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Jefferson-Pilot Life Insurance Co. v. Thompson: Lienholders Beware Chapter 11 May Be Hazardous to Your Security Interest's Health

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NOTES

Jefferson-Pilot Life Insurance Co. v. Thompson: Lienholders Beware! Chapter 11 May Be Hazardous to Your Security Interest's Health

Creditors in ancient times had wide latitude in dealing with delinquent borrowers. One ancient Roman decree proclaimed that "[i]f the debtor be insolvent to serve creditors, let his body be cut in pieces on the third market day. It may be cut into more or fewer pieces with impunity. Or, if his creditors consent to it, let him be sold to foreigners beyond the Tiber."¹ In colonial America, insolvent debtors may not have been treated quite as harshly as those in ancient Rome, but they did face the likelihood of prison if they did not or could not repay.² In fact, imprisonment for insolvency was permitted in the United States until the early part of the twentieth century.³

Fortunately, modern society views debtor-creditor relations more liberally. While the law of most states permits creditors to undertake a variety of enforcement actions,⁴ these statutes typically are laden with restrictions designed to protect debtors' rights.⁵ At the federal level, the Bankruptcy Code⁶ (Code) is designed to give debtors a "fresh start" while treating similarly situated creditors as equally as possible.⁷ Individual debtors can obtain a discharge by liquidating

1. T. SULLIVAN, E. WARREN & J. WESTBROOK, AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA 44 n.20 (1989) (quoting *Twelve Tables*, Table III (c. 450 B.C.)).

2. P. COLEMAN, DEBTORS AND CREDITORS IN AMERICA: INSOLVENCY, IMPRISONMENT FOR DEBT, AND BANKRUPTCY, 1607-1900, at 5 (1974).

3. *Id.* at 223-25.

4. *See, e.g.*, N.C. GEN. STAT. § 1-306 (1983) (allowing a party in whose favor a judgment is rendered to enforce it by execution); *id.* § 1-410(5) (allowing the arrest of a defendant who has removed or disposed of his property with the intent to defraud creditors); *id.* § 1-440.2 (permitting attachment for the purpose of securing a judgment); *id.* § 1-440.21 (recognizing garnishment as a means of attaching certain types of property belonging to the defendant).

5. North Carolina statutes are typical in this regard. *See, e.g.*, N.C. CONST. art. I, § 28 (disallowing imprisonment for debt except in cases of fraud); N.C. GEN. STAT. § 1-47 (1983) (setting a ten-year statute of limitations on enforcing judgments and mortgage foreclosures); *id.* § 1-339.54 (requiring that notice be given to a judgment debtor before conducting a public sale of his real property); *id.* § 1-362 (exempting recent salary earnings of a debtor from garnishment upon a showing that the money is necessary for support of the debtor's family); *id.* § 1-440.10 (requiring creditors to post a bond before attaching debtor's property); *id.* § 1-440.39 (allowing debtor to obtain a discharge of attached property by posting a bond); *id.* § 1C-1601 (1987) (exempting certain amounts of debtor's real and personal property from the claims of creditors); *id.* § 1C-1705 (Supp. 1990) (allowing a judgment debtor to file a motion for relief from a foreign judgment); *id.* § 1C-1708 (exempting from enforcement under the Uniform Enforcement of Foreign Judgments Act any foreign judgment deemed contrary to local public policy).

6. 11 U.S.C. §§ 101 to 1330 (1988). The Bankruptcy Code, enacted in 1978, supersedes the old Bankruptcy Act. *See* Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (1898), *repealed by* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, §§ 101 to 411, 92 Stat. 2549 (codified at 11 U.S.C. §§ 101 to 1330 (1988)).

7. Scott, *Sharing the Risks of Bankruptcy: Timbers, Ahlers, and Beyond*, 1989 COLUM. BUS. L. REV. 183, 186.

nonexempt assets under Chapter 7 of the Code.⁸ Alternatively, under Chapter 13, they can construct a plan for repaying all or part of their debts over a three to five year period, thus sparing the debtor the trauma of having nonexempt assets seized and sold.⁹ Chapter 11 gives business entities and individuals¹⁰ an opportunity to reorganize their affairs free from the distraction of impatient creditors and the burden of unmanageable debt payments.¹¹

The use of these provisions by both business entities and individuals has grown dramatically in recent years. Between June 1988 and June 1989, 642,993 bankruptcy claims were filed,¹² nearly a two-fold increase in only seven years.¹³ Many commentators have speculated over the causes behind this upward trend. Popular explanations usually point to the rising level of consumer debt caused by easier access to credit; a reduction in the social stigma of bankruptcy; and advertising by personal bankruptcy lawyers, which has led to an increased awareness of the potential advantages to filers.¹⁴ Many believe that the Code itself is to blame, claiming that it treats debtors with excessive liberality, thereby encouraging abuse.¹⁵ Commentators cite examples such as the use of Chapter 11 by some large businesses to negate collective bargaining agreements with their employees.¹⁶

While academics have debated the societal impact of the Code, courts have disagreed over the proper interpretation of specific Code provisions. One such controversy centers on how to treat a prepetition lien when a confirmed plan of reorganization under Chapter 11 makes no mention of or allowance for it.¹⁷

8. See 11 U.S.C. § 727 (1988). Most Chapter 7 cases are rather perfunctory, since most debtors have no assets beyond those that are exempt. See T. SULLIVAN, E. WARREN & J. WESTBROOK, *supra* note 1, at 28-30, 203. When a debtor is discharged in Chapter 7, most or all of her debts probably will be extinguished. *Id.* at 30-33.

9. T. SULLIVAN, E. WARREN & J. WESTBROOK, *supra* note 1, at 33-36.

10. Although the Code's drafters designed Chapter 11 specifically to handle large business reorganizations, individual debtors can utilize it as well. See 11 U.S.C. § 109(d) (1988). The availability of Chapter 11 for individuals may soon change, however; the United States Supreme Court has granted certiorari in a case in which the creditor disputes an individual debtor's right to use Chapter 11. See *In re Toibb*, 902 F.2d 14 (8th Cir. 1990), *cert. granted sub nom.* Toibb v. Radloff, 111 S. Ct. 775 (1991).

11. B. WEINTRAUB, WHAT EVERY EXECUTIVE SHOULD KNOW ABOUT CHAPTER 11, at 1-3 (1985).

12. ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 362 (1989), *reprinted in* REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES (1989).

