



TIP OF THE MONTH – August 2014

In March 2014, the U.S. Supreme Court rejected a long-standing line of cases which allowed a bankruptcy court to disallow a claim of exemption, or an amendment to an exemption, if the court determined that the amendment was in bad faith or prejudiced creditors. In *Law v Siegel*, 134 S.Ct. 1188, 1196-1197, (U.S. 2014), it stated “the Bankruptcy Code admits no such power” to “deny exemptions based on a debtor’s bad-faith conduct.” In *Law*, the U.S. Supreme Court specifically rejected the bankruptcy court’s authority to use exempt property of the estate to pay any administrative expenses of the estate. The Court said “§ 522 does not give courts discretion to grant or withhold exemptions based on whatever considerations they deem appropriate.” It noted that Congress addressed limitations on exemptions that Congress intended, e.g. §522(c), (o) and (q), and ruled that bankruptcy courts “are not authorized to create additional exceptions.” In doing so, the Supreme Court specifically rejected the argument “that a handful of courts have claimed authority to disallow an exemption (or to bar a debtor from amending his schedules to claim an exemption, which is much the same thing) based on the debtor’s fraudulent concealment of the asset alleged to be exempt.” *Id.*

Since *Law* was issued, most courts have ruled that *Law* precludes the bad faith and prejudice to creditor analysis as a basis to disallow an exemption or an amendment to a claim of exemption. E.g. *In re Gutierrez*, Slip Copy issued June 12, 2014, 2014 WL 2712503 (Bankr. E.D. Cal.); *In re Bodeker*, Slip Copy, 2014 WL 2615714 (Bankr. D. Mont.); *In re Pipkins*, Slip Copy, 2014 WL 2756552 (Bankr. N.D. Cal. 2014). In each case, in the face of arguably bad faith conduct, the bankruptcy court determined that *Law* precluded the denial of an exemption or an amendment to exemption on the basis of bad faith conduct.

The *Law* Court did state that “when a debtor claims a *state-created* exemption, the exemption’s scope is determined by state law, which may provide that certain types of debtor misconduct warrant denial of the exemption.” 134 S.Ct. at 1196-1197.

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