

Unfairness of Reopening Bankruptcy Cases to Administer Uncertain Claims

by
*Tajera Fowler and Michael Markham*¹

When Michael Tarrant filed for Chapter 7 bankruptcy in 2015, he had no idea that he would later develop cancer from exposure to Roundup, an old popular brand of herbicide.² He received his bankruptcy discharge in 2016, an opportunity for fresh a financial start.³ However, in 2022, six years after his case closed, the United States Trustee (“UST”) filed a motion to reopen his bankruptcy case.⁴ The UST claimed that Tarrant’s post-discharge cancer diagnosis gave rise to a products liability claim that constituted property of the estate in his 2015 bankruptcy case.⁵ The UST asserted that “the Debtor must have been exposed to Roundup for a number of years before his 2017 diagnosis and, on that basis, his claim should be determined to be property of the estate in his 2015 bankruptcy filing.”⁶ This raises a conceptual problem: when debtors discover tort or products liability claims after their bankruptcy case closes, should bankruptcy courts automatically reopen cases and assert control over those claims or does this practice risk unfairness when courts administer claims that may not be property of the estate as discussed in *In re Tarrant* and related case law.

This issue arises in mass tort contexts such as asbestos exposure, toxic chemicals like Roundup, and implantation of medical devices, where the latency period between exposure and diagnosis can span years or even decades.⁷ At the time of filing bankruptcy, if there are no symptoms of cancer or related illness, neither the debtor nor creditors know that there is potential tort claim. When the symptoms appear later post-bankruptcy filing and a potential claim is brought to the attention of the UST, the UST or bankruptcy trustees may file motions to reopen

¹ Tajera Fowler is a Student Lawyer in the Bankruptcy Pro Bono Clinic at the Florida State University College of Law. Michael Markham is the Adjunct Professor of the Clinic.

² *In re Tarrant*, No. 15-71581, 2023 WL 2616969, at *1-3 (Bankr. C.D. Ill. Mar. 23, 2023).

³ *Id.* at *2.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Clark, Love & Hutson, *Delayed Symptoms in Toxic Tort Claims: When Does the Clock Start?*, TRIAL LAW FIRM (Nov. 11, 2024), <https://www.triallawfirm.com/blog/2024/11/delayed-symptoms-in-toxic-tort-claims-when-does-the-clock-start/>.

closed cases to recover assets for creditors.⁸ In *In re Tarrant*, the court observed that in its jurisdiction, “although attorneys for the UST appearing on such motions regularly assure objecting debtors that any trustee appointed will undertake a review of whether the cause of action is property of the estate before beginning to administer the property, this Court questions whether that is happening in every such case.”⁹ The court reviewed every motion to reopen filed in its district within the last five years and further noted that the UST in that jurisdiction routinely relies on outdated case law to support motions to reopen.¹⁰ These concerns raise serious questions of fairness to debtors. While creditor recovery is a legitimate bankruptcy goal, the practice in some jurisdictions of routinely reopening cases to administer post-petition assets threatens fundamental bankruptcy principles and debtor protections.

What Constitutes “Property of the Estate”?

11 U.S.C. §541(a)(1) governs bankruptcy estate property.¹¹ It provides that the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.”¹² The Supreme Court has repeatedly emphasized that it broadly interprets §541(a)(1) to serve the core purpose of bankruptcy.¹³ It holds that the core purpose of bankruptcy requires an expansive reading of estate property to capture all of the debtor’s legally cognizable interests that exist at the time of filing, even if those interests are “contingent or not subject to possession until a future time.”¹⁴ However, the critical temporal limitation, “as of the commencement of the case,” establishes a clear boundary. Property acquired or rights accrued after the petition is filed, generally do not constitute property of the estate, with limited exceptions for specific types of post-petition property enumerated in §541 (a)(5).¹⁵ This time limit protects debtors and allows

⁸ *Tarrant*, 2023 WL 2616969, at *5-6.

⁹ *Id.* at *6.

¹⁰ *Id.*

¹¹ 11 U.S.C. § 541(a) (1) 2018.

¹² *Id.*

¹³ Lawrence Ponoroff, *Neither Twixt Nor Tween: Emerging Property Interests in Bankruptcy*, 61 ARIZ. L. REV. 101, 104 (2019).

¹⁴ *Id.* at 104.

