UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

In re

STEPHEN M. ALFORD,
CHERI L. ALFORD,

Case No. 01-41816-PNS3

Debtors.

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY,

Plaintiff,

vs.

Adv. No. 01-80056

STEPHEN M. ALFORD,

Defendant.

ORDER GRANTING PLAINTIFF'S SUMMARY JUDGMENT MOTION AND FINDING THAT DEBTOR'S DEBT TO PLAINTIFF IS EXCEPTED FROM DISCHARGE

John E. Venn, Jr., Pensacola, Florida, Attorney for Stephen M. Alford
W. Douglass Hall and F. Townsend Hawkes, Tallahassee, Florida, Attorneys for St. Paul Fire and Marine Insurance Company

This case is before the Court on St. Paul Fire and Marine Insurance Company's summary judgment motion to find that a judgment it obtained against Stephen M. Alford is excepted from discharge. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) and the Court has the authority to enter a final order. For the reasons given below, the Court is granting St. Paul's summary judgment motion and finding that Mr. Alford's entire $3,150,000 debt to St. Paul is excepted from discharge pursuant to 11 U.S.C. §523(a)(6).

FACTS

St. Paul Fire and Marine Insurance Company is an insurance company which provides, among other things, payment and performance bonds to a variety of businesses involved in the construction industry. It does business by entering into agreements with insurance agencies which solicit insurance contracts that are subsequently placed with St. Paul. St. Paul authorizes certain employees of these insurance agencies to issue bonds on its behalf.

Stephen Alford was employed by an insurance agency that placed certain insurance contracts with St. Paul during the time period relevant to this case. One of Mr. Alford's clients, SwiftShips, was a marine construction company that needed a bond as collateral to obtain financing for its Egyptian Coastal Minehunter Project ("CMH Project"). Mr. Alford approached St. Paul to obtain a bond for CMH project but it refused to provide one. The other insurance companies Mr. Alford tried to obtain a bond from also refused.

After running out of options to get a legitimate bond from St. Paul or any other insurance company, Mr. Alford offered to issue a fake St. Paul bond to SwiftShips. Mr. Alford discussed his idea with Dennis Spurgeon, one of the owners of Swiftships, but Mr. Spurgeon never affirmatively agreed to it. Nonetheless, Mr. Spurgeon was aware that the bond was not authorized by St. Paul when Mr. Alford issued it to SwiftShips on January 27, 1992.

Although the bond was fake, it looked legitimate on its face due to Mr. Alford's efforts to make it look authentic. The bond appeared to bind St. Paul as a surety to SwiftShips' lender in the amount of $27,990,236 if SwiftShips failed to perform its contractual obligations on the CMH project. It had a stolen St. Paul corporate seal affixed to it that Mr. Alford traveled across the country to steal from an insurance agency office affiliated with his employer, a forged signature of the name of an agent authorized to issue bonds on St. Paul's behalf, and a stolen St.

Paul power of attorney document purporting to acknowledge that the agent whose name appeared on the bond was authorized to issue it.

Pursuant to his agreement with Mr. Spurgeon, Mr. Alford subsequently received two payments of $525,000 each from SwiftShips (for a total of $1,050,000) for issuing the bond. After rapidly spending the money he received from issuing the bond to SwiftShips on luxury items and failed investment schemes, Mr. Alford issued additional fake St. Paul bonds to another one of his clients, Texas DryDock, Inc. ("TDI"), on October 29, 1993. TDI needed the bonds on a marine barge construction project for an oil company named ENSCO ("ENSCO Project").

Like the fake bond he issued to SwiftShips, the bonds Mr. Alford issued to TDI looked like legitimate St. Paul bonds on their face because Mr. Alford took the same steps to make them look authentic. The bonds bore a stolen St. Paul corporate seal, forged signatures of the name of an agent authorized to issue bonds on St. Paul's behalf, and came with a stolen St. Paul power of attorney document. However, unlike the SwiftShips transaction in which one of the owners knew the bond was fake, it is unclear if anyone at TDI knew the bonds were not real.

