No. 24-1384

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

In re: Jose L. Garcia-Morales, DEBTOR

Robertson B. Cohen, Chapter 7 Trustee,
Appellant

v.

Jose L. Garcia-Morales, Debtor,
Appellee

Appeal from the United States Bankruptcy Court for the District of Colorado,
Bankruptcy Case No. 21-14949 KHT,
District Court Appeal, Civil Case No. 23-CV-2178 PAB.

BRIEF OF APPELLEE

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ORAL ARGUMENT IS NOT REQUESTED.

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I. JURISDCTION

Appellee agrees that this Court has jurisdiction with respect to this appeal.

II. ISSUE PRESENTED

Whether for purposes of Colo. Rev. Stat. §13-54-102(1)(o), "attributed to" means "but for" causation, so the amount of a refund "attributed to" a Subpart C tax credit is the difference between the refund calculated with the credit and without the credit.

III. STANDARD OF REVIEW

The Appellee agrees this is a question of law, subject to *de novo* review by the 10th Circuit.

IV. STATEMENT OF THE CASE

Appellee agrees with the Statement of the Case as presented in the Appellant's Opening Brief. For purposes of brevity, Appellee will not reiterate those statements here.

Appellee agrees that the trustee continues to hold his federal refund from 2021.

V. SUMMARY OF THE ARGUMENT

Colorado law provides an exemption for "the full amount of any federal or state income tax refund attributed to an earned income tax credit or a child tax credit." Colo. Rev. Stat. §13-54-102(1)(o). The statute itself provides clear guidance as to what portion of a refund is exempt. The "full amount attributed to" an earned income credit or child tax credit is exempt. "Attributed to" should be given its ordinary meaning, requiring the simple and traditional standard of but-for causation. This only requires a calculation of the amount of the refund with the credit and without the credit. The difference is the exempt amount.

Cohen v. Borgman (In re Borgman), 698 F.3d 1255 (10th Cir. 2012) does not mandate use of the *pro-rata* tracing method for determining how much of an income tax refund is exempt. *Borgman* is mainly focused on defining the word "refund," but it did briefly discuss the phrase "attributed to." Its discussion was not necessary to the holding. *Borgman* used a hybrid "but-for" test, in which "but-for" causation is the baseline, but certain sub components of payments and liabilities must be excluded from the equation.

The Colorado legislature in subsequent iterations, including this one, have repudiated this approach. The 2022 iteration of the statute overruled *Borgman*.

The tracing methods suggested by the Appellant only apply to situations where funds have been commingled. They are not applicable to a debtor-creditor relationship, such as that which exists between a taxpayer and taxing authority.

None of the authorities cited by the Appellant apply tracing methods in the context of a debtor-creditor relationship.

The Trial Court did not "re-write" the statute. It did the opposite. It implemented the plain meaning of the statute, citing a dictionary for the proposition that "attributed to" means causation.

The Trial Court correctly held that the Colorado exemption statute provides clear guidance as to how much of an income tax refund resulting from the child tax credit should be exempt: The full amount attributed to the credit. This only requires a simple calculation of the amount of the refund with the credit and without the credit. The difference is the exempt amount. For this reason, the Trial Court's Order should be AFFIRMED.

The District Court noted in its order that the 2022 amendment to the statute actually "contradicts the 10th Circuit's holding in *In re Borgman* that a non refundable tax credit is not exempt from a debtor's estate under section 13-54-102(1)(o). See *In re Borgman* at 698 F.3d at 1262." See Appellant App. at 234, footnote 7. This legislature's disagreement with *Borgman* is of importance here, because it gives weight to the Appellee's position that the Bankruptcy Court and the District Court's "but for" analysis is the correct one; that the Colorado legislature specifically re-wrote the statute to circumvent the 10th Circuit's ruling Borgman. This being the case, the Appellant's reliance upon *Borgman* is misplaced.

VI. ARGUMENT

The Debtor claimed his federal income tax refund as exempt under Colorado law, which provides that

> (1) The following property is exempt from levy and sale under writ of attachment or writ of execution:
>
> ....
>
> (o) The full amount of any federal or state income tax refund **attributed to** an earned income tax credit or a child tax credit;

Colo. Rev. Stat. §13-54-102(1)(o) (emphasis added).

