Why the "45 FAPT Cases Gone Wrong" List Is Misleading

Introduction

A list titled "45 FAPT Cases Gone Wrong," attributed to Mr. Oshins, has circulated widely among estate planning and asset protection professionals as evidence that foreign asset protection trusts (FAPTs) or offshore asset protection trusts (OAPTs) do not work. The list catalogs forty-five court decisions and presents each as an example of an offshore trust failing to protect a settlor's assets from a creditor, a divorce, a bankruptcy trustee, or a government enforcement action. Because the list is frequently cited to discourage clients from pursuing offshore trust planning, it is worth examining the cases it relies on.

A case-by-case review shows that the list does not hold up. Many of the cited matters never involved a properly structured offshore asset protection trust at all. Others involve settlors who retained impermissible control, transferred assets only after a claim had already arisen, concealed assets in bankruptcy, or engaged in conduct that would defeat any asset protection structure, onshore or offshore. Still others resulted in a court holding the debtor personally in contempt or liable, without the offshore trust itself ever being reached. Conflating these outcomes with "trust failure" overstates the case against offshore planning. What follows is a review of each entry on Mr. Oshins' list, organized by category, explaining why it does not represent the failure of a properly formed offshore asset protection trust.

01. CONTEMPT OF COURT

1. ***FTC v. Affordable Media***

   Summary of Relevant Facts: FTC brought an action in federal court against Affordable Media and its managers, Denyse and Michael Anderson, for a telemarketing Ponzi scheme through which their company raised about $13 million from investors and kept roughly $6.3 million in commissions; note this was a preliminary-injunction and contempt proceeding, not a $13 million money judgment. The Andersons had transferred their commissions to a Cook Islands trust. The trial court issued an injunction ordering the Andersons to return the funds from the Cook Islands trust. The Andersons did not comply. After reviewing the evidence, the trial court rejected the Andersons' impossibility defense and found that they remained in control of the trust. The court found the Andersons in civil contempt. The Andersons appealed. The appellate court, reviewing the contempt finding for abuse of discretion and the underlying factual findings for clear error, could not find that the lower court clearly erred, because, among other things, the Andersons had previously been able to obtain in excess of $1 million from the trust to pay their taxes, they were protectors of the trust (here with the power to force the foreign trustee to repatriate their assets), and they attempted to resign as protectors only after the FTC revealed they held that role.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of a properly structured asset protection trust, as a properly structured OAPT would not have the settlor retaining such control, in particular, not the protector powers that let the Andersons force the foreign trustee to repatriate.

2. *In re Lawrence*

Summary of Relevant Facts: In January 1991, in anticipation of an adverse arbitration award, Stephan Jay Lawrence settled an offshore trust holding an estimated $7 million, retaining the sole power to appoint trustees. Two months later, a $20.4 million arbitration award was entered against him. Several amendments followed, a spendthrift clause, a duress clause, and one declaring Lawrence an "excluded person" barred from benefiting. He filed for bankruptcy in 1997. Applying Florida law rather than the trust's chosen Mauritius law, the bankruptcy court found the trust was property of the estate, ordered Lawrence to turn over its assets, and set a status conference a couple of months out to gauge compliance. At that conference the court found Lawrence retained control through his powers to remove and appoint trustees and to add and exclude beneficiaries, rejected his impossibility defense, and held him in contempt. He was incarcerated, fined $10,000 per day until he purged it; the Eleventh Circuit affirmed.

Why Not a Failure of a Properly-Formed OAPT: This is not a failure of a properly structured OAPT but of a fraudulent, settlor-controlled one, Lawrence funded the trust two months before a $20.4 million award he plainly anticipated and kept the power to appoint trustees (and to exclude or reinstate beneficiaries), the very control the court used to find he could still reach the assets and to reject his impossibility defense.

3. *SEC v. Bilzerian*

Summary of Relevant Facts: SEC brought an action against Bilzerian for securities fraud. A $62 million judgment was ultimately entered against him in 1993. After a protracted 5-year litigation, it was confirmed the judgment was non-dischargeable. After Bilzerian failed to pay, the SEC moved to hold Bilzerian in contempt of the 1993 order; the court agreed and issued an order finding him in contempt on August 21, 2000, and which included an order to provide a full accounting of his finances. The trust held his former Tampa mansion, the proceeds of which the court had frozen when he tried to sell it. When his accounting proved deficient and his claimed inability to produce it non-credible, he was incarcerated until he complied.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of a properly structured offshore asset protection trust: the incarceration turned on Bilzerian's refusal to provide a sworn accounting, not on any breach of the trust, and the court never reached the offshore corpus. The one trust asset it could reach was U.S.-situs real estate, the Tampa mansion, whose sale proceeds the court froze, a vulnerability of holding domestic property in such a trust rather than a defect in the trust itself.

4. *Bankfirst v. Legendre*

Summary of Relevant Facts: In November 1999, BankFirst loaned Michael Legendre's struggling Orlando graphics company, Total Worx, $600,000 against his personal guarantee. After Total Worx closed, the bank obtained a $650,000 judgment against Legendre but could not collect, because, according to the bank, he and three others (his Paine Webber broker, a lawyer, and another man) had moved his assets into a Nassau-based offshore trust, the Yawn Trust, shortly after the judgment, with the trust then paying his personal expenses (American Express bills, utilities on an Indiana home). After BankFirst sued, alleging he was funneling trust money through a second Florida corporation, Master Works, Legendre filed personal bankruptcy, which temporarily shielded the assets. The bankruptcy court then froze the trust and Master Works, Paine Webber turned its two accounts over to the trustee, and when Legendre withheld information about his assets he was jailed five days for contempt, after which he agreed to cooperate in turning the assets over to creditors.

Why Not a Failure of a Properly-Formed OAPT: This is not a failure of a properly structured asset protection trust but a textbook fraudulent conveyance, Legendre created it shortly after a known creditor won a judgment, kept the beneficial use of the assets (the trust paid his living expenses), and left the assets and key players (his U.S. broker, the Paine Webber accounts, and U.S. real estate) within reach of U.S. courts, so the offshore wrapper never actually put anything beyond creditors' grasp.

5. *Barbee v. Goldstein (In re Reliance Financial & Investment Group, Inc.)*

Summary of Relevant Facts: Jamie S. Goldstein settled a Cook Islands trust (the "JG Trust") of which he was both settlor and a beneficiary. In February 2001, he and his father, Donald I. Goldstein, were named as defendants in a civil RICO action arising from an alleged viatical-investment fraud, filed in the U.S. District Court for the District of Colorado (Paoloni v. Goldstein, No. 01-cv-00275-JLK (D. Colo.), Kane, J.). Early in that case the court entered a preliminary injunction freezing the defendants' disposition of their assets and, through a series of orders, directed them to account for and repatriate their offshore funds. Those orders reached the offshore trusts directly: both the JG Trust and the related DG Trust (Donald's Cook Islands trust) were named as defendants and ordered to show cause why they were not in violation of the court's repatriation requirements.