13. In 1982, the number of bankruptcy filings was 367,866. See ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 388 (1982), *reprinted in* REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES (1982).

14. Staten, *Statistics: Bankruptcy Watch*, 11 J. RETAIL BANKING 65, 68 (1989).

15. T. SULLIVAN, E. WARREN & J. WESTBROOK, *supra* note 1, at 5.

16. See, e.g., Note, *The Use of Bankruptcy Proceedings to Modify Bargaining Agreement Obligations in the United States*, 50 MOD. L. REV. 855, 855 (1987).

17. In a Chapter 11 proceeding, a debtor (and, in some instances, one or more creditors) submits a plan detailing how he will repay its obligations. See 11 U.S.C. § 1121 (1988). If the requisite majorities of creditors vote to approve the plan, it is then submitted to the court for confirmation. See *id.* §§ 1126, 1128. If the plan meets the statutory requirements for approval, then the court confirms it; the debtor emerges from bankruptcy and attempts to implement the plan. See *id.* §§ 1129, 1141-42. For a description of the confirmation process, see Hopper, *Confirmation of a Plan*

Although the issue has arisen infrequently thus far,¹⁸ most courts addressing this matter have held that a bankruptcy court's confirmation of a debtor's plan of reorganization extinguishes any claims of secured creditors not provided for in the plan or in the confirmation order itself.¹⁹ Thus, if the final plan lists a creditor's claim as unsecured rather than secured, the creditor will be left with only an unsecured claim, regardless of his preconfirmation status, and will be entitled to only those payments called for in the plan.²⁰ At least one court has refused to follow this line of reasoning, ruling instead that a secured claim survives a Chapter 11 proceeding and that a lienholder need not participate in order to protect her claim.²¹

The North Carolina Court of Appeals recently faced this issue in *Jefferson-Pilot Life Insurance Co. v. Thompson*.²² After considering both interpretative theories, the *Jefferson-Pilot* court held that a confirmed plan binds a lienholder to its provisions, and that any security interest not mentioned in the plan is extinguished.²³ In so doing, the court of appeals clearly aligned itself with the majority view on this issue.

After discussing the *Jefferson-Pilot* case, this Note examines the current split of authority by discussing some of the leading cases in both camps. It then examines the statutory language in the relevant Code provisions to determine the meaning intended by the drafters. The Note concludes that the *Jefferson-Pilot* court correctly sided with the majority of courts on this issue. The court, however, erred seriously by failing to distinguish between cases in which the debtor fully discloses all assets and liabilities but disputes the claims of one or more creditors and cases in which the debtor fails to disclose the existence of property. The court's failure to do so places its decision at odds with an established line of cases holding that undisclosed property is not discharged from creditors' post-bankruptcy claims.²⁴

The plaintiff in *Jefferson-Pilot*, the Jefferson-Pilot Life Insurance Company,

Under Chapter 11 of the Bankruptcy Code and the Effect of Confirmation on Creditors' Rights, 15 IND. L. REV. 501, 504-07 (1982).

18. See, e.g., *In re American Properties, Inc.* (Board of County Comm'rs v. Coleman Am. Properties, Inc.), 30 Bankr. 239, 246 (Bankr. D. Kan. 1983).

19. See, e.g., *In re Arctic Enters., Inc.* (Minstar, Inc. v. Plastech Research, Inc.), 68 Bankr. 71, 80 (D. Minn. 1986); *In re Pennsylvania Iron & Coal Co.* (Pennsylvania Iron & Coal Co. v. Good), 56 Bankr. 492, 496 (Bankr. S.D. Ohio 1985); *In re Penn-Dixie Indus.* (Martin Marietta Corp. v. County of Madison), 32 Bankr. 173, 179 (Bankr. S.D.N.Y. 1983); *American Properties*, 30 Bankr. at 246.

20. See, e.g., *Arctic Enters.*, 68 Bankr. at 80. For a discussion of *Arctic Enterprises*, see *infra* text accompanying notes 79-92.

21. See *Relihan v. Exchange Bank*, 69 Bankr. 122, 125 (S.D. Ga. 1985). For a discussion of the *Relihan* case, see *infra* text accompanying notes 93-113. Both *Relihan* and courts in the majority camp presuppose that the debtor has made a full and complete disclosure of all his assets so that the court may properly evaluate the debtor's proposed plan of reorganization. Should the debtor fail to do so, a recent line of cases holds that the undisclosed property is not protected from further claims by creditors following confirmation. See, e.g., *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 418 (3d Cir.), cert. denied, 488 U.S. 967 (1988). For a discussion of the *Oneida* line of cases, see *infra* notes 118-40 and accompanying text.

22. 98 N.C. App. 479, 391 S.E.2d 517 (1990).

23. *Id.* at 484, 391 S.E.2d at 520.

24. See, e.g., *Oneida Motor Freight*, 848 F.2d at 418. For a discussion of the *Oneida* line of cases, see *infra* notes 118-40 and accompanying text.

had issued four life insurance policies on the life of Dr. John Hargett Thompson.²⁵ In 1975 Dr. and Mrs. Thompson assigned one of these policies to Branch Banking and Trust Company (BB&T) as collateral "for any and all liabilities of the undersigned [the Thompsons], or any of them, to the Assignee, either now existing or that may hereafter arise between any of the undersigned and the Assignee."²⁶ Ten years after this transaction, the Thompsons filed a Chapter 11 bankruptcy petition.²⁷ At the time of the filing, BB&T, a major creditor of the Thompsons, held a second mortgage on their residence and on Dr. Thompson's office and a first mortgage on two undeveloped lots.²⁸ The Thompsons' total indebtedness to BB&T exceeded \$115,000.²⁹ The final bankruptcy plan submitted by the Thompsons listed all outstanding obligations to BB&T except for the assignment of the life insurance policy, of which no mention was made.³⁰ The bankruptcy court approved this plan on August 22, 1986.³¹

Two years later, upon Dr. Thompson's death, a dispute arose over who was the proper recipient of the net proceeds of the policy, which then totalled \$41,369.43.³² BB&T, as assignee, claimed that it was entitled to the proceeds, while Mrs. Thompson, as named beneficiary on the policy, asserted that the final plan as confirmed had released her and her late husband from all dischargeable debts except those provided for in the plan itself or the bankruptcy court's order.³³ Since neither the plan nor the order made mention of the assignment, she argued, BB&T's interest in the policy was extinguished.³⁴

In order to avoid possible multiple liability, the Jefferson Pilot Company filed an interpleader action, deposited all proceeds due under the policy with the court, and asked the court to determine the proper recipient.³⁵ The trial court granted summary judgment for BB&T, Mrs. Thompson appealed, and the North Carolina Court of Appeals reversed.³⁶ Writing for a unanimous panel, Judge Eagles stated that "the order of confirmation adopting the terms of the plan is a final judgment for purposes of *res judicata* on all matters relevant to the confirmation and is therefore binding on BB&T."³⁷ Quoting *Collier on Bankruptcy*,³⁸ the court asserted that a final plan binds a creditor even if he "is not scheduled, has not filed a claim, does not receive a distribution under the plan,

25. *Jefferson-Pilot*, 98 N.C. App. at 479, 391 S.E.2d at 518.

