For example, the rules governing the liquidation of a financial institution after the Federal Deposit Insurance Corporation has been appointed receiver have similar exceptions for creditors who lacked notice.[277] The FDIC must publish and mail notice of a liquidation to all creditors to allow them a certain period for filing claims.[278] Claims filed after the bar date are disallowed, and if a claimant does not seek a judicial determination of a disallowed claim, the claimant has no "further rights or remedies with respect to such claim," i.e., the debt is discharged.[279]

Like section 726(a)(2)(C),[280] these insolvency receiverships have an identical exception to the bar date filing requirement.[281] Under

---

2009, 2037 n.143 (1995) ("Strictly speaking, the Borrowed Statute Rule applies only to statutes borrowed from other jurisdictions, while the Rule of Statutes in Pari Materia states the same principle for statutes from the same jurisdiction."). The borrowed statute rule generally provides that when Congress "borrows" the text of a statute it "borrows" settled interpretations placed on that statute, with certain exceptions. *See, e.g.*, Shannon v. United States, 512 U.S. 573, 581 (1994) ("[When Congress] has borrowed from the statutes of a State provisions which had received in that State a known and settled construction . . . that construction must be deemed to have been adopted by Congress . . . ." (citation omitted)); Lorillard v. Pons, 434 U.S. 575, 581 (1978); *see also In re* OTC Net, Inc., 34 B.R. 658, 660 (Bankr. D. Colo. 1983) ("And the priorities of distribution [in a Securities Investor Protection Act liquidation] are set forth by that section as the same as those in 11 U.S.C. § 726.").

[277] *See, e.g.*, Heno v. FDIC, 20 F.3d 1204, 1206 (1st Cir. 1994).

[278] *See id.*

[279] *See id.* at 1207; Seaway Bank & Tr. Co. v. J&A Series I, LLC, 962 F.3d 926, 930 (7th Cir. 2020) (noting courts lack authority to review claims unless they endure the administrative claim process); Superior Bank, FSB v. Boyd (*In re* Lewis), 398 F.3d 735, 740 (6th Cir. 2005); *see also* Hollace T. Cohen, *Orderly Liquidation Authority: A New Insolvency Regime to Address Systemic Risk*, 45 U. RICH. L. REV. 1143, 1172–74 (2011); Kenneth J. Caputo, *Customer Claims in SIPA Liquidations: Claims Filing and the Impact of Ordinary Bankruptcy Standards on Post-Bar Date Claim Amendments in SIPA Proceedings*, 20 AM. BANKR. INST. L. REV. 235, 237–47 (2012) (discussing liquidations and the claim process under the Securities Investor Protection Act).

[280] *Compare* 11 U.S.C. § 726(a)(2)(C)(i)–(ii) (exception for late-filed claims due to lack of notice that are filed in time to permit payment), *with* 12 U.S.C. § 1821(d)(5)(C)(ii)(I)–(II) (same), 12 U.S.C. § 5390(a)(3)(C)(ii)(I)–(II) (same), 12 U.S.C. § 1787(b)(5)(C)(ii)(I)–(II) (same), *and* 12 C.F.R. § 380.35(b)(2)(ii) (2022) ("A claim is 'filed in time to permit payment' when it is filed before a final distribution is made by the receiver.").

[281] *See Heno*, 20 F.3d at 1207; *In re Lewis*, 398 F.3d at 740 ("Claims filed after the date specified in the notice must be disallowed unless 'the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date.'" (citation omitted); Miller v. FDIC, 738 F.3d 836, 842 (7th Cir. 2013) ("But the statute also contains an exception for claimants who do not actually receive the

this exception, late-filed claims are permitted "*only if* 'the claimant did not have notice of the appointment of the receiver in time to file [a claim by the bar date]; and such claim is filed in time to permit payment of such claim.'"[282] Congress intended for late-filed claims to be disallowed unless the claimant did not have notice of the bar date and a claim is filed in time to permit payment.[283] Thus, timely means filed before a final distribution.

Likewise, some receiverships under state law have a similar rule.[284] Generally, claims against the assets of a receivership estate must be filed by the bar date.[285] Claims not filed by the bar date do not receive any share of the assets.[286] For example, under the Uniform Commercial Real Estate Receivership Act, a creditor must submit a claim to the receiver by the bar date.[287] Creditors submitting untimely claims do not receive a distribution unless the court orders

---

notice of the deadline in the mail and time remains to allow payment of the claim. In that situation the FDIC may still consider the claim." (citation omitted)).

