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## The Classification of ERISA As “Applicable Nonbankruptcy Law” Under Section 541(c)(2) of the Bankruptcy Code

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THE CLASSIFICATION OF ERISA AS "APPLICABLE NONBANKRUPTCY  
LAW" UNDER SECTION 541(c)(2) OF THE  
BANKRUPTCY CODE

*In re Lucas*, 924 F.2d 597 (6th Cir.), cert. denied,  
111 S. Ct. 2275 (1991)

In *In re Lucas*,<sup>1</sup> the Sixth Circuit determined that the Employment Retirement Income Security Act (ERISA)<sup>2</sup> constitutes "applicable nonbankruptcy law"<sup>3</sup> and thus that the anti-alienation provisions of an ERISA plan<sup>4</sup> worked to exclude a debtor's interest in the plan from her bankruptcy estate.<sup>5</sup> The Sixth Circuit's decision in *Lucas* places it with a growing number of courts that have held that ERISA qualifies as "applicable nonbankruptcy law."<sup>6</sup>

In *Lucas*, a Chapter Seven trustee sued to recover money from the debtor's employee pension fund that had been distributed to the debtor after the commencement of bankruptcy proceedings.<sup>7</sup> The debtor's employer paid the funds from the debtor's ERISA-qualified defined-benefit pension fund.<sup>8</sup> Seeking to recover from the debtor's employer, the

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1. 924 F.2d 597 (6th Cir.), cert. denied, 111 S. Ct. 2275 (1991).

2. 29 U.S.C. §§ 1001-1381 (1988).

3. 924 F.2d at 601.

4. To qualify under ERISA, a fund must include anti-alienation and assignment provisions. 29 U.S.C. § 1056(d)(1) (1988). See *infra* note 24 and accompanying text.

5. 924 F.2d at 603. According to the Bankruptcy Code, the initiation of a bankruptcy proceeding creates an estate comprised of "all legal and equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a) (1988). See *infra* notes 17-21 and accompanying text. Section 541(c)(2) limits the scope of the § 541(a) estate by excluding interests enforceable under "applicable nonbankruptcy law." 11 U.S.C. § 542(c)(2) (1988). See *infra* note 19 and accompanying text.

6. To date, four circuits have held that the ERISA provisions constitute "applicable non-bankruptcy law" as defined in § 541(c)(2) of the Bankruptcy Code. The Fourth Circuit adopted this view in *In re Moore*, 907 F.2d 1476 (4th Cir. 1990). Next, *In re Lucas*, 924 F.2d 597 (6th Cir. 1991), the focus of this Comment, adopted the *Moore* rationale. Following the growing trend, in November 1991, the Third Circuit adopted a similar view in *Velis v. Kardanis*, 949 F.2d 78 (3d Cir. 1991). Finally, in December of 1991, the Tenth Circuit espoused the same view when it decided *In re Harline*, No. 90-4157, 1991 U.S. App. LEXIS 28540 (10th Cir. December 5, 1991).

7. 924 F.2d at 598. The trustee did not object to the claim that \$2,000 of the fund was exempt personal property under TENN. CODE ANN. § 26-2-102 (1987), which allows a debtor to protect certain personal property—including money or funds on deposit with a bank or other financial institution. (The current maximum exemptible amount under § 26-2-102 is \$4000). The trustee, however, objected to payments made to the debtor after the debtor filed for Chapter 7 protection. See *infra* note 8.

8. 924 F.2d at 598. Holiday Inn Corporation, the debtor's employer, had established a retire-

trustee claimed that the money paid to the debtor<sup>9</sup> was the property of the estate and not exempted under Tennessee law.<sup>10</sup> The debtor's employer denied liability for the payments, arguing that the debtor's interest in the account was excluded from the estate by virtue of the ERISA anti-alienation restrictions.<sup>11</sup>

The bankruptcy court granted the trustee's motion for summary judgment, refusing to expand the definition of "applicable nonbankruptcy law" to include ERISA.<sup>12</sup> On appeal from the district court's affirmation of the bankruptcy court's decision,<sup>13</sup> the Sixth Circuit reversed<sup>14</sup> and

ment account for its employees. Since Lucas' interest was fully vested, she had complete access to the funds. *Id.*

9. The plan had distributed a total of \$7491.11 in three installments after the commencement of the bankruptcy case. *Id.*

10. Tennessee law exempts a debtor's right to receive payments under a pension plan from inclusion in a bankruptcy estate, provided:

[T]hat the debtor has no right or option to receive [the assets] except as monthly or other periodic payments beginning at or after age fifty-eight (58). Assets of such funds or plans are not exempt if the debtor may, at his option, accelerate payments so as to receive payments in a lump sum. . . .

TENN. CODE ANN. § 26-2-111(1) (1987). The trustee argued that the debtor's ability to receive payments from the trust violated this section and, therefore, that the assets of the fund could not be excluded from the bankruptcy estate under Tennessee law. 924 F.2d at 598-99.

