

CONGRESSIONAL RESEARCH SERVICE,
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Washington, DC, October 26, 2000.
MEMORANDUM

To: Hon. Charles Grassley, Attention: John McMickle
From: Robin Jeweler, Legislative Attorney, American Law Division
Subject: Westlaw/LEXIS survey of bankruptcy cases under 11 U.S.C. § 523.

This confirms our phone conversation of October 25, 2000. You requested a comprehensive online survey of reported decisions considering the dischargeability of liability incurred in connection with violence at reproductive health clinics by abortion protesters. Our search did not reveal any reported decisions where such liability was discharged under the U.S. Bankruptcy Code.

The only reported decision identified by the search is *Buffalo Gyn Womenservices, Inc. v. Behn (In re Behn)*, 242 B.R. 229 (Bankr. W.D.N.Y. 1999). In this case, the bankruptcy court held that a debtor's previously incurred civil sanctions for violation of a temporary restraining order (TRO) creating a buffer zone outside the premises of an abortion service provider was nondischargeable under 11 U.S.C. § 523(a)(6), which excepts claims for "willful and malicious" injury. The court surveyed the extant and somewhat discrepant standards for finding "willful and malicious" conduct articulated by three federal circuit courts of appeals. It granted the plaintiff's motion for summary judgment and denied the debtor/defendant's motion to retry the matter before the bankruptcy court. Specifically, the court held:

"[W]hen a court of the United States issues an injunction or other protective order telling a specific individual what actions will cross the line into injury to others, then damages resulting from an intentional violation of that order (as is proven either in the bankruptcy court or (so long as there was a full and fair opportunity to litigate the question of violation and violation) in the issuing court) are ipso facto the result of a 'willful and malicious injury.'"—242 B.R. at 238.

Mr. BIDEN. Again, Mr. President, the only case I could find, in fact, held, as I had predicted, that willful and malicious conduct denies you from being discharged in bankruptcy, in a case where a woman was arrested for violating a restraining order or getting too close to the clinic, tried to discharge the fines against her in bankruptcy, and could not.

I repeat: No one has escaped liability under the Fair Access to Clinic Entrances Act through the abuse of the bankruptcy code, not one. As strongly as feelings are on both sides of this issue, the Schumer amendment is, I must say, a solution in search of a problem. I would support it just to make sure we have the extra protection, but in the absence of the Schumer amendment, there is no reason for the Senate to reverse its opinion on the legislation that had received such strong support.

We voted today on trying to get to a conference report that had a strong Senate stamp on it. I think we made a mistake. I think part of the reason why we made a mistake in not invoking cloture was we had a number of absences. There are 16 or 17 or 18 absences, as I

count it; 15 or thereabouts were for cloture. But we will come back to it again, as the majority leader has said.

This does not in any way do anything to allow people to violate the free access to clinics law. And it actually helps women and children who depend on support payments and alimony payments. I will speak to it more later.

I see the majority leader is on the floor for important business. I thank the Chair and yield the floor.

Mr. LOTT. Mr. President, I thank Senator BIDEN for his comments and for yielding the floor at this time.

UNANIMOUS CONSENT AGREEMENT—H.J. RES. 122

Mr. LOTT. Mr. President, I ask unanimous consent that at 2:15 p.m., the Senate turn to the continuing resolution, H.J. Res. 122, if received from the House, and the resolution be read the third time, agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2000

Mr. LOTT. Mr. President, I further ask unanimous consent that the Senate proceed immediately to Calendar No. 428, H.J. Res. 84, and following the reporting by the clerk, the amendment at the desk sponsored by myself be agreed to, the resolution be read the third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (H.J. Res. 84) making further continuing appropriations for the fiscal year 2000, and for other purposes.

There being no objection, the Senate proceeded to consider the joint resolution.

The amendment (No. 4357) was agreed to, as follows:

Strike all after the resolving clause and insert the following:

That Public Law 106-275, is further amended by striking the date specified in section 106(c) and inserting "November 14, 2000."

Amend the title so as to read: "Making further continuing appropriations for the fiscal year 2001, and for other purposes."