¹⁵ 11 U.S.C. § 541(a) (5) 2018 (limited categories of property acquired post-petition that are included in the bankruptcy estate, such as inheritances and life insurance proceeds within 180 days).

them to secure a fresh start with no interference with their earnings or newly acquired property post filing.¹⁶

In *In re Tarrant*, the UST cited *Segal v. Rochelle* as the controlling precedent for determining when a claim constitutes property of the estate.¹⁷ In *Segal v. Rochelle*, the Supreme Court considered the difficult question whether tax loss-carryback refund claims based on pre-petition business losses constituted estate property under the former Bankruptcy Act.¹⁸ The Segals filed for bankruptcy after their cotton business suffered losses in 1961.¹⁹ After filing, they claimed federal tax refunds from the losses they suffered prior to bankruptcy filing.²⁰ The Segals argued that the tax refunds were not property of the estate.²¹ The Supreme Court held that the refund claims were property of the estate because they were “sufficiently rooted in the pre-bankruptcy past and so little entangled with the bankrupts' ability to make an unencumbered fresh start.”²² The court reasoned that although the refund claims could not be filed until after the tax year closed, the underlying losses occurred prior to the bankruptcy filing and created a pre-petition right to the funds.²³

Segal was decided under the old Bankruptcy Act, which used a different statutory language than the modern Bankruptcy Code.²⁴ Section 70(a)(5) of the 1898 Bankruptcy Act vested the trustee with “property which prior to the filing of the petition [the debtor] could by any means have transferred or which might have been levied upon and sold under judicial process against [the debtor].”²⁵ However, the 1978 Bankruptcy Code replaced this with §541(a)(1), which defined property as all legal and equitable interests of the debtor and implemented the temporal limitation that property of the estate includes interests “as of the

¹⁶ See Richard S. Davis, *Protection of a Debtor's “Fresh Start” Under the New Bankruptcy Code*, 29 Cath. U. L. Rev. 843 (1980); *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

¹⁷ *Tarrant*, 2023 WL 2616969, at *6.

¹⁸ *Segal v. Rochelle*, 382 U.S. 375, 376-79 (1966).

¹⁹ *Id.* at 376.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 380.

²³ *Id.*

²⁴ Compare 11 U.S.C. § 541 (2018), with Bankruptcy Act § 70(a)(5), 30 Stat. 565 (1964) (repealed 1978).

²⁵ Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (codified at 11 U.S.C., in scattered sections of 28 U.S.C., and in scattered sections of other titles); *Church Joint Venture, L.P. v. Blasingame (In re Blasingame)*, 986 F.3d 633, 639 (6th Cir. 2021).

commencement of the case.”²⁶ Although this new language contradicts *Segal*’s “sufficiently rooted” test, some courts continued to apply *Segal*’s antiquated doctrine, instead of considering it as repealed law.²⁷

Modern courts have increasingly raised concerns about the continuing use of the *Segal* test following the adoption of the new Bankruptcy Code and evolution of case law post-*Segal*.²⁸ In *In re Bracewell*, the Eleventh Circuit explicitly rejected the “sufficiently rooted” test when it considered whether disaster relief payments based on pre-petition crop losses constituted estate property under §541(a)(1).²⁹ The Bracewells suffered substantial crop losses from a drought in 2001.³⁰ They subsequently filed Chapter 7 bankruptcy in 2001, then became eligible for disaster relief payments under legislation enacted in 2002.³¹ The court rejected the argument that the relief payments were “sufficiently rooted” in pre-bankruptcy farming losses and therefore property of the estate.³² The court held that § 541(a) (1) implemented a temporal limitation, “as of the commencement of the case,” which prevails over the *Segal* test.³³ Based on this limitation, at the time of filing, the Bracewells had no legal or equitable interest in the disaster relief payments because the legislation was not yet enacted.³⁴

Modern courts are moving in the right direction. The phrase “sufficiently rooted” is inherently vague and provides little guidance for courts to determine when a future, contingent interest crosses the threshold into estate property. It does not provide clarity on what suffices as necessary for claims arising from pre-bankruptcy past. This results in inconsistent application and allows some courts in different jurisdictions to reach divergent conclusions on similar facts.

²⁶ § 541(a) (1).

²⁷ Benjamin Walther & Ryan S. Killian, *Sufficiently Rooted in Precedent and Policy*, 50 U. MEM. L. REV. 287, 291 (2019); *Macon v. Meredith (In re Macon)*, 669 B.R. 626, 635 (Bankr. S.D. Ga. 2025).