11. 924 F.2d at 600. *See supra* note 4. The employer argued that ERISA was "applicable nonbankruptcy law" and, that ERISA's anti-alienation provisions sufficed to exclude the assets from the bankruptcy estate. *Id.* at 600. *See* 29 U.S.C. § 1056(d)(1) (1988).

12. *In re Lucas*, 100 B.R. 969 (Bankr. M.D. Tenn.), *aff'd* 110 B.R. 335 (M.D. Tenn. 1989), *rev'd*, 924 F.2d 597 (6th Cir.), *cert. denied*, 111 S. Ct. 2275 (1991). The bankruptcy court based its decision on a narrow interpretation of § 541(c)(2), and held that only state spendthrift-trust law qualifies as "applicable nonbankruptcy law." 100 B.R. at 970.

Spendthrift trusts provide a fund for the maintenance of a beneficiary while at the same time securing the fund against the beneficiary's improvidence or incapacity. Such trusts usually contain provisions that prohibit the alienation of future funds by either the beneficiary or his creditors. 6 GEORGE GLEASON BOGERT, TRUSTS § 40 (1987). Had Lucas' ERISA account been classified as a spendthrift trust, Tennessee spendthrift-trust law would have applied and the account could have been excluded from the bankruptcy estate. However, the bankruptcy court determined that Lucas' ability to receive funds from the account indicated that the fund was not a spendthrift trust and, therefore, neither the Tennessee spendthrift-trust provision, TENN. CODE ANN. § 26-2-111 (1987), nor § 541(c)(2) of the Bankruptcy Code excluded the assets from the bankruptcy estate. 100 B.R. at 971. *See also infra* note 29.

The bankruptcy court based its holding on the decisions of two previous Tennessee bankruptcy court cases that "applicable nonbankruptcy law" under § 541(c)(2) was expressly limited to state spendthrift-trust law. 100 B.R. at 970. *See In re Ridenour*, 45 B.R. 72, 78 (Bankr. E.D. Tenn. 1984); *In re Faulkner*, 79 B.R. 362 (Bankr. E.D. Tenn. 1987) (only those ERISA-qualified pension plans that also constitute valid spendthrift trusts under state law can be excluded from the debtor's estate).

13. *In re Lucas*, 110 B.R. 335 (M.D. Tenn. 1989), *rev'd*, 924 F.2d 597 (6th Cir.), *cert. denied*, 111 S. Ct. 2275 (1991).

held that “applicable nonbankruptcy law” meant all applicable law and, as a result, that the anti-alienation provisions of ERISA sufficed to exclude a debtor’s interest in an ERISA-qualified pension plan from the bankruptcy estate.<sup>15</sup>

Under section 541(a) of the Bankruptcy Code,<sup>16</sup> the institution of Chapter Seven bankruptcy proceedings results in the gathering of the debtor’s valuable property to be sold for the benefit of the debtor’s creditors.<sup>17</sup> In satisfying the claims of creditors, courts broadly define “property of the estate” to encompass as much property as possible.<sup>18</sup> However, section 541(c)(2) provides that any “restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a [bankruptcy proceeding.]”<sup>19</sup> In addition, once included in the bankruptcy estate, certain property may be exempted from the estate.<sup>20</sup> To protect the assets of the bankruptcy estate, holders of the debtor’s property are prohibited from making disbursements and may be liable to the trustee for unauthorized payments.<sup>21</sup>

Congress passed ERISA<sup>22</sup> in 1974 to help guarantee that workers

14. 924 F.2d at 603.

15. *Id.* at 598.

16. 11 U.S.C. § 541(a) (1988).

17. S. REP. NO. 598, 95th Cong., 2d Sess. 82-83 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5868-69. To this end § 541(c)(1) states that all of the debtor’s property or interests in property become part of the bankruptcy estate under § 541(a), regardless of whether the property or interest is governed by any agreement between parties restricting transfer. However, a debtor’s interest in a trust with restrictions on transfer that are enforceable under “applicable nonbankruptcy” law is given effect in bankruptcy proceedings. See 11 U.S.C. § 541(c)(2) (1988). See also *infra* note 19 and accompanying text.

18. S. REP. NO. 598, *supra* note 17, at 5869. Even with a broad reading of § 541(a), the debtor is still entitled to all state-law exemptions, see *supra* note 10, and any exclusions allowed under § 541(c)(2). See *supra* note 17. For a discussion of property belonging to the estate, see Geoffrey Orlandi, Recent Development, *Property of the Estate: Section 541*, 3 BANKR. DEVEL. J. 341 (1986).

19. 11 U.S.C. § 541(c)(2) (1988).

20. 11 U.S.C. § 522(b) (1988). This section of the Bankruptcy Code provides that a debtor can exempt from the property of her estate either property exempt under federal or state law or property identified in 11 U.S.C. § 522(d). See *supra* note 12. This list includes payments under pension plans, “to the extent necessary for the support of the debtor. . . .” 11 U.S.C. § 522(d)(10)(E) (1988). As a result, even if a debtor is unable to exclude property from the estate via § 542(c)(2), she may still withhold a portion of that property from the estate under § 522(b).

