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Not Interested? A Trustee Lacks “Party in Interest” Standing To Move for an Extension of the Nondischargeability Bar Date on Behalf of Creditors

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NOT INTERESTED? A TRUSTEE LACKS “PARTY IN INTEREST” STANDING TO MOVE FOR AN EXTENSION OF THE NONDISCHARGEABILITY BAR DATE ON BEHALF OF CREDITORS

*Stephen C. Behymer**

Chapter 7 bankruptcy is designed to provide a financially distressed debtor with a “fresh start.” Towards that end, an individual debtor’s debts are typically discharged during the case. A creditor has only a short window of time in which to object to the dischargeability of its claims. This bar date can only be extended for cause and upon the application of a “party in interest.” Occasionally, a trustee will move for such an extension on behalf of the creditors. There is a split, however, between the Fourth and Sixth Circuits regarding whether a trustee is a “party in interest” and, therefore, whether the trustee has standing to move for an extension.

This Note analyzes the trustee’s role and interests in a Chapter 7 bankruptcy case, as well as the policy interests underlying the U.S. bankruptcy system. This Note concludes that a trustee is not a “party in interest” because a trustee does not have a financial, practical, or statutorily imposed interest in the dischargeability of an individual debt. Therefore, this Note finds that the Fourth Circuit is correct in holding that a trustee does not have standing to move for an extension of the nondischargeability bar date.

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INTRODUCTION

Imagine a debtor who, experiencing financial hardship, can no longer pay his creditors.¹ After weighing his options, the debtor decides to file a petition for relief under Chapter 7 of the Bankruptcy Code. In the typical Chapter 7 case, the debtor’s assets will be sold and distributed to his creditors, and the debtor will receive a discharge, “eliminat[ing] the debtor’s personal liability for all debts not excepted from discharge.”² The deadline (the § 523 bar date) for each of his 350-plus creditors to file a complaint challenging the dischargeability of the individual debts they are owed (the nondischargeability complaint) is set for sixty days from the date of the creditors’ meeting.³ Imagine further that some of the creditors sleep on their rights by failing to timely file nondischargeability complaints or apply for an extension of the § 523 bar date. Other creditors decide to rely on the bankruptcy trustee, who is planning to move for an extension of the § 523 bar date on behalf of the creditors. On the morning of the § 523 bar

1. This hypothetical is loosely based upon the facts of *In re Farmer*, 786 F.2d 618 (4th Cir. 1986).

2. 6 COLLIER ON BANKRUPTCY ¶¶ 700.01, 700.05 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009).

3. 11 U.S.C. § 523(c) governs the procedure for objecting to the dischargeability of an individual debt. 11 U.S.C. § 523(c) (2006). Federal Rule of Bankruptcy Procedure 4007(c), which supplements 11 U.S.C. § 523(c), provides that “a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than sixty days after the first date set for the meeting of creditors under [11 U.S.C.] § 341(a).” FED. R. BANKR. P. 4007(c). For a more thorough discussion of the procedure for objecting to the dischargeability of a debt, see *infra* Part I.C.

date, the bankruptcy trustee moves for an extension of the § 523 bar date on behalf of all 350-plus creditors, seeking to give the creditors additional time to object to the dischargeability of their claims.

Should the bankruptcy court grant the trustee's application for an extension? Or, did the creditors err in relying on the trustee to obtain an extension? Should their claims be discharged for failure to comply with the § 523 bar date? The answers to these questions depend on whether the trustee has standing to move for such an extension on behalf of the creditors. Federal Rule of Bankruptcy Procedure 4007(c) provides that only a "party in interest" has standing to move for an extension of the § 523 bar date.⁴ But is a trustee a "party in interest" under Rule 4007(c)? The Fourth and Sixth Circuits disagree on this issue. The Fourth Circuit, in *In re Farmer*, held that the bankruptcy trustee is not a "party in interest" under Rule 4007(c).⁵ Conversely, in *Brady v. McAllister*, the Sixth Circuit held that the bankruptcy trustee is a "party in interest" and, therefore, can move for an extension of the § 523 bar date on behalf of creditors.⁶ This circuit split has resulted in confusion among bankruptcy courts.⁷ The majority of bankruptcy courts to address this issue have aligned with the Fourth Circuit and held that a bankruptcy trustee is not a "party in interest" under Rule 4007(c).⁸ Still, some of these bankruptcy courts have used other equitable powers to extend the § 523 bar date where a creditor reasonably relied on a prior bankruptcy court order granting a trustee's Rule 4007(c) motion.⁹

4. FED. R. BANKR. P. 4007(c).

5. *In re Farmer*, 786 F.2d at 620–21.

6. *Brady v. McAllister*, 101 F.3d 1165, 1170 (6th Cir. 1996).

7. *Compare Silverdeer, LLC v. Deckelbaum (In re Deckelbaum)*, No. 10-06021-8-JRL, 2011 WL 5909331, at *1 (Bankr. E.D.N.C. June 17, 2011) ("The trustee is not a 'party in interest' under Bankruptcy Rule 4007(c) and cannot extend the deadline for filing objections to the discharge of specific debts under § 523."), *Ruben v. Harper (In re Harper)*, 194 B.R. 388 (Bankr. D.S.C. 1996) (acknowledging case law that questions whether a trustee has standing to move for an extension of a § 523 bar date, but nevertheless permitting the creditor's nondischargeability complaint to stand because the debtor failed to object to the trustee's motion for an extension of the § 523 bar date), *Flanagan v. Herring (In re Herring)*, 116 B.R. 313 (Bankr. M.D. Ga. 1990) (suggesting that a trustee is not a "party in interest," but nevertheless allowing the creditor's nondischargeability complaint to stand because the debtor did not appeal the court's previous order granting an extension of the § 523 bar date), *and Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. Tatum (In re Tatum)*, 60 B.R. 335 (Bankr. D. Colo. 1986) (holding that the trustee's motion for an extension of time in which to object to discharge does not extend the § 523 bar date on behalf of the creditors), *with Ellsworth Corp. v. Kneis (In re Kneis)*, No. 08-18014(DHS), 2009 WL 1750101 (Bankr. D.N.J. June 15, 2009) (holding that a trustee does have standing to move for an extension of the § 523 bar date on behalf of the creditors). *See generally Frati v. Gennaco*, No. 10-11055-PBS, 2011 WL 241973, at *2 (D. Mass. Jan. 24, 2011) (acknowledging the split between the Fourth and Sixth Circuits, but assuming for the purposes of their analysis that a bankruptcy trustee does have standing under Rule 4007(c)).

8. *See, e.g., Silverdeer, LLC*, 2011 WL 5909331, at *1; *In re Owen-Moore*, 435 B.R. 685 (Bankr. S.D. Cal. 2010); *Ruben*, 194 B.R. at 391–92 (using its equitable powers to permit the creditors' § 523 complaint to stand even though case law questions whether a trustee is generally a party in interest); *Flanagan*, 116 B.R. at 315; *Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 60 B.R. at 338.

9. *See Flanagan*, 116 B.R. at 315 (permitting a creditor's § 523 complaint to stand where the creditor relied on an unappealed order of the bankruptcy court extending the § 523

Part I of this Note provides a background on bankruptcy law in the United States, focusing on those portions of the Bankruptcy Code that are relevant to the issue addressed by this Note: whether a trustee has standing to move for an extension of the § 523 bar date on behalf of creditors. Part II of this Note explores the *Farmer* and *Brady* decisions and the reasoning of the Fourth and Sixth Circuits regarding whether a Chapter 7 bankruptcy trustee has standing to move for an extension of the § 523 bar date on behalf of creditors. Part II also discusses how bankruptcy courts have responded to the *Farmer* and *Brady* decisions. Part III of this Note argues that the Fourth Circuit was correct in concluding that a trustee is not a “party in interest” under Rule 4007(c).¹⁰

I. SETTING THE STAGE: GROWTH OF THE CURRENT BANKRUPTCY CODE AND AN OVERVIEW OF CHAPTER 7 LIQUIDATION

This Note begins by providing a general background of the U.S. bankruptcy laws, with a focus on Chapter 7 bankruptcies. Part I.A discusses the history and development of the U.S. bankruptcy laws, including the primary policy interests of the Bankruptcy Code. Part I.B then provides a general overview of the structure of the current bankruptcy laws. Next, Part I.C focuses its discussion more narrowly on Chapter 7 bankruptcies, with an emphasis on the procedure for determining the dischargeability of an individual debt and the role of the bankruptcy trustee. Part I.D concludes by looking at the use and interpretation of the phrase “party in interest” throughout the Bankruptcy Code and Rules.

A. *Understanding the Bankruptcy Code*

This section briefly reviews the development of the U.S. bankruptcy laws. It begins by exploring the history of bankruptcy in the United States and the development of the current debtor-friendly system. This section then discusses the two major policy interests that permeate the current Bankruptcy Code.

1. History of Bankruptcy Laws in the United States

Today, bankruptcy is defined as the “statutory procedure by which a . . . debtor obtains financial relief and undergoes a judicially supervised reorganization or liquidation of the debtor’s assets for the benefit of creditors.”¹¹ Bankruptcy laws have existed in America, in some form, since

bar date based upon the trustee’s application); *see also Ruben*, 194 B.R. at 391–92 (permitting the creditor’s nondischargeability complaint to stand because the debtor failed to object to the trustee’s motion for an extension of the § 523 bar date).

10. While § 523 is applicable to the entire Bankruptcy Code—and therefore this issue is relevant regardless of the type of relief sought under the Bankruptcy Code—this Note focuses on § 523 within a Chapter 7 bankruptcy case. There are two reasons for this. First, this limitation will allow for a more refined and concrete exploration of the issues. Second, most of the cases that address this issue, including both *In re Farmer* and *Brady*, were Chapter 7 bankruptcy cases.

11. BLACK’S LAW DICTIONARY 166–67 (9th ed. 2009).

the early colonial era.¹² The bankruptcy laws have not, however, always looked as they do today. Over the past two and a half centuries, bankruptcy in America has slowly transitioned from a collection of pro-creditor state laws, which were largely unsympathetic to the plight of the financially distressed debtor, to a more liberal federal system, which focuses on providing the debtor with a “fresh start” while simultaneously facilitating the fair and orderly collection of debts owed to creditors.¹³

During the colonial era, debtors were generally viewed as quasi-criminals.¹⁴ Defaulting debtors could be imprisoned indefinitely, and placed in jails alongside other criminals.¹⁵ In Pennsylvania, debtors were subject to public flogging.¹⁶ In New York, debtors could be branded with a “T,” designating them as thieves.¹⁷ Still, debtors were not without any remedial measures. Some colonies and early states provided debtors with a discharge, releasing the debtors from their obligations to repay their outstanding debts.¹⁸ This form of relief was limited, however, and required consent by a majority or supermajority of the debtor’s creditors, in number and amount.¹⁹

Prior to the adoption of the U.S. Constitution, bankruptcy laws were left to the control and administration of the individual states.²⁰ In fact, the Articles of Confederation never mentioned bankruptcy.²¹ During the Constitutional Convention of 1787, however, the Founding Fathers were concerned with the lack of uniformity in the states’ administration of bankruptcy laws, which resulted in a federal bankruptcy power.²² Article I,

12. See John E. Matejkovic & Keith Rucinski, *Bankruptcy “Reform”: The 21st Century’s Debtors’ Prison*, 12 AM. BANKR. INST. L. REV. 473, 475–77 (2004).

13. See Uriel Rabinovitz, Note, *Toward Effective Implementation of 11 U.S.C. § 522(d)(11)(e): Invigorating a Powerful Bankruptcy Exemption*, 78 FORDHAM L. REV. 1521, 1531, 1534 (2009) (“[T]he current Bankruptcy Code is the product of historical evolution that was at least two centuries in the making: what began as a tool to help creditors collect debts has evolved into a mechanism granting relief to downtrodden debtors.”).

14. See, e.g., Matejkovic & Rucinski, *supra* note 12, at 476; Charles Jordan Tabb, *The History of the Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 12 (1995).

15. Matejkovic & Rucinski, *supra* note 12, at 475.

16. GEORGE W. KUNEY, *MASTERING BANKRUPTCY* 4 (2008); Rabinovitz, *supra* note 13, at 1528.

17. KUNEY, *supra* note 16, at 4; Rabinovitz, *supra* note 13, at 1528.

18. 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 20.01[1].

19. John C. McCoid, II, *The Origins of Voluntary Bankruptcy*, 5 BANKR. DEV. J. 361, 367–69 (1988). At the time of the American Revolution, four colonies authorized a limited discharge from debt in their bankruptcy laws. *Id.* at 367. In New York, from 1788 to 1811, a discharge required the consent of three-fourths of creditors. *Id.* at 368. In South Carolina, a discharge required the consent of three-fourths of creditors in number and amount. *Id.* at 367. From 1749 to 1793, North Carolina authorized discharges to imprisoned debtors who took an oath of poverty. *Id.* at 368. In addition, from 1756 to 1828, Rhode Island authorized a discharge to all imprisoned debtors in exchange for surrendering their real and personal property. *Id.* at 369.

20. See generally F. REGIS NOEL, *A HISTORY OF THE BANKRUPTCY LAW* 33–66 (William S. Hein & Co. 2002) (1919) (discussing various bankruptcy laws of the colonies and states prior to the adoption of the Constitution).

