BANKRUPTCY, DIVORCE, AND THE ROOKER-FELDMAN DOCTRINE: A POTENTIAL MARRIAGE OF CONVENIENCE

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I. INTRODUCTION

The Rooker-Feldman Doctrine is a relatively obscure principle. It is based on two cases: Rooker v. Fidelity Trust Co.1 and District of Columbia Court of Appeals v. Feldman.2 The doctrine stands for the principle that lower federal courts, including bankruptcy courts, lack subject-matter jurisdiction to review determinations made by state courts in judicial proceedings. Federal review of state court decisions lies only with the United States Supreme Court. Moreover, a lower federal court may not entertain a claim that is “inextricably intertwined” with a claim addressed in the state court.3 Sometimes confused with “claim preclusion” and “issue preclusion,” Rooker-Feldman has been applied in cases where the more familiar preclusion doctrines have not.

When an individual files bankruptcy and seeks to discharge all of his or her debts, creditors occasionally challenge the debtor’s ability to have any debts forgiven.4 The denial of a discharge is reserved for debtors whose activities are inconsistent with the purposes of bankruptcy. More often, creditors will challenge a debtor’s ability to discharge a particular debt, rather than all of his or her debts.5 Efforts to stop the discharge of marital debts fall within the second category of challenges. To block the discharge of a debt in bankruptcy requires the creditor to file adversary complaints6 with the bankruptcy court.7 Adversaries are akin to civil lawsuits and require all of the procedural safeguards that suits filed in the federal

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1 263 U.S. 413 (1923).
3 Id. at 483.
6 Hereinafter “adversaries.”
7 See FED. R. BANKR. P. 7001.
district courts enjoy. When a debtor owes a debt to an ex-spouse or to the children of a marriage, adversaries challenging the dischargeability of those debts are often raised to settle the question of whether the marital debt survives bankruptcy.

When bankruptcy courts adjudicate challenges to the discharge of marital debts, they revisit the same issues that the parties confronted in their divorce. The decision to award alimony, maintenance, support, and/or equitable distribution or property settlements in state court is often second-guessed in bankruptcy proceedings because the federal court must reexamine the divorce issues to determine whether the debt in question is dischargeable. Bankruptcy jurisprudence has long recognized that a fresh look at the terms of the divorce is required in order that federal law may be applied to determine whether a particular debt is in the nature of alimony, maintenance or support or whether it is “something else.” The former category of marital debts is not discharged in bankruptcy; the latter category, however, may be dischargeable in some types of bankruptcy cases.

As a consequence of the bankruptcy court’s need to reexamine the facts and circumstances surrounding the divorce, family law practitioners have often been frustrated when the terms of a divorce decree or a marital settlement agreement are reviewed and given new meaning in bankruptcy. Likewise, bankruptcy judges have expressed concern that they are becoming second-chance divorce courts. Unquestionably, family law matters have taken up a disproportionately significant portion of bankruptcy court dockets. This Article examines the little-known Rooker-Feldman Doctrine and offers Rooker-Feldman as an important jurisdictional tool in bankruptcy adversary practice to prevent parties from having to re-litigate disputes involving marital debts.

The Rooker-Feldman Doctrine stands for the proposition that bankruptcy judges are not only bound by what happened in state court, they lack jurisdiction to hear challenges that revisit the issues that were raised in state court. Facing an increasing number of marital-debt discharge challenges, bankruptcy judges may find that the Rooker-Feldman Doctrine provides much-needed relief.

This Article asserts that the recent amendments to the U.S. Bankruptcy Code (“the Code”) have eliminated many of the past reasons that bankruptcy courts had to review divorce decisions. Bankruptcy judges should invoke Rooker-Feldman and refuse to hear many marital-debt-dischargeability adversary actions. Under Rooker-Feldman, bankruptcy courts lack subject-matter jurisdiction to hold proceedings to determine the dischargeability of most marital debts.

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9 See, e.g., In re Harrell, 754 F.2d 902, 905 (11th Cir. 1985) (citing In re Williams, 703 F. 2d 1055,1056 (7th Cir. 1983)); In re Dirks, No. 08-8031, *2–4, 8–9, 2009 WL 103606 (B.A.P. 6th Cir. Jan. 16, 2009) (unpublished).
II. MARITAL DEBT DISCHARGEABILITY BEFORE 2005

Discharging marital debts in bankruptcy has been problematic since the Code was first enacted. From the Code’s ratification in 1978 until 2005, divorced parties too often had to revisit in bankruptcy court the painful financial issues arising from the dissolution of their marriage in order to determine whether a particular debt could or should be discharged in the bankruptcy. The situation was sometimes made more acute because the Code required that marital debts be separated into two categories: (1) those in the nature of alimony, maintenance or support and (2) those not in the nature of alimony, maintenance or support, which usually meant property settlements, equitable distribution orders, or hold-harmless agreements. If the debt in question were in the former category, it was non-dischargeable in bankruptcy; if it were in the latter category, it might or might not be dischargeable because the determination was subject to a balancing test. In

11 CHARLES J. TABB, THE LAW OF BANKRUPTCY 991 (2nd ed. 2009) (“Drawing the line between debts that are and those that are not actually in the nature of alimony, maintenance or support has proven difficult for courts.”).
12 See, e.g., In re Carlisle, 205 B.R. 812, 819–20 (Bankr. W.D. La. 1997) (citing In re Smither, 194 B.R. 102, 111 (Bankr. W.D. Ky. 1996) (listing ten factors that the court would consider, at minimum, in determining whether a debt, not in the nature of alimony, maintenance or support, would be discharged. The factors are:

1. The amount of debt involved, including all payment terms; 2. The current income of the debtors, objecting creditor and their respective spouses; 3. The current expenses of the debtor, objecting creditor and their respective spouses; 4. The current assets, including exempt assets of the debtor, objecting creditor and their respective spouses; 5. The current liabilities, excluding those discharged by the debtor’s bankruptcy, of the debtor, objecting creditor and their respective spouses; 6. The health, job skills, training, age and education of the debtor, objecting creditor and their respective spouses; 7. The dependents of the debtor, objecting creditor and their respective spouses, their ages and any special needs they may have; 8. Any changes in the financial conditions of the debtor and the objecting creditor which may have occurred since the entry of the divorce decree; 9. The amount of debt which has been or will be discharged in the debtor’s bankruptcy; 10. whether the objecting creditor is eligible for relief under the bankruptcy code; and 11. Whether the parties have acted in good faith in the filing of the bankruptcy and the litigation of 11 U.S.C. § 523(a)(15) issues.).
15 See In re Crosswhite, 148 F.3d 879, 888 (7th Cir. 1998); In re Hill, 184 B.R. 750, 755–56 (Bankr. N.D. Ill. 1995); In re Miller, 247 B.R. 412, 416 (Bankr. N.D. Ohio 2000);
other words, the classification of the marital debt was outcome-determinative in dischargeability litigation.

The classification of marital debts as either in the nature of alimony, maintenance or support or “something else” resulted in a few noteworthy decisions\(^\text{16}\) and many frustrated bankruptcy attorneys and judges.\(^\text{17}\) No case stands out more than *In re Davidson*.\(^\text{18}\)


\(^{16}\) *See, e.g.*, Daulton v. Daulton (*In re Daulton*), 139 B.R. 708 (Bankr. C.D. Ill. 1992) (listing twenty factors to be considered when determining if a marital debt is in the nature of alimony, maintenance or support or if it is a property settlement. However, in ruling that the debt in question was dischargeable as a property settlement, the court barely addressed any of the factors it had just laid out. The court’s complete analysis consisted of two paragraphs. It wrote:

> In considering the factors outlined above, the Court concludes that the fees in question were not intended to be in the nature of alimony, maintenance, or child support. The December 21, 1990, Dissolution Order contains a maintenance section at paragraph D. and specifically states at paragraph Z.Z. that maintenance is waived by both parties except as otherwise provided in the Order. Additionally, there is a separate paragraph concerning child support. This Court is not bound by the labels placed on these debts by the State Court, but, in this case, the Court finds the State Court Order indicative of the State Court’s intent and the intent of the parties as to the characterization of the debts in question.

> The Court further finds that the income of the parties at the time of the December 21, 1990, Order was relatively equal given Plaintiff’s child support payments to Defendant and Plaintiff’s care of Defendant’s son. There is no indication that the fees were awarded against Plaintiff to balance the income of the parties. The parties are young and appear to have a relatively equal ability to earn a living. *These factors, together with others of a more minor character, lead the Court to find in favor of Plaintiff as to all of the debts in question.*

*Id.* at 711 (emphasis added). *Daulton* was potentially instructive to bankruptcy attorneys because of its twenty-factor test, but its importance was diminished by virtue of its truncated analysis.

\(^{17}\) *See, e.g.*, *In re Hesson*, 190 B.R. 229 (Bankr. D. Md. 1995), *abrogated by In re Dexter*, 250 B.R. 222 (Bankr. D. Md. 2000) (“Professor Peter C. Alexander urges (much to the prayers of some bankruptcy judges) that jurisdiction over marital debts should remain in the divorce court with the bankruptcy court serving as an adjunct to enforce the state court orders . . . ”) *Id.* at 236. *See also In re Ingalls*, 297 B.R. 543 (Bankr. C.D. Ill. 2003) (rejecting the prevailing dischargeability analysis under 11 U.S.C. § 523(a)(15) in favor of a “totality of the circumstances” test as a way to be more precise when determining marital-debt dischargeability challenges); *In re Gunia*, 91 B.R. 989, 991 (Bankr. M.D. Fla. 1988) (cautioning that marital-debt discharge actions may turn the bankruptcy courts into appellate courts for divorce decrees). The most colorful exposition of a court’s frustration
The Davidsons were divorced in 1983 and, pursuant to their divorce decree, Mr. Davidson agreed to pay his ex-wife $7,732 per month for 121 months. The divorce decree explicitly stated that the obligation was for support and not a property settlement; Mr. Davidson labeled his checks to his ex-wife as “alimony” and deducted the payments as alimony on his income tax returns. The former Mrs. Davidson declared the checks as alimony on her tax returns. In March of 1988, Mr. Davidson filed for bankruptcy and, in defense of a challenge to the dischargeability of the marital debt by his ex-wife, Mr. Davidson argued that the debt in question was not in the nature of alimony, maintenance or support. The bankruptcy court agreed with Mr. Davidson, as did the district court on appeal. The United States Court of Appeals for the Fifth Circuit finally reversed the lower courts and ordered him to pay the debt to his ex-wife. Sixty-five months passed between the date on which Mr. Davidson first withheld payment to his ex-wife and the point at which the court of appeals ordered him to pay the debt. It is therefore not surprising that the process of determining the dischargeability of marital debts has been regarded by many as “confusing” and “unfair.”

was penned by Judge Frank W. Kroger in his opening paragraphs in *In re Rice*, 94 B.R. 617, 618 (Bankr. W.D. Mo. 1988). He wrote:

> Conquest, War, Famine, Death—these the Book of Revelations tells us are the Four Horsemen of Apocalypse, no matter what that later apostle known to the sporting gentry as Grantland Rice wrote some nineteen centuries later. Yet in the arena of consumer bankruptcy, neither prophet was right. Here and now those dread specters are: Divorce, Illness, Unemployment, and Overspending. These now are the harbingers of economic doom that spell the end of the “good life” for so many of the economic refugees that seek relief in this “Court of Last Resort.” But even here the tendrils of Divorce linger on and judges of these courts are called upon to decide whether the remaining shards of the former physical and spiritual union are “in lieu of maintenance” or “in the nature of property settlement” and thus correspondingly nondischargeable or dischargeable as the case may be.