21. 11 U.S.C. § 542 (1988). This section states that any holder of the debtor’s property must turn over such property to the trustee unless the property is of inconsequential value to the estate. *Id.*

22. 29 U.S.C. §§ 1001-1461 (1988). For a brief discussion of ERISA, see John I. Houseal, Jr. &

would be able to collect promised retirement benefits.<sup>23</sup> Congress sought to achieve this goal by making ERISA a comprehensive regulatory statute that requires disclosure and reporting, and imposes fiduciary obligations on employers.<sup>24</sup> To qualify under ERISA, a plan must contain anti-alienation provisions.<sup>25</sup> Thus, ERISA indicates that only the employee is entitled to even fully vested funds that are available for distribution.<sup>26</sup> To ensure that the provisions of ERISA would be enforced, Congress provided that ERISA supersede any and all state laws insofar as they relate to employee benefit plans.<sup>27</sup> Thus, whether interests in an ERISA-qualified plan are excluded from the bankruptcy estate hinges on whether courts recognize ERISA as "applicable nonbankruptcy law" under section 541(c)(2) of the Bankruptcy Code.

In *In re Goff*,<sup>28</sup> the Fifth Circuit determined that a debtor's vested interest in two ERISA-qualified pension plans was bankruptcy-estate property.<sup>29</sup> The court determined initially that ERISA is not "applicable nonbankruptcy law" under section 541(c)(2),<sup>30</sup> and further that ERISA was insufficient to exempt pension benefits (once they became part of the

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Jeffery A. Jarett, *An Overview of ERISA From a Litigator's Standpoint*, 25 TENN. B.J., Jan.-Feb. 1989, at 20.

23. *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 214 (1986).

24.

It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

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It is further declared to be the policy of this Act to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

29 U.S.C. §§ 1001(b), (c) (1988).

25. "Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1) (1988). Additionally, for a defined-benefit plan to be tax exempt under § 401 of the Internal Revenue Code an anti-alienation or assignment provision must be contained in the plan. See I.R.C. § 401(a)(13) (1988); I.R.C. § 501(a) (1988).

26. 29 U.S.C. § 1053(a) (1988).

27. 29 U.S.C. § 1144(a) (1988). See *infra* note 53.

28. 706 F.2d 574 (5th Cir. 1983).

29. *Id.* at 589.

30. *Id.* at 580. The court determined that Congress only intended to exclude traditional spend-thrift trusts under this exception to the general rule regarding property of the bankruptcy estate in § 541(a), relying on the inconclusive legislative history of the Bankruptcy Code. *Id.* at 582.

bankruptcy estate) from the estate under section 522(b)(2)(A).<sup>31</sup> The court held that interests in an ERISA-qualified plan could be excluded or exempted from the estate under state spendthrift-trust law.<sup>32</sup> However, the court determined that the plans involved were not spendthrift trusts,<sup>33</sup> and thus that the property was properly part of the bankruptcy estate.<sup>34</sup>

In *In re Graham*,<sup>35</sup> the Eighth Circuit adopted the Fifth Circuit's reasoning with regard to ERISA benefits and bankruptcy. The *Graham* court held that neither the exclusion provision set out in section 541(c)(2)<sup>36</sup> nor the exemption provision of section 522(b)(2)(A) applied to ERISA.<sup>37</sup> Unlike the Fifth Circuit, however, the Eighth Circuit concentrated mainly on the possible *exempt* status of ERISA benefits and not on the possible *exclusion* of plan benefits.<sup>38</sup> The court examined the

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31. *Id.* at 585. See 11 U.S.C. § 522(b)(2)(A) (1988) (once in the estate, certain property can be exempted from the bankruptcy estate under either applicable federal or state law). The Fifth Circuit determined that ERISA did not qualify as federal law referred to in § 522(b)(2)(A). Once again, the court relied on the legislative history of the Code for its justification that ERISA did not qualify to exclude or exempt ERISA-governed property from the estate. 706 F.2d at 585.

The court reasoned that since the legislative history of § 522(b)(2)(A) specifically listed property that could be exempted under federal law, without including ERISA, Congress consciously decided not to have § 522(b)(2)(A) apply to ERISA. *Id.* See S. REP. NO. 589, *supra* note 17, at 5861.

The court attempted to distinguish ERISA from the statutes in the legislative history and thus bolster its conclusion that ERISA was never intended to apply under § 522(b)(2)(A). 706 F.2d at 585 n.29. These listed statutes, the court argued, contained absolute prohibitions against alienation, whereas ERISA's alienation requirements only related to whether or not the plan would be qualified under ERISA and be tax exempt. *Id.* at 585.

32. 706 F.2d at 586-87. The court determined that since state spendthrift-trust law was sufficient to exclude or exempt property under § 541(c)(2) and § 522(b)(2)(A) respectively, ERISA-qualified plans that constituted spendthrift trusts could still be excluded or exempted. *Id.*

33. *Id.* at 588. The court stated that "neither law nor equity would afford self-settled [ERISA-qualified] plans 'spendthrift trust' exemptions in bankruptcy." *Id.* The *Goff* court reasoned that such recognition would allow debtors to dump assets into restricted plans of which they were the beneficiaries and that were beyond the reach of creditors. *Id.* The Fifth Circuit established this rule earlier in *Judson v. Witlin (In re Witlin)*, 640 F.2d 661 (5th Cir. 1981), when it stated that if a beneficiary created a trust for his own benefit but inserted a spendthrift clause restricting alienation or assignment, such clause would be void and the benefits attachable by creditors. *Id.* at 663.