Mr. Alford represented to TDI that St. Paul would charge an $852,000 premium for issuing the bonds. However, Mr. Alford insisted that TDI pay the premium directly to him rather than remitting it to St. Paul. TDI was uncomfortable with this payment arrangement because it was not a typical industry practice to make a premium payment directly to an agent. TDI also began to have suspicions about the legitimacy of the bond. Before remitting the premium directly to Mr. Alford, TDI contacted the insurance agent whose signature Mr. Alford had forged on the bond. The agent informed TDI that his signature had been forged and he contacted St. Paul regarding the fake bonds. Mr. Alford never received any premium payment from TDI.

St. Paul filed a lawsuit against Mr. Alford in the United States District Court for the Eastern District of Louisiana. It deposed Mr. Alford on three occasions but he subsequently failed to file an answer to St. Paul's complaint or any other responsive pleading on his behalf. The record does not indicate Mr. Alford's reason for failing to respond to St. Paul's complaint. It only shows that a default judgment was entered against Mr. Alford for failing to respond. However, Mr. Alford submitted an affidavit in this case stating that he did not respond to St. Paul's complaint because he could not adequately represent himself and he could not afford to hire a lawyer.

At the confirmation hearing on St. Paul's motion for entry of default, St. Paul presented evidence to support its allegations that Mr. Alford defrauded St. Paul in violation of the Federal Racketeer Influenced and Corrupt Organization Act (RICO). On February 26, 1996 the Louisiana District Court found that Mr. Alford was liable to St. Paul for $3,150,000 (consisting of $1,050,000 in damages to St. Paul for the premium retained by Mr. Alford multiplied by three under RICO) in principal damages plus attorneys fees and costs, post judgment interest, and judicial costs for a total default award of $3,469,542.50.

Mr. Alford and his wife Cheri, filed a chapter 7 bankruptcy case in this Court on July 16, 2001. In their schedules, they listed a $3.5 million unsecured debt to St. Paul for the judgment it obtained against Mr. Alford in the Louisiana District Court on February 26, 1996. St. Paul filed an adversary proceeding complaint in the Alfords' bankruptcy case alleging that Mr. Alford's $3.5 million debt to St. Paul is excepted from discharge under the Bankruptcy Code. The Alfords filed a summary judgment motion alleging that St. Paul's judgment was unenforceable under Florida's statute of limitations.

This Court granted the Alfords' motion for summary judgment, holding that St. Paul's judgment was unenforceable because Florida's statute of limitations on actions on a foreign judgment had expired. On appeal, the United States District Court for the Northern District of Florida reversed the decision and held that St. Paul's judgment was enforceable under the federal judgment registration statute. This Court must now consider the nature of Mr. Alford's underlying debt to St. Paul to determine if the Alfords may discharge St. Paul's $3.5 million judgment in their bankruptcy case.

LAW

The plaintiff, St. Paul, filed a summary judgment motion in this case alleging that Mr. Alford's $3.5 million judgment debt to St. Paul is excepted from discharge under the Bankruptcy Code. A motion for summary judgment should be granted if the moving party can show that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 447 U.S. 242, 247 (1986). As the party seeking summary judgment, St. Paul has the burden of demonstrating that no genuine issue as to any material fact exists, and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The Court must view the underlying facts, and all reasonable inferences drawn therefrom, in the light most favorable to Mr. Alford, the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A.

St. Paul argues that under the doctrine of issue preclusion (collateral estoppel), Mr. Alford may not relitigate in his bankruptcy case the facts established in the Louisiana District Court action in which St. Paul received a $3.5 million default judgment against him. It is

incorrect. Although the doctrine of issue preclusion is applicable to discharge exception proceedings, *Grogan v. Garner*, 498 U.S. 279, 285 (1991), it may not be invoked following "ordinary" defaults like the one in this case. *See Bush v. Balfour Beatty Bahamas, Ltd.*, 62 F.3d 1319 (11th Cir. 1995).

A bankruptcy court must find four elements present to invoke issue preclusion in a discharge exception proceeding:

1. The issue in the prior action and the issue in the bankruptcy court are identical;
2. The bankruptcy issue was actually litigated in the prior action;
3. The determination of the issue in the prior action was a critical and necessary part of the judgment in that litigation; and
4. The burden of persuasion in the discharge proceeding must not be significantly heavier than the burden of persuasion in the initial action.

