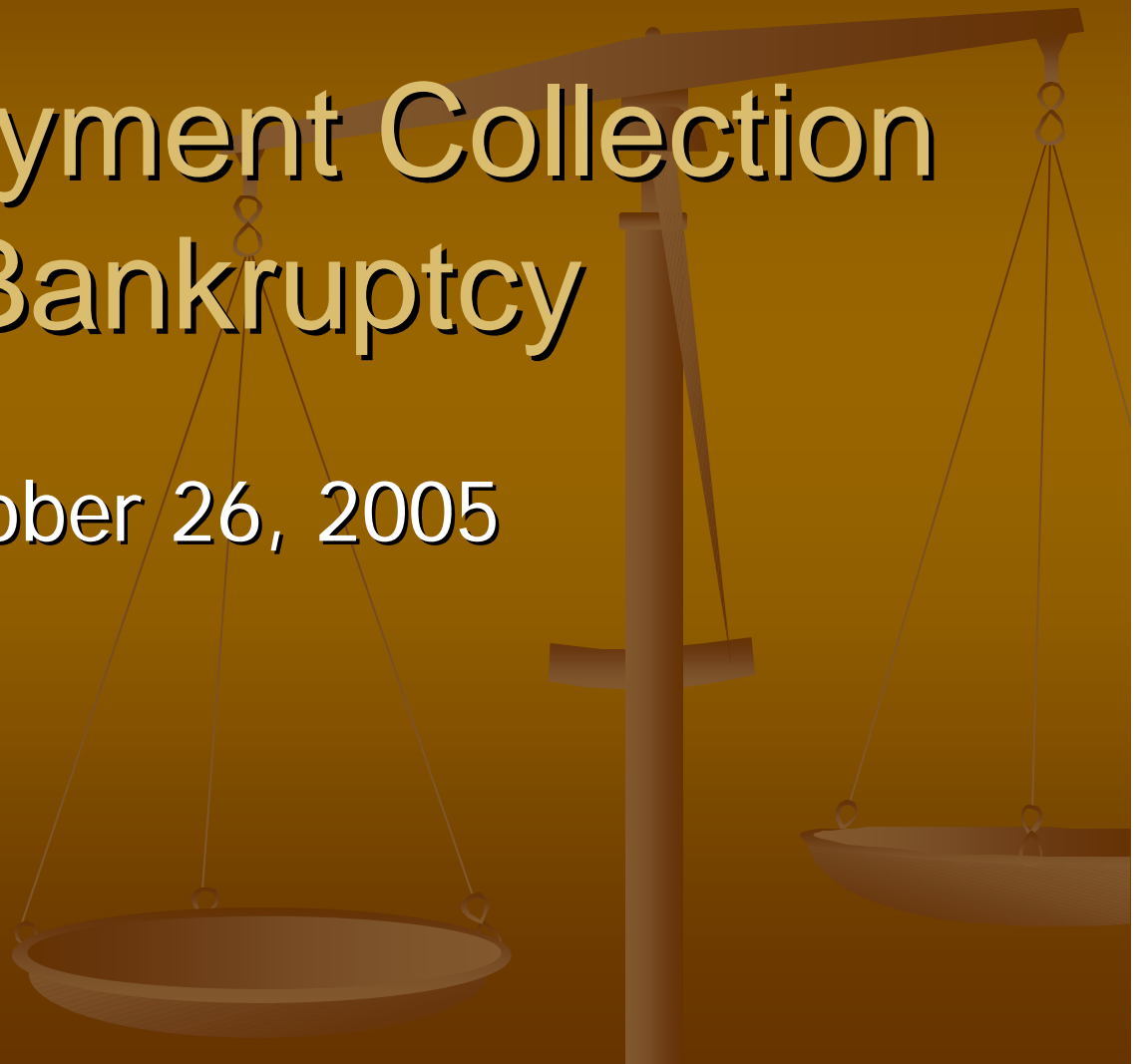
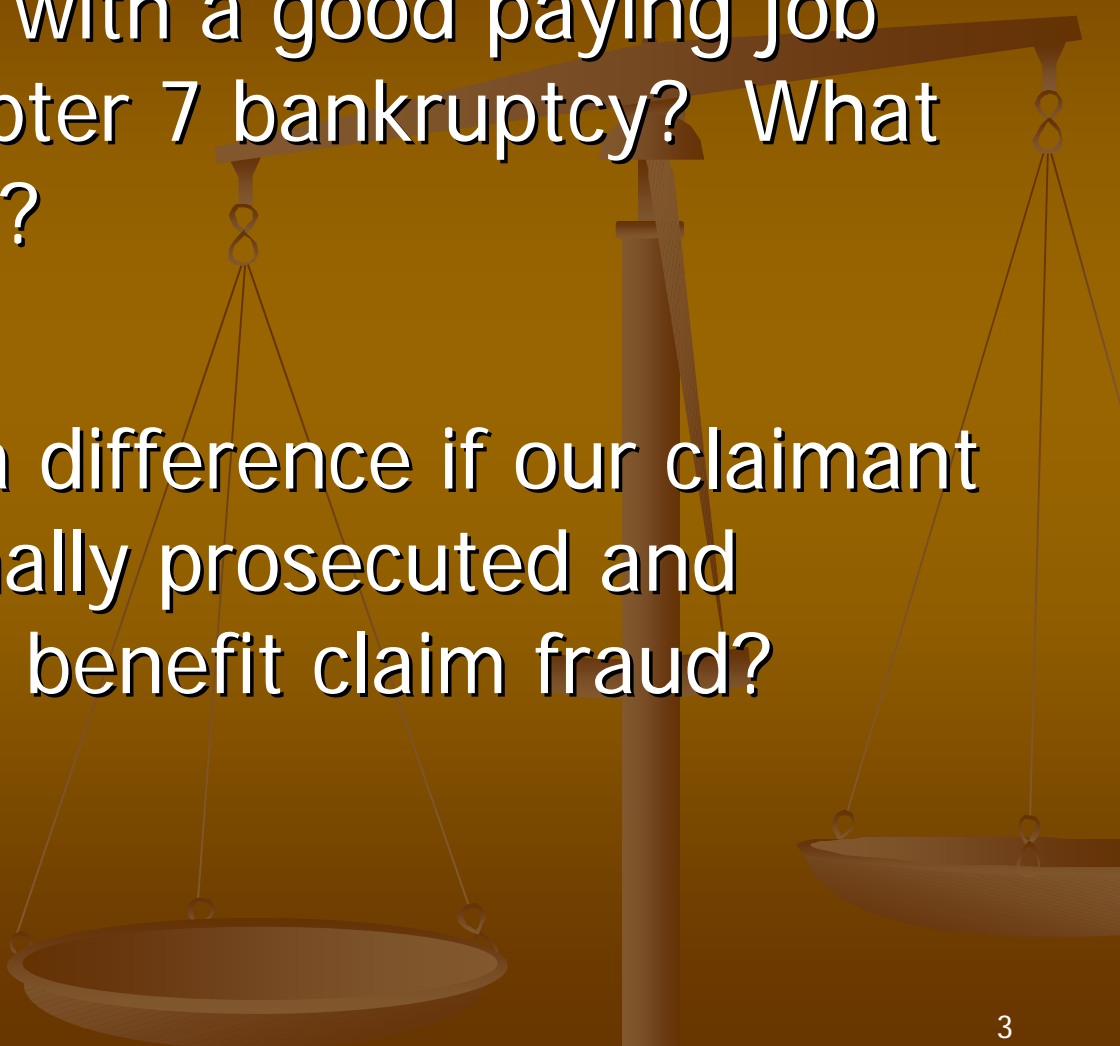


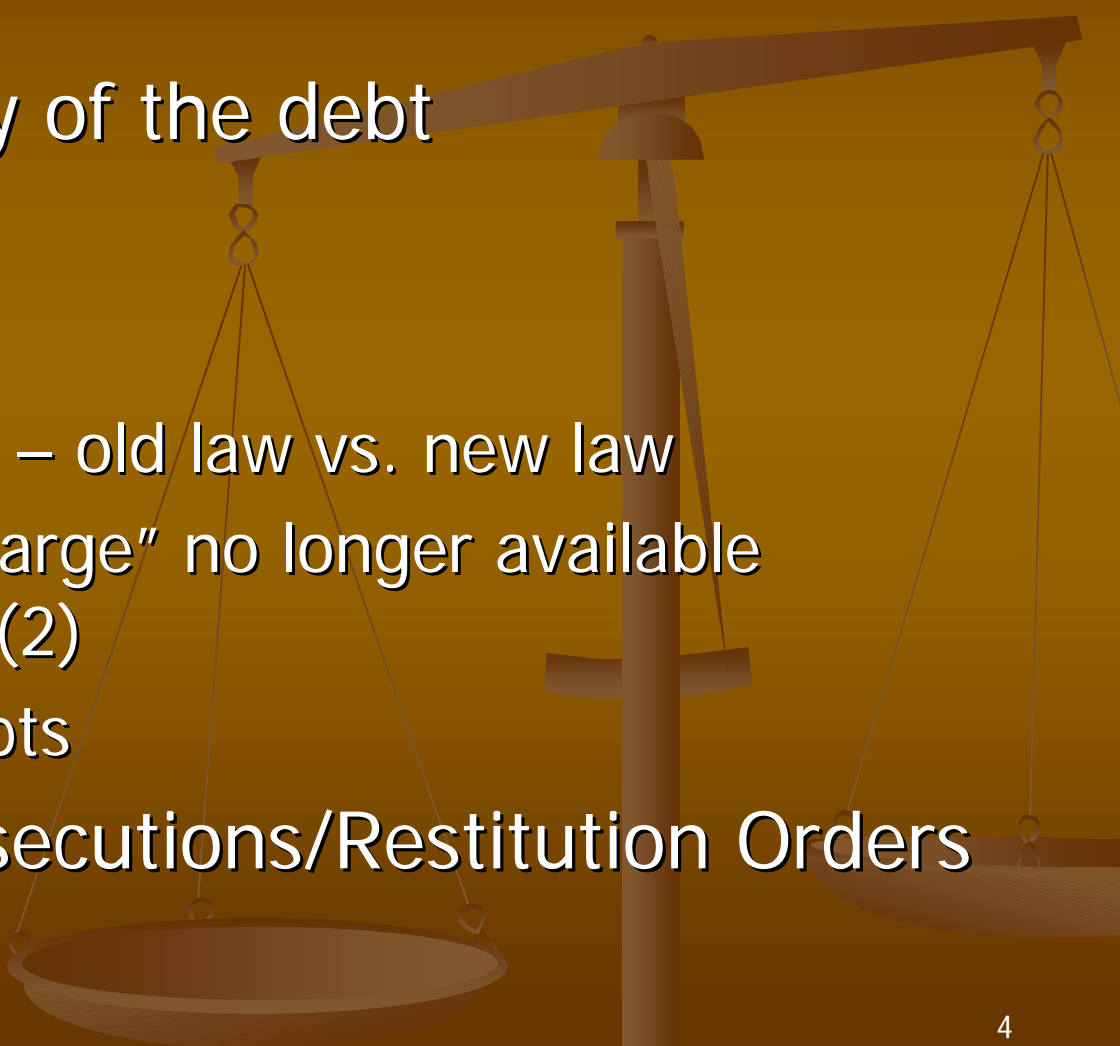
# UI Overpayment Collection and Bankruptcy