34. 706 F.2d at 589. The court, after determining that the plans involved could not be governed by state spendthrift trust law, concluded that there was no law that could serve to exclude or exempt the property from the estate. *Id.*

35. 726 F.2d 1268 (8th Cir. 1984).

36. *Id.* at 1271.

37. *Id.* at 1274.

38. *Id.* at 1271. The Eighth Circuit gave only a brief discussion of the possibility that ERISA plan benefits might be excluded from the bankruptcy estate: "[t]he question of pension rights is dealt with as a matter of exemption." *Id.* at 1272. The court again read the legislative history of § 541(c)(2) narrowly to conclude that only traditional state-recognized spendthrift trusts were

legislative history of section 522(b)(2)(A) and found that the anti-alienation provisions of an ERISA plan at issue were insufficient to exempt the property from the estate under that section.<sup>39</sup>

The Eleventh Circuit joined the Fifth and Eighth Circuits in holding that ERISA-qualified pension benefits are neither excluded nor exempted from the bankruptcy estate. In *In re Lichstrahl*,<sup>40</sup> the Eleventh Circuit concluded that “applicable nonbankruptcy law” did not encompass ERISA and, therefore, that benefits under such a plan were property of the estate under section 541(a).<sup>41</sup> The court recognized that ERISA-qualified plans could be excluded from the estate under section 541(c)(2) if they qualified under state law as spendthrift trusts.<sup>42</sup> However, the court determined that, because the plans involved were not spendthrift trusts under Florida law,<sup>43</sup> they were properly included in the estate.<sup>44</sup> Furthermore, the court determined that, once included in the estate,

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within the “applicable nonbankruptcy law” exception under § 541(c)(2). *Id.* at 1271. Additionally, the *Graham* court stated that the Bankruptcy Code had the purpose of gathering all property of the debtor, even that needed for a fresh start, and then allowing exemptions of certain property once within the estate. The court then indicated that, to this end, § 522(d)(10)(E) allowed pension benefits to be exempted to the extent necessary for subsistence. *Id.* See *supra* note 21 and accompanying text. Based on this section, the Eighth Circuit concluded that Congress never intended that pension benefits might be excluded from the estate under § 541(c)(2). 726 F.2d at 1272. The court reasoned that it would be superfluous for pension benefits to be addressed in two separate sections of the Code; thus the specific reference to pension funds in § 522(d)(10)(E) overrides the general language of § 541(c)(2). *Id.* See *supra* note 20.

39. 726 F.2d at 1274. The court reached this conclusion based on § 522(b)(2)(A)'s failure specifically to include ERISA. The Eighth Circuit acknowledged that the section's list was illustrative, but found ERISA's absence to be determinative of its applicability. The court emphasized that, although the anti-alienation provisions of some of the statutes listed in the legislative history of § 522(b)(2)(A) were similar to those found in ERISA plans, ERISA plans focus on *private*-employer payments as opposed to *federal government* payments, thus distinguishing ERISA. *Id.* For a criticism of the *Graham* decision, see Case Comment, *The Fate of ERISA-qualified Pensions Plans Under the Federal Bankruptcy Code*: *In re Graham*, 11 WM. MITCHELL L. REV. 1045 (1985).

40. 750 F.2d 1488 (11th Cir. 1985).

41. *Id.* at 1490. The court relied on the reasoning of the courts in *Goff* and *Graham* to conclude that § 541(c)(2)'s reference to “applicable nonbankruptcy law” was confined solely to state spendthrift-trust law. *Id.* See *supra* notes 28-34, 35-39 and accompanying text.

42. 750 F.2d at 1490. The court did acknowledge that an ERISA-qualified plan enforceable under state spendthrift-trust law would be excluded from the estate under § 541(c)(2). *Id.*

43. *Id.* at 1490. The court defined “spendthrift trusts” as those trusts that provide for the maintenance of another while at the same time protecting the fund from use by the beneficiary or anyone else. *Id.* See *Croom v. Ocala Plumbing & Elec. Co.*, 57 So. 243 (Fla. 1911). The *Lichstrahl* court then indicated that a trust over which a beneficiary had total control was not a spendthrift trust. 750 F.2d at 1490.