The child tax credit provided by the Internal Revenue Code falls into two different categories: Subpart A credits (also called "non-refundable" credits), which are codified at 26 U.S.C. §§ 21-26, and Subpart C credits (also called "refundable" credits), which are codified at 26 U.S.C. §§ 31-37.

The question raised by this appeal is how to determine how much of an income tax refund is "attributed to" a Subpart C tax credit? In other words, what does "attributed to" mean?

It is the Debtor's opinion that "attributed to" means "caused by," so for purposes of Colo. Rev. Stat. §13-54-102(1)(o), the amount of a refund "attributed to" a Subpart C tax credit is the difference between the refund calculated with the credit and without the credit. The difference is the amount "attributed" to or "caused by" the exempt tax credit. Appellant's App. at 143-46. (But for the … tax credit there would be no refund …).

This approach takes a "plain meaning" approach to the phrase "attributed to," making "but for" causation the test. According to the Debtor, the calculation should be performed like this:

Total Wages	$99147
Total Taxable Income	$74047
Total Tax Due	$8485
Federal Income Tax Withheld	$8140
Refundable Child Tax Credit (CTC)	$1800
Total Payments	$9940
Federal Refund attributable to CTC	**$1455**

"But for" the tax credit, there would be no refund. Because the entire refund was *caused by* the tax credit, the entire refund is "attributed to" the tax credit, and is exempt.

The Trustee takes a different approach. At trial, the Trustee argued that "attributed to" has an unusual, technical meaning. He argued that because tax liabilities are paid from a variety of sources, the payments are commingled money, and because the payments are commingled, refunds from those payments must also be commingled money. Because the refunds are commingled money, the amount of the exemption must be determined by a complex process of tracing methods and calculations of proportionality:

> Trustee takes the position that the Total Federal Payments is akin to a 'pot of money' whereby it is impossible to trace the actual type of money that was used to pay the tax liability. That it is impossible to know which tranche of money was used to pay the tax liability and therefore the equitable way is to proportion the numbers as set forth above.

Appellant's App. at 6, ¶ 9. According to the Trustee, the calculation should be performed like this:

	Payments	% of Total Payments	Exempt Amount:
+ $8,140	Fed Withholding	82%	82% of refund not exempt
+ $1,800	Tax Credit	18%	18% of refund exempt
= $9,940	Total Payments		

Appellant's App. at 6, ¶ 7. Because 18% of the total payments came from the exempt tax credit, 18% of the refund is deemed to be money that originated in the exempt tax credit.

The Trial Court held that tracing methods, such as the *pro-rata* method, are only applicable to commingled money. It rejected the idea that, relative to a bankruptcy debtor, all refunds are commingled money. It held that money sent to the IRS is commingled money while it is in the possession of the IRS, but when it is refunded to the debtor, it ceases to be commingled. After receiving the money, a debtor could possibly commingle it by, for example, depositing it into an account with other money, but it is not commingled when it is received. In this case, the money was never received by the Debtor, so the Debtor could not possibly have commingled it. Instead, it was sent directly to the Trustee (who presumably commingled it by depositing it with all the other funds he receives).

Because, relative to a bankruptcy debtor, tax refunds are not commingled money, the Trial Court rejected the application of tracing methods, such as the *pro-rata* method suggested by the Trustee.

The Trial Court also rejected the Trustee's approach because it requires a presumption that exempt assets are used to pay the debtor's tax liability.

The Trial Court also rejected the Trustee's approach because it ignores the plain language of the Colorado exemption statute, which exempts "[t]he **full** amount of any … refund." Colo. Rev. Stat. §13-54-102(1)(o) (emphasis added). The Trustee's approach necessarily requires a presumption that part of the exempt refund was used to pay the debtor's tax liability. If that is the case, then the "full amount" can never be exempt.

To decide this case, the Trial Court adopted a plain meaning approach, citing a dictionary in support of its holding that "attributed to" means but-for causation:

> To "attribute" is "to explain as caused or brought about by[;] [to] regard as occurring in consequence of or on account of." *Webster's Third New International Dictionary* 142 (1976).
>
> ....
>
> Turning to the language of the Colorado exemption statute, the phrase "attributed to" should similarly be interpreted according to its ordinary meaning, requiring the "'simple' and 'traditional' standard of but-for causation." If the refundable credit were removed from the tax equation, would the refund amount be different? If so, we have identified a but-for cause. Here, removing the refundable credit would eliminate Debtor's federal refund. The refundable credit is a but-for cause of Debtor's refund, and the causation requirement of the

> exemption statute is satisfied. The refund is attributed to the refundable credit.