21. See ARTICLES OF CONFEDERATION of 1781; NOEL, *supra* note 20, at 67.

22. See Tabb, *supra* note 14, at 13.

Section 8, Clause 4 of the Constitution, referred to as the “Bankruptcy Clause,” authorizes Congress to enact “uniform Laws on the subject of Bankruptcies throughout the United States.”²³ While this federal bankruptcy power was only sporadically used before 1898, the few and short-lived federal bankruptcy acts during the nineteenth century made important strides in liberalizing bankruptcy in the United States into a more debtor-friendly system.²⁴

The first national bankruptcy law, the Bankruptcy Act of 1800,²⁵ continued the creditor-oriented mindset of the colonial era.²⁶ Under the Bankruptcy Act of 1800, bankruptcy was involuntary, meaning that only creditors could initiate a bankruptcy case.²⁷ Moreover, discharge under the Act was limited to merchants, traders, bankers, brokers, factors, underwriters, and marine insurers, and required two-thirds consent of the creditors, by number and amount.²⁸ Beginning in 1841, however, the federal government began to enact more debtor-friendly bankruptcy legislation.²⁹ For example, the Bankruptcy Act of 1841³⁰ permitted debtors to petition for voluntary bankruptcies.³¹ Moreover, the Bankruptcy Act of 1841 was not limited to traders and merchants; instead, any individual debtor who was unable to repay his debts could petition for bankruptcy.³² In the Bankruptcy Act of 1898,³³ Congress not only provided for voluntary bankruptcy, but also eliminated the longstanding requirement of creditor’s consent to a discharge, recognizing the importance of providing relief to a financially distressed debtor.³⁴ Today, the Bankruptcy Reform Act of 1978³⁵ (the Bankruptcy Code), which established the current bankruptcy system, is widely considered a “much more debtor-friendly law.”³⁶

23. U.S. CONST. art. I, § 8, cl. 4.

24. See 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 20.01[2]; Rabinovitz, *supra* note 13, at 1528–30.

25. Act of Apr. 4, 1800, ch. 19, 2 Stat. 19 (repealed 1803).

26. See Rabinovitz, *supra* note 13, at 1529 (“The primary purpose of the Bankruptcy Act of 1800 was not to aid debtors, but rather to address attempts to defraud creditors.”).

27. Act of Apr. 4, 1800, ch. 19, § 2, 2 Stat. at 19, 21–22; see also Rabinovitz, *supra* note 13, at 1528.

28. Act of Apr. 4, 1800, ch. 19, §§ 1, 36, 2 Stat. at 20, 31; see also 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 20.01[2][a]; Tabb, *supra* note 14, at 15 (“Before a discharge could be granted, the bankruptcy commissioners had to certify to the federal district judge that the debtor had cooperated, and two-thirds of the creditors, by number *and* by value of claims, had to consent to the discharge.”).

29. See Rabinovitz, *supra* note 13, at 1529–31.

30. Act of Aug. 19, 1841, ch. 9, 5 Stat. 440 (repealed 1843).

31. *Id.* ch. 9, § 1, 5 Stat. at 440–41; see also Tabb, *supra* note 14, at 16–18.

32. Act of Aug. 19, 1841, ch. 9, § 1, 5 Stat. at 440–41; see also McCoid, *supra* note 19, at 361. While the Bankruptcy Act of 1841 was not limited to merchants, corporations were still excluded from seeking relief. Tabb, *supra* note 14, at 16–17.

33. ch. 541, 30 Stat. 544 (repealed 1978).

34. See *id.* ch. 541, §§ 4a, 14, 30 Stat. at 547, 550; Rabinovitz, *supra* note 13, at 1530 (“With this Act, Congress tried to make the discharge more readily attainable, eliminating the requirement for creditors’ consent to a discharge.”).

35. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (codified as amended in 11 U.S.C.). Congress has amended the Bankruptcy Code several times since 1978. *E.g.*, Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-

This is not to suggest that the current Bankruptcy Code ignores creditors' interests.³⁷ Rather, the current Bankruptcy Code provides debtor-friendly means of relief while simultaneously accounting for the interests of creditors.³⁸ This dual approach was apparent with the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005³⁹ (the BAPCPA), which halted the pro-debtor trend, providing additional protection for creditors to ensure that only those debtors in critical need would be helped.⁴⁰ Today, the current Bankruptcy Code focuses on providing relief to honest debtors in need, while creating a system designed to facilitate the orderly collection of debts owed to creditors.⁴¹

2. Policy Interests Underlying the Bankruptcy Code

The analysis of whether a bankruptcy trustee is a "party in interest" with standing to move for an extension of the § 523 bar date requires consideration of the policy interests underlying the current Bankruptcy Code. This section discusses those two major policy interests.

As suggested in Part I.A.1, the Bankruptcy Code primarily serves two important policy interests: (1) to provide the debtor with a fresh start, and (2) to facilitate the fair collection of debts owed to creditors.⁴² Even though

353, 98 Stat. 333 (codified as amended in scattered sections of 11 and 28 U.S.C.); Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088 (codified as amended in 11 U.S.C. §§ 1201-1231); Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (codified as amended in scattered sections of 11 U.S.C.).

36. Rabinovitz, *supra* note 13, at 1531 (quoting *Personal Bankruptcy Consumer Credit Crisis: Hearings Before the Subcomm. on Admin. Oversight and the Courts of the S. Comm. on the Judiciary*, 105th Cong. (1997) (statement of the American Bankruptcy Institute)); see also Robert J. Landry, III & Nancy Hisey Mardis, *Consumer Bankruptcy Reform: Debtors' Prison Without Bars or "Just Desserts" for Deadbeats?*, 36 GOLDEN GATE U. L. REV. 91, 95 (2006) ("Even though the Bankruptcy Code significantly changed substantive bankruptcy, it did not alter the fundamental policy in favor of debtors. In fact, some argue that it enhanced a policy in favor of debtors."). For a more detailed discussion of the passage of the Bankruptcy Reform Act of 1978, see Tabb, *supra* note 14, at 32-37.

37. See KUNEY, *supra* note 16, at 4-5 (noting that the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 "is a notable reversal" of the Bankruptcy Code's debtor-friendly policy); Rabinovitz, *supra* note 13, at 1531.

38. See Rabinovitz, *supra* note 13, at 1531.

39. Pub. L. No. 109-8, 119 Stat. 23 (codified as amended in scattered sections of 11 U.S.C.).

40. See H. COMM. ON THE JUDICIARY, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005, H.R. REP. NO. 109-31, pt. 1, at 2 (2005) ("The purpose of the [BAPCPA] is to . . . ensure that the system is fair for both debtors and creditors."); see also KUNEY *supra* note 16, at 4-5 (arguing that the BAPCPA is a "notable reversal of the more liberal trend"); Rabinovitz, *supra* note 13, at 1531 (arguing that the BAPCPA takes into account the interests of creditors).

41. See Rabinovitz, *supra* note 13, at 1531.

42. 1 HENRY J. SOMMER, CONSUMER BANKRUPTCY LAW & PRACTICE § 2.3, at 17-18 (10th ed. 2012). See generally Margaret Howard, *A Theory of Discharge in Consumer Bankruptcy*, 48 OHIO ST. L.J. 1047-48 (1987) (discussing five policy interests in the Bankruptcy Code: bankruptcy as a collection device, the bankruptcy discharge as a reward to a worthy debtor, bankruptcy as a system to protect the interests of worthy creditors, bankruptcy as a system to rehabilitate the debtor, and bankruptcy as a system "designed to

early state and federal bankruptcy laws favored creditors, the interest in providing a fresh start to the debtor dates back to the founding of the United States.⁴³ The Framers of the Constitution recognized that many debtors are in such a position that they cannot escape or overcome their debts on their own.⁴⁴ The bankruptcy powers were granted under the Constitution, in part, so that the federal government could order that “a cloak be made to protect the debtor from the bitter winds of misfortune and the cruel assaults of his creditor.”⁴⁵

Today, the fresh start policy has grown into one of the most important rationales underlying the bankruptcy system.⁴⁶ According to the fresh start theory, the aim of the Bankruptcy Code is to provide those individuals who have suffered financial hardship with “a new opportunity in life . . . unhampered by the pressure and discouragement of preexisting debt.”⁴⁷ The Bankruptcy code seeks to “allow the debtor to . . . resume being a contributing member of society.”⁴⁸ The fresh start policy requires a final disposition of assets and claims against the debtor, so that the debtor can be confident in his expectation for relief from financial distress.⁴⁹

The fresh start policy does not, however, condone abuse by debtors.⁵⁰ The U.S. Supreme Court has stated on multiple occasions that a fresh start

achieve economic efficiency in its allocation of the risk of loss . . . between debtor and creditor”).

43. NOEL, *supra* note 20, at 7–8. *But see* Tabb, *supra* note 14, at 43 (“The idea of a bankruptcy law as a means of providing a fresh start for distressed debtors was foreign to the framers.”).

44. NOEL, *supra* note 20, at 7–8.

45. *Id.* at 8.

46. *See* Grogan v. Garner, 498 U.S. 279, 286 (1991); *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934); THOMAS H. JACKSON, *THE LOGIC AND LIMITS OF BANKRUPTCY LAW* 225 (1986). *But see* Katherine Porter & Deborah Thorne, *The Failure of Bankruptcy’s Fresh Start*, 92 CORNELL L. REV. 70 (2006) (arguing that Chapter 7 bankruptcy does not rehabilitate many debtors sufficiently to provide them with a fresh start).

47. *Local Loan Co.*, 292 U.S. at 244.

48. Rabinovitz, *supra* note 13, at 1534.

49. *See* State Bank & Trust, N.A. v. Dunlap (*In re Dunlap*), 217 F.3d 311, 315 (5th Cir. 2000) (“The strict time limitation placed upon creditors who wish to object to a debt’s dischargeability reflects the Bankruptcy Code’s goal of providing debtors with a fresh start.”); *FDIC v. Meyer* (*In re Meyer*), 120 F.3d 66, 69 (7th Cir. 1997) (“[Rule 4007(c)] defines a time certain when creditors may no longer come claiming that the debtor defrauded them and that certain debts should be non-dischargeable. . . . The debtor can relax.”); *Ichinose v. Homer Nat’l Bank* (*In re Ichinose*), 946 F.2d 1169, 1172–73 (5th Cir. 1991).

50. *Grogan*, 498 U.S. at 286–87. The BAPCPA introduced the rigid “means test” to prevent abuse of the Bankruptcy Code by debtors who wanted to shirk the personal responsibility of repaying their debts. *See* Lauren E. Tribble, Note, *Judicial Discretion and the Bankruptcy Abuse Prevention Act*, 57 DUKE L.J. 789, 792 (2007) (arguing that it was a “poor decision” for Congress to enact the “means test,” and proposing an alternative test). Pursuant to the “means test,” a debtor’s ability to repay his or her loans is measured using an objective formula “that produces a straightforward presumption or nonpresumption of abuse of the bankruptcy process.” Kathleen Murphy & Justin H. Dion, “Means Test” or “Just a Mean Test”: *An Examination of the Requirement That Converted Chapter 7 Bankruptcy Debtors Comply with Amended Section 707(b)*, 16 AM. BANKR. INST. L. REV. 413, 414 (2008).

should only be granted to those debtors who have clean hands themselves.⁵¹ Accordingly, a debtor who has acted improperly may not be entitled to a general discharge,⁵² or a bankruptcy court may determine that certain improperly obtained debts are excepted from discharge.⁵³

The second main function of the Bankruptcy Code is to provide for the fair distribution of the debtor's assets to the creditors.⁵⁴ This fair collection policy has a long history in bankruptcy law.⁵⁵ In fact, the discharge was originally incorporated into English bankruptcy laws in 1705 as a means to encourage the debtor to cooperate in a bankruptcy case.⁵⁶ Moreover, bankruptcy laws were seen as a method of avoiding "'grab law[s]' with a first-come, first-served characteristic, enabling the court to oversee an orderly liquidation of the debtor's assets."⁵⁷ Today, the fair collection policy requires a prompt and orderly process of collection, liquidation, and distribution of the debtor's assets to the creditors.⁵⁸ As such, the Bankruptcy Code provides for a "ratable and equitable" distribution of a debtor's nonexempt assets to creditors according to a priority list determined by Congress.⁵⁹

B. The Structure of the Current Bankruptcy Laws: Code and Rules

Today, the current bankruptcy system is governed by the Bankruptcy Code, found in Title 11 of the U.S. Code.⁶⁰ The Bankruptcy Code is the most important source of bankruptcy law in the United States.⁶¹ The Bankruptcy Code is broken down into nine chapters, six of which provide for some type of bankruptcy relief.⁶² Chapters 1, 3, and 5 contain laws that are generally applicable to each of the six types of relief, including relevant definitions,⁶³ provisions regarding the administration of a bankruptcy case

51. *Grogan*, 498 U.S. at 286–87 (“[The Bankruptcy Code] limits the opportunity for a completely unencumbered new beginning to the ‘honest but unfortunate debtor.’” (quoting *Local Loan Co.*, 292 U.S. at 244)).

52. 11 U.S.C. § 727(a) (2006) (setting forth the circumstances in which a debtor is not entitled to a discharge, including when the debtor has destroyed or concealed property with intent to defraud).

53. *Id.* § 523(a) (providing that certain types of debts, including those obtained through false pretenses or fraud, are nondischargeable).

54. *See* *Union Bank v. Wolas*, 502 U.S. 151, 161 (1991); *see also* 1 SOMMER, *supra* note 42, § 2.3, at 17–18; Rabinovitz, *supra* note 13, at 1533.

