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**Personal Injury Tort Claims as Core Proceedings in Bankruptcy Courts—Broad, Narrow,
and Intermediate Approaches**

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Cite as: *Personal Injury Tort Claims as Core Proceedings in Bankruptcy Courts—Broad, Narrow, and Intermediate Approaches*, 15 ST. JOHN'S BANKR. RESEARCH LIBR. NO. 19 (2023).

Introduction

Under 28 U.S.C. § 157(b)(1), “bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11.”¹ Core proceedings are those concerning the administration of an estate and the confirmation of plans, among others listed in the statute. However, not considered core proceedings are those regarding “the liquidation or estimation of contingent or unliquidated personal injury tort . . . claims against the estate for purposes of distribution in a case under title 11.”² Personal injury tort claims are instead reserved for the district court in which the bankruptcy case is pending or the district court in the district where the claim arose.³ Because personal injury tort claims are non-core proceedings, the bankruptcy courts may submit findings of fact and conclusions of law to the district court for review and the issuance of a final judgment.⁴ This article will discuss the three interpretations of the “personal injury tort” exception to 28 U.S.C. § 157 and how these interpretations impact claims for non-

¹ 28 U.S.C § 157(b)(1) (2018).

² *Id.* at § 157(b)(2)(B).

³ *See id.* at § 157(b)(5).

⁴ *Stern v. Marshall*, 564 U.S. 462, 471 (2011).

traditional torts like defamation and intentional infliction of emotional distress (“IIED”), as well as the allowability of these claims.

Discussion

I. Bankruptcy Courts Have Adopted Three Interpretations of the Personal Injury Tort Exception.

While 28 U.S.C. §157(b) excludes personal injury tort claims from core proceedings, there is no statutory definition indicating exactly what kind of personal injury torts this exclusion is meant to cover. Courts have interpreted “personal injury tort” differently.⁵ The following sections will discuss the three interpretations of personal injury tort claims in bankruptcy courts.

A. The Broad Approach to Personal Injury Tort Claims Essentially Removes Tort Claims from Bankruptcy Courts’ Jurisdiction.

Some courts, including the Bankruptcy Courts for the Northern District of New York, the Southern District of California, and the Middle District of North Carolina, have adopted a broad view of what is considered a personal injury tort claim excluded from core proceedings. This approach “embraces a broad category of private or civil wrongs or injuries for which a court provides a remedy in the form of an action for damages, and includes damage to an individual's person and any invasion of personal rights, such as libel, slander and mental suffering.”⁶ The broad approach essentially removes all tort claims from the bankruptcy courts’ jurisdiction, equating “tort” with “personal injury tort.” For example, in *Boyer*, the Bankruptcy Court for the Northern District of New York was faced with the issue of whether claims for civil rights violations under 42 U.S.C. § 1983 are personal injury tort claims.⁷ The bankruptcy court noted the Supreme Court’s assertion in *Wilson v. Garcia* that claims brought under section 1983 are

⁵ See *In re Residential Capital, LLC*, 536 B.R. 566, 571 (Bankr. S.D.N.Y. 2015).

⁶ *In re Boyer*, 93 B.R. 313, 317 (Bankr. N.D.N.Y. 1988).

⁷ *Id.*

best characterized as personal injuries, and that most causes of action under section 1983 occur as a result of a personal injury.⁸

Under the broad reading of the personal injury tort exception, civil rights claims brought under federal antidiscrimination laws may be covered, as seen in the Bankruptcy Courts for the Southern District of California and the Middle District of North Carolina.⁹ Violations of antidiscrimination laws are deemed personal injuries on account of being injuries to personal rights.¹⁰ Courts adopting the broad view also note that, because under 28 U.S.C. § 157, civil rights violations are considered personal injuries when determining appropriate statutes of limitations under state law, they should also be considered personal injuries when jurisdiction is at issue.¹¹ Under this broad interpretation, the Bankruptcy Court for the Southern District of California held in *Gary Brew* that the racial discrimination claims at issue were non-core under section 157 and the bankruptcy court did not have jurisdiction over them.¹² The Bankruptcy Court for the Middle District of North Carolina held similarly in *In re Nifong*, adopting the broad approach such that non-traditional tort claims (such as those resulting in emotional distress or humiliation), as well as traditional tort claims (such as those like a slip and fall or other bodily injury), are personal injury tort claims and, therefore, are non-core proceedings.¹³

The broad interpretation of “personal injury” would likely encompass claims for defamation, IIED, false light invasion of privacy, and negligent infliction of emotional distress because, like the civil rights violations discussed above, these torts are injurious without necessarily causing physical bodily injuries. Bankruptcy courts adopting the broad view would

⁸ *Id.* at 317 (citing *Wilson v. Garcia*, 471 U.S. 261 (1985)).

⁹ See *In re Gary Brew Enters.*, 198 B.R. 616, 618–19 (Bankr. S.D. Cal. 1996) (holding that a claim for relief under 42 U.S.C. § 1983 is a personal injury tort claim); *In re Nifong*, 2008 Bankr. LEXIS 1608, (Bankr. M.D.N.C., May 27, 2008) (same).