> This case illustrates some of the sadness, the bitterness and the economic desolation visited upon such parties, for they were and are the victims of both Divorce and Illness.

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19 *Id.* at 797.
20 *Id.*
21 *Id.*
22 Davidson, 947 F.2d 1294 at 1296.
23 *Id.* at 1298.
24 See, *e.g.*, Jana B. Singer, *Divorce Obligation and Bankruptcy Discharge: Rethinking the Support/Property Distinction*, 30 HARV. J. ON LEGIS. 43 (1993). She writes:

> The Bankruptcy Code currently divides divorce-related obligations into two categories: awards or agreements in the nature of support are non-dischargeable;
One unintended consequence of the marital-debt-dischargeability paradigm, pre-2005, was that women, more often than men, seemed to be disenfranchised in bankruptcy. In case after case, ex-husbands who earned more money and who had either been ordered to pay or had accepted the responsibility to pay certain marital debts filed bankruptcy after the divorce. Soon thereafter, either the ex-husband sought to have the bankruptcy court declare the marital debt(s) in question to be dischargeable in bankruptcy or the ex-wife filed a challenge to have the bankruptcy court declare the debts to be excepted from discharge. The bankruptcy proceeding was an expensive second round of litigation for the parties, particularly the party with the fewest resources, which was often the ex-wife.

Id. at 43.


Marital debt dischargeability may be used as either a sword or a shield. Dischargeability of marital debts may be raised by a debtor to have the debt declared dischargeable or it may be raised by the creditor spouse to keep the debtor from discharging the debt(s) in question. Shayna M. Steinfeld & Bruce R. Steinfeld, The Family Lawyer’s Guide to Bankruptcy 99 (A.B.A., 2d ed. 2002).

The issue of determining the dischargeability of a marital debt is often complicated and can involve protracted litigation. In *Jestice v. Jestice*, a husband and his ex-wife were divorced on November 6, 2001. She filed a Chapter 13 reorganization in August of 2002; he filed a Chapter 7 liquidation almost two years later. In his bankruptcy, Mr. Jestice sought to discharge certain marital debts that he had been obligated to pay in the couple’s divorce decree, namely credit card debts, a motor vehicle loan, and a mortgage obligation. Ms. Jestice filed an adversary and sought a determination that her former husband’s debts were nondischargeable debts pursuant to Sections 523(a)(5) and (a)(15) of the Code.

The bankruptcy court held that the debts were not in the nature of alimony, maintenance or support under Section 523(a)(5) and turned its attention to whether the debts were dischargeable pursuant to Section 523(a)(15). In reaching its decision under Section 523(a)(15), the court was required to examine whether Mr. Jestice had the ability to pay the obligations in question and whether the discharge benefit to the debtor outweighed the detriment to Ms. Jestice. As part of its analysis, the court considered the income of each party (and income from Ms. Jestice’s live-in fiancé) as well as the fact that Mr. Jestice was paying child support to Ms. Jestice, who had been awarded primary custody of the couple’s children. The court then calculated the parties’ monthly expenses and concluded that the debtor did not have the ability to pay the obligations in question.

Once the bankruptcy court reached its decision, Ms. Jestice appealed the ruling to the Bankruptcy Appellate Panel (“B.A.P.”) for the Sixth Circuit, which affirmed the bankruptcy court. The B.A.P. noted that the bankruptcy court applied the wrong test to determine dischargeability of the marital debts, but it

*Dischargeability, supra* note 25, at 363–65. *See also* Margaret F. Brinig, *In Search of Prince Charming*, 4 J. GENDER, RACE & JUST. 321, 325 (2001) (“For the last several years, I have noticed a puzzling phenomenon in American marriage and divorce. American women primarily file for divorce, even though they all too frequently end up in poverty following marital dissolution.”).

29 Dischargeability challenges, called “adversary complaints” in the world of bankruptcy, are governed by the Federal Rules of Bankruptcy Procedure, which provides all of the procedural safeguards that parties in a district court litigation would have. *See* F. R. Bankr. P. 7001 et seq. Actions begin with a complaint, followed by responsive pleading(s) and discovery, etc. *Id.*


31 “Chapter 13 offers an alternative to liquidation under Chapter 7 by allowing a debtor with regular income to keep his assets and establish a plan to pay creditors out of his future income.” Matter of Crippin, 877 F.2d 594, 596 (7th Cir. 1989).


33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.* at *43.


38 *Id.* at *41, *45.

39 *Id.* at *39.
concluded that the lower court was correct to decide that the debtor’s assumption of the credit card, vehicle and mortgage debts “lacked the traditional indicia of support” and were dischargeable.40 Following the B.A.P. decision, Ms. Jestice appealed to the U.S. Court of Appeals for the Sixth Circuit, which affirmed the prior holdings.41

This Sixth Circuit decision acknowledged (as had the B.A.P.) that some of the facts weighed in favor of the ex-wife, suggesting that this was not an open-and-shut case.42 However, the senior court could not conclude that the bankruptcy court erred in finding in favor of the ex-husband.43

The final decision does not provide a complete picture of Ms. Jestice’s struggle to try and keep her ex-husband from discharging the marital debts in question. The Jestices were divorced pursuant to a decree entered on November 6, 2001, but the Sixth Circuit did not issue its ruling until February 9, 2006.44 The parties were living with the financial controversy swirling around them for more than four years; more importantly, the parties had to fund an initial court challenge plus two appeals in order to close this painful chapter of their marriage. In the end, the debtor’s discharge meant that any debts for which Ms. Jestice was a co-debtor (the credit cards and the mortgage in all likelihood) would become Ms. Jestice’s sole responsibility because her ex-husband discharged his obligation to these creditors in bankruptcy.45

### III. Marital Debt Dischargeability After 2005

In 2005, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”).46 The goal of this new law was, inter alia, to make bankruptcy more difficult to file and to end perceived abusive filings.47 To further

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40 Id. at *43.
41 Id. at *46.
42 Jestice, 168 Fed. Appx. at *43.
43 Id.
44 Id. at *40.
45 If Mr. Jestice was represented by a competent bankruptcy attorney, he also discharged any obligation to his ex-wife that he may have had to hold her harmless should the marital debts fall back to her to pay. She could be listed as a “contingent creditor” whose debts are subject to discharge. See 11 U.S.C. § 101(5)(A) (2005) (“claim” means “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured . . . .” (emphasis added)). In Jestice, however, Ms. Jestice had filed a Chapter 13 reorganization and a portion of her debts, including the marital debt, would be paid in part through a plan and over a three-to-five-year period.
47 See Tally M. Wiener & Nicholas B. Malito, On the Nature of the Chapter 7 Bankruptcy Trustee Fee, 17 J. BANKR. L. & PRAC. 2 ART. 3 (2009) (BAPCPA’s purpose was to make it more difficult for consumers to declare personal bankruptcy); Marisa Terranova, Attorneys as Debt Relief Agencies: Constitutional Considerations, 13
its stated (and unstated) purposes, BAPCPA essentially changed basic bankruptcy theory. Prior to the enactment of BAPCPA, honest but unfortunate debtors typically filed bankruptcy and sought a discharge of their debts under Chapter 7 of the Code.\(^48\) If the debtor’s financial disclosures indicated that it would be an abuse to grant her a discharge under Chapter 7, the bankruptcy court, on its own motion, or on the motion of the Office of the United States Trustee, could move to dismiss the debtor’s bankruptcy unless the debtor converted her case to a consumer reorganization under Chapter 13.\(^49\) The burden was on the government to prove that the debtor was abusing the bankruptcy system by failing to file a reorganization.\(^50\)

Under BAPCPA, all debtors are presumed to be capable of paying something on their debts and are therefore presumed to be capable of completing a Chapter 13 reorganization plan.\(^51\) Those debtors who lack the ability to fund a Chapter 13 plan are identified through a complicated “means test,” which all consumer debtors must complete and which is intended to alert the court and the United States Trustee when a debtor is financially unable to file a Chapter 13 and is therefore eligible for the much simpler Chapter 7 liquidation.\(^52\) The goal of bottom-line

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\(^{48}\) See, e.g., Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) (recognizing that the purpose of the bankruptcy discharge is to provide a fresh start to honest but unfortunate debtors).


\(^{50}\) See CHARLES J. TABB, supra note 11, at 10.


objective of BAPCPA is clearly to move more debtors into Chapter 13 reorganizations.

Among the numerous amendments to the Code, BAPCPA significantly revised the marital debt discharge provisions. “Marital debts,” of all types, are now known as “domestic support obligations” as long as they are in the nature of alimony, maintenance or support.53 “Domestic support obligation” includes debts that were established pursuant to a separation agreement, property settlement, divorce decree, or court order.54 More importantly, these “domestic support obligations,” as well as debts that are not in the nature of alimony, maintenance or support,55 are nondischargeable in a Chapter 7 liquidation.56

There is no longer a classification distinction when determining the dischargeability of marital debts in Chapter 7 cases. A distinction remains in Chapter 13 cases, but changes under BAPCPA have rendered marital-debt dischargeability in Chapter 13 cases much less complicated. More troubling, however, is that BAPCPA should have ended litigation over the classification of marital debts in Chapter 7 cases and yet some cases that were filed pre-BAPCPA are still being litigated.57

A. Chapter 7 Treatment of Marital Debts

BAPCPA eliminated the need for litigation in Chapter 7 liquidation cases where courts were trying to determine the type of marital debt that was the subject of a pending adversary dispute. Since all categories of marital debt are now nondischargeable in a Chapter 7, there is no reason to continue to make distinctions between debts in the nature of alimony, maintenance or support and debts that are something other than in the nature of alimony, maintenance or support.