[282] *Heno*, 20 F.3d at 1207 (citing § 1821(d)(5)(C)(ii)). Congress clearly contemplated the receiver to defer to the late-coming claimant. *Contra* Croix Oil Co. v. Mai Yer Moua (In re Mai Yer Moua), 457 B.R. 755, 762 (Bankr. D. Minn. 2011) ("But what if a tardily-filed claim comes in after the trustee has filed a final report and proposed distribution, or has noticed one to creditors, but the checks have not been cut? Should the trustee be under an (uncompensated) obligation to redo and renotice everything . . . ?").

[283] *See, e.g.*, *Heno,* 20 F.3d at 1207. The FDIC also rejected comments suggesting "that an 'excusable neglect' exception to late-filed claims like the Bankruptcy Code should be used." Certain Orderly Liquidation Authority Provisions Under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 Fed. Reg. 41626, 41636 (July 15, 2011) (to be codified at 12 C.F.R. pt 380).

[284] *See* Commodity Futures Trading Comm'n v. Lake Shore Asset Mgmt. Ltd., 646 F.3d 401, 404 (7th Cir. 2011) (recognizing the "similarity between an insolvency receivership and a bankruptcy proceeding"). Receiverships are not limited to state law. Federal receiverships grounded in federal common law, although uncommon, are a remedy available to creditors after satisfying the jurisdictional requirements for entry into a federal court, which gives a court ancillary jurisdiction to appoint a receiver. *See* Tabb, *supra* note 82, at 21–23.

[285] *See Lake Shore*, 646 F.3d at 403 ("[T]he receiver sent a notice to Lake Shore's creditors, including Andbanc, telling them they had to file a claim with the receiver within 45 days or be excluded from the distribution of the receivership's assets.").

[286] *See id.* at 404.

[287] UNIF. COM. REAL EST. RECEIVERSHIP ACT § 20(b) (Unif. L. Comm'n 2015). The Uniform Commercial Real Estate Receivership Act has a rule for estates with insufficient assets, i.e., no-asset cases; in such cases, unsecured creditors need not file claims unless it is discovered later that the receivership generated receipts more than the amounts needed to satisfy secured claims. *See id.* § 20, cmt. 6.

otherwise.[288] But a court may allow an untimely claim if, for example, the creditor gained knowledge of the receivership after the bar date.[289] This indicates if a distribution has not been made, the creditor who lacked notice may file a claim and receive a distribution.[290] So in some cases an untimely claim is treated as timely.[291]

There is a similar rule for probate proceedings in some jurisdictions. Virtually all jurisdictions have nonclaim statutes in their probate codes.[292] A nonclaim statute mandates timely filing of a claim, and if not timely filed, the claim is forever barred.[293] But a minority of jurisdictions have an exception[294] for unfiled claims.[295] In these states, a precondition to a tardy filing by a claimant who lacked notice is filing the claim before a distribution.[296] Thus, in some states a claim is timely if it is filed before a distribution.

These principles may provide greater insight in deciding whether a claim filed after the bar date but before a distribution is timely in a chapter 7 case.

---

[288] *See id.* § 20, cmt. 2.

[289] *Id.*

[290] *See, e.g.*, *SEC v. Hardy*, 803 F.2d 1034, 1039 n.5 (9th Cir. 1986). In *Hardy*, the Ninth Circuit recognized the possible suggestion that the deadline for filing claims in an equity receivership "should be flexibly applied where the assets have not been distributed." *See id.*

[291] *See* 75 C.J.S. *Receivers* § 274, Westlaw (database updated Nov. 2022) ("[T]he court may, in its discretion, permit a creditor to come in and prove his or her claim thereafter, at any time before actual distribution, or even after partial payments, if there is a surplus in the hands of the receiver, so as not to interfere with payments already made." (footnotes omitted)).

[292] *See* Tulsa Pro. Collection Servs., Inc. v. Pope, 485 U.S. 478, 479 (1988). One case has noted the due process concerns expressed in *Pope* apply by analogy to debts held by omitted creditors in a chapter 7 case. *See* Schouten v. Jakubiak (*In re* Jakubiak), 591 B.R. 364, 392–93 (Bankr. E.D. Wis. 2018).

