

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. _____
v.	:	DATE FILED: May 29, 2014
DEBORAH MESSNER	:	VIOLATIONS:
	:	18 U.S.C. §§ 152(1) and (7) (concealing property in bankruptcy – 1 count)
	:	18 U.S.C. §§ 152(2) and (3) (false oath in bankruptcy proceeding – 2 counts)

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

Introduction

1. Defendant DEBORAH MESSNER was a resident of Glenmoore, Pennsylvania.
2. Pietro A. Barbieri, charged elsewhere, was an attorney licensed to practice law in the Commonwealth of Pennsylvania. Barbieri practiced law as Barbieri & Associates, with an office located at 657 Exton Commons, in Exton, Pennsylvania.

The Bankruptcy Process

3. The bankruptcy process is conducted in a federal court and is governed by the United States Bankruptcy Code, found in Title 11 of the United States Code. The process is designed to achieve the dual objectives of assisting honest debtors and protecting creditors.
4. An individual may file a petition for one of several different types of

bankruptcy, commonly referred to as chapters. One of these types of bankruptcy is known as “Chapter 7.” The Chapter 7 bankruptcy process is designed to free the debtor from unsecured debt, i.e., medical bills, credit cards, department store cards, payday loans, some personal loans, utility bills, and more. The process cancels many or all of the debtor’s debts and may also involve the liquidation of the debtor’s assets.

5. A Chapter 7 bankruptcy case is begun by the filing of a bankruptcy petition and the person who filed that petition is a “debtor” under federal bankruptcy law. Upon the filing of a bankruptcy petition, a debtor is required by law to fully disclose his or her financial circumstances, including, among other things, assets, liabilities, income from prior years, and any anticipated increase in income. Assets include real, personal, tangible and intangible property, whether or not the asset is held in the debtor’s name or held in the name of another person or entity on behalf of the debtor. A bankruptcy “estate” is created upon the filing of a bankruptcy petition, which is a collective reference to all legal or equitable interests of the debtor in property at the time of the bankruptcy filing. The estate includes all property in which the debtor has an interest, even if it is owned or held by another person.

6. The financial circumstances of the debtor are to be disclosed to the bankruptcy court by the debtor in a series of bankruptcy forms called the Schedules of assets and liabilities and on a separate bankruptcy form called a “Statement of Financial Affairs” disclosing, among other things, the transfers of assets during the year preceding the filing of bankruptcy, payments to creditors within 90 days immediately preceding the filing of the bankruptcy petition, and suits and administrative actions. These forms are to be signed by the debtor under penalty of perjury.

7. Federal Rule of Bankruptcy Procedure 2016(b) requires an attorney representing a debtor to disclose the amount of compensation received from a debtor or on behalf of a debtor in a bankruptcy case.

8. If a bankruptcy trustee is assigned to the bankruptcy case, he or she is responsible for the administration of the debtor's bankruptcy estate, including the identification and liquidation of assets and distribution of proceeds to creditors. All debtors are required to attend a Section 341 Meeting of Creditors, at which the debtor is placed under oath by the bankruptcy trustee and questioned about his or her financial affairs, including, but not limited to, the bankruptcy petition, the Schedules stating the assets and liabilities and the Statement of Financial Affairs.

9. If necessary, other types of proceedings may be held in relation to bankruptcy cases, such as Rule 2004 examinations, at which the debtor is placed under oath by the bankruptcy trustee and/or the trustee's representative and questioned about his or her financial affairs.

10. Chapter 7 bankruptcy provides debtors with an opportunity to obtain a fresh financial start through discharge of their debts. A discharge depends upon the debtor's disclosure of a true and accurate picture of his or her financial affairs.

Concealment of Property and False Representations

11. Defendant DEBORAH MESSNER retained Pietro A. Barbieri as her attorney regarding her divorce and bankruptcy matter.

12. In or about February 2009, defendant DEBORAH MESSNER and Pietro A. Barbieri engaged in discussions regarding defendant MESSNER filing for bankruptcy.

13. In or about February 2009, in contemplation of filing for bankruptcy, defendant DEBORAH MESSNER transferred possession of a Chevrolet Corvette to her father.

14. In or about April 2009, Pietro A. Barbieri advised defendant DEBORAH MESSNER to open an Individual Retirement Account (“IRA”) to receive the proceeds from defendant MESSNER’s divorce settlement.

15. On or about April 6, 2009, defendant DEBORAH MESSNER, assisted by Pietro A. Barbieri, entered into an agreement in her divorce proceeding in which she would receive monies and those monies would fund an IRA.

16. On or about April 9, 2009, defendant DEBORAH MESSNER opened a Scottrade Individual Retirement Account (“IRA”), managed by Legacy Wealth Management, under the name Deborah S. Messner, to receive the proceeds from her divorce settlement.

17. Defendant DEBORAH MESSNER had and maintained a checking account at DNB First, under the name Deborah S. Messner.

18. On or about May 6, 2009, defendant DEBORAH MESSNER received a letter from Pietro A. Barbieri in which he advised defendant MESSNER that her Scottrade IRA had been funded in the amount of approximately \$193,000 with the proceeds from her divorce settlement. Barbieri also advised defendant MESSNER that “additional time will be required in order to protect this substantially larger fund from the grasp of the United States Bankruptcy Court.”

19. On or about May 6, 2009, Pietro A. Barbieri informed defendant DEBORAH MESSNER that his fee was increasing from \$22,000 to \$27,000.

20. On or about May 18, 2009, defendant DEBORAH MESSNER transferred

and caused the transfer of \$22,000, representing an attorney fee, to Pietro A. Barbieri.