26. *Id.* at 480, 391 S.E.2d at 518 (quoting assignment). This did not amount to an outright transfer of ownership, but rather the creation of a lien on the policy in favor of BB&T. See Defendant Appellant's Reply Brief at 5, *Jefferson-Pilot* (No. 894SC676).

27. *Jefferson-Pilot*, 98 N.C. App. at 480, 391 S.E.2d at 518.

28. Record at 41, *Jefferson-Pilot* (No. 894SC676).

29. *Id.*

30. Neither the court opinion nor the briefs give any explanation for why BB&T failed to catch this omission. *Jefferson-Pilot*, 98 N.C. App. at 480, 391 S.E.2d at 518.

31. *Id.*

32. *Id.*

33. *Id.* at 479-80, 391 S.E.2d at 518.

34. *Id.* at 480, 391 S.E.2d at 518.

35. *Id.* at 479, 391 S.E.2d at 517-18.

36. *Id.* at 480-81, 391 S.E.2d at 518.

37. *Id.* at 481, 391 S.E.2d at 519.

38. 5 COLLIER ON BANKRUPTCY ¶ 1141.01[1], at 1141-6 (15th ed. 1989).

or is not entitled to retain an interest under such plan.' ”³⁹ The court then summarized some of the leading cases supporting its holding,⁴⁰ discussed one case cited as contrary authority by BB&T,⁴¹ and concluded that the majority view on this issue was correct.⁴²

As Judge Eagles noted, courts differ over the proper treatment of liens not mentioned in a bankruptcy plan or confirmation order.⁴³ This tension arises from arguably conflicting language in two separate provisions of the Code. Section 1141, which addresses the effect of confirmation of a Chapter 11 plan, states, in relevant part:

(a) [T]he provisions of a confirmed plan bind the debtor . . . and any creditor

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) [E]xcept as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors⁴⁴

Another provision of the Code, section 506(d), states: “To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless . . . such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim.”⁴⁵ Courts ruling that confirmation wipes out any security interest not provided for in the plan or the confirmation order point to section 1141,⁴⁶ while the lone court holding that a valid secured lien survives the proceedings and may be enforced subsequent to confirmation relied on section 506(d).⁴⁷

One of the first cases to interpret section 1141 as extinguishing liens not allowed for in a final plan is *In re American Properties, Inc.*⁴⁸ After filing under Chapter 11, the debtor in *American Properties* submitted to the bankruptcy court a schedule listing its assets and liabilities.⁴⁹ Among the creditors listed

39. *Jefferson-Pilot*, 98 N.C. App. at 481, 391 S.E.2d at 518 (quoting 5 COLLIER ON BANKRUPTCY, *supra* note 38, ¶ 1141.01[1], at 1141-6).

40. These cases are: *In re Arctic Enters., Inc.* (Minstar, Inc. v. Plastech Research, Inc.), 68 Bankr. 71 (D. Minn. 1986); *In re Pennsylvania Iron & Coal Co.* (Pennsylvania Iron & Coal Co. v. Good), 56 Bankr. 492 (Bankr. S.D. Ohio 1985); *In re Penn-Dixie Indus., Inc.* (Martin Marietta Corp. v. County of Madison), 32 Bankr. 173 (Bankr. S.D.N.Y. 1983). For a discussion of these cases, see *infra* text accompanying notes 58-92.

41. The court discussed *In re Tarnow*, 749 F.2d 464 (Bankr. 7th Cir. 1984). For a summary of this case, see *infra* note 93.

42. *Jefferson-Pilot*, 98 N.C. App. at 483-84, 391 S.E.2d at 520.

43. *Id.* at 481, 391 S.E.2d at 519.

44. 11 U.S.C. § 1141 (1988).

45. *Id.* § 506(d). A “proof of claim” is a form that a creditor fills out stating that she has a claim against the debtor for a certain amount. See B. WEINTRAUB, *supra* note 11, at 132.

46. See, e.g., *In re American Properties, Inc.* (Board of County Comm’rs v. Coleman Am. Properties, Inc.), 30 Bankr. 239, 246 (Bankr. D. Kan. 1988).

47. See *Relihan v. Exchange Bank*, 69 Bankr. 122, 127 (S.D. Ga. 1985).

48. 30 Bankr. 239 (Bankr. D. Kan. 1983).

49. *Id.* at 242.

was Saline County, Kansas, which held a tax lien on property owned by the debtor.⁵⁰ The debtor listed all claims on its schedule as "unliquidated," meaning that it disputed the amounts owed.⁵¹ Notice of the proceedings, a proof of claim form, and a copy of the schedule listing the county's claim as unliquidated were sent to the county treasurer,⁵² but the county never responded.⁵³ The bankruptcy court approved the debtor's schedule and, three months later, confirmed the debtor's plan of reorganization, again with no objection from the county.⁵⁴ After confirmation, the county tried to enforce its lien, but the bankruptcy court barred it from doing so.⁵⁵ With language quoted in several subsequent opinions, the court explained its interpretation of section 1141:

Confirmation of a chapter 11 plan has three effects. First, all creditors are bound by the provisions of a plan whether or not the creditor is impaired and whether or not the creditor files a claim. Second, all property vests in the debtor, "free and clear of all claims and interests of creditors . . . [e]xcept as otherwise provided in the plan or in the order confirming the plan." Third, a non-liquidating corporate debtor is discharged of all debts arising before confirmation, whether or not a proof of claim is filed. The effect of these provisions are [sic] far-reaching. After confirmation of a chapter 11 plan, a creditor's lien rights are only those granted in the confirmed plan. A creditor no longer can enforce its pre-confirmation lien rights; a creditor must seek to enforce its lien rights granted in the plan, rather than its pre-chapter 11 lien rights.⁵⁶