When Goldstein failed to comply, the district court held him in civil contempt and, on October 18, 2002, ordered the U.S. Marshal to take him into custody until he complied. Because a civil contemnor can be jailed for noncompliance only where he retains the present ability to comply, the incarceration itself reflected a judicial determination that Goldstein controlled the offshore assets sufficiently to bring them home. He secured his release only by achieving substantial compliance, paying roughly $586,000 into the court's registry in late October 2002, and his father's parallel contempt was discharged the following month. Around the same time, Goldstein and his mother requested that the JG Trust be terminated; the trustee and trust protector consented, the trust was wound up, and its assets reverted to Goldstein. He then filed for Chapter 7 bankruptcy in the Southern District of Florida (No. 02-36633-BKC-PGH) on November 25, 2002.

Why Not a Failure of a Properly-Formed OAPT: The offshore barrier was never tested on its own terms. Rather than an independent trustee refusing a coerced demand, Goldstein's trustee and protector consented to liquidating this self-settled trust to secure his release from jail, reverting the corpus to him. That was a structural failure, not one inherent to a correctly implemented OAPT.

Comment: The contempt referred to by Mr. Oshins was actually a minute order in *Paoloni v. Goldstein*, No. 1:01-cv-00275-JLK (D. Colo.).

6. *Chadwick v. Green*

Summary of Relevant Facts: Mr. Chadwick was jailed for civil contempt for refusing to return roughly $2.5 million to the divorce court. No trust was involved: he claimed he had sent the money abroad to repay a Gibraltar debt, then in 1994 redeemed annuity contracts and deposited the proceeds in a Panamanian bank. The courts found he retained control and was simply refusing, and his confinement ultimately ran 14 years.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of an offshore trust, because no trust was involved at all. Instead, the money sat offshore in annuities and a Panamanian bank account that the courts found Mr. Chadwick still controlled, and he simply refused to repatriate it despite being able to do so.

7. *SEC v. Jamie Solow*

Summary of Relevant Facts: The SEC sued Jamie Solow over a fraudulent securities-trading scheme. A jury found him liable, and the Final Judgment ordered roughly $2.6 million in disgorgement (about $3.4 million with prejudgment interest) plus an equal civil penalty of approximately $2.6 million. After the verdict but before judgment was entered, Mrs. Solow retained an asset-protection firm and settled a Cook Islands trust (the Gina P. Solow Trust), placing into it her jewelry and certificates of deposit funded by mortgages that stripped the equity from the couple's Hillsboro Mile homestead and Fort Lauderdale condo. Mr. Solow's own role was consenting to and executing the roughly $5.2 million mortgage on the jointly held (tenancy-by-the-entirety) Hillsboro property, while joint securities and bank accounts were liquidated and the bulk shifted into Mrs. Solow's name alone. When Solow paid only nominal amounts toward the judgment, the SEC moved to hold him in civil contempt. Running the contempt/impossibility analysis, the court rejected his claim that he had no money, he still enjoyed the same assets, now held through his wife, and a lavish lifestyle, found his inability self-created, and ordered him incarcerated until he complied.

Why Not a Failure of a Properly-Formed OAPT: The court never tested the Cook Islands trust itself. It held Mr. Solow in contempt for failing to make reasonable efforts to recover the assets he had transferred to his wife after the verdict, not for anything about her downstream trust.

8. *Morris v. Morris*

Summary of Relevant Facts: Merry Morris had funded a Cook Islands trust, with Southpac as trustee and her children as beneficiaries. Separately, she signed a post-nuptial agreement with a no-challenge clause: if she challenged any provision, she would forfeit the $1.5 million her husband had paid in consideration. After divorcing, she moved to enforce and modify the agreement; her husband counterclaimed, and the state court ordered her to forfeit the $1.5 million. She did not satisfy the judgment, was held in contempt, became a fugitive, and was incarcerated upon surrendering, by her account, for indirect criminal contempt for failing to appear in court, not for the trust. The parties ultimately settled.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of a properly formed offshore trust. By Morris's own account, the contempt and her incarceration were for indirect criminal contempt, failing to appear in court, not for funding the Cook Islands trust, which (administered by Southpac) was never set aside.

9. Morris v. Wroble (Placeholder)

Summary of Relevant Facts: n/a

Why Not a Failure of a Properly-Formed OAPT: n/a

Comment: Mr. Oshins counts this as one of the 45, but this is the same Merry Morris action. This is the case where she sued the Judge of her case in Palm Beach County and also the Chief Judge of the 4th DCA.

10. Eulich v. U.S.

Summary of Relevant Facts: The IRS was investigating John F. Eulich for certain tax years and sought documents relating to a Bahamian trust and the corporations it controlled, which were physically held by the trust's offshore bank trustee. After Eulich failed to produce them, and after the Fifth Circuit affirmed that he controlled them, the court found he had not made reasonable efforts to comply, held him in civil contempt, and imposed escalating daily fines to coerce production, reserving the option of higher fines or incarceration if he kept refusing. Eulich then obtained and turned over the documents. The court purged him of contempt, but still assessed a fine ($135,000) for the days he remained noncompliant without explanation.

Why Not a Failure of a Properly-Formed OAPT: This is not an example of a properly structured offshore asset protection trust failing, because Eulich was ultimately able to obtain every requested document and produce it to the court. A properly structured trust should likewise let the settlor furnish all responsive information to a court while still protecting the underlying assets.

11. FTC v. AmeriDebt

Summary of Relevant Facts: FTC sued AmeriDebt, DebtWorks, and Andris Pukke for deceptive practices under Section 5 of the FTC Act, and moved under Section 13(b) for injunctive relief. Less than two months after the FTC served Civil Investigative Demands in 2002, and after he had become aware of the investigation, Pukke established three trusts over which he retained substantial control, one in Delaware (~$8.8 million), one in Nevis (~$9 million), and one in the Cook Islands (~$1.3 million). On April 20, 2005, the U.S. District Court in Maryland entered an order freezing Pukke's and DebtWorks's assets, appointing a receiver, and ordering Mr. Pukke to repatriate the assets from his offshore trusts (stating that it seemed he maintained de facto control over the trusts but that he was free to argue impossibility). The FTC later obtained a $172 million judgment, reducible to $35 million if Pukke cooperated. On March 30, 2007, the Court found Pukke in contempt and soon jailed him, for concealing and refusing to turn over other assets, not the Nevis or Cook Islands trusts.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of a properly structured offshore trust, because the trusts were created in the teeth of the FTC's investigation, and Pukke's contempt and incarceration turned on his concealment of other assets, not any failure to repatriate the Nevis or Cook Islands trusts.

02. FRAUDULENT CONVEYANCE

12. *Brown v. Higashi*

Summary of Relevant Facts: Plaintiff obtained a $1.4 million judgment against S. Wayne Brown, his wife Carrol, and their corporation, which compelled the Browns to file bankruptcy. Some time before the bankruptcy filing he had set up two offshore trusts, which were executed in the country of Belize and to be interpreted and construed under the laws of Belize, one called "American International Retail" and one called "Leones Company." American International Retail had nominal assets, but Leones Company had the following assets: a whole life insurance policy with a net cash value of $202,897.91 and an annuity with a cash value of $148,831. Applying Alaska rather than Belize law, the bankruptcy court found the trust assets to be property of the estate because the transfers were fraudulent and self-settled, and primarily because Mr. Brown funded and retained complete control over the assets while the foreign trustee remained a figurehead.