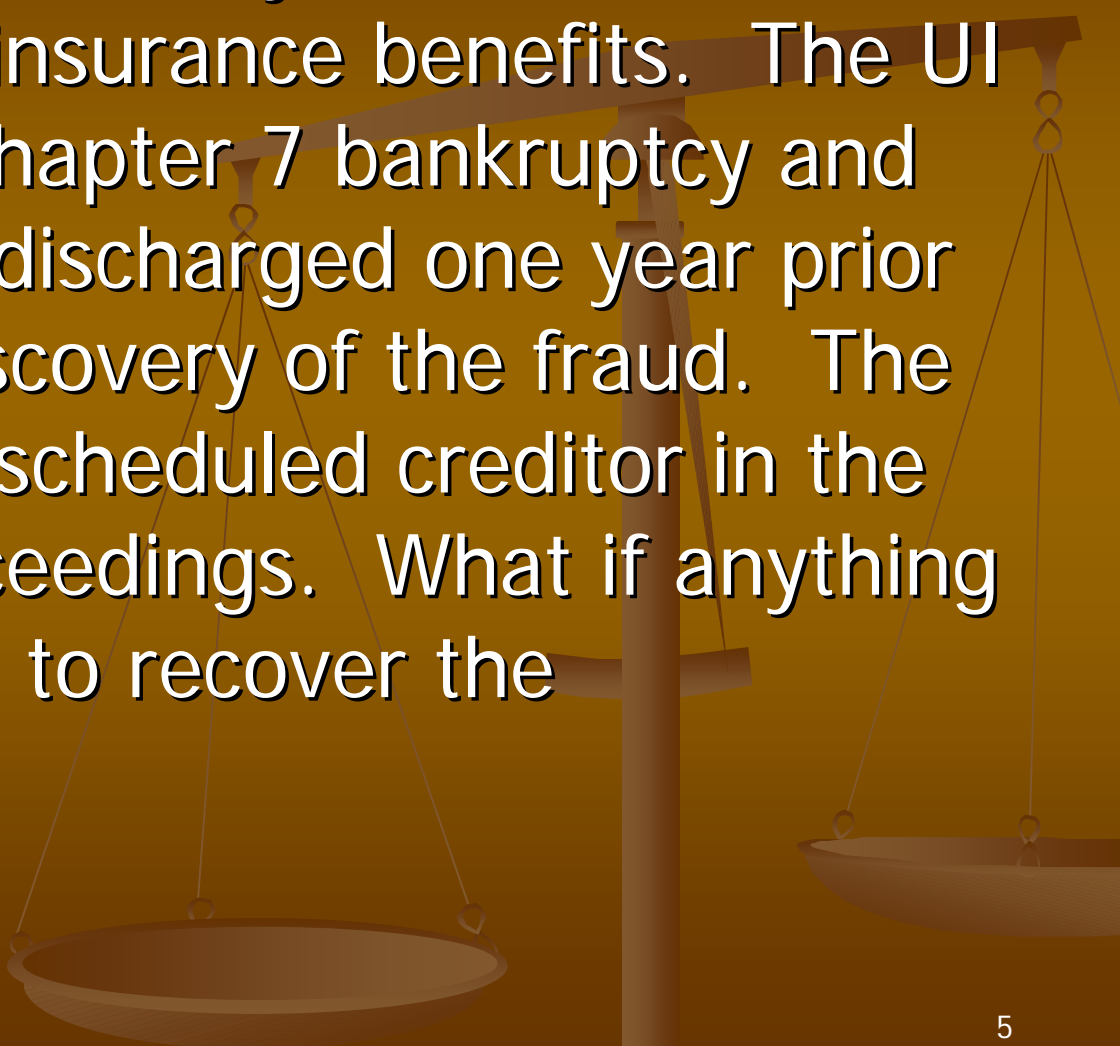
October 26, 2005



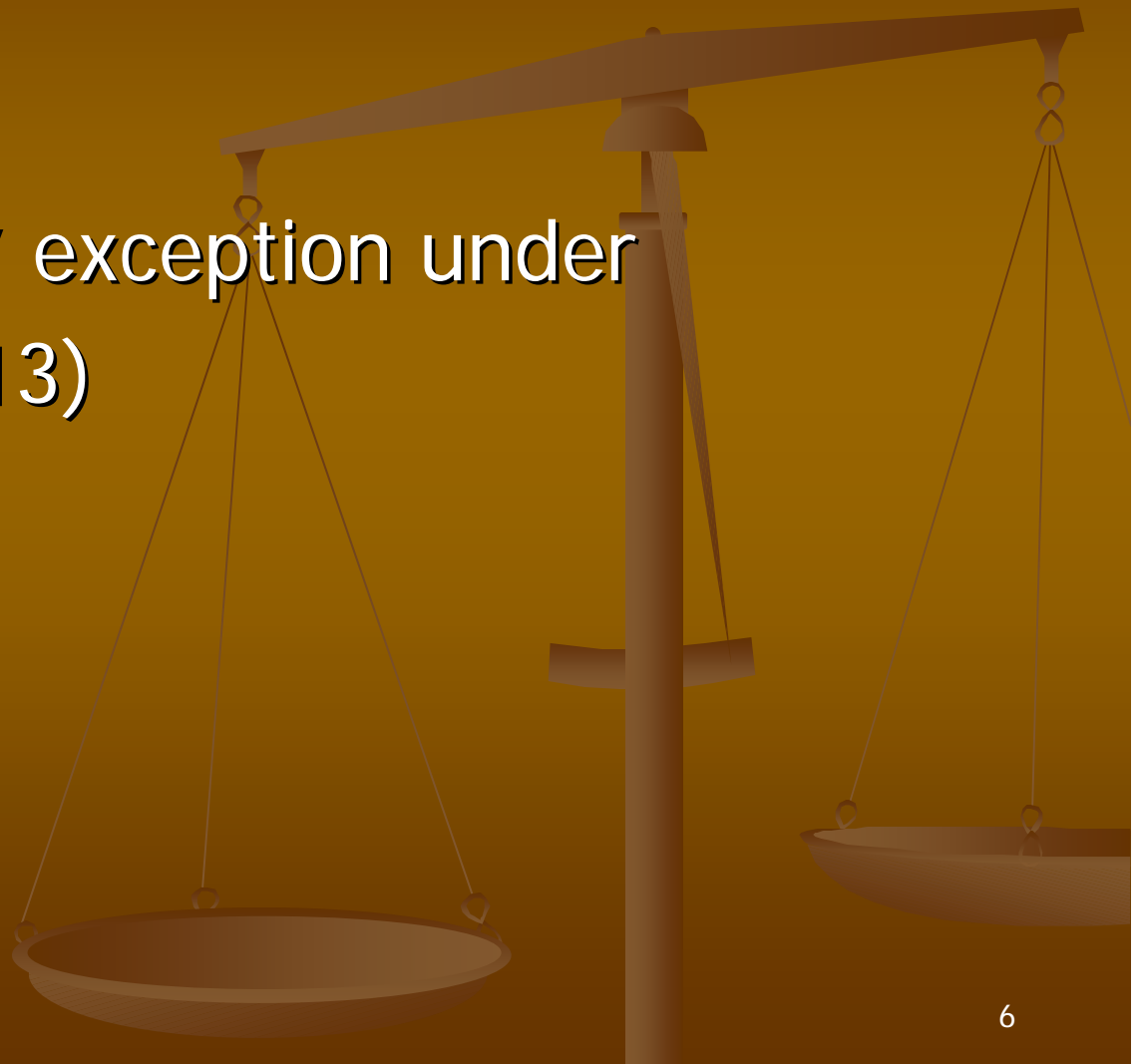
- A UI Claimant spent several weeks looking for work. She then got a great new job as a computer program developer earning \$90,000 per year, but “forgot” to disclose that detail to the State Workforce Agency (“SWA”)! After the state workforce agency found out, it issued an administrative determination that she owed \$4,200 for an overpayment of UI benefits obtained by way of fraudulent conduct. The administrative determination was not appealed and the decision has become final under state law. The claimant has now filed for a Chapter 7 bankruptcy.