Bush at 1322 (quoting *In re Yanks*, 931 F.2d 42, 43 n.1 (11th Cir. 1991)). A prior default judgment in which none of the issues were actually litigated will generally not support the application of issue preclusion in a later bankruptcy case because the second element (actually litigated) of the four part test is not met. *Id.* at 1323. However, there is a narrow exception to this general rule.

In *Bush*, the Court of Appeals found that "[w]here a party has substantially participated in an action in which he had a full and fair opportunity to defend on the merits, but subsequently chooses not to do so, and even attempts to frustrate the effort to bring the action to judgment, it is not an abuse of discretion for a [bankruptcy] court to apply the doctrine of collateral estoppel to prevent further litigation of the issues resolved by the default judgment in the prior action." *Id.* at 1325. The *Bush* court was careful to point out that bankruptcy courts have discretion to choose whether or not to apply issue preclusion to "ordinary" default judgments. *Bush* at 1325 n.8 (stating that a subsequent court might decline to allow preclusion in the case of an "ordinary"

default).

In this case, the Louisiana District Court entered a $3.5 million default judgment against Mr. Alford because he failed to file an answer or any other responsive pleading to St. Paul's complaint. At the confirmation hearing on St. Paul's motion for default judgment, St. Paul's counsel stated that Mr. Alford had participated in depositions but afterwards they were unable to locate him. There is no indication in the record that Mr. Alford attempted to "frustrate" St. Paul's effort to get a judgment against him. This Court finds that the *Bush* exception does not apply to the default judgment entered against Mr. Alford because it was "ordinary" in nature. Therefore, issue preclusion does not prevent Mr. Alford from arguing in his bankruptcy case that his debt to St. Paul is dischargeable.

B.

Notwithstanding the Court's finding that issue preclusion does not apply to the dischargeability determination in this case, the $3.5 million default judgment entered against Mr. Alford by the Louisiana District Court stands as a final unappealed judgment. Although Mr. Alford seeks to collaterally attack the amount of the Louisiana District Court judgment in his bankruptcy case, he cannot do so in this Court. If Mr. Alford was not satisfied with the findings of the Louisiana District Court, he should have appealed the default judgment entered against him to the Eleventh Circuit Court of Appeals. He may not use the bankruptcy court to collaterally attack the final judgment of a federal district court. *Cutler v. Lindsey (In re Lindsey)*, 199 B.R. 580, 583 (E.D. Va. 1996)(affirmed in part and reversed in part on other grounds).

The only issue to be resolved in this Court is whether the debt is excepted from discharge not whether the debt is owed. The Court will look behind the default judgment to determine the true nature of Mr. Alford's debt to St. Paul. It will consider the Louisiana District Court

transcript of the default confirmation proceeding, the fake St. Paul bonds submitted into evidence, Mr. Alford's affidavit submitted into evidence, and Mr. Alford's extensive deposition testimony to determine if Mr. Alford's debt to St. Paul meets one of the exceptions to discharge provided in the Bankruptcy Code.

The Bankruptcy Code provides exceptions to the general policy of discharge for debts that result from, among other things, the debtor's fraud, embezzlement, larceny, or willful and malicious injury to another. St. Paul alleges that its $3.5 million default judgment against Mr. Alford represents a debt that is excepted from discharge because it was obtained by fraud under §523(a)(2)(A); because it was obtained by embezzlement or larcency under §523(a)(4); and because it constituted a willful and malicious injury to St. Paul under §523(a)(6). The Court will consider each of these exceptions below.

1.

Section 523(a)(2)(A) of the Bankruptcy Code provides:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt–
> (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--
> (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition.

11 U.S.C. §523(a)(2)(A). Under this section, a debtor may not discharge a debt for money he obtained by "false pretenses, a false representation, or actual fraud." These terms are not defined by the Bankruptcy Code. They are common law terms which "imply elements that the common law has defined them to include." *Field v. Mans*, 516 U.S. 59, 69 (1995). Reliance is an implied element found in all three terms.

