

## HISTORICAL AND REVISION NOTES

## LEGISLATIVE STATEMENTS

Section 508(b) of the House amendment is new and provides an identical rule with respect to a creditor of a partnership who receives payment from a partner, to that of a creditor of a debtor who receives a payment in a foreign proceeding involving the debtor.

## SENATE REPORT NO. 95-989

This section prohibits a creditor from receiving any distribution in the bankruptcy case if he has received payment of a portion of his claim in a foreign proceeding, until the other creditors in the bankruptcy case in this country that are entitled to share equally with that creditor have received as much as he has in the foreign proceeding.

## AMENDMENTS

2005—Pub. L. 109-8 designated subsec. (b) as entire section and struck out subsec. (a) which read as follows: “If a creditor receives, in a foreign proceeding, payment of, or a transfer of property on account of, a claim that is allowed under this title, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor in such foreign proceeding.”

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

**§ 509. Claims of codebtors**

(a) Except as provided in subsection (b) or (c) of this section, an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment.

(b) Such entity is not subrogated to the rights of such creditor to the extent that—

(1) a claim of such entity for reimbursement or contribution on account of such payment of such creditor’s claim is—

- (A) allowed under section 502 of this title;
- (B) disallowed other than under section 502(e) of this title; or
- (C) subordinated under section 510 of this title; or

(2) as between the debtor and such entity, such entity received the consideration for the claim held by such creditor.

(c) The court shall subordinate to the claim of a creditor and for the benefit of such creditor an allowed claim, by way of subrogation under this section, or for reimbursement or contribution, of an entity that is liable with the debtor on, or that has secured, such creditor’s claim, until such creditor’s claim is paid in full, either through payments under this title or otherwise.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2585; Pub. L. 98-353, title III, § 450, July 10, 1984, 98 Stat. 375.)

## HISTORICAL AND REVISION NOTES

## LEGISLATIVE STATEMENTS

Section 509 of the House amendment represents a substantial revision of provisions contained in H.R. 8200 as

passed by the House and in the Senate amendment. Section 509(a) states a general rule that a surety or codebtor is subrogated to the rights of a creditor assured by the surety or codebtor to the extent the surety or codebtor pays such creditor. Section 509(b) states a general exception indicating that subrogation is not granted to the extent that a claim of a surety or codebtor for reimbursement or contribution is allowed under section 502 or disallowed other than under section 502(e). Additionally, section 509(b)(1)(C) provides that such claims for subrogation are subordinated to the extent that a claim of the surety or codebtor for reimbursement or contribution is subordinated under section 510(a)(1) or 510(b). Section 509(b)(2) reiterates the well-known rule that prevents a debtor that is ultimately liable on the debt from recovering from a surety or a codebtor. Although the language in section 509(b)(2) focuses in terms of receipt of consideration, legislative history appearing elsewhere indicates that an agreement to share liabilities should prevail over an agreement to share profits throughout title 11. This is particularly important in the context of codebtors who are partners. Section 509(c) subordinates the claim of a surety or codebtor to the claim of an assured creditor until the creditor’s claim is paid in full.

## SENATE REPORT NO. 95-989

Section 509 deals with codebtors generally, and is in addition to the disallowance provision in section 502(e). This section is based on the notion that the only rights available to a surety, guarantor, or comaker are contribution, reimbursement, and subrogation. The right that applies in a particular situation will depend on the agreement between the debtor and the codebtor, and on whether and how payment was made by the codebtor to the creditor. The claim of a surety or codebtor for contribution or reimbursement is discharged even if the claim is never filed, as is any claim for subrogation even if the surety or codebtor chooses to file a claim for contribution or reimbursement instead.

Subsection (a) subrogates the codebtor (whether as a codebtor, surety, or guarantor) to the rights of the creditor, to the extent of any payment made by the codebtor to the creditor. Whether the creditor’s claim was filed under section 501(a) or 501(b) is irrelevant. The right of subrogation will exist even if the primary creditor’s claim is allowed by virtue of being listed under proposed 11 U.S.C. 924 or 1111, and not by reason of a proof of claim.

Subsection (b) permits a subrogated codebtor to receive payments in the bankruptcy case only if the creditor has been paid in full, either through payments under the bankruptcy code or otherwise.

## AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353, § 450(a), substituted “subsection (b) or” for “subsections (b) and”, and inserted “against the debtor” after “a creditor”.