In Chapter 7 cases, all the bankruptcy court must do is determine whether the marital debt(s) in question were owed “to a spouse, former spouse, or child of the debtor” and were “incurred by the debtor in the course of a divorce.”58 Once that

54 Id.
55 The debts typically include property settlements, equitable distribution agreements, and hold-harmless agreements. See generally Bernice B. Donald & Jennie D. Latta, The Dischargeability of Property Settlement and Hold Harmless Agreements in Bankruptcy: An Overview of Section 523(a)(15), 31 FAM. L.Q. 409 (1997). See also In re Raffeld, 356 B.R. 786 (B.A.P. 6th Cir.) (stating that section 523(a)(15) “is intended to cover divorce-related debts such as those found in property settlement agreements . . . ” (citing Crosswhite v. Crosswhite, 148 F.3d 879, 882 (7th Cir. 1998)); In re Klein, 2008 WL 238848 (Bankr. D.N.D. 2008) (holding a property settlement nondischargeable under section 523(a)(15)).
determination is made by the court, the debt is “unqualifiedly nondischargeable.” The change in the Code recognizes the changing nature of how dependents are cared for following a divorce. As one judge has written:

The enactment of subsection 523(a)(15) and the increase in the scope of the discharge exception effected by the 2005 amendments, [sic] expresses Congress’s recognition that the economic protection of dependent spouses and children under state law is no longer accomplished solely through the traditional mechanism of support and alimony payments. State courts do not always draw sharp distinction between support and property division in providing for the post-divorce economic security of dependent family members. Property settlement arrangements are often “important components of the protection afforded individuals who, during the marriage, depended on the debtor for their economic well-being.”

B. Chapter 13 Treatment of Marital Debts

If a debtor files a Chapter 13 consumer reorganization, instead of a Chapter 7 liquidation, a domestic support obligation is not dischargeable, but the Chapter 13 discharge provisions still permit a discharge of a debt that is not in the nature of alimony, maintenance or support. The balancing test that used to be applied to the dischargeability of marital debts not in the nature of alimony, maintenance or support, however, has been eliminated. As a result, if a debtor files a consumer reorganization instead of a liquidation, it is possible that his or her marital debt could be deemed “dischargeable.”

In order to determine whether the marital debt in question qualifies for a discharge in a Chapter 13 reorganization, the interested parties must present the issue to the court by filing an adversary complaint and engage in the same arguments that the parties made pre-BAPCPA. This suggestion is not illusory;

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59 Id.
60 Id. at 61–62, quoting 4 L. KING, COLLIER ON BANKRUPTCY, ¶ 523.21 at 523–118 (15th Ed. Rev. 2008). See also Crosswhite v. Ginter, 148 F. 3d 879, 881 (7th Cir. 1998) (“Bankruptcy law has had a longstanding corresponding policy of protecting a debtor’s spouse and children when the debtor’s support is required.”); Shine v. Shine, 802 F. 2d 583, 585–86 (1st Cir. 1986) (“The bankruptcy law should receive such an interpretation as will effectuate its beneficent purposes and not make it an instrument to deprive dependent wife and children of the support and maintenance due them from the husband and father, which it has ever been the purpose of the law to enforce.”).
62 Under 28 U.S.C. §1334(a), bankruptcy courts, through reference from the district courts, have original and exclusive jurisdiction of all cases under title 11. “Cases” refers to the bankruptcy case itself. The bankruptcy court also has full “but not exclusive”
one of the intended (and actual) consequences of BAPCPA is to move more debtors into Chapter 13 and reduce the number of debtors who are permitted to walk away from their obligations in Chapter 7. \(^{63}\) Since the enactment of BAPCPA, there has been no decline in Chapter 13 filings. \(^{64}\) As a result, there are still considerable opportunities for bankruptcy courts to reexamine the nature of marital debts to determine dischargeability and many more opportunities for continued confusion and frustration. \(^{65}\)

After BAPCPA, the test for determining the dischargeability of a marital debt that is not in the nature of alimony, maintenance or support is quite simple in a Chapter 13 case. Section 523(a)(15) of the Code provides that, if the debt in question is not a “domestic support obligation” (which is covered by Section 523(a)(5) of the Code), the debt is dischargeable. “Dischargeable” doesn’t typically mean that a debtor spouse can walk away from this marital debt and not pay anything to his or her former spouse. In a Chapter 13 case, “dischargeable” usually means that the debt will be included with all of the other general unsecured creditors that are included in the debtor’s Chapter 13 plan. Those creditors will be paid a pro rata share of the funds that are to be distributed as provided in the

jurisdiction over proceedings “arising under title 11, or arising in and related to cases under title 11.” 28 U.S.C. §1334(b) (2009). Thus, state courts have jurisdiction to hear and determine some issues that arise out of a bankruptcy case. This has been generally understood to include nondischargeability determinations, except in instances identified in 11 U.S.C. §523(c)(1), which gives bankruptcy courts exclusive jurisdiction to determine four types of nondischargeability claims; and to include determinations of whether a particular debt is excepted from or prohibited by the automatic stay. See, e.g., Local Loan Co. v. Hunt, 292 U.S. 234, 240 (1934) (“The effect of the discharge in bankruptcy is a matter to be determined by any court in which the discharge may be pleaded . . .”).

\(^{63}\) See, e.g., Rafael I. Pardo, Failing to Answer Whether Bankruptcy Reform Failed: A Critique of the First Report from the 2007 Consumer Bankruptcy Project, 83 Am. Bankr. L.J. 27, 37 (2009) (“the means test . . . is designed to shunt some [debtors] from Chapter 7 to Chapter 13.”); Bruce M. Price & Terry Dalton, From Downhill to Slalom: An Empirical Analysis of the Effectiveness of BAPCPA (and Some Unintended Consequences), 26 Yale L. & Pol’y Rev. 135, 192 (2007) (increase in the amount of debts being repaid in Chapter 13 bankruptcies post BAPCPA). See also Alexander, supra note 52, at 604 (“[T]he means test is the centerpiece of the government’s new effort to force debtors who have some ability to pay their debts into chapter 13 reorganizations and away from chapter 7 liquidations.”).


\(^{65}\) See Musselman, supra note 57 (reviewing the many issues that still surround the discharge of marital debts in bankruptcy).
Accordingly, the spouse may receive some distribution from the Chapter 13 trustee, but, typically, not the full amount of his or her claim.

When a debtor files a Chapter 13 consumer reorganization and marital debts are included in the overall debt picture, it is likely that either the debtor spouse or the creditor spouse may ask the bankruptcy court to determine the dischargeability of those debts. Advocates of the changes to the marital-debt dischargeability provisions of the Code would argue that, by making virtually all marital debts nondischargeable, Congress helped to reduce the number of adversaries seeking to discharge marital debts. The argument, unfortunately, does not take into account that the distinction between debts in the nature of alimony, maintenance or support and other marital debts still remains an issue in Chapter 13 cases. Moreover, since one of the purposes of BAPCPA is to move more debtors into Chapter 13 reorganizations, the number of Chapter 13 filings will likely continue to increase and the number of marital debt challenges will likely remain high. If so, all of the troubling issues surrounding marital-debt dischargeability will also remain.

Despite BAPCPA, the litigation to determine the dischargeability of marital debts in Chapter 13 cases still revolves around the classification of the debts as either in the nature of alimony, maintenance or support or as “something else.” There is no need to go beyond that inquiry because, if the debt is in the nature of alimony, maintenance or support, it is a domestic support obligation as defined in Section 101(14A) of the Code and it is not dischargeable in either a Chapter 7 liquidation or a Chapter 13 consumer reorganization. If the debt is not a domestic support obligation, then Section 523(a)(15) provides that it can be discharged in a Chapter 13. All of the parties’ efforts, therefore, must be directed toward having the marital debts in question classified as either a domestic support obligation or something other than a domestic support obligation. A debtor’s only chance to have a marital debt discharged in bankruptcy is to have a bankruptcy court conclude that the debt in question is not in the nature of alimony, maintenance or support.

When determining the classification of a marital debt, the bankruptcy court must examine the characteristics of the debt and consider factors that look...
strangely similar to the factors that the divorce court considered when the debtor and the creditor spouses were getting their divorce. Consider *In re Daulton*, wherein the court relied on twenty factors to determine if a marital debt was in the nature of alimony, maintenance, or support. The factors included the length of the marriage, the age and health of the parties, employment of the parties, the relative future earning power of each spouse, and whether the provisions of the parties’ settlement agreement was intended to balance the relative income of the parties. The list should look familiar to most family law practitioners because these are among the same factors that are considered when determining if alimony, maintenance or support are justified in a divorce.

One might justifiably ask why Congress did not conform dischargeability determinations in Chapter 13 cases with those in Chapter 7 cases. That is a mystery that cannot be resolved in this Article. However, it does seem that further amendment to the Code would be appropriate to eliminate the requirement that bankruptcy courts determine if marital debts are “in the nature of” alimony, maintenance or support. Simply declaring that marital debts are nondischargeable in Chapter 13 cases, just as they are in Chapter 7 cases, would eliminate the issues discussed herein.

IV. PRECLUSION IN BANKRUPTCY

Generally, claim and issue preclusion are affirmative defenses that can bar the untimely litigation of certain matters or the re-litigation of others. As one court has noted, the two concepts are closely related but are certainly applied differently. “The concepts are distinct. Claim preclusion, otherwise referred to as *res judicata*, gives dispositive effect to a prior judgment if the particular issue, albeit not litigated in the prior action could have been raised. On the other hand, issue preclusion, often referred to as collateral estoppel, bars relitigation only of an issue identical to that adjudicated in the prior action.”

A. Claim Preclusion

One of the better-known preclusion doctrines is claim preclusion. The essential elements of claim preclusion are: “(1) a final judgment on the merits in an earlier action; (2) an identity of parties or privies in the two suits; and (3) an identity of the cause of action in both suits.” Once all of these elements are

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69 Daulton, supra note 16.
70 Id. at 710.
72 FDIC v. Shearson-Amer. Express, Inc., 996 F.2d 493 (1st Cir. 1993).
satisfied, the parties are barred from re-litigating claims and from raising claims that could have been raised in the original action.\textsuperscript{74}

The United States Supreme Court in \textit{Brown v. Felsen}\textsuperscript{75} held that claim preclusion does not apply in bankruptcy dischargeability proceedings.\textsuperscript{76} The Court stated “the mere fact that a conscientious creditor has previously reduced his claim to judgment should not bar further inquiry into the true nature of the debt.”\textsuperscript{77} It is well-settled that the dischargeability of debt in a bankruptcy proceeding is “the exclusive province of bankruptcy courts.”\textsuperscript{78} As such, the determination of the dischargeability of a marital debt is a different claim than those that could be brought before state courts.\textsuperscript{79} A party seeking to avoid re-litigating marital debt issues in bankruptcy clearly cannot rely on claim preclusion.