Based on this interpretation of section 1141, the *American Properties* court concluded that the debtor no longer could enforce its lien because the plan as confirmed did not recognize it.⁵⁷

Another case decided just two months after *American Properties* resulted in a similar holding. In *In re Penn-Dixie Industries*,⁵⁸ two counties in Iowa had levied tax liens on certain parcels of real property owned by the debtor, Penn-Dixie Industries.⁵⁹ With the bankruptcy court's approval, Penn-Dixie sold these parcels to a third party, Martin Marietta Corp., free and clear of the liens.⁶⁰ As a condition of allowing the sale, the court ordered the debtor to place

50. *Id.*

51. *Id.* at 243. Ordinarily, when a debtor lists a claim on its schedule, the claim is considered filed, thus relieving the holder of that claim from the necessity of filing a proof of claim. 11 U.S.C. § 1111(a) (1988). If the debtor lists the claim as either disputed, contingent, or unliquidated, however, that claim is not deemed filed. *Id.* § 502(a). In such instances, the creditor must file a proof of claim to protect its interests.

52. *American Properties*, 30 Bankr. at 242-43. Although the county claimed that it never received the mailings, the court rejected this argument and held that service of process had been adequate. *Id.* at 244.

53. *Id.* at 242-43.

54. *Id.* at 243.

55. *Id.* at 247.

56. *Id.* at 246 (quoting 11 U.S.C. § 1141(c) (1988)) (citations omitted).

57. *Id.* at 247.

58. (Martin Marietta Corp. v. County of Madison), 32 Bankr. 173 (Bankr. S.D.N.Y. 1983).

59. *Id.* at 174.

60. *Id.*

a portion of the sale proceeds equal to the lien amounts in a separate bank account to which the liens would attach.⁶¹ Shortly after this sale took place, the court approved Penn-Dixie's plan of reorganization, which provided for an extended repayment period of the overdue county taxes.⁶² The counties, although aware of these developments, made no objection to either the sale or the modified payment plan during the bankruptcy proceedings.⁶³ Following confirmation, the counties, unhappy that the plan called for them to receive payment over a six-year term rather than immediately, sought reformation.⁶⁴

The court held that, under the doctrines of *res judicata* and collateral estoppel, the counties could not raise prepetition claims after confirmation.⁶⁵ In denying the counties' claim, the court made no mention of section 1141; instead it relied on these two common-law doctrines.⁶⁶ Nonetheless, the holding and rationale used here closely mirror *American Properties*: in both cases the final plan altered the creditor's status, in both cases the creditor neglected to challenge this alteration, and, as a result, both courts limited the creditor to whatever rights the plan provided for it.⁶⁷

Two years later an Ohio bankruptcy court reached the same conclusion as the *American Properties* court regarding the proper interpretation of section 1141. In *In re Pennsylvania Iron & Coal Co.*,⁶⁸ the plaintiff coal company and the defendant Rodney Good entered into a verbal agreement under which Good would haul scrap metal in a large trailer owned by the company in exchange for compensation based on a mileage/ton ratio.⁶⁹ The company further agreed to reimburse Good for any repair and maintenance costs related to the trailer that Good might incur over the life of the contract.⁷⁰ Both parties performed under this arrangement until the coal company filed for Chapter 11 reorganization two years later.⁷¹ As required by the Code, the company prepared a schedule listing its assets and liabilities, and creditors of the company were notified of the proceedings and invited to file a proof of claim.⁷² Good received a copy of the

61. *Id.*

62. *Id.*

63. *Id.* at 177.

64. *Id.* at 175.

65. *Id.*

66. *Id.* at 176-78. It is unclear why the court failed to mention § 1141 in its holding.

67. Section 1141 functions like a statutory *res judicata*, barring claims that could have been asserted before confirmation of the plan. See 11 U.S.C. § 1141(a) (1988) ("[T]he provisions of a confirmed plan bind the debtor . . . and any creditor . . . whether or not the claim or interest of such creditor . . . is impaired under the plan and whether or not such creditor . . . has accepted the plan."). Similarly, *res judicata* binds parties to a suit "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Cromwell v. County of Sac*, 94 U.S. 351, 352 (1876). The North Carolina Court of Appeals in *Jefferson-Pilot* implicitly acknowledged this similarity by quoting § 1141(a) and, in the next sentence, stating that "[t]he order of confirmation . . . is a final judgment for purposes of *res judicata* on all matters relevant to the confirmation." *Jefferson-Pilot*, 98 N.C. App. at 481, 391 S.E.2d at 519.

68. (*Pennsylvania Iron & Coal Co. v. Good*), 56 Bankr. 492 (Bankr. S.D. Ohio 1985).

69. *Id.* at 493.

70. *Id.*

71. *Id.*

72. *Id.* at 494.

schedule, which listed him as an unsecured creditor with claims amounting to \$14,392.54 for services rendered.⁷³ Good never filed a proof of claim, nor did he object to the debtor's reorganization plan, which was proposed and confirmed over a year after the initial filing.⁷⁴ Following confirmation the company asked Good to return its trailer but Good refused, claiming he held a lien on the trailer for monies expended by him for repair and maintenance.⁷⁵ The company sued and the court ordered Good to release the trailer, holding that any lien Good may have had was extinguished because neither the plan nor the confirming order made any mention of it.⁷⁶ Relying on section 1141 and on *American Properties*, the court declared that "when this court confirmed plaintiff's plan of reorganization, defendant became bound by the provisions of that plan."⁷⁷ The court stated that the burden lies with a creditor to come forward and inform the court if it disagrees with the proposed treatment of its claim in a reorganization case: "[t]here is simply no other effective method for a bankruptcy court to become aware that a creditor objects."⁷⁸

The most recent case discussed by the North Carolina Court of Appeals in *Jefferson-Pilot* was *In re Arctic Enterprises, Inc.*⁷⁹ The plaintiff debtor, Arctic Enterprises, Inc., was a manufacturer of snowmobiles.⁸⁰ Prior to filing for Chapter 11, the company had maintained a continuing business relationship with Plastech Corporation, a manufacturer of plastic tools and molding.⁸¹ Pursuant to this relationship, Plastech held in its possession certain molds, dies, and other equipment owned by Arctic.⁸² When Arctic filed for Chapter 11, it listed Plastech as an unsecured creditor in the amount of \$105,905.⁸³ Some months later Plastech filed a proof of claim, in which it asserted a security interest in the equipment in its possession.⁸⁴ Arctic apparently ignored this assertion—its final proposed reorganization plan still listed Plastech among its unsecured creditors.⁸⁵ Plastech made no objection to this and the court soon thereafter confirmed the plan.⁸⁶

After confirmation, Arctic sought the return of its tools and equipment, but Plastech refused to relinquish possession on the ground that it still held a valid

73. *Id.*

74. *Id.* at 493-94. Good later claimed that he did not understand the significance of the plaintiff's disclosure statement sent to him. *Id.* at 494.