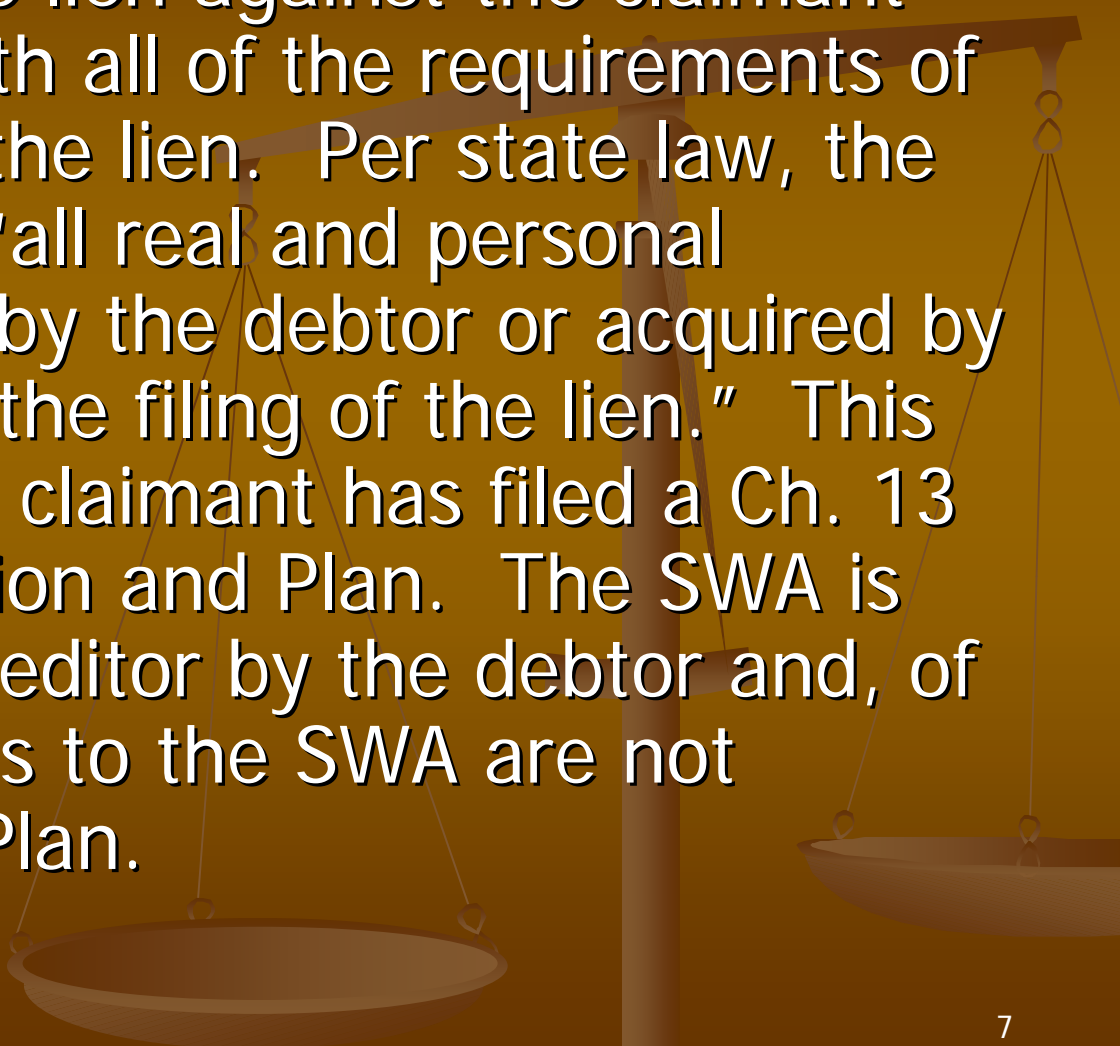
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- Can this worker with a good paying job really file a Chapter 7 bankruptcy? What can the SWA do?
  - Would it make a difference if our claimant had been criminally prosecuted and convicted for UI benefit claim fraud?

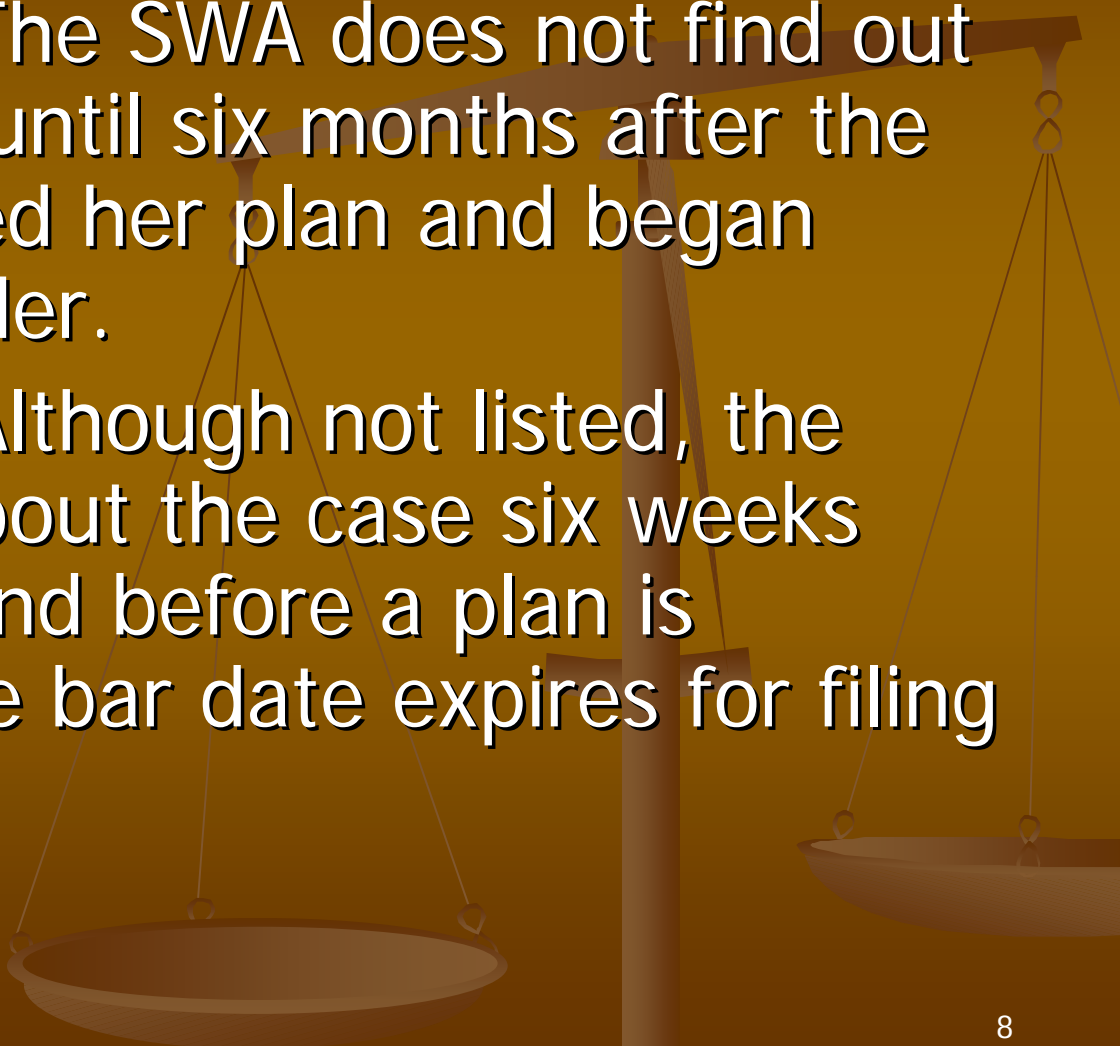
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- Eligibility Issues – Chapter 7 vs. Chapter 13
  - Dischargeability of the debt
    - Chapter 7
    - Chapter 13
      - fraud debts – old law vs. new law
      - “superdischarge” no longer available
        - § 1328(a)(2)
      - secured debts
    - Criminal Prosecutions/Restitution Orders

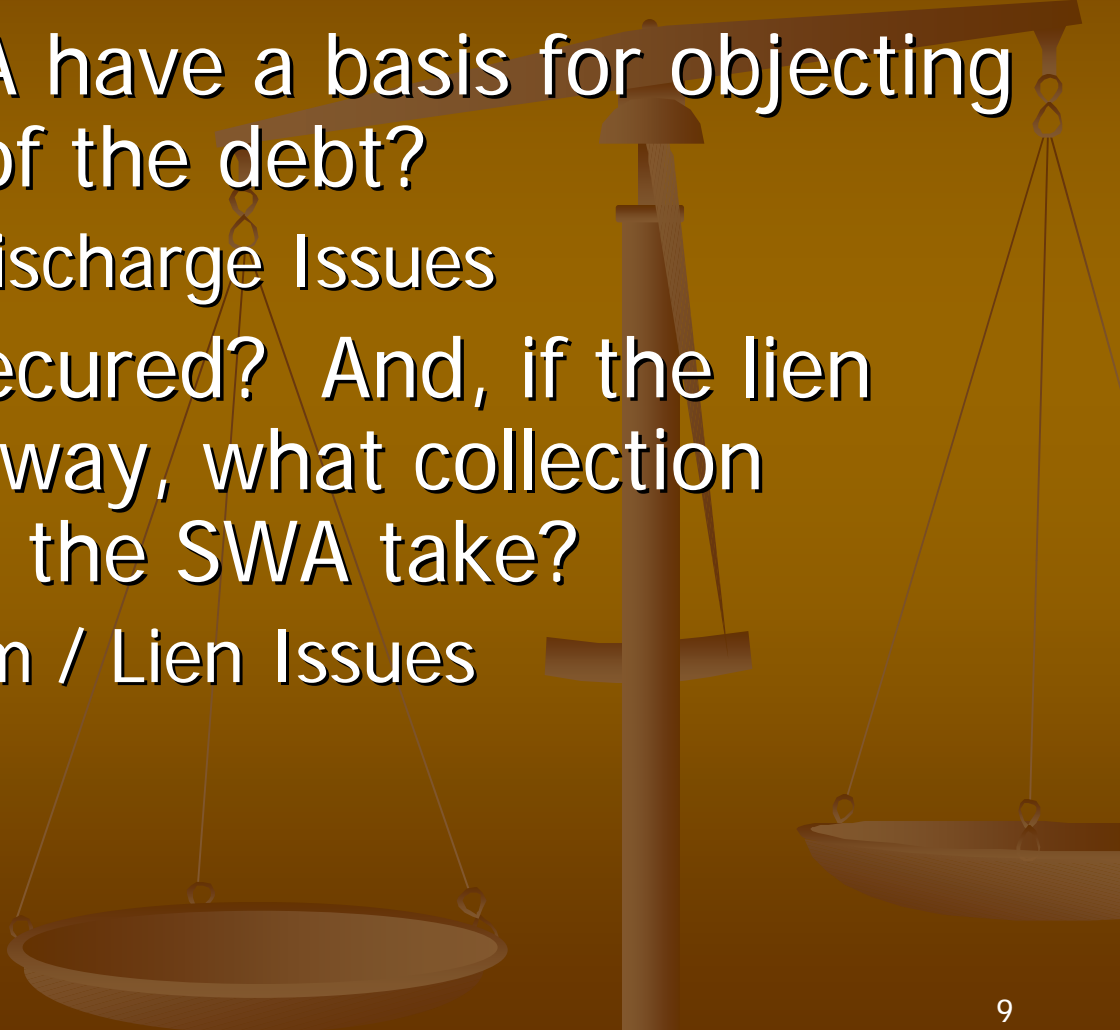
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- An SWA discovers that three years ago a UI claimant fraudulently obtained unemployment insurance benefits. The UI Claimant filed Chapter 7 bankruptcy and her debts were discharged one year prior to the SWA's discovery of the fraud. The SWA was not a scheduled creditor in the bankruptcy proceedings. What if anything can the SWA do to recover the overpayment?