Why Not a Failure of a Properly-Formed OAPT: This is not a failure of a properly structured offshore trust, as a properly structured trust would have vested the assets in an independent foreign trustee holding them offshore; here Brown funded and controlled the U.S.-based accounts himself, the trustee never controlled them, and they stayed within the court's reach.

13. *Fortney v. Kuipers*

Summary of Relevant Facts: Lisa Fortney was hit by a tow truck owned by Dale and Bev Kuipers. She sued in state court and obtained a judgment for around $650,000. Before and after that judgment, Dale and Bev made property transfers to family members and friends, on the advice of their attorneys. They then filed for bankruptcy in Illinois. Fortney and the bankruptcy trustee then sued in the U.S. District Court for the Northern District of Illinois to recover the transferred assets.

Why Not a Failure of a Properly-Formed OAPT: This is not a failure of an offshore asset protection trust, as this case appears to involve domestic transfers only and does not involve any offshore trust.

14. *Advanced Telecommunications Network v. Allen*

Summary of Relevant Facts; Daniel W. Allen and Gary Carpenter started a company called Advanced Telecommunication Network ("ATN"), eventually had a falling out, but then reached a settlement. As part of the settlement ATN paid the Allens roughly $6.25 million, including a $6 million transfer. ATN later filed Chapter 11 and, as the reorganized debtor rather than through a trustee, sued the Allens to void that transfer as fraudulent. While ATN was seeking a preliminary injunction to freeze the funds in 2003, the Allens liquidated their U.S. stock accounts and wired at least $2.2 million into two self-settled Cook Islands trusts, one created by Daniel and one by his brother David. The court granted the injunction and ordered repatriation; when the Allens refused, it held them in contempt in 2004. At trial the bankruptcy court initially ruled for the Allens, but the Eleventh Circuit reversed, and on remand in 2009 the court set aside the transfer and entered a $6.25 million judgment against them. Pursuing collection, the court found Allen retained control of the trust and issued a second repatriation order; when he failed to comply, ATN moved for contempt in 2011. However, before that motion could be heard, Mr. Allen filed his own bankruptcy. A complex procedural history then follows.

Why Not a Failure of a Properly-Formed OAPT: This is not a failure of a properly structured offshore trust, because the funds were wired into it after suit was filed and while a motion to freeze them was pending, fraudulent-transfer timing, not legitimate advance planning. And despite years of repatriation orders and a contempt finding, the creditor never recovered any of the trust funds; the corpus went undisturbed.

15. Rush University v. Sessions

Summary of Relevant Facts: Rush University Medical Center filed action against trustees of two trusts created by Robert Sessions (one in the Cook Islands), after Mr. Sessions had promised the medical center a gift of $1.5 million. The university had relied on this pledge, but then Mr. Sessions came to believe the medical center had failed to properly diagnose his lung cancer and then executed further documents that revoked the gift. When payment failed to issue following Mr. Sessions' death, Rush University Medical Center filed suit and obtained a judgment of $1.5 million. The issue on appeal was whether the Fraudulent Transfer Act had abrogated the common law rule that a self-settled spendthrift trust is void as to the settlor's creditors. The court held it had not, and that Rush was a creditor who could reach the trust, whose entire principal and income Mr. Sessions was entitled to receive and control.

Why Not a Failure of a Properly-Formed OAPT: This is not a failure of a properly structured offshore asset protection trust. Its assets were all U.S.-situs, Illinois real estate and a Colorado partnership interest, reachable by the court regardless of its Cook Islands governing-law clause, with the settlor retaining full benefit and control; the trust was offshore in name only. The decision also resolved only that the assets were reachable to satisfy a $1.5 million claim, a fraction of a corpus exceeding $18 million, and the opinion reflects no actual invasion of the trust principal.

16. BB&T v. Hamilton Greens (Bellinger)

Summary of Relevant Facts: The creditor, Branch Banking & Trust Co., had made a loan of $3,375,000 personally guaranteed by Richard Bellinger and two others. On November 30, 2011, almost seven months into the action, Bellinger created an offshore trust in the Cook Islands and funded it with $1.7 million of his assets. Summary judgment was finally heard on January 3, 2012, and the court entered a judgment against him for $4.9 million. The creditor then filed a very simple motion to show cause, stating that Mr. Bellinger had not paid the final judgment because he had transferred all of his assets to the Cook Islands trust. The Court held a hearing and, crediting Bellinger's testimony, found that he had no ability to get the assets from the trust. The motion to show cause was denied.

Why Not a Failure of a Properly-Formed OAPT: This case actually represents a win for an offshore trust: a federal district court, adopting a magistrate judge's report, not an appellate ruling, declined to hold the defendant in contempt for nonpayment, crediting his testimony that he could not compel the trustee to release the assets while the creditor offered no evidence that he retained control.

03. BANKRUPTCY

17. *In re Portnoy*

Summary of Relevant Facts: Larry Portnoy personally guaranteed the debt of his company (Mary Drawers, Inc.) to Marine Midland Bank, then established an offshore trust in the Jersey Channel Islands and transferred substantially all of his assets into it. Marine sued on the guarantee, obtained a judgment, and began enforcement proceedings; Portnoy then filed Chapter 7 bankruptcy, which would have discharged his debts. In his schedules he disclosed his interest in the trust only as a discretionary beneficiary, omitting the substantial "control powers" he retained over it. Marine objected to his discharge, arguing he had concealed assets and made a false oath, and alternatively sought to except its own debt as a willful and malicious injury. Mr. Portnoy moved for summary judgment to dispose of those arguments. Ultimately the court denied the motion, finding genuine issues of material fact as to whether, under these circumstances, Portnoy should be denied a discharge (or whether Marine Midland's debt alone should be excepted from discharge).

Why Not a Failure of a Properly-Formed OAPT: This case is not a failure of a properly structured asset protection trust, as Portnoy made himself its primary beneficiary, kept sweeping control, funded it when he knew his guarantee was about to be called, and then failed to disclose those retained rights in bankruptcy.

18. *SEC v. Brennan*

Summary of Relevant Facts: The SEC brought an action against Robert E. Brennan and his firm First Jersey Securities, alleging it induced customers to buy securities at excessive prices, and in July 1995 obtained a judgment ordering Brennan and First Jersey jointly and severally to disgorge approximately $75 million in ill-gotten gains and prejudgment interest. Near the end of his trial in the SEC action, before that judgment and before he filed for bankruptcy, Brennan had established an offshore asset protection trust in Gibraltar, the Cardinal Trust, funding it with approximately $4 million in bearer bonds; a "flight clause" later relocated it to Mauritius and then Nevis. In August 1995 he filed for Chapter 11 bankruptcy and omitted the Cardinal Trust from his original petition; after its existence was discovered, he amended the petition to include it but valued his interest at $0. Mr. Brennan was eventually indicted and convicted of bankruptcy fraud for concealing the bearer bonds and casino chips.