75. *Id.* at 492-93.

76. *Id.* at 495.

77. *Id.* The company also claimed that, because the contract was not to be performed within one year, it was unenforceable under the statute of frauds. *Id.* at 494. The court never reached this issue.

78. *Id.* at 496.

79. (*Minstar, Inc. v. Plastech Research, Inc.*), 68 Bankr. 71 (D. Minn. 1986).

80. *Id.* at 73.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* at 79.

85. *Id.* at 73.

86. *Id.*

security interest in these items.⁸⁷ Arctic paid the claimed amount of the lien under protest in order to obtain release of the tools.⁸⁸ Two years later Minstar, Inc., Arctic's successor in interest, sued to recover the amount paid, claiming that Plastech's refusal to release the tools was wrongful because it had no lien in the property.⁸⁹ The court agreed and held for Minstar, concluding that the final plan, because it made no mention of Plastech's lien, extinguished any security interest Plastech may have had.⁹⁰ Plastech argued that it had filed a proof of claim listing itself as a secured creditor and that no objection to that claim had been made by Arctic; therefore its claim should be "deemed allowed" under section 502.⁹¹ The court rejected this argument, holding that section 1141 was controlling and that any lien not addressed by the final plan or the confirming order was void.⁹²

At least one court has expressly disagreed with *American Properties* and declared that prepetition liens survive confirmation.⁹³ In *Relihan v. Exchange*

87. *Id.* at 73-74.

88. *Id.* at 74.

89. *Id.*

90. *Id.* at 80.

91. *Id.* at 79 (quoting 11 U.S.C. § 502(a) (1988)). Section 502 states that when a proof of claim is filed, the claim is deemed allowed unless the debtor objects. 11 U.S.C. § 502(a) (1988).

92. *Arctic Enters.*, 68 Bankr. at 80. The *Arctic Enterprises* court noted that this treatment of liens contrasts sharply from their treatment under Chapter 7. Courts consistently have ruled that liens survive a Chapter 7 liquidation and that a lienholder need not participate in order to protect her interest unless the debtor specifically challenges the secured claim. *Id.* The court further explained: "The rationale for requiring the debtor to actively challenge a claim upon which a lien is based in order to extinguish the lien in a chapter 7 context is that in a chapter 7 bankruptcy there is no plan of reorganization." *Id.*

93. See *Relihan v. Exchange Bank*, 69 Bankr. 122 (S.D. Ga. 1985). For a discussion of this holding, see *infra* notes 93-113 and accompanying text. The *Jefferson-Pilot* court never discussed *Relihan*, even though the case clearly conflicts with *American Properties* and its progeny. Instead, the court of appeals discussed *In re Tarnow*, 749 F.2d 464 (Bankr. 7th Cir. 1984). After analyzing *Tarnow*, however, the court correctly noted that the case was inapposite to the situation in *Jefferson-Pilot*. See *Jefferson-Pilot*, 98 N.C. App. at 483-84, 391 S.E.2d at 520.

In *Tarnow*, the Commodity Credit Corporation (CCC) made to Tarnow, a farmer, a loan secured by a lien on his crops and equipment. *Tarnow*, 749 F.2d at 464. Tarnow subsequently was unable to meet his obligations and filed for protection under Chapter 11. *Id.* To expedite the reorganization process, the bankruptcy court set a deadline for creditors to file claims against the bankruptcy estate. *Id.* CCC knew of this deadline but failed to file until two months after it had lapsed. *Id.* Because of this, the bankruptcy judge barred CCC from asserting any unsecured claim it may have had against Tarnow and, as a further sanction, declared CCC's security interest in the crops and equipment void. *Id.* CCC appealed the order extinguishing its lien, the district court affirmed the order, and the Court of Appeals for the Seventh Circuit reversed. *Id.* Judge Posner, writing for a unanimous panel, stated that voiding CCC's lien was a disproportionately severe penalty for a mere failure to meet the court's deadline, given that no other party was or would be harmed by such a failure. *Id.* at 465. When a plaintiff fails to file claims within the period allowed by an applicable statute of limitations, "the sanction is dismissal; it is not to take away his property." *Id.* at 466. Thus, asserted Judge Posner, CCC should not lose its security interest in Tarnow's crops and equipment merely for failing to file before the court-announced deadline. *Id.*

The *Jefferson-Pilot* court correctly noted that *Tarnow* was not truly in conflict with the *American Properties* line of cases. *Jefferson-Pilot*, 98 N.C. App. at 483, 391 S.E.2d at 520. *Tarnow*, said Judge Eagles, concerned the status of a lienholder who had failed to file a proof of claim before an announced court deadline. *Id.* at 483-84, 391 S.E.2d at 520. Unlike the situation in *Jefferson-Pilot*, the bankruptcy court in *Tarnow* had not confirmed a final reorganization plan at the time the deadline lapsed. See *id.* at 484, 391 S.E.2d at 520. Thus, § 1141, which deals with the effects of confirmation on debtors and creditors, was not applicable. See *id.* Indeed, Judge Posner makes no mention of § 1141 anywhere in the *Tarnow* opinion. See *Tarnow*, 749 F.2d at 464-67. It seems odd that the

Bank.⁹⁴ Randolph Relihan filed a voluntary petition under Chapter 11.⁹⁵ Like the debtor in *American Properties*, Relihan disputed the amount owed on each of his outstanding debts.⁹⁶ Among Relihan's creditors was the Exchange Bank of Douglas (Bank), which held a valid security interest in some of his property.⁹⁷ The Bank apparently received notice of the proceedings and thus knew that the amount of its claim was being disputed and that it was required to file a proof of claim if it wished to contest the debtor's challenge.⁹⁸ Nonetheless, the Bank did nothing.⁹⁹