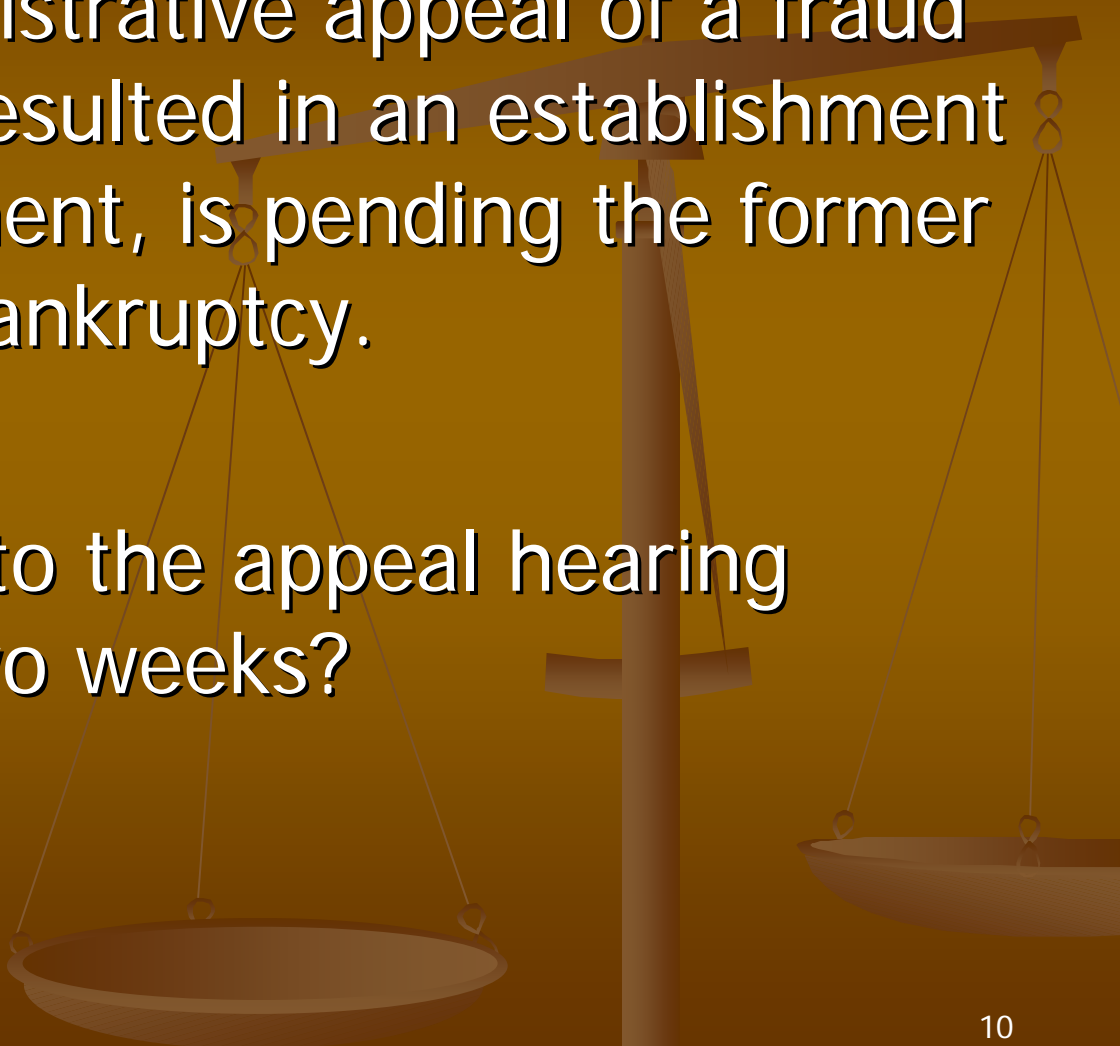
- Chapter 7
  - “no notice” exception under § 523(a)(13)
- Chapter 13