The Bankruptcy Code and the Restatement (Second) of Torts (1976) support a finding

that a creditor must rely on the debtor's misrepresentation of a fact to succeed in a discharge exception proceeding under §523(a)(2)(A). The Supreme Court held in *Field* that "§523(a)(2)(A) requires justifiable, but not reasonable reliance" on a debtor's misrepresentation. *Field* at 74-75. The *Field* Court looked first to the text of §523(a)(2)(A) and found that "some degree of reliance is required to satisfy the element of causation inherent in the phrase 'obtained by' . . . ." *Id.* at 66. It then considered the meaning of the term "actual fraud" as it was understood when it was added to the Bankruptcy Code by looking to the Restatement. *Id.* at 70. The Supreme Court found that §537 of the Restatement, the section dealing with fraudulent misrepresentation, requires both actual and justifiable reliance. *Id.*

This Court finds that the Supreme Court's analysis in *Field* regarding reliance is applicable to the other two terms used in §523(a)(2)(A) as well. The phrase "obtained by" as used in §523(a)(2)(A) of the Bankruptcy Code modifies the terms "false pretenses" and "a false representation" in the same manner as it modifies "actual fraud." Section 537 of the Restatement, which requires both actual and justifiable reliance, applies to any fraudulent misrepresentation not just "actual fraud." Therefore, St. Paul must prove that it relied on a misrepresentation by Mr. Alford for his debt to be excepted from discharge under §523(a)(2)(A).

Mr. Alford did not make any misrepresentation of fact to St. Paul when he issued fake St. Paul bonds to two of his clients. He approached St. Paul to obtain a bond for SwiftShips but it declined to issue a bond on the CMH project. Mr. Alford then issued a fake St. Paul bond to SwiftShips but nothing in the record indicates that he made any misrepresentation to St. Paul in this transaction. St. Paul only became aware that Mr. Alford had issued the fake bond to SwiftShips during its later investigation of the fake bonds Mr. Alford issued to TDI. The only misrepresentation that could have occurred in the SwiftShips transaction would have been

between Mr. Alford and SwiftShips. However, Mr. Alford stated in his depositions that one of the owners of SwiftShips, Mr. Spurgeon, knew that the bond was not real. That is why SwiftShips paid the $1,050,000 premium on the bond to Mr. Alford rather than to St. Paul.

Mr. Alford did not make any misrepresentation to St. Paul when he issued fake St. Paul bonds to TDI on its ENSCO project either. Like in the SwiftShips transaction, Mr. Alford approached St. Paul to obtain a bond for TDI but St. Paul declined. Mr. Alford then issued fake St. Paul bonds without St. Paul's knowledge. St. Paul did not know the bonds had been issued until it was contacted by TDI, which suspected the bonds might not be genuine because Mr. Alford insisted that the $852,000 be paid to him instead of to St. Paul. TDI never paid the premium to Mr. Alford; therefore, Mr. Alford does not have any debt to TDI that could be excepted from discharge.

The Court finds that Mr. Alford did not make a misrepresentation to St. Paul when he issued fake St. Paul bonds to his clients. Mr. Alford's debt is not excepted from discharge under §523(a)(2)(A).

2.

Section 523(a)(4) of the Bankruptcy Code provides:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt–
> (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

Under this section, a debtor may not discharge a debt for money he obtained by "fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." Similar to the terms used in §523(a)2)(A), these terms are not defined by the Bankruptcy Code. Unlike the §523(a)(2)(A) terms though, there is no implied element that is common to all three terms used

in §523(a)(4). The Court will examine each term independently to determine if Mr. Alford's debt to St. Paul is excepted from discharge under this section.

a.

To establish an exception to discharge for "fraud or defalcation while acting in a fiduciary capacity" under §523(a)(4), the plaintiff "must prove that (1) the defendant was acting in a fiduciary capacity, and (2) while acting in a fiduciary capacity, the defendant committed fraud or defalcation." *Synod of South Atlantic Presbyterian Church v. Magpusao (In re Magpusao)*, 265 B.R. 492, 497 (Bankr. M.D. Fla. 2001)(citing to *NesSmith Elec. Co. v. Kelley (In re Kelley)*, 84 B.R. 225, 228 (Bankr. M.D. Fla. 1988)). The existence of a fiduciary relationship is determined by federal bankruptcy law rather than state law. *Id.*