The debtor submitted a proposed reorganization plan that called for more favorable repayment terms on the Bank's secured note.¹⁰⁰ Shortly thereafter Relihan twice modified this plan, both times lowering the principal due and easing the terms of repayment still further.¹⁰¹ The bankruptcy court issued an order confirming the debtor's plan, which contained the most recent and most favorable modifications.¹⁰² In its confirmation order, however, the court made an express provision for the Bank's prepetition lien:

Nothing in the plan, or in this Order confirming the plan, shall be construed to divest any lien of the Exchange Bank of Douglas or limit the rights of the Bank to satisfy any pre-petition or post-petition claim against the Debtor out of property which secures such claim. The Debtor's personal, pre-petition obligation to the Exchange Bank is discharged, and the Debtor's sole remaining personal obligation to the Bank is as set forth in the plan.¹⁰³

Relihan, unhappy with this provision, sought reconsideration of the order, but the bankruptcy court denied review.¹⁰⁴ He then appealed,¹⁰⁵ arguing that the confirmation order should vest all of his property in him free and clear of all prepetition claims and interests, including the Bank's lien.¹⁰⁶ Section 1141, argued Relihan, conflicts with section 506(d); therefore, section 1141, which is

court of appeals would discuss a case that clearly is distinguishable while ignoring *Relihan*, which conflicts more directly with the holding reached by the *Jefferson-Pilot* court.

94. 69 Bankr. 122 (S.D. Ga. 1985).

95. *Id.* at 123.

96. *Id.* at 123 & n.1.

97. *Id.* at 123.

98. *Id.*

99. *Id.*

100. *Id.* at 123-24.

101. *Id.* at 124.

102. *Id.*

103. *Id.* The *Relihan* court could have ruled in favor of the Bank without challenging the *American Properties* rule, which states that liens are extinguished unless they are provided for in the plan or in the order confirming the plan. *In re American Properties, Inc.* (Board of County Comm'rs v. Coleman Am. Properties, Inc.), 30 Bankr. 239, 246 (Bankr. D. Kan. 1983); *see also* 11 U.S.C. § 1141(b) (1988) ("Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor."). The bankruptcy court's statement in the confirmation order clearly was an express provision for the Exchange Bank's secured claim. On appeal, however, the *Relihan* court declined to take this route; instead it chose to attack the *American Properties* holding, asserting that "*American Properties* . . . is wrongly decided." *Relihan*, 69 Bankr. at 127.

104. *Relihan*, 69 Bankr. at 124.

105. *Id.*

106. *Id.* at 126.

specifically applicable to Chapter 11 cases, should prevail over section 506, which is a general provision applicable to all bankruptcy cases.¹⁰⁷ The court rejected this argument, concluding that the two sections are not conflicting:

Section 506(d)(1) deals with "liens." Section 1141(b) reverts the property of the estate in the debtor, while 1141(c) makes all the property dealt with by the plan "free and clear of all *claims* and *interests* of creditors. . . ." Despite Debtor's citations to the contrary, [section] 1141 does not act to extinguish valid pre-petition *liens*.¹⁰⁸

Noting that the Code separately defines the words "claim" and "lien" in section 101, the court concluded that the drafters purposely avoided using the word "lien" in section 1141(c) because it was their intent that liens survive bankruptcy intact.¹⁰⁹ Section 1141's "claim or interest" language, declared the court, applies only to unsecured claims.¹¹⁰ Acknowledging that *American Properties* took a contrary position on the issue, the *Relihan* court stated that it had "wrongly decided" the matter.¹¹¹ As for the Collier treatise on which the *American Properties* court had relied,¹¹² the *Relihan* court asserted that the treatise's editors had misread the statutes and, moreover, had cited no authority in support of their position.¹¹³

In *Relihan*, as well as in all the *American Properties* cases, the debtor, as an initial matter, had fully disclosed all of its assets and liabilities to the court. Section 521(1) requires that the debtor "file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtors' financial affairs."¹¹⁴ A Chapter 11 debtor also must file a disclosure statement¹¹⁵ containing sufficient detail of its financial condition to "enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an

107. *Id.*

108. *Id.* at 127 (quoting 11 U.S.C. § 1141(c) (1988)) (footnotes omitted).

109. *Id.*

110. *Id.*

111. *Id.*

112. 5 COLLIER ON BANKRUPTCY, *supra* note 38, ¶ 1141.01[1], at 1141-6.

113. *Relihan*, 69 Bankr. at 127. The *Relihan* court posited an alternative argument in support of its holding. It claimed that the portion of a debtor's property that is encumbered by a lien never becomes part of the bankruptcy estate in the first place. *Id.* Section 541(a)(1), which addresses this issue, states: "The commencement of a [bankruptcy] case . . . creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held: (1) . . . all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1) (1988). The *Relihan* court argued that the debtor has no legal or equitable interest in that portion of the property encumbered by a lien. *Relihan*, 69 Bankr. at 127. Thus, § 1141, which applies only to property that had been part of the bankruptcy estate, would not affect the encumbered portion of a debtor's property or the lien encumbering it. *Id.*

This reading of § 541 is rather unusual and probably wrong. This misconception is apparent from § 363, which permits the bankruptcy trustee to sell encumbered property "free and clear" of any liens, so long as the secured interest is protected by setting aside part of the proceeds to cover the amount of the lien. 11 U.S.C. § 363(f). In these instances, the lien would then attach to the proceeds. Clearly, § 363 assumes that the entire property, not merely the debtor's equity in that property, is part of the estate. Thus, the drafters' interpretation of § 541 seemingly is at odds with that of the *Relihan* court.

114. 11 U.S.C. § 521 (1988).