The resolution (H.J. Res. 84), as amended, was read the third time and passed.

Mr. LOTT. Mr. President, I announce then to the Senate that the continuing resolution to be passed at 2:15 today provides for a continuing of the Government for 1 day. The resolution just passed provides for Government funding through November 14, 2000.

I thank the Democratic leader for his cooperation on this. I know he has been

involved in this process, trying to find a date that is fair and reasonable to all interested parties. I know it is not easy, but I think this is the right thing to do. I hope the House will accept this resolution and then we would proceed to wrap things up after that.

In light of this agreement, there will be no further votes today. All Senators will be notified when the next vote will occur in the Senate.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Before the majority leader leaves, we understand his role. He is the leader here, and it is not easy. I can't speak for everyone on this side, but I can speak for a few. We hope when we come back that we will come back with a fresh view as to what needs to be done and hopefully we can get things done.

I ask the leader, is there some assurance—I guess that is the word—is there some certainty that the House will accept this? What has the leader learned?

Mr. LOTT. Mr. President, I have spoken to the Speaker of the House. There have been staff contacts with the leadership on both sides of the aisle. It is my impression that the leadership on both sides will work for this to be accepted. We had some discussion about a different date, but the House felt very strongly that this date was preferred to the later one, and that is basically one of the reasons why we settled on this date. Hopefully, they will move quickly to accept this and then we will be able to go do our responsibilities in other areas.

I say also that while we will be home and will not be here for awhile, there has been further progress made on the Labor-HHS and Education appropriations bill. I understand there are only a few issues remaining. The staff will not be on vacation. Work will continue. It would be my hope that the areas of disagreement can be worked out and when we come back on November 14, we will have a vote or two and that is all, that we would be done with it. But hope springs eternal, and it doesn't always come true. That is what we are thinking about right now.

Mr. REID. I say to the leader, the President is excited about this. It is my understanding that he will do what is necessary in this instance. I repeat that when we come back here, I hope we can move this forward. With minor exceptions, the work done by Senator STEVENS and Senator BYRD and others on the Labor-HHS bill is really good work. I hope we can wrap it up very quickly.

Mr. LOTT. We have seen here today persistence does pay off. Yesterday very little was said about it, but a lot of credit goes to the members of the committee that produced the Water Resources Development Act under the chairmanship of BOB SMITH. There was some disagreements with the House,

but they put their shoulder to the wheel and we passed that very important legislation last night. Today, thanks to a lot of good effort by Senator DASCHLE and Senator REID, and working with Senators on our side, we were able to move the FSC legislation, which we had not been able to get done earlier. So at this very moment, we are continuing to work to get agreement on the bankruptcy vote. I agree that this is an indication of why we probably should take a time-out. We didn't pass that cloture today because of absentees. I believe when we get everybody here, cloture will be invoked, and we will go forward with that important legislation.

Again, I thank the Senator for his good work as always.

I yield the floor.

UNANIMOUS-CONSENT REQUEST—
S. 13

Mr. SESSIONS. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 13, the Class Act. I further ask consent that the Senate proceed to its consideration, and an amendment at the desk submitted by Senator SESSIONS be agreed to, the bill be read the third time and passed, and that the motion to reconsider be laid upon the table. Further, I ask that the bill remain at the desk, and that when the Senate receives from the House H.R. 254, the Senate proceed to its consideration, all after the enacting clause be stricken and the text of S. 13, as amended, be inserted in lieu thereof. I further ask that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and all previous action on S. 13 be vitiated.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, a member of the minority has requested that on his behalf I object to this action, and based upon that request, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. SESSIONS. Mr. President, Senator GRAHAM of Florida and I have been working on this bill. This legislation, in sum, provides that families that are saving for college tuition under prepaid college tuition plans, which are growing in popularity in America, the money they save and the interest that accrues on those plans not be taxable by the Federal Government. That is what this law would do if passed.