Trial Court Opinion, Appellant's App. at 143-44, pp. 6-7. On this basis, the Trial Court decided that the entire refund was exempt.

A. Exemptions generally.

The Appellee agrees with the Appellant's characterization of the law regarding exemptions in general.

The Appellee would note that under both state and federal law, exemption statutes are to be liberally construed. *In re Chavez*, 26 B.R. 129, 130 (Bankr. Colo. 1983)(citing *In re Hellman*, 474 F. Supp. 348 (U.S.Dist.Ct.D. Colo.1979) and *Sandberg v. Borstadt*, 48 Colo. 96, 109 P. 419 (1910)). The Colorado Constitution, Art. XVIII, Section 1, provides as follows: "The general assembly shall pass liberal homestead and exemption laws."

Colorado exemptions preserve to the debtor a means of support and a means for the debtor to sustain himself following the bankruptcy filing. *Beneficial Finance Co. v. Schmuhl*, 713 P.2d 1294, 1298 (Colo. 1986)(*citing Smith v. Pueblo Mercantile & Credit Ass'n*, 82 Colo. 364, 260 P. 109 (1927) and *In re Youngstrom*, 153 F. 98 (8th Cir. 1907)).

Bankruptcy exemptions benefit society because they are "to prevent private destitution and hardship, to support and stabilize the home and family unit, and to prevent impecunious debtors from burdening the private purse by resorting to

charity and welfare programs." *In re Robinson*, 271 B.R. 437, 442 (Bankr.N.Dist. N.Y. 2001). In every bankruptcy case, there is a tension between the trustee's liquidation of assets for which the trustee receives a healthy commission and the debtor's interest in a fresh start. See 11 USC §§ 326(a), 330(a), & 503(b) allowing compensation and payments to the trustee for up to 25% of the value of liquidated assets and certain items of expense.

B. The Colorado exemption statute provides clear guidance for determining how much of an income tax refund is attributed to an exempt child tax credit.

The trustee argues that because *Schwab v. Reilly*, 560 U.S. 770, 782 (2010), creates a distinction between the kind of property which may be declared as exempt, the statute may not be interpreted without reconciling it to the trustee's own interpretation. This is a distinction without a difference in this case, because the statute seeks, by its terms, to give full credit to the impact of the earned income credit and the child tax credit. Appellee agrees with the Trial Court's approach which places no limitations on the value of these credits. The trustee argues that we should embrace his unjustified re-writing of the statute, all because--he argues--the Trial Court re-wrote the statute.

Appellee respectfully disagrees. The trustee's own interpretation is out of keeping with the plain meaning of the statute. The trustee's interpretation--offering a pro rata analysis not found anywhere in the statute–is unnecessarily confusing. In any dispute with the trustee over the meaning of the exemption, the

trustee–holding the debtor's tax refund monies–effectively tells the debtor "It means what I say it means!" One of the concerns with the trustee's statutory interpretation is the invitation it provides to the abuse of power.

Colorado's exemption statute actually does provide very clear and specific guidance for determining how much of a tax refund is attributed to a child tax credit. The statute says the "full amount" "attributed to" the tax credit is exempt. This is guidance. This is specific. The inquiry should end here.

Like many other words and phrases, "attributed to" is not expressly defined in Colorado law. The Colorado legislature evidently believed that most people who speak the English language would understand what "attributed to" means. It appears that, until now, they were correct, since there are no cases interpreting this phrase.

Undefined statutory words and phrases are given their plain and ordinary meaning. Employing this methodology the Trial Court found that "[t]o "attribute" is "to explain as caused or brought about by[;] [to] regard as occurring in consequence of or on account of." Appellant's App. at 145. On this basis, it held that "attributed to" results in a "but for" causation relationship.

The amount of the refund "attributed to" or "caused by" the credit is easily ascertained by calculating the amount of the refund with the credit, calculating the refund without the credit, and calculating the difference between the two. The full amount of the difference is "attributed to" the credit, and is therefore exempt.

