcy petition in Virginia, but failed to disclose his Maryland petition. Based on this omission, he was charged with and pled guilty to bankruptcy fraud for making a false oath.

More specifically, in April 2014, Groggins petitioned the bankruptcy court in Maryland, but the petition was dismissed six days later. (Dkt. 10 at ECF 52). In July 2014, he filed the bankruptcy petition in Virginia that underlies this appeal. (*Id*. at ECF 53). The Virginia petition failed to disclose that Groggins had filed the Maryland petition. (*Id*.). Based on that and other omissions, the Government indicted Groggins in the Western District of Virginia on October 16, 2014 for, *inter alia*, a count of bankruptcy fraud in violation of 18 U.S.C. § 152(3). (*Id*. at ECF 55).

Groggins subsequently pled guilty before me to the bankruptcy fraud count in late 2014. (Dkt. 10 at ECF 57, 65, 70). On May 22, 2015, I entered the criminal judgment, sentencing Groggins to 27 months imprisonment on the bankruptcy fraud count, to run concurrently with his sentence on another count. (*Id*. at ECF 71-72). Approximately two months later, the U.S. Trustee asked the Bankruptcy Court to deny Groggins a discharge in the Virginia bankruptcy case. (*Id*. at ECF 10-13). She argued that his guilty plea and criminal conviction in this Court for bankruptcy fraud (for omitting, in his Virginia bankruptcy petition, mention of his Maryland bankruptcy petition) conclusively established that he "made a false oath or account" in "connection with th[e Virginia bankruptcy] case," thus justifying a denial of discharge under 11 U.S.C. § 727(a)(4)(A). (*Id*.; *see also id*. at ECF 21-24). The Bankruptcy Court agreed, and this appeal ensued.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 56 applies to bankruptcy proceedings like the one that underlies this appeal. *See* Fed. R. Bank. P. 7056. Accordingly, summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A material fact is one "that might affect the outcome of the suit under the governing law . . . ." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In order to preclude summary judgment, the dispute about a material fact must be "'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*; *see also JKC Holding Co. v. Washington Sports Ventures, Inc.*, 264 F.3d 459, 465 (4th Cir. 2001). However, if the evidence of a genuine issue of material fact "is merely colorable or is not significantly probative, summary judgment may be granted." *Anderson*, 477 U.S. at 250. In considering a motion for summary judgment under Rule 56, a court must view the record as a whole and draw all reasonable inferences in the light most favorable to the nonmoving party. *See, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 322–24 (1986); *Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir. 1994).

Federal courts are accorded "broad discretion to determine" whether collateral estoppel is justified. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979); *e.g.*, *Sales v. Grant*, 158 F.3d 768, 781 (4th Cir. 1998).[1]

---

[1] The Fourth Circuit has held that the first four elements of collateral estoppel described below are reviewed *de novo*, with the fifth element reviewed for abuse of discretion. *See Sandberg v. Virginia Bankshares, Inc.*, 979 F.2d 332, 344 (4th Cir. 1992). But it later vacated that opinion upon request of the parties. No. 91-1873(L), 1993 WL 524680 (4th Cir. Apr. 7, 1993). Although at least one unpublished Fourth Circuit case has since cited *Sandberg* as precedent, *Davis Vision, Inc. v. Maryland Optometric Ass'n*, 187 F. App'x 299, 302 (4th Cir. 2006), more recent binding precedent makes clear that it is not good law. *Solis v. Food Employers Labor Relations Ass'n*, 644 F.3d 221, 228 n.5, 232 (4th Cir. 2011).

ANALYSIS

I. Application of Collateral Estoppel

There are five elements that must be satisfied to apply the doctrine of collateral estoppel. They are:

> (1) the issue sought to be precluded is identical to one previously litigated; (2) the issue must have been actually determined in the prior proceeding; (3) determination of the issue must have been a critical and necessary part of the decision in the prior proceeding; (4) the prior judgment must be final and valid; and (5) the party against whom estoppel is asserted must have had a full and fair opportunity to litigate the issue in the previous forum.

Sedlack v. Braswell Servs. Grp., Inc., 134 F.3d 219, 224 (4th Cir. 1998).