¹⁰ *In re Gary Brew Enters.*, 198 B.R. at 619 (citing *Almond v. Kent*, 459 F.2d 200, 204 (4th Cir. 1972)).

¹¹ *Id.* at 620.

¹² *Id.*

¹³ See *In re Nifong*, 2008 Bankr. LEXIS 1608 at *9.

thus be unable to issue final judgments for these issues and they would instead need to be determined in district court. If the bankruptcy court does not have jurisdiction over the claims, “relief from the automatic stay is required so that the claim can be adjudicated in a court that does have jurisdiction.”¹⁴

B. The Narrow Approach Encompasses Claims Involving Physical Injuries.

Some courts, including the Bankruptcy Courts for the Eastern District of Virginia and the Southern District of New York, have interpreted “personal injury tort” under 28 U.S.C. § 157 narrowly to only include claims including actual physical injury.¹⁵ This view considers personal injuries in a more traditional sense, encompassing incidents like slip and fall accidents, or incidents resulting in psychiatric injury beyond shame or humiliation.¹⁶ In *In re Cohen*, the Bankruptcy Court for the Southern District of New York determined that alleged violations of New York anti-discrimination laws do not fall within the statutory exclusion in section 157 because that exclusion applies to traditional torts.¹⁷ The court supported this position by citing legislative history indicating that the personal injury exception in section 157 was meant to apply to a narrow range of claims.¹⁸ The court further suggested that the narrow view promotes “judicial efficiency and fairness to both parties” since “the entire controversy, as to liability, damages and dischargeability” would be “adjudicated by one judicial officer in one proceeding.”¹⁹

¹⁴ *In re Nifong* at *14 (citing *In re Erickson*, 330 B.R. 346 (Bankr. D. Conn. 2005)).

¹⁵ See *Massey Energy Co. v. W.Va. Consumers for Justice*, 351 B.R. 348, 351 (E.D. Va. 2006); *In re Vinci*, 108 B.R. 439 (Bankr. S.D.N.Y. 1989).

¹⁶ *In re Residential Capital, LLC*, 536 B.R. 566, 571–72 (Bankr. S.D.N.Y. 2015) (citing *In re Cohen*, 107 B.R. 453 (Bankr. S.D.N.Y. 1989)).

¹⁷ *In re Cohen*, 107 B.R. 453, 455 (Bankr. S.D.N.Y. 1989).

¹⁸ *Id.*

¹⁹ *Id.*

Relying on the text of the statute, the Bankruptcy Court for the Eastern District of Virginia reasoned in *Massey Energy* that “Congress intended to limit the claims fitting the exception by introducing the narrow, modifying language ‘personal injury.’”²⁰ The Bankruptcy Court for the Southern District of New York took a similar approach in *In re Gawker Media*, relying on canons of statutory interpretation in their adoption of the narrow view.²¹ The court in *Gawker* reasoned that, under the principle *noscitur a sociis*, under which a word is known by the company it keeps, “personal injury” in section 157 should be construed similarly to “wrongful death” because of their proximity in the statute, and therefore require a physical bodily injury to fall under the exception.²² The court then explained that claims for “[t]orts such as defamation, false light and injurious falsehood do not require proof of trauma, bodily injury or severe psychiatric impairment,” and that even though the only injury complained of in that case was an emotional one, “incidental claims of emotional injury do not suffice to transform a tort claim into a personal injury tort when it otherwise would not be.”²³

Where a bankruptcy court adopts the narrow view of 28 U.S.C. § 157 to determine the meaning of “personal injury,” claims for non-traditional torts likely will not fall under the exception and instead can be heard in bankruptcy courts as core proceedings. Such non-traditional torts likely include defamation, IIED, libel, and slander, among other torts whereby the victim did not suffer a physical injury.

C. The Hybrid Approach is a Balance Between the Narrow and Broad Approaches.

Some courts have rejected the narrow and broad approaches adopted by other courts and have instead developed a hybrid approach for determining what is considered a personal injury

²⁰ 351 B.R. 348, 351 (E.D. Va. 2006).

²¹ *In re Gawker Media LLC*, 571 B.R. 612, 620 (Bankr. S.D.N.Y. 2017).

²² *Id.* at 620–21.