44. 750 F.2d at 1490.

these benefits were not exemptible under section 522(b)(2)(A).<sup>45</sup>

With the decision in *In re Daniel*,<sup>46</sup> the Ninth Circuit joined the list of circuits including ERISA-plan benefits in bankruptcy estates. In *Daniel*, the court relied on *Goff* to conclude that Congress did not intend that anti-alienation provisions of ERISA-qualified plans create exceptions or exemptions to the bankruptcy estate under either section 541(c)(2) or section 522(b)(2)(A).<sup>47</sup> The court based its determination of the inapplicability of section 541(c)(2) to ERISA on both the section's legislative history<sup>48</sup> and case law.<sup>49</sup> Further, the court concluded that ERISA did not fall under the exemptions contemplated by section 522(b)(2)(A), relying on the legislative history of the section<sup>50</sup> and the unique character of ERISA benefits.<sup>51</sup>

In *In re Moore*,<sup>52</sup> however, the Fourth Circuit held that ERISA consti-

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45. *Id.* at 1491. The *Lichstrahl* court stated that since the plans involved could not be governed by state spendthrift-trust law, the plan benefits could be exempted under § 522(b)(2)(A) only if ERISA constituted federal law under that section. *Id.* See *supra* note 21. The court then determined that Congress did not intend to include ERISA within the definition of § 522(b)(2)(A), see *supra* notes 31, 37 and accompanying text, and that this result was compelled by ERISA's absence from the illustrative list of statutes to which § 522(b)(2)(A) applied. 750 F.2d at 1491. See *supra* note 31.

46. 771 F.2d 1352 (9th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986).

47. *Id.* at 1359.

48. *Id.* at 1359-60. The court stated that both the House and the Senate reports "expressly limit § 541(c)(2) to spendthrift trusts." *Id.* at 1359 n.17.

49. *Id.* at 1360. The court sided with the courts in *Goff*, *Graham*, and *Lichstrahl* and held that "applicable nonbankruptcy law" refers only to state spendthrift trust law." *Id.* The court did recognize that ERISA plans could be excluded under § 541(c)(2) if they also qualified as spendthrift trusts. *Id.*

50. 771 F.2d at 1361. The court also relied on the holdings in *Goff*, *Graham* and *Lichstrahl*, which held that ERISA was not intended to be included in the list of exempted federal law under § 522(b)(2)(A) because of its conspicuous absence from that section's legislative history. See *supra* note 31.

51. 771 F.2d at 1361. The court emphasized that the list of benefits in statutes exempt under § 522(b)(2)(A) were all federal in nature, whereas ERISA benefits were derived from private employers. The court reasoned that this distinction mandated that benefits protected under ERISA were not to be afforded the same protections in bankruptcy given to benefits that originated with the government. *Id.*

The *Daniel* case was recently affirmed by the Ninth Circuit in *In re Reed*, No. 90-15874, 1991 U.S. App. LEXIS 28739 (9th Cir. December 11, 1991). Although *Reed* recognized that several other circuits had reached contrary findings since *Daniel* was decided, it refused to overturn the *Daniel* decision. The *Reed* court stated that since "*Daniel* is the law of this circuit and also the majority view in the nation," it would continue to follow *Daniel*'s ruling that ERISA regulations do not constitute "applicable nonbankruptcy law" as defined in § 542(c)(2) of the Bankruptcy Code. *Id.* at \*9-10.

52. 907 F.2d 1476 (4th Cir. 1990). In *Moore*, the trustee of several Chapter Seven debtors



tutes “applicable nonbankruptcy law.”<sup>53</sup> The court based its decision solely on the wording of section 541(c)(2) itself, indicating that an examination of the legislative history was unnecessary.<sup>54</sup> As a result, the court concluded that ERISA’s anti-alienation provisions protected a debtor’s interest in an ERISA-qualified plan from inclusion in the bankruptcy estate.<sup>55</sup> In *Moore*, the Fourth Circuit became the first appellate court to

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sought to have the debtors’ interests in ERISA-qualified profit sharing and pension plans included in the debtor’s bankruptcy estates. *Id.* at 1476-77.

53. *Id.* at 1480. The court based its determination on the plain language of § 541(c)(2) and concluded that “applicable nonbankruptcy law” means *all* nonbankruptcy law. *Id.* at 1478-79. *See supra* note 12.

Additionally, the court relied on other uses of the term “applicable nonbankruptcy law” in the Bankruptcy Code to buttress its opinion that “applicable nonbankruptcy law” was not limited to state spendthrift-trust law. 907 F.2d at 1478. The court stated that it was unlikely that Congress intended the same term to have different meanings throughout the Code, especially in light of the fact that the entire Code was enacted at the same time. *See* 11 U.S.C. §§ 1125(d), 108(a) (1988). *See also* Morrison-Knudson Constr. Co. v. Director, OWCP, 461 U.S. 624, 633 (1983) (“[A] word is presumed to have the same meaning in all subsections of the same statute.”).

Finally, the court indicated that when Congress had intended state law to apply, it expressly stated so. 907 F.2d at 1478. *See, e.g.*, 11 U.S.C. § 109(c)(2) (1988) (“An entity may be a debtor . . . if and only if such entity . . . is generally authorized to be a debtor under such chapter by State law”); 11 U.S.C. § 522(b)(1) (1988) (“an individual debtor may exempt from property of the estate . . . property that is specified under subsection (d) of this section, unless the State law . . . is applicable . . .”). The court reasoned that if Congress had wanted only state spendthrift law to apply, it would not have used the term “applicable nonbankruptcy law” in § 541(c)(2). 907 F.2d at 1478. Congress did not use the term “state spendthrift law,” however, and the court declined to read such a limitation into the statute. *Id.* (citing *In re Ralstin*, 61 B.R. 502 (Bankr. D. Kan. 1986)).