55. Rabinovitz, *supra* note 13, at 1532.

56. *Id.*

57. *Id.* at 1533.

58. 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 1.01[1].

59. *Id.*; *see also* 11 U.S.C. § 726 (2006) (setting forth the order of distribution of assets in the bankruptcy estate in a Chapter 7 bankruptcy case).

60. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (codified as amended in 11 U.S.C.); *see also* 1 SOMMER, *supra* note 42, § 1.4.1.1, at 8–9.

61. *See* 1 SOMMER, *supra* note 42, § 1.4.1.1, at 8.

62. 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 1.01[2] (noting that the chapters are usually odd numbered to allow room for expansion in the Bankruptcy Code).

63. *See* 11 U.S.C. §§ 101–112; *see also* 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 1.01[2][a].

between its commencement and closing,⁶⁴ and provisions regarding creditors' claims and the claims process for each type of bankruptcy relief.⁶⁵ Chapter 1 also grants courts the power to "carry out the provisions of this title" and gives courts the power to, "sua sponte, tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules."⁶⁶

The Bankruptcy Code provides six forms of bankruptcy relief, referenced according to their respective chapters therein.⁶⁷ The three most common forms of relief are Chapter 7, Chapter 11, and Chapter 13.⁶⁸ Chapter 7 bankruptcy, the type of relief explored in this Note, governs the liquidation of a debtor's estate.⁶⁹ In a Chapter 7 liquidation, the debtor's nonexempt property is collected, liquidated, and then distributed among creditors according to a priority scheme set forth in the Bankruptcy Code.⁷⁰ After the distribution of the bankruptcy estate, the debtor typically receives a general discharge, relieving him from the responsibility of repaying most of his outstanding debts.⁷¹

Chapter 7 bankruptcy is the most common form of bankruptcy relief used by individual debtors.⁷² The next most common form of bankruptcy relief for the individual debtor is set forth in Chapter 13 of the Bankruptcy Code.⁷³ For qualifying individual debtors,⁷⁴ Chapter 13 bankruptcy

64. See 11 U.S.C. §§ 301–308, 321–333, 341–351, 361–366; see also 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 1.01[2][a].

65. See 11 U.S.C. §§ 501–511, 521–528, 541–562; see also 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 1.01[2][a]. The statute at issue in this Note, 11 U.S.C. § 523, is found in Chapter 5 of the Bankruptcy Code.

66. 11 U.S.C. § 105(a).

67. See 1 WILLIAM L. NORTON, JR. & WILLIAM L. NORTON III, NORTON BANKRUPTCY LAW AND PRACTICE § 11:1 (3d ed. 2008).

68. Rabinovitz, *supra* note 13, at 1522–23. See generally 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 1.01[1]. The three other types of bankruptcy relief are set forth in Chapters 9, 12, and 15 of the Bankruptcy Code. Chapter 9 bankruptcy deals with the adjustment of a municipality's debt. See 11 U.S.C. §§ 901–904, 921–930, 941–946. Chapter 12 bankruptcy governs relief for family farmers and fishermen. See *id.* §§ 1201–1208, 1221–1231. Lastly, Chapter 15 governs international bankruptcies. See *id.* §§ 1501–1532.

69. 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 700.01. For a more detailed discussion of Chapter 7 of the Bankruptcy Code, see *infra* Part I.C.1.

70. 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 700.01. The order of distribution of assets in a Chapter 7 bankruptcy case is set forth in 11 U.S.C. § 726.

71. 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶¶ 700.01, 727.01; see also 11 U.S.C. § 727 (governing the discharge in a Chapter 7 bankruptcy case).

72. 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 1.07[1]. In the twelve-month period ending December 31, 2012, there were 816,271 "nonbusiness" Chapter 7 bankruptcy petitions filed, compared to 363,280 "nonbusiness" Chapter 13 petitions. *Table F-2, U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending December 31, 2012*, U.S. Ct., http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BankruptcyFilings/2012/12_12_f2.pdf (last visited Oct. 21, 2013) [hereinafter *Table F-2*].

73. See *Table F-2, supra* note 72.

74. 11 U.S.C. § 109(e) sets forth the minimum regular income requirements necessary for an individual to qualify for Chapter 13 protection. This minimum dollar amount is adjusted every three years "to reflect the change in the Consumer Price Index." *Id.* § 104(a).

provides bankruptcy court protection and supervision in creating a repayment plan, taking into account the individual's regular income.⁷⁵

A financially distressed business typically petitions under Chapter 7 or Chapter 11 of the Bankruptcy Code.⁷⁶ Chapter 11 bankruptcy provides for the reorganization of a business.⁷⁷ In a Chapter 11 case, the parties attempt to come to an agreement regarding how to reorganize the company, rather than simply liquidate it.⁷⁸ The hope is that allowing the company to continue to operate will generate greater value than liquidating the company.⁷⁹

The Bankruptcy Code works in conjunction with the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules), which were promulgated by the Supreme Court in 1983.⁸⁰ The Bankruptcy Rules govern the procedure of cases brought forth under the Bankruptcy Code.⁸¹

C. Chapter 7 Bankruptcy

This section looks specifically at bankruptcy relief governed by Chapter 7 of the Bankruptcy Code. First, this section provides an overview of a Chapter 7 bankruptcy case. Next, it explores the role and duties of the Chapter 7 bankruptcy trustee. Lastly, it discusses the strict nature of the time limits in a Chapter 7 bankruptcy case.

1. Overview of a Chapter 7 Bankruptcy Case

The ultimate goal of a Chapter 7 debtor is to obtain a fresh start by seeking a general discharge of his or her debts.⁸² This is accomplished through a liquidation procedure, managed by the Chapter 7 bankruptcy trustee, and overseen by a bankruptcy court.⁸³ In general, the debtor's assets are collected, liquidated, and then distributed to creditors according to an order of priority set forth in the Bankruptcy Code.⁸⁴ This subsection will review in more detail the relevant procedure and laws of a Chapter 7 bankruptcy case.

The first step is the initiation of the Chapter 7 bankruptcy case.⁸⁵ There are two ways to commence a Chapter 7 case.⁸⁶ The most common is a

75. 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 1.07[5][d].

76. In the twelve-month period ending December 31, 2012, there were 27,274 "business" Chapter 7 bankruptcy petitions filed, compared to 8,900 "business" Chapter 11 petitions. *Table F-2, supra* note 72.

77. 7 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 1100.01.

78. *See* Daniel R. Wong, *Chapter 11 Bankruptcy and Cramdowns: Adopting a Contract Rate Approach*, 106 NW. U.L. REV. 1927, 1931 (2012).

79. *Id.* at 1931–32.

80. *See* 9 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 1001.02[2]. The Supreme Court is granted the power to prescribe bankruptcy rules pursuant to 28 U.S.C. § 2075 (2006).

81. 1 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 1.01[2][b].

82. 1 SOMMER, *supra* note 42, § 2.3, at 17–18.

83. *See id.*

84. 11 U.S.C. § 507 (governing the priority scheme); *Id.* § 726 (setting forth the Chapter 7 distribution scheme); *see* 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 700.01.

85. 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 700.02.

voluntary bankruptcy case in which the debtor, facing financial hardship, chooses to file a Chapter 7 petition in bankruptcy court.⁸⁷ The second method is an involuntary bankruptcy case in which the creditors file a Chapter 7 petition.⁸⁸

Once the case is initiated, either the U.S. trustee or the court appoints an interim trustee,⁸⁹ and the bankruptcy estate is created.⁹⁰ The bankruptcy estate, comprised of almost all of the debtor's assets, is central to the bankruptcy case because it is used to pay the creditors.⁹¹ Only assets that are categorized as exempt are excluded from the bankruptcy estate.⁹² The status of an asset—as exempt or nonexempt—is determined by 11 U.S.C. § 541(b). Under § 541(b), very few property interests are categorized as exempt.⁹³ Exempt assets include, *inter alia*, assets that a debtor controls for the sole benefit of another⁹⁴ and interests in certain income withheld by an employer to be used in an employee health benefit plan.⁹⁵ It is the duty of the trustee to collect the nonexempt assets for the bankruptcy estate, and to begin liquidating those assets for future distribution to the creditors.⁹⁶

During the liquidation process, the trustee receives and reviews the claims of the creditors.⁹⁷ The Bankruptcy Code defines a claim as a “right to payment.”⁹⁸ A debt is defined as “liability on a claim.”⁹⁹ The two terms are interconnected; a debtor owes a debt to a creditor, and a creditor has a claim against a debtor.¹⁰⁰ If the trustee believes that a claim is improper, then the trustee may object to the claim.¹⁰¹ Once the bankruptcy estate has

86. *Id.* In addition to these two methods for initiating a Chapter 7 bankruptcy case, a case may also be converted to a Chapter 7 case from a Chapter 11, 12, or 13 case. *Id.* ¶ 700.02.

87. McCoid, *supra* note 19, at 361 (noting that voluntary bankruptcy is more common than involuntary bankruptcy). In 2010, 99.92 percent of the Chapter 7 bankruptcy cases filed were voluntary cases. *See Table 7.2, U.S. Bankruptcy Courts—Voluntary and Involuntary Cases Filed, by Chapter of the Bankruptcy Code*, U.S. Ct., <http://www.uscourts.gov/uscourts/Statistics/JudicialFactsAndFigures/2010/Table702.pdf> (last visited Oct. 21, 2013).

88. 11 U.S.C. § 303.

89. *Id.* § 701. Either the U.S. trustee or the court initially appoints the interim trustee. *Id.* Subsequently, at the meeting of the creditors, the general unsecured creditors may elect a permanent trustee. *See infra* note 108 and accompanying text; *see also* 11 U.S.C. § 702; 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 702.01.

90. 11 U.S.C. § 541; *see also* 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 700.02.

91. 5 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 541.01.

92. *See* 11 U.S.C. § 541(b); 5 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 541.01.

93. *See* 11 U.S.C. § 541(b); 5 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 541.01.

94. *See* 11 U.S.C. § 541(b)(1).

95. *See id.* § 541(b)(7).

96. *Id.* § 704(a)(1); 1 SOMMER, *supra* note 42, § 3.5.1, at 41.

97. 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 700.04.

98. 11 U.S.C. § 101(5)(A).

99. *Id.* § 101(12).

100. *See Johnson v. Home State Bank*, 501 U.S. 78, 84 n.5 (1991).

101. *See* 11 U.S.C. § 704(a)(5) (“The trustee shall if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper.”). However, the trustee is not always required to object to an improper claim. Steven Rhodes, *The Fiduciary and Institutional Obligations of a Chapter 7 Bankruptcy Trustee*, 80 AM. BANKR. L.J. 147, 176 (2006). In determining whether a trustee should object, “the inquiry is whether other

been liquidated, and the deadline for filing claims has passed, the trustee will distribute the estate in accordance with the distribution scheme set forth in the Bankruptcy Code.¹⁰² First, secured creditors are entitled to payment from the liquidation of the corresponding secured property, up to the amount of the secured creditor's claim.¹⁰³ A secured creditor is "[a] creditor who has the right, on the debtor's default, to proceed against collateral and apply it to the payment of the debt."¹⁰⁴ Then, unsecured or undersecured¹⁰⁵ creditors are paid as set forth under §§ 507 and 726, with domestic support claims being paid first.¹⁰⁶

While the trustee is collecting and liquidating the debtor's nonexempt assets, the bankruptcy court sends notice of the bankruptcy case to all of the debtor's creditors.¹⁰⁷ The notice contains a date for the creditors' meeting, which is the creditors' first opportunity to examine the debtor.¹⁰⁸ In addition, the court's notice also contains certain deadlines, called bar dates, including the bar date for objecting to the debtor's general discharge, and the bar date for filing nondischargeability complaints.¹⁰⁹ Pursuant to Federal Rules of Bankruptcy Procedure 4004(a) and 4007(c), these bar dates can be set no later than sixty days from the first date set for the creditors' meeting, regardless of whether the meeting actually takes place.¹¹⁰ These bar dates can be extended by a court for cause upon a motion by a "party in interest."¹¹¹

creditors would receive a greater distribution" if the objection was made. *Id.* Therefore, in some situations the trustee might choose not to object if the trustee believes that the administrative cost outweighs the benefit of objecting to the claim. *See id.*

102. *See* 11 U.S.C. § 507; *id.* § 726; 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 726.01.

103. 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 700.04; Chris Lenhart, Note, *Toward a Midpoint Valuation Standard in Cram Down: Ointment for the Rash Decision*, 83 CORNELL L. REV. 1821, 1824 (1998).

104. BLACK'S LAW DICTIONARY, *supra* note 11, at 425.

105. A creditor is undersecured when the sale of the secured property is insufficient to repay the full amount of the secured debt. *See* Lenhart, *supra* note 103, at 1824. The undersecured creditor would be entitled to the full value of the secured property and then would be treated as an unsecured creditor with regards to the outstanding portion of the debt. *See* 11 U.S.C. § 506(a).

106. *See* 11 U.S.C. §§ 507, 726. The term "domestic support obligation" is defined by the Bankruptcy Code and includes alimony, maintenance, and support debts owed to "a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative" or owed to a governmental unit. *Id.* § 101(14A). It also includes any interest that accrues on those debts. *Id.*

107. 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 700.03.

108. 1 SOMMER, *supra* note 42, § 3.3, at 39. The meeting of creditors is governed by 11 U.S.C. § 341.

