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"Sufficiently Rooted" Test**

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Introduction

This article examines the scope of property included in a bankruptcy estate under section 541 of the Bankruptcy Code, with a focus on causes of action arising both before and after the bankruptcy petition date. Courts apply a two-part analysis to determine whether a claim is part of the estate: (1) whether it accrued as of the petition date, and (2) whether a post-petition claim is sufficiently rooted in the pre-bankruptcy past. This article explores how courts interpret and apply these components to determine estate property.

Discussion

I. Property of Estate Includes Causes of Action That Accrue as of Bankruptcy Petition Date and Accrue Post-Petition if Sufficiently Rooted in Pre-Bankruptcy Past

Under section 541 of the Bankruptcy Code, filing for bankruptcy creates property of the estate consisting of "all legal or equitable interests in property as of the commencement of the case."¹ The estate also includes "proceeds, product, offspring, rents, or profits of or from property of the estate."² Courts construe "property of the estate" broadly, holding that "every

¹ 11 U.S.C. § 541(a)(1).

² *Id.* § 541(a)(6).

conceivable interest of the debtor, future, nonpossessory, contingent, speculative, and derivative," is within the reach of section 541.³

Legal causes of action fall within this definition.⁴ Courts determine whether a cause of action is part of the estate by assessing when the claim accrued.⁵ Accrual is governed by state law and depends on whether all elements of the claim existed at the time.⁶ Generally, claims that accrue post-petition are excluded from the estate.⁷ However, claims that accrue post-petition may become part of the estate if they are "sufficiently rooted in the pre-bankruptcy past."⁸ Courts find this standard satisfied when there is a "strong nexus" between the prepetition and post-petition claim, where either the prepetition or post-petition conduct alone would be insufficient to give rise to the claim.⁹

A. A Claim Accrues When All Elements of a Successful Claim Exist Under Applicable State Law

A claim accrues when the debtor has "a complete and present cause of action."¹⁰ Courts look to state law to assess whether all the required elements of the claim are present.¹¹ A claim qualifies as prepetition if the debtor could have asserted it under state law at the time of filing for bankruptcy.¹² Generally, a debtor's lack of knowledge about potential claims does not prevent

³ *In re Sommer*, No. 05-67284, 2008 WL 704401, at *2 (Bankr. N.D. Ohio Mar. 14, 2008).

⁴ *Jackson v. Novak*, 593 F.3d 171, 176 (2d Cir. 2010).

⁵ *Mendelsohn v. Ross*, 251 F. Supp. 3d 518, 522 (E.D.N.Y. 2017).

⁶ *Butner v. United States*, 440 U.S. 48, 55 (1979).

⁷ *Chartschlaa v. Nationwide Mut. Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008).

⁸ *Segal v. Rochelle*, 382 U.S. 375, 380 (1966).

⁹ *See In re Sommer*, No. 05-67284, 2008 WL 704401, at *4 (Bankr. N.D. Ohio Mar. 14, 2008); *see also Mendelsohn*, 251 F. Supp. 3d at 525.

¹⁰ *Wallace v. Kato*, 549 U.S. 384, 388 (2007).

¹¹ *Butner*, 440 U.S. at 55.

¹² *See Cusano v. Klein*, 264 F.3d 936, 947 (9th Cir. 2001).

accrual, unless no viable means exist for discovering the claim's actionability.¹³ However, if state law defines accrual based on the discovery of injury, the debtor's knowledge becomes relevant.¹⁴ Thus, courts will assess not only whether the injury occurred, but also whether it was discoverable under the relevant state law standard.¹⁵

For example, in *In re Burris*, the debtor's personal injury claims for cancer were not property of the estate because the cause of illness was unknown at the time of filing.¹⁶ There, the debtor had been diagnosed with lymphoma several years before filing a Chapter 7 petition but was unaware of its cause and had not scheduled any related claims.¹⁷ Four years after the case was closed, World Health Organization ("WHO") published a study linking glyphosate, a common herbicide, to cancer.¹⁸ The debtor then asserted claims against the maker of the herbicide and obtained settlement.¹⁹ The court held that the personal injury claims had not accrued under the applicable state law as of the petition date because the element of causation could not have been established until the WHO report was published post-petition.²⁰ This case illustrates that where a critical element is undiscoverable at the time of filing, a claim does not accrue, even if injury has already occurred.

In re Vasquez similarly supports the principle that claims do not accrue until all elements—including injury—exist and are discoverable under state law. There, product liability claims arising from a defective medical device implanted prepetition did not accrue because no

¹³ *In re Carroll*, 586 B.R. 775, 783 (Bankr. E.D. Cal. 2018); see *In re Burris*, No. 09-78161-JWC, 2022 WL 1131950, at *1 (Bankr. N.D. Ga. Apr. 15, 2022).

¹⁴ *In re Vasquez*, 581 B.R. 59, 68 (Bankr. D. Vt. 2018).

¹⁵ See *id.*

¹⁶ *In re Burris*, 2022 WL 1131950, at *1.

¹⁷ *Id.*

¹⁸ *Id.* at *2.