\textbf{B. Issue Preclusion}

Unlike claim preclusion, bankruptcy courts have continually given preclusive effect to state court judgments through issue preclusion, formerly known as “collateral estoppel.”\textsuperscript{80} The Supreme Court has explicitly recognized that “collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to Section 523(a).”\textsuperscript{81} Issue preclusion bars re-litigation of issues that were litigated and determined in prior legal proceedings.\textsuperscript{82} In order for issue preclusion to bar the re-litigation of an issue, four requirements must be met:

1. The precise issue raised in the present case must have been raised and actually litigated in the prior proceeding;

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\textsuperscript{75} 442 U.S. 127, 133–39 (1979).
\textsuperscript{76} See also \textit{In re Murphy}, 297 B.R. 332, 347 (Bankr. D. Mass. 2003) (“It is well established, however, that claim preclusion does not bar a bankruptcy court’s review of the nature of the debt in question for purposes of determining its dischargeability.”) (emphasis in original).
\textsuperscript{77} \textit{Brown}, 442 U.S. at 138.
\textsuperscript{78} \textit{In re Murphy}, 297 B.R. at 347 (citing \textit{Brown}, 442 U.S. at 139).
\textsuperscript{79} \textit{Id}.
\textsuperscript{80} See, e.g., \textit{In re Livingston}, 372 F. App’x 613, 616 (6th Cir. Apr. 9, 2010) (affirming the lower court’s finding that “because the elements of a state common law fraud claim are virtually identical to those necessary to determine non-dischargeability, the Livingstons were collaterally estopped from re-litigating the issue of fraud”); \textit{In re Tulloch}, 373 B.R. 370 (Bankr. D.N.J. 2007) (adversary plaintiff carried its burden of proving the non-dischargeability of drunk-driving debt by collateral estoppel); \textit{In re LaRoche}, 207 B.R. 369 (Bankr. D.R.I. 1997) (the debtor’s state court criminal conviction binds the bankruptcy court under the doctrine of collateral estoppel).
\textsuperscript{82} For a more complete definition of collateral estoppel, see \textit{BLACK’S LAW DICTIONARY} 256 (7th ed. 1999).
\end{flushright}
(2) Determination of the issue must have been necessary to the outcome of the prior proceeding;
(3) The prior proceeding must have resulted in a final judgment on the merits; and
(4) The party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding. 83

Bankruptcy courts, relying on issue preclusion, have given preclusive effect to state court judgments 84 most often when determining dischargeability exceptions when the debts in question are classified as “drunk-driving debts,” 85 “fraud debts,” 86 or “willful and malicious injury debts.” 87

1. Drunk-Driving Injuries

Section 523(a)(9) of the Code excepts from discharge debts “for death or personal injury caused by the debtor’s operation of a motor vehicle, . . . if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug or another substance.” 88 Through the use of issue preclusion, bankruptcy courts have found that state court judgments determining that an injury was caused by a debtor’s operation of a motor vehicle while intoxicated can satisfy all the elements necessary to grant an exception to discharge under Section 523(a)(9). 89 When the state court judgment satisfies the 523(a)(9) elements, there is no need for the bankruptcy court to reevaluate the evidence or circumstances presented at state court. In fact, when such a judgment exists, the bankruptcy court simply grants a plaintiff’s motion for summary judgment and excepts the judgment from discharge. 90

83 Id.
84 See In re Calvert, 105 F.3d 315, 321 (6th Cir. 1997) (stating “a creditor may utilize collateral estoppel to prevent litigation of the dischargeability of a debt after obtaining a default judgment on claims of fraud in state court.”); Colorado West Trans., Inc. v. McMahon, 380 B.R. 911, 924 (N.D. Ga. 2007) (district court overruling bankruptcy court, finding that “the Bankruptcy Court’s determination that McMahon did not defraud Colorado West was precluded by the prior default judgment.”); In re Thorne, 1995 WL 506843, *2 (Bankr. E.D. Va. 1995) (finding that “the precise issues raised in plaintiff’s dischargeability complaint were previously litigated in Virginia state court and judgment entered against debtor.”).
89 In re Thorne, 1995 WL 506843, at *2. But see In re Caffey, 24884 B.R. 920, 923 (Bankr. N.D. Ga. 2000) (holding that a state criminal proceeding that acquitted the debtor was based on a beyond reasonable doubt standard of proof, and thus was not preclusive under the bankruptcy court’s preponderance of the evidence standard).
90 Thorne, 1995 WL 506843, at *2.
2. Fraud Debts

Section 523(a)(2) of the Code excepts from discharge, debts obtained by “false pretenses, false representation, or actual fraud . . . .” Bankruptcy courts have routinely given preclusive effect to state court judgments based on fraud.\(^91\) Often times the jury in state court proceedings will have to consider the same elements as the bankruptcy court would have under § 523(a)(2).\(^92\) In fact, in many states, even “default judgments on fraud claims are considered to be a full and fair litigation of the fraud issue” when determining dischargeability under Section 523(a)(2).\(^93\) As long as the state considers default judgments a full and fair litigation of the fraud issue, the judgment will be given preclusive effect by the bankruptcy court.\(^94\) One bankruptcy court has gone so far as to say that “there is nothing specific about fraud determinations that make them especially well suited for determination by the bankruptcy court.”\(^95\)

3. Willful and Malicious Injuries

Issue preclusion is also regularly used by bankruptcy courts with regard to litigation under Section 523(a)(6) of the Code, which provides an exception to discharge “for willful and malicious injury by the debtor to another entity or to the property of another entity.”\(^96\) In these situations, courts will use issue preclusion as an “alternative basis to satisfy the elements of Section 523(a)(6).”\(^97\) When the issues implicated by Section 523(a)(6) are actually litigated in a state court proceeding, the bankruptcy court can accord the state court judgment “preclusive effect.”\(^98\) If the bankruptcy court determines that the state court judgment determined the elements necessary under Section 523(a)(6), it will not reevaluate those elements.\(^99\)

\(^92\) See In re Diamond, 285 F.3d 822, 828 (9th Cir. 2002) (stating that “the reliance issues in the state law fraudulent misrepresentation claim are identical to those in the nondischargeability claim under § 523(a)(2)(A).”).
\(^93\) McMahon, 380 B.R. at 918.
\(^94\) Id.
\(^95\) Id.
\(^97\) In re Keaty, 397 F.3d 264, 270 (5th Cir. 2005).
\(^98\) Id. at 273 (finding that the Louisiana Fourth Circuit Court of Appeal’s findings on a “claim for sanctions under Louisiana law encompasses the elements of the willful and malicious injury requirement under § 523(a)(6) of the Bankruptcy Code”); In re Diamond, 285 F.3d 822, 828 (9th Cir. 2002) (holding that the state court judgment “necessarily included” the Section 523(a)(6) element of “willful and malicious injury”); In re Baldwin, 249 F.3d 912, 917–920 (9th Cir. 2001).
\(^99\) In re Keaty, 397 F.3d at 2743.
4. Issue Preclusion’s Inapplicability to Martial Debts

It is relatively straightforward for a bankruptcy court to give preclusive effect to a state court’s determination that a debtor caused an accident while driving under the influence of alcohol or drugs. Section 523(a)(9) of the Code does not provide leeway for bankruptcy courts to reevaluate the state court’s decision. Similarly, the dischargeability exception for fraud under Section 523(a)(2) is not as stringent but still can tie the hands of the bankruptcy court if the state court’s decision clearly indicates that debt obligation is based on some type of fraudulent activity. In dealing with both fraud and drunk-driving exceptions, the language and terminology used by the state court are identical to the applicable exception under 523(a) of the Code.

Unlike fraud and drunk driving, the language and terminology of willful and malicious torts under Section 523(a)(6) can be somewhat different than that used by the state court. The state court action giving rise to a claim that a debt is nondischargeable under Section 523(a)(6) is bound up in varying terminology and many different causes of action. Litigants don’t file “willful and malicious” torts. Typically, the plaintiff seeks recovery for an “intentional tort” of some sort and pleads that the defendant’s actions were willful and malicious. There are many ways to identify an injury as “willful and malicious.” Accordingly, a bankruptcy court will have to examine the underlying facts and circumstances of a particular controversy to determine whether the definition of “willful and malicious” has been met. While state courts may not use the terminology, their determinations may have preclusive effect if the state court’s reasoning fulfills the elements of a “willful and malicious” exception.

The dischargeability exception for domestic support obligations is different from the three exceptions discussed above. Under Section 523(a)(5), the language and terminology used to determine dischargeability is similar to what a state court may use but an extra phrase is added that is not present in the exceptions for drunk driving, fraud, and willful and malicious injuries. Under Section 101(14A) of the Code, domestic support obligations are defined not as “alimony, maintenance or support” but rather as those obligations that are “in the nature of alimony, maintenance, or support . . .” While the words “alimony, maintenance, and support” could easily be found in state court divorce judgments, the additional words “in the nature of” have justified courts in finding that such determinations are solely an issue of federal law.

Based on this premise, courts have repeatedly

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100 See Michael D. Martinez, Note, Where There’s a “Will” There Should be a Way: Why In Re Salvino Unjustifiably Restricts the Application of §523(a)(6) to Exclude Willful and Malicious Breaches of Contract, 219 N. ILL. U. L. REV. 441, 448 (2009) (stating with regard to determining whether an injury is malicious, “some courts have required a showing of ‘specific malice’—that is, ‘proof of an intent to injure’ while other courts have found a showing of implied or constructive malice to be sufficient.”).
102 In re Werthen, 329 F.3d 269, 272–73 (1st Cir. 2003); Cummings v. Cummings, 244 F.3d 1263, 65 (11th Cir. 2001); In re Chang, 163 F.3d 1138, 1140 (9th Cir. 1998); In
found that while an obligation may have one classification under state law, it may also have another under Section 523(a)(5). Since federal law is asking whether a debt is in the nature of alimony, maintenance, or support and not if it is alimony, maintenance, or support, issue preclusion is inapplicable.

Issue preclusion bars re-litigation of issues which were litigated and determined in prior legal proceedings. Whether a debt is alimony, maintenance or support is uniquely the province of divorce courts. Likewise, divorce courts do not consider whether an obligation by one spouse to another is in the nature of alimony, maintenance or support; rather, they are concerned about awarding (or not awarding) something that is alimony, maintenance or support.

V. ROOKER-FELDMAN DOCTRINE

The Rooker-Feldman Doctrine provides the piece that is missing from the concept of issue preclusion being used to stop parties from re-litigating matters that were previously litigated by the same parties in state court. In order for Rooker-Feldman to apply, three conditions must be met:

(1) “[T]he party against whom the doctrine is invoked must have actually been a party to the prior state-court judgment”; (2) “the claim raised in the federal suit must have been actually raised or inextricably intertwined with the state-court judgment”; and (3) “the federal claim must not be parallel to the state-court claim.”

In addition, “Rooker-Feldman is entirely federal and requires no reference to principles of state law.”

When parties are divorced, a state court judge must determine how to divide the couple’s property and must further determine whether equity requires that one spouse be awarded alimony, maintenance, or support in order to provide financial assistance to that spouse or for the benefit of minor children from the marriage.