[293] *See Pope*, 485 U.S. at 479–81; *see also* Mark Reutlinger, *State Action, Due Process, and the New Nonclaim Statutes: Can No Notice Be Good Notice If Some Notice Is Not?*, 24 REAL PROP. PROB. & TR. J. 433, 434–40 (1990).

[294] *See* 31 Am. Jur. 2d *Executors and Administrators* § 482, Westlaw (database updated Nov. 2022) ("In the absence of any statutory authorization, a court may not extend the time for filing a claim fixed by the nonclaim statute.").

[295] *See, e.g.*, Debra A. Falender, *Notice to Creditors in Estate Proceedings: What Process Is Due?*, 63 N.C. L. REV. 659, 660 n.7, 667 n.38, & 669 n.49 (1985). The existence of such statutes does not appear to be universal. *See id.*

[296] *See id.* at 667 n.38 ("Other states extend the time for filing claims under certain circumstances, but require filing before distribution to avoid forfeit of the claim.").

3. Purpose and Narrow Construction

Interpreting "timely" to include claims filed in time to permit payment supports the policy of providing debtors a fresh start.[297] If a plain construction[298] of this exception to discharge means the purpose of section 523(a)(3)(A) is limited to the protection of the right to share in the distribution, then "timely" should mean in time to exercise that right.[299] But under the Dodd-Frank Wall Street Reform and Consumer Protection Act the purpose of allowing late-filed claims ensures the meaningful opportunity for claimants to participate in the claims process, which could mean something more than merely sharing in the distribution.[300] Under the Code, however, interpreting "timely" in furtherance of protecting the right to share in the distribution may support the dischargeability of the debt if the creditor learns of the case in time to permit filing a claim and sharing in the distribution.

---

[297] *See* Kowalski v. Romano (*In re* Romano), 59 F. App'x 709, 714 (6th Cir. 2003).

[298] *But see* Jonathon S. Byington, *The Fresh Start Canon*, 69 FLA. L. REV. 115, 116–17 (2017) (examining the tension between the exceptions to discharge and the fresh start policy). It is true the Court has stated the "exceptions to discharge should be confined to those plainly expressed." *See* Kawaauhau v. Geiger, 523 U.S. 57, 61–62 (1998) (citation omitted) (internal quotation marks omitted). But the Court has also recognized that this principle is consistent with the exceptions to discharge that benefit a typically more honest creditor. *See* Bullock v. BankChampaign, N.A., 569 U.S. 267, 275–76 (2013) (collecting exceptions to discharge dealing with fault, governmental, and spousal creditors). Section 523(a)(3)(A) does not necessarily benefit an honest creditor if the debtor through mistake and inadvertence omitted a creditor. *See* 11 U.S.C. § 523(a)(3)(A). And a confined construction—not extending the statutory language to meet a particular set of facts—would be consistent with the doctrine of *Gleason*. *See* United States v. Sotelo, 436 U.S. 268, 285–86 (1978) (Rehnquist, J., dissenting) (citing Gleason v. Thaw, 236 U.S. 558, 562 (1915) (refusing to hold that the services of an attorney fall under the contours of "property" for the fraud exception to discharge)). Confining the exceptions to discharge to those plainly expressed may merely mean excepting from discharge the debts Congress plainly chose to except from discharge. *See* Schwab v. Reilly, 560 U.S. 770, 790 n.17 (2010).

[299] *See, e.g.*, *In re Romano*, 59 F. App'x at 714.

[300] As discussed *supra* Section III.2.a, the orderly liquidation of certain financial institutions allow certain tardy claims. The purpose of allowing these ensures a "meaningful opportunity for claimants to participate in the claims process . . . ." *See* Covered Broker-Dealer Provisions Under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 85 Fed. Reg. 53645, 53656 (Aug. 31, 2020). Participating in the claims process could mean something *more* than sharing in the distribution. *See supra* notes 185–89 and accompanying text.

