

## **- BANKRUPTCY CORNER -**

### **OBTAINING A STATE COURT JUDGMENT FOR FRAUD DOES NOT NECESSARILY MEAN THAT THE DEBT WILL BE NON DISCHARGEABLE IN A BANKRUPTCY.**

**I**n a recent decision handed down by the United States Bankruptcy Court, the Honorable Gregory F. Kitchell denied the State of New York's Motion for Summary Judgment seeking a determination that a debt was excepted from discharge because the underlying judgment obtained in another court did not meet the specific elements required by Section 523 (a)(2), (a)(4), or (a)(6) of the Bankruptcy Code.

Judge Kitchell held that in order to prevail under a non-dischargeability claim arising out of a state court judgment, the judgment must contain specific findings satisfying the following elements:

- (1) That the debtor made a false representation of fact;
- (2) That the debtor knew it was false at the time the debtor made it;
- (3) That the debtor made the representation with the specific intent and purpose of deceiving the creditor;
- (4) That the creditor justifiably relied on the representation; and,
- (5) That the creditor sustains financial injury as a proximate result of the representation.

Therefore, the lesson to be learned is that in order for a state court judgment to have any effect with respect to the dischargeability of a debt in Bankruptcy Court, the state court judgment must be very specific with respect to the findings of fact and corresponding conclusions of law set forth in the state court order and judgment.

### **EXPANSION OF EXEMPTIONS**

**P**rior to the bankruptcy amendments being enacted in 2005, it had ordinarily been required that the debtor select either state exemptions or federal exemptions when filing a bankruptcy. The debtor was not entitled to mix and match the best of each. However, the recent amendments have led to a boom of debtors claiming exemptions associated with ERISA tax qualified plans under the Internal Revenue Code, including 401(k) plans, employee stock benefit plans, and IRAs. Under the current schematics associated with the federal exemptions and the state exemptions, a debtor may now avail him or herself of a \$1,095,000.00 exemption for an IRA or 401(k), regardless of whether or not the debtor opts for the federal exemptions or the state exemptions in a bankruptcy. This is not good news for creditors given the fact that Minnesota still has a rather liberal homestead exemption, as compared to other states, which now totals \$330,000.00 of equity. In the past, the State had placed a cap on the amount of money that could be exempt for a 401(k)/IRA tax qualified plan. However, under the new amendments, a debtor may now avail him or herself of the state exemptions to take advantage of the \$330,000.00 homestead exemption, and claim the \$1,095,000.00 exemption for tax qualified plans otherwise afforded to them under the federal exemptions.