C. *Borgman* did not mandate a *pro-rata* approach

The trustee in his brief puts great emphasis on the effect of *In re Borgman. Borgman* is his life saver in the storm. It is evident that the drafters of the statute were aware of *Borgman* and drafted the current iteration of the statute--and the 2022 reiteration of the statute--to override *Borgman*. The 2022 statute, for example, specifically includes within the exemption the "non refundable" portion of the child tax credit which *Borgman* said was not available. *Borgman* at 1262, [12]. This contradiction was noted in a footnote by Judge Brimmer in his District Court opinion. He stated:

> Moreover, the Court notes that the Colorado General Assembly has seemingly expressed disagreement with *In re Borgman*. "When a statute is amended, the judicial construction previously placed upon the statute is deemed approved by the General Assembly to the extent that provision remains unchanged." *Specialty Restaurants Corp. v. Nelson*, 231 P.3d 393, 403 (Colo. 2010) (emphasis added). In 2022, the Colorado General Assembly amended the exemption statute to exempt "[t]he full amount of any federal or state income tax refund attributed to an earned income tax credit or any child tax credit, whether as a refundable tax credit or as a nonrefundable reduction in tax." Colo. Rev. Stat. § 13-54-102(1)(o) (2022) (emphasis added). This amendment contradicts the Tenth Circuit's holding in *In re Borgman* that a nonrefundable tax credit is not exempt from a debtor's estate under section 13-54-102(1)(o). See *In re Borgman*, 698 F.3d at 1262.

See Appellant's App. at 217, footnote 7. In its subsequent re-writings of the statute, the Colorado legislature makes it clear that *Borgman* was an overly restrictive interpretation. Where did *Borgman* go wrong?

The meaning of the word "refund" was the main focus of *Cohen v. Borgman (In re Borgman)*, 698 F.3d 1255 (10th Cir. 2012). *Borgman* held that the word

"refund" in the Colorado exemption statute does not carry its plain and ordinary meaning. Instead, it is defined by the Internal Revenue Code. Because of this, a tax refund is not a "refund" if it is attributed to a Subpart A tax credit.

Borgman's main focus was the word "refund," but it did briefly discuss the phrase "attributed to." This discussion was not necessary to the holding.

The *Borgman* Court started correctly, by acknowledging that the starting point was the language of the statute; that the language was clear and unambiguous; and that it must be interpreted as written. It even acknowledged that it must ascertain and give effect to the intent of the legislature. But here it came to a fork in the road. Here it could continue on the straight and narrow path of plain meaning, or it could veer from the path and plunge into the abyss. *Borgman* dove for the abyss.

To understand *Borgman's* plunge, it is important to understand that the word "refund" has at least three meanings: 1) the plain and ordinary meaning, 2) the meaning intended by the drafters of the Colorado exemption statute, and 3) the technical meaning defined by the Internal Revenue Code.

Meaning 1 and meaning 2 are probably the same, since the Colorado exemption statute does not define the word "refund," and undefined terms are presumed to carry their plain and ordinary meaning.[1] The Colorado legislature

[1] "In construing previously undefined statutory words and phrases, we should accord them their plain and ordinary meaning. *See People v. District Court*, 713 P.2d 918 (Colo.1986)." *People v. Forgey*, 770 P.2d 781 (Colo. 1989).

knew this, and intentionally left the term undefined. That makes it very clear that they intended courts to use the plain and ordinary meaning or the dictionary definition.

The *Borgman* Court seemed unaware of this. It made no distinction between these meanings, and merged them together. In failing to make this distinction, it committed the logical fallacy of equivocation,[2] in which the meaning of the word "refund" shifted throughout the opinion. The Colorado exemption statute does not expressly import the Internal Revenue Code, and the *Borgman* Court provided no legal reasoning or justification for cutting and pasting the Internal Revenue Code into the Colorado exemption statute. *Borgman* just assumed that it means the same thing in both instances. But it is obvious the drafters of the exemption statute gave to the word "refund" its plain and ordinary meaning. They made this clear by leaving the word undefined. It is highly unlikely that they would have intended courts to attribute such an artificial, technical meaning to the word, especially in light of the well-settled liberal construction policy regarding exemptions.