¹⁹ *Id.* at *1.

²⁰ *Id.* at *3.

injury had been sustained as of the petition date.²¹ The debtor underwent surgery to implant a device intended to relieve a urinary condition.²² Although she continued experiencing urinary issues before filing her Chapter 7 petition, she did not have the device removed until after discharge and only then learned of the potential claim.²³ Under Vermont law, a cause of action accrues as of "the date of discovery of the injury."²⁴ The court found no evidence of prepetition injury and noted that the debtor did not make the decision to have the device surgically removed until years after filing the bankruptcy case.²⁵ Accordingly, the court held that the product liability claims were not property of the estate.²⁶ *Vasquez* reinforced that under discovery-based accrual rules, claims involving latent injury are not property of the estate if no actionable harm is reasonably identifiable at the time of filing.²⁷

Conversely, in *In re Carroll*, the court held that product liability settlement proceeds were property of the estate despite the debtor's lack of knowledge as to the existence of such claim.²⁸ In that case, the debtor underwent mesh implantation surgery and five additional surgeries to address pain caused by the initial implantation surgery before filing a Chapter 7 petition.²⁹ The debtor asserted that the claim could not have accrued as of the petition date because she learned of the defects in the mesh through post-petition FDA update.³⁰ However, the court noted that the

²¹ *In re Vasquez*, 581 B.R. 59, 78 (Bankr. D. Vt. 2018).

²² *Id.* at 62.

²³ *Id.*

²⁴ *Id.* at 68.

²⁵ *Id.* at 78.

²⁶ *Id.*

²⁷ *See id.*

²⁸ *In re Carroll*, 586 B.R. 775, 790 (Bankr. E.D. Cal. 2018).

²⁹ *Id.*

³⁰ *Id.*

update merely reiterated already publicly available information regarding the harmful consequences of using the device.³¹

The court further emphasized that the debtor underwent six injuries and even consulted with product liability counsel before filing her bankruptcy, which indicated that the debtor had sustained an injury essential to product liability claims as of the petition date.³² Accordingly, the court held that since all the required elements for a successful product liability case were present prepetition, the debtor's lack of subjective knowledge as to the existence of the claim did not prevent the accrual of claim for the purposes of determining property of the estate.³³ *In re Carroll* establishes that when sufficient facts exist prepetition to satisfy all elements of a claim, including demonstrable injury, the claim accrues—even if the debtor is unaware of the claim's viability.³⁴ This rule prevents debtors from shielding claims from creditors by claiming ignorance when the underlying facts are already present.

These cases demonstrate that the timing of claim accrual hinges on whether all legal elements, particularly injury and causation, exist and are discoverable at the time of the petition. If either is missing or undiscoverable under applicable state law, the claim arises post-petition. Conversely, when the facts underlying the claim are present and knowable, even if not fully appreciated by the debtor, the claim is considered prepetition. This framework provides a practical basis for advising clients on whether potential recoveries belong to the estate or remain the debtor's personal property.

B. Claims That Accrue Post-Petition Are Property of the Estate if They Are "Sufficiently Rooted" to Pre-Bankruptcy Past.

³¹ *Id.* at 782.

³² *Id.* at 779.

³³ *Id.* at 790.

³⁴ *See id.*

Accrual is not dispositive of whether a property interest belongs to the bankruptcy estate.³⁵ Though claims accruing post-petition are generally not property of the estate, they may be included in the estate if they are "sufficiently rooted in the bankruptcy past."³⁶ The analysis of whether a claim is sufficiently rooted in the prebankruptcy past is distinct from analysis of accrual.³⁷ Courts evaluate whether there is a "strong nexus" between the post-petition claim and prepetition injury giving rise to a claim.³⁸ Such nexus exists where neither prepetition nor post-petition conduct alone would give rise to the claim.³⁹ Additionally, absent a prepetition interest that "manifest[s] itself" in the post-petition claim, the claim is not sufficiently rooted in the prebankruptcy past.⁴⁰

In re Sommer illustrates how a wrongful death claim, though not accruing until the debtor's post-petition death, was nonetheless included in the estate due to the foundational role of prepetition asbestos exposure. There, proceeds from a wrongful death claim that accrued post-petition were property of the estate due to a strong nexus between the debtor's prepetition asbestos exposure and his post-discharge death.⁴¹ In that case, the debtor developed lung cancer from asbestos exposure before filing a Chapter 7 case.⁴² The debtor passed away approximately one month after receiving a discharge.⁴³ Under Ohio state law, wrongful death claims belong to the statutory beneficiaries and do not accrue until the death of the beneficiary.⁴⁴ However, the

³⁵ *In re Sommer*, No. 05-67284, 2008 WL 704401, at *4 (Bankr. N.D. Ohio Mar. 14, 2008).

³⁶ *Segal v. Rochelle*, 382 U.S. 375, 380 (1966).

³⁷ *See In re Sommer*, 2008 WL 704401, at *2.

³⁸ *Id.* at *4.