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103 In re Werthen, 329 F.3d at 272-73; Cummings, 244 F.3d at 65; In re Matter of Dennis, 25 F.3d at 274, 277.
105 See Garry v. Geils, 82 F.3d 1362, 1367 n.8 (7th Cir. 1996).
106 See, e.g., NEB. REV. STAT. § 42-365 (Reissue 2008) (“The purpose of a property division is to distribute the marital assets equitably between the parties. The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances and other criteria enumerated in this section makes it appropriate.”); Horvath v. Horvath, 250 S.W.3d 316, 318 (Ky. 1968) (“The
Divorce courts often spend considerable amounts of time reviewing factors to determine if a property settlement is equitable and whether to award alimony, maintenance or support. Among the factors that courts consider are the parties’ relative ability to earn money (both now and in the future), their respective ages and health status, the length of the marriage, the kind of property involved, and the conduct of the parties.\footnote{107}

\footnote{107} See Stigall v. Stigall, 277 N.E.2d 802, 809 (Ind. Ct. App. 1972) (finding that the determination of alimony should be guided by factors such as “‘(1) the existing property rights of the parties, (2) the amount of property owned and held by the husband . . . [and] (3) the financial condition and income of the parties and the ability of the husband to earn money.’” (quoting Bahre v. Bahre, 181 N.E.2d 639, 641 (Ind. Ct. App. 1962)); Olson v. Olson, 671 N.W.2d 64, 71–72 (Mich. App. 2003) (stating that factors to be considered in determining alimony are: “(1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties’ ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties’ health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party’s fault in causing the divorce, (13) the effect of cohabitation on a party’s financial status, and (14) general principles of equity.”)); Lorenz v. Lorenz, 881 N.Y.S.2d 208, 209–10 (N.Y. App. Div. 2009) (court awarded maintenance after considering the parties’ incomes, their future earning capacity, the long duration of the marriage, and the husband’s good health conditions); Miles v. Miles, 202 P.2d 485, 486 (Or. 1949) (finding that the proper amount of alimony depend on factors like “the capacity of the husband to earn money; . . . the social standing of the parties; their health, age, and general physical condition”); see also Rogers v. McGahee, 602 S.E.2d 582, 586 (Ga. 2004); Gaschler v. Gaschler, 176 P.3d 250, at *2, 2008 WL 440751 (Kan. Ct. App. 2008) (memorandum opinion) (per curium) (quoting KAN. STAT. ANN.§ 60-1610(b)(1)(C) (2010)) (unpublished disposition) (stating that “[w]hen dividing property in a divorce, the trial court must consider factors such as ‘the age of the parties, the duration of the marriage, the property owned by the parties; [and] their present and future earning capacities; . . .’”); In re Marriage of Payer, 110 P.3d 460, 462–63 (Mont. 2005) (finding that the court “shall consider, among other things, the amount and duration of the party’s request; the financial resources of the party seeking maintenance, including marital property and ability to meet financial needs; the duration and standard of living established during the marriage; the age and the physical and emotional condition of the spouse seeking maintenance; and the ability of the spouse from whom maintenance is sought to meet his needs as well as his spouse,” as well as factors outlined in state statute); In re Marriage of McFarland, 176 S.W.3d 650, 654–55 (Tex. Ct. App. 2005) (listing factors the court may consider); Slade v. Slade, 872 A.2d 367, 371 (Vt. 2005) (holding that the lower court appropriately considered “considered the statutory factors and the evidence that the parties presented on the issue of maintenance.”); Stuck v. Stuck, 218 S.E.2d 367, 371 n.9 (W. Va. 2005) (noting that courts may consider “(1) monetary contributions to marital property . . . , (2) non-monetary contributions to
When divorced spouses are parties to a dischargeability proceeding in bankruptcy and a debtor spouse seeks to have a marital debt discharged or a creditor spouse seeks to keep one from being discharged, the bankruptcy court must examine the debt in question and assess the character, or “nature,” of the debt.\(^\text{108}\)

In the case of a Chapter 7 liquidation, the bankruptcy court really does not have to consider anything because the debt is \textit{per se} not dischargeable in bankruptcy.\(^\text{109}\) If the debtor filed a Chapter 13 consumer reorganization, debts that are in the nature of alimony, maintenance, or support are likewise nondischargeable. However, the debts will be dischargeable if they are deemed to be part of a property settlement or equitable distribution order.\(^\text{110}\) In order to determine the type of debt that exists for bankruptcy purposes, the bankruptcy court will have to conduct an inquiry very near to the one performed by the state court thereby inviting a “free appeal” for the party who lost in state court.

While the Code, post-BAPCPA, relieves bankruptcy judges of having to hold lengthy dischargeability hearings in Chapter 7 liquidations, they may still be called upon to take testimony and hear arguments in Chapter 13 reorganizations. In Chapter 13 cases where the dischargeability of marital debts is at issue, the \textit{Rooker-Feldman} Doctrine should be available to relieve the parties from having to replay the state court litigation. So long as the \textit{Rooker-Feldman} conditions have been met, the bankruptcy court lacks subject-matter jurisdiction and should not hear the marital-debt dischargeability dispute.

\textit{Rooker-Feldman} is a potentially helpful tool for bankruptcy judges who want to avoid protracted marital-debt dischargeability litigation and repeating significant portions of the divorce proceeding. It is equally helpful for family law practitioners who do not wish to have divorce decrees and marital settlement agreements re-examined in bankruptcy court. Examining each prong of the \textit{Rooker-Feldman} test reveals that it has application in bankruptcy and may prevent bankruptcy judges from having to preside over disputes that are essentially being re-litigated by the divorced parties.

\textit{A. The Party Against Whom the Doctrine Is Invoked Must Have Actually Been a Party to the Prior State-Court Judgment}

The first of the three \textit{Rooker-Feldman} conditions requires that the parties to the bankruptcy dischargeability action be the same as the parties to the divorce. Stated another way, \textit{Rooker-Feldman} will not bar a federal court plaintiff who was not actually a party to the underlying state-court judgment.\(^\text{111}\) In marital debt

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dischargeability actions, the parties to the dissolved marriage are normally the same parties who are involved in the bankruptcy litigation. More explicitly, the ex-husband is often the party filing bankruptcy and the ex-wife is the creditor attempting to keep the debtor from discharging the marital debt but, occasionally, the ex-wife files the bankruptcy. It is not difficult to meet the first prong of the Rooker-Feldman test.

The Code does permit governmental units to bring dischargeability actions in bankruptcy court. Section 101(14A)(ii) of the Code provides that one class of marital debts—domestic support obligations—may be “owed to or recoverable by” a governmental unit. In those limited instances where a government agency is filing a dischargeability action, Rooker-Feldman could not bar the bankruptcy court from hearing the dispute. In all other circumstances, however, the parties should not be able to re-litigate their divorce issues in bankruptcy court.

B. The Claim Raised in the Federal Suit Must Have Been Actually Raised or Inextricably Intertwined with the State-Court Judgment

After BAPCPA, when a bankruptcy court is asked to determine the dischargeability of a marital debt, the only decision the court must make is whether the debt is a “domestic support obligation” as defined in the Code. That inquiry requires the court to first determine if the debt in question is “in the nature of alimony, maintenance, or support.” If the debt is in the nature of alimony, maintenance or support, it is a “domestic support obligation” and the Bankruptcy Code is clear that the debt is not dischargeable in bankruptcy. It does not matter if the bankruptcy was filed as a Chapter 7 liquidation or a Chapter 13 consumer reorganization; the debt is not discharged. If a court decides that the debt is not in the nature of alimony, maintenance or support (i.e., it is equitable distribution, a property settlement, etc.), then the debt is still nondischargeable in a Chapter 7, but

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113 See Adams v. Zentz, 963 F.2d 197, 199 (8th Cir. 1992) (finding that the legal fees awarded to an ex-husband were a dischargeable debt when the ex-wife filed for bankruptcy); Batlan v. Bledsoe, 569 F.3d 1106 (9th Cir. 2009) (trustee brought adversary proceeding to set aside transfer of assets to debtor’s ex-husband); In re McQuade, 232 B.R. 810 (Bankr. M.D. Fla. 1999) (ex-wife filed for bankruptcy and received a discharge from a profit sharing plan). See also 11 U.S.C. Section § 523(a)(5), as defined by Section § 101(14)(A), does which permits governmental units to petition the bankruptcy court to except a marital debt from discharge; however, this Article does not attempt to advocate for the application of the Rooker-Feldman Doctrine to governmental creditors because they could not have been parties to the underlying divorce.


it would be dischargeable in a Chapter 13. Consequently, in three out of the four circumstances in which marital debt discharge matters arise in consumer bankruptcies, the debt is automatically not discharged.

While determining if a debt is “in the nature of” is not exactly identical to whether it “is” alimony, maintenance or support, under Rooker-Feldman it does not have to be exactly identical. Rooker-Feldman provides that the doctrine applies if the matter to be reviewed by the federal court is “inextricably intertwined” with the state court matter. “Inextricably intertwined” has been defined to mean that the federal court in question is “in essence being called upon to review the state-court decision.” In other words, “the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.” The nature of a marital debt is surely inextricably intertwined with the specific category of debt into which the debt falls.

C. The Federal Claim Must Not Be Parallel to the State-Court Claim

As explained in Lance v. Davidson, Rooker-Feldman challenges are not appropriate if the federal action and the state action are running simultaneously. In other words, the federal claim must have been filed after the state court judgment was entered.

Bankruptcy cases may be filed at any time in relation to a state court dispute. Sometimes, a debtor will file a bankruptcy petition following an adverse state court judgment. But, in some instances, a debtor will not wait for the resolution of a state court proceeding to file. Those debtors who file “early” are often plagued by other financial pressures and cannot wait for the resolution of a state court dispute. In

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118 United States v. Shepherd, 23 F.3d 923, 924 (5th Cir. 1994) (citing D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 n.16 (1983). See also Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987) (“While the question whether a federal constitutional challenge is inextricably intertwined with the merits of a state-court judgment may sometimes be difficult to answer, it is apparent, as a first step, that the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.”).
121 Id. at 1124.
122 See, e.g., In re Johns-Manville Corp., 36 B.R. 727, 729 (Bankr. S.D.N.Y. 1984) (illustrating an example of a corporation that filed bankruptcy in the face of 16,000 pending asbestos lawsuits, which would be “compounded by the crushing economic burden to be suffered by Manville over the next 20-30 years by the filing of an even more staggering
those situations where the bankruptcy filing occurs before a state court judgment is entered, one must concede that *Rooker-Feldman* does not apply. However, more typically, the bankruptcy challenge follows the state court judgment. When it does, *Rooker-Feldman* should provide bankruptcy judges with a device to refuse to sit as second-chance divorce courts.

