The following is a list of over 2 dozen court cases commonly cited as defeating offshore trusts. ~~There are no cases to~~Reviewed against their facts, none reflects the ~~contrary~~failure of a properly structured offshore asset protection trust. Rather, each turned on the settlor’s retained control, fraudulent transfers, nondisclosure, or the absence of any trust at all.

Bankruptcy Court Cases Cited as Defeating Offshore Trusts:

In re Colburn 145 B.R. 851 (Bkrpt E.D. Va. 1992). (For failing to disclose offshore trust, debtor was denied a discharge and accused of fraud~~).~~. The court nonetheless held that the creditor failed to prove the trust’s assets were property of the debtor or his estate. The discharge was lost to concealment and false oaths, not to any failure of the trust itself). Brown v. Higashi, (Bkrpt Ak. 1995). (Assets of offshore trust included in bankruptcy estate. The court stated that “[t]he fact that the trusts were established in Belize, a country notorious for its anti-creditor policies…indicates an intent to hinder, delay or defraud on the part of the defendants~~”). In re Portnoy, 201 B.R. 685 (S.D.N.Y. Bkrpt 1996) (Because of offshore money, discharge denied and debtor accused of fraud). In re Brooks, 217 B.R. 98 (D.Conn. Bkrpt. 1998) (Offshore trust disregarded and assets seized by US court).~~”. The transfers were fraudulent and self-settled, and Brown funded and kept complete control of U.S.-based assets the foreign trustee never held, not the failure of a properly structured trust, which vests the assets in an independent offshore trustee). In re Portnoy, 201 B.R. 685 (S.D.N.Y. Bkrpt 1996) (The court denied the debtor’s own summary-judgment motion, finding triable issues over discharge: he had made himself primary beneficiary, kept sweeping control (including the power to remove and replace the trustee), funded the trust as his guarantee was about to be called, and failed to disclose those retained rights (retained control and nondisclosure), not the failure of a properly structured trust). In re Brooks, 217 B.R. 98 (D.Conn. Bkrpt. 1998) (On choice-of-law grounds (Connecticut law, not the trusts’ chosen Bermuda and Jersey law) the court held the transferred stock was estate property because the arrangement was effectively self-settled, but the offshore corpus was never actually disturbed, and a properly formed trust would not have left the settlor such broad beneficiary rights). Advanced Telecommunication Network, Inc. v. Allen, D.C. Docket No. 05-00770-CV-ORL-19-JA-DA (11th Cir. 2011) (Debtor ~~funded~~wired funds into a Cook Islands trust, after suit was filed and while a motion to freeze the funds was pending, which included duress clause and all the usual provisions; bankruptcy court found offshore trust against public policy and ordered debtor to repatriate funds; debtor claimed he had no power to comply; debtor was held in contempt and the court cited earlier cases holding that a self-created impossibility is not a defense; 11th circuit affirmed. Despite years of repatriation orders and the contempt finding, the creditor never recovered any of the trust funds; the corpus went undisturbed.)

U.S. Federal Government Enforcement Actions ~~Against Offshore Trusts~~:

FTC v. Fortuna Alliance (1997) (FTC investigated a pyramid scheme and in doing so was able to get a U.S. District Court to issue arrest warrants to Debtors, who then repatriated millions from offshore accounts in Antigua. ~~This case is often ignored by~~No offshore trust ~~promoters because it~~ was ~~settled out of court).~~involved. The funds were corporate money held in an Antiguan bank account in the company's name, repatriated as part of the settlement, so the case says nothing about offshore trusts). SEC v. Brennan, 230 F. 3d 65 (2nd Cir. 2000) (Debtor convicted of bankruptcy fraud~~).~~ for concealing the trust and its bearer bonds from his bankruptcy schedules. This was a disclosure crime, not a failure of the trust itself). FTC v. Direct Benefits Group, LLC, 2011 WL 3654469 (M.D.Fla., Slip Copy, Aug. ~~19, 2011). (Court ordered all offshore funds repatriated without regard to any documents~~19, 2011).(Court's standard ex parte freeze order included boilerplate repatriation and anti-duress provisions, but no offshore trust, foreign trustee, or ~~legal structures~~foreign asset ever appeared in the case, nothing was repatriated and no structure was tested).

Offshore Trusts Cited as Defeated in Divorce:

Riechers v. Riechers, 679 N.Y.S. 2d 333 (1998) (Offshore trust assets included in marital estate for divorce purposes, but only through an in personam award against the settlor. The court accepted the Cook Islands trust as legitimate, disclaimed jurisdiction over its corpus, and never invaded or set aside the trust).

Westrate v. Westrate (1998) (Husband accused of fraud and threatened with criminal penalties. ~~Assets included in marital estate~~The case settled, the wife recovering $4.3 million from her husband and $2.5 million from his company, and the trust assets themselves were never touched).

Breitenstine v. Breitenstine, 2003 WY 16, 62 P.3d 587 (Wyo. 2003) (Trust assets included in property division, but only indirectly: the Wyoming courts could not and did not alter title to the Bahamian trust property or bind the foreign trustee. Relief ran against the husband personally, with any recovery dependent on his compliance).

Debtor Jailed ~~For Refusing to Repatriate Assets~~for Contempt of Court:

To help our clients understand what is good planning vs. bad planning, we have listed **Seven Pillars of Asset Protection**. The **Fourth Pillar of Asset Protection** is that creditors cannot force you to choose between freedom or use of your assets. ~~So, obviously~~The cases below are often cited to argue that Offshore Asset Protection Trusts fail ~~to meet~~ this standard~~, as you'll see below~~; in each, however, the coercion rested on the settlor's retained control or misconduct, not on a properly structured trust.

FTC v. Affordable Media, LLC, 179 F.3d 1228 (9th Cir. 1999). (Debtor jailed for refusing to repatriate assets that remained in their control: the settlors were the trust's protectors, with the power to force the foreign trustee to repatriate, and the contempt rested on that retained control, which a properly structured trust would not have left with them).

SEC v. Bilzerian, 131 F. Supp. 2d 10 (D.C. 2001). (Debtor jailed for refusing to ~~repatriate assets~~provide a credible sworn accounting of his finances. The court never reached the offshore corpus, and the only trust asset it touched was U.S.-situs real estate, the frozen sale proceeds of his Tampa mansion).

In re Lawrence, 279 F.3d 1294 (11th Cir. 2002). (Debtor jailed for over six years for refusing to repatriate assets he had placed in trust two months before an anticipated $20.4 million arbitration award, while keeping the powers to appoint trustees and to exclude or reinstate beneficiaries, the retained control the court relied on. A fraudