

1-1-2007

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BANKRUPT AND NOT ALLOWED TO WORK: THE STATUTORY, PRECEDENTIAL,
AND POLICY REASONS FOR EXCLUDING AGENT CERTIFICATIONS FROM A
DEBTOR'S BANKRUPTCY ESTATE

by
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Submitted in partial fulfillment of the requirements of the
King Scholar Program
Michigan State University College of Law
under the direction of
Professor Kathleen Payne
Spring, 2007

I. AN INTRODUCTION TO BANKRUPTCY BY INDIVIDUALS IN THE UNITED STATES AND AGENT CERTIFICATIONS.

Bankruptcy is a part of society in the United States. In a twelve month period that ended September 30, 2006, there were 1,112,542 bankruptcy filings.¹ Many readers may believe that a high number of businesses that filing for bankruptcy saturate that number. That seems like a logical assumption; however, the fact is that individuals represent 1,085,209 of those filings.² Even though this number has decreased by over 25% from 2005, most likely as a result of the revisions to the Bankruptcy Code, individuals will continue to file for bankruptcy.³ As a result of the high amount of individuals filing for bankruptcy every year, debtors represent a wide variety of occupations and professions. This paper will focus on one group of professional, sports agents, and the Bankruptcy Code's effect on these debtors.

There are a variety of professional sports leagues with which one may become a player's representative, a.k.a certified agent. Each of the professional sports leagues promulgated its own agent regulatory system and certification processes; therefore, each one must be examined separately to determine the Bankruptcy Code's effect on certified agents with that specific league. The National Football League ("NFL") is one of the four major sports leagues in the United States. This paper will analyze the Bankruptcy Code's effect on the agent certification issued by the National Football League Players Association ("NFLPA")⁴ with the intent of identifying whether these agent certifications should be included as property of the debtor-agent's bankruptcy estate. This decision may seem inconsequential in the realm of the bankruptcy proceeding. This assumption may lead people to believe that discussion of this topic is unimportant or a waste of time. However, as will be discussed, the court's decision could strip a debtor of any opportunity to earn a living or could prevent a debtor from satisfying his or her debts to the creditors.⁵

This paper begins by giving a brief overview of the important bankruptcy filings which will lay a foundation for understanding bankruptcy in this context. In particular, the overview focuses on the two most prevalent bankruptcy filings by individuals, chapter 7 and chapter 13.⁶ This overview lays the ground work for understanding what happens to the “property” that becomes a part of the bankruptcy estate. After the overview of bankruptcy, there is a brief summary of the NFLPA, its regulations and its agent certification process. The synopsis of the NFLPA and its structure is followed by the importance of bankruptcy in relation to these agent certifications. Before delving into the background of this paper, there is one point that needs to be addressed in order to prevent confusion. The words “certification” and “license” are used interchangeably throughout this paper since courts do not distinguish the two words. In fact, the United States Supreme Court ruled that a license and certification are substantially similar, the only difference being the issuing party.⁷

The number of certified agents and the number of bankruptcy filings consistently remain high; yet, case law and scholars have failed to address the issue of whether agent certifications are property of the debtor’s bankruptcy estate. There are numerous cases dealing with certifications in other professions; however, in dealing with the unique world of professional sports and their agents, there is no guidance. In addition, the cases dealing with other certifications, the courts are split on whether those certifications should be property of the bankruptcy estate. Further complicating the matter, there are numerous sections of the Bankruptcy Code that address the Bankruptcy Court’s jurisdiction over the debtor’s assets. Therefore, courts typically examine the certification under one section but not all of the pertinent sections. This creates a lack of uniformity in case law precedent across jurisdictions and uncertainty among debtors, creditors, bankruptcy trustees, and bankruptcy judges.

There are numerous goals that this paper intends to accomplish. The first goal is to provide a description of the strict and strenuous agent certification and regulation process. The second goal is to provide an understanding of how a perceived “simple” decision on whether to include a certification in the debtor’s bankruptcy estate can result in major consequences to the parties involved in the proceeding. However, the main goal is to analyze the NFLPA’s agent certifications under the relevant sections of the Bankruptcy Code and the progeny of case law interpreting these sections. Furthermore, the analysis will extend to the policy considerations in deciding whether or not the agent certification is property of the debtor’s bankruptcy estate. This analysis combined with the policy considerations will lead to the conclusion that the NFLPA issued agent certifications should not be considered property of the debtor’s bankruptcy estate.

A. THE PURPOSE OF BANKRUPTCY AND ITS MOST COMMONLY USED CHAPTERS.

Throughout the development of and amendments to the Bankruptcy Code, legal scholars and the courts cite two main purposes of the bankruptcy process. The first is to create a fresh start for the debtor.⁸ The “fresh start” goal is intended to encourage the debtor to “becom[e] reestablished as a hard-working member of society, striving to find the good life and fulfill the American Dream.”⁹ The United States Supreme Court has also characterized the fresh start as “a new opportunity for life, unhampered by the pressure and discouragement of pre-existing debt.”¹⁰ Bankruptcy allows for individuals and businesses to engage in risk-taking in the free-market with limited overall risk involved to those who fail in the competitive, capitalist market.¹¹

The second purpose drawn out of the Bankruptcy Code is the creation of equity among creditors.¹² The goal is to systematically and fairly distribute the debtor’s assets among the creditors as proscribed by the Bankruptcy Code.¹³ This guarantees equal treatment among the creditors in similarly situated positions, which essentially creates certainty for creditors when

extending credit.¹⁴ The rules are designed to discourage creditors from rushing to the front of the line, instead promoting the negotiation of debts prior to the debtor filing for bankruptcy.¹⁵

In order to understand the implications of the Bankruptcy Court exercising jurisdiction over the agent certification, we must identify and understand the commonly used chapters of bankruptcy. Once identified, the objectives of the chapters can guide the decision on whether the agent certifications should be included in the debtor's bankruptcy estate. Although there are six potential chapters to file under, there are two types of bankruptcy proceedings commonly used by individuals, chapter 7 and chapter 13.¹⁶ In the 2006 fiscal year, the Federal Judiciary reported 1,112,542 bankruptcy filings with 1,085,209 filed by individuals.¹⁷ Individuals predominantly used chapter 7 compared to any other form of bankruptcy with the Federal Judiciary reporting 814,889 chapter 7 filings, 269,660 chapter 13 filings and only 658 chapter 11 filings.¹⁸ This paper will focus on primarily chapter 7 and chapter 13 since the statistics clearly reveal that these two chapters are by far the chapters in which individuals use when filing for bankruptcy.

The most common bankruptcy filing, chapter 7, constitutes over 75% of individual filings.¹⁹ "Any individual residing, domiciled, or having property or a place of business in the United States may file a chapter 7 bankruptcy."²⁰ A chapter 7 filing, called a "liquidation" requires the appointment of a trustee to collect and sell all of the debtor's non-exempt²¹ property.²² The proceeds from the sale are distributed to satisfy the debts to creditors.²³ The final step of a chapter 7 filing is the Bankruptcy Court granting a discharge of the remaining, unsatisfied debts of the debtor that were not paid-off through liquidation.²⁴ The purpose of this chapter is "to achieve a fair distribution to creditors of whatever nonexempt property the debtor has and to give an individual debtor a fresh start through the bankruptcy discharge."²⁵

The second common bankruptcy filing, chapter 13, represents about 25% of individual filings.²⁶ Any individual with “a regular income” who resides, is domiciled, or has a place of business or property in the United States may file for chapter 13 bankruptcy.²⁷ An individual qualifies as having “a regular income” if the “income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13.”²⁸ This chapter allows the debtor to adjust his or her financial situation without resorting to liquidation of current assets.²⁹ Chapter 13 is used to rehabilitate a debtor with regular income through a court-confirmed plan of reorganization.³⁰ The earnings and other income received after the filing of the petition is used under the plan to pay creditors in full or in part under a trustee’s supervision.³¹ The goal of chapter 13 is to repay creditors within a three to five year period depending on the “current monthly income” of the debtor.³² At the end of this court-confirmed plan, the debtor receives the same discharge, with some exceptions, as under chapter 7.³³

The interplay between these two chapters is significant. Chapter 7 can be converted to chapter 13 at any time during the case as long as the debtor is qualified for relief under chapter 13.³⁴ In the same manner, a person who has commenced a chapter 13 bankruptcy can convert the proceeding to a chapter 7 bankruptcy.³⁵ The important point to be made from the relative ease of conversion is that the courts must see chapter 7 and chapter 13 as interchangeable when deciding what to include as property of the debtor’s bankruptcy estate. Due to the easy ability to convert from one chapter to another, the court cannot make an asset property under one chapter and not property under the other chapter. With a few exceptions, the court should be uniform under the Bankruptcy Code in defining “property.” As such, this is an important limitation to keep in mind when addressing whether agent certifications can be property of the debtor’s bankruptcy estate.

B. BACKGROUND OF AGENT CERTIFICATIONS WITH THE NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION (NFLPA), THE NFLPA'S REGULATORY SYSTEM AND THE CERTIFICATION PROCESS.

In order to represent National Football League (“NFL”) players in contract negotiations, the NFLPA requires that the agent obtain a certification by completing the NFLPA’s certification process. The NFLPA’s intent is to ensure that qualified and competent agents are representing the players in their contract negotiations. There are particular requirements that must be met throughout the certification process. These requirements are set forth in the NFLPA Regulations Governing Contract Advisors (“The Regulations”). The Regulations create specific personal requirements and duties that will be important in establishing whether the agent certification should be property of the debtor’s bankruptcy estate. Therefore, it is important to understand the certification process and the duties of the agents once they become certified with the NFLPA.

The NFLPA was created, in part, to certify and authorize agents to represent the players of the NFL.³⁶ In order to be considered for certification with the NFLPA, an agent must meet application criteria and complete the certification process.³⁷ In accordance with the Regulations, a prospective agent must meet, at a minimum, the following qualifications: (1) have an undergraduate and post-graduate degree; (2) pass a written examination and background check; (3) complete appropriate application materials; (4) submit application fees; and (5) attend a seminar for new contract advisors.³⁸

Once an applicant becomes certified with the NFLPA, the agent has continuing obligations to the NFLPA which include, but are not limited to: (1) reporting negotiated player contracts; (2) acting in a fiduciary capacity at all times; (3) paying an annual fee; (4) obtaining professional liability insurance from an approved carrier; (5) attending one of three NFLPA seminars held each year for Certified Contract Advisors; (6) remaining educated regarding

NFLPA matters; (7) providing an updated application on an annual basis; (8) complying with all stated policies of the NFLPA, including the Regulations; and (9) negotiating at least one player contract within a three-year period.³⁹ The agent can lose his or her certification if he or she does not satisfy any one of these requirements.

Throughout the process, the NFLPA controls who becomes a certified agent and who remains a certified agent. The NFLPA has the “sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification of an agent.”⁴⁰ Even though it is not specifically stated in the Regulations, this power retained by the NFLPA restricts transferability of the agent certifications. Since the NFLPA must approve all potential agents through the rigorous process described above, the certified agent cannot unilaterally transfer the agent certification to any third party. This control factor is significant in deciding whether the agent certification is property of the debtor’s bankruptcy estate.

C. THE BANKRUPTCY CODE’S RELEVANCE TO NFLPA AGENT CERTIFICATIONS.

The analysis of whether an agent certification is property under the debtor’s bankruptcy estate is an important topic since a decision in either direction has financial consequences for debtors, creditors, and NFL players. If the agent certification is not a part of the bankruptcy estate, the creditors are harmed. Under a chapter 7 filing, the creditors have one less asset to liquidate and recoup some of the debt. Also, under a chapter 13 filing, the certification will not be included in the debtor’s plan of reorganization. If the certification is not under the plan of reorganization, the debtor may not be required to use the income produced as a result of the certification to satisfy the outstanding debt.

On the other hand, negative effects of placing the certification under the Bankruptcy Court’s jurisdiction are felt by the debtors and the NFL players. The harm to the actual debtor-

agent exists under chapter 7 and chapter 13. In a chapter 7 case, the agent's financial problems will not be solved by selling the certification. The liquidation effectively takes away the agent's means of earning an income. The agent no longer possesses the certification; thus, the agent can no longer represent NFL players in contract negotiations. In the end, the agent loses his or her employment and the NFL player loses his agent that negotiated his current contract. Similarly, in a chapter 13 case, the certification does not necessarily need to be in the plan of reorganization in order for the income to be used to satisfy the debts. However, if it is under the Bankruptcy Court's jurisdiction and the Court rejects the debtor's plan of reorganization, the case may be converted to a chapter 7. This, once again, implicates the problems of liquidating the debtor's only means of generating income to satisfy creditors.

The liquidation of the agent's certification has a secondary effect on the NFL players represented by the agent. If the agent loses his or her certification because of some financial difficulties, the player may lose his agent's effective representation. The player may not want to lose his agent because of bankruptcy proceedings. This may result in the agent declining to invoke the benefits of bankruptcy to obtain the "fresh start" in fear of losing clients and income at a time where bankruptcy may be the most beneficial option.

II. STATUTORY INTERPRETATION, RELEVANT CASE LAW INTERPRETING THESE STATUTES AND POLICY IMPLICATIONS PREVENT AGENT CERTIFICATIONS FROM BECOMING PROPERTY OF THE DEBTOR'S BANKRUPTCY ESTATE.

There are two sections of the Bankruptcy Code that govern whether assets with the characteristics of agent certifications will be included in the bankruptcy estate.⁴¹ The first, 11 U.S.C. § 541(a) places "[a]ll legal and equitable interests of the debtor" into the bankruptcy estate.⁴² Congress did not define "property" in the Bankruptcy Code.⁴³ Therefore, as general of

a statutory statement as that language is, this statement is the closest Congress came to defining “property” in the Bankruptcy Code. As a result of Congress’s decision to exclude a definition of “property” in the bankruptcy estate context, courts are required to interpret what constitutes property of the bankruptcy estate.

Many courts have set out guidelines for determining what constitutes property of the bankruptcy estate. In the case of agent certifications, there are two important cases that are analogous to this inquiry. The first case is *In re Geiger*, which addresses whether a driver’s license is a part of the debtor’s bankruptcy estate.⁴⁴ The second case is *Wade v. State Bar of Arizona*, which discusses whether an attorney’s license to practice law is part of the estate.⁴⁵ As will be discussed in detail, these two cases are important because they deal with non-transferable licenses.⁴⁶ More importantly, *Wade* deals with a professional license that is non-transferable and valueless in the hands of a third party.⁴⁷

The second section, 11 U.S.C. § 365, it restricts the agent certification from becoming property of the bankruptcy estate because it is an executory contract for personal services. There are four subsections that are important regarding the agent certifications. The first subsection, § 365(a), restricts the agent certification from automatically becoming part of the bankruptcy estate because the trustee must make a decision of whether to accept or reject the contract.⁴⁸ The second subsection, § 365(d)(1), excludes the executory contract from the debtor’s estate unless the trustee assumes the contract within 60 days.⁴⁹ The third subsection, § 365(b), only allows assumption of the contract if the trustee “cures, or provides adequate assurance that the trustee will promptly cure” the default on the contract.⁵⁰ The fourth subsection, § 365(c)(1)(A)-(B), does not allow assumption by the trustee if it is prohibited by law and if the other party to the contract does not consent to the assumption.⁵¹ In the sections that follow, the reasons why the

agent certifications are executory contracts for personal services and why the agent certifications are not property of the debtor's bankruptcy estate are discussed in relation to § 365 and its relevant subsections.

A. AGENT CERTIFICATIONS WITH THE NFLPA ARE NOT PROPERTY OF THE DEBTOR'S BANKRUPTCY ESTATE IN ACCORDANCE WITH CASE LAW INTERPRETING § 541(A).

By examining each of the relevant statutory provisions individually, the most logical starting point is § 541(a). This section makes “[a]ll legal and equitable interests of the debtor . . . property of the estate upon filing of bankruptcy.”⁵² This language seems to give the Bankruptcy Court a broad blanket that covers every possession of the debtor. However, the courts do not interpret this language to include every possession as the language seems to suggest. In particular, two cases, one from the Eastern District of Pennsylvania Bankruptcy Court and one from the Ninth Circuit's Bankruptcy Appellate Panel, can be used to show that the Bankruptcy Court's jurisdiction does not reach an NFLPA agent certification.⁵³ By examining these two cases, it is evident that the agent certification is not property when analogizing agent certifications to the licenses dealt with by the courts.

1. Agent Certifications with the NFLPA Do Not Meet the Three Prong Test Created by *In re Geiger*.

The Pennsylvania Bankruptcy Court case of *In re Geiger* placed specific limitations on what is considered property of the estate in bankruptcy. In this case, the court established a three prong test to identify whether a debtor's license was property of the debtor's bankruptcy estate.⁵⁴ The court held that the possession must (1) be transferable, (2) have a tangible pecuniary or marketable value, and (3) be capable of financial quantification.⁵⁵ The case is a guideline in examining whether an agent's certification is property of the debtor's bankruptcy estate.

The court in *Geiger* was deciding whether the debtor's driver's license should be included in the debtor's bankruptcy estate.⁵⁶ The court specifically held that the license was not property of the debtor's bankruptcy estate because it was not transferable, did not have a tangible pecuniary or market value, and it was incapable of financial quantification.⁵⁷ Even though the debtor argued that other decisions have held that liquor licenses⁵⁸ and other commercially oriented licenses are property of the bankruptcy estate, the Court stated that the driver's license is more akin to a FCC license⁵⁹ or medical licenses,⁶⁰ which are not considered property of the bankruptcy estate.⁶¹ By analyzing the agent certifications in accordance with this ruling, it is evident that the agent certification does not meet any prong of the test.

i. Agent certifications with the NFLPA are nontransferable.

The requirement that the license be transferable essentially hinges on the restrictions imposed by the issuer and personal characteristics of the license. In each of the cases, the applicant must pass a test in order to obtain the license.⁶² Once the test is passed by the individual, the personal nature of the certification does not allow the license to be passed to whomever the license-holder chooses. In contrast, the liquor license only requires an application and payment of the license fee if there are licenses available. These licenses are not personal in nature and can be transferred from licensee to any third party on the open market.⁶³

The NFLPA's agent certifications are non-transferable by the certified agent. The Regulations do not allow for the transferability of the certification from a certified agent to a third party.⁶⁴ In contrast to the idea of free transferability by the certified agent, the Regulations specifically authorize the NFLPA as the sole and exclusive authority of determining how many individuals hold certifications.⁶⁵ Furthermore, the NFLPA's stringent application and certification process controls which applicants will hold certifications. The Regulations

requirement that the applicant pass an examination makes this certification agent specific. In addition, the NFLPA further personalizes the certification beyond the requirement of passing an examination. The certified agent must attend a NFLPA sponsored seminar, hold undergraduate and post-graduate degrees and submit to a background check.⁶⁶ The characteristic of the agent specific certifications make these non-transferable; thus, an agent certification with the NFLPA cannot meet the first prong under *Geiger*.

ii. Agent Certifications with the NFLPA do not have tangible pecuniary or market value.