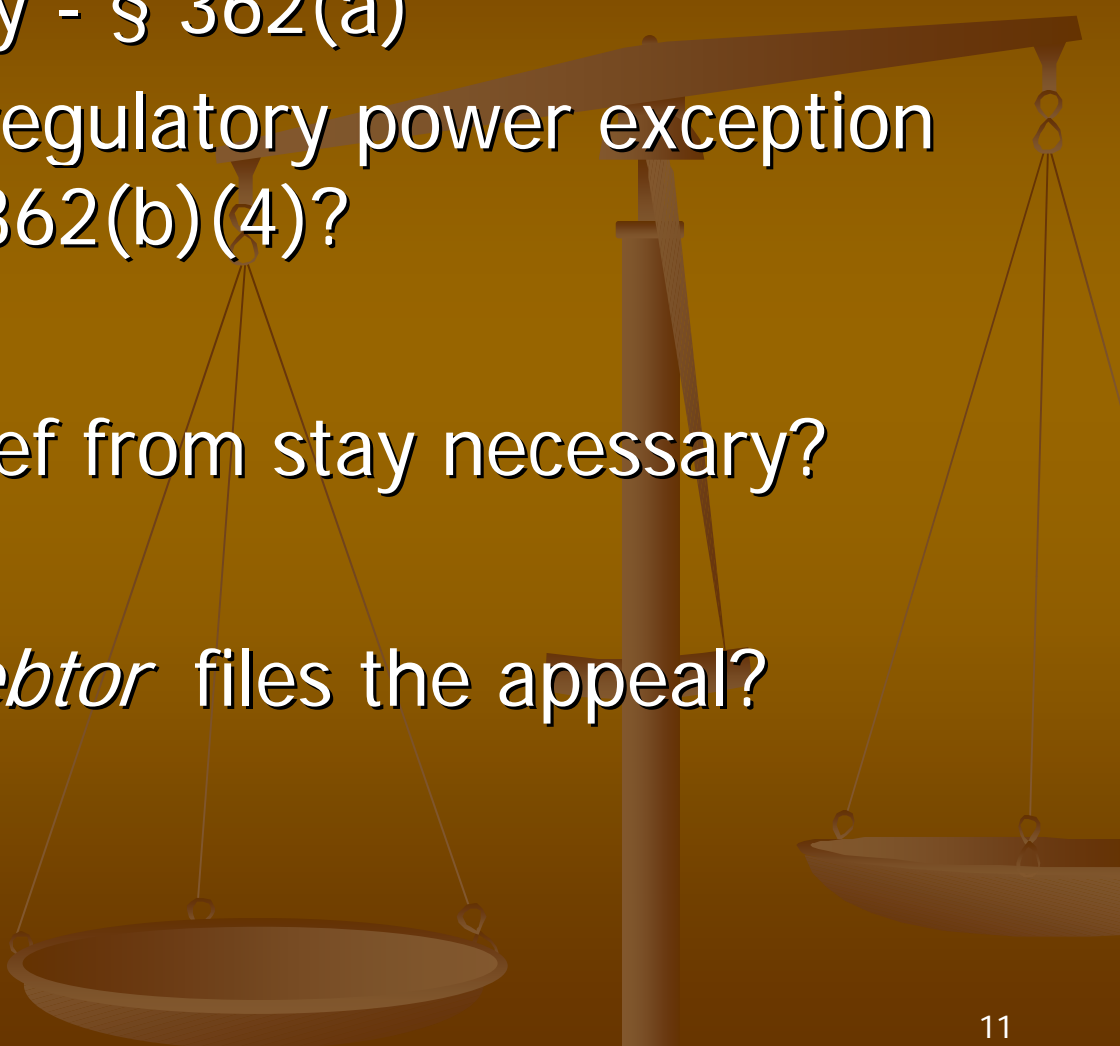


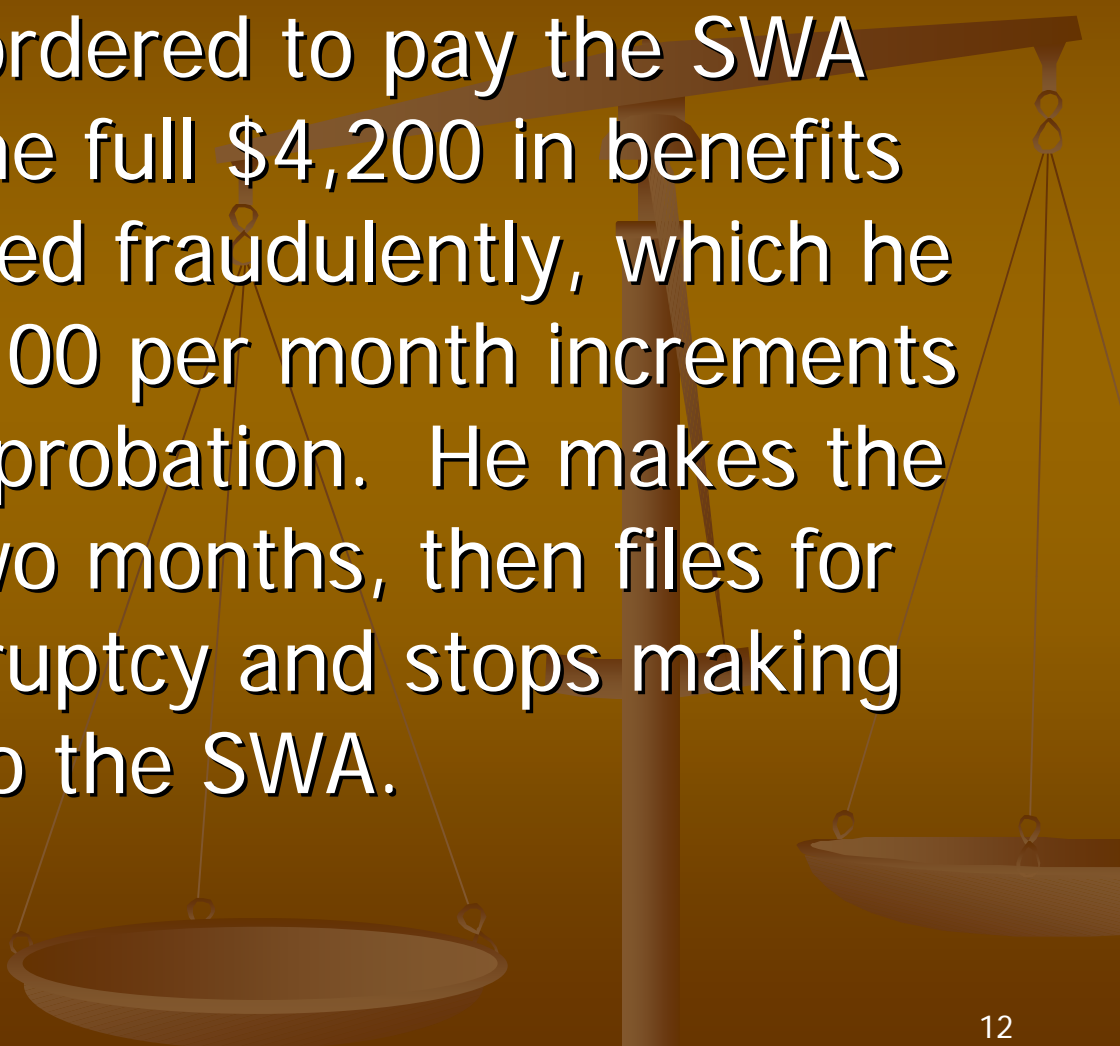
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- A former UI claimant owes an SWA \$2,101 for a non-fraud overpayment. The SWA filed an administrative lien against the claimant and complied with all of the requirements of state law to file the lien. Per state law, the lien attaches to "all real and personal property owned by the debtor or acquired by the debtor after the filing of the lien." This week the former claimant has filed a Ch. 13 bankruptcy petition and Plan. The SWA is not listed as a creditor by the debtor and, of course, payments to the SWA are not specified in the Plan.

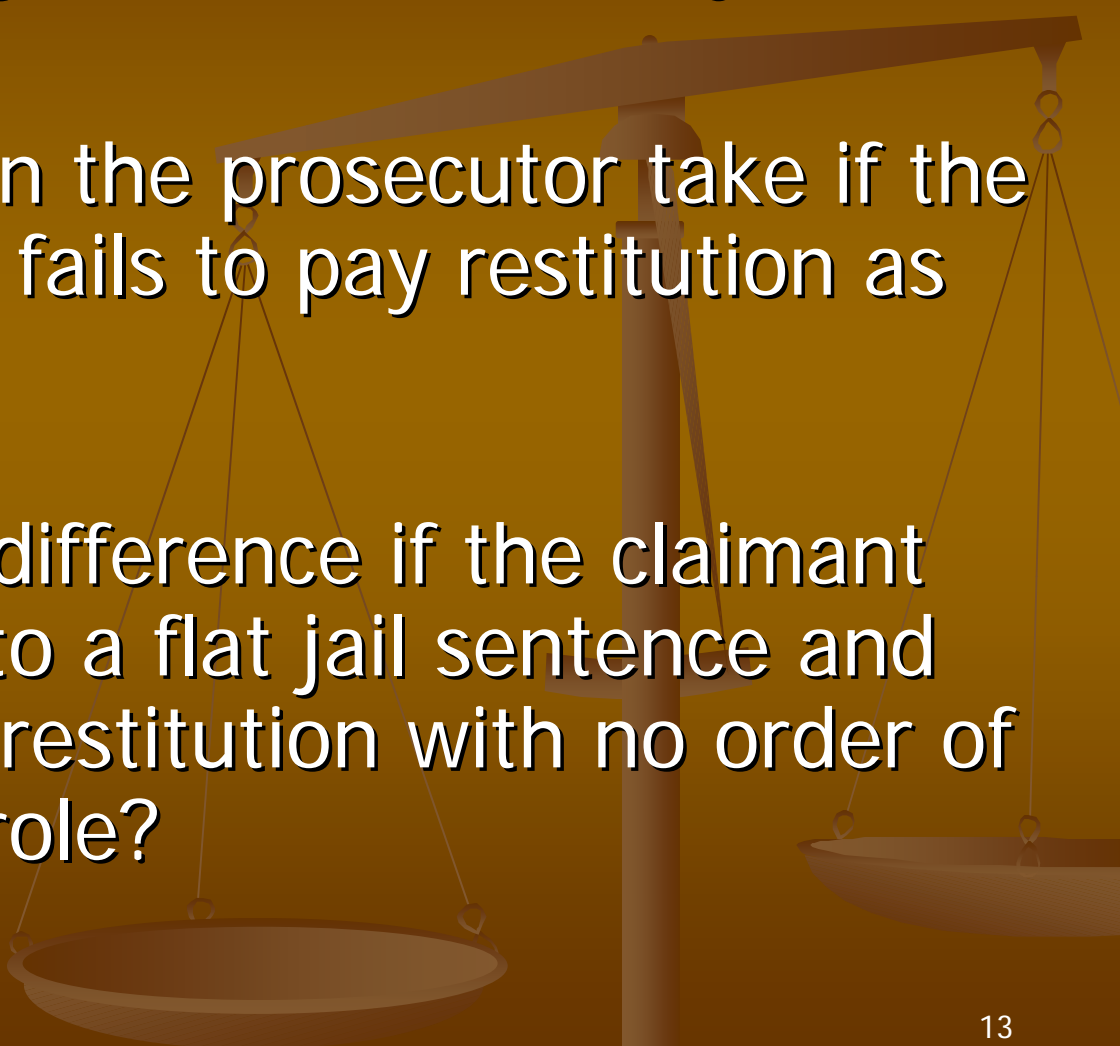
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- Alternative 1: The SWA does not find out about the debt until six months after the Debtor confirmed her plan and began paying thereunder.
  - Alternative 2: Although not listed, the SWA find out about the case six weeks after it is filed and before a plan is confirmed or the bar date expires for filing a claim.

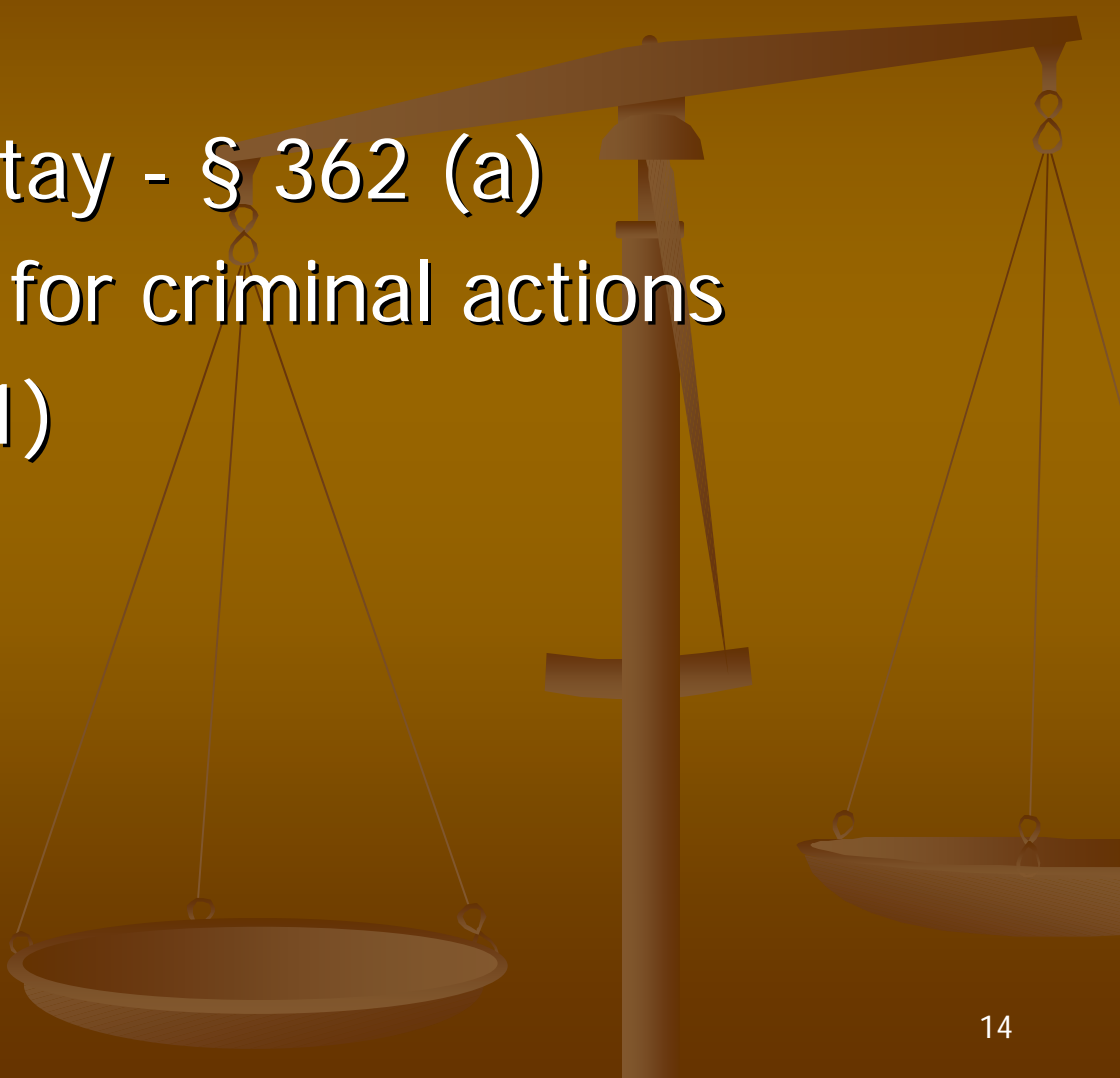
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- Does the SWA have a basis for objecting to discharge of the debt?
    - Notice and Discharge Issues
  - Is this debt secured? And, if the lien does not go away, what collection measures can the SWA take?
    - Secured Claim / Lien Issues