109. 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 700.03. Federal Rule of Bankruptcy Procedure 4007(c) requires the court to give at least thirty days' notice of the § 523 bar date. FED. R. BANKR. P. 4007(c). Federal Rule of Bankruptcy Procedure 4004(a) requires the court to give at least twenty eight days' notice of the bar date for objecting to the general discharge. FED. R. BANKR. P. 4004(a).

110. FED. R. BANKR. P. 4004(a); *id.* R. 4007(c); *see also* Katherine S. Kruis, *The Time Limitation for Objecting to the Dischargeability of Debts: A Trap for the Unwary*, 26 CAL. BANKR. J. 55, 60 (2001).

111. FED. R. BANKR. P. 4004(b); *id.* R. 4007(c).

After the bankruptcy estate is distributed, the court typically enters an order of discharge, absolving the individual debtor from personal liability of any remaining debts.¹¹² A debtor is not, however, guaranteed a discharge of all of his debts.¹¹³ There are primarily two ways in which an individual debtor will not be relieved of the obligation to repay his remaining debts.¹¹⁴ First, the court may determine that the debtor is not entitled to a general discharge.¹¹⁵ Second, the court may grant the general discharge but determine that certain debts should be exempted from the discharge.¹¹⁶ The following three paragraphs discuss the procedures for determining whether a debtor is entitled to a general discharge and whether individual debts are dischargeable.

First, a trustee, creditor, or U.S. trustee may object to the granting of a discharge.¹¹⁷ The court will then determine whether the debtor is entitled to a general discharge under § 727.¹¹⁸ Consistent with the fresh start policy,¹¹⁹ the exceptions listed in § 727(a) are meant to ensure that only honest debtors are able to take advantage of the bankruptcy laws.¹²⁰ For example, the bankruptcy court is required to deny the debtor a discharge if the debtor fraudulently transferred or concealed assets in the year preceding the filing of the petition,¹²¹ or the debtor failed to keep proper records of his financial condition and business transactions.¹²² However, a denial of a general discharge under § 727 is considered an “extreme penalty.”¹²³ As such, exceptions under § 727(a) are to be construed “liberally in favor of the debtor.”¹²⁴

Second, even if the bankruptcy court grants the debtor a discharge, the court may determine that a specific debt is nondischargeable, meaning that the debt is exempt from the discharge, and the creditor can go after the postpetition assets.¹²⁵ Section 523(a) governs whether a debt is exempt from discharge.¹²⁶ Most debts described in § 523(a) are automatically exempt simply because they are a type of debt that Congress has decided

112. See 11 U.S.C. § 727; 1 SOMMER, *supra* note 42, § 3.6, at 47–48.

113. See 11 U.S.C. § 727(a); 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 727.01[1].

114. See 1 SOMMER, *supra* note 42, § 15.1, at 451.

115. See 11 U.S.C. § 727(a); 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 727.01[1].

116. See 11 U.S.C. § 523; 4 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 523.01.

117. 11 U.S.C. § 727(c).

118. See 6 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 727.01[1]; see also 11 U.S.C. § 727 (governing Chapter 7 debtor’s entitlement to a discharge and setting forth the grounds for denial of discharge).

119. See *supra* note 51 and accompanying text.

120. See *Irving Fed. Sav. & Loan Ass’n v. Billings (In re Billings)*, 146 B.R. 431, 434 (Bankr. N.D. Ill. 1992).

121. 11 U.S.C. § 727(a)(2).

122. *Id.* § 727(a)(3).

123. *Rosen v. Bezner*, 996 F.2d 1527, 1534 (3d Cir. 1993).

124. *Stamat v. Neary*, 635 F.3d 974, 979 (7th Cir. 2011) (citing *In re Kontrick*, 295 F.3d 724, 736 (7th Cir. 2002)); *Rosen*, 996 F.2d at 1534.

125. See 4 COLLIER ON BANKRUPTCY, *supra* note 2, ¶ 523.01; see also 11 U.S.C. § 523 (governing the dischargeability of individual debts in a Chapter 7 case).

126. See 11 U.S.C. § 523.

should survive through bankruptcy.¹²⁷ These include, inter alia, taxes¹²⁸ and domestic support obligations.¹²⁹ Other debts require a hearing so that a bankruptcy court can determine whether they are nondischargeable.¹³⁰ These debts are described in § 523(a)(2), (4), and (6) and include, inter alia, debts obtained through fraud¹³¹ or incurred through the willful and malicious conduct of the debtor.¹³² Only a creditor can file a nondischargeability complaint seeking a determination from the bankruptcy court as to whether his claim is dischargeable under § 523(a)(2), (4), or (6).¹³³

The Bankruptcy Rules govern the procedure for objecting to the debtor's right to a discharge and determining the dischargeability of an individual debt.¹³⁴ Specifically, Rule 4004¹³⁵ governs the procedure for objecting to a discharge, and Rule 4007¹³⁶ governs the procedure for determining the dischargeability of an individual debt. As stated above, a creditor, trustee, and U.S. trustee all have standing to object to the debtor's discharge.¹³⁷ Only the creditor can file a nondischargeability complaint.¹³⁸ Under both Rule 4004(a) and 4007(c), these objections must be filed within sixty days from the first date scheduled for the creditors' meeting.¹³⁹ These bar dates are strictly enforced; any motion filed after their expiration will be denied.¹⁴⁰ Yet both Rules 4004(b) and 4007(c) provide that any "party in interest" can move for an extension of these bar dates as long as the motion is filed before the expiration of the bar dates.¹⁴¹ Upon the motion of a "party in interest," the court may extend the deadlines for cause.¹⁴² As Part II of this Note illustrates, there is a split between the Fourth and Sixth Circuits regarding whether a bankruptcy trustee is a "party in interest" with standing to move for an extension of the bar date for filing nondischargeability complaints.¹⁴³

127. *Id.* § 523(a).

128. *Id.* § 523(a)(1).

129. *Id.* § 523(a)(5).

130. *Id.* § 523(c).

131. *Id.* § 523(a)(2)(A).

132. *Id.* § 523(a)(6).

133. *Id.* § 523(c)(1).

134. *See* FED. R. BANKR. P. 4004 (governing the procedure for challenging a general discharge); *id.* R. 4007 (governing the procedure for challenging the dischargeability of an individual debt).

135. *Id.* R. 4004.

136. *Id.* R. 4007.

137. 11 U.S.C. § 727(c).

138. *See id.* § 523(c)(1).

139. FED. R. BANKR. P. 4004(a); *id.* R. 4007(c); Kruis, *supra* note 110, at 60.

140. *See* Anwiler v. Patchett (*In re* Anwiler), 958 F.2d 925, 927 (9th Cir. 1992).

141. FED. R. BANKR. P. 4004(a); *id.* R. 4007(c).

142. FED. R. BANKR. P. 4004(b)(1); *id.* R. 4007(c).

143. *See infra* Part II.

2. Strict Enforcement of the § 523(c) Time Limitations

This section focuses on the strict nature of the deadline for filing a nondischargeability complaint under 11 U.S.C. § 523(c).

Rule 4007(c) supplements § 523(c) and provides that a nondischargeability complaint must be filed within sixty days of the first date set for the meeting of the creditors.¹⁴⁴ This time limit is purposefully short and strictly enforced in order to further the prompt administration of the bankruptcy case and allow the debtor to obtain a fresh start expeditiously.¹⁴⁵

As the language of Rule 4007(c) indicates, the sixty-day time limit runs from “the first date set for the meeting of creditors under § 341(a).”¹⁴⁶ This language has been interpreted to mean that the sixty-day time period runs from the date the first meeting of the creditors is scheduled for, regardless of whether the meeting of the creditors is actually held on that date.¹⁴⁷ Therefore, if a meeting is scheduled and then adjourned, the § 523 bar date is calculated based on the original date, not the adjourned date.¹⁴⁸ This is one example of the strict nature of the § 523 bar date.

While the § 523 bar date is strict, it may not be jurisdictional, meaning that it could be waived by a debtor if the debtor fails to raise the untimeliness of a nondischargeability complaint as an affirmative defense.¹⁴⁹ Currently, there is a split of authority as to whether the § 523 bar date is jurisdictional.¹⁵⁰ If it is jurisdictional, then the court would be powerless to consider an untimely nondischargeability complaint regardless of whether the debtor raised the timeliness issue.¹⁵¹ While the Supreme Court has not directly addressed this issue, it has stated that the similar bar date under § 727 is not jurisdictional.¹⁵² Therefore, it is likely that the § 523 bar date is also not jurisdictional and can be waived by a debtor.¹⁵³

144. FED. R. BANKR. P. 4007(c).

145. See *Torrez v. Dickinson (In re Dickinson)*, No. 99-1506, 2000 WL 1761065, at *2 (10th Cir. Nov. 29, 2000) (stating that Rule 4007(c) serves an important purpose and must be strictly enforced); *State Bank & Trust, N.A. v. Dunlap (In re Dunlap)*, 217 F.3d 311, 316 (5th Cir. 2000); *FDIC v. Meyer (In re Meyer)*, 120 F.3d 66, 69 (7th Cir. 1997); *Kruis, supra* note 110, at 59 (stating that the § 523 bar date favors the debtor).

146. FED. R. BANKR. P. 4007(c).

147. *DeLesk v. Rhodes (In re Rhodes)*, 61 B.R. 626, 629 (B.A.P. 9th Cir. 1986); *Gatchell v. Kise (In re Kise)*, 84 B.R. 36, 37 (Bankr. E.D. Pa. 1988); *Kruis, supra* note 110, at 60.

148. See *DeLesk*, 61 B.R. at 629; *Gatchell*, 84 B.R. at 37.

149. 1 SOMMER, *supra* note 42, § 15.4.2, at 461.

150. *Compare European Am. Bank v. Benedict (In re Benedict)*, 90 F.3d 50, 54 (2d Cir. 1996) (holding that the § 523 bar date is not jurisdictional), with *First Nat'l Bank in Okeene v. Barnes*, No. 91-6183, 1992 WL 33251, at *1 (10th Cir. Feb. 18, 1992) (finding that Rule 4007(c) is jurisdictional), *Dollinger v. Poskanzer (In re Poskanzer)*, 146 B.R. 125, 131 (D.N.J. 1992) (finding that the § 523 bar date is jurisdictional, and cannot be waived), and *Norwest Fin., Tex., Inc. v. Curtis (In re Curtis)*, 148 B.R. 465, 467 (Bankr. N.D. Tex. 1992) (finding that untimely nondischargeability complaint suffered from a jurisdictional defect).

151. *Kruis, supra* note 110, at 75–76.

152. *Kontrick v. Ryan*, 540 U.S. 443, 452–53 (2004) (“Only Congress may determine a lower federal court’s subject-matter jurisdiction. . . . [T]he provision conferring jurisdiction over objections to discharge, however, contains no timeliness condition. . . . The time

In addition to the strict nature of the § 523 bar date itself, the rules governing an extension of the bar date are restrictive; the § 523 bar date can only be extended as provided for under Rule 4007(c).¹⁵⁴ Generally, Rule 9006(a) permits a court to extend a time limitation under the Bankruptcy Code after the deadline has expired if “the failure to act was the result of excusable neglect.”¹⁵⁵ However, this equitable remedy is not applicable to the § 523 bar date as Rule 9006(b)(3) further provides, “The court may enlarge the time for taking action under Rule[] . . . 4007(c) . . . only to the extent and under the conditions stated in [that] rule[.]”¹⁵⁶ Therefore, a “party in interest” must either file a nondischargeability complaint or move for an extension of the § 523 bar date before time expires; otherwise his claim is subject to a general discharge.¹⁵⁷

Adding to the confusion regarding Rule 4007(c), there is a split of authority regarding whether “piggybacking” is allowed under Rule 4007(c).¹⁵⁸ Piggybacking occurs when one party moves for, and is granted, an extension on behalf of other nonmoving parties.¹⁵⁹ Most courts conclude that a “party in interest” may seek an extension of the § 523 bar date on behalf of other creditors, but only if the movant specifically states so in his moving papers.¹⁶⁰

As illustrated, the § 523 bar date is strictly enforced. Failure to either timely file a nondischargeability complaint or move for an extension of the bar date will result in being barred from bringing a § 523(a)(2), (4), or (6) complaint.¹⁶¹

constraints applicable to objections to discharge are contained in Bankruptcy Rules prescribed by this Court.” (citations omitted)).

153. See generally 1 SOMMER, *supra* note 42, § 15.4.2, at 461.

154. FED. R. BANKR. P. 9006(b)(3).

155. *Id.* R. 9006(b)(1).

156. *Id.* R. 9006(b)(3).

157. 11 U.S.C. § 523(c) (2006).

158. Kruis, *supra* note 110, at 75; see also *In re Pappas*, 207 B.R. 379, 381–82 (B.A.P. 2d Cir. 1997) (noting the lack of continuity in case law regarding whether the deadline to file a nondischargeability complaint can be extended for multiple creditors based on the motion of a single creditor). Compare *Burger King Corp. v. B-K of Kansas, Inc.*, 73 B.R. 671, 673 (D. Kan. 1987) (holding that the extension of time granted to two creditors did not enlarge the time for a nonmoving creditor), with *Donegal Mut. Ins. Co. v. Watkins (In re Watkins)*, 365 B.R. 574, 577–78 (Bankr. W.D. Pa. 2007) (holding that the bankruptcy court can extend the time for all creditors to file nondischargeability complaints based on the motion of a single creditor).