115. *Id.* § 1125(b).

informed judgment about the plan."¹¹⁶

Taken together, the requirements of these sections place a duty on the debtor to schedule, for the benefit of its creditors, all its interests and property rights.¹¹⁷ Several recent cases have held that when a debtor fails to disclose property, section 1141 does not reconstitute such property in the debtor free and clear following confirmation.¹¹⁸ In *Oneida Motor Freight v. United Jersey Bank*,¹¹⁹ a Chapter 11 debtor brought an action against one of its former creditors seven months after it had been granted a discharge, alleging breach of its credit agreements, fraudulent misrepresentation, and breach of the bank's duty of good faith.¹²⁰ The debtor, Oneida, had not disclosed the existence of this cause of action during its bankruptcy reorganization.¹²¹ Because of Oneida's nondisclosure, the Court of Appeals for the Third Circuit affirmed the district court's dismissal of the suit, holding that Oneida was equitably and judicially estopped¹²² from pursuing its cause of action at this later date.¹²³ The court was concerned that allowing the suit to proceed could unravel the Chapter 11 plan:

The practical effect of a successful prosecution of Oneida's claim would be to require the bank to make restitution of the amount realized on its bankruptcy claim, since Oneida's present action calls into question the bank's right to collect its secured debt. This could also constitute a successful collateral attack on the bankruptcy court's order confirming the reorganization plan.¹²⁴

The court also noted that Oneida's other creditors were entitled to fair and accurate information on the debtor's assets and liabilities; had the creditors known about the cause of action, they might have voted differently on the proposed plan of reorganization.¹²⁵ The *Oneida* court acknowledged that denying Oneida the right to pursue the claim adversely affected its other creditors, since any damage award resulting from the litigation would have accrued to them.¹²⁶ The court noted, however, that its limited scope of review on appeal prevented it from considering the interests of other creditors in this instance.¹²⁷

116. *Id.* § 1125(a)(1).

117. *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 416 (3d Cir.), *cert. denied*, 488 U.S. 967 (1988). The *Oneida* court stressed that "[t]he importance of full disclosure is underlaid by the reliance placed upon the disclosure statement by the creditors and the court. Given this reliance, we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information.'" *Id.* at 417 (quoting 11 U.S.C. § 1125(a)(1) (1988)).

118. *See, e.g., Oneida Motor Freight*, 848 F.2d at 418; *In re Hoffman* (*Hoffman v. First Nat'l Bank*), 99 Bankr. 929, 937 (N.D. Iowa 1989).

119. 848 F.2d 414.

120. *Id.* at 416.

121. *Id.*

122. *Id.* at 419. The *Oneida* court explained the doctrine of judicial estoppel as "appl[ying] to preclude a party from assuming a position in a legal proceeding inconsistent with one previously asserted. Judicial estoppel looks to the connection between the litigant and the judicial system while equitable estoppel focuses on the relationship between the parties to the prior litigation." *Id.*

123. *Id.* at 420.

124. *Id.* at 418.

125. *Id.* at 417.

126. *Id.* at 420.

127. *Id.* The appeal to the Court of Appeals for the Third Circuit involved only the question whether the bank was entitled to judgment as a matter of law. *Id.* at 416 n.3, 420.

In another recent case involving an undisclosed cause of action, *Pako Corp. v. Citytrust*,¹²⁸ the court similarly held that judicial estoppel barred a suit by a former Chapter 11 debtor against one of its creditors.¹²⁹ As in *Oneida*, the debtor in *Pako* failed to disclose the existence of a potential cause of action against Citytrust.¹³⁰ The court held that this failure constituted a knowing misrepresentation to the court and that *Pako*, the debtor, would not be allowed to pursue the action.¹³¹ Then, the court directly addressed the situation present in *Jefferson-Pilot* by stating that section 1141 does not free undisclosed assets from creditors' claims after confirmation.¹³² The *Pako* court noted that, while section 1141(b) reverts "all of the property of the estate in the debtor" following confirmation, section 1141(c) provides that only property "dealt with by the plan" is to be "free and clear of all claims and interests of creditors."¹³³ Property not dealt with by the plan, such as undisclosed assets, reverts with the debtor under 1141(b), but remains subject to the claims of creditors.¹³⁴

The *Pako* court discussed a 1984 case involving similar facts in which the court reached a rather different result. In *In re Auto West, Inc.*,¹³⁵ the debtors again failed to disclose the existence of a cause of action against one of their creditors.¹³⁶ Following confirmation, the debtors petitioned the bankruptcy court for permission to employ special counsel to represent them in pursuing the claim.¹³⁷ The court held that the suit would be allowed to proceed for the benefit of all of the debtors' creditors: "[A]pplication of res judicata, estoppel or waiver in this case would be improper. . . . [T]he extinguishment of unscheduled assets is inconsistent with the policy of the Code."¹³⁸ The better solution, said the *Auto West* court, would be to let the debtors pursue the claim under tight supervision of the bankruptcy court, which would then distribute any proceeds recovered from the litigation to the creditors.¹³⁹ "To permit otherwise," stated the court, "might be an inducement for a debtor in possession to fail to schedule claims, which might then revert to the debtor's ownership."¹⁴⁰

The relevance of *Oneida*, *Pako*, and *Auto West* to the *Jefferson-Pilot* case lies in the fact that Dr. and Mrs. Thompson never disclosed the existence of the insurance policy; as a result, no mention of it was made in the confirmed plan.¹⁴¹ Because of this nondisclosure the court of appeals should have held that the insurance policy reverted in the Thompsons upon confirmation, pursuant to sec-

128. 109 Bankr. 368 (D. Minn. 1989).

129. *Id.* at 376.

130. *Id.* at 371.

131. *Id.* at 376-77.

132. *Id.* at 376; see 11 U.S.C. § 1141 (1988).

133. *Pako*, 109 Bankr. at 376 (quoting 11 U.S.C. § 1141(b), (c)); see § 1141.

134. *Pako*, 109 Bankr. at 376. As a practical matter, *Pako's* cause of action was worthless because the court estopped it from pursuing the claim.

135. 43 Bankr. 761 (D. Utah 1984).

136. *Id.* at 762.

137. *Id.*

138. *Id.* at 764.

139. *Id.*

140. *Id.*

141. *Jefferson-Pilot*, 98 N.C. App. at 480-81, 391 S.E.2d at 518.

tion 1141(b), but that the policy was subject to creditors' claims because it had not been "dealt with by the plan" as required by section 1141(c). BB&T, as holder of a lien on the policy, should have been granted the proceeds. To extinguish the lien and revest the property in the Thompsons free and clear, as the *Jefferson-Pilot* court did, is tantamount to rewarding debtors for making misrepresentations to the court while penalizing lienholders for the wrongful behavior of others. This holding may tempt future Chapter 11 debtors to hide assets in the hope that any liens on the property will be extinguished by confirmation and that the general creditors will not bother seizing the asset after the debtor emerges from bankruptcy.