A. Identical Issue

The bankruptcy fraud statute to which Groggins pled guilty and on which judgment was entered—18 U.S.C. § 152(3)—makes it illegal for a person to "knowingly and fraudulently make[] a false declaration, certificate, verification, or statement under penalty of perjury. . . in or in relation to relation to" a bankruptcy case. The indictment conveys that one falsity on which Groggins' bankruptcy fraud count rested was his failure to disclose the Maryland bankruptcy petition in his Virginia petition. (Dkt. 10 at ECF 53, 55). Prior to sentencing and through counsel, Groggins acknowledged that "he falsely declared that he had not previously filed a bankruptcy petition." *United States v. Groggins*, No. 6:14-cr-00021, dkt. 37 at 5 (W.D. Va. May 14, 2015). His plea agreement stated he pled guilty "because I am in fact guilty." (Dkt. 10 at

ECF 58). And at his plea hearing, these legal and factual issues were recounted to and admitted by Groggins. (Dkt 27-1 at 6-11, 14-15).[2]

Likewise, under the bankruptcy laws, a debtor may not be granted a discharge if he "knowingly and fraudulently, in or in connection with the [bankruptcy] case . . . made a false oath or account." 11 U.S.C. § 727(a)(4)(A). The grounds for dismissal rest on the same facts as Groggins criminal conviction, mainly, his failure to disclose the Maryland petition in his Virginia petition. As the Eleventh Circuit has said:

> The conduct involved in section 727 is identical to that proscribed under 18 U.S.C. § 152. Both provisions come into play only if a debtor issues a false statement in relation to his bankruptcy petition. As each provision is implicated only if the improper conduct is undertaken knowingly and fraudulently, the intent requirements are also identical.

Matter of Raiford, 695 F.2d 521, 522 (11th Cir. 1983); *see In re Petersen*, 315 B.R. 728, 733 (Bankr. C.D. Ill. 2004) (holding the same and compiling similar cases). Accordingly, the first element of collateral estoppel is met.

B. Prior, Actual Determination

The issue of Groggins' failure to disclose his Maryland bankruptcy was also actually determined in his criminal case. Again, Groggins acknowledged that he was "in fact guilty" of Count 8, the bankruptcy fraud count. (Dkt. 10 at ECF 58). He stipulated that "there is a sufficient factual basis to support each and every material factual allegation contained within the charging document(s) to which" he pled guilty. (*Id*. at ECF 68). He waived the right to collaterally attack any order issued in his criminal case, and he agreed not to "deny I committed any crime to which I have pled guilty." (*Id*. at ECF 64-65). Finally, at Groggins' guilty plea

[2] The Court will grant the U.S. Trustee's motion to take judicial notice of the full transcript of Groggins guilty plea hearing and the factual basis of his plea. (Dkt. 27). These documents are public records whose veracity cannot reasonably be questioned, as they were both entered on the docket of this Court in Groggins' criminal case.

hearing, the Government summarized the elements of the bankruptcy fraud count and the fact that he failed to disclose the Maryland petition. (Dkt. 27-1 at 6, 14-15). And because the burden of proof is higher in a criminal than in a civil case, the determinations in Groggins' criminal case necessarily satisfy the evidentiary threshold in the bankruptcy case. *See In re Chaplin*, 179 B.R. 123, 126-27 (Bankr. E.D. Wis. 1995).

C. Critical and Necessary Part of the Prior Case

Third, the establishment of Groggins' failure to disclose his Maryland petition was critical and necessary to his criminal case: Without evidence that all elements of 18 U.S.C. § 152(3) were met, he could not have been constitutionally convicted and sentenced.

D. Valid Final Judgment

This Court entered a final judgment in Groggins' criminal case on May 22, 2015. *United States v. Groggins*, No. 6:14-cr-00021, dkt. 42 (W.D. Va. May 22, 2015). The judgment was executed on August 20, 2015. (*Id.* at dkt. 47). No successful appeal or collateral attack on the judgment has been filed and therefore it remains valid.

E. Full and Fair Opportunity to Litigate

Groggins also had a full and fair opportunity to litigate the issue in his criminal case. For one, he was represented by counsel. Given that his freedom was at stake, he also "had every reason to try to establish his innocence in the criminal proceeding." *Raiford*, 695 F.2d at 524. Nevertheless, he admitted his guilt both in a written plea and in open court. Thus, the final element of collateral estoppel is satisfied.