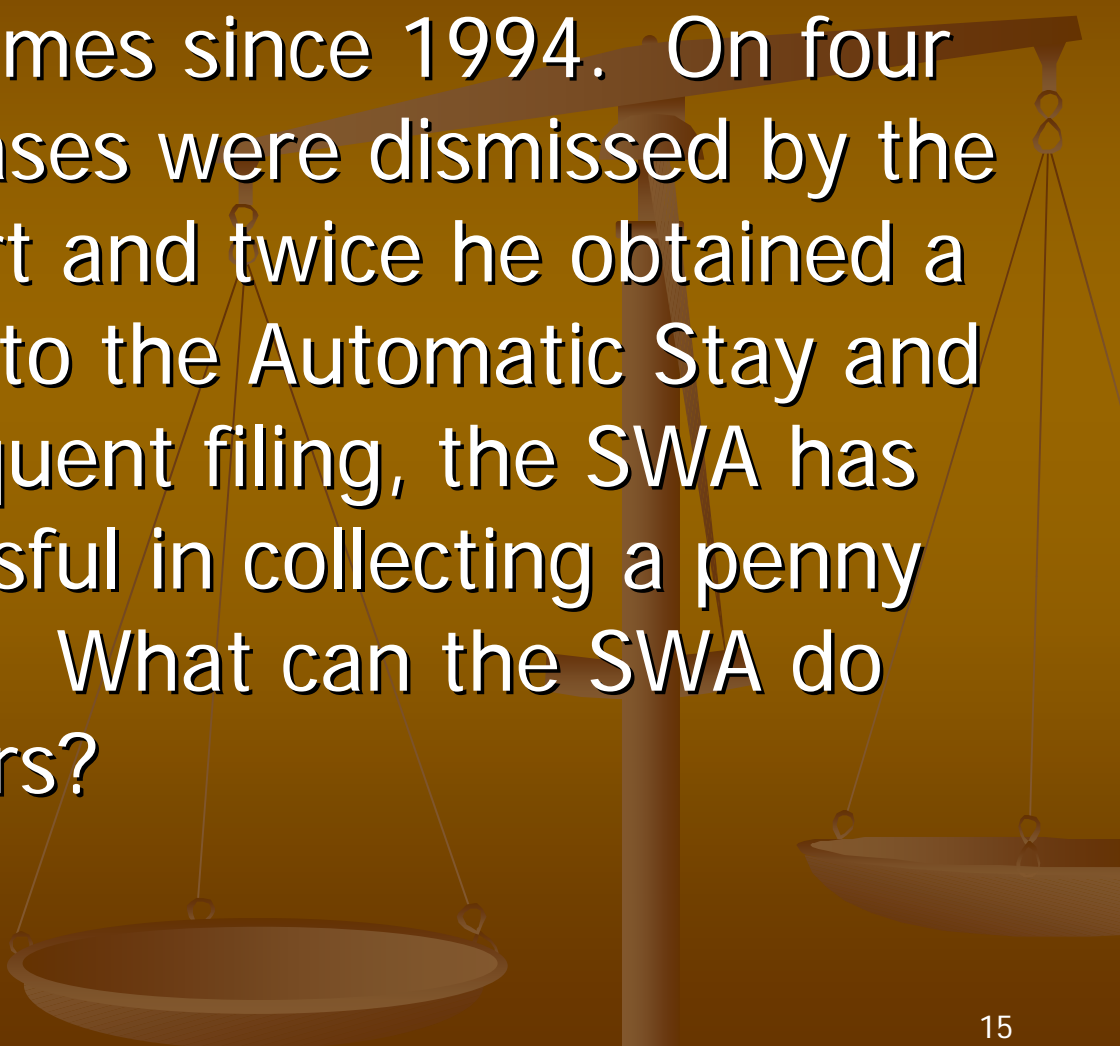
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- While an administrative appeal of a fraud decision, that resulted in an establishment of an overpayment, is pending the former claimant files bankruptcy.
  - What happens to the appeal hearing scheduled in two weeks?

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- Automatic Stay - § 362(a)
    - police and regulatory power exception to stay - § 362(b)(4)?
  - Motion for relief from stay necessary?
  - What if the *debtor* files the appeal?

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- Our claimant has been convicted of UI fraud and was ordered to pay the SWA restitution for the full \$4,200 in benefits which he obtained fraudulently, which he is to repay in \$100 per month increments as a part of his probation. He makes the payments for two months, then files for Chapter 7 bankruptcy and stops making any payments to the SWA.

- 
- What actions may the Department take without violating the automatic stay?
  - What actions can the prosecutor take if the claimant/debtor fails to pay restitution as required?
  - Does it make a difference if the claimant was sentenced to a flat jail sentence and required to pay restitution with no order of probation or parole?

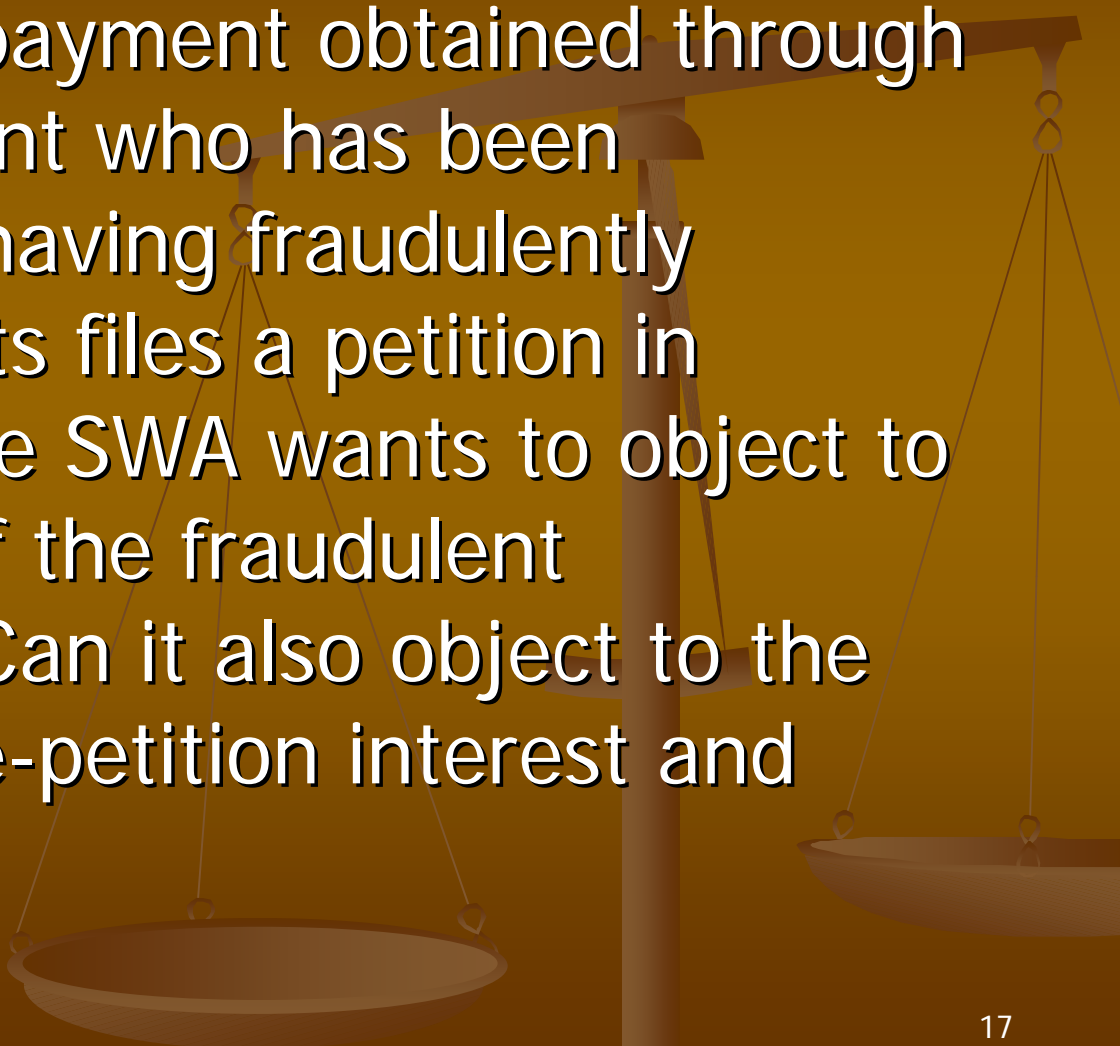
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- Automatic Stay - § 362 (a)
    - exception for criminal actions
  - § 362(b)(1)

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- An SWA discovered a debtor who filed bankruptcy six times since 1994. On four occasions, his cases were dismissed by the Bankruptcy Court and twice he obtained a discharge. Due to the Automatic Stay and the debtor's frequent filing, the SWA has not been successful in collecting a penny from the debtor. What can the SWA do with such abusers?