"Federal courts have found 'the traditional meaning of the term 'fiduciary'– a relationship involving confidence, trust, and good faith– to be far too broad for bankruptcy purposes." *Id.* Instead, they have held that §523(a)(4) "applies only when the plaintiff can prove the existence of an express or technical trust." *Id.* An express or technical trust only exists when "'there is a segregated trust res, an identifiable beneficiary, and affirmative trust duties established by contract or by statute.'" *Id.*

No express or technical trust existed between Mr. Alford and St. Paul to create a fiduciary duty between the parties. Mr. Alford was not a St. Paul agent. He was merely an insurance agent who approached St. Paul to issue a bond to two of his clients. He issued fake St. Paul bonds to two of his clients and retained a $1,050,000 premium paid by SwiftShips that would have been paid to St. Paul only if the bond would have been authentic, which it was not. The Court finds that a fiduciary relationship did not exist between Mr. Alford and St. Paul under §523(a)(4). Mr. Alford's debt is not excepted from discharge as obtained by fraud or defalcation

while acting in a fiduciary capacity.

b.

Bankruptcy courts define embezzlement as "the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come." *Magpusao* at 497. To prove embezzlement under §523(a)(4), the plaintiff "must show (1) the debtor appropriated funds for his or her own benefit; and (2) the debtor did so with fraudulent intent or deceit." *In re Weber*, 892 F.2d 534, 538-39 (7th Cir. 1989). The Court will not consider the two elements necessary to prove an embezzlement claim under §523(a)(4) because it finds that St. Paul did not entrust any bonds to Mr. Alford nor did any St. Paul bonds lawfully come into his possession.

Mr. Alford, in his efforts to conceal his actions from St. Paul, stole St. Paul corporate seals and forged the signature of an agent St. Paul had authorized to issue its bonds. The bonds he issued were fakes rather than legitimate bonds St. Paul had entrusted to Mr. Alford. No legitimate St. Paul bonds ever came into Mr. Alford's possession. Mr. Alford's debt is not excepted from discharge as obtained by embezzlement.

c.

For purposes of §523(a)(4), larceny is defined as the debtor's "fraudulent taking and carrying away of the property of another with intent to convert such to his use without the consent of another." *Magpusao* at 497. Unlike embezzlement, larceny requires the that the "original taking of the property be unlawful." *Ford v. Pupello (In re Pupello)*, 281 B.R. 763, 768 (Bankr. M.D. Fla. 2002). The Court finds that Mr. Alford's actions in issuing fake St. Paul bonds do not amount to larceny.

Mr. Alford issued fake St. Paul bonds to two of his clients. Although Mr. Alford did

keep (convert to his own use) the premium he received for issuing the fake St. Paul bond to SwiftShips, the premium was not St. Paul's property. If Mr. Alford would have issued an authorized St. Paul bond to SwiftShips and retained the premium, he would be guilty of larceny for purposes of §523(a)(4). However, because the bond was fake, the premium paid to Mr. Alford was never the property of St. Paul. SwiftShips merely paid Mr. Alford $1,050,000 for a fake bond bearing St. Paul's name. Mr. Alford's debt to St. Paul is not excepted from discharge as obtained by larceny.

3.

Section 523(a)(6) of the Bankruptcy Code provides:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt–
> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

11 U.S.C. §523(a)(6). Under this section, a debt obtained by the debtor's "willful and malicious injury" to another is excepted from discharge. Like the terms in the previous §523(a) sections considered by this Court, the Bankruptcy Code does provide a definition of a willful and malicious injury. In the absence of a statutory definition, the United States Supreme Court has held that "[t]he word 'willful' in (a)(6) modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998).

The *Geiger* Court found that a more encompassing definition could wrongly except from discharge "a wide range of situations in which an act is intentional, but injury is unintended, *i.e.*, neither desired nor in fact anticipated by the debtor." *Id.* at 62. It gave as an example every car accident caused by a driver intentionally making a left hand turn but not first looking for

oncoming traffic. *Id.* Such acts would be intentional but debts resulting from them would not be willful and malicious injuries excepted from discharge because the drivers would not have intended or anticipated the resulting accident.