**D. Application of Rooker-Feldman to Bankruptcy**

Federal courts, including bankruptcy courts, have struggled to determine the exact reach of the *Rooker-Feldman* Doctrine and two recent Supreme Court decisions have called into question the continued viability of *Rooker-Feldman*. In 2005, the Court decided *Exxon Mobil Corp. v. Saudi Basic Industries Corp.* and held that *Rooker-Feldman* “is confined to cases of the kind from which the doctrine acquired its name: cases brought by state court losers complaining of injuries caused by state-court judgments.” Less than a year later, the Court decided *Lance v. Dennis* in which Justice John Paul Stevens wrote:

> Rooker and Feldman are strange bedfellows. Rooker, a unanimous three-page opinion written by Justice Van Devanter in 1923, correctly applied the simple legal proposition that only this Court may exercise appellate jurisdiction over state-court judgments. Feldman, a nonunanimous, 25-page opinion written by Justice Brennan in 1983, was incorrectly decided and generated a plethora of confusion and debate among scholars and judges. Last Term, in Justice Ginsburg’s lucid opinion in *Exxon Mobil v. Saudi Basic Industries*, the Court finally interred the so-called ‘Rooker-Feldman doctrine.’ And today, the Court quite properly disapproves of the District Court’s resuscitation of a doctrine that has produced nothing but mischief for 23 years.

The two most recent Supreme Court decisions, when read together, suggest that federal courts should limit the application of *Rooker-Feldman* to matters actually litigated (*Rooker*) and should not apply the doctrine to matters inextricably intertwined with those actually litigated (*Feldman*). In fact, the Sixth Circuit recently stressed the Supreme Court’s preference for a narrow and limited number of suits by those who had been exposed [to asbestos] but who will not manifest the asbestos-related diseases until some time during this future period . . . .”

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125 *Id.* at 284.


2011] BANKRUPTCY, DIVORCE, AND THE ROOKER-FELDMAN DOCTRINE 105

application of Rooker-Feldman when it held that the claim in question was not a review of a state court decision but was, rather, an independent legal claim. The Supreme Court’s expressed “preference” for limiting the reach of Rooker-Feldman, however, is not the end of the discussion.

Without a clear pronouncement by the Supreme Court that the Doctrine is abolished, some federal cases decided after Exxon Mobil and Lance have refused to significantly modify how Rooker-Feldman is applied. If the Rooker-Feldman Doctrine remains a recognized jurisdictional device—and nothing in either the Exxon Mobil or Lance decisions explicitly says otherwise—it remains available to bankruptcy courts and to family law practitioners who do not want marital debts redefined in bankruptcy.

Another concern over the use of Rooker-Feldman in bankruptcy is that bankruptcy courts are vested with original jurisdiction over “core bankruptcy proceedings” and that jurisdictional grant is not disturbed by the Rooker-Feldman Doctrine. While it is true that certain bankruptcy proceedings are unique to bankruptcy, e.g., imposing an automatic stay to protect debtors and granting a discharge of one’s debts, not all bankruptcy proceedings are created equal. Not surprisingly, many of the bankruptcy cases that have rejected Rooker-Feldman are, contextually, different than marital-debt dischargeability cases.

In In re Chinin USA, Inc., the debtor filed a Chapter 11 reorganization after settling, by agreement, a multi-million-dollar dispute in state court. As part of the settlement, the debtor released its claims against the other parties to the state court litigation. Once in bankruptcy, the debtor sought to void the settlement agreement as constructively fraudulent by arguing that it did not receive reasonably equivalent value in exchange for the release of claims. The court held that Rooker-Feldman did not require the dismissal of a claim asserting that a pre-

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130 In re Toledo, 170 F. 3d 1340, 1348 (11th Cir. 1999) (“If [a] proceeding involves a right created by the federal bankruptcy law, it is a core proceeding. . . .”). See also 28 U.S.C. § 157(b)(2) (listing core proceedings).

131 See, e.g., In re Chinin USA, Inc., 327 B.R. 325 (Bankr. N.D. Ill. 2005) (“The [Rooker-Feldman] Doctrine states the general rule that lower federal courts lack subject matter jurisdiction over claims that seek to review or modify a state court judgment”); see also In re Murphy, 331 B.R. 107 (Bankr. S.D. N.Y. 2005); In re Kye Soon Chung, 334 B.R. 271 (Bankr. C.D. Cal. 2005).


133 Id. at 330.

134 Id.
petition settlement agreement upheld by a state court was a fraudulent conveyance.\textsuperscript{135}

In \textit{In re Murphy}, a Chapter 7 trustee filed an adversary complaint seeking to avoid a municipality’s tax forfeiture of the debtor’s residential real estate as a fraudulent conveyance.\textsuperscript{136} The municipality sought to dismiss the complaint, \textit{inter alia}, on the ground that \textit{Rooker-Feldman} precludes the bankruptcy court from hearing the claim because it constitutes an impermissible federal lower-court review of a state court judgment.\textsuperscript{137} The court declined to dismiss the complaint based on \textit{Rooker-Feldman} and stated that the claim asserted in the bankruptcy court (a determination whether the tax forfeiture constitutes a fraudulent conveyance) is independent from the claim heard in the state court proceeding.\textsuperscript{138}

In both \textit{Chinin USA} and \textit{Murphy}, the bankruptcy court was being asked to perform a function that is specifically assigned to bankruptcy courts. Determining whether a transfer is a fraudulent conveyance is unique to bankruptcy;\textsuperscript{139} it is a core proceeding that takes place within a bankruptcy case. The determination of whether a transfer constitutes a fraudulent conveyance cannot be made in state court so it makes perfect sense that bankruptcy would look upon fraudulent conveyance litigation as being an independent claim and not a review of a state court decision.

The application of \textit{Rooker-Feldman} in other bankruptcy disputes is less clear. Dischargeability actions, including complaints to determine the dischargeability of marital debts, involve the exploration of a variety of subjects. Consequently, determining if \textit{Rooker-Feldman} is applicable in a particular proceeding is more nuanced than deciding that the doctrine does not apply to fraudulent conveyance actions.

In \textit{In re Kye Soon Chung}, the bankruptcy court was asked by a trustee to review a state court judgment entered against Chapter 7 debtors in a deed-of-trust foreclosure and fraud action.\textsuperscript{140} The trustee sought to have the judgment deemed nondischargeable as fraud under 11 U.S.C. Section 523(a)(2). The court had to determine what portion of the state court judgment was nondischargeable and what portion was discharged in bankruptcy because the underlying judgment was a result of a foreclosure judgment as well as a fraud judgment.\textsuperscript{141} The trustee argued that the bankruptcy court could not review the state court’s decision because of the \textit{Rooker-Feldman} Doctrine, but the bankruptcy judge disagreed.\textsuperscript{142} Judge Bufford wrote:

\begin{itemize}
  \item \textsuperscript{135} \textit{Id.} at 335–36.
  \item \textsuperscript{136} \textit{In re Murphy}, 331 B.R. 107, 115–16 (Bankr. S.D.N.Y 2005).
  \item \textsuperscript{137} \textit{Id.} at 131.
  \item \textsuperscript{138} \textit{Id.} at 132.
  \item \textsuperscript{139} Fraudulent conveyances are governed by two provisions of the Code, 11 U.S.C. §§ 544(b) and § 548 (2009).
  \item \textsuperscript{140} \textit{In re Kye Soon Chung}, 334 B.R. 271, 274 (Bankr. C.D. Cal. 2005).
  \item \textsuperscript{141} \textit{Id.} at 274.
  \item \textsuperscript{142} \textit{Id.}
\end{itemize}
The court finds that the Rooker-Feldman doctrine is not applicable in this case. This doctrine does not prevent a federal court from exercising subject matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal plaintiff presents an independent claim supporting federal jurisdiction, preclusion based on the state court judgment may apply, but Rooker-Feldman does not.

Where federal litigation is not filed for the purpose of attacking the result of state court litigation, the Rooker-Feldman doctrine is not applicable.143

There is one recent marital-debt-dischargeability case wherein the Rooker-Feldman Doctrine was applied. In Schwartz v. Schwartz,144 a Chapter 7 debtor’s ex-wife filed an adversary complaint to have the debtor’s obligation to her deemed nondischargeable in bankruptcy as being a domestic support obligation.145 The ex-wife was an Israeli citizen prior to the marriage and the debtor executed an Affidavit of Support to assist her in obtaining permanent resident status from the U.S. Immigration and Naturalization Service (INS).146 In the affidavit, the debtor agreed “‘to provide sponsored immigrant(s) whatever support is necessary to maintain the sponsored immigrant(s) at an income that is at least 125 percent of the Federal poverty guidelines.’”147 The obligation would terminate upon the death of either spouse or until the immigrant spouse either became a U.S. citizen, was credited with forty quarters of work, or departed the United States permanently.148

The couple divorced and the state court that adjudicated the divorce issued a decree of divorce, which specifically provided that “‘[Mr. Schwartz’s] obligation to support [Ms. Schwartz] shall terminate as of 12:00 noon on June 1, 2004, and from and after such time and date [Mr. Schwartz] shall have no further obligation to provide any support whatsoever to [Ms. Schwartz].’”149 Following the parties’ divorce, Mr. Schwartz filed bankruptcy and Ms. Schwartz filed a complaint to determine the dischargeability of the debt that he owed to her by virtue of the INS support affidavit. She argued that she was entitled to specific performance of the Affidavit of Support and that the divorce decree did not automatically terminate the debtor’s obligations to provide support as provided in the Affidavit.150

The bankruptcy court dismissed the ex-wife’s adversary complaint for lack of subject matter jurisdiction and cited the Rooker-Feldman Doctrine as the basis for

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143 Id. (citations omitted).
145 Id. at 243 (quoting the Affidavit of Support).
146 Id.
147 Id.
148 Id.
149 Id. (quoting Decree of Divorce).
150 Id. at 243-44.
its decision.\textsuperscript{151} The bankruptcy judge’s explanation was succinct and without reservation:

In the facts before me, it is clear that the Affidavit was submitted to the divorce court. The Decree of Divorce does not specify the reasoning behind its support order. The Plaintiff here seeks an order declaring the Affidavit to be a domestic support obligation and any claims arising thereunder to be nondischargeable. She is, in essence, seeking review of the Decree of Divorce. Under the \textit{Rooker-Feldman} doctrine, I lack jurisdiction to review the Decree of Divorce.\textsuperscript{152}

The \textit{Schwartz} court’s use of the phrase “in essence” is an indication that the issue to be reviewed in bankruptcy does not have to be the exact same issue as the state court addressed.\textsuperscript{153} It appears that \textit{Rooker-Feldman} is satisfied when the bankruptcy issue is “in essence” the same as the state court issue; it is sufficient because the bankruptcy issue is inextricably intertwined with the state court’s resolution. One can certainly argue that \textit{Rooker-Feldman} still lives.