159. Kruis, *supra* note 110, at 75.

160. See *Kezelis & Kominiarek, P.C. v. Carlson (In re Carlson)*, 255 B.R. 22, 24 (Bankr. N.D. Ill. 2000); *In re Floyd*, 37 B.R. 890, 893 (Bankr. N.D. Tex. 1984) (holding that creditors could not piggyback on a Rule 4007(c) motion made by another creditor because they were not included in the motion); 3 NORTON & NORTON, *supra* note 67, § 57:72. But see *Burger King Corp.*, 73 B.R. at 673 (holding that the extension of time did not apply to a nonmoving creditor).

161. See *Torrez v. Dickinson (In re Dickinson)*, No. 99-1506, 2000 WL 1761065, at *2 (10th Cir. Nov. 29, 2000); *State Bank & Trust, N.A. v. Dunlap (In re Dunlap)*, 217 F.3d 311, 316 (5th Cir. 2000); *FDIC v. Meyer (In re Meyer)*, 120 F.3d 66, 69 (7th Cir. 1997).

3. Role and Duties of a Chapter 7 Bankruptcy Trustee

The ultimate issue of this Note, whether a trustee has standing under Rule 4007(c), depends on the interests of a Chapter 7 bankruptcy trustee because only a “party in interest” has standing.¹⁶² This section explores the roles and duties of a Chapter 7 bankruptcy trustee to provide insight into a trustee’s interests.

A trustee plays an important role in a Chapter 7 bankruptcy case as a “representative of the [bankruptcy] estate.”¹⁶³ As a representative of the estate, a trustee has both fiduciary obligations and institutional obligations.¹⁶⁴ The trustee’s fiduciary obligations include the duty of loyalty, which requires the trustee to be disinterested in the case and prohibits the trustee from obtaining an interest adverse to the estate,¹⁶⁵ as well as the duties of due care, accountability, competence, and diligence.¹⁶⁶ One of the most important fiduciary duties is the duty to maximize the distribution of the bankruptcy estate.¹⁶⁷ The duty to maximize encompasses both the duty to maximize the value of the estate, as well as the duty to minimize the estate’s administrative expenses.¹⁶⁸ As the Seventh Circuit has explained, “The performance of this duty will sometimes require [the trustee] to forbear attempting to collect a particular asset, because the costs of collection would exceed the asset’s value.”¹⁶⁹

Related to the duty to maximize are the trustee’s duties to investigate the financial affairs of the debtor¹⁷⁰ and to examine and object to creditors’ improper claims.¹⁷¹ The purpose of the trustee’s duty to investigate is “to amass information helpful to all creditors,”¹⁷² including ensuring that the debtor discloses all of his property.¹⁷³ Accordingly, the trustee undertakes the duty to investigate in the interest of the creditors generally; in other words, this duty is owed to the class of creditors, not to each individual creditor.¹⁷⁴ Similarly, the trustee undertakes the duty to examine claims in the interest of the creditors as a class.¹⁷⁵ Under the duty to examine claims, a trustee is not necessarily required to object to an improper claim.¹⁷⁶

162. FED. R. BANKR. P. 4007(c).

163. 11 U.S.C. § 323(a) (2006).

164. Rhodes, *supra* note 101, at 147.

165. *See* Mosser v. Darrow, 341 U.S. 267, 271–72 (1951); Rhodes, *supra* note 101, at 156.

166. Rhodes, *supra* note 101, at 172–76.

167. *See In re Taxman Clothing Co.*, 49 F.3d 310, 315 (7th Cir. 1995); Rhodes, *supra* note 101, at 165.

168. Rhodes, *supra* note 101, at 165.

169. *In re Taxman*, 49 F.3d at 315.

170. 11 U.S.C. § 704(a)(4) (2006).

171. *Id.* § 704(a)(5).

172. *In re Owen-Moore*, 435 B.R. 685, 692 (Bankr. S.D. Cal. 2010).

173. *See In re Sebosky*, 182 B.R. 912, 913 (Bankr. M.D. Fla. 1995).

174. *See In re Owen-Moore*, 435 B.R. at 692 (“The chapter 7 trustee has neither the duty nor the right to conduct an investigation designed only to aid a creditor in its individual nondischargeability action.”).

175. *See* Rhodes, *supra* note 101, at 176.

176. *See id.*

Rather, a trustee must determine whether objecting would increase the distribution of the bankruptcy estate to the other creditors.¹⁷⁷

Another important fiduciary duty of a Chapter 7 bankruptcy trustee is the trustee's duty of diligence.¹⁷⁸ The duty of diligence requires the trustee to "collect and reduce to money the property of the estate . . . as expeditiously as is compatible with the best interests of parties in interest."¹⁷⁹ This duty relates to both of the major policy rationales underlying the Bankruptcy Code as discussed in Part I.A.2: the interest in providing the debtor with a fresh start and the interest in facilitating the fair and orderly collection of debts owed to creditors.¹⁸⁰

Contrary to the fiduciary duties stated above, the trustee does not owe his institutional obligations to the parties of the bankruptcy case.¹⁸¹ Instead, they are separate duties derived directly from the Bankruptcy Code.¹⁸² Institutional obligations are "established to protect the integrity of the bankruptcy process."¹⁸³ The most prominent institutional obligation is the trustee's duty to oppose the debtor's discharge, if advisable.¹⁸⁴ The purpose of the duty to oppose the discharge is to deter future debtors from neglecting or ignoring their bankruptcy obligations, and to punish debtors who have acted improperly.¹⁸⁵ Notably, while the trustee has a duty to object to the debtor's discharge, if advisable, the trustee is not assigned a duty to object to the dischargeability of individual debts.¹⁸⁶

D. Use of the Phrase "Party in Interest" Throughout the Bankruptcy Code and Rules

This section analyzes the use of the phrase "party in interest" as it is used throughout the Bankruptcy Code and Rules. This analysis will provide insight into whether a trustee is a "party in interest" under Rule 4007(c).

The Bankruptcy Code does not define "party in interest."¹⁸⁷ This is because the phrase is an elastic concept.¹⁸⁸ Who is considered a "party in

177. *See id.*

178. *See* 11 U.S.C. § 704(a)(1) (2006).

179. *Id.*

180. *See supra* Part I.A.2.

181. Rhodes, *supra* note 101, at 148.

182. *Id.*

183. *Id.* at 203; *see also* Jacobson v. Robert Speece Props., Inc. (*In re Speece*), 159 B.R. 314, 320 (Bankr. E.D. Cal. 1993) ("Preservation of the integrity of the bankruptcy system . . . is one reason the court is empowered to order the case trustee to examine whether any ground exists to deny discharge.").

184. 11 U.S.C. § 704(a)(6).

185. *See Jacobson*, 159 B.R. at 320; Rhodes, *supra* note 101, at 207.

186. 11 U.S.C. § 704(a)(6).

187. *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3rd Cir. 1985); *see also* 11 U.S.C. § 101 (defining many of the terms used in the Bankruptcy Code, but not "party in interest").

188. *In re Johns-Manville Corp.*, 36 B.R. 743, 747-49 (Bankr. S.D.N.Y. 1984); *see In re Amatex Corp.*, 755 F.2d at 1042; Chalgren v. Deutsche Bank Nat'l Trust Co. (*In re Chalgren*), No. 09-56729 ASW, 2011 WL 4753528, at *7 (Bankr. N.D. Cal. Oct. 7, 2011) ("The term party in interest is meant to be elastic, and whether a party is a party in interest is determined by the facts of the case.").

interest” may change based upon where the phrase is used in the Bankruptcy Code or Rules, because the meaning depends on the individual’s interest in the particular proceeding.¹⁸⁹ A party may have an interest in one part of a bankruptcy case, but not another part of that same case.¹⁹⁰ As this section will illustrate, an individual is generally considered a “party in interest” only if they have a financial interest, practical stake, or some other interest in the proceeding.¹⁹¹

Occasionally, when the phrase “party in interest” is used in the Bankruptcy Code or Rules, the specific statute or rule will provide a list of certain individuals who are to be considered “parties in interest.”¹⁹² For example, in Chapter 11, the Bankruptcy Code defines a “party in interest” as “including the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee.”¹⁹³ When these lists are provided, courts have interpreted them to be nonexhaustive lists of who should be considered a “party in interest” under that particular statute or rule.¹⁹⁴

A review of the circuit court decisions interpreting the phrase “party in interest” as it is used throughout the Bankruptcy Code and Rules reveals that an individual is considered a party in interest only if he has a financial interest, a practical interest, or some other interest in the outcome of the particular proceeding.¹⁹⁵ The Third Circuit, in *In re Amatex Corp.*, held that future asbestos victims were “parties in interest” entitled to have a voice in the Chapter 11 reorganization of an asbestos manufacturer.¹⁹⁶ The Third Circuit specifically noted that whether or not future claimants have claims in the bankruptcy case is immaterial because they “clearly have a practical stake in the outcome of the proceedings.”¹⁹⁷ The Third Circuit stated that in order to determine whether an individual is a “party in interest,” courts must inquire “on a case by case basis whether the prospective party in interest has a sufficient stake in the proceeding.”¹⁹⁸

In determining whether an individual is a “party in interest,” the Second, Fourth, and Seventh Circuits have focused on whether the individual’s

189. *In re Amatex Corp.*, 755 F.2d at 1042.

190. *See id.*

191. *See* Nintendo Co. v. Patten (*In re Alpex Computer Corp.*), 71 F.3d 353, 356–57 (10th Cir. 1995); *Yadkin Valley Bank & Trust Co. v. McGee* (*In re Hutchinson*), 5 F.3d 750, 756 (4th Cir. 1993) (noting that the term “party in interest” is “generally understood to include all persons whose pecuniary interests are directly affected by the bankruptcy proceeding” (quoting *White Cnty. Bank v. Leavell* (*In re Leavell*), 141 B.R. 393, 399 (Bankr. S.D. Ill. 1992)); *In re Amatex Corp.*, 755 F.2d at 1041–42 (finding that future asbestos victims were “parties in interest” because they had a “practical stake in the outcome of the proceedings”).

192. *See, e.g.*, 11 U.S.C. §§ 1109(b), 1121(c).

193. *Id.* §§ 1109(b), 1121(c).

194. *In re Amatex Corp.*, 755 F.2d at 1042.

195. *See* Nintendo Co., 71 F.3d at 356–57; *Yadkin Valley Bank & Trust Co.*, 5 F.3d at 756; *In re Amatex Corp.*, 755 F.2d at 1042.

196. *In re Amatex Corp.*, 755 F.2d at 1042–43.

197. *Id.* at 1041.

198. *Id.* at 1042.

financial interests are directly affected by the bankruptcy proceeding.¹⁹⁹ The Fourth Circuit, in *Yadkin Valley Bank & Trust Co. v. McGee*, found that the owners and lienholders of a dairy farm were “parties in interest” with respect to the bankruptcy auction of the farm, because they “had a pecuniary interest in its sale.”²⁰⁰ The Second Circuit, however, has clarified that the financial interest must be direct, and that a “party in interest” is the party with the legal right which is sought to be enforced or the party entitled to bring suit.²⁰¹ The Second Circuit, in *Krys v. Official Committee of Unsecured Creditors of Refco, Inc.*, found that the creditor’s investors were not “parties in interest” because, while they had a financial interest in the creditor, they did not have a direct financial interest in the bankruptcy proceedings.²⁰² Ultimately, as the previous cases illustrate, an individual cannot constitute a “party in interest” unless he has at least some interest in the proceedings, whether it is financial or practical.²⁰³

II. CONFLICT BETWEEN CIRCUITS: WHY THE FOURTH AND SIXTH CIRCUITS DISAGREED ON TRUSTEES’ STANDING UNDER RULE 4007(C)

In a Chapter 7 bankruptcy case, it is vital that a creditor abide by the time limitation established for filing a nondischargeability complaint.²⁰⁴ If a creditor fails to file a timely nondischargeability complaint, the creditor will be barred from bringing a § 523(a)(2), (4), or (6) challenge to the dischargeability of his claim.²⁰⁵ In other words, the creditor will be barred from arguing that the debt he is owed is a nondischargeable debt acquired by the debtor via fraud, embezzlement, or larceny, or created as a result of a willful or malicious injury.²⁰⁶ Therefore, it is imperative that a creditor with a § 523(a)(2), (4), or (6) claim either file a timely nondischargeability complaint or obtain an extension of the § 523 bar date.²⁰⁷

Currently, there exists a split between the Fourth and Sixth Circuits regarding who constitutes a “party in interest” under Rule 4007(c) with standing to move for such an extension.²⁰⁸ Specifically, these circuits are

199. See *Krys v. Official Comm. of Unsecured Creditors of Refco Inc. (In re Refco Inc.)*, 505 F.3d 109, 117 (2d Cir. 2007); *FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 284 (7th Cir. 2002) (stating that a “party in interest” is anyone holding a direct financial stake in the outcome of the proceeding); *Yadkin Valley Bank & Trust Co.*, 5 F.3d at 756.

200. *Yadkin Valley Bank & Trust Co.*, 5 F.3d at 756.

201. *Krys*, 505 F.3d at 117 (citing *Roslyn Sav. Bank v. Comcoach Corp. (In re Comcoach Corp.)*, 698 F.2d 571, 573 (2d Cir. 1983)).

202. *Krys*, 505 F.3d at 117.

203. *Nintendo Co. v. Patten (In re Alpex Computer Corp.)*, 71 F.3d 353, 356–57 (10th Cir. 1995); *Yadkin Valley Bank & Trust Co.*, 5 F.3d at 756; *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985).