# Repeat Filers

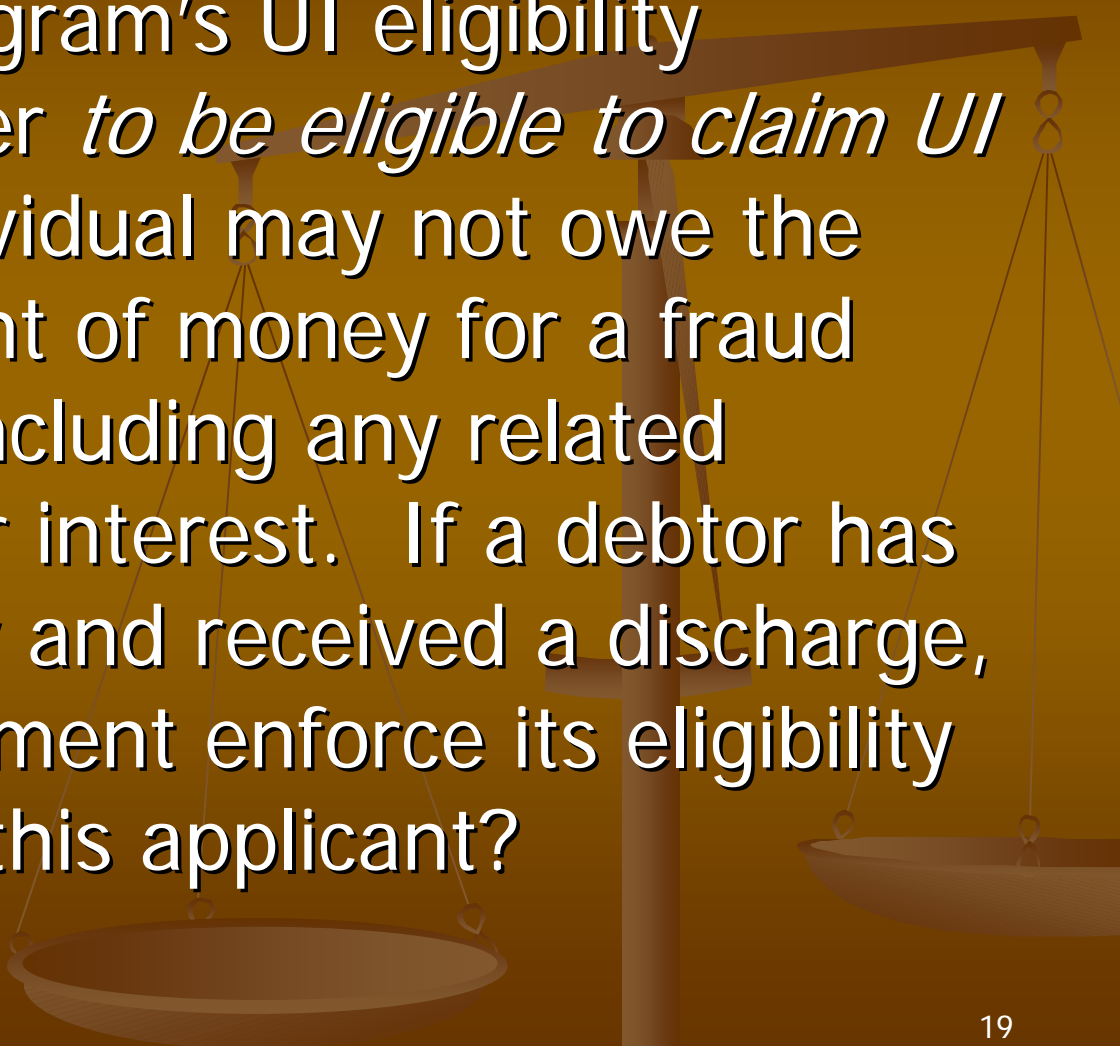


- Code Provisions - §§ 109(g) & 349
- Creditor Options for serial filers
  - *in rem* orders
- Impact of new law
  - § 362(c)(3) & (c)(4)
  - § 727(a)(8) & (a)(9)
- Motion to Dismiss for Cause - § 707(a)

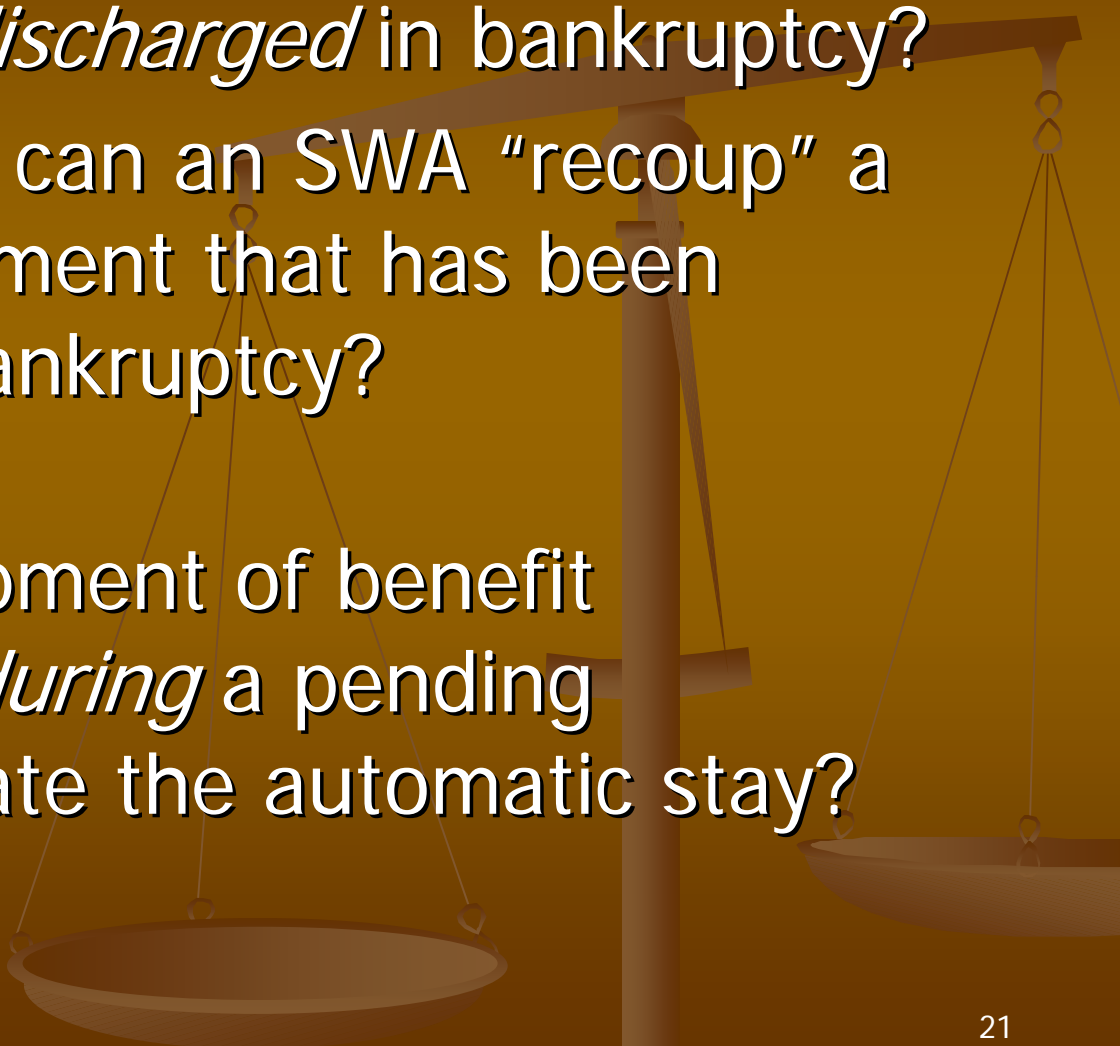
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- A state's UI law provides for the assessment of interest and penalties for a UI benefit overpayment obtained through fraud. A claimant who has been adjudicated as having fraudulently obtained benefits files a petition in bankruptcy. The SWA wants to object to the discharge of the fraudulent overpayment. Can it also object to the discharge of pre-petition interest and penalties?

# Interest and Penalties

- Good news: The treatment of interest and penalties in Bankruptcy Court generally follows the treatment of the underlying debt.

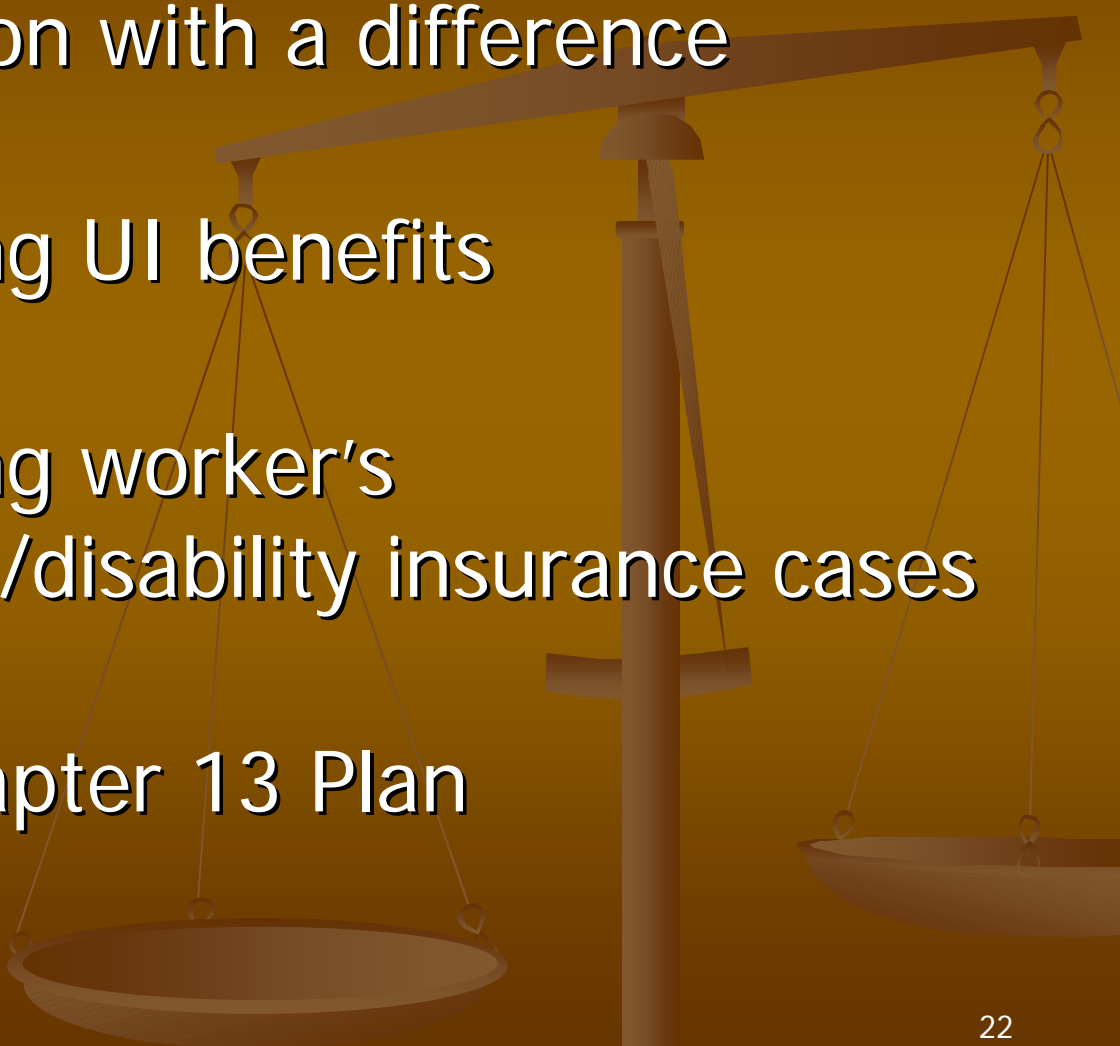
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- In an effort to deter fraud against the State's UI system, a state has statutorily changed its program's UI eligibility criteria: In order *to be eligible to claim UI benefits* an individual may not owe the SWA any amount of money for a fraud overpayment, including any related penalties and/or interest. If a debtor has filed bankruptcy and received a discharge, may the Department enforce its eligibility criteria against this applicant?