4. Legislative History

The legislative history may also provide some limited support. Since the Code was not enacted by a simple legislative procedure, one commentator has suggested consulting the floor statements first, then the Senate Report, and finally the House Report to glean legislative intent.[301] The Court has also treated the floor statements by "Representative Edwards and his counterpart floor manager Senator DeConcini" on the Bankruptcy Reform Act of 1978 as "persuasive evidence of congressional intent."[302]

The floor statements by Representative Edwards and Senator DeConcini express their intent to overrule *Birkett*.[303] Likewise, the reports submitted by the Senate and House Judiciary Committee indicate section 523(a)(3) excepts "a debt from discharge if it was not scheduled in time to permit timely action by the creditor to protect his rights."[304]

Ascertaining the intent in the reports to clarify some "uncertainties" generated by the caselaw "construing 17a(3)" is difficult to identify.[305] The uncertainties generated in the caselaw may have been created by *Robinson*,[306] but Congress did not overrule *Robinson* or *Milando*. Congress does not employ methods of stealth in abrogating prior bankruptcy practice. For example, there was no reluctance in overruling other lower court decisions.[307] Because the floor statements are persuasive evidence of congressional intent, the overruling of *Birkett* is the clearest pronouncement of legislative intent from these materials.

In sum, depending on what is the "clearer pronouncement" of legislative intent, the legislative history may be useful,[308] in determining the right protected under section 523(a)(3)(A).

---

[301] *See* Kenneth N. Klee, *Legislative History of the New Bankruptcy Law*, 28 DEPAUL L. REV. 941, 957–58 (1979).

[302] Begier v. I.R.S., 496 U.S. 53, 64 n.5 (1990).

[303] Schouten v. Jakubiak (*In re* Jakubiak), 591 B.R. 364, 385 (Bankr. E.D. Wis. 2018) (citations omitted).

[304] *Id.* (citations omitted) (internal quotation marks omitted).

[305] *Id.* at 385 n.4 (citations omitted).

[306] *See id.*; Helbling & Klein, *supra* note 11, at 57; Lott Furniture, Inc. v. Ricks (*In re* Ricks), 253 B.R. 734, 750 n.62 (Bankr. M.D. La. 2000) ("It could be that Congress meant to strike a new path with statutory language that overrules both *Birkett* and *Robinson*.").

[307] *See, e.g.*, S. Rep. No. 95-989, at 88 (1978) (overruling "*Dubay v. Williams*, 417 F.2d 1277 (9th Cir. 1966)"); H.R. Rep. No. 95-595, at 374 (1977) (same).

[308] Legislative history should not be relied on if it is ambiguous or imprecise. *See, e.g.*, Marrama v. Citizens Bank of Mass., 549 U.S. 365, 371–72 (2007).

B. Implications

The window of opportunity to give notice to an omitted creditor after the bar date but before a distribution has slowly begun to plague the courts on questions of dischargeability. This Article does not purport to have a complete answer to the questions raised. It does, however, aspire to advance the conversation by offering observations given the current standoff.

First, and most importantly, the plain language approach assumes the right to *participate* in a distribution of the estate includes something more than receiving a dividend.[309] According to some courts, meaningful participation would include the right to object to the claims of other creditors and the right to object to administrative expenses.[310] This participation could increase the available distribution to all creditors.[311] So if a creditor cannot participate and increase the dividend to all creditors, the creditor has been deprived of its rights and its debt is not discharged.[312]

But this premise invites the question: how do we know the creditor would successfully increase the dividend available to all creditors? Not only that, a trustee has a duty to object to claims, which would increase any dividend.[313] But assuming the truth of this premise, the creditors who did file claims should have already exercised their rights to increase the dividend.[314] Creditors with timely—though minuscule—claims may not have been as motivated to backstop the trustee and increase the dividend. Even so, this premise rewards timely creditors who fiddled while the bankruptcy court fires burned.[315] As the maxim has it: for time is a means of destroying obligations and

---

[309] *See, e.g.*, Purcell v. Khan (*In re* Purcell), 362 B.R. 465, 476 (Bankr. E.D. Cal. 2007); Croix Oil Co. v. Mai Yer Moua (*In re* Mai Yer Moua), 457 B.R. 755, 763 (Bankr. D. Minn. 2011).

[310] *See In re Purcell*, 362 B.R. at 476; *In re Mai Yer Moua*, 457 B.R. at 760 ("[Section] 523(a)(3)(A) protects a right to meaningfully participate in the estate, actual administrative performance is the context that has to be considered in determining the congressional intent behind its words."). *But see* Eglin Fed. Credit Union v. Horlacher (*In re* Horlacher), No. 08CV173, 2009 WL 903620, at *3 n.6 (N.D. Fla. Mar. 31, 2009) (noting Congress intended the right to participate in asset distribution by overruling the right to participate in all aspects of the administration of the estate).

[311] *See In re Purcell*, 362 B.R. at 476.

[312] *See id.*; *see also In re Mai Yer Moua*, 457 B.R. at 763.