204. See *supra* Part I.C.2.

205. See FED. R. BANKR. P. 4007(c); *supra* note 161 and accompanying text; see also *Moody v. Bucknum (In re Bucknum)*, 951 F.2d 204, 205 (9th Cir. 1991) (affirming the dismissal of a nondischargeability complaint filed after the § 523 bar date expired).

206. See *supra* note 161 and accompanying text.

207. See FED. R. BANKR. P. 4007(c); *supra* note 161 and accompanying text.

208. Compare *In re Farmer*, 786 F.2d 618 (4th Cir. 1986), with *Brady v. McAllister (In re Brady)*, 101 F.3d 1165 (6th Cir. 1996).

split as to whether a Chapter 7 bankruptcy trustee has standing to move for an extension on behalf of creditors.²⁰⁹ The Fourth Circuit, in *In re Farmer*, concluded that bankruptcy trustees are not “parties in interest” because they do not have a statutory duty related to, or financial interest in, the dischargeability of an individual debt.²¹⁰ Conversely, the Sixth Circuit, in *Brady v. McAllister*, concluded that a bankruptcy trustee is a “party in interest.”²¹¹ The *Brady* court based its conclusion on the broad definition of the phrase “party in interest,” concerns for administrative efficiency, and because the trustee’s general duties give the trustee an interest in the dischargeability of individual debts.²¹²

This circuit split has resulted in confusion and inconsistent application of Rule 4007(c) in the lower bankruptcy courts. The majority of bankruptcy courts to address this issue have aligned with the Fourth Circuit and concluded that a Chapter 7 bankruptcy trustee is not a “party in interest.”²¹³ Nevertheless, a few of these courts have simultaneously employed equitable powers to permit a creditor’s untimely § 523(a)(2), (4), or (6) challenge to stand where the creditor reasonably relied on a bankruptcy court’s order granting an extension based upon the trustee’s application.²¹⁴

This Part of the Note first discusses the Fourth Circuit’s decision in *In re Farmer* and the Sixth Circuit’s decision in *Brady v. McAllister*. This Part will then explore some of the bankruptcy court decisions that have followed, specifically focusing on the equitable remedies that a few of these courts have employed to account for the creditor’s belief that the trustee had standing under Rule 4007(c) to move for an extension of the § 523 bar date on behalf of the creditors.

209. See *Brady*, 101 F.3d at 1167; *In re Farmer*, 786 F.2d at 621.

210. See *In re Farmer*, 786 F.2d at 620–21.

211. See *Brady*, 101 F.3d at 1171.

212. See *id.* at 1169–71.

213. Compare *Silverdeer, LLC v. Deckelbaum (In re Deckelbaum)*, No. 10-06021-8-JRL, 2011 WL 5909331, at *1 (Bankr. E.D.N.C. June 17, 2011) (“The trustee is not a ‘party in interest’ under Bankruptcy Rule 4007(c) and cannot extend the deadline for filing objections to the discharge of specific debts under § 523.”), *In re Owen-Moore*, 435 B.R. 685 (Bankr. S.D. Cal. 2010), *In re Cooper*, Nos. 02-03566, 03-00235, 2003 WL 1965711 (Bankr. N.D. Iowa Apr. 7, 2003), *Ruben v. Harper (In re Harper)*, 194 B.R. 388, 391–92 (Bankr. D.S.C. 1996) (acknowledging case law that questions whether a trustee has standing to move for an extension of a § 523 bar date), *Flanagan v. Herring (In re Herring)*, 116 B.R. 313, 315 (Bankr. M.D. Ga. 1990) (suggesting that a trustee is not authorized to seek an extension of time for filing objections to the dischargeability of individual debts), and *Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. Tatum (In re Tatum)*, 60 B.R. 335, 338 (Bankr. D. Colo. 1986) (holding that the trustee’s motion for an extension of time in which to object to discharge does not extend the § 523 bar date on behalf of the creditors), *with Ellsworth Corp. v. Kneis (In re Kneis)*, No. 08-18014(DHS), 2009 WL 1750101, at *3 (Bankr. D.N.J. June 15, 2009) (holding that a trustee does have standing to move for an extension of time on behalf of the creditors).

214. See *Ruben*, 194 B.R. at 391 (using its equitable powers to permit the creditors’ § 523 complaint to stand even though case law questions whether a trustee is generally a party in interest); *Flanagan*, 116 B.R. at 315 (permitting a creditor’s § 523 complaint to stand where the creditor relied on an unappealed order of the bankruptcy court extending the § 523 bar date based upon the trustee’s application).

A. *The Fourth Circuit Held That a Bankruptcy Trustee Is Not a “Party in Interest” Under Rule 4007(c)*

The Fourth Circuit was the first circuit court to address whether a Chapter 7 bankruptcy trustee is a “party in interest” with standing to move for an extension of the § 523 bar date on behalf of creditors.²¹⁵ In *In re Farmer*, the Fourth Circuit held that the Chapter 7 bankruptcy trustee was not a “party in interest” under Rule 4007(c) because the trustee did not have a statutory duty related to, or a financial interest in, the dischargeability of the individual debt.²¹⁶

In *In re Farmer*, Elma Speight Farmer and Mary Alice Parker Farmer (the Farmer debtors) filed a Chapter 7 bankruptcy petition after being sued in federal court on allegations of securities and investment fraud.²¹⁷ The bankruptcy court set the § 523(c) deadline for creditors to file nondischargeability complaints as October 4, 1984.²¹⁸ Thereafter, the trustee moved twice, pursuant to Rule 4007(c),²¹⁹ for an extension of this bar date.²²⁰ The bankruptcy court granted the first extension without opposition.²²¹ The Farmer debtors opposed the trustee’s second extension request, however, arguing that the trustee was not a “party in interest” entitled to request such an extension under Rule 4007(c).²²² Nevertheless, the bankruptcy court granted the second extension.²²³

On appeal, the Fourth Circuit reversed, denying the second extension request.²²⁴ The Fourth Circuit held that a bankruptcy trustee is not a “party in interest” under Rule 4007(c) and therefore does not have standing to move for an extension of time on behalf of the creditors.²²⁵ In rendering its conclusion, the court acknowledged that the meaning of “party in interest” varies depending upon where the phrase is used in the Bankruptcy Code and Rules.²²⁶ An individual may be a “party in interest” with regards to one part of a bankruptcy case, and not a “party in interest” with regards to another part of the case.²²⁷ According to the Fourth Circuit, under Rule 4007(c) a “party in interest” is limited to those parties who either have (1) a statutory duty related to, or (2) financial interest in the dischargeability of an individual debt “sufficient to justify seeking an extension on behalf of

215. *See In re Farmer*, 786 F.2d at 621.

216. *See id.*

217. *Id.* at 619.

218. *Id.*

219. Federal Rule of Bankruptcy Procedure 4007(c) provides that “[o]n motion of a party in interest, after hearing on notice, the court may for cause extend the time” for filing complaints under § 523(c) in a Chapter 7 liquidation. FED. R. BANKR. P. 4007(c).

220. *In re Farmer*, 786 F.2d at 619.

221. *Id.*

222. *Id.*

223. *Id.* The *In re Farmer* court’s opinion did not elaborate on the bankruptcy court’s reasoning, only stating that the bankruptcy court “granted the trustee’s request for an extension of time, holding that the trustee was a ‘party in interest.’” *Id.*

224. *Id.* at 621.

225. *Id.*

226. *Id.* at 620.

227. *See id.*

the creditor.”²²⁸ The court concluded that a Chapter 7 bankruptcy trustee does not satisfy either of these criteria, and therefore cannot move for an extension of the § 523 bar date.²²⁹

In the first part of its opinion, the Fourth Circuit concluded that a trustee does not have any statutory duty that would give him an interest in the dischargeability of an individual debt and make him a “party in interest” under Rule 4007(c).²³⁰ Rather, the Fourth Circuit acknowledged that a trustee’s statutory duties do make him a “party in interest” under a Rule 4004(b) application.²³¹ The Fourth Circuit explained that a trustee has standing to object to a general discharge under § 727.²³² Therefore, under Rule 4004(b), which supplements § 727 and sets forth the time limits for objecting to a general discharge, a trustee “would clearly be a ‘party in interest’ to seek time extensions under 4004(b).”²³³ However, a trustee has no corresponding standing to object to the dischargeability of an individual debt under § 523.²³⁴ Therefore, according to the Fourth Circuit, under Rule 4007(c), which supplements § 523, a trustee lacks any statutory duty that would give him an interest in the dischargeability of an individual debt.²³⁵

In addition, the Fourth Circuit rejected trustee-appellee’s argument that the difference in language between § 523 and the corresponding Rule 4007(c) necessarily implies that a trustee is a “party in interest” under Rule 4007(c).²³⁶ The appellee’s argument proceeded as follows: § 523 only gives “creditors” the right to object to the dischargeability of an individual debt. Rule 4007(c) uses a broader phrase, “any party in interest,” in describing who can move for an extension of the § 523 bar date. Therefore, because the phrase “party in interest” includes more than just creditors, it must also include the trustee.²³⁷ The Fourth Circuit readily dismissed this argument, suggesting that the phrase “party in interest” can be broader without necessarily including the trustee.²³⁸ As the Fourth Circuit continued, a creditor may have a successor in interest who would not be a “creditor” under § 523, but could have an interest sufficient to be a “party in interest” under Rule 4007(c).²³⁹ The Fourth Circuit concluded, “Allowing a party who shares a community of interest with a creditor to offer a 4007(c) motion does not . . . extend that privilege to the trustee.”²⁴⁰

Next, the Fourth Circuit concluded that a trustee’s general duties to investigate the financial affairs of the debtor and to assist in the

228. *Id.*

229. *Id.* at 620–21.

230. *Id.* at 620.

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. *See id.*

236. *See id.*

237. *See id.*

238. *See id.*

239. *Id.*

240. *Id.*

administration of the bankruptcy case do not give the trustee an interest in extending the § 523 bar date.²⁴¹ The Fourth Circuit stated that the trustee's general duties to investigate and to assist, set forth at 11 U.S.C. § 704, cannot give the trustee the power that the trustee is specifically denied under § 523.²⁴² Put differently, a trustee's general duties are insufficient to make the trustee a "party in interest" under Rule 4007(c) because the trustee was already denied the specific duty to object to the dischargeability of an individual debt under § 523.²⁴³ In addition, the Fourth Circuit stated that permitting the trustee to request extensions under Rule 4007(c) does not enhance the trustee's ability to carry out these general duties.²⁴⁴ The Fourth Circuit did state, however, that a trustee may still investigate the circumstances surrounding individual debts to the extent that the circumstances may affect the debtor's right to a general discharge.²⁴⁵ Nevertheless, having an interest in the circumstances surrounding individual debts does not give the trustee an interest in the dischargeability of an individual debt.²⁴⁶

Moreover, the Fourth Circuit concluded that the trustee has no financial interest in the dischargeability of an individual debt.²⁴⁷ It stated, "The trustee acts for all the creditors so as to maximize the distribution from the [bankruptcy] estate,"²⁴⁸ and further noted, "A nondischargeable debt is not satisfied from the estate to the detriment of the other creditors."²⁴⁹ Rather, a creditor holding a nondischargeable debt can recover from postpetition assets.²⁵⁰ Therefore, the Fourth Circuit concluded that a trustee, having no financial interest in postpetition assets, has no financial interest in the dischargeability of an individual complaint.²⁵¹ Accordingly, a trustee is not a "party in interest" under Rule 4007(c).²⁵²

There exists some confusion among the bankruptcy courts regarding the accuracy of the Fourth Circuit's financial interest analysis in *In re Farmer*. This disagreement centers on the Fourth Circuit's statement that "[a] nondischargeable debt is not satisfied from the estate to the detriment of the other creditors."²⁵³ Some courts have criticized the *In re Farmer* decision as relying on the mistaken presumption that creditors holding nondischargeable debts can only recover from postpetition assets and do not

241. *Id.* at 621.

242. *Id.*

243. *See id.* ("The investigatory responsibility granted in 11 U.S.C. § 704 cannot give the trustee power that another portion of the Code denies.")

244. *See id.* ("[W]e fail to see how permitting the trustee to file 4007(c) motions enhances his ability to investigate or assists in the administration of an admittedly complex case.")

245. *Id.*

246. *Id.*

247. *See id.* at 620–21.

248. *Id.* at 621 (quoting *In re Overmyer*, 26 B.R. 755, 758 (Bankr. S.D.N.Y. 1982)).

249. *Id.* (quoting *Overmyer*, 26 B.R. at 758).