Why Not a Failure of a Properly-Formed OAPT: This is not a failure of an offshore asset protection trust, rather Mr. Brennan seemingly intentionally failed to disclose the trust and the bearer bonds on his bankruptcy schedules, which is a violation of the law.

19. *In re Colburn*

Summary of Relevant Facts: Charles E. Colburn, III, a geologist who owned several oil and gas businesses, filed for Chapter 7 bankruptcy in 1989, listing over $446 million in claims against him and roughly $810,000 in assets. He failed to disclose, among other things, his reversionary interest in the "Prince Trust," an offshore trust he had settled in Bermuda. Peoples Bank, a creditor, filed a complaint objecting to his discharge. The court found Colburn had made numerous false oaths and concealed assets, and denied his discharge under 11 U.S.C. §§ 727(a)(4), (a)(2), and (a)(3). Notably, however, the court held that Peoples Bank failed to prove the trust's assets were property of the Debtor or his estate, the trust itself was not shown to be defective.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of the trust, rather the court found its assets were not proven to be the Debtor's property. Colburn lost his discharge for concealing his interest and failing to keep records, not because the trust failed; a properly-formed trust can be fully disclosed and still protect.

20. In re Brooks

Summary of Relevant Facts: n/a

Why Not a Failure of a Properly-Formed OAPT: n/a

Comment: Duplicate of *Sattin v. Brooks* (*see below*).

21. In re Rensin

Summary of Relevant Facts: Joseph K. Rensin was the founder, CEO, and sole owner of BlueHippo Funding LLC and its subsidiary, which defrauded more than 50,000 consumers to the tune of more than $14 million. The FTC sued, and in December 2018, the Court entered a non-dischargeable judgment against Mr. Rensin and in favor of the FTC in an adversary proceeding in the amount of $13,400,627.60. In November 2001 (and 15 years before he filed for bankruptcy), Mr. Rensin had established a Cook Islands trust called the "Joren Trust" which later changed situs in 2014 and became governed by the laws of Belize. During the FTC litigation, Mr. Rensin received 14 distributions from the trust totaling roughly $8.68 million. The Court ultimately ruled that Florida law applied and that, because the Jorgen Trust was a self-settled discretionary trust whose trustee could distribute the entire corpus to him, all of its assets were reachable by his creditors and therefore property of the bankruptcy estate. However, the bankruptcy court did not declare that the trust's assets were property of the bankruptcy estate, or to order their turnover, because the Joren Trustee was an indispensable party that had not been joined.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of an offshore asset protection trust, as the trust corpus remained undisturbed, and the Court actually dismissed the declaratory claim that the assets were part of the bankruptcy estate, given that the trustee had not been joined and was an indispensable party.

22. In re Cyr

Summary of Relevant Facts: Dr. Steven Cyr filed for Chapter 7 bankruptcy in 2018; his wife, Le Ann Cyr, did not, though she was named a defendant. Years earlier, Le Ann's parents had created the irrevocable, domestic (Texas) Bergerud Heritage Trust, of which the Cyrs were trustees and beneficiaries; the Cyrs later transferred their own assets into it, and the bankruptcy trustee sought to set aside those transfers. The trustee alleged various bad facts, transfers made while contemplating bankruptcy, Dr. Cyr serving as co-trustee until months before filing, his alleged “unfettered access” to and disregard of the trust's terms, and more. On a motion to dismiss, the court let the trustee's key § 548(e)(1) and state-law fraudulent-transfer claims proceed while dismissing others

Why Not a Failure of a Properly-Formed OAPT: Not a failure of a properly-formed OAPT, it is a domestic Texas trust, created by the debtor's in-laws rather than self-settled by him, and the ruling was merely a motion to dismiss; nothing was decided on the merits.

23. Sattin v. Brooks

Summary of Relevant Facts: On November 7, 1991, an involuntary bankruptcy petition was filed against B.V. Brooks, and a Chapter 11 trustee was later appointed. More than a year earlier, as part of a long-term estate and tax planning strategy, Mr. Brooks and his wife, Kathryn Frazer Brooks, consulted counsel; on that advice, Mr. Brooks transferred stock certificates to his wife, who then funded spendthrift trusts in Bermuda and Jersey naming him as income beneficiary. The Chapter 11 trustee moved for summary judgment that the certificates were property of the bankruptcy estate. The court agreed, but on a narrow, choice-of-law ground: because the settlor was Connecticut-domiciled, it applied Connecticut law over the trusts’ chosen Bermuda and Jersey law and found, after review of the facts, that the arrangement was a self-settled spendthrift trust, which Connecticut public policy did not then recognize.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of a properly formed offshore trust, given that firstly the trust corpus remained undisturbed notwithstanding the bankruptcy court’s order and second, because a properly formed OAPT would not have left the settlor with such broad beneficiary rights.

24. In re Smith

Summary of Relevant Facts: BABS Holding Co. purchased certain assets owned by Rhodes Properties for $18 million, $14 million at closing and $4 million via a promissory note, which Mr. Milton M. Smith, as majority owner and president, personally guaranteed. After BABS defaulted, Rhodes sued on the guaranty and the state court granted summary judgment against Mr. Smith. Three days before the severance order that finalized that judgment for appeal, Mr. Smith formed a Cook Islands irrevocable trust and assigned the bulk of his assets into it. He claimed a negative net worth and posted $1 to suspend enforcement pending appeal; after he later withdrew that deposit and moved to dissolve a post-judgment injunction, Rhodes filed an involuntary Chapter 7 petition the next day. The bankruptcy court denied dismissal and entered an order for relief, finding Mr. Smith had only four qualifying creditors (after excluding insiders and recipients of voidable transfers), so a single creditor could petition under § 303(b)(2); it did not need to reach Rhodes's “special circumstances” argument).

Why Not a Failure of a Properly-Formed OAPT: The settlor was pushed into involuntary bankruptcy in this case and the court failed to dismiss the case, but no facts suggesting the trust corpus was disturbed.

Comment: Unclear if this is the correct case; could not locate a case by the name *In re Schmidt*, as cited in Mr. Oshins' list.

04. DIVORCE

25. *Riechers v. Riechers*

Summary of Relevant Facts: In 1966, Mary Riechers married Roger Riechers; she was a registered nurse and he was a second-year medical student, and the couple entered the marriage without appreciable assets. The wife's earnings supported the family while the husband finished medical school and his residency, after which he built a urology practice that the parties developed together. In September 1992, citing three malpractice suits filed against him in the 1980s, Dr. Riechers formed a Colorado limited partnership and, as settlor, established an irrevocable asset-protection trust in the Cook Islands, funding it with 99% of the partnership's assets. The trust's beneficiaries were Dr. Riechers and the couple's children, but Mrs. Riechers was not personally named a beneficiary; the instrument designated her separately as "Spouse of the Settlor," a status and its benefits she would lose upon divorce. The court granted the wife a divorce and found the trust had been funded almost entirely with marital assets. Although it had no jurisdiction over the foreign trust corpus and made no finding of economic fault, the court exercised in personam jurisdiction over Dr. Riechers and awarded the wife one-half of the marital assets placed in the trust as of December 1994, $2,000,000 (later adjusted on appeal to $2,178,865).

Why Not a Failure of a Properly-Formed OAPT: The court accepted the Cook Islands trust as legitimate, disclaimed jurisdiction over its corpus, and reached only Dr. Riechers personally, entering a $2 million in personam equitable-distribution award (half the trust's December 1994 value) without ever invading or setting aside the trust.

26. *Westrate v. Westrate*

Summary of Relevant Facts: David Westrate was married to Barbara Westrate. Mr. Westrate was the owner and operator of National Business Institute, a multi-million dollar company. In 1994, Mr. Westrate, without the knowledge of Ms. Westrate, created a Cook Islands trust and transferred 90 percent of their assets to the trust (totaling approximately $11 million). The problem is that Ms. Westrate, his wife of 11 years, was not named in the trust document (and rather was only referred to as "spouse of the settlor"), meaning that she was not a beneficiary of the trust and would have no access to the assets therein. Eventually, in 1996, Ms. Westrate filed for divorce and learned, for the first time, what her husband had set up this trust in this manner. Ultimately the case settled with Ms. Westrate getting $4.3 million from her husband and an additional $2.5 million from suing National Business Institute.

Why Not a Failure of a Properly-Formed OAPT: This is not a failure of properly formed asset protection trust, as the case settled and the trust assets remained untouched.

27. *Breitenstine v. Breitenstine*

Summary of Relevant Facts: In 1979, Jerald Breitenstine married Nancy Breitenstine. After their marriage, the family business was sold; although Mr. Breitenstine received only a modest sum from the sale itself, substantial gifts and inheritance from his parents followed over the next several years. In 1995, sixteen years into the marriage, he created the Breitenstine Family Trust in the Bahamas and transferred a substantial portion of the marital assets to it. The trust named the couple's children as beneficiaries, but Mr. Breitenstine retained control of the assets and the trust's benefits, with the corpus set to revert to him in 2005. Ms. Breitenstine filed for divorce, which was granted in 1999, and the district court found the marital estate to be worth at least $8,764,673, made up almost entirely of those gifts and inheritance, and that the transfers to the trust were fraudulent conveyances intended to defraud Mr. Breitenstine's creditors, including his wife. The court awarded Ms. Breitenstine one-half of the marital estate plus $2,000 per month in alimony. Mr. Breitenstine appealed, and ultimately the Supreme Court of Wyoming affirmed both the property division and the fraudulent-conveyance finding, modifying only the remedy so that it operated against him personally rather than directly against the foreign trust property.

Why Not a Failure of a Properly-Formed OAPT: This is not a failure of a properly structured offshore asset protection trust, as the Wyoming court could not, and did not, directly alter title to the Bahamian res or bind the foreign trustee, so it reached the corpus only indirectly, through coercive orders against the husband, and ultimate recovery still depended on his compliance.

28. Marriage of Harnack

Summary of Relevant Facts: In connection with divorce proceedings, the court awarded Harnack 120,000 of Fanady's 280,000 shares in Chicago Board Options Exchange, Inc. Fanady claimed compliance was impossible — the shares no longer existed, and his assets were locked in a Belize trust. Harnack initiated a rule to show cause. The court rejected both: the order let him pay the shares' cash value instead, and he produced no definite evidence he lacked the means — never claiming poverty or denying the trust held over $10 million — so the court found he had the means. It ordered Fanady jailed until he transferred the stock or its value.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of the offshore trust, the court never reached the Belize corpus, and the trustee invoked the trust's duress clause to refuse compliance. The court instead coerced Fanady personally through contempt, finding he had not shown genuine inability and could not rely on assets he had deliberately placed offshore beyond reach.

05. TAX EVASION

29. U.S. v. Thompson

Summary of Relevant Facts: Thomas G. Thompson, the treasure hunter who found a long-sunken ship (the SS Central America) and its gold, was sued by employees and a business he had hired, who claimed a share of the profits. After the court enjoined him from transferring 500 commemorative gold restrike coins, he moved them into a trust, failed to disclose the transfer as ordered, and absconded. Arrested and charged with criminal contempt, he pleaded guilty under an agreement to sit for a debtor's examination and to help identify and recover the assets, then refused to answer questions and refused to sign a power of attorney letting the parties probe a Belizean trust thought to hold the coins. The court jailed him indefinitely for civil contempt ($1,000/day). When his confinement passed eighteen months he invoked the recalcitrant-witness statute (§ 1826); the Sixth Circuit affirmed, holding its eighteen-month cap inapplicable because his contempt also rested on non-testimonial conduct, including the power of attorney.

Why Not a Failure of a Properly-Formed OAPT: This is not an OAPT-on-the-merits case at all, as the trust's validity was never litigated, and Thompson was jailed not for the coin transfer but for refusing to honor his plea agreement (the debtor's exam and a power of attorney to open the Belizean trust). The only holding is that such civil contempt is not capped at eighteen months under § 1826 when it includes non-testimonial conduct.

30. U.S. v. Butselaar

Summary of Relevant Facts: The U.S. charged Frank Butselaar, a Dutch tax advisor who called himself a "tax lawyer" but was not admitted as an attorney anywhere (though he was a shareholder at a major law firm's Amsterdam office), with conspiring to defraud the IRS by building offshore structures for high-net-worth clients, including two world-famous EDM DJs (identified by the DOJ as Tiësto and Afrojack) and two fashion models. Per the indictment, the clients held offshore entities through trusts they beneficially owned and controlled; the alleged fraud was to conceal that control by removing the clients as beneficiaries of their own trusts and installing nominee beneficiaries while they qualified as U.S. taxpayers, then omitting the offshore income from their Form 1040s. The scheme allegedly kept over $100 million in worldwide income off the clients' returns. Butselaar was charged with conspiracy to defraud the United States and several counts of aiding the filing of false returns; he later pleaded guilty and was sentenced to 30 months, with roughly $19.25 million in restitution ordered against him (not the clients).

Why Not a Failure of a Properly-Formed OAPT: This is not an asset protection case at all, the trusts were specifically part of an offshore structure intended to conceal income from the IRS, not offshore asset protection trust, and the proceeding was a criminal tax-fraud prosecution of the *advisor*, not a creditor's or trustee's effort to reach trust assets.

31. Jerome Schneider Case

Summary of Relevant Facts: The U.S. brought a criminal case against Jerome Schneider, a Vancouver-based promoter who marketed and sold offshore banks and corporations (including entities licensed as "international banks" by Nauru) to U.S. taxpayers for roughly $15,000–$60,000, paired with a "decontrol" process meant to conceal the buyers' ownership and evade U.S. tax. Decontrol meant sham-transferring the taxpayer's interest in the offshore entity to a Schneider-selected "Independent Foreign Owner" for an arbitrary, non-negotiated promissory note, so that on paper the taxpayer no longer owned it, though Schneider understood the taxpayers in fact still owned and controlled the entity and its foreign accounts. This case did not involve offshore asset protection trusts; the structures were offshore banks and corporations. Schneider pleaded guilty to conspiracy to defraud the IRS; his co-defendant, attorney Eric Witmeyer, who prepared the decontrol documents, had pleaded guilty earlier and cooperated.