The ex-wife in \textit{Schwartz} appealed the bankruptcy court’s decision and the Bankruptcy Appellate Panel for the Sixth Circuit affirmed the lower court and cited to the \textit{Rooker-Feldman} Doctrine or, alternatively, to the doctrine of \textit{res judicata} to support its decision.\textsuperscript{154} The \textit{Schwartz} decision noted that there was a factual dispute as to whether the Affidavit of Support was submitted as evidence in the divorce proceedings, but it affirmed the decision of the bankruptcy court because it believed that the alternate theory of \textit{res judicata} would require the same result.\textsuperscript{155}

Distinguishing itself from the Sixth Circuit, the Second Circuit no longer considers matters in the second challenge that are “inextricably intertwined” with the original dispute. The court has held that \textit{Rooker-Feldman} applies only if four conditions are met:

First, the federal-court plaintiff must have lost in state court. Second, the plaintiff must complain of injuries caused by a state-court judgment. Third, the plaintiff must invite district court review and rejection of that judgment. Fourth, the state-court judgment must have been rendered before the district court proceedings commenced-i.e., \textit{Rooker-Feldman} has no application to federal-court suits proceeding in parallel with ongoing state-court litigation.\textsuperscript{156}

\textsuperscript{151} Id. at 244.
\textsuperscript{152} Id. (quoting lower court’s decision).
\textsuperscript{154} \textit{In re Schwartz}, 409 B.R. at 250.
\textsuperscript{155} Id. at 249.
\textsuperscript{156} Hoblock v. Alban Cnty. Bd. of Elections, 422 F.3d 77, 85 (2d Cir. 2005) (alterations and citations omitted).
If *Rooker-Feldman* were to be applied to deny bankruptcy courts jurisdiction to hear marital-debt-dischargeability complaints, the conditions laid down by the Second Circuit would have to be satisfied.

To test whether the application of the Doctrine would have any effect on marital-debt-dischargeability litigation in bankruptcy, it is helpful to revisit a case where the bankruptcy court actually determined the dischargeability of a marital debt and apply the *Rooker-Feldman* Doctrine as constructed by both the Sixth Circuit and the Second Circuit.

Recall *In re Davidson*,\(^{157}\) the extraordinary case from the Fifth Circuit wherein sixty-five months had passed between the time Mr. Davidson had stopped making his support payments to his ex-wife and the decision of the Fifth Circuit to hold the marital debt nondischargeable. The bankruptcy court and the district court both held that the obligation was a property settlement even though Davidsons were divorced in 1983 and, pursuant to their divorce decree, Mr. Davidson agreed to pay his ex-wife $7,732 per month for 121 months and all indications were that the obligation was intended to be for alimony.\(^{158}\)

If the bankruptcy court had applied the Sixth Circuit’s recent interpretation of the *Rooker-Feldman* Doctrine to the controversy, the court could have found that it lacked subject matter jurisdiction to hear the marital debt dischargeability action and Ms. Davidson would not have been deprived of her support checks for sixty-five months. The bankruptcy court could have easily concluded that: (1) the federal-court plaintiff, Mr. Davidson, lost in state court; (2) Mr. Davidson’s dischargeability action was actually a complaint about having to make $7,732 per month in support payments to comply with the state-court judgment; (3) Mr. Davidson’s request of the bankruptcy court was, in essence, to have the district court review and reject the state court judgment; and (4) the state-court judgment was rendered before the district court proceedings commenced.

Applying the Second Circuit’s *Rooker-Feldman* test, a similar result is achieved: (1) “the federal-court plaintiff,” Mr. Davidson, “lost in state court”; (2) in trying to discharge his marital debts, he was “complain[ing] of injuries caused by a state-court judgment,” i.e., that the obligation he owed to his ex-wife was alimony; (3) Mr. Davidson was “invit[ing] district court review and rejection of [the state court] judgment”; and (4) the bankruptcy challenge took place after the state-court judgment had been rendered.\(^{159}\) Even without considering whether the review in bankruptcy involved issues that were “inextricably intertwined” with the state court issues, the Second Circuit’s analysis could still permit a bankruptcy court to apply *Rooker-Feldman* and claim that it lacked jurisdiction to hear the marital debt discharge case.

Regardless of which circuit’s test is applied, Ms. Davidson would not have been without her court-ordered support payments for more than five years; the

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\(^{157}\) See Davidson v. Davidson (*In re Davidson*), 133 B.R. 795, 800–01 (N.D. Tex. 1990), rev’d *In re Davidson*, 947 F.2d 1294 (5th Cir. 1991).

\(^{158}\) *Id.* at 797–78.

\(^{159}\) *Id.*
Davidsons would not have had to engage in expensive litigation in bankruptcy to determine if alimony was still alimony; and the bankruptcy court—and two reviewing courts—would not have had to engage in an exhaustive review of factors to determine the classification of the couple’s marital debt and repeat the state court’s process.

1. Exceptions to Rooker-Feldman

There are exceptions to the Rooker-Feldman Doctrine. The doctrine does not apply where a federal statute, such as habeas corpus, authorizes federal review of state court decisions; the state court judgment was procured through fraud, deception, accident, or mistake; the federal suit is brought by a party that was not a party in the state court suit; and the state court did not have subject matter jurisdiction over the prior action (“void ab initio” exception).

The aforementioned exceptions are not applicable in marital debt dischargeability cases. One scholar has argued that the Eleventh Circuit has made an exception in which Rooker-Feldman “will not bar a party from bringing a claim which it did not have a fair or reasonable opportunity to raise in the initial state court case.” Recently though, the Eleventh Circuit has gone on to explain that “[t]he doctrine applies not only to claims actually raised in the state court, but also

160 See Young v. Murphy, 90 F.3d 1225, 1230 (7th Cir. 1996) (stating that “[b]eyond the limited authority to examine state judicial proceedings pursuant to habeas corpus review . . . , district courts have no authority to review the proceedings or final judgments of state courts.) (citing D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983)). See also Boddie v. Connecticut, 401 U.S. 371 (1971) (Black, J., dissenting) (“Absent some specific federal constitutional or statutory provision, marriage in this country is completely under state control, and so is divorce. . . . [t]he institution of marriage is of peculiar importance to the people of the States.”).

161 See Sun Valley Foods Co. v. Detroit Marine Terminals, Inc. (In re Sun Valley Foods Co.), 801 F.2d 186, 189 (6th Cir. 1985) (stating that “[a] federal court ‘may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake . . . .’” (quoting Resolute Ins. Co. v. North Carolina, 397 F.2d 586, 589 (4th Cir. 1968))).

162 See, e.g., Snider v. Excelsior Springs, Mo., 154 F.3d 809, 812 (8th Cir. 1998) (“It is true that . . . the Rooker-Feldman rule does not bar a federal claim brought by one who was not a party to the state court action and therefore not in any position to seek appellate review of the state court judgment.” (citing Johnson v. De Grandy, 512 U.S. 997, 1005–06 (1994))).

163 See Pavelich v. McCormic, Barstow, Sheppard, Wayte & Carruth, LLP (In re Pavelich), 229 B.R. 777, 783 (B.A.P. 9th Cir. 1999) (“An exception to Rooker-Feldman applies when the state proceeding is a legal nullity and void ab initio.”).

to claims that were not raised in the state court but are ‘inextricably intertwined’ with the state court’s judgment.”

VI. APPLICATION OF THE ROOKER-FELDMAN DOCTRINE:
PUBLIC POLICY CONSIDERATIONS

When a party files an adversary complaint in bankruptcy to prevent a former spouse from discharging a marital debt in bankruptcy, the bankruptcy judge must first take into account the type of bankruptcy the debtor-spouse filed. Recall that the classification of the marital debt will determine if it will be dischargeable in bankruptcy. If a Chapter 7 liquidation is filed, the marital debt will be deemed to be nondischargeable. If a Chapter 13 consumer reorganization is filed, the judge will have to determine whether the debt in question is a “domestic support obligation” under Section 523(a)(5) of the Code or some other marital debt, which is covered by Section 523(a)(15) of the Code. If, in the Chapter 13, the judge determines that the marital debt is a “domestic support obligation,” it is nondischargeable and the debtor will have to pay the debt in full. If, on the other hand, the judge concludes that the debt falls under Section 523(a)(15), the debt will be discharged to the extent that the Chapter 13 plan does not provide for full payment of creditors’ claims.

The concern of both parties to the adversary proceeding is to produce enough evidence to convince the bankruptcy judge that the debt(s) in question should or should not be dischargeable, even if the inquiry requires the judge to review the exact same facts and apply the exact same factors that the state court judge reviewed at the time of the divorce. The concern of bankruptcy judges, on the other hand, seems to be two-fold: to determine whether the debt in question is in the nature of alimony, maintenance or support, but not to become a second-chance divorce in order to avoid a flood of dischargeability challenges.

Deciding whether a marital debt is dischargeable in bankruptcy has long been regarded as a uniquely federal inquiry. But why? Federal court decisions make it very clear that the federal courts should abstain from deciding marital issues.

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165 Powell v. Powell, 80 F.3d 464, 466 (11th Cir. 1996) (citation omitted).
166 See Grogan v. Garner, 498 U.S. 279, 291 (1991) (holding that the burden of proof in all dischargeability cases is to be established by a preponderance of the evidence and not by clear and convincing evidence).
168 See Marshall v. Marshall, 547 U.S. 293, 299 (2006) (“Among longstanding limitations on federal jurisdiction otherwise properly exercised are the so-called ‘domestic relations’ and ‘probate’ exceptions. Neither is compelled by the text of the Constitution or federal statute. Both are judicially created doctrines stemming in large measure from misty understandings of English legal history.”).
Despite the oft-repeated statement that bankruptcy courts must apply federal law to the question of whether marital debts are in the nature of alimony, maintenance or support, there is no federal divorce law. In fact, in 1859, the U.S. Supreme Court held that “the federal courts have no jurisdiction over suits for divorce or the allowance of alimony” and that basic principle has remained true for over one hundred and fifty years.

Even though determining whether a debt is nondischargeable as “alimony” is not the same as a suit for the “allowance of alimony,” bankruptcy courts should be guided by spirit of the domestic relations exception to federal court jurisdiction. The state courts are more appropriate venues within which to hear family law cases; there are more judges and, in many jurisdictions, they have specialized knowledge and training to help them adjudicate matters efficiently. The federal courts, by contrast, will find their dockets overrun if they are to continue to hear divorces and divorce-related litigation.

Hundreds of marital-debt-dischargeability decisions have been reported since the Bankruptcy Code was enacted and, in each case, bankruptcy judges state that the bankruptcy court must decide if the debt in question is in the nature of alimony, maintenance or support under federal law. As a result, bankruptcy courts also state that they are therefore not bound by the labels used in state court and must make an independent decision as to the nature of the debt. There is nothing within the


170 Although federal courts have repeatedly abstained from hearing domestic relations cases, the Supreme Court has clearly stated that the “domestic relations exception” is not absolute. See Ankenbrandt, 504 U.S. at 700-02 (1992) (acknowledging the existence of a domestic relations exception as a matter of statutory interpretation, but stating that the exception was inapplicable to the facts sub judice).

The Ankenbrandt court, however, acknowledged that the domestic relations exception is sometimes interpreted broadly. “So strong is our deference to state law in this area that we have recognized a ‘domestic relations exception’ that ‘divests the federal courts of power to issue divorce, alimony, and child custody decrees.’” Elk Grove Unif. Sch. Dis. v. Newdow, 542 U.S. 1, 12 (2004) (quoting Ankenbrandt, 504 U.S. at 703). “We have also acknowledged that it might be appropriate for the federal courts to decline to hear a case involving ‘elements of the domestic relationship,’ even when divorce, alimony, or child custody is not strictly at issue . . . .” Id. at 13 (quoting Ankenbrandt, 504 U.S. at 705).