[313] *See, e.g.*, 11 U.S.C. § 704 (a)(5).

[314] *See, e.g.*, Morris v. Zimmer (*In re* Zimmer), 623 B.R. 139 147–50 (Bankr. W.D. Pa. 2020) (addressing the creditors' standing to object to claims partly because disallowance would produce a greater distribution).

[315] *Cf.* Boyajian v. DeFusco (*In re* Giorgio), 50 B.R. 327, 329 (D.R.I. 1985).

actions, because time runs against the slothful and contemners of their own rights.[316]

Second, *Taggart*'s standard for determining whether the discharge order's injunction has been violated will be implicated.[317] In *Taggart*, the Court held a creditor cannot be held in contempt for violating the discharge injunction if there is an "objectively reasonable basis for concluding that the creditor's conduct might be lawful."[318] The inquiry is on the objectiveness of the violation.[319] The split in courts and the lack of any binding precedent may provide a creditor with an objectively reasonable basis for concluding the debt was not discharged, meaning any attempts to collect the debt would be lawful.

On top of that, the extent of a debt's dischargeability may also be challenged. Would dischargeability be pro rata? Courts have rejected "pro rata dischargeability" arguments.[320] These courts acknowledge this result produces a harsh result.[321] Some courts also

---

[316] *See id.*; *see also* BLACK, *supra* note 252, at 1157.

[317] *See* Taggart v. Lorenzen, 139 S. Ct. 1795, 1799 (2019) ("In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful.").

[318] *Id.* at 1801.

[319] *See, e.g.*, Orlandi v. Leavitt Fam. Ltd. P'ship (*In re* Orlandi), 612 B.R. 372, 382–83 (B.A.P. 6th Cir. 2020) (acknowledging the clear split of authority and the lack of any controlling law provides an objectively reasonable basis for concluding the collection action was lawful); *In re* Shuey, 606 B.R. 760, 771 (Bankr. N.D. Ill. 2019) ("It is difficult to state with conviction that Creditor's belief was objectively unreasonable *given that he can cite to authority that supports his position.*" (emphasis added)).

[320] *See, e.g.*, Croix Oil Co. v. Mai Yer Moua (*In re* Mai Yer Moua), 457 B.R. 755, 763 n.12 (Bankr. D. Minn. 2011); Licup v. Jefferson Ave. Temecula, LLC (*In re* Licup), No. 22-1111, 2023 WL 2134975, at *4 (B.A.P. 9th Cir. Feb. 21, 2023) (citing Mountain W. Fed. Credit Union v. Stradinger (*In re* Stradinger), No. 07-00024, 2007 WL 2319812, at *8 (Bankr. D. Mont. Aug. 9, 2007)). *But see* Ladnier v. Ladnier (*In re* Ladnier), 130 B.R. 335, 338 (Bankr. S.D. Ala. 1991) ("Balancing the debtor's right to a fresh start with the creditor's right to payment of a debt, this Court finds that equity demands the Defendant receive an amount equal to a *pro rata* share of the distribution . . . ."). If the debt was satisfied in full through distribution, then nondischargeability may become moot. *See* Thompson v. Roland (*In re* Roland), 294 B.R. 244, 249 (Bankr. S.D.N.Y. 2003) ("In the absence of an enforceable obligation, there is no 'debt' that can be non-dischargeable."); Spilka v. Bosse (*In re* Bosse), 122 B.R. 410, 416 n.3 (Bankr. C.D. Cal. 1990) (noting a creditor holding a nondischargeable claim can participate in any distribution but acknowledging *In re Farmer*, 786 F.2d 618, 621 (4th Cir. 1986) and *In re Overmyer*, 26 B.R. 755, 758 (Bankr. S.D.N.Y. 1982) as authority to the contrary).