Subsec. (b)(1). Pub. L. 98-353, § 450(b), substituted “of such” for “of a” after “account”.

Subsec. (c). Pub. L. 98-353, § 450(c), substituted “this section” for “section 509 of this title”.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

**§ 510. Subordination**

(a) A subordination agreement is enforceable in a case under this title to the same extent that such agreement is enforceable under applicable nonbankruptcy law.

(b) For the purpose of distribution under this title, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from

the purchase or sale of such a security, or for reimbursement or contribution allowed under section 502 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

(c) Notwithstanding subsections (a) and (b) of this section, after notice and a hearing, the court may—

(1) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or

(2) order that any lien securing such a subordinated claim be transferred to the estate.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2586; Pub. L. 98-353, title III, § 451, July 10, 1984, 98 Stat. 375.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 510(c)(1) of the House amendment represents a compromise between similar provisions in the House bill and Senate amendment. After notice and a hearing, the court may, under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest. As a matter of equity, it is reasonable that a court subordinate claims to claims and interests to interests. It is intended that the term “principles of equitable subordination” follow existing case law and leave to the courts development of this principle. To date, under existing law, a claim is generally subordinated only if holder of such claim is guilty of inequitable conduct, or the claim itself is of a status susceptible to subordination, such as a penalty or a claim for damages arising from the purchase or sale of a security of the debtor. The fact that such a claim may be secured is of no consequence to the issue of subordination. However, it is inconceivable that the status of a claim as a secured claim could ever be grounds for justifying equitable subordination.

Subordination: Since the House amendment authorizes subordination of claims only under principles of equitable subordination, and thus incorporates principles of existing case law, a tax claim would rarely be subordinated under this provision of the bill.

Section 511 of the Senate amendment is deleted. Its substance is adopted in section 502(b)(9) of the House amendment which reflects an identical provision contained in H.R. 8200 as passed by the House.

##### SENATE REPORT NO. 95-989

Subsection (a) requires the court to enforce subordination agreements. A subordination agreement will not be enforced, however, in a reorganization case in which the class that is the beneficiary of the agreement has accepted, as specified in proposed 11 U.S.C. 1126, a plan that waives their rights under the agreement. Otherwise, the agreement would prevent just what chapter 11 contemplates: that seniors may give up rights to juniors in the interest of confirmation of a plan and rehabilitation of the debtor. The subsection also requires the court to subordinate in payment any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate, or for damages arising from the purchase or sale of such a security, to all claims and interests that are senior to the claim or interest represented by the security. Thus, the later subordination varies with the claim or interest involved. If the security is a debt instrument, the damages or rescission claim will

be granted the status of a general unsecured claim. If the security is an equity security, the damages or rescission claim is subordinated to all creditors and treated the same as the equity security itself.

Subsection (b) authorizes the bankruptcy court, in ordering distribution of assets, to subordinate all or any part of any claim to all or any part of another claim, regardless of the priority ranking of either claim. In addition, any lien securing such a subordinated claim may be transferred to the estate. The bill provides, however, that any subordination ordered under this provision must be based on principles of equitable subordination. These principles are defined by case law, and have generally indicated that a claim may normally be subordinated only if its holder is guilty of misconduct. As originally introduced, the bill provided specifically that a tax claim may not be subordinated on equitable grounds. The bill deletes this express exception, but the effect under the amendment should be much the same in most situations since, under the judicial doctrine of equitable subordination, a tax claim would rarely be subordinated.

#### AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Any claim for rescission of a purchase or sale of a security of the debtor or of an affiliate or for damages arising from the purchase or sale of such a security shall be subordinated for purposes of distribution to all claims and interests that are senior or equal to the claim or interest represented by such security.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

#### § 511. Rate of interest on tax claims

(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.

(Added Pub. L. 109-8, title VII, § 704(a), Apr. 20, 2005, 119 Stat. 125.)

#### EFFECTIVE DATE

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

#### SUBCHAPTER II—DEBTOR’S DUTIES AND BENEFITS

#### § 521. Debtor’s duties

(a) The debtor shall—

(1) file—

(A) a list of creditors; and

(B) unless the court orders otherwise—

(i) a schedule of assets and liabilities;

(ii) a schedule of current income and current expenditures;

(iii) a statement of the debtor’s financial affairs and, if section 342(b) applies, a certificate—