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Cc:
Subject: Case: What are Social Security "Benefits"?
Date: 7/27/2016
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Attachments: None

News for Tax, Bankruptcy, and Consumer Professionals
 SEE also Rooker Feldman - Desperate Consumer Bankruptcy Lawyer

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MORGAN D. KING EDITOR

The King Law Letter

NEWS – EVENTS - UPDATES FOR BANKRUPTCY AND TAX PROFESSIONALS

& CONSUMER PROTECTION ATTORNEYS

LAW LETTER NO. 15 July 25 2016

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EXCERPT FROM

King's

Fundamentals of Consumer Bankruptcy

Law & Practice

Book Release 2016 # 1
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PART 8 Median And Means Tests

§ 8.4 Current Monthly Income

§ 8.4(b) Deduct exclusions

In arriving at the income used in the median income test, the means test, and the chapter 13 plan, certain categories of income are excluded from current monthly income or "projected disposable income."

The issue is, what are deemed "benefits" under the "Social Security Act" codified at 42 U.S.C.A. §§ 301- 1397mm.

The court in [Adinolfi v. Meyer 543 B.R. 612 \(9th. Cir. BAP 2016\)](#) held that payments to the debtor by way of "Adoption Assistance" were ultimately provided by the federal government and fell within the category of "Social Security Benefits," and should be excluded from income to calculate the chapter 13 plan.

The court in [Adinolfi v. Meyer](#), where the debtor and the trustee took opposite positions on whether "adoption assistance" payments should be excluded,

The court, citing a penumbra of Social Security Benefits, held for the debtor.

Said the court:

"We are not persuaded by the Trustee's "follow the money" argument. If Congress meant what the Trustee says, Congress would have said something like "benefits received from the federal government under the Social Security Act." But that is not what Congress said. Rather, Congress used broad language which excludes all "benefits received under the Social Security Act."

Congress knew that, under many SSA programs, state and local governments cut the benefit checks. Congress also knew how to refer to specific portions of the SSA when it wanted to do so. See, e.g., §§ 362(b)(2)(D), (E), (F), (G); 704(c)(1)(A)(i); 1302(d)(1)(A)(i). But in this case, Congress referred to the entire SSA. We must assume that, when Congress referred broadly to the SSA, Congress meant exactly what it said."

The court cited some contrary opinions: *DeHart v. Baden* (In re Baden), 396 B.R. 617, 621-23 (Bankr.M.D.Pa.2008) holding that unemployment compensation is not excluded from current monthly income because unemployment compensation is not a "benefit"-an ambiguous word-received under the Social Security Act, but received under a state-run program, and similar opinion *In re Kucharz*, 418 B.R. 635, 640-43 (Bankr.C.D.Ill.2009).

The court said "In short, the "Social Security Act" encompasses a wide spectrum of programs. Most of the programs involve some degree of state participation, and the extent of the states' involvement varies widely from program to program."

The Adinolfi opinion cited numerous other examples:

- Adoption assistance
- Child welfare services under *Tubbs-Jones*
- Medicare & Medicaid
- Temporary assistance to needy families
- Unemployment compensation and see *In re Munger* 370 B.R. 21 (Bankr.D.Mass 2007)
- Disability insurance benefits.
- Federal funding of state-paid benefits
- Foster care
- Programs for child support collection and the determination of paternity
- Child care services

Another opinion held that withdrawals from an IRA are excluded from income. *Zahn v. Fink* 391 B.R. 840 (8th Cir. BAP 2008).

But another case held that distributions from a private pension plan are not excluded from income. *In re Coverstone*, 461 B.R. 629 (Bankr.Idaho, 2011)

The point to be made is, don't count only standard social security payments in the category of kinds of income that may be excluded from "income."

Look for the sources of funding for things that may "benefit" the debtor; if the program is funded by the federal government, directly or indirectly, there is good chance it falls within the excluded category. It is unlikely that the typical debtor will be able to tell you what the ultimate sources of program funding are. This question may require that the debtor's attorney

do some digging into the respective programs reported by the debtor.

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THE LAW & CASE
HOTWIRE

CASE CITES VARIETY OF SOCIAL SECURITY BENEFITS THAT ARE EXCLUDED FROM "INCOME" FOR MEDIAN AND MEANS TESTS

[Adinolfi v. Meyer 543 B.R. 612 \(9th Cir. B.A.P. 2016\)](#)

Bankruptcy court denied Debtor's chapter 13 plan because debtor proposed to exclude payments for "Adoption Assistance" from income."

See remarks in Excerpt" above.

[In re Munger 370 B.R. 21 \(Bankr.D. Mass. 2007\)](#)

Held: Unemployment compensation falls within benefits of social security and can be excluded from income.

Contrary, [In re Baden, 396 B.R. 617 \(Bankr. M.D. Pa., 2008\)](#)

"In considering the language of the Bankruptcy Code and Congress' intent in enacting the BAPCPA, this Court holds that unemployment compensation is not a "benefit received under the Social Security Act" and, therefore, should be included in the calculation of CMI. Accordingly, the Debtors incorrectly excluded their unemployment compensation, in the amounts of \$501.33 and \$381.33, from the calculation of CMI."