Why Not a Failure of a Properly-Formed OAPT: This was not a trust at all, the structures were offshore banks and corporations, and the case is a criminal prosecution of the scheme's promoter for conspiring to defraud the IRS, not a creditor or trustee trying to reach assets.

06. REGULATORY ENFORCEMENT

32. FTC v. Fortuna Alliance

Summary of Relevant Facts: The FTC charged Fortuna Alliance and several individual defendants with running an internet-based illegal pyramid scheme. The court froze Fortuna's assets, appointed a receiver, and ordered repatriation of the millions Fortuna had moved to a bank in Antigua. The individual defendants defied that order, avoiding civil arrest warrants by staying out of the United States, and did not repatriate the funds until the case settled. Under the February 1997 settlement, they repatriated $2.8 million from Antigua and secured further refunds with a $2.8 million letter of credit.

Why Not a Failure of a Properly-Formed OAPT: This case does not represent a failure of a properly structured offshore asset protection trust, there was no trust at all. The $2.8 million was simply corporate funds held in an Antiguan bank account in Fortuna Alliance's name, recovered through the settlement's repatriation.

33. SEC v. Greenberg

Summary of Relevant Facts: In an action by the SEC against Defendant Keith Greenberg, the Court entered a money judgment against Mr. Greenberg consisting of a civil penalty of $100,000, disgorgement of $3,828,000, and prejudgment interest of $1,987,346. Mr. Greenberg paid nothing, and then the SEC learned that he was living a lavish lifestyle and filed a motion to show cause, which produced a variety of evidence. It turns out Mr. Greenberg had created a series of trusts, including an offshore trust in Gibraltar, through which he was enjoying this lifestyle. The evidence showed that Mr. Greenberg had basically been using the trust as his personal account, with substantial transfers over time. This resulted in the court not finding his impossibility defense credible and finding him in contempt.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of an offshore asset protection trust, since the Wyoming court could not directly alter title to the Bahamian res or bind the foreign trustee, so it reached the corpus only indirectly, through coercive orders against the husband, and ultimate recovery still depended on his compliance.

34. SEC v. Cook

Summary of Relevant Facts: SEC / CFTC filed an action against Trevor Cook for running a fraudulent investment scheme. Prior to judgment, the SEC and CFTC obtained Asset Freeze Orders, which required repatriation of any funds or assets held in foreign banks or transferred out of the United States. The SEC and CFTC then brought a motion for an order to show cause why Mr. Cook should not be held in contempt of the Court's orders, citing (among other violations) his failure to repatriate money ($46,401,929, over $27 million of which represented investor funds) that had been transferred to offshore accounts in Denmark, the

Middle East, Sweden, Switzerland, Germany and Central America. The court reviewed the evidence, found Trevor Cook in contempt, and ordered his incarceration.

Why Not a Failure of a Properly-Formed OAPT: This case does not represent a failure of a properly structured offshore asset protection trust, as it involved money sitting in various offshore bank accounts and entities Cook personally controlled, rather than any trust with an independent trustee.

07. PIERCING OFFSHORE TRUSTS/ COURT ORDERS

35. U.S. v. Grant (Arline Grant Case)

Summary of Relevant Facts: U.S. sues Arline and Raymond Grant for unpaid income tax, ultimately resulting in a final default judgment of $36 million plus interest. Mr. Grant had previously set up two foreign trusts (one in Jersey and one in Bermuda). When the judgment went unsatisfied, the court ordered Ms. Grant to either appoint a trustee in the U.S. for the two trusts, or to repatriate the assets to satisfy the judgment. The Court initially accepted Ms. Grant's position that she could not comply with the repatriation order. But then Ms. Grant made transfers from the offshore trusts to herself (through her kids' accounts) and then used said funds to pay her expenses, demonstrating that she in fact retained the power to reach the trust assets, including an unconditional right under the Jersey Trust to withdraw 10% of the corpus each year. This, the court found (in Footnote 10) was not the same as the trust transferring to her for her "personal maintenance." Because valid federal tax liens had already attached to those assets, the funds were reachable regardless of how she intended to spend them, and her diversion of the money into her children's accounts rather than turning it over established a scheme to dissipate assets, justifying injunctive relief under 26 U.S.C. § 7402(a). The court ordered her to not reveal the lawsuit to the trustees and to direct past and future money flowing to the U.S. to Plaintiff. This was a personal-conduct failure on the settlor's side, not a structural defeat of the offshore jurisdiction.

Why Not a Failure of a Properly-Formed OAPT: This was not a failure of a properly structured offshore asset protection trust, as the transfer to herself revealed her apparent control over the trust.

36. U.S. v. Plath

Summary of Relevant Facts: This case relates to a nationwide investigation of offshore credit card accounts (not offshore trusts) and the IRS came to find out that Robert Plath had an offshore credit card account with Leadenhall Trust Company in the Bahamas. They requested information from Mr. Plath related to such accounts and when he failed to produce the requested information, the court found him in contempt and gave him thirty days to produce the records or be incarcerated.

Why Not a Failure of a Properly-Formed OAPT: This case does not show a failure of a properly structured offshore trust, because it involved offshore credit card accounts and not trusts.

37. U.S. v. Rogan

Summary of Relevant Facts: The United States filed civil action against Peter G. Rogan related to a Medicare fraud scheme, resulting in a $64 million judgment. Through an FBI investigation it was uncovered that a few months before the judgment was entered, Peter Rogan established two trusts in the Bahamas. Mr. Rogan had filed an affidavit with the court stating that he did not have control over the trusts. However, the FBI agent uncovered that between 1996 and 2004, Rogan had directly or indirectly directed the trustee of the trusts to make distributions of approximately $8.15 million to himself or to the persons he specified. After review of the evidence, the court found that the trust was a mere alter ego of Mr. Rogan, and thus the funds in the trust were available to creditors.

Why Not a Failure of a Properly-Formed OAPT: This case does not represent a failure of a properly structured offshore trust, because Mr. Rogan retained substantial control over the trust as detailed in the FBI agent's 2006 affidavit.

38. *Indiana Investors, LLC v. Hammond-Whiting Medical Centers; Indiana Investors v. Victor Fink*

Summary of Relevant Facts: In both of these cases, the trust was set up so that in the case an event of duress occurred, control of the trust would shift to an offshore trustee (in this case South Pac International, Inc.). The transition, however, required affirmative steps of persons subject to U.S. court jurisdiction, and so when plaintiffs obtained a temporary restraining order, everything remained in place and no transfer was able to occur.

Why Not a Failure of a Properly-Formed OAPT: This case does not represent a failure of a properly structured offshore trust, because the trust was domestic setup to allow control to shift offshore upon an event of duress, and the court was able to stop that shift offshore from happening through an injunction.