171 See In re Carlisle, 205 B.R. 812, 818 (Bankr. W.D. La. 1997) (stating that “it is well settled that bankruptcy courts may inquire behind labels” created in divorce settlements). See also In re Brody, 3 F.3d 35, 39 (2d Cir.1993) (deciding that labels given an obligation by the parties or the state court are not dispositive); In re Sampson, 997 F.2d 717, 722 (10th Cir.1993) (concluding that the label attached to an obligation does not control); Adams v. Zentz, 963 F.2d 197, 199 (8th Cir.1992) (determining that state law or the divorce decree characterization of the debt is not binding on bankruptcy courts); In re Gianakas, 917 F.2d 759, 762 (3d Cir.1990) (ruling that bankruptcy courts must look beyond the label attached to settlement agreements to find the debt’s true nature); In re Seibert, 914 F.2d 102, 106 (7th Cir.1990) (ruling that state law does not control the issue of whether an obligation constitutes alimony, maintenance, or support); In re Long, 794 F.2d
Code, however, that mandates that a court *ignore* the state court’s findings. It is the insistence on classifying marital debts pursuant to federal law that has created the additional work for bankruptcy courts. Bankruptcy should defer to state courts on all divorce matters and, if the parties disagree about the type of debt they have incurred, they should return to state court and seek a modification of the divorce decree or judgment. Bankruptcy courts should not be involved in those disputes.

Even if marital-debt-dischargeability actions are to remain within the jurisdiction of the bankruptcy courts, the courts need not spend time adjudicating these disputes because BAPCPA has eliminated the need for a federal common law on divorce, if there ever was one. As discussed above, whether a marital debt is dischargeable in bankruptcy is not the real focus of a dischargeability dispute; the Bankruptcy Code makes a debt nondischargeable—automatically—if it meets the definition of a domestic support obligation in consumer bankruptcies. Moreover, a marital debt that does not meet the definition of a domestic support obligation is also automatically nondischargeable in a Chapter 7 liquidation. The real fight to be waged is over the classification of the debts in a Chapter 13 reorganization, i.e., whether they are in the nature of alimony, maintenance or support. Since BAPCPA was enacted, the parties must focus their efforts in bankruptcy on resolving the classification issue because determining what type of marital debt is at issue is the only way a debtor has any chance of discharging a marital debt in bankruptcy.

The bankruptcy judge, in determining the dischargeability of the marital debt, is duplicating the efforts of the parties and/or the divorce judge because the bankruptcy judge is considering:

- whether the parties or the court intended the obligation to be for support,
- how the debt was characterized in the order or decree, . . . who had custody of minor children, whether the obligation was payable in a lump sum or by periodic payments and whether it terminated when the divorce was final, whether payment was enforceable by contempt, the relative financial resources and earning power of the spouses at the time the order or agreement was made, and what the obligation served to pay.172

Recent federal court decisions suggest that the *Rooker-Feldman* Doctrine is inapplicable to marital debt dischargeability actions in bankruptcy because the “determination of whether an obligation arising out of a divorce settlement is in the nature of alimony, maintenance, or support . . . is a matter of federal

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928, 930 (4th Cir.1986) (determining that labels are not controlling); Stout v. Prussel, 691 F.2d 859, 861 (9th Cir.1982) (holding that the descriptions which parties give obligations in settlements or decrees are not conclusive).

172 Judith K. Fitzgerald, *We All Live in a Yellow Submarine: BAPCPA’s Impact on Family Law Matters*, 31 S. ILL. U. L.J. 563, 567–68 (2007) (citing Cummings v. Cummings, 244 F.3d 1263 (11th Cir. 2001); *In re Fitzgerald*, 9 F.3d 517 (6th Cir. 1993); *In re Gianakas*, 917 F.2d 759 (3d Cir. 1990)).
bankruptcy law. 173 The parties could therefore not have litigated this issue in state court and, consequently, the bankruptcy court cannot serve as a reviewing court.

These courts assert that dischargeability is unique to the bankruptcy system and that state courts could not have entered a dischargeability judgment. The cases are correct insofar as they recognize the parameters of dischargeability disputes. Case law has long established that it is federal law, and not state law, that determines the nature of a marital debt for bankruptcy purposes. The long line of cases, however, may be incorrect in their application of federal law and, even if they are correct, the courts that assert that state courts could not have litigated dischargeability matters pre-bankruptcy mischaracterize what actually happens in a marital debt dischargeability proceeding.

Even if it is appropriate to create a federal definition of alimony, maintenance or support, each marital debt dischargeability adversary proceeding is fact-specific and the crux of the dischargeability determination is the classification of the debt. More simply stated, each couple presents to the bankruptcy court the unique facts and circumstances surrounding the dissolution of a marriage and the reallocation of marital assets, but what the couple is really is litigating how the debts in question are to be classified and not whether they should be discharged. The actual question of whether a marital debt is dischargeable is not the focus in Chapter 7 liquidations or in Chapter 13 reorganizations involving debts that are in the nature of alimony, maintenance or support because the statute clearly states that those debts are nondischargeable. There is no statutory exception to the rule. Moreover, debts that are not in the nature of alimony, maintenance or support are also nondischargeable in Chapter 7 cases.

If the focus of marital debt dischargeability actions is on how the debts in question are classified, one must closely examine how bankruptcy courts make that determination. Courts look to the facts and circumstances arising from the dissolution that shed light on the real nature of the final judgment in the divorce. That means that a spouse who was required by a divorce court to assume certain marital debts or to pay certain debts as “alimony, maintenance, or support” could use bankruptcy as the means to have a lower federal court—a division of the federal district court—look again at the same factors as the divorce court. “Preclusive effect is often extended to pre-petition state judgments as to identical issues raised in subsequent bankruptcy proceedings.” 174 In marital debt dischargeability cases, the issue before the bankruptcy court—the classification or “nature” of the debt—is precisely the issue that was litigated in state court and that

173 Cline v. Cline, 259 F. App’x 127, 133 (10th Cir. 2007). See also, Sweeney v. Sweeney (In re Sweeney), 276 B.R. 186, 195 (B.A.P. 6th Cir. 2002) (“[T]he doctrine does not require lower federal courts to surrender their own exclusive jurisdiction. Jurisdiction to determine the dischargeability of debts . . . is exclusively within the bankruptcy courts . . . .”).

174 Gruntz v. Cnty. of Los Angeles 4 (In re Gruntz), 202 F.3d 1074, 1084 (9th Cir. 2000).
is sought to be reviewed in bankruptcy court. Bankruptcy courts should decline jurisdiction in marital-debt disputes.

The bankruptcy judge in *In re Gunia* accurately summed up the controversy surrounding marital debt dischargeability cases when he wrote, “The Bankruptcy Code was not designed to give litigants a second chance to challenge a state court judgment nor did it intend for the Bankruptcy Court to serve as an appellate court for divorce decrees. The proper forum to challenge such judgments is within the state court appellate system. . . .”175

### VII. CONCLUSION

Bankruptcy judges are called upon to adjudicate a wide variety of disputes and, too often, judges have to inquire into detailed facts and circumstances that take them far beyond the traditional contours of bankruptcy law and practice. In the area of the dischargeability of marital debts, courts have, historically, considered information that one would expect a divorce court to rely upon and not a federal court. Moreover, the dischargeability determination often requires bankruptcy judges to review decisions of state court judges. In each dischargeability action, it is possible for a bankruptcy court to review the very same facts that a divorce court considered but conclude that the nature of the underlying obligation is very different. A state court judge could award “alimony,” but a bankruptcy judge could decide that the award was “not in the nature of alimony” and, therefore, take it away from the recipient spouse.

Bankruptcy judges have spent too much time being second-chance divorce courts. They have grown weary of the practice and family law practitioners do not like bankruptcy judges substituting their judgment, albeit pursuant to a federal statute, for that of divorce court judges. It is bad policy. Divorce should be the end of a marital dispute; the issues should not continue into bankruptcy.

To date, Congress has not seen fit to amend the Code to remove the “in the nature” language from the Chapter 13 marital-debt dischargeability provision, but that discussion is best left for another day. Congressional inaction notwithstanding, the *Rooker-Feldman* Doctrine may provide bankruptcy judges with a way to avoid hearing many marital-debt disputes. *Rooker-Feldman* is a jurisdictional device that deprives federal courts, other than the United States Supreme Court, from reviewing decisions of state courts. Under *Rooker-Feldman*, whatever the parties and/or the state court determined a marital debt was, it is. One reason is because, regardless of what it’s called, all marital debts are nondischargeable in a Chapter 7 bankruptcy and the greatest percentage of cases filed are Chapter 7 liquidations. Query why spend significant time and money to figure out what the nature of the debt in question is when it will not be discharged?

A second reason arises in Chapter 13 consumer reorganization cases. In Chapter 13 cases where a debtor spouse seeks the dischargeability review, he is most often attempting to have debts reclassified as something other than debts that

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are in the nature of alimony, maintenance or support. Debtors seek dischargeability determinations in Chapter 13 because alimony, maintenance and support debts are not dischargeable in bankruptcy but debts that are not in the nature of alimony, maintenance or support are dischargeable. The factors the court must weigh in determining how to classify the debts are the same factors that the state court used in creating the obligation in the first place.

When a marital-debt dischargeability action is filed in bankruptcy, the party who lost in state court is, in effect, getting a second chance to litigate the nature of the post-divorce obligations that will define the relationship of the formerly married couple. *Rooker-Feldman* stands for the proposition that lower federal courts cannot review the lower court decision; only the United States Supreme Court can hear appeals from state court judgments.

Critics may argue that, when bankruptcy courts are determining the dischargeability of debts, they are employing an analysis which is entirely different from the ordering of alimony by a divorce court. While the two actions are different, dischargeability of marital debts is inextricably intertwined with the initial debt classification and, a matter that is inextricably intertwined with a state court decision, is properly precluded by *Rooker-Feldman*.

A bankruptcy court cannot determine dischargeability without determining exactly what type of marital debt is under review. Furthermore, a bankruptcy judge has to review the same factors that a divorce judge considers in order to determine the type of marital debt in question. Under *Rooker-Feldman*, the practice of re-litigating marital issues is ended because the federal court would lack jurisdiction to hear the dispute.

Family law practitioners and bankruptcy attorneys who represent creditor spouses in bankruptcy should look to the *Rooker-Feldman* Doctrine to prevent bankruptcy courts from engaging in an inquiry that might result in a change to the terms of a divorce decree. Bankruptcy judges should invoke *Rooker-Feldman* so as to avoid becoming a second-chance divorce court. To do otherwise invites continued litigation in bankruptcy in which debtor spouses seek to recast alimony orders as equitable distribution orders or to obtain rulings that maintenance awards are really just property settlements.