[In re Powers \(Bankr.N.D.N.Y. 2016\)](#)

Held: A below median income debtor is not subject to the expense restrictions in § 707(b)(2).

[In re Coverstone, 461 B.R. 629 \(Bankr.Idaho, 2011\)](#)

Held, distributions from private pension is not an SSA benefit and must be included in CMI

[In re Zahn, 391 B.R. 840 \(B.A.P. 8th Cir., 2008\)](#)

Held: Distributions from IRA are excluded from CMI for purposes of the median income test.

The court: "An IRA, or individual retirement account, is a trust created in the United States for the benefit of the creator or his beneficiaries, provided that the written instrument creating the trust meets certain requirements. 26 U.S.C. § 408(a). Bankruptcy courts that have considered whether IRA distributions should be included in current monthly income have found that distributions from IRAs should be excluded because the money deposited into an



IRA is received for use prior to the distribution from the IRA. See *Simon v. Zittel*, 2008 WL 750346 (Bankr.S.D.Ill.2008); *In re Wayman*, 351 B.R. 808 (Bankr.E.D.Tex. 2006). We agree with the bankruptcy courts in *Zittel* and *Wayman*. Given the attributes of an IRA, we conclude that IRA distributions should not be treated as income for purposes of the means test."

"The basis for the trustee's objection was the debtor's omission from her statement of current monthly income of the distribution that her husband took from his IRA account during the six months preceding the bankruptcy. If the distribution were included in the income report, then the debtor's income would be above the applicable median income for a family of three in Missouri. The applicable commitment period for a debtor with above median income is 60 months versus 36 months for a debtor with below median income.

"Congress did not set forth in § 101(10A)(B) an exclusion from current monthly income for withdrawals made from retirement accounts, yet courts have held that such withdrawals should not be included in the calculation of current monthly income because the withdrawals are not income in the first place. (*Bankr.D.Neb.2008*).

Held: Filing a proof of claim in a Chapter 13 for a time-barred debt (expired statute of limitations) is a violation of the Fair Debt Collection Practices Act (FDCPA) which may be adjudicated in bankruptcy court and may be a violations of Bankruptcy Rule 9011.

The court said: "A moral obligation is not a claim under § 105(a)."

[Avalos v. LVNV 531 B.R. 748 \(Bankr.N.D. Ill 2015\).](#)

HELD: False Representation Unnecessary to Find Consumer Bankruptcy Fraud

By Richard E. Weltman and Melissa A. Guseynov

[Husky Inter. Elect., Inc. v. Ritz, 136 S.Ct. 1581 \(2016\).](#)

We previously reported on the split among the federal circuit courts of appeal concerning circumstances under which a debtor's discharge with regard to a particular debt may be denied based on actual fraud if, prior to filing, the debtor transferred assets away from creditors without directly misleading them. In *Husky International Electronics, Inc. v. Ritz*, the United States Supreme Court settled the split of opinion among the lower courts, holding that debtor's actual misrepresentation is not a necessary prerequisite to demonstrate "actual fraud" under section 523(a)(2)(A).

HELD: Ninth Circuit Case of First Impression Holds That FDCPA Notice Requirement Applies to Subsequent Collectors of Same Debt

[Hernandez v. Williams, Zinman & Parham PC](#)

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IN OTHER NEWS

Bankruptcy - Taxes - Consumer Protection

Woman pleads guilty to fraudulent bankruptcy filing

By Field Walsh -
July 25, 2016

A Malvern, Ark., woman pleaded guilty in federal court Friday to using a friend's name and social security number to file bankruptcy in a scheme to recoup a repossessed car.

Calandra Lock appeared before U.S. District Judge Susan Hickey with federal public defender Anna Williams Friday to plead guilty to an information charging Lock with misuse of a social security number. Assistant U.S. Attorney Claude Hawkins said Lock had agreed to take over Jacinda Clegg's car payments in exchange for the car.

When Lock failed to make the car payments, it was repossessed by an auto dealer in Hot Springs. Lock contacted a lawyer and arranged to file Chapter 13 bankruptcy under Clegg's name and social security number with the expectation the filing would result in a return of the repossessed ride. The duped lawyer filed bankruptcy under Clegg's name May 26.

[CLICK FOR MORE STORY](#)

Commentary: In Chapter 11 Disclosure, No Firm Is Above the Rules Perry Mandarino gives his thoughts on chapter 11 disclosures

By
Perry M. Mandarino
Jun 22, 2016

The retention of a professional firm in a chapter 11 case, while requiring some thoughtful and perhaps tedious work, is incredibly straightforward. There are long established standards that are intended to protect the integrity of the proceeding and form the fabric of chapter 11 cases. The successful adjudication of a bankruptcy case requires many building blocks, with process and transparency being two of the most critical.

Disinterestedness is a simple concept. The professional may not represent any materially adverse interests to the estate or cannot be an interested party.