²⁸ *Tarrant*, 2023 WL 2616969, at *8.

²⁹ *In re Bracewell*, 454 F.3d 1234, 1236 (11th Cir. 2006).

³⁰ *Id.* at 1236.

³¹ *Id.* at 1236-37.

³² *Id.* at 1237.

³³ *Id.* at 1242.

³⁴ *Id.* at 1247.

When Does a Tort Claim Accrue?

Federal law determines whether a debtor's interest in property is property of the estate.³⁵ However, the Supreme Court established in *Butner v. United States* that the nature and extent of "property interests are created and defined by state law" and courts must follow those state law determinations, unless a federal interest requires a different result, to ensure uniform application of bankruptcy law.³⁶ Therefore, a debtor's tort claim arises under §541(a)(1) when the cause of action accrues under state law.³⁷

When Does a Tort Claim Become Property of the Estate?

The time period for when a claim accrues usually determines if the claim is property of the estate.³⁸ States apply different rules for determining when tort claims accrue. Some jurisdictions follow the injury rule, which stipulates that a tort cause of action accrues when the injury occurs.³⁹ Other jurisdictions apply the discovery rule, which provides that a cause of action accrues "when a person knows or reasonably should know of his injury *and* also knows or reasonably should know that it was wrongfully caused."⁴⁰ These different approaches create a circuit split and uncertainty in bankruptcy law. Under *Butner*, the same debtor with the same exposure history might have an enforceable claim in a discovery rule jurisdiction but no claim in the injury rule jurisdiction. The choice between the two rules determines whether courts may reopen a closed bankruptcy case years or decades later when the debtor develops symptoms from a latent injury.

Under *Tarrant's* analysis, the Illinois Supreme Court applies the discovery rule.⁴¹ This is a fair standard that does not subject the injured person to "[k]nowing the inherently

³⁵ *Blanco v. Bank of Am., N.A.*, 2020 U.S. Dist. LEXIS 149453, at *6 (M.D. Fla. Aug. 19, 2020).

³⁶ *Butner v. United States*, 440 U.S. 48, 54-55 (1979).

³⁷ Ponoroff, *supra* note 13, at 105.

³⁸ *Blanco*, 2020 U.S. Dist. LEXIS 149453 at *6; *Gomez v. Kokoszka*, 670 B.R. 863, 865.

³⁹ *Atkins v. Crosland*, 417 S.W.2d 150, 153 (Tex. 1967).

⁴⁰ *Tarrant*, 2023 WL 2616969, at *16, citing *Witherell v. Weimer*, 85 Ill.2d 146, 156 (1981).

⁴¹ *Id.* at *16.

unknowable[.]”⁴² Tarrant was not diagnosed with cancer until December 2017.⁴³ Without knowledge of his injury, he could not have known that it was wrongfully caused. The mere fact that exposure occurred pre-petition was insufficient under Illinois law to establish accrual.⁴⁴ The court’s analysis directly supports this article’s thesis about fairness. The *Tarrant* court noted that the UST routinely seeks to reopen cases whenever they learn of a debtor’s personal injury claim⁴⁵ – typically from the Roundup settlement administrator. The court is concerned that this practice places an unfair burden on debtors with limited resources to prove that the claims were not estate property.⁴⁶

Why Existing Procedures Fail to Protect Debtors?

Bankruptcy courts are mandated by law to close a case after the estate is fully administered and the trustee is discharged.⁴⁷ Under U.S.C.S. 350(b), the court may reopen a closed case “to administer assets, to accord relief to the debtor, or for other cause.”⁴⁸ Courts usually consider several factors to determine whether to reopen a case, including, the benefit to the debtor, benefit to the creditors, prejudice to the affected party, and any equitable factors.⁴⁹

When the UST or a trustee seeks to reopen a case and asserts that a debtor’s post-petition tort claim is property of the estate and the debtor challenges that assertion, the parties are disputing the extent of the trustee’s interest in the property.⁵⁰ Bankruptcy law provides procedural mechanisms to resolve disputed property claims, however, these mechanisms are insufficient to protect debtors. Federal Rule of Bankruptcy Procedure 7001 provides that an adversary proceeding is required to resolve disputes involving “the validity, priority, or extent of a lien or other interest in property.”⁵¹ In plain language, an adversary proceeding may be a useful vehicle to determine estate property before a trustee settles or administers a claim. However, the

⁴² *Id.*

⁴³ *Id.* at *2.