II. Groggins' Arguments

Groggins makes two arguments against the bankruptcy court's use of collateral estoppel and summary denial of his discharge, but neither is availing.

Groggins asserts that he had no knowledge of his Maryland bankruptcy petition, implying that an attorney filed it without his permission. (Dkt. 13 at 5-6). For one, Groggins cites to no evidentiary support in the record for this position. More importantly, this kind of attack on—and corresponding attempt to relitigate—an issue that cuts to the heart of his prior criminal conviction is precisely what the doctrine of collateral estoppel is meant to curtail. Groggins' present argument about the circumstances of his Maryland petition might have been a reasonable (even if not successful) defense to his criminal charge. But that opportunity passed when Groggins pled guilty to bankruptcy fraud for failing to disclose his Maryland petition.

Second, Groggins contends that he pled guilty not to violating 18 U.S.C. § 152(3)—which outlaws false declarations, certifications, verifications, or statements—but rather to § 152(1), which forbids concealment of assets. (Dkt. 13 at 6-7; dkt. 24 at 2-3). Although never fleshed out in detail, Groggins' argument is rooted—as the U.S. Trustee observes—in typographical errors made by the Government in the indictment and plea agreement. These documents occasionally cite to subsection (1) in addition to subsection (3), the latter of which clearly comprised the substance of Count 8. (*Compare* dkt. 10 at ECF 51, 57 (referencing subsection (1) in indictment and plea agreement) *with id*. at ECF 53, 55, (citing subsection (3) and including associated language and facts in Count 8 of the indictment), 57 (plea agreement provision that Groggins "will enter a plea of guilty to Count[] . . . 8 of the Indictment").

Although drafting oversights in key criminal filings are disconcerting, reading the documents on the whole—both together and when analyzed separately—leaves no doubt that Groggins was charged with and pled guilty to a violation of subsection (3), not subsection (1).[3]

[3] *See United States v. Padgett*, 233 F. App'x 223, 228 (4th Cir. 2007) ("Even though Defendant argues that he entered a plea agreement for theft of property, not a violent burglary felony offense, examining the Judgment as a whole reveals that the theft of property citation was

Moreover, the judgment itself makes clear that subsection (3) was the operative provision, as does the guilty plea hearing transcript and written statement of facts forming the basis of the plea. (Dkt. 10 at ECF 15, 42; dkt. 27-1 at 6 (summarizing elements of Count 8, including that Groggins "intentionally failed to disclose a material fact"), 14-15 (summarizing facts proving that element); dkt. 27-2 at ECF 3).[4] Accordingly, Groggins' position does not impeach the Bankruptcy Court's ruling.

* * *

For the reasons explained above, the Bankruptcy Court's order granting a denial of discharge (dkt. 1-2) will be affirmed. The U.S. Trustee's motion for judicial notice will be granted. (Dkt. 27). The Clerk of the Court is hereby directed to send a certified copy of this opinion and the accompanying order to all counsel of record and to Groggins.

Entered this 30th day of August, 2016.

NORMAN K. MOON
UNITED STATES DISTRICT JUDGE

---

a typographical error—all other indicators of the offense on the face of the Judgment point to a felony."); *see also United States v. Hart*, 176 F. App'x 415, 416 (4th Cir. 2006) (permitting amendment when indictment, plea agreement, and judgment do not identically describe the relevant offense); *United States v. Chavez-Reyes*, 29 F. App'x 125, 126 (4th Cir. 2002).

[4] At oral argument and as further proof that he was not convicted under subsection (3), Groggins cited the Bankruptcy Court's single reference (dkt. 1-2 at 4) to his conviction as under subsection (1). This is but a mere typographical error, for it is clear from the substance of the Bankruptcy Court's opinion that it (correctly) understood Groggins as having been convicted under subsection (3), regarding false oaths, not subsection (1), regarding concealment of assets. (*E.g.*, dkt. 1-2 at 2, 3 (discussing relevance of Maryland petition), 4 (referring to Groggins' failure to disclose Maryland petition and making a false oath), 5-6 (discussing false oath guilty plea and corresponding false oath section of the bankruptcy code)).