Comment: This reference is usually to two cases: *Indiana Investors, LLC v. Hammon-Whiting Medical Center, LLC*, No. 45D02-0807-CT-201 (Lake Superior Court, Lake County, Indiana) and Indiana Investors v. Victor Fink, No. 12-CH-02253 (Circuit Court of Cook County, Illinois, Chancery Division). We continue to search for the trial court filings to confirm the above facts.

39. *Gilmore v. Asia Trust*

Summary of Relevant Facts: Gilmore Bank brought an action in Orange County, California Superior Court against Jay Cho to collect on a $3.2 million arbitration award related to Ms. Cho's sale of her business to Cindy Dalrymple, which the bank had financed. The business' performance went down substantially after the sale closed. On the second day of the arbitration Ms. Cho created a trust, and later had AsiaTrust (a New Zealand trustee) create a second trust to hold an annuity. This caused AsiaTrust to also be sued in the action. AsiaTrust objected for lack of jurisdiction. The California trial court declined to find personal jurisdiction over the trustee. The appellate court reversed, holding that personal jurisdiction over the foreign trustee did exist.

Why Not a Failure of a Properly-Formed OAPT: This case does not represent a failure of a properly structured offshore asset protection trust, as a court finding it has jurisdiction over a foreign trustee does not mean the trust corpus was reached in any way.

40. *Bank of America v. Weese*

Summary of Relevant Facts: In 1999, Bank of America issued a credit line to a company called Bloomsbury, which the Weeses personally guaranteed. The loan came due a year later and the amount due totaled $16 million. Both the company and the Weeses failed to pay. Bank of America then initiated arbitration against Elizabeth and Brian Weese. It seems that the same day that the notice of arbitration was sent, Elizabeth Weese created a Cook Islands trust, and over the course of several months transferred approximately $25 million to the trust. Eventually Bank of America obtained an arbitration award for $17.6 million. When Bank of America realized the assets had been transferred, it filed suit in Maryland and also in the Cook Islands. After further litigation, the case ended up being settled for approximately $13 million.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of a properly structured offshore trust, given that the trust corpus remained undisturbed. The fact that the matter concluded with a consensual settlement does not alter that conclusion.

41. *Netsphere v. Baron*

Summary of Relevant Facts: Jeffrey Baron and Munish Krishan formed an internet domain-name venture that spawned years of litigation, which the parties settled by agreement in 2009. Netsphere Inc. (Krishan's company) then sued Baron for breaching that settlement agreement. What follows is a truly complex procedural history. Relevant for our purposes is the fact the case ended up in bankruptcy. Baron's company, Ondova Limited, filed for Chapter 11. It came out in testimony that Mr. Baron had a Cook Islands trust called the "Village Trust." The trustee of this trust was SouthPac (also a Cook Islands entity), the trust held the interests in two entities (Novo Point and Quantec), and Baron was the trust's sole beneficiary. The bankruptcy court ordered Baron to request $330,000 from the trust as security, to be held until further court order. This money was deposited and held to pay Baron's obligations. There is no evidence that any other asset of the Cook Islands trust was accessed, and on appeal the Fifth Circuit reversed the receivership over Baron's personal assets and the trust-owned entities as an abuse of discretion, ordering roughly $1.6 million released back to Baron

Why Not a Failure of a Properly-Formed OAPT: This case does not show a failure of a properly structured offshore asset protection trust. The $330,000 was a voluntary distribution that Baron, as sole beneficiary, directed to a neutral court officer to cover his own obligations, precisely the kind of beneficiary distribution a properly-formed OAPT is designed to permit, not a creditor's coerced extraction of the trust corpus, which is what such a structure's duress provisions guard against. That protective mechanism was never tested: no other trust asset was reached, and on appeal the corpus and the trust-owned entities remained beyond the court's grasp.

08. OTHER NOTABLE OUTCOMES

42. *In re Omegas Group*

Summary of Relevant Facts: This case involves no offshore asset protection trust. A bankruptcy court imposed a constructive trust over $302,142 Datacomp paid Omegas, but the Sixth Circuit reversed, holding constructive trusts generally cannot remove property from a bankruptcy estate.

Why Not a Failure of a Properly-Formed OAPT: Not a failure of an offshore trust, there is none here. It is a constructive-trust dispute from a commercial deal, which the Sixth Circuit reversed.

43. FDIC v. Lewis

Summary of Relevant Facts: Rex Lewis personally guaranteed five Nevada real-estate development loans. After the 2008 crash the borrowers defaulted and his guarantees were called, leaving him owing five judgments totaling over $66 million. Although he had listed assets exceeding $100 million when giving the guarantees, at his debtor's examination he claimed to be broke and refused to disclose transfers to family or trusts; the court threatened to hold him in contempt. Creditors eventually traced his structure: a St. Vincent asset-protection trust with anti-creditor "duress" provisions, owning an Isle of Man company (Woman LLC) that held his investment portfolio and domestic LLCs owning Nevada and Utah real estate, plus a 2011 "Six Kids Trust" receiving further transfers. After freezing the Isle of Man assets, creditors moved for a repatriation order, which the court denied, directing them to first exhaust their other collection remedies.

Why Not a Failure of a Properly-Formed OAPT: This is not a failure of a properly structured offshore trust: the court denied the repatriation order, leaving the trust intact, and told creditors to exhaust their other remedies first. And Lewis's structure was post-claim fraud on creditors, not bona fide asset protection.

44. In re Steering Committee

Summary of Relevant Facts: n/a

Why Not a Failure of a Properly-Formed OAPT: n/a

Comment: Despite extensive research, this case has not yet been located, and the search is ongoing.

45. In re Tinsley

Summary of Relevant Facts: n/a

Why Not a Failure of a Properly-Formed OAPT: n/a

Comment: Despite extensive research, this case has not yet been located, and the search is ongoing.

Conclusion: Why the "45 FAPT/OAPT Cases Gone Wrong" List Is Misleading

Mr. Oshins' list of "45 FAPT Cases Gone Wrong" is misleading because it treats every adverse event involving offshore assets, foreign accounts, self-settled trusts, fraudulent transfers, bankruptcy misconduct, contempt, divorce, tax evasion, and regulatory enforcement as though each were a failure of a properly structured offshore asset protection trust. That framing collapses several legally distinct concepts into one rhetorically powerful but analytically imprecise category. The cases do not show that a properly formed, timely funded offshore asset protection trust with an independent foreign trustee and no retained settlor control is ineffective. Rather, they show that U.S. courts will punish fraud, concealment, contempt, retained control, post-claim transfers, and domestic-law violations. That is a very different proposition.

The threshold problem is that many of the listed cases are not offshore asset protection trust cases at all. Several involve no trust, but instead offshore bank accounts, annuities, credit cards, corporations, constructive trusts, or other non-trust structures. For example, the list includes *Chadwick v. Green*, *FTC v. Fortuna Alliance*, *U.S. v. Plath*, *SEC v. Cook*, *Jerome Schneider*, and *In re Omegas Group*, even though those matters did not involve a properly structured offshore asset protection trust being defeated on the merits. The "45 FAPT Cases Gone Wrong" list itself describes categories such as "Tax Evasion / Hiding Assets Offshore," "Regulatory Enforcement / Pyramid Schemes," and "Other Notable Outcomes," which are not the same thing as cases adjudicating the effectiveness of an offshore asset protection trust. Counting non-trust cases as "trust failures" inflates the number and obscures the relevant legal issue.