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Higher Ed Law Firm Takes on Bankruptcy Trustees in Tuition Battles

The law firm that has bailed colleges and universities out of NCAA athletic-compliance trouble is getting dragged into the bankruptcy courtroom, where fights are increasingly breaking out over tuition payments.

The Bond, Schoeneck & King firm is representing several colleges that face demands to return tuition payments made by a student's parents. That money, court-appointed bankruptcy officials argue, should have paid off the parents' own bills.



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No Attorneys' Fees for Litigation Over Bankruptcy Stay

From Bankruptcy Law Reporter (also available on Bloomberg Law)

By

June 22 - A debtor was not entitled to an award of attorneys' fees for successfully opposing a motion for relief from the Bankruptcy Code's automatic stay brought to exercise foreclosure rights, a district court ruled on June 20 (Green Tree Servicing LLC v. Giusto, 2016 BL 196785, N.D. Cal., No. 15-cv-02105-HSG, 6/20/16).

Judge Haywood S. Gilliam, Jr. of the U.S. District Court for the Northern District of California reversed the decision of a bankruptcy court which had found that the Supreme Court in its 2007 Travelers decision had overruled the Ninth Circuit's 1985 In re Johnson opinion.

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National Taxpayer Advocate Reviews Filing Season and Identifies Priority Areas and Challenges in Mid Year Report to Congress

IR-2016-97, July 7, 2016 - National Taxpayer Advocate Nina E. Olson today released her statutorily mandated mid-year report to Congress that contains extended excerpts from her ongoing Public Forums on Taxpayer Needs and Preferences, presents a review of the 2016 filing season, and identifies the priority issues the TAS will address during the upcoming fiscal year.

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ROOKER FELDMAN - DESPERATE CONSUMER BANKRUPTCY ATTORNEY

When Rocky arrived at his office he couldn't help but notice, as he wooshed past the hot front-desk girl Bling's desk, that Bling seemed to be totally absorbed in her cell phone.

He didn't stop there to suggest she get back to work, but a moment later as he slipped through the doorway to his office he suddenly realized he was annoyed. He stepped back into the open office and stared at Bling.

"Hgmnnph."

Blink did not look up.



"Hrumph grh=umppho!"

Bling still focused entirely on her cell phone.

"Eh, Bling? Should we all get back to work now? Put our phones away?"

Bling didn't look up, but replied:

"Just a moment! I've got one in my sights!"

"Got what, exactly, in your sights?"

"The pokemon!"

Rocky quickly scanned the office.

"The pokey what? I don't see him in the office."

Bling finally looked up and, rolling her eyes, said -

"Mr. Feldman, the pokemon! You know, a pokemon! I've hunted him down to this office."

Rooker realized he had no idea what she was talking about.

"Well, I don't want him poking, or whatever, in the waiting room! Kick him out and let's get back to work!"

Suddenly, a small crowd of people, strangers, poured in the front door, each holding a cell phone aimed somewhere into the air space of the waiting room.

"What the ...?"

"Sorry folks, this is a law office. Unless you're here for an appointment, you are welcome to leave."

The group ignored him and paced around the office, aiming their phones here and there.

"You're all welcome to get out of here, NOW."

Still no reaction.

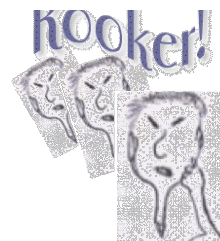
"Bling, what the hell is going on here? Please clue me in!"

"We've all spotted the pokemons in our office."

"How did they get in here?"

"No, Mr. Feldman, they aren't really here. They're in the virtual space of the office. They can only be seen if you have the app on your cell phone. Where have you been?"

Being over 50 years old, Rooker Feldman had no clue, and would never have a clue, about what Bling, the crowd, and the pokemons were about. He just knew he wanted them all out of the office.



**DESPERATE
CONSUMER
BANKRUPTCY
ATTORNEY!**

"Bling! Let me put it straight. If you don't collect your pokemons and get them out of the office, you will soon be in virtual employment and you will be free to hunt these pokey whatevers with your phone, while you wait in the unemployment office."

At that point, Lew, the faithful paralegal, stuck his head out of his office. With a wide grin he announced -

"Hey! There's one in my office!"

"Oh, criminy!" Rocky muttered.

He reached for a phone and called the police. Presently a cop showed up and came into the office.

"I'm so happy to see you, officer! Can you please held me get rid of all these people?"

The officer came back with "Ok. Oh! Hold on here."

He was studying his own cell phone with great interest.

"Wow!" blurted the cop. "I've found one right here!"

With a great sigh, Rooker gave up, and turned around and went back into his office. As he went in he couldn't help but scan the office out of the corners of his eyes for signs of one of these pokemons. To be safe, he also stepped over to the open window, which as we know is a portal to the virtual spirit world. He looked out the window, again searching for signs of anything strange.

Seeing nothing unusual, he grumbled

"Hmmp!" he murmered, "all just a lot of hocus pokus! and lit up a cigar.

World without end.

Amen.



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CONTACT

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