What we are doing in America today is we have a public policy to encourage families, through loan subsidies and other forms of incentives and delays in payments of interest, to borrow money to pay for college. But people who are saving money, even under State prepaid college tuition plans, are taxed on the money they save. This is a dis-

incentive for the best way to pay for college tuition; that is, saving for college. Well over 40 States have these prepaid plans and the few States that don't are moving to develop them. It is working very well. The Federal tax policy ought to affirm what these States are doing and make this tax-free.

I just note that this is a middle class program. For example, 71 percent of the participating families in the Florida prepaid college program have annual incomes under \$50,000, and 25 percent have incomes of less than \$30,000; 81 percent of the contracts in Wyoming's savings plan have been purchased by families with annual incomes of less than \$34,000; 62 percent of the contracts in Pennsylvania have been purchased by families with annual incomes of less than \$35,000. The average monthly contribution to a family's college savings account in 1995 in Kentucky was \$43.

So what we are saying is let's have a good public policy. Let's encourage people to save and make sure it is a wise thing for them to do financially. If we can achieve that, I think it would be good. As far as I understand, there is only one person in this who has an objection. I would be delighted to know who that was. Senator GRAHAM and I would like to talk to them to see if the problem they have can be worked out. I think it is good public policy. Both Vice President GORE and Governor Bush have made statements that clearly indicate their support for this kind of public policy. I am working with Senator DASCHLE, the Democratic leader, and I thank him for his assistance on this legislation, dealing with an issue he thought important to his State.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

BANKRUPTCY REFORM

Mr. REID. Mr. President, I know my friend from Illinois wishes to speak at some length. First, I have a couple of comments. On the recently completed vote on cloture regarding bankruptcy, I think that is an example of why we need to follow Senate procedures the way we have for 200-plus years. Here is the bankruptcy bill brought up on a bill under the jurisdiction of the Foreign Relations Committee. Some Members who should have been weren't in that conference. I just think it is a very poor way to do business.

I think that we in the minority have been treated unfairly on a number of occasions this year. In an effort to show my displeasure—and that is a real soft, cool word because I feel more strongly than that—I voted against invoking cloture.

There comes a time when we have to work as legislators, and as Senators. If things don't change here, there are

going to be other unfortunate procedures such as this, even though there is support for the substance of the legislation.

Also, Senator SCHUMER had a very strong point in this legislation. He and I cosponsored an amendment that is very simple. It said that these people—these very, in my opinion, evil people, who go to clinics where women come to get advice—some people may not like the advice they get in these clinics because some of the advice results in obtaining an abortion. But we live in a free country; people have the right to go where they want to go and talk about what they want. What these women are doing is lawful, not illegal. People spray chemicals into those facilities, and they can't get rid of the stench for up to 1 year, and many times they have to simply tear the insides of the facility down so it can be reused. In this legislation, Senator SCHUMER and I said if you do that, you cannot discharge that debt in bankruptcy as a result of the damages incurred, whether to the facilities or those women who use those facilities.

That provision should be in this legislation. For it not to be is wrong, and I understand that the chief advocate of the legislation—I don't know this to be a fact—Senator GRASSLEY, was willing to accept the provision. However, it was not in there. This is wrong and, as a matter of procedure and as a result of the substantive issue that I just talked about, I am satisfied with my vote. I have no second thoughts. I did the right thing. Unless there is a different method of approaching this bankruptcy reform, which I agree is badly needed, there are going to be roadblocks all along the way.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

IN MEMORY OF MARLENE
CALDWELL CARLS

Mr. DURBIN. Mr. President, I rise today to pay tribute to Marlene Carls, a very special person who worked in my Springfield office for nearly 20 years. Marlene passed away on October 24.

My wife Loretta first introduced me to Marlene almost 20 years ago when I was running for a seat in the U.S. House of Representatives. Loretta told me Marlene was an excellent worker and she hoped that she would join my campaign. So I sat down with Marlene and offered her a deal she could not refuse. I offered her a beat-up old desk, a run-down office, and not much pay, if she was willing to work for a candidate who had lost three straight elections. In a moment of weakness, she accepted. Marlene was part of our family from that day forward.

Marlene was born to be a caseworker and she was the best. She had a heart