So *Borgman* plunged into the abyss. Instead of consulting a dictionary for the meaning of the word "refund," which is the normal practice when determining

[2] "[I]f an expression is used more than once in an argument, it must have the same meaning throughout the argument. When a word or expression shifts meaning from one occurrence in the argument to the next, the argument commits the fallacy of equivocation." Cederblom & Paulsen, "Critical Reasoning: Understanding and Criticizing Arguments and Theories" 108 (2d ed 1982).

the plain and ordinary meaning of words,[3] it inexplicably turned to the Internal Revenue Code. This error led the Court to ultimately find that a "refund" is not a "refund." This Court has the opportunity to correct the *Borgman* Court's dive into the empty swimming pool.

It is unclear why *Borgman* discussed "attributed to" at all. If the refund was not a refund, that was dispositive. There was no need to go further. When *Borgman* discussed "attributed to," it did not take the *pro-rata* approach advocated by the Trustee. Nowhere does it calculate percentages or proportions. Instead, it says a tax refund is "attributed to" the difference between payments and liabilities:

> In light of the fact that a refund depends first upon a payment, it cannot be said that the disputed refunds in this case were **"attributed to"** the [tax credit]. The Dunckleys' refund was **"attributed to"** the fact that they had $8,447 in withholding, as against total tax liability of $4,186. Meanwhile, Borgman's refund was **"attributed to"** the fact that he had $1,328 in withholding, a $400 Making Work Pay credit, a $1,860 earned income tax credit, and a $182 Additional CTC, as against total tax liability of zero.

Id. at 1261 (emphasis added). On its face, this would seem to support the "but-for" causation test which is advocated by the Appellee and adopted by both the Trial Court and the District Court. The plain and ordinary meaning

[3] "We have frequently looked to the dictionary for assistance in determining the plain and ordinary meaning of words. *People v. Huckleberry*, 768 P.2d 1235 (Colo.1989) (definition of "alibi"); *Kane v. Royal Ins. Co. of America*, 768 P.2d 678 (Colo.1989) (definition of "flood"); *People v. Winters*, 765 P.2d 1010 (Colo.1988) (definition of "incarceration"); *Hartley v. Colorado Springs*, 764 P.2d 1216 (Colo.1988) (definition of "abandonment" and "discontinuance")." *People v. Forgey*, 770 P.2d 781 (Colo. 1989).

of "attributed to" is "caused by." A tax refund is "attributed to" or "caused by" the difference between payments and liabilities. Just being part of the equation is enough. But *Borgman* did not just calculate the refund based on the difference between payments and liabilities. It excluded one sub component on the liability side of the equation: the Subpart A tax credit. It also expressly rejected the idea that just being part of the equation is enough. Again, the Colorado legislature has repudiated this approach.

In the course of this discussion, it either denied that a tax refund is attributable to any of the sub components of payments and liabilities (which would be nonsensical), or found that a tax refund is attributable to all of the sub components of payments and liabilities (which would be obvious). It is difficult to say which is meant by this, or how this is relevant to its rejection of the idea that just being part of the equation is enough:

> It is true that the [tax credit] is "part of the equation," … by which a refund, if any, is calculated, but so too are the amount of income earned, the amount of deductions claimed, the amount of credits available, and the amount of taxes already paid in withholding, among other variables. A taxpayer's refund, if any, is no more **"attributed to"** the [tax credit] than it is to any of these other elements of the equation.

Borgman at 1261 (emphasis added). *Borgman* therefore does not seem to be using a simple "but-for" causation test, either. It used a hybrid "but-for" test, in which "but-for" is the baseline, but certain sub components of payments and liabilities can be excluded from the equation.

The criteria for exclusion are murky. To determine which sub components must be excluded, the Court assumed that "refund" as used in the Colorado exemption statute means the same thing as "refund" in the Internal Revenue Code. It then looked at how Subpart A tax credits work in the Internal Revenue Code and decided that a Subpart A tax credit cannot cause a "refund," as the Internal Revenue Code defines that word, so it should be excluded from the equation. It seemed to be looking at the nature of the sub component to determine whether it should be excluded.

Borgman does not mandate the *pro-rata* approach advocated by the trustee. Instead, it seems to have used a hybrid "but-for" causation approach, to the extent it addressed the question at all. Subsquent iterations of the statute illustrate where the *Borgman* Court lost its bearings.