[321] *See, e.g.*, Duerkop v. Jongquist (*In re* Jongquist), 125 B.R. 558, 560 (Bankr. D. Minn. 1991).

question the incentive to schedule a creditor.[322] However, the incentive to schedule creditors in a no-asset case should apply equally in a case with assets.[323] In other words, it is worth considering what incentivizes a debtor to schedule and list creditors in a case with no assets since scheduling has no impact on dischargeability,[324] and determing if those incentives apply to a case with assets. Moreover, extending this reasoning further, a creditor could file a claim after the bar date but in time to permit payment knowing its debt is still nondischargeable. If the debtor acquires assets postpetition, then the creditor beats other prepetition creditors because of mistake or inadvertence.[325]

Lastly, Rule 3002(c)(6) was amended December 1, 2022,[326] and it now allows the court to extend the bar date on the creditor's motion if notice did not give them a "reasonable time" to file a claim.[327] A creditor moving for an extension of the bar date in a chapter 7 case when notice was insufficient is unlikely. An extension is not necessary because any claim is treated timely.[328] Perhaps a creditor

---

[322] *See In re Mai Yer Moua*, 457 B.R. at 762 ("The Defendant's interpretation shifts the impact of a separate statutory onus entirely away from the debtor in bankruptcy—the party originally at fault—and onto a non-culpable creditor."); *see also In re Licup*, 2023 WL 2134975, at *4 ("But under Debtors' proposed construction, there is no incentive to ensure proper scheduling of debts or to provide notice to creditors.").

[323] *See supra* note 38. *But see In re Licup*, 2023 WL 2134975, at *4.

[324] *See* Beezley v. Cal. Land Title Co. (*In re* Beezley), 994 F.2d 1433, 1436–37 (9th Cir. 1993) (O'Scannlain, J., concurring) (explaining scheduling has no impact on dischargeability under section 523(a)(3)(A) in a case with no assets).

[325] *Cf. In re Licup*, 2023 WL 2134975, at *4 (noting "that a creditor's net recovery on a nondischargeable debt is often less than the full amount of its claim, given the difficulties and expense in collection. Part of the balance struck by Congress involves creditors receiving an assured distributive share from . . . [the] estate").

[326] Rule 3002(c)(6) was amended to resolve a conflict in the caselaw. *Compare In re* Helios & Matheson Analytics, Inc., 629 B.R. 772 (Bankr. S.D.N.Y. 2021) (noting an extension of the bar date is warranted if the creditor lacked notice because of a debtor's failure to include the creditor in the matrix), *with In re* Wulff, 598 B.R. 459 (Bankr. E.D. Wis. 2019) (noting an extension of the bar date was unavailable because the matrix was not filed untimely). *See In re* MPAC Home Improvement & Constr., LLC, No. 19-41940, 2021 WL 1748080, at *2 (Bankr. D. Mass. May 3, 2021) (describing the conflict under Rule 3002(c)(6)). The phrase "because the debtor failed to timely file the list of creditors' names and addresses required by Rule 1007(a)" was removed.

[327] *See* FED. R. BANKR. P. 3002(c)(6).

[328] *See* 11 U.S.C. § 726(a)(2)(C); *see also In re MPAC Home Imp.*, 2021 WL 1748080, at *3 ("It is not necessary for this Court to reach whether Rule 3002(c)(6)(A) is applicable, however, because § 726(a)(2)(C) is applicable and

could file such a motion for an underlying motive: providing notice to the trustee to hold off on making a distribution while it prepares to file a claim. But if the creditor lacked knowledge of the case before the bar date,[329] then a creditor can rest on the exception to discharge and decline the opportunity to ask for an extension of the bar date, opening the door to collect from a debtor postpetition under the plain language approach.

But if a creditor successfully extends the bar date under Rule 3002(c)(6), would the extension apply to all creditors?[330] The Rule does not expressly limit an extension of time to only the specific creditors who filed the motion.[331] If the terms of the extension order are not limited to the creditor, perhaps a debtor could piggy-back off the extension and amend his schedules to provide notice to *other* omitted creditors. This could threaten those creditors who were relying on section 523(a)(3)(A) to collect from the debtor postpetition. Or does the bar date extend only as to that creditor?[332] If so, does each creditor have their own specific bar date? If each creditor has their own bar

---

affords similar relief to that sought by the Sim/Sekelsky Creditors."); *In re* Feldman, 261 B.R. 568, 575 (Bankr. E.D.N.Y. 2001).

[329] A debtor may file a claim on behalf of the creditor but may face the same "timely" issue. *See* 11 U.S.C. § 501(c); Mahakian v. William Maxwell Invs., LLC (*In re* Mahakian), 529 B.R. 268, 275–76 (B.A.P. 9th Cir. 2015). *But see* Am. President Lines Ltd. v. Hatley (*In re* Hatley), No. 09-5088, 2010 WL 200825, at *3–5 (Bankr. E.D. Tenn. Jan. 12, 2010); Leadbetter v. Snyder (*In re* Snyder), 544 B.R. 905, 907–08 (Bankr. M.D. Fla. 2016).