54. 907 F.2d at 1478-79. Although other courts relied on the legislative history of § 541(c)(2), *see infra* notes 30, 38, 41, 48 and accompanying text, the Fourth Circuit held that the unambiguous language of § 541(c)(2) obviated the need for review. 907 F.2d at 1479. *See* Rubin v. United States, 449 U.S. 424, 430 (1981) (“When we find the terms of a statute unambiguous, judicial inquiry is complete.”).

Additionally, the Fourth Circuit reasoned that even if an ambiguity warranted resort to the legislative history of the section, such history was inconclusive. 907 F.2d at 1479. Section 541(c)(2)’s legislative history states that “[§ 541(c)(2)] preserves restrictions on transfer of a spendthrift trust to the extent that the restriction is enforceable under applicable nonbankruptcy law.” H.R. REP. NO. 595, 95th Cong., 2d Sess. 369 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6325.

While the Fourth Circuit declined to give authoritative value to the references to spendthrift trusts in the legislative history of § 541(c)(2), in *Goff* the Fifth Circuit took this reference to indicate that § 541(c)(2) was to apply only to state spendthrift trust law. 706 F.2d at 589.

55. 907 F.2d at 1480. The court indicated that in light of Congress’ purpose in enacting ERISA, *see supra* notes 22-26 and accompanying text, to disregard the anti-alienation provisions of the Act would be counterproductive. ERISA seeks to protect employee retirement benefits and to ensure that employees will receive them. *Id.* If the anti-alienation provisions were not given effect, “substantive pension benefits [would] be subject to the vagaries of state law.” *Id.* (citing PPG Indus. Pension Plan A v. Crews, 902 F.2d 1148, 1151 (4th Cir. 1990)). To this end, ERISA § 1144(a) states that ERISA is to supersede all state laws that relate to employee benefit plans. *Id.* 29 U.S.C. § 1144(a) (1988). *See also infra* note 77.

determine that ERISA's status as "applicable nonbankruptcy law" enabled the anti-alienation provisions of ERISA to protect a debtor's interest in a pension plan from becoming property of the bankruptcy estate.<sup>56</sup>

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56. Recently, two more circuits followed the reasoning espoused in *Moore* and determined that ERISA does constitute "applicable nonbankruptcy law" for § 541(c)(2) purposes.

In *Velis v. Kardanis*, 949 F.2d 78 (3d Cir. 1991), the Third Circuit held that the "applicable nonbankruptcy law" provision of § 541(c)(2) includes federal law, and that, therefore, § 541(c)(2)'s exclusionary provision covers ERISA-regulated plans. "We believe it reasonable to conclude that Congress intended to provide protection against the claims of creditors for a person's interest in pension plans, unless vulnerable to challenge as fraudulent conveyances or voidable preferences." *Id.* at 82.

In reviewing the applicability of ERISA provisions to the contested language in § 541(c)(2), the *Velis* court stated that "any conceivable doubt as to the meaning of the term . . . is removed when one considers how the same term is used elsewhere in the Bankruptcy Code." *Id.* at 81 (citing *United Sav. Ass'n. v. Timbers of Inwood Forest*, 484 U.S. 365, 371 (1988)). The *Velis* court then examined other sections of the Bankruptcy Code (§ 25(d), §§ 108(a), (b), and (c), and § 365(n)(1)(B)), and determined that these provisions clearly included federal law in their definitions of "applicable nonbankruptcy law." *Id.* Since the Bankruptcy Code uniformly includes federal law as a part of applicable nonbankruptcy law, the *Velis* court held that ERISA constituted "applicable nonbankruptcy law" for § 541 purposes as well. *Id.* at 82.

*In re Harline*, No. 90-4157, 1991 U.S. App. Lexis 28540 (10th Cir. December 5, 1991), is another recent case to adopt the *Moore/Lucas* rationale. There the court noted that "even considering the legislative history [of § 541], which we acknowledge was almost exclusively concerned with preserving state-recognized spendthrift trusts, we do not find 'a clearly expressed legislative intention' to limit the meaning of 541(c)(2) exclusively to state-recognized spendthrift trusts." *Id.* at \*19-20 (citing *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980) ("Absent a clearly expressed legislative intention to the contrary, the language must ordinarily be regarded as conclusive.")). Thus, through *Harline*, the Tenth Circuit became the fourth circuit to find that § 541(c)(2) restrictions must be read in harmony with ERISA regulations.

Several other lower courts have similarly decided this issue. *See, e.g., In re Majul*, 119 B.R. 118, 123 (Bankr. W.D. Tex. 1990) ("exclusion [of ERISA] in section 541(c)(2) does not evidence a congressional intent to include ERISA pension benefits in property of the estate"); *In re Ralstin*, 61 B.R. 502, 504 (Bankr. D. Kan. 1986) ("The crucial question . . . [is] whether the debtor's interest in qualified ERISA plans are beyond the reach of general creditors in non-bankruptcy proceedings.")).