³⁹ *See Mendelsohn v. Ross*, 251 F. Supp. 3d 518, 525 (E.D.N.Y. 2017); *see also Bercy v. City of Phoenix*, 103 F.4th 591, 595 (9th Cir. 2024).

⁴⁰ *Mendelsohn*, 251 F. Supp. 3d at 525.

⁴¹ *In re Sommer*, 2008 WL 704401, at *4.

⁴² *Id.* at *1.

⁴³ *Id.*

⁴⁴ *Id.* at *2.

court emphasized that the accrual is not dispositive in determining whether a claim is part of the bankruptcy estate.⁴⁵ The court held that since the "foundation" for the wrongful death claim was debtor's prepetition exposure to asbestos, the claim was "sufficiently rooted in the prebankruptcy past."⁴⁶ The key takeaway from *Sommer* is that when a claim is based on a prepetition injury, even post-petition legal claims may be "sufficiently rooted" to bring them into the estate.⁴⁷ Accrual timing does not override this connection if the factual basis is already in place.⁴⁸

Similarly, *Bercy v. City of Phoenix* confirms that post-petition conduct does not exclude a claim from the estate if it arises from a continuing course of prepetition events.⁴⁹ In that case, an employment discrimination claim based on conduct that began prepetition and continued post-petition belonged to the bankruptcy estate.⁵⁰ A city employee alleged a Title VII hostile work environment claim that spanned two years, starting before and continuing after the petition date.⁵¹ The court noted that the debtor was aware of the harassment's illegality and could have brought the claim at the time of filing.⁵² In addition, the court reasoned that acts giving rise to the claim were inseparable, suggesting that the debtor could not assert a post-petition claim alone because her lawsuit would need to include all conduct, including prepetition acts.⁵³ Accordingly, the court held that the post-petition conduct was "sufficiently rooted in the prebankruptcy past" because it was part of the same actionable hostile work claim that she could have brought as of

⁴⁵ *Id.* at *4.

⁴⁶ *Id.* at *3.

⁴⁷ *See id.*

⁴⁸ *See id.* at *2.

⁴⁹ *Bercy*, 103 F.4th at 593.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 595.

⁵³ *Id.*

the petition date.⁵⁴ *Bercy* underscores that continuity and inseparability of conduct—especially where prepetition events would have supported a claim alone—support a finding that the post-petition claim is rooted in the pre-bankruptcy past.⁵⁵

In contrast, *Mendelsohn* sets a boundary on the doctrine by holding that a post-petition claim is *not* property of the estate when no prepetition manifestation of injury or legal interest exists. There, a defective medical device implanted prepetition did not give rise to an injury that "manifested itself" in product liability claims that accrued post-petition.⁵⁶ In that case, the debtor underwent surgery to have a medical device implanted before filing for Chapter 7.⁵⁷ She did not schedule any interest in a product liability claim and had not suffered any injury from the device as of the petition date.⁵⁸ Five years after the case was closed, the FDA issued an advisory opinion pertaining to potential defects with the medical device.⁵⁹ The debtor subsequently learned of the defects and obtained settlement proceeds by asserting a product liability claim.⁶⁰ Although the Chapter 7 trustee argued that the timing the debtor obtained knowledge of her claim was irrelevant, the court held that since the prepetition implantation was inconsequential without the post-petition issuance of advisory opinion, the settlement proceeds were not "sufficiently rooted in the prebankruptcy past."⁶¹ *Mendelsohn* establishes that absent some prepetition manifestation of harm or legal interest, a post-petition claim will not be deemed part of the estate—even if the underlying conduct occurred before filing.⁶²

⁵⁴ *Id.*

⁵⁵ *See id.*

⁵⁶ *Mendelsohn*, 251 F. Supp. 3d at 525.

⁵⁷ *Id.*

⁵⁸ *Id.* at 520.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 526.

⁶² *See id.*

Collectively, these cases clarify that determining whether a post-petition claim belongs to the estate under the "sufficiently rooted" standard depends on whether the factual and legal foundations for the claim existed before the petition. Courts look to the substance of the events, not just the timing of accrual, to evaluate the claim's connection to the debtor's pre-bankruptcy history.

Conclusion

The property of the estate under § 541 of the Bankruptcy Code generally includes legal causes of action that accrued as of the petition date, as governed by state law.⁶³ Although claims that accrue post-petition are generally not considered part of the bankruptcy estate, they may still be included if they are sufficiently rooted in the pre-bankruptcy past.⁶⁴ Courts evaluate this connection based on whether the prepetition event that gave rise to the claim is inseparable from the post-petition event that caused the claim to materialize.⁶⁵ Therefore, causes of action that meet the "sufficiently rooted" test can be considered property of the estate, even if they do not fully accrue until after the petition date.

⁶³ *Butner v. United States*, 440 U.S. 48, 55 (1979).

⁶⁴ *Chartschlaa v. Nationwide Mut. Ins. Co.*, 538 F.3d 116, 122 (2d Cir. 2008); *Segal v. Rochelle*, 382 U.S. 375, 380 (1966).

⁶⁵ *Mendelsohn v. Ross*, 251 F. Supp. 3d 518, 525 (E.D.N.Y. 2017).