The second prong of the *Geiger* analysis requires that the license have a pecuniary or market value.⁶⁷ The *Geiger* court found that the debtor's driver's license did not have a pecuniary or market value.⁶⁸ The court does not discuss this element; however, it can be inferred that the court found that the lack of pecuniary or market value stems from the fact that the license is non-transferable. If the license cannot be transferred there will be no ready market to purchase a license since it is worthless upon receipt. Even though the court did not feel it was necessary to fully address this prong, the simple economic analysis easily shows why there is no pecuniary or market value for the asset.

Similarly, the NFLPA's agent certifications do not have a pecuniary or market value. Since the NFLPA requires certification directly from its certification process and does not allow for the transfer from the certified agent to a third party, there is no market outside of going directly to the NFLPA. There is no ready market for these certifications since they are agent specific. The agent certifications are worthless in the hands of the third party, similar to the driver's license's lack of value to any person other than the actual licensed driver.

It is important that a pecuniary or market value exist for the license to be property of the bankruptcy estate. As described earlier, under chapter 7 bankruptcy, the trustee liquidates all of the nonexempt property of the debtor's bankruptcy estate.⁶⁹ In order for the license to benefit the estate and the creditors, there needs to be a pecuniary or market value. If the value does not exist, it is pointless to include in the liquidation. This will benefit neither the debtor nor the creditors. This idea is even codified in 11 U.S.C. § 554 of the Bankruptcy Code. This section allows the trustee or the court to abandon property that is of inconsequential value to the estate.⁷⁰

The *Geiger* court does not even require dealing with the property in the first instance since the inconsequential property is excluded before it is placed into the debtor's bankruptcy estate. By excluding the property before it enters the bankruptcy court's jurisdiction, the process become more efficient and less expensive. Furthermore, the exclusion benefits the debtor and creditor since it is more important that the debtor retain the certification so that he or she can continue to earn income from the certification. This course of action is more effective in satisfying the debts to creditors. It is evident that the non-transferability of the agent certification essentially makes it valueless to the market; thus, the second prong of *Geiger* is not met.

iii. Agent certifications with the NFLPA are incapable of financial quantification.

The third and final prong of the *Geiger* test requires that the license be capable of financial quantification.⁷¹ The agent certification is the closest to meeting this prong of the test, yet it still does not meet the third prong. The financial quantification of the certification could be the value paid to obtain the certification from the NFLPA. The NFLPA requires an annual non-refundable application fee of \$1650.00.⁷² Even though this application fee may seem like a logical and simple solution to meeting this prong of the *Geiger* test, there are two problems.

The first problem is that the *Geiger* court did not find that the driver's license was capable of financial quantification.⁷³ Similar to the agent certification, a driver's license also has an application fee that must be paid in order to obtain the license. Even though this application fee existed, the court did not find that a fee for obtaining the certification amounted to financial quantification. Therefore, the application fee should not be relied upon in this case to establish that it is capable of financial quantification. The second problem is that the application fee is non-refundable.⁷⁴ Once the fee is paid, it cannot be recovered by anyone if the holder intends to discontinue representing NFL players. If a third party that obtained the certification could return the certification and receive the application fee in return, then it would be capable of financial quantification. Therefore, in accordance with *Geiger* and the application process of the NFLPA, the agent certification cannot meet the third prong of the *Geiger* test.

Under the test set forth in *Geiger* and analogizing the agent certification to the licenses in the above cited cases, the agent certification cannot be considered property of the debtor's bankruptcy estate. The *Geiger* court's interpretation of § 541 would preclude a court from placing the agent certification in the debtor's bankruptcy estate since it is non-transferable, has no tangible pecuniary or market value, and is incapable of financial quantification.

2. Agent Certifications with the NFLPA are Analogous to Attorney Licenses as Addressed in *Wade v. State Bar of Arizona*.

The Ninth Circuit Bankruptcy Appellate Panel specifically examined in *Wade v. State Bar of Arizona* nontransferable professional licenses.⁷⁵ The issue of whether nontransferable professional licenses are property of the bankruptcy estate came before the court in the form of an attorney's license to practice law.⁷⁶ The court stated that “[a] nontransferable professional

license . . . is not a property interest.”⁷⁷ The court relied upon two specific statements in ruling that nontransferable professional are not property of the debtor’s bankruptcy estate.⁷⁸

The Court first relied on *Wisner v. Wisner*.⁷⁹ The *Wisner* court held that professional licenses certifying a person to practice medicine are not considered property of the estate due to the nontransferability.⁸⁰ The court supported this holding when it stated that the license could not be considered property of the estate because it was not subject to joint ownership.⁸¹ The second case cited by the *Wade* court, *In re D.H. Overmyer Telecasting Co.*, addressed Federal Communications Commission (“FCC”) licenses.⁸² The court reasoned that the debtor’s FCC license was not property of the estate because of the issuer’s retained “authority to strip [D.H. Overmyer] Telecasting of its broadcasting license, and may also refuse to allow [D.H. Overmyer] Telecasting to transfer or assign its license.”⁸³ The court relied on the nontransferability, or at least the restriction on transferability, as the reason for holding that the license is not property of the bankruptcy estate.

The three cases mentioned in the previous paragraph, *Wade*, *Wisner*, and *Telecasting*, and the case analyzed in the previous section, *Geiger*, all hold that professional certifications that are nontransferable or where the issuer retains the authority to restrict transferability are not property of the bankruptcy estate. Similar to the certifications in these four cases, the NFLPA’s agent certifications are nontransferable professional certifications. The extreme personal nature and requirements from the NFLPA make these nontransferable or at the very least place restrictions on transferability as the FCC did in *Telecasting*. Either factor alone restricts the free transferability of the agent certification; thus, the agent certification is not property of the debtor’s bankruptcy estate.

Readers may notice one common thread that runs through all the cases that one may argue distinguishes those licenses from NFLPA issued agent certifications. This common thread is that all these licenses are issued by a government agency. It may be argued that since the agent certification is issued by the NFLPA and not the government, it should not receive the same type of exemption that governmental licenses receive. This argument can be dispelled by examining the delegated authority received by the NFLPA. Congress, through the National Labor Relations Act (“NLRA”), delegates exclusive authority to unions to handle the operation and administrative decisions of their union.⁸⁴ This delegation by Congress through the NLRA is analogous to the Supreme Court of Arizona delegating its authority to the State Bar of Arizona. The State Bar of Arizona is a private entity, but receives the same exemption that other governmental units receive due to the governmental oversight. In *Wade*, the court still found that the State Bar had the necessary oversight so that the attorney license was not part of the bankruptcy estate.⁸⁵ As a result of Congress’s oversight through the National Labor Relations Board, the nontransferable agent certification is not property of the debtor’s bankruptcy estate.