In addition, in *Morton v. Farm Credit Services*, 937 F.2d 354 (7th Cir. 1991), the Seventh Circuit intimated that it would follow a line of reasoning akin to *Moore* if an ERISA question arose. In *Morton*, the court held that a teacher's interest in a retirement and equity fund was excluded from the bankruptcy estate. The court agreed that "the plain language of § 541(c)(2) does not require that a retirement plan be a 'traditional' spendthrift trust . . . § 541(c)(2) should not be confined in its recognition of enforceable transfer restrictions to those found in 'traditional' spendthrift trusts." *Id.* at 357 (quoting *McLean v. Central States, Southeast & Southwest Pension Fund*, 762 F.2d 1204, 1207 n.1 (4th Cir. 1985)).

Furthermore, in the Ninth Circuit there are indications that the line of reasoning espoused in *Moore* is gaining support. In *In re Kincaid*, 917 F.2d 1162 (9th Cir. 1990), Judge Fletcher voiced his concerns regarding the Ninth Circuit's continued adherence to the decision in *In re Daniel*, 771 F.2d 1352 (9th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986), *see supra* notes 46-51, and indicated that the arguments posed by the *Moore* court were more consistent with the purposes behind both the Bankruptcy Code and ERISA. 917 F.2d at 1169 (Fletcher, J., concurring). However, in *In re Reed*, No. 90-15874, 1991 U.S. App. LEXIS 28739 (9th Cir. Dec. 11, 1991), the Ninth Circuit had

In *In re Lucas*,<sup>57</sup> the Sixth Circuit determined that ERISA did constitute “applicable nonbankruptcy law” and that the anti-alienation provisions contained in an ERISA-qualified plan were sufficient to exclude a debtor’s interest in the plan from the bankruptcy estate under section 541(c)(2).<sup>58</sup> In reaching this conclusion, the court rejected the view that “applicable nonbankruptcy law” referred solely to state spendthrift-trust law.<sup>59</sup> Instead, the court adopted the more expansive view that “applicable nonbankruptcy law” refers to all nonbankruptcy law.<sup>60</sup>

The Fourth Circuit’s *Moore* holding heavily influenced the Sixth Circuit.<sup>61</sup> The *Lucas* court determined that the wording of section 541(c)(2) was unambiguous, rendering an analysis of the legislative history unnecessary and unwarranted.<sup>62</sup> The Sixth Circuit was persuaded by the *Moore* court’s conclusion that limiting “applicable nonbankruptcy law” to state spendthrift-trust law would be inconsistent with the other references to “applicable nonbankruptcy law” in the Bankruptcy Code.<sup>63</sup> The court also noted that congressional references to state law were specific and express.<sup>64</sup> Furthermore, even if the legislative history applied, the *Lucas* court agreed with the *Moore* court that it was inconclusive.<sup>65</sup>

After concluding that ERISA qualified as “applicable nonbankruptcy law,” the *Lucas* court then addressed whether ERISA contained an enforceable transfer restriction that would prevent benefits from being included in the bankruptcy estate under section 541(c)(2).<sup>66</sup> After

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the opportunity to review its decision in *Daniel*. The Ninth Circuit upheld its determination that ERISA regulations do not constitute “applicable nonbankruptcy law” as referred to in § 541(c)(2) of the Bankruptcy Code. *Id.* at \*9-10.

57. 924 F.2d 597 (6th Cir.), cert. denied, 111 S. Ct. 2275 (1991).

58. *Id.* at 601. Unlike the courts adopting the narrow construction of § 541(c)(2), the Sixth Circuit never addressed the issue of whether the benefits might be subject to exemption under § 522(b)(2)(A). The court held that its determination that ERISA was “applicable nonbankruptcy law” under § 541(c)(2) disposed of the case. *Id.* at 603.

59. *Id.* at 601.

60. *Id.*

61. See *supra* notes 52-56 and accompanying text.

62. 924 F.2d at 601.

63. *Id.* See also *supra* note 53 and accompanying text.

64. 924 F.2d at 601 (when Congress “intended to refer to state law, it did so expressly”). See *supra* note 53 and accompanying text.

65. 924 F.2d at 602. See *supra* note 54 and accompanying text. The *Lucas* court argued that the legislative history only clarified that § 541(c)(2) was to continue to apply to spendthrift trusts, but that it in no way limited the protection of § 541(c)(2) to these trusts. 924 F.2d at 602. See also *supra* note 18 and accompanying text.