⁴⁴ *Id.* at *2.

⁴⁵ *Id.* at *21.

⁴⁶ *Id.*

⁴⁷ *Macon*, 669 B.R. at 626.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Tarrant*, 2023 WL 2616969, at *4.

⁵¹ 11 U.S.C. § 350(b) 2018.

Tarrant court observed that in its jurisdiction, courts sometimes bypassed that process by reopening cases for investigative purposes without first establishing that the property belonged to the estate.

The court explained that the UST had a routine practice of reopening cases and promising debtors that they would investigate if the cause of action is property of the estate.⁵² However, the court stated that it is unclear whether the UST was investigating ownership in every case before property was administered.⁵³ The *Tarrant* court reviewed every motion to reopen filed in its division over five years and found questionable results.⁵⁴ In cases involving toxic exposure or implantation of medical devices, some trustees filed reports of no distribution after determining claims were not estate property or even if it was property, it was insubstantial to administer. But in numerous claims, “trustees moved quickly to settle pending [claims], and the docketed time records for such trustee show virtually no time spent reviewing medical records or otherwise investigating when the causes of action accrued or whether a credible case could be made that the [claims] were property of the estate.”⁵⁵ In essence, the *Tarrant* court found that in the cases it reviewed in its division, some trustees settled claims and distributed proceeds to creditors without meaningfully investigating whether they had jurisdiction over the property being administered. The *Tarrant* opinion highlights the procedural flaws that can deprive debtors.

And in the case of a formal adversary proceeding, debtors would face disadvantages because a full civil litigation imposes financial costs, extensive time commitment, burdensome evidentiary requirements, and other issues. Represented debtors would incur substantial attorney’s fees, while *pro se* debtors, who make up a large portion of consumer bankruptcy filers, would struggle with the burden of litigation without legal assistance.⁵⁶

The financial burden is particularly concerning because it is misaligned with debtors’ resources. A debtor would either have to spend thousands of dollars on litigation attorney fees or

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Edwards v. LVNV Funding, LLC (In re Edwards)*, 539 B.R. 360, 366 (Bankr. N.D. Ill. 2015).

surrender the claim to the trustee if unable to afford to litigate. Either outcome undermines the fresh start benefit promised upon successful closure of a bankruptcy case.

Perhaps a Bright Line Rule?

The practice of reopening bankruptcy cases to administer tort claims that emerge post-bankruptcy filing can create unfairness for debtors if proper measures are not undertaken. As the *Tarrant* court discovered after reviewing its own division's historical practices, this concern arises where courts rely on the outdated *Segal* "sufficiently rooted" test and inadequate procedural safeguards to determine estate ownership.⁵⁷ This creates a burden for debtors who have already received their discharge and are attempting to rebuild their financial lives, only to contend with a motion to reopen their bankruptcy case to recover tort claims that may never have belonged to the estate.

The current law also fails to provide the uniformity that bankruptcy law requires, as state law variations under *Butner* produce different outcomes based on the jurisdiction.⁵⁸ Because state-law accrual rules and the UST and trustee practices vary, debtors may face different outcomes depending on the jurisdiction.⁵⁹ In the division reviewed by the *Tarrant* court, the practice of reopening cases years after discharge to pursue claims that debtors were unaware of at the time of filing, deprived those debtors of meaningful notice and the fresh start that bankruptcy promises.

To promote consistency, Congress should adopt a uniform federal standard for latent tort claims that combines a discovery rule with temporal limitations on reopening. Under this standard, tort claims involving latent injuries would accrue only when the debtor knows or reasonably should know of both the injury and its wrongful cause. This ensures that debtors would not be unfairly punished for unknowable claims. Further, the law should impose a statutory limitation to prevent trustees from reopening cases more than two years after discharge, unless the trustee proves fraudulent concealment of the claim with clear and convincing

⁵⁷ *Tarrant*, 2023 WL 2616969, at *7.

⁵⁸ *Butner*, 440 U.S. 48 at 54-55.

⁵⁹ *Tarrant*, 2023 WL 2616969, at *7.

evidence. This approach would mitigate the specific concerns highlighted by the court in *Tarrant*, while respecting the diversity of practices across jurisdictions.