250. *Id.*

251. *Id.*

252. *See id.*

253. *Id.* (quoting *Overmyer*, 26 B.R. at 758).

share in the distribution of the bankruptcy estate.²⁵⁴ In *In re Owen-Moore*, however, the U.S. Bankruptcy Court for the Southern District of California maintained that the *In re Farmer* court “was correctly referring to the portion of a nondischargeable claim paid exclusively from non-estate assets after the chapter 7 trustee fulfills his statutory obligations to liquidate and distribute estate assets to creditors.”²⁵⁵

*B. The Sixth Circuit Held That a Bankruptcy Trustee Is a
“Party in Interest” Under Rule 4007(c)*

The Sixth Circuit reached the opposite conclusion in *Brady v. McAllister*, explicitly rejecting the Fourth Circuit’s holding in *In re Farmer*.²⁵⁶ In *Brady*, the bankruptcy court below set the § 523 bar date for filing nondischargeability complaints as July 21, 1992.²⁵⁷ On July 20, 1992, the Chapter 7 bankruptcy trustee moved for and received an extension of the § 523 bar date, extending the time for creditors to file nondischargeability complaints to October 21, 1992.²⁵⁸ On October 20, 1992, creditor Donald T. McAllister filed a complaint alleging that his \$40,000 claim against the debtor was nondischargeable.²⁵⁹ In response, the debtor moved to dismiss McAllister’s § 523 complaint as untimely.²⁶⁰ The bankruptcy court denied the debtor’s motion to dismiss, explaining that its previous order extended the § 523 bar date for all creditors, including McAllister.²⁶¹ The debtor appealed this decision.²⁶²

On appeal, the Sixth Circuit affirmed, holding that the trustee had standing under Rule 4007(c) to move for an extension of the § 523 bar date on behalf of all creditors.²⁶³ The Sixth Circuit based its decision on four factors.²⁶⁴ First, while Rule 4007(a) only permits creditors and debtors to file a nondischargeability complaint, Rule 4007(c) more broadly provides that “any party in interest” can move for an extension of the § 523 bar date.²⁶⁵ Second, the *Brady* court suggested that a trustee does have an economic interest in the dischargeability of an individual debt.²⁶⁶ Third,

254. *Brady v. McAllister (In re Brady)*, 101 F.3d 1165, 1170 (6th Cir. 1996); *In re Myers*, 168 B.R. 856, 861 (Bankr. D. Md. 1994).

255. *In re Owen-Moore*, 435 B.R. 685, 689 n.3 (Bankr. S.D. Cal. 2010) (stating that the *In re Farmer* court’s language could be clearer, but nevertheless basing its interpretation on a careful reading of the *In re Farmer* court’s economic interest analysis).

256. *Brady*, 101 F.3d at 1170.

257. *Id.* at 1167.

258. *Id.*

259. *Id.* The *Brady* opinion did not explain the basis of McAllister’s nondischargeability complaint.

260. *Id.*

261. *Id.*

262. *Id.* at 1168. The debtor first appealed to the Western District of Kentucky. *Id.* The district court affirmed the bankruptcy court’s decision. *Id.*

263. *See id.* at 1171.

264. *See id.* at 1169–71.

265. *Id.* at 1170.

266. *See id.* The *Brady* court did not explicitly conclude that a trustee has an economic interest in obtaining an extension of the § 523 bar date; rather, the *Brady* court suggested this

giving trustees standing to move for an extension of the § 523 bar date promotes the administrative efficiency of bankruptcy proceedings.²⁶⁷ Fourth, the trustee has a duty to investigate the financial affairs of a debtor and therefore should be considered a “party in interest.”²⁶⁸ Based on these four factors, the Sixth Circuit held that a trustee was a “party in interest” under Rule 4007(c) with standing to move for an extension of the § 523 bar date.²⁶⁹

This section will further explore each of the arguments presented by the *Brady* court. First, the Sixth Circuit analyzed the plain language of Rule 4007 and concluded that standing to move pursuant to Rule 4007(c) for an extension of the § 523 bar date is not restricted to those parties who have standing to file a § 523 nondischargeability complaint.²⁷⁰ As the *Brady* court indicated, the phrase “any party in interest,” as used in Rule 4007(c), is broader than the language used in Rule 4007(a), which provides that only creditors and debtors may file nondischargeability complaints.²⁷¹ The *Brady* court reasoned that if the phrase “any party in interest” was similarly limited to debtors and creditors, it would render the difference in phrasing meaningless.²⁷² Therefore, “party in interest” under Rule 4007(c) is not limited to creditors and debtors.²⁷³

Second, the Sixth Circuit criticized the *In re Farmer* court’s conclusion that a trustee has no economic interest in obtaining an extension of time for creditors to file nondischargeability complaints.²⁷⁴ According to the Sixth Circuit, the *In re Farmer* court’s analysis was based on the erroneous presumption that nondischargeable debts are only paid out of the postpetition assets.²⁷⁵ However, “nondischargeable debts do share in estate distributions pro rata with dischargeable debts of the same class.”²⁷⁶ In other words, creditors with nondischargeable debts can recover from both the distribution of the bankruptcy estate and from the postpetition assets.²⁷⁷ Therefore, the Sixth Circuit suggested that a trustee does have a financial interest in a nondischargeable debt to the extent that the debt will be recovered from the distribution of the bankruptcy estate.²⁷⁸

conclusion by criticizing the *In re Farmer* court’s conclusion that a trustee has no economic interest in obtaining an extension of the § 523 bar date. *Id.*

267. *Id.* (“Depriving the trustee of standing to secure additional time for creditors to file nondischargeability complaints could undermine the efficient administration of bankruptcy proceedings.”).

268. *See id.* at 1171.

269. *See id.*

270. *See id.* at 1170.

271. *Id.*

272. *Id.*

273. *See id.* The *Brady* court noted that the *Farmer* court itself acknowledged that “the inability to file a nondischargeability complaint does not preclude the ability to request additional time to file such a complaint.” *Id.*; *see supra* note 238 and accompanying text.

274. *Brady*, 101 F.3d at 1170.

275. *Id.*; *see supra* note 254 and accompanying text.

276. *Brady*, 101 F.3d at 1170 (quoting *In re Myers*, 168 B.R. 856, 861 (Bankr. D. Md. 1994)).

277. *See id.*

278. *See id.*

Third, the Sixth Circuit stated that the court's interest in promoting the efficient administration of bankruptcy proceedings supports its conclusion that a trustee is a "party in interest" with standing to seek an extension of the § 523 bar date.²⁷⁹ The court explained that Chapter 7 bankruptcy cases may have hundreds or thousands of creditors who may have suffered "from an elaborate scheme of consumer or securities fraud by the debtor."²⁸⁰ Therefore, the court further stated that it is impractical to have each creditor file an individual motion seeking an extension of time to file a nondischargeability complaint.²⁸¹ Instead, allowing the trustee to file a single motion on behalf of every creditor would decrease the financial burdens and increase the speed of bankruptcy proceedings.²⁸² Moreover, the Sixth Circuit stated that this would not unnecessarily delay the bankruptcy case because the creditors must still make a showing of entitlement to the extension.²⁸³

Lastly, the *Brady* court concluded that the trustee's general duty to investigate the financial affairs of the debtor, laid out in 11 U.S.C. § 704, further supported its conclusion that a trustee has standing under Rule 4007(c).²⁸⁴ In rendering this conclusion, the Sixth Circuit again criticized the Fourth Circuit, stating that the *In re Farmer* court was misguided in concluding that this general duty cannot "give the trustee power that another portion of the Code denies."²⁸⁵ The Sixth Circuit explained its criticism, stating that the very issue at hand was whether the Code or Rules in fact deny the trustee standing.²⁸⁶

C. Bankruptcy Courts' Responses to the *In re Farmer* and *Brady* Decisions

Currently, there is confusion among the bankruptcy courts as to whether a trustee is a "party in interest" under Rule 4007(c) because of the split between the Fourth and Sixth Circuits.²⁸⁷ In fact, some bankruptcy courts have initially granted a trustee's Rule 4007(c) motion, only to subsequently reverse course within the same case and side with the Fourth Circuit.²⁸⁸ While the majority of bankruptcy courts to address this issue have

279. *See id.*

280. *Id.* at 1170–71.

281. *Id.* at 1171.

282. *Id.*

283. *Id.*

284. *See id.*

285. *Id.* (quoting *In re Farmer*, 786 F.2d 618, 621 (4th Cir. 1986)).

286. *Id.*

287. *See Frati v. Gennaco*, No. 10-11055-PBS, 2011 WL 241973, at *2–3 (D. Mass. Jan. 24, 2011) (acknowledging the split between the Fourth and Sixth Circuits); *In re Owen-Moore*, 435 B.R. 685, 688 (Bankr. S.D. Cal. Aug. 12, 2010) (stating that the Fourth and Sixth Circuits have come to "widely divergent results" regarding whether a trustee is a "party in interest" under Rule 4007(c)).

288. *See Ruben v. Harper (In re Harper)*, 194 B.R. 388 (Bankr. D.S.C. 1996); *Flanagan v. Herring (In re Herring)*, 116 B.R. 313, 315 (Bankr. M.D. Ga. 1990); *Merrill, Lynch, Pierce, Fenner & Smith, Inc. v. Tatum (In re Tatum)*, 60 B.R. 335, 338 (Bankr. D. Colo. 1986).

ultimately aligned themselves with the Fourth Circuit,²⁸⁹ a few of these courts have nevertheless employed equitable remedies to avoid having to dismiss untimely § 523(a)(2), (4), or (6) complaints where a creditor reasonably relied on a bankruptcy court's previous order granting an extension of the § 523 bar date based upon the trustee's application.²⁹⁰ This subsection briefly reviews the equitable remedies employed by these courts, and discusses their hesitation in dismissing these untimely complaints.

In *Flanagan v. Herring*, the U.S. Bankruptcy Court for the Middle District of Georgia agreed with the Fourth Circuit's analysis in *In re Farmer*, but nevertheless permitted a creditor's § 523 complaint to stand, because the creditor had relied on an unappealed order of the bankruptcy court extending the § 523 bar date.²⁹¹ In *Flanagan*, the bankruptcy court initially granted the trustee's Rule 4007(c) motion, extending the § 523 bar date for all creditors.²⁹² The debtor did not appeal this order.²⁹³ Then, after the initial bar date, but before the expiration of the new bar date, the creditor filed a § 523 complaint challenging the dischargeability of his claim.²⁹⁴ The debtor moved to dismiss this complaint as untimely because it was made after the initial § 523 bar date had expired.²⁹⁵ The court denied the debtor's motion.²⁹⁶ In doing so, the bankruptcy court agreed with the Fourth Circuit's analysis in *In re Farmer* and acknowledged that the trustee was not a "party in interest" under Rule 4007(c).²⁹⁷ Nevertheless, the court declined to dismiss the untimely § 523 complaint, suggesting that the debtor waived his right to object to the timeliness of the § 523 complaint by failing

289. Compare *Silverdeer, LLC v. Deckelbaum (In re Deckelbaum)*, No. 10-06021-8-JRL, 2011 WL 5909331, at *1 (Bankr. E.D.N.C. June 17, 2011) ("The trustee is not a 'party in interest' under Bankruptcy Rule 4007(c) and cannot extend the deadline for filing objections to the discharge of specific debts under § 523."), *In re Owen-Moore*, 435 B.R. at 688, *In re Cooper*, Nos. 02-03566, 03-00235, 2003 WL 1965711, at *5 (Bankr. N.D. Iowa Apr. 7, 2003), *Ruben*, 194 B.R. at 392 (acknowledging case law that questions whether a trustee has standing to move for an extension of a § 523 bar date), *Flanagan*, 116 B.R. at 315 (suggesting that a trustee is not a "party in interest," but nevertheless allowing the creditor's § 523 complaint to stand because the debtor did not appeal the court's previous order granting an extension of the § 523 bar date), and *Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 60 B.R. at 338 (holding that the trustee's motion for an extension of time in which to object to discharge does not extend the § 523 bar date on behalf of the creditors), with *Ellsworth Corp. v. Kneis (In re Kneis)*, No. 08-18014(DHS), 2009 WL 1750101, at *3 (Bankr. D.N.J. June 15, 2009) (holding that a trustee does have standing to move for an extension of time on behalf of the creditors).

290. See *Ruben*, 194 B.R. at 392 (acknowledging case law that questions whether a trustee has standing to move for an extension of a § 523 bar date, but using its § 105 equitable powers to allow the complaint to stand); *Flanagan*, 116 B.R. at 315 (suggesting that a trustee is not a "party in interest," but nevertheless allowing the creditor's § 523 complaint to stand because the debtor did not appeal the court's previous order granting an extension of the § 523 bar date).

291. *Flanagan*, 116 B.R. at 315.

292. *Id.* at 314.

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.* at 315.

297. *Id.* ("This court does not disagree with the analysis of the Fourth Circuit in *Farmer*.").

to appeal the erroneously granted extension.²⁹⁸ Accordingly, the court in *Flanagan* held that a § 523 complaint should not be dismissed where a creditor relied upon an unappealed order of the court.²⁹⁹

The U.S. Bankruptcy Court for the District of South Carolina issued a similar order in *Ruben v. Harper*, declining to dismiss an untimely § 523 complaint where the creditor relied upon an unappealed order of the court granting an extension.³⁰⁰ The *Ruben* court indicated that this equitable power derives from 11 U.S.C. § 105.³⁰¹ It stated that under § 105, the court is required to allow a creditor's complaint to stand where the creditor reasonably relied upon an unappealed order of the bankruptcy court.³⁰² Consequently, while the majority of the courts ultimately side with the Fourth Circuit in concluding that trustees are not "parties in interest" under Rule 4007, the inconsistent interpretation of Rule 4007 has led some bankruptcy courts to employ these equitable remedies to avoid dismissing untimely § 523 complaints where the creditor relied upon a previous court order granting an extension.