66. 924 F.2d at 602.

outlining the legislative purpose behind ERISA,<sup>67</sup> the Sixth Circuit determined that the protection of worker benefits could be achieved only by granting enforceability to the plan's anti-alienation and assignment provisions.<sup>68</sup> The court then concluded that the anti-alienation provisions, written to protect worker benefits from employer withdrawal and from general creditors, also prevented turnover of the plan benefits to the bankruptcy trustee.<sup>69</sup>

The Sixth Circuit noted that its holding would harmonize the Bankruptcy Code, ERISA, and the Internal Revenue Code.<sup>70</sup> In addition, the court pointed out that this result would ensure that a plan would not lose its tax-exempt status under Internal Revenue Code section 501 due to the turnover of one participant's interest to a bankruptcy trustee.<sup>71</sup> Finally, the court observed that ensuring that the anti-alienation provisions of ERISA would be given effect resulted in uniform benefits treatment.<sup>72</sup>

The Sixth Circuit's determination in *In re Lucas* that ERISA constitutes "applicable nonbankruptcy law," and, as a result, that a debtor's interest in an ERISA-qualified plan is excluded from the bankruptcy estate, is a sound decision. The language of section 541(c)(2) is clear and unambiguous.<sup>73</sup> Decisions that have turned to the legislative history of section 541(c)(2) to resolve this issue over emphasize the history's importance.<sup>74</sup> By holding that ERISA does not constitute "applicable nonbankruptcy law," the majority of courts have denied ERISA the effectiveness that Congress intended.<sup>75</sup>

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67. *Id.* See *supra* note 23 and accompanying text.

68. 924 F.2d at 603. The court emphasized Congress' desire to ensure that workers actually would receive the benefits promised to them. To achieve this goal, the *Lucas* court argued, Congress included § 1056(d)(1) to prohibit the assignment or alienation of plan benefits. *Id.* at 602-03.

69. *Id.* at 603.

70. *Id.*

71. *Id.* See *Moore*, 907 F.2d at 1480. See also *supra* note 27.

72. 924 F.2d at 603.

73. See *supra* notes 17-20, 27.

74. "Congress enacted § 541(c)(2), not its accompanying legislative reports." *Moore*, 907 F.2d at 1479. As a result, the statute must be interpreted on its face; "applicable nonbankruptcy law" must be read to mean just that. It is beyond the province of the courts to assign a meaning to an unambiguous term based on an inconclusive reference in the statute's legislative history. "Legislative history can be a legitimate guide to a statutory purpose obscured by ambiguity, but '[i]n the absence of a clearly expressed legislative intention to the contrary, the language of the statute itself must ordinarily be regarded as conclusive.'" *Burlington Northern Railroad*, 481 U.S. 454, 461 (1987) (quoting *United States v. James*, 478 U.S. 597, 606 (1986)). As a result, the legislative history of § 541(c)(2) should not be read to override the clear expression of § 541(c)(2).

75. See *supra* 31 and accompanying text. The courts in *Goff* and *Graham* indicated that

If ERISA is held not to be “applicable nonbankruptcy law,” ERISA funds would be unprotected from inclusion in the bankruptcy estate unless courts consider them spendthrift-trust funds.<sup>76</sup> Congress could not have intended this result because its purpose in enacting ERISA was to implement a uniform independent system for regulating pension plans.<sup>77</sup> Furthermore, granting exclusion to ERISA-plan benefits furthers Congress’ goal of protecting employees’ retirement benefits from any and all types of alienation.<sup>78</sup>

Adoption of the position taken by the Sixth Circuit in *Lucas* should encourage continued investment in ERISA-qualified plans and increased protection for employee benefits. In addition, classifying ERISA as “applicable nonbankruptcy law” will serve to achieve Congress’ intent in passing ERISA; ERISA will afford the maximum amount of protection in all settings. If ERISA benefits are not excluded from bankruptcy estates, not only will employees encourage employers to invest funds in other exempt, and possibly more risky ventures, but also the expectations of plan participants and their beneficiaries will be negated.

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ERISA does not constitute federal law under § 522(b)(2)(A). See *supra* notes 31, 39 and accompanying text.

It appears that the *Goff* court reasoned that ERISA benefits were not to be afforded the same protection as were benefits derived under statutes listed in the legislative history of § 522(b)(2)(A). However, a careful reading of this legislative history reveals that the operative language of the section is, “[s]ome of the other items that may be excluded . . .” S. REP. NO. 589, *supra* note 17, at 5861 (emphasis added). Therefore, the list of statutes in the legislative history of § 522(b)(2)(A) must be seen as only illustrative and not exclusive.

76. The whole purpose of ERISA was to provide protection for employee retirement benefits. To this end, Congress required that, for a plan to be qualified under ERISA (and to obtain tax exempt status), it had to contain internal anti-alienation provisions. See *supra* note 23 and accompanying text.

77. See *supra* notes 23-24. Section 1144(a) of ERISA states that, except for situations not applicable here, “the provisions of this subchapter . . . shall supersede any and all state law insofar as they may now or hereafter relate to any employee benefit plan. . . .” 29 U.S.C. § 1144(a) (1988). See *supra* note 27 and accompanying text. If ERISA were intended to supersede all state law regarding employee benefit plans, it would be completely illogical that one would have to return to these superseded state laws to find protection for ERISA plans. See *supra* note 55.

78. Congress felt that ERISA was needed because of the uncertainty employees faced regarding whether they would actually receive retirement benefits that they had been promised. See *supra* notes 23-25 and accompanying text. As a result, Congress’ goal in encouraging participation in ERISA-qualified plans could be achieved by making ERISA plans as attractive as possible by allowing the required anti-alienation provisions to be given effect in bankruptcy proceedings. See *supra* notes 17, 25.