21. On or about May 19, 2009, defendant DEBORAH MESSNER caused the withdrawal of \$125,000 from her Scottrade IRA.

22. On or about May 19, 2009, defendant DEBORAH MESSNER and Pietro A. Barbieri filed and caused the filing of a bankruptcy petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Pennsylvania, in the proceeding entitled In re: Deborah Susan Messner, Case No. 09-13701 (the “bankruptcy petition”), in which defendant MESSNER claimed assets exempted from the Bankruptcy Code totaling approximately \$84,410 and sought to discharge unsecured debts totaling approximately \$86,861.47.

23. On or about May 19, 2009, defendant DEBORAH MESSNER and Pietro A. Barbieri filed and caused the filing of documents relating to the bankruptcy petition, including Schedules of assets and liabilities and a Statement of Financial Affairs, in which defendant MESSNER did not disclose, concealed and covered up the transfer of the Chevrolet Corvette, her divorce proceeding, the Scottrade IRA, all of her unsecured creditors, and the transfer of \$22,000 to Pietro A. Barbieri.

24. On or about May 19, 2009, defendant DEBORAH MESSNER signed the bankruptcy petition and supporting documents under penalty of perjury.

25. On or about May 19, 2009, Pietro A. Barbieri and defendant DEBORAH MESSNER filed and caused the filing of a B203 Disclosure of Compensation of Attorney for Debtor form with the Bankruptcy Court and did not disclose, concealed and covered up Barbieri’s receipt of \$22,000 from defendant MESSNER on or about May 18, 2009.

26. On or about May 26, 2009, defendant DEBORAH MESSNER obtained \$87,500 from her Scottrade IRA, deposited the money into her DNB First checking account, and used part of those monies to fund four cashier's checks payable to unsecured creditors not disclosed on her bankruptcy petition.

27. On or about June 30, 2009, defendant DEBORAH MESSNER and Pietro A. Barbieri appeared at a Section 341 Meeting of Creditors and both provided false testimony and statements regarding the accuracy of the bankruptcy petition, and about defendant MESSNER's Scottrade IRA, her unsecured creditors, and Barbieri's attorney compensation statement.

28. On or about June 30, 2009, defendant DEBORAH MESSNER and Pietro A. Barbieri falsely represented that defendant MESSNER had, within a matter of days, just received the proceeds from a divorce settlement, placed the proceeds into an IRA, and "did not know the value of [the IRA] was, because we had not gotten any paperwork concerning it."

29. On or about July 3, 2009, defendant DEBORAH MESSNER filed an Amended Schedule B – Personal Property and falsely stated that she did not know the value of the IRA, when, at the time, defendant MESSNER had withdrawn approximately \$125,000 since she filed her bankruptcy petition on May 19, 2009.

30. On or about October 7, 2009, defendant DEBORAH MESSNER and Pietro A. Barbieri appeared at a Rule 2004 bankruptcy proceeding and defendant MESSNER provided false testimony regarding the accuracy of the bankruptcy petition and about her Scottrade IRA, her unsecured creditors, and the disposition of the bankruptcy estate.

31. On or about October 7, 2009, defendant DEBORAH MESSNER acknowledged that she learned that her IRA was funded prior to May 18, 2009, when she caused

the premature distribution of \$22,000 from the IRA and paid this amount as an attorney fee to Pietro A. Barbieri.

32. On or about October 7, 2009, defendant DEBORAH MESSNER acknowledged that she also caused the premature distribution of \$87,500 from the IRA on May 20, 2009, deposited this amount into her DNB First checking account and made payments totaling \$67,562.78 to creditors that she did not disclose on her Chapter 7 bankruptcy petition.

33. From on or about May 19, 2009 until on or about October 7, 2009, in the Eastern District of Pennsylvania, defendant

DEBORAH MESSNER,

in connection with her bankruptcy case, In re: Deborah Susan Messner, Case No. 09-13701, which is a case under Title 11 of the United States Code, knowingly and fraudulently concealed and caused to be concealed from creditors, the Bankruptcy Court, and the United States Trustee, personal property belonging to her bankruptcy estate, that is, a Scottrade IRA with a balance of approximately \$172,383.49, a Chevrolet Corvette, and an attorney fee payment of \$22,000.

In violation of Title 18, United States Code, Sections 152(1) and (7).

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs One through Thirty-Two of Count One are incorporated here.
2. On or about June 30, 2009, in the Eastern District of Pennsylvania,

defendant

DEBORAH MESSNER,

knowingly and fraudulently made a false material statement under oath in and in relation to a case under Title 11, In re: Deborah Susan Messner, Case No. 09-13701, by falsely testifying under oath at a Section 341 Meeting of Creditors before the United States Trustee about the accuracy of the information contained in the bankruptcy petition, Schedules and Statement of Financial Affairs.

In violation of Title 18, United States Code, Sections 152(2) and (3).

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs One through Thirty-Two of Count One are incorporated here.
2. On or about October 7, 2009, in the Eastern District of Pennsylvania,

defendant

DEBORAH MESSNER,

knowingly and fraudulently made a false material statement under oath in and in relation to a case under Title 11, In re: Deborah Susan Messner, Case No. 09-13701, by falsely testifying under oath at a Rule 2004 examination conducted at the request of the United States Trustee about the accuracy of the information contained in the bankruptcy petition, Schedules and Statement of Financial Affairs, and the disposal of assets that were part of the bankruptcy estate.

In violation of Title 18, United States Code, Sections 152(2) and (3).

A TRUE BILL:

FOREPERSON

ZANE DAVID MEMEGER
United States Attorney