B. NFLPA AGENT CERTIFICATIONS ARE NON-ASSUMABLE UNDER § 365.

The NFLPA’s agent certification cannot automatically become a part of the bankruptcy estate since it is an executory contract for personal services pursuant to 11 U.S.C. § 365. In order for an executory contract to become a part of the bankruptcy estate, the trustee must decide whether to accept or reject the contract.⁸⁶ Congress specifically set forth in § 365(d)(1) that the executory contract does not automatically become part of the debtor’s bankruptcy estate since it must be assumed by the trustee within 60 days; if it is not assumed it is deemed rejected.⁸⁷ However, the trustee’s decision is only relevant if the other party to the contract (the NFLPA) consents to the trustee’s assumption.⁸⁸ Before addressing these issues, it is necessary to address

how this agent certification is subject to § 365. This requires discussing what makes the agent certification an executory contract for personal services.

In order to be an executory contract, the certification must have all the necessary elements of a contract. A contract is formed when there is a valid offer, acceptance, and consideration.⁸⁹ The applicant makes an offer by submitting his or her application for certification as a NFLPA agent to the NFLPA. The NFLPA accepts the offer by issuing a certification. The NFLPA provides adequate consideration by maintaining an exclusive and regulated environment for certified NFLPA agents to represent NFL players.⁹⁰ This exclusive and regulated environment provides the agents with an advantageous environment where players can feel secure that their agent, by holding a certification, is qualified and competent to negotiate with NFL teams. The certified agent provides adequate consideration by paying the required annual fee and agreeing to act in a fiduciary manner at all times.⁹¹

The NFLPA application for agent-specific certification is further evidence of the existence of a contract between the NFLPA and an accepted applicant. The application states,

[i]n consideration for the opportunity to obtain Certification and in consideration of the NFLPA's time and expense incurred in the processing of my application for such Certification, I further agree that this Application and the Certification, if issued to me, along with the NFLPA Regulations Governing Contract Advisors shall constitute a contract between the NFLPA and myself.⁹²

This language clearly concedes that a contract exists. Even without this language, there is valid offer, acceptance, and consideration; thus, the NFLPA's agent certification is a contract.

The NFLPA's agent certification is not only a contract, but it is an executory contract. An executory contract is one where the parties on both sides have a duty to performance to some extent.⁹³ To be more specific, "a contract is executory if 'the obligations of both parties are so unperformed that the failure of either party to complete performance would constitute a material

breach and thus excuse the performance of the other.’’⁹⁴ While an “executory contract” is not defined in the Bankruptcy Code, its legislative history has been interpreted to agree with the definition from *Helms*.⁹⁵ The NFLPA agent certification is an executory contract because it contemplates performance by both parties into the future.⁹⁶

In regards to the NFLPA’s agent certification, it requires future performance from both sides. Among other requirements, the certified agent must pay an annual fee, attend an annual NFLPA seminar on contract negotiations, comply with all provisions of the Regulations, remain educated regarding NFLPA matters, and act in a fiduciary capacity on behalf of all players at all times.⁹⁷ Similarly, the NFLPA has outstanding obligations that would result in a material breach of the contract if they are not performed. It must maintain an exclusive environment in which only certified agents are allowed to negotiate contracts on behalf of the players, regulate agent behavior through the Regulations, and act as the exclusive organization to certify agents.⁹⁸ Failure by either party to perform any of their outstanding obligations would result in a material breach. Therefore, in accordance with *Helms*, the fact that both parties have outstanding obligations makes the NFLPA’s agent-specific certifications executory contracts between the certified agent and the NFLPA.⁹⁹

This executory contract is a contract for personal services due to the personal requirements that the NFLPA expects from the applicants. The Bankruptcy Court for the Northern District of Texas held that an agent-principal contract was a personal service contract.¹⁰⁰ The court in *Clay* was addressing a contract where an insurance agency delegated its authority to contract with the insured individuals to specific insurance agents.¹⁰¹

In the same manner as the insurance company delegating its authority to contract to the agents, the NFLPA delegates its authority to contract directly with NFL players and represent

them in contract negotiations to certified agents. Furthermore, it is even more apparent that the NFLPA's agent certifications are personal in nature compared to the principal-agent contract in *Clay*, since the applicant must have an undergraduate and post-graduate degree; pass a written examination; subject himself or herself to a background check; complete appropriate application materials; submit application fees; and attend a seminar for new contract advisors.¹⁰² Such requirements are so specific to the individual that the certifications are not transferable or assumable by another individual.

Since the NFLPA's agent certification is an executory contract for personal services, there are three specific reasons that it cannot be assumed by the trustee of the bankruptcy estate. These three specific reasons will be addressed individually. All three of these reasons standing alone can restrict the agent certification from inclusion into the bankruptcy estate.

1. Executory Contracts for Personal Service are Non-assumable by the Bankruptcy Estate's Trustee in Accordance with *In re Clay*.

The agent certifications through the NFLPA are not assumable by the trustee of the bankruptcy estate since it is an executory contract for personal services. The Bankruptcy Court in *Clay* excluded the debtor-agent's principal-agent contract with the insurance company from his bankruptcy estate upon filing bankruptcy.¹⁰³ The court stated that since the contract was an executory contract for personal services, it could not be assumed into the bankruptcy estate.¹⁰⁴ In response to the trustee's argument, the court relied upon *Williams v. Tomer (In re Tomer)*¹⁰⁵ and ruled that the agreement could not be a part of the estate because it was an executory contract for personal services.¹⁰⁶

In following the analysis of the *Clay* court, its reliance on *Tomer*, and direct conclusion that the personal service characteristic of an executory contract automatically excludes the

contract from the bankruptcy estate would also preclude an NFLPA agent certification from the bankruptcy estate. As addressed previously, the agent certification possesses the same characteristics that qualify the contract in *Clay* as an executory contract for personal services. As such, in accordance with *Clay*, the agent certification is not assumable by the trustee of the debtor's bankruptcy estate.

2. The Bankruptcy Estate's Trustee Cannot Adequately Cure the Default as Required by 11 U.S.C. § 365(b)(1)(A).

The agent certification cannot become property of the bankruptcy estate since the default that would occur from the non-performance of the debtor-agent cannot be cured by the bankruptcy estate's trustee as required by 11 U.S.C. § 365(b)(1)(A). This section restricts the bankruptcy trustee from assuming the executory contract unless the trustee "cures, or provides adequate assurance that the trustee will promptly cure" the default on the contract.¹⁰⁷ Due to the personal nature of the executory contract between the NFLPA and the certified agent, the trustee cannot adequately cure the default that would result if the Bankruptcy Court obtains control of the debtor-agent's certification.