III. WHY THE FOURTH CIRCUIT GOT IT RIGHT

Under Rule 4007(c), only a "party in interest" has standing to move for an extension of the § 523 bar date for filing a nondischargeability complaint.³⁰³ As Part I.D illustrated, the phrase "party in interest" is generally interpreted to include those individuals who have some interest in the particular proceeding, whether it be a financial interest, a practical interest, or some other interest.³⁰⁴ Because the interpretation rests on the individual's interests in the particular proceeding, who is considered a "party in interest" can vary depending upon the specific statute or rule in which the phrase is used.³⁰⁵ An individual may have an interest with regards to one proceeding within a bankruptcy case, but not an interest with regards to another proceeding within the same case.³⁰⁶ Accordingly, as it is used in Rule 4007(c), a "party in interest" includes those parties who have a (1) financial, (2) practical, or (3) statutorily imposed interest in the dischargeability of an individual debt.³⁰⁷ Part III argues that a bankruptcy trustee does not have any interest in the dischargeability of an individual debt. Therefore, the Fourth Circuit was correct in determining that a bankruptcy trustee was not a "party in interest" with standing to move for an extension of the § 523 bar date.

298. *See id.*; *see also supra* notes 149–53 and accompanying text (discussing whether a debtor can waive the § 523 bar date).

299. *Flanagan*, 116 B.R. at 315.

300. *Ruben v. Harper (In re Harper)*, 194 B.R. 388, 391, 396 (Bankr. D.S.C. 1996).

301. *Id.* at 392; *see also supra* note 66 and accompanying text (discussing the power granted to courts under 11 U.S.C. § 105(a) (2006)).

302. *Ruben*, 194 B.R. at 392.

303. *See supra* note 141 and accompanying text.

304. *See supra* note 191 and accompanying text.

305. *See supra* note 189 and accompanying text.

306. *See supra* note 190 and accompanying text.

307. *See supra* note 191 and accompanying text.

Part III.A argues that a Chapter 7 bankruptcy trustee is not a “party in interest” under Rule 4007(c) because a bankruptcy trustee does not have an interest in the dischargeability of an individual debt sufficient to give the trustee standing to move for an extension of the § 523 bar date on behalf of creditors. Part III.B argues that this conclusion is consistent with the fresh-start policy interest of the Bankruptcy Code.

A. A Bankruptcy Trustee Is Not a “Party in Interest” Under Rule 4007(c)

First, the Fourth Circuit was correct in concluding that a bankruptcy trustee does not have a financial interest in the dischargeability of an individual debt sufficient to be a “party in interest” under Rule 4007(c).³⁰⁸ A trustee has a financial interest in those aspects of a bankruptcy case that affect the collection, liquidation, and distribution of the bankruptcy estate. This financial interest stems from the trustee’s role in managing the distribution of the bankruptcy estate to unsecured and undersecured creditors.³⁰⁹ In this role, the bankruptcy trustee has a duty to maximize the distribution of the bankruptcy estate, including both the duties to maximize the value of the bankruptcy estate and to minimize the administrative expenses.³¹⁰ The dischargeability of a claim, however, does not affect the collection, liquidation, and distribution of the bankruptcy estate. This is because both a dischargeable and nondischargeable debt are treated the same way during the distribution of the bankruptcy estate; that is, both will be reimbursed according to the priority list set forth in the Bankruptcy Code.³¹¹ Where a dischargeable debt and a nondischargeable debt differ is after the completion of the distribution of the estate, when a nondischargeable debt is still able to be collected from the postpetition assets.³¹² Since the dischargeability of an individual debt does not affect the collection, liquidation, and distribution of the bankruptcy estate, and does not affect the trustee’s duty to maximize the distribution of the estate, the trustee has no financial interest in whether or not the debt is dischargeable.³¹³ As such, the bankruptcy trustee fails the first prong of the “party in interest” test because the trustee does not have a financial interest in the dischargeability of an individual debt.³¹⁴

308. See *supra* note 247 and accompanying text.

309. See *supra* notes 167–69 and accompanying text.

310. See *supra* note 168 and accompanying text.

311. See *supra* notes 249, 255, 277 and accompanying text.

312. See *supra* notes 249, 255, 277 and accompanying text.

313. See *supra* notes 249, 255, 277 and accompanying text.

314. The Sixth Circuit, in *Brady v. McAllister*, erred in suggesting that a trustee has a financial interest in the dischargeability of an individual debt. See *Brady v. McAllister* (*In re Brady*), 101 F.3d 1165 (6th Cir. 1996). In rendering its opinion, the Sixth Circuit merely critiqued the *In re Farmer* court’s financial interest analysis instead of providing support for its own conclusion. See *supra* note 275 and accompanying text. However, the *Brady* court accurately stated that nondischargeable debts share in the distribution of the estate with dischargeable debts. See *supra* note 276 and accompanying text. As indicated in the text accompanying notes 309–12, this supports the conclusion that dischargeability of a debt does not affect the distribution of the bankruptcy estate, and as such, the trustee has no financial interest in the dischargeability of a debt.

Second, the Fourth Circuit was correct in concluding that a bankruptcy trustee does not have a statutorily imposed interest in the dischargeability of an individual debt.³¹⁵ Both the Fourth and Sixth Circuits agreed that an individual has a statutorily imposed interest in the dischargeability of an individual debt if that individual has standing to file a nondischargeability complaint.³¹⁶ Yet both circuits also correctly noted that a trustee does not have standing to file a nondischargeability complaint.³¹⁷ Therefore, a Chapter 7 bankruptcy trustee does not have a statutorily imposed interest in the dischargeability of an individual debt under § 523.³¹⁸ Conversely, a trustee does have a statutorily imposed interest in the debtor's right to a general discharge because § 727 gives standing to the trustee to object to the general discharge.³¹⁹ In fact, § 704(a)(6) specifically makes it the duty of the trustee to object to the granting of a general discharge, if advisable.³²⁰ Therefore, a trustee would be a "party in interest" under Rule 4004(a), which corresponds to § 727, with standing to move for an extension of the bar date for objecting to the general discharge.

Third, a bankruptcy trustee does not have a practical interest in the dischargeability of an individual debt. An individual has a practical interest in a proceeding if they have a sufficient stake in the outcome of that proceeding.³²¹ None of a Chapter 7 bankruptcy trustee's general duties, however, are affected by, or dependent upon, the determination of whether a debt is dischargeable.³²² Therefore, the trustee does not have a practical interest in the dischargeability of an individual debt sufficient to make the trustee a "party in interest" under Rule 4007(c).³²³

For instance, under 11 U.S.C. § 704(a)(5), the trustee has a duty to review and, if necessary, object to any claim made against the bankruptcy estate.³²⁴ Yet this duty requires the trustee to investigate the validity of a claim to determine if the claim can partake in the distribution of the bankruptcy estate; the duty does not have anything to do with whether that claim will be discharged after the estate has been distributed.³²⁵ Therefore, the trustee's duty to review claims does not give the trustee a practical interest in the dischargeability of an individual debt.³²⁶

315. *See supra* note 271 and accompanying text.

316. *See supra* notes 236–40, 270–73 and accompanying text.

317. *See supra* notes 237–38, 271 and accompanying text.

318. While the Sixth Circuit was correct in noting that a "party in interest" under Rule 4007(c) is not limited to those individuals with standing to file § 523 complaints, it erred in suggesting that the broader language of Rule 4007(c) implies that a trustee is a "party in interest." *See supra* note 272 and accompanying text. Instead, an individual still needs some interest in the dischargeability of an individual debt to be considered a "party in interest." *See supra* note 307 and accompanying text.

319. *See supra* notes 117, 137 and accompanying text.

320. *See supra* note 184 and accompanying text.

321. *See supra* note 198 and accompanying text.

322. *See supra* Part I.C.3.

323. *See supra* notes 191, 307 and accompanying text.

324. *See supra* notes 97–101, 175–77 and accompanying text.

325. *See supra* notes 176–77 and accompanying text.

326. *See supra* notes 174–77 and accompanying text.

Similarly, the Sixth Circuit erred in concluding that the trustee is a “party in interest” under Rule 4007(c) because of the trustee’s general duty to investigate the financial affairs of the debtor.³²⁷ A trustee’s § 704(a)(4) duty to investigate the financial affairs of the debtor is not affected by whether an individual debt is determined to be dischargeable and, therefore, does not give the trustee a practical interest in the dischargeability of an individual debt.³²⁸ The purpose of a trustee’s duty to investigate is “to amass information helpful to all creditors.”³²⁹ As such, this duty must be undertaken in the interest of all of the creditors; it does not permit a trustee to investigate matters that do not affect the creditors as a class.³³⁰ Therefore, similar to the trustee’s duty to review claims, the § 704(a)(4) duty to investigate does not include a duty to investigate the dischargeability of an individual debt, and does not serve as a basis for making a trustee a “party in interest” under Rule 4007(c).

However, as the *In re Farmer* court suggested, the § 704(a)(4) duty to investigate does not necessarily prohibit a trustee from investigating the circumstances surrounding individual debts.³³¹ For example, the trustee may investigate the circumstances surrounding individual debts if they may affect the debtor’s right to a general discharge.³³² Nevertheless, the trustee is only concerned with the individual debts to the extent that they weigh in on the availability of a general discharge or otherwise affect the class of creditors.³³³ The trustee is not interested in whether the individual debts themselves are dischargeable.³³⁴

Lastly, the Sixth Circuit erred in suggesting that the use of the broad phrase “party in interest” in Rule 4007(c), as compared to the use of the narrower language “debtor or creditor” in Rule 4007(a), implies that a trustee is a “party in interest” under Rule 4007(c).³³⁵ As both the Fourth and Sixth Circuits indicated, the difference in language does suggest that the phrase “party in interest” is not limited to just debtors and creditors.³³⁶ As the Fourth Circuit stated, however, the phrase “party in interest” can be broader without necessarily including the trustee.³³⁷ For example, in *In re Overmyer*, the U.S. Bankruptcy Court for the Southern District of New York held that a Chapter 7 creditor’s parent company was a “party in interest” even though the parent company was neither a creditor nor debtor.³³⁸ The use of the broad language does not, by itself, imply that a

327. See *supra* notes 170–74, 284–86 and accompanying text.

328. See *supra* notes 171–74 and accompanying text.

329. See *supra* note 172 and accompanying text.

330. See *supra* note 174 and accompanying text.

331. See *supra* note 245 and accompanying text.

332. See *supra* note 245 and accompanying text.

333. See *supra* notes 175, 245 and accompanying text.

334. See *supra* note 246 and accompanying text.

335. See *supra* notes 270–73 and accompanying text.

336. See *supra* notes 238, 273 and accompanying text.

337. See *supra* note 238 and accompanying text.

338. See *In re Overmyer*, 26 B.R. 755, 758 (Bankr. S.D.N.Y. 1982); see also *supra* note 238 and accompanying text.

trustee is a “party in interest.”³³⁹ Instead, the trustee needs some interest in the particular proceedings.³⁴⁰ Therefore, because the trustee does not have a financial, practical, or statutorily imposed interest in the dischargeability of an individual debt, the trustee is not a “party in interest” under Rule 4007(c).

*B. Consistency with the Fresh-Start Policy Interest
of the Bankruptcy Code*

This Note’s conclusion that a Chapter 7 bankruptcy trustee is not a “party in interest” under Rule 4007(c) is consistent with the fresh-start policy interest underlying the Bankruptcy Code. As the Supreme Court has stated, “The various provisions of the bankruptcy act . . . are to be construed when reasonably possible in harmony with . . . the general purpose and policy of the act.”³⁴¹ This consistency provides further support that a trustee is not a “party in interest” under Rule 4007(c). As discussed in Part I.A.2, one of the primary goals of the Bankruptcy Code is to “allow the debtor to get out from under the weight of his debt and resume being a contributing member of society.”³⁴² Under the fresh-start theory, the Code aims to provide the debtor with both finality and certainty as to his expectations for relief from financial distress.³⁴³ In fact, the short sixty-day bar date under Rule 4007(c) is supposed to limit delays in providing the debtor with a fresh start, regardless of the potentially harsh consequences of the short bar date.³⁴⁴ However, permitting the trustee to be a “party in interest” runs counter to this fresh-start theory. Allowing the trustee to extend the § 523 bar date will delay the case, potentially providing many creditors with additional time to file nondischargeability complaints when they otherwise may have been barred from doing so.³⁴⁵ This delays, and potentially hinders, the ability of the debtor to get out from under the weight of its debt.³⁴⁶ Therefore, the fresh-start policy underlying the Bankruptcy Code further supports the conclusion that a trustee is not a “party in interest” under Rule 4007(c).

CONCLUSION

The Fourth and Sixth Circuits’ disagreement in their interpretations of Rule 4007(c) has created confusion among the bankruptcy courts and parties to a bankruptcy case as to whether a trustee can move for an extension of the § 523 bar date. First, the Fourth Circuit concluded that a trustee does not have standing under Rule 4007(c). Then, the Sixth Circuit explicitly rejected the Fourth Circuit and came to the opposite conclusion.

339. *See supra* note 335 and accompanying text.

340. *See supra* note 307 and accompanying text.

341. *Local Loan Co. v. Hunt*, 292 U.S. 234, 245 (1934).

342. Rabinovitz, *supra* note 13, at 1534; *see also supra* note 46 and accompanying text.

343. *See supra* note 49 and accompanying text.

344. *See supra* note 145 and accompanying text.

345. *See supra* note 161 and accompanying text.

346. *See supra* notes 46, 342 and accompanying text.

However, this Note's analysis of the meaning of the phrase "party in interest," and the trustee's lack of interest in the dischargeability of a debt, illustrate that the Fourth Circuit's decision was the better-reasoned opinion. A trustee does not have a financial, practical, or statutorily imposed interest in the dischargeability of an individual debt sufficient to be a "party in interest" under Rule 4007(c).