[330] *Cf. In re* Rhodes, 88 B.R. 464, 466 (Bankr. N.D. Ga. 1988) ("[A]ny extension granted pursuant to Rule 3002(c)(6) should be given to all creditors to give them a chance to share in the distribution from a surplus and not merely to the creditor who requested the extension."); *In re* Watkins, 365 B.R. 574, 577 (Bankr. W.D. Pa. 2007) (noting the caselaw holds an order granting an extension of time to file a complaint to determine dischargeable or object to discharge extends the time for creditors other than the moving party). The Rule in *Rhodes* was a prior version of Rule 3002(c)(6). *See supra* note 68.

[331] *Cf. In re* Wijewickrama, No. 16-CV-00347, 2018 WL 2212983, at *4 (W.D.N.C. Mar. 15, 2018) ("The Bankruptcy Rules do not expressly limit an extension of time to only the specific creditors who filed the motion."). *Compare id.* (analyzing Rule 4004's language that "the court may for cause extend the time fixed under this subdivision"), *with* FED. R. BANKR. P. 3002(c)(6) ("[T]he court may extend the time . . . ."), *and* FED. R. BANKR. P. 9006(b)(3) ("The court may enlarge the time for taking action under [Rule 3002(c)] only to the extent and under the conditions stated in [Rule 3002(c)].").

[332] *See In re* Helios & Matheson Analytics, Inc., 629 B.R. 772, 779 (Bankr. S.D.N.Y. 2021) ("Rule 3002(c)(6) provides the court with discretion to extend the bar date as to that creditor[.]" (citation omitted) (internal quotation marks omitted)).

date, then timeliness should be assessed against the date each creditor received notice.

Long story short: the plain language approach provides a creditor with a sword of Damocles,[333] having the power of participating in the distribution or having its debt declared nondischargeable, or both. The "value of a sword of Damocles is that it hangs—not that it drops."[334] A creditor with this much power flouts the Code's purpose of providing the honest but unfortunate debtor a fresh start.[335]

CONCLUSION

Courts have found Congress failed to cure the caselaw under *Birkett*. The divide under section 523(a)(3)(A) persists. Some hold the language is clear and unambiguous. Most cases find the language convoluted and address timeliness based on the nature of a liquidation proceeding and discharge debts held by creditors who can share in a distribution.

A careful application of the rules of statutory construction may resolve these difficulties. In the end, the focus should be shifted to liquidations. If the debtor pays the omitted creditor the same dividend as other creditors, the debt should be discharged.[336] But without binding precedent, the dischargeability issue will continue to cause disagreements and differences in opinion.

Festering underneath this inquiry lies bankruptcy law's fundamental dilemma: is it a "system for picking a debtor's bones in a more orderly fashion? Or is it an economic and social safety net that allows debtors to return to the world? The fact that it is both has never slowed debate that it should be primarily one or the other."[337] Given this dilemma, courts and litigants should scrutinize section 523(a)(3)(A) to

---

[333] The Sword of Damocles is a parable in which Damocles has a sword dangling over his head hung by a single-horsehair, signifying the ever-present peril held by those in power of not knowing when the sword will drop. *See* State v. Parson, 844 A.2d 178, 180 n.2 (R.I. 2004).

[334] Arnett v. Kennedy, 416 U.S. 134, 231 (1974) (Marshall, J., dissenting); *see also In re* Beasley, 22 B.R. 773, 774 (Bankr. W.D. Tenn. 1982) ("Section 1322(b)(9) may not be used by a creditor as a sword of Damocles to hang over a debtor's head during the long duration of a wage earner plan.").

[335] *See* Bougie v. Livingston (*In re* Livingston), No. 15CV00036, 2016 U.S. Dist. LEXIS 888, at *17 (W.D. Va. Jan. 4, 2016); *see also* Slates, *supra* note 11, at 293–94.

[336] *See* Helbling & Klein, *supra* note 11, at 63 ("What if the omitted creditor learned of the bankruptcy in time to file a tardy claim that actually was paid the same dividend as timely claims as permitted by § 726(a)(2)(C)?").

[337] MANN, *supra* note 79, at 255.

reconcile the tension between a creditor's right to timely file a proof of claim on the one hand, and the debtor's right to a fresh start on the other, with an eye toward the purpose of a liquidation.

* * *