Mr. Alford issued fake St. Paul bonds that purported to obligate St. Paul for millions of dollars on projects that St. Paul believed were too risky for it to issue a bond. After Mr. Alford's scheme was discovered, SwiftShips and TDI were left without bonds on their projects. Although at least one of the owners of SwiftShips knew its bond was fake, the record is unclear regarding TDI's knowledge. Nonetheless, St. Paul's reputation in the bond industry was damaged as a result of Mr. Alford's actions.

Additionally, Mr. Alford kept a $1,050,000 premium he was paid on the first bond and he was trying to negotiate an $852,000 premium on another set of fake bonds when he was caught. These premiums would ordinarily have been remitted to St. Paul to compensate it for the risk it incurs for issuing bonds. Mr. Alford claimed in depositions and in an affidavit submitted into evidence that he did not desire or intend to injure St. Paul. He stated that he intended to repay the premiums to St. Paul. However, his actions indicated otherwise. Mr. Alford rapidly spent the first premium he received on luxury items and failed investment schemes. There was no money left to repay St. Paul.

The *Geiger* Court found that an injury is unintended if it is "neither desired nor in fact anticipated by the debtor." *Id.* at 62. This Court finds that Mr. Alford, at the very least, anticipated that issuing fake St. Paul bonds to his clients would injure St. Paul. Whether he anticipated that his actions would injure St. Paul's reputation or that his failure to repay St. Paul for the premium he kept would injure St. Paul is immaterial. The Court finds that either of these is sufficient to show that an injury was anticipated. Because Mr. Alford anticipated that he may

injure St. Paul, his injury was willful and malicious under §523(a)(6). Mr. Alford's underlying debt to St. Paul of $1,050,000 (the amount of the premium he kept), as found by the Louisiana District Court, is excepted from discharge.

C.

Section 523(a) of the Bankruptcy Code excepts from discharge "any debt" for "willful and malicious injury by the debtor to another." The Bankruptcy Code does not define the contours of this phrase. However, in *Cohen v. De La Cruz*, the United States Supreme Court held that "any debt" should be read broadly to except from discharge any liability acquired by a debtor for fraud, including an award of treble damages. 523 U.S. 213, 220-21 (1998).

The debtor in *Cohen* argued that "a 'debt for' money, property, or services obtained by fraud is necessarily limited to the value of the money, property, or services received by the debtor." *Id.* at 219. The Supreme Court disagreed with the debtor's construction of "debt for." It found that under the Bankruptcy Code, "an obligation to pay treble damages satisfies the threshold condition that it constitute a 'debt'" because "[a] debt is defined in the Code as 'liability on a claim," § 101(12), a 'claim' is defined in turn as a 'right to payment,' § 101(5)(A), and a 'right to payment,' . . . 'is nothing more nor less than an enforceable obligation.'" *Id.*(quoting *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 559 (1990)).

St. Paul's $3,469,542.50 default judgment, including treble damages, attorneys fees and costs, is an enforceable obligation against Mr. Alford. Although Mr. Alford's debt to St. Paul is excepted from discharge under §523(a)(6) instead of §523(a)(2)(A), the Court finds that the Supreme Court's broad reading of the phrase "any debt" is applicable to §523(a)(6). The text of §523(a), in which "each use of 'debt for' in § 523(a) serves the identical function of introducing

a category of nondischargeable debt . . ." supports this Court's construction, *Cohen* at 220, as do the policies underlying the Bankruptcy Code, which "limit[] the opportunity for a completely unencumbered new beginning to the 'honest but unfortunate debtor.'" *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991)

The Court finds that it is appropriate to grant St. Paul's summary judgment motion because "there is no genuine issue as to any material fact and [St. Paul] is entitled to judgment as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 447 U.S. 242, 247 (1986). Mr. Alford's entire $3,469,542.50 debt to St. Paul is excepted from discharge under §523(a)(6) of the Bankruptcy Code.

It is ORDERED that Stephen M. Alford's $3,469,542.50 debt to St. Paul Fire and Marine Insurance Company is excepted from discharge pursuant to 11 U.S.C. §523(a)(6).

Dated: _______________, 2003

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MARGARET A. MAHONEY
BANKRUPTCY JUDGE