D. Trustee Argues that His Approach Is the Only Correct One

The trustee argues that his approach is the only one which makes sense. The trustee's approach is in fact unnecessarily complicated and, in effect, rewrites the statute and countermands the changes to the statute enacted since *Borgman*. Both the trustee and the trustee's counsel do not come to the Court without an axe to grind. A large part of the revenues to the respective law firms of both counsel are generated as a result of the commissions prescribed by 11 U.S.C. §§ 326(a), 330(a), & 503(b). This interest pails when weighed against society's need to put

the debtor back on his feet. The tax refunds in question give the debtor a solid pool of funds from which to set aside savings against future needs.

E. Tracing does not apply in the context of a debtor-creditor relationship, and a debtor cannot commingle funds until he has possession and control of the funds.

The Appellee agrees with the Trial Court that income tax payments received by the IRS are not subject to tracing methods because bankruptcy debtors are in a debtor-creditor relationship with the IRS.

None of the authorities cited by the Appellant apply tracing methods in the context of a debtor-creditor relationship. *In re Tydings*, Case No. 19-20889-drd-7 (Bankr. W.D. Mo. Mar. 27, 2020) involved the commingling of social security benefits and wages in a debtor's bank account. *United States v. Henshaw*, 388 F.3d 738 (10th Cir. 2004) involved an attorney for a chapter 11 debtor and his client. The debtor was ordered to open a debtor-in-possession account and a separately segregated account. The debtor commingled funds in the two accounts and his attorney received his fee from the commingled funds. *In re Lichtenberger*, 337 B.R. 322 (Bankr. C.D. Ill. 2006) involved funds from various sources commingled in a chapter 7 debtor's bank account. *In re Plantz*, Case No. 09-65036-aer7 (Bankr. D. Or. Nov. 16, 2010) involved income tax refunds that had already been received by the debtor. *In re Ross*, Case No. 12-4937-AJM-7 (Bankr. S.D. Ind. Sep. 4, 2012) also involved income tax refunds that had already been received by the debtor and deposited into his bank account.

The Appellee agrees that a bankruptcy debtor cannot commingle funds until he has possession and control of the funds.

F. The Trial Court did not "re-write" the statute.

The Trial Court did not "re-write" the statute. It did precisely the opposite. It implemented the plain meaning of the statute, citing a dictionary for the proposition that "attributed to" means the same thing as "caused by." The "liberal construction" principle was simply cited as a policy consideration giving additional support to its reasoning. If an example of a court that actually did "re-write" a statute is needed, *Borgman* would be a good place to start. The Colorado legislature has repudiated this approach.

G. Application to this case.

According to the Appellee, the calculation should be performed like this:

Total Wages	$99147
Total Taxable Income	$74047
Total Tax Due	$8485
Federal Income Tax Withheld	$8140
Refundable Child Tax Credit (CTC)	$1800
Total Payments	$9940
Federal Refund attributable to CTC	**$1455**

VII. CONCLUSION

The Trial Court correctly held that the Colorado exemption statute provides clear guidance as to how much of an income tax refund resulting from the child tax credit should be exempt: The full amount attributed to the credit. This only requires a simple calculation of the amount of the refund with the credit and without the credit. The difference is the exempt amount. For this reason, the Trial Court should be AFFIRMED.

VIII. STATEMENT REGARDING ORAL ARGUMENT

Appellee does not request oral argument and does not believe that oral argument will assist the 10th Circuit to come to a correct decision in this case.

Date: January 6, 2025

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CERTIFICATE OF COMPLIANCE WITH TYPE VOLUME LIMITATION

In accordance with Fed.R.Bankr. 8015(71)(B), I certify that this brief is double spaced and contains 4669 words. I relied on the Wordperfect word processing program to obtain this count.

_/s/ Stephen H. Swift_____
Stephen H. Swift

CERTIFICATE OF SERVICE

I certify that on the 6th day of January, 2025 I served a copy of this Appellee Opening Brief on the following persons and in the manner prescribed:

VIA EMAIL TO: Appellee

VIA ECF TO: Andrew D. Johnson, Esq., attorney for the Chapter 7 Trustee, Robertson Cohen, Esq.

VIA ECF TO: David V. Wadsworth, Esq., attorney for the Chapter 7 Trustee, Robertson Cohen, Esq.

/s/ Stephen H. Swift_____
Stephen H. Swift