²³ *Id.* at 623.

tort under 28 U.S.C. § 157. In *In re Ice Cream Liquidation, Inc.*, the Bankruptcy Court for the District of Connecticut reasoned that the broader view, rather than the narrow view, was favorable; however, rather than accepting the broad view as it has been previously laid out by other courts, the Connecticut bankruptcy court determined that, in “cases where it appears that a claim might be a ‘personal injury tort claim’ under the ‘broader’ view but has earmarks of a financial, business or property tort claim, or a contract claim, the court reserves the right to resolve the ‘personal injury tort claim’ issue by (among other things) a more searching analysis of the complaint.”²⁴ The court rejected the broad view as it feared this view presented the risk that financial, business, or property tort claims would be excluded from the bankruptcy system, positing that this could not have been Congress’s intended result.²⁵ The court also rejected the narrow approach, claiming that if Congress had intended such a narrow interpretation, it would have written the statute to specifically address personal bodily injury.²⁶ Under the Connecticut court’s hybrid approach, the court held that a plaintiff’s successor liability claim for sexual harassment was a personal injury tort claim under section 157(b) and was therefore non-core.²⁷

Elaborating on the hybrid or intermediate approach, the Bankruptcy Court for the District of Nevada explained that the middle ground struck by the Bankruptcy Court for the District of Connecticut in *Ice Cream Liquidation* is “appealing because it is closely aligned with what are traditionally thought of as the ‘common law torts;’ and while it includes emotional and reputational harms, it does not go so far as to allow non-bankruptcy law to define certain torts as

²⁴ *In re Ice Cream Liquidation, Inc.*, 281 B.R. 154, 161 (Bankr. D. Conn. 2002).

²⁵ *Id.*

²⁶ *Id.* at 160.

²⁷ *Id.* at 164.

personal injury torts.”²⁸ In *Smith*, the Nevada court determined that, under this “middle ground” approach, the libel claims at issue were personal injury tort claims under section 157(b)(5).²⁹

The Bankruptcy Court for the Southern District of New York relied on the hybrid approach to determine whether claims for IIED were personal injuries under section 157.³⁰ In *Residential Capital*, the court assessed claims for IIED stemming “from allegedly flawed mortgage foreclosure and loss mitigation processes.”³¹ The court determined that “the hybrid approach was most appropriate for determining whether the . . . IIED claims were personal injury torts.”³² Under this approach, because the IIED claims arose “primarily out of financial, contract, or property tort claims,” they were not personal injury torts and were thus core proceedings.³³

The Bankruptcy Court for the District of New Mexico also relied on the hybrid approach to assess claims for IIED and defamation.³⁴ Having determined that defamation is not a personal injury under the narrow approach, the court used a hybrid approach similar to that used by the Bankruptcy Court for the Southern District of New York in *Residential Capital*.³⁵ In *Residential Capital*, the court explained that “[i]f the IIED claim is the gravamen of the claim, . . . section 157(b)(5) does not permit the bankruptcy court to try the claim absent consent.”³⁶ Relying on this explanation, the New Mexico bankruptcy court in *Byrnes* determined that, because defamation was the gravamen of the plaintiff’s claims rather than IIED, the court would try both

²⁸ *In re Smith*, 389 B.R. 902, 908 (Bankr. D. Nev. 2008).

²⁹ *Id.*

³⁰ *See In re Residential Capital, LLC.*, 536 B.R. 566, 575 (Bankr. S.D.N.Y. 2015).

³¹ *Id.* at 576.

³² *Id.* at 575.

³³ *Id.* at 576.

³⁴ *In re Byrnes*, 638 B.R. 821, 824 (Bankr. D. N.M. 2022).

³⁵ *See id.* at 830, 832.

³⁶ 536 B.R. at 573.

the defamation and IIED claims.³⁷ The IIED claim arose out of the defamation claim, so it became a core proceeding under the hybrid approach.³⁸

II. Allowability of Defamation Claims in Bankruptcy Proceedings

Under 28 U.S.C. § 502(b)(1), a claim will be disallowed if it is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured. Whether a claim is allowable is generally determined under applicable non-bankruptcy law. In *In re JCK Legacy*, the debtors had filed an objection to the claimant’s various tort claims, including defamation and IIED, arguing the claims were deficient as a matter of law and should be disallowed.³⁹ The Bankruptcy Court for the Southern District of New York evaluated each of the tort claims under applicable Washington state law to determine if they warranted further proceedings.⁴⁰ The Bankruptcy Court for the Southern District of New York had previously adopted the narrow reading of “personal injury” under section 157, giving it jurisdiction to issue a final judgment over claims for torts such as defamation and the others at issue in *JCK Legacy*.⁴¹ Applying the applicable Washington state law, the Bankruptcy Court for the Southern District of New York evaluated the tort claims and determined that they were deficient as a matter of law and were disallowed.⁴²

Conclusion

Bankruptcy courts remain divided in their interpretations of whether personal injury torts are core proceedings under 28 U.S.C. § 157. While courts have adopted the narrow, broad, and hybrid approaches, each of which having its own benefits and disadvantages, the narrow

³⁷ 638 B.R. at 833.

³⁸ *See id.*

³⁹ *In re JCK Legacy Co.*, 2022 Bankr. LEXIS 2461 at *4 (Bankr. S.D.N.Y. September 7, 2022).

⁴⁰ *Id.* at *6.

⁴¹ *See In re Gawker Media*, 571 B.R. at 623.

⁴² 2022 Bankr. LEXIS 2461 at *6.

approach works to expand the jurisdiction of the bankruptcy courts to hear claims for torts such as defamation and other non-traditional torts that do not involve physical bodily injuries. Until Congress provides bankruptcy courts with further clarity, the courts remain free to adopt their own interpretations of the statute.