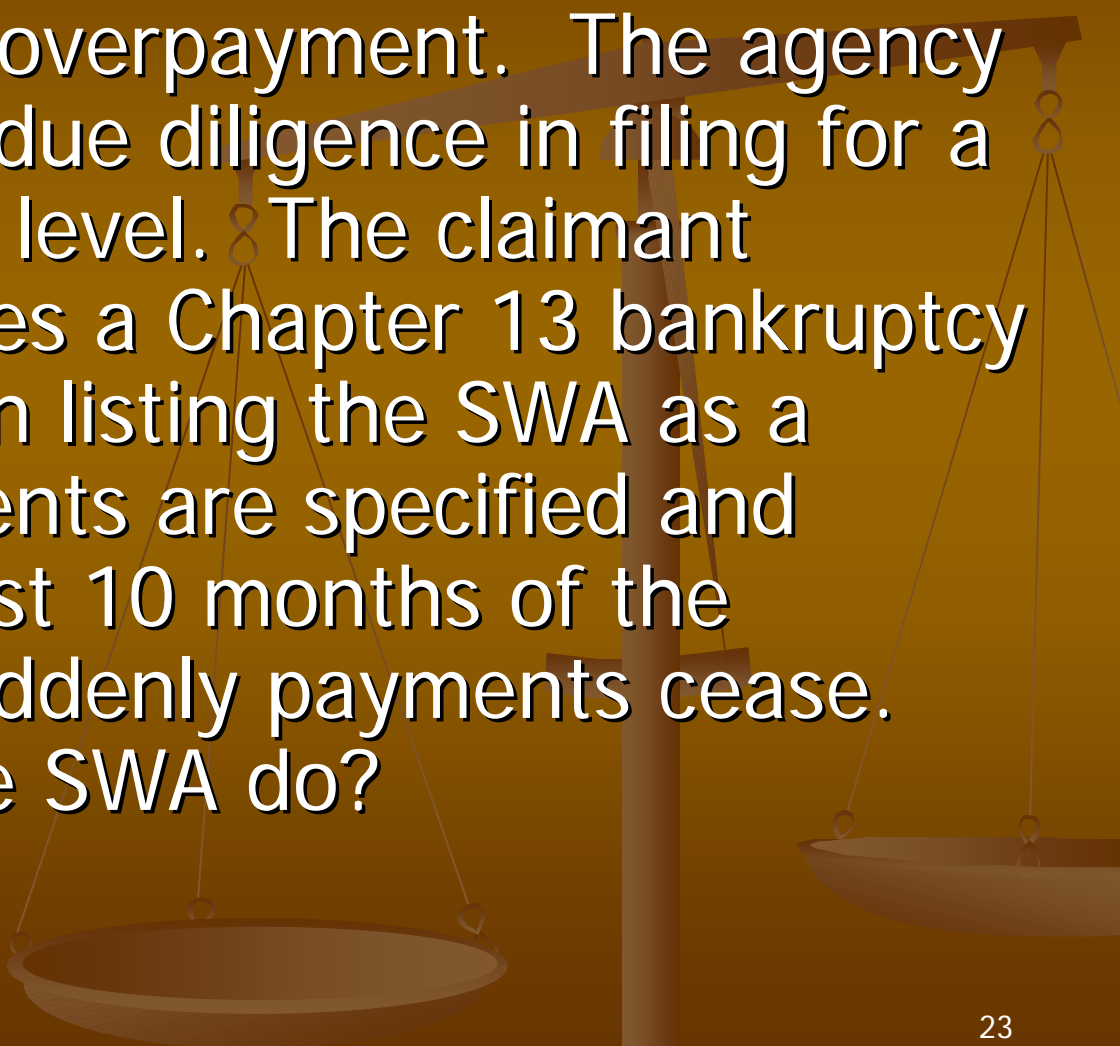
- General Comments on enforcement of eligibility criteria post-discharge

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- To tackle the problem a different manner, can an SWA “offset” a benefit payment that has been *discharged* in bankruptcy?

In other words, can an SWA “recoup” a benefit overpayment that has been discharged in bankruptcy?

- Does the recoupment of benefit overpayments *during* a pending bankruptcy violate the automatic stay?

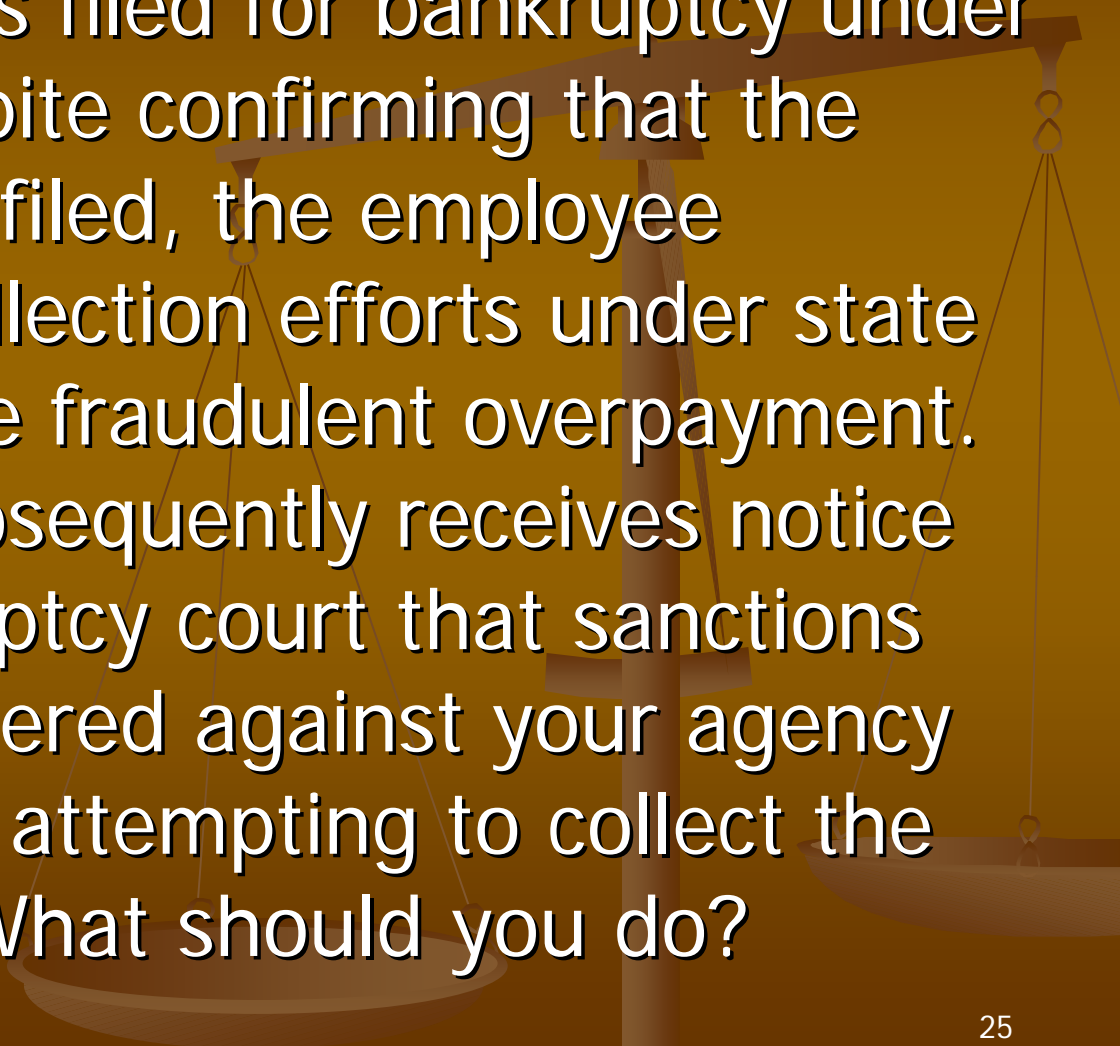
- Recoupment vs. Offset –  
a distinction with a difference
  - Cases involving UI benefits
  - Cases involving worker's  
compensation/disability insurance cases
  - Impact of Chapter 13 Plan
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- A former claimant owes an SWA \$11,000, for a non-fraud overpayment. The agency has done all its due diligence in filing for a lien at the state level. The claimant subsequently files a Chapter 13 bankruptcy petition and plan listing the SWA as a creditor. Payments are specified and made for the first 10 months of the bankruptcy. Suddenly payments cease. What should the SWA do?

# Chapter 13 Plan Enforcement

- Call the Trustee
- Then What?



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- An SWA employee learns that a former claimant who owes \$6,342 for a fraud overpayment has filed for bankruptcy under Chapter 7. Despite confirming that the bankruptcy was filed, the employee continues his collection efforts under state law to collect the fraudulent overpayment. Your agency subsequently receives notice from the bankruptcy court that sanctions are being considered against your agency for its actions in attempting to collect the overpayment. What should you do?

# Automatic Stay Violations

- How do we deal with a violation of the stay?
- Do we *always* have to give the money back to the debtor?

# Questions?



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