A second problem is the list's treatment of contempt cases. Cases such as *FTC v. Affordable Media*, *In re Lawrence*, *SEC v. Bilzerian*, *BankFirst v. Legendre*, *Barbee v. Goldstein*, *SEC v. Solow*, *Eulich*, and *AmeriDebt* are largely contempt or coercive-order cases. Mr. Oshins' list characterizes these as "Contempt of Court / Jail for Refusal to Repatriate Assets." But a contempt order against a debtor is not the same as a successful *in rem* seizure of offshore trust assets. In contempt proceedings, the U.S. court exercises personal jurisdiction over the debtor and asks whether the debtor has the present ability to comply. If the court finds retained control, lack of credibility, concealment, or self-created impossibility, it may incarcerate or fine the debtor. That says something about the debtor's conduct and credibility. It does not necessarily show that the foreign trustee was compelled to distribute assets, that the foreign court disregarded its own law, or that the trust corpus was reached.

That distinction matters. The central protective feature of a properly structured OAPT is not that a U.S. court is powerless to make orders against a U.S. settlor. U.S. courts plainly retain *in personam* authority over persons before them. The point is that the trust assets are held by an independent foreign trustee in a jurisdiction that does not automatically recognize or enforce U.S. fraudulent transfer judgments, contempt orders, or self-settled trust prohibitions. Thus, a finding that a settlor was jailed for contempt does not prove that the trust failed. It often proves the opposite: the U.S. court could not directly reach the trust res and therefore resorted to coercion against the settlor.

Third, many of the cited cases are simply fraudulent transfer cases. The list identifies an entire category as "Fraudulent Conveyance / Transfers to Defeat Creditors." That category tells us little about properly implemented asset protection planning. A transfer made after a claim has arisen, after litigation has begun, after judgment, after an investigation, or while an injunction or asset freeze is pending is vulnerable under ordinary fraudulent transfer principles. That is not a unique failing of offshore trusts. It is a basic feature of debtor-creditor law. If a debtor transfers assets to an LLC, a domestic trust, a spouse, a child, a corporation, a foundation, or an offshore trust after a known claim arises, the transfer may be attacked. The legal problem is not "offshore trust failure"; it is bad timing, badges of fraud, and creditor prejudice.

Fourth, the list repeatedly relies on cases where the settlor retained excessive control. *Affordable Media* involved settlors who were also protectors and who had powers inconsistent with true divestiture. *Lawrence* involved a debtor who retained trustee-appointment and beneficiary-control powers. *Rogan* involved evidence that the settlor directed distributions. *Brown* involved assets over which the debtor retained practical control while the foreign trustee functioned as a figurehead. *Portnoy* involved a debtor who allegedly retained sweeping powers and failed to disclose them in bankruptcy. These cases are not a referendum on properly structured offshore trusts; they are examples of what not to do. A trust in which the settlor can appoint and remove trustees, terminate the trust, command distributions, use the trust as a personal checking account, or conceal retained powers is structurally different from a properly formed OAPT.

Fifth, several divorce cases are mischaracterized. Cases such as *Riechers*, *Westrate*, *Breitenstine*, and *Harnack* involve marital property division and *in personam* remedies against a spouse. The relevant courts often addressed whether marital assets had been transferred, whether the spouse should receive an equitable distribution award, or whether the transferor spouse should be ordered personally to satisfy an award. That is not the same as a foreign trustee being bound or a foreign trust corpus being directly invaded. In *Riechers*, for example, the significance is not that the Cook Islands trust was set aside; rather, the domestic court made an equitable distribution award against the husband personally. In *Westrate*, the matter settled. In *Breitenstine*, the remedy ultimately operated against the husband personally, not directly against the foreign trust property. Those outcomes may be important in family-law planning, but they do not prove that the offshore trust structure failed.

Sixth, bankruptcy cases on the list often turn on disclosure misconduct, denial of discharge, false oaths, or domestic public policy, not successful recovery from a soundly structured foreign trust. In *Brennan*, the problem was concealment and bankruptcy fraud. In *Colburn*, the debtor lost his discharge for false oaths and concealment, while the court did not find that the trust assets were property of the estate. In *Portnoy*, the issue included retained control and failure to disclose. In *Rensin*, the court confronted self-settled discretionary trust issues under Florida law, but the trustee was an indispensable party and the corpus was not simply turned over. These cases show that debtors must disclose assets and interests truthfully in bankruptcy. They do not show that proper offshore planning, implemented before creditor problems and fully disclosed where required, is ineffective.

Seventh, the list includes duplicates, placeholders, and uncertain authorities. *Morris v. Morris* and *Morris v. Wroble* appear to arise from the same Merry Morris dispute. *In re Brooks* appears to duplicate *Sattin v. Brooks*. Several entries are placeholders or cases that could not be located, including "In re Steering Committee" and "In re Tinsley." Mr. Oshins presents these as part of the overall "45" universe, but the underlying case support is uneven. That matters because the rhetorical force of the list depends heavily on the number. If the count includes duplicate matters, non-trust cases, unresolved placeholders, and cases in which no trust assets were recovered, the number materially overstates the point.

Eighth, the list often equates "court order entered" with "assets recovered." That is a serious analytical error. A U.S. court may order repatriation, include assets in a marital estate, deny discharge, find contempt, enter a money judgment, reject an impossibility defense, or declare a transfer avoidable. But those outcomes do not necessarily mean the foreign trustee complied, the offshore court enforced the U.S. order, or the creditor recovered the trust corpus. In several of the cited matters, the trust assets remained undisturbed, the case settled, or the court proceeded only against the debtor personally. The relevant question is not whether a U.S. judge wrote unfavorable language about an offshore trust. The relevant question is whether a properly structured trust, funded before creditor issues arose and administered by an independent offshore trustee, was actually penetrated. The list largely fails to isolate that question.

The more accurate lesson from the cases is straightforward: offshore trusts are not tools for fraud, concealment, tax evasion, or emergency post-claim transfers. They do not immunize a debtor who keeps control, lies in bankruptcy, ignores court orders, transfers assets after judgment, or uses offshore structures as personal bank accounts. U.S. courts can and will impose severe consequences for those acts. But that does not make those cases failures of properly structured OAPTs. It makes them failures of debtor behavior, timing, disclosure, and drafting.

Accordingly, Mr. Oshins' list is most fairly understood as a cautionary list of bad facts, not as empirical proof that properly designed offshore asset protection trusts fail. The cases show that courts punish abusive planning and retained control. They do not establish that a properly formed, timely funded, fully disclosed offshore asset protection trust, administered by an independent trustee, holding non-U.S. assets, without settlor control, and created before creditor problems arise, is routinely defeated.