Had the debtors in *Jefferson-Pilot* made full disclosure of all assets, as did the debtors in *Relihan* and in the *American Properties* line of cases, then the interpretative dispute over section 1141 would have formed the proper framework for the *Jefferson-Pilot* court's analysis. This conflict can be reduced ultimately to a disagreement over definitions. The *Relihan* court claimed that section 1141's use of the phrase "claims and interests" was intended to exclude liens.¹⁴² The court noted that the Code separately defines "lien" and asserted that the drafters intentionally avoided using the word in section 1141.¹⁴³ Section 101(4) of the Code defines "claim" as a "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."¹⁴⁴ "Lien" is defined in section 101(33) as a "charge against or interest in property to secure payment of a debt or performance of an obligation."¹⁴⁵ The *Relihan* court argued that, had the drafters of the Code wished to include liens along with unsecured claims in section 1141, they could have drafted the statute to read "claims, interests, and liens" rather than merely "claims and interests."¹⁴⁶

While the *Relihan* court's argument certainly is plausible, it ignores the Code's use of the word "interest" in contexts implying that the word is intended to include liens. The *Arctic Enterprises* court noted this and asserted that the word "interest" includes lien rights within its definitional umbrella.¹⁴⁷ The *Arctic Enterprises* court then cited several instances in which the Code used the word "interest" in a context lending credence to this assertion.¹⁴⁸ Most compelling is section 363(f)(3), which allows a bankruptcy trustee to sell property "free and clear of any interest in such property . . . [so long as] such interest is a

142. *Relihan v. Exchange Bank*, 69 Bankr. 122, 127 (S.D. Ga. 1985).

143. See *supra* text accompanying notes 109-10.

144. 11 U.S.C. § 101(4) (1988).

145. *Id.* § 101(33). One should not confuse the concept of a "lien" with that of a "secured claim." A lien is not a type of claim; rather, it is merely a means of securing a claim. A claim secured by a lien is a "secured claim." See BLACK'S LAW DICTIONARY 1354 (6th ed. 1990) (defining "secure" as: "To give security; . . . to guaranty or make certain the payment of a debt One 'secures' his creditor by giving him a lien").

146. *Relihan*, 69 Bankr. at 127.

147. *In re Arctic Enters.* (Minstar, Inc. v. Plastech Research, Inc.), 68 Bankr. 71, 79 (D. Minn. 1986). For a discussion of this case, see *supra* text accompanying notes 79-92.

148. *Arctic Enters.*, 68 Bankr. at 79.

lien.”¹⁴⁹ *Relihan* supporters may counter that “interest,” unlike “claim,” is not defined in the Code and that a commonly used word with multiple meanings such as “interest” cannot be used with perfect consistency in widely differing contexts. It is indeed true that, although the drafters sought precision in their use of language in order to minimize ambiguities, the overlapping meanings of certain words can frustrate even the most dedicated efforts to achieve linguistic clarity. Nonetheless, the *Arctic* court makes a rather convincing case that section 1141 affects liens as well as unsecured claims.

If one decides that “claims and interests” includes liens, then one might conclude that sections 1141 and 506(d) are in conflict, since the former states that confirmation extinguishes prepetition liens not included in the plan or confirmation order, and the latter states that failure to file a proof of claim does not constitute grounds for voiding. Such a conclusion, however, is not inevitable. One may read section 506(d)¹⁵⁰ as protecting lienholders who choose not to file claims up to the point of confirmation, but not thereafter. Under this interpretation, a secured creditor does not have to participate in a bankruptcy proceeding from the outset by filing a proof of claim, but would have to scrutinize the debtor’s final reorganization plan to ensure that her lien is recognized. If she fails to do so, and if the plan contains no provision for her lien, then confirmation would extinguish her interest, regardless of whether an initial proof of claim had been filed. Under this more limited reading, section 506(d) would serve merely to instruct the court that liens can be enforced subsequent to bankruptcy even if the lienholders do not participate in the proceedings and that the court should require that the debtor include them in her reorganization plan.

While this dispute over statutory interpretation is both interesting and important, it was not a controversy that the North Carolina Court of Appeals needed to embrace, given the factual differences between *Jefferson-Pilot* and the cases it cited. As stated above, the *Oneida* line of cases should have formed the basis for the *Jefferson-Pilot* holding.¹⁵¹

Nonetheless, the case is now precedent and lawyers need to advise their clients of its ramifications. In light of the ruling, North Carolina attorneys should advise clients holding valid security interests in property owned by a Chapter 11 debtor to scrutinize closely the debtor’s proposed reorganization plan to ensure that their interests are accounted for. Further, creditors should check their own records carefully to see if there are any unlisted claims they may have against the debtor. Observing these fairly simple precautions should provide adequate protection of creditors’ interests.

If the debtor’s final plan already has been confirmed and it contains no mention of the lien, then a lienholder’s prospects are less promising. Creditors in such a situation should, if possible, steer any subsequent legal proceedings in

149. 11 U.S.C. § 363(f) (1988).

150. Section 506(d) reads, in relevant part: “To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless . . . (2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim.” *Id.* § 506(d).

151. For a discussion of this line of cases, see *supra* notes 118-40 and accompanying text.

North Carolina involving that debtor toward federal court. Since *Jefferson-Pilot* was decided on federal law grounds,¹⁵² its holding is binding only in North Carolina state courts.¹⁵³ If the debtor chooses a state forum and removal to federal court is not feasible,¹⁵⁴ a creditor may be able to convince a state court to rule in its favor by raising the *Oneida* line of cases, which were not brought to the court's attention in *Jefferson-Pilot*.¹⁵⁵

The *Jefferson-Pilot* decision makes life a bit more precarious for lienholders in North Carolina. No longer can they rely on their secured status during a Chapter 11 proceeding. Instead they must keep themselves apprised of the case and remain ready to assert their interests. Creditors who fail to do so ultimately may fail to collect.

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152. The court based its holding on its interpretation of § 1141 of the Code. See *Jefferson-Pilot*, 98 N.C. App. at 484, 391 S.E.2d at 520.

153. A state court's interpretation of federal law is not binding on any federal court. See R. ROTUNDA, J. NOWAK & J. YOUNG, *TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE* § 1.4, at 13 & n.33 (1986). Moreover, the *Jefferson-Pilot* holding, having been decided by the court of appeals, is not binding on the North Carolina Supreme Court.

154. 28 U.S.C. § 1452(a) provides for removal of bankruptcy cases. It states, in relevant part: "A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if [the claim is related to a bankruptcy case]." 28 U.S.C. § 1452(a) (1988). Removal involves issues beyond the scope of this Note.

155. See Defendant Appellee's Brief at ii, *Jefferson-Pilot* (No. 894SC676); Defendant Appellant's Reply Brief at i, *Jefferson-Pilot* (No. 894SC676).