The agent certification issued by the NFLPA is not assumable by a bankruptcy trustee because someone who wishes to represent NFL players must meet the specific qualifications required to obtain an agent certification. Since the potential agent must have a post-graduate degree; pass a written examination and background check; complete appropriate application materials; submit application fees; and attend a seminar for new contract advisors, any random person cannot cure the defaults of the debtor-agent.¹⁰⁸ Because these requirements are specific to an individual, and are neither transferable nor assumable by another individual, the trustee cannot provide the assurance required under the Bankruptcy Code to cure the debtor-agent's

default.¹⁰⁹ The default would be related to the debtor-agent's inability to represent the NFL players as required by the Regulations and in accordance with his agent certification. The trustee cannot cure this default because it is specific to the debtor-agent and the trustee would not be able to take the debtor-agent's place to represent his or her clients. Therefore, pursuant to § 365(b)(1)(A), the agent certification is not assumable by the trustee of the bankruptcy estate.

3. The Bankruptcy Estate's Trustee Cannot Assume the Agent Certification Pursuant to 11 U.S.C. § 365(c)(1).

The third and final reason that the agent certification issued by the NFLPA is not assumable by the bankruptcy trustee is a result of the restrictions placed on the trustee by 11 U.S.C. § 365(c)(1). The first exception provides that a trustee may not assume an executory contract if

applicable law excuses a party, other than the debtor, to such contract . . . from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession whether or not such contract . . . prohibits or restricts assignment of rights or delegation of duties.¹¹⁰

The second exception provides that a trustee may not assume an executory contract if the party to the contract with the debtor does not consent to such assumption.¹¹¹

Under the first exception, the applicable law is § 9(a) of the NLRA, which delegates exclusive authority to the NFLPA to handle its operations.¹¹² The authority extended to the NFLPA includes the exclusive ability to enact agent regulations, and the process to grant certification to these agents. The debtor-agent does not have this authority, so he or she cannot pass his or her agent-specific certification on to the trustee. Thus, under the Bankruptcy Code, the NFLPA is excused from accepting performance, if performance was even possible, from anyone besides the original certified agent, i.e. the debtor-agent.

Under the second exception, the NFLPA must expressly consent to the assumption of the agent certification by the bankruptcy trustee.¹¹³ The Regulations state that the NFLPA “shall have sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification of an agent.”¹¹⁴ As addressed earlier, this does not allow for the certified agent to essentially become a certifier by transferring his or her existing certification. The NFLPA chose not to allow non-certified agents to become certified through a transfer of agent certifications, which is what would happen if the trustee was able to assume the agent certification. Thus, the agent certification is neither assumable by law nor assumable without the consent of the NFLPA.

III. ALTHOUGH ONE CAN ARGUE THAT 11 U.S.C. § 541 SHOULD BE INTERPRETED BROADLY, THE AGENT CERTIFICATION DOES NOT FALL INTO THE BROAD INTERPRETATION.

Proponents of including the agent certification as property of the bankruptcy estate will generally advocate that the agent certification fits as property under 11 U.S.C. § 541. As discussed in Section II of this paper, § 541 makes “[a]ll legal and equitable interests of the debtor . . . property of the estate upon filing of bankruptcy.”¹¹⁵ In order to support their contention that the certification should not be viewed in accordance with *Geiger* and *Wade*, the advocates will point to number of cases that stand for the idea that the scope of the property interests included in the bankruptcy estate should be construed broadly, while the scope of the exclusions should be construed narrowly.¹¹⁶ Furthermore, they will argue that the congressional intent of § 541 is that the scope of property interests included in the estate be broad, while the scope of exclusions be narrow.¹¹⁷

The cases that stand for this proposition are not analogous to the agent certifications issued by the NFLPA. These cases deal with licenses that are either a non-professional license,

transferable, or non-personal to the applicant.¹¹⁸ For example, in the *Miller* case, the court was dealing with a liquor license.¹¹⁹ As previously discussed, liquor licenses are transferable and have significant value on the open market since these licenses are typically limited in quantity and financially lucrative for subsequent possessors to own.¹²⁰

On the surface, this argument seems like a logical approach. The court should just throw every possible property interest of the debtor into the bankruptcy estate. While generally it would be beneficial to the debtor to include every possible asset in the bankruptcy estate, there are some consequences associated with inclusion. The advocates of placing the agent certification in the debtor's bankruptcy estate are seeking short term satisfaction of debts. By including the agent certification in the debtor's bankruptcy estate, the trustee can liquidate the certification and payoff the creditors with the sale price. However, dispossessing the debtor of his or her certification and liquidating the certification has the long term effect of closing off the debtor's ability to earn an income with the certification. This income will arguably generate more money for the creditors than liquidating an agent certification since the certification is useless to the third party.

The approach of throwing all of the debtor's property into the bankruptcy estate is an approach of some courts. The trustee of the estate may find that the agent certification's headaches and problems are outweighed by the inconsequential value to the debtor's bankruptcy estate. In this case where the court decides to include all the property without excluding the agent certification, the trustee has an opportunity to relieve itself of this problem. "The trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."¹²¹ As discussed above, the agent certification does not have a market value to third parties; therefore, if a court decides to use a broad

definition of “property,” the trustee should recognize the agent certification’s inconsequential value. The estate should then abandon the certification since there is no beneficial value.

The decision by either the Bankruptcy Court or the trustee to exclude the agent certification from the debtor’s bankruptcy estate allows the debtor to continue to earn an income and use the income to pay the creditors during the bankruptcy proceeding. In the end, this course of action will be more beneficial to every party involved. The income can supplement the monies received from liquidation in chapter 7 and can help the plan of reorganization in chapter 13. Thus, it is more beneficial to allow the debtor to continue representing the NFL players with the agent certification rather than taking the agent certification away and either liquidating it or attempting to have the trustee perform a contract that he or she cannot legally perform.

IV. CONCLUSION

The decision by the court, electing to place the agent certification into the bankruptcy estate, can have unanticipated long term consequences. It is easy to overlook the consequences at first. If the court does not examine what the effects on the debtor, and essentially the creditor, will be, then it is easy to include every asset of the debtor in the estate. However, as we have seen, placing the agent certification in the hands of the trustee will, more likely than not, hurt the parties involved rather than meet the purposes of the Bankruptcy Code, giving the debtor a fresh start and equity among creditors. The delay caused by allowing the trustee 60 days under § 365(d)(1) to accept the agent certification into the debtor’s bankruptcy estate harms the debtor no matter how the trustee subsequently decides. This 60 day period leaves the debtor uncertain about his or her future. Therefore, the Bankruptcy Court should take this decision relating to agent certifications out of the hands of the trustee. Even if the Bankruptcy Court leaves this

decision to the trustee, the agent certification's characteristics prevent it from becoming part of the debtor's bankruptcy estate.

Based on the existing case law that is most analogous with the agent certifications, it is appropriate to view this in line with other professional licenses. Courts should follow the rulings in *Wade* and *Geiger* that restrict the inclusion in the bankruptcy estate if the issuer restricts transferability.¹²² The reason that this approach should be taken results from the inherent problem that exists when the license is non-transferable. If the issuer restricts transferability in any manner the license becomes valueless. The fact that the transferee cannot be certified by the certified agent through a mere transfer makes the license of no or possibly nominal value to the transferee. This does nothing to benefit the bankruptcy estate. It is more important for the debtor to hold the certification and use it to earn an income during and subsequent to the bankruptcy proceeding.

Furthermore, the courts should also conclude that not only is this not property in the general sense, since it is an executory contract for personal services. The agent certification fits the definition of these contracts; thus, it is governed by the § 365 and its relevant subsections of the Bankruptcy Code. As we have seen, the executory contract cannot be assumed because the trustee cannot cure the defect. Further, even if the trustee was qualified to cure the defect, the personal service contract is not assumable by law. Based on the statutory language and common law jurisprudence, there are multiple reasons that, standing alone, would not place the agent certification as property of the debtor's bankruptcy estate. The law as it currently stands, policy reasons, and the consequences affecting all of the parties to assumption justify the exclusion of the agent certification issued by the National Football League Players Association from the debtor's bankruptcy estate.

¹ U.S. Courts, Bankruptcy Statistics, <http://www.uscourts.gov/bnkrpctystats/statistics.htm#calendar> (follow “2006 Fiscal Year by Chapter” hyperlink to obtain an Excel Spreadsheet of statistics) (last visited Mar. 30, 2007).

² *Id.*

³ *Id.*

⁴ The NFLPA is the collective bargaining union that represents all NFL players. The NFLPA delegates its authority to represent these players in contract negotiations to individuals who become certified agents. The NFLPA regulates the certified agents’ conduct through its regulatory system.

⁵ 11 U.S.C. § 101, et seq.

⁶ Cornell Law School Legal Information Institute, Bankruptcy, <http://www.law.cornell.edu/wex/index.php/Bankruptcy> (last visited Mar. 30, 2007).

⁷ *Peel v. Att’y Registration & Disciplinary Comm’n*, 496 U.S. 91 (1990).

⁸ NATIONAL CONSUMER LAW CENTER, *CONSUMER BANKRUPTCY LAW AND PRACTICE* 19 (8th ed. 2006).

⁹ *Id.*

¹⁰ *Id.* at 20 quoting *Local Loan Co. v. Hunt*, 229 U.S. 234, 244 (1934).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Cornell Law School Legal Information Institute, *supra* note 5.

¹⁷ U.S. Courts, *supra* note 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ NATIONAL CONSUMER LAW CENTER, *supra* note 6, at 35 citing 11 U.S.C. § 109.

²¹ Nonexempt property is defined by 11 U.S.C. § 522 (2007), which sets forth a list of exempt items. If the property is not on the exempt list, it is considered nonexempt property.

²² Cornell Law School Legal Information Institute, *supra* note 5.

²³ *Id.*

²⁴ NATIONAL CONSUMER LAW CENTER, *supra* note 6, at 44-45.

²⁵ RICHARD B. LEVIN ET AL., *FUNDAMENTALS OF BANKRUPTCY LAW* 17 (6th ed., American Law Institute-American Bar Association Committee on Continuing Professional Education 2006) (1986).

²⁶ U.S. Courts, *supra* note 1.

²⁷ NATIONAL CONSUMER LAW CENTER, *supra* note 6, at 47.

²⁸ *Id.* citing 11 U.S.C. § 101(30).

²⁹ *Id.*

³⁰ Levin, *supra* note 22, at 19, 393.

³¹ *Id.* at 19.

³² *Id.* at 401.

³³ NATIONAL CONSUMER LAW CENTER, *supra* note 6, at 47.

³⁴ *Id.* at 49 citing 11 U.S.C. § 706(a).

³⁵ *Id.* at 50 citing 11 U.S.C. § 1307(a).

³⁶ NFLPA Regulations Governing Contract Advisors, Introduction available at <http://nflpa.org/RulesAndRegs/AgentCertification.aspx>.

³⁷ *Id.* at § 2.

³⁸ *Id.*

³⁹ *Id.* at § 3.

⁴⁰ *Id.* at Introduction.

⁴¹ 11 U.S.C. § 541 (2007); 11 U.S.C. § 365 (2007).

⁴² 11 U.S.C. § 541(a)(1) (2007).

⁴³ *In re Gosman*, 282 B.R. 45, 48-49 (Bankr. S.D. Fla. 2002) citing *Norwest Bank of Worthington v. Ahlers*, 485 U.S. 197 (1988).

⁴⁴ *In re Geiger*, 143 B.R. 30 (E.D. Pa. 1992).

⁴⁵ *Wade v. State Bar of Ariz.*, 115 B.R. 222 (9th Cir. B.A.P. 1990).

⁴⁶ *Geiger*, 143 B.R. at 36; *Wade*, 115 B.R. 228-29.

⁴⁷ 115 B.R. at 228-29.

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- ⁴⁸ “Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a) (2007).
- ⁴⁹ “In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60- day period, fixes, then such contract or lease is deemed rejected.” 11 U.S.C. § 365(d)(1) (2007).
- ⁵⁰ 11 U.S.C. § 365(b) (2007).
- ⁵¹ 11 U.S.C. § 365(c)(1)(A)-(B) (2007).
- ⁵² § 541(a)(1).
- ⁵³ *Wade*, 115 B.R. at 228-29; *Geiger*, 143 B.R. at 36.
- ⁵⁴ *Geiger*, 143 B.R. at 36.
- ⁵⁵ *Id.*
- ⁵⁶ *Id.*
- ⁵⁷ *Id.*
- ⁵⁸ *In re Nejberger*, 934 F.2d 1300, 1301 (3d Cir.1991).
- ⁵⁹ *In re Overmyer Telecasting Co., Inc.*, 35 B.R. 400 (Bankr. Ohio 1983).
- ⁶⁰ *Matter of Lynn*, 18 B.R. 501 (Bankr. Conn.1982).
- ⁶¹ *Geiger*, 143 B.R. at 36.
- ⁶² In this instance we are specifically talking about the license to practice medicine, the license to be a certified agent and the license to operate a motor vehicle.
- ⁶³ *Nejberger*, 934 F.2d at 1302 *citing* 21 West Lancaster Corp. v. Main Line Restaurant, Inc., 790 F.2d 354, 357 (3d Cir. 1986).
- ⁶⁴ *See generally* NFLPA Regulations, *supra* note 34.
- ⁶⁵ *Id.* at Introduction.
- ⁶⁶ *Id.* at § 2.
- ⁶⁷ *Geiger*, 143 B.R. at 36.
- ⁶⁸ *Id.*
- ⁶⁹ Exempt property is defined by 11 U.S.C. § 522.
- ⁷⁰ 11 U.S.C. § 554 (2007).
- ⁷¹ *Geiger*, 143 B.R. at 36.
- ⁷² National Football League Players Association, Agent Certification, <http://nflpa.org/RulesAndRegs/AgentCertification.aspx> (last visited Mar. 30, 2007).
- ⁷³ *Geiger*, 143 B.R. at 36.
- ⁷⁴ National Football League Players Association, *supra* note 67.
- ⁷⁵ *Wade*, 115 B.R. at 228-29.
- ⁷⁶ *Id.*
- ⁷⁷ *Id.*
- ⁷⁸ *Wisner v. Wisner*, 129 Ariz. 333 (1981); *In re D.H. Overmyer Telecasting Co.*, 35 B.R. 400, 401 (Bankr. N.D. Ohio 1983)
- ⁷⁹ *Wade*, 115 B.R. at 229.
- ⁸⁰ *Wisner*, 129 Ariz. at 339.
- ⁸¹ *Id.*; *citing* *Muckleroy v. Muckleroy*, 84 N.M. 14, 15 (1972)
- ⁸² *Overmyer Telecasting*, 35 B.R. at 401.
- ⁸³ *Id.*
- ⁸⁴ 29 U.S.C. §§ 101, 159(a) (2007); *see* *Gurton v. Arons*, 339 F.2d 371, 375 (2d Cir. 1964).
- ⁸⁵ *Wade*, 115 B.R. at 229.
- ⁸⁶ “Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” § 365(a).
- ⁸⁷ *See* § 365(d)(1).
- ⁸⁸ *See* § 365(c)(1)(B).
- ⁸⁹ *In re Roman Crest Fruit, Inc.*, 35 B.R. 939, 944 (Bankr. S.D.N.Y. 1983); Restatement (Second) of Contracts §§ 24, 50, 71 (1981).
- ⁹⁰ NFLPA Regulations, *supra* note 34, at Introduction.

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- ⁹¹ *Id.* at § 3(A).
- ⁹² *Id.* at Appendix A at 2.
- ⁹³ NLRB v. Bildisco & Bildisco, 465 U.S. 513, 522 (1984); *see also* VERN COUNTRYMAN, EXECUTORY CONTRACTS IN BANKRUPTCY Part I, 57 Minn. L. Rev. 439, 460 (1974).
- ⁹⁴ *In re* Robert L. Helms Constr. & Dev. Co., 139 F.3d 702, 705 (9th Cir. 1998), *quoting In re* Wegner, 839 F.2d 533, 536 (9th Cir. 1988).
- ⁹⁵ *In re* Cirillo, 121 B.R. 5, 6 (Bankr. D.N.J. 1990).
- ⁹⁶ *See In re* Taylor, 91 B.R. 302 (Bankr. D.N.J. 1988).
- ⁹⁷ NFLPA Regulations, *supra* note 34, at § 3(A).
- ⁹⁸ *Id.* at Introduction.
- ⁹⁹ 139 F.3d at 705.
- ¹⁰⁰ *In re* Clay, 241 B.R. 534, 537-38 (Bankr. N.D. Tex. 1999).
- ¹⁰¹ *Id.* at 535.
- ¹⁰² NFLPA Regulations, *supra* note 34, at Introduction.
- ¹⁰³ *Clay*, 241 B.R. at 537-38.
- ¹⁰⁴ *Id.*
- ¹⁰⁵ 128 B.R. 746 (Bankr.S.D.Ill.1991)
- ¹⁰⁶ *Clay*, 214 B.R. at 537-38.
- ¹⁰⁷ § 365(b)(1)(A).
- ¹⁰⁸ NFLPA Regulations, *supra* note 34, at § 2(A).
- ¹⁰⁹ § 365(b)(1)(A).
- ¹¹⁰ § 365(c)(1)(A).
- ¹¹¹ § 365(c)(1)(B); *see also In re* Sunshine Restaurants, 13 B.R. 149 (Bankr. M.D. Fla. 1991); *In re* Rooster, 100 B.R. 228 (B.R. E.D. Pa. 1989).
- ¹¹² § 159(a).
- ¹¹³ § 365(c)(1)(B).
- ¹¹⁴ NFLPA Regulations, *supra* note 34, at Introduction.
- ¹¹⁵ § 541(a)(1).
- ¹¹⁶ U.S. v. Whiting Pools, 462 U.S. 198 (1983).
- ¹¹⁷ *In re* Cook, 43 B.R. 996, 999 (Bankr. N.D. Ind. 1984).
- ¹¹⁸ *See Whiting Pools*, 462 U.S. at 198 (building contractor’s license); *see also In re* Draughton Inst., Inc., 119 B.R. 921, 926 (Bankr. W.D. La. 1990) (instructional certificate of approval); *Lambillotte v. Charlotte County*, 25 B.R. 392 (Bankr. M.D. Fla. 1982) (building contractor’s license); *In re* Cent. Ark. Broad. Co., 170 B.R. 143, 146 (Bankr. E.D. Ark. 1994) (broadcasting license); *In re* Rocky Mountain Trucking Co., Inc., 4 Bankr. 1020 (D. Col. 1985) (common carrier operator’s license); *In re* Miller, 68 Bankr. 385 (Bankr. W.D. Pa. 1986) (liquor license).
- ¹¹⁹ 68 Bankr. at 385.
- ¹²⁰ *See Neiberger*, 934 F.2d at 1301.
- ¹²¹ 11 U.S.C. § 554 (2007); An interested party may also request the court “order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(b).
- ¹²² *Wade*, 115 B.R. at 228-29; *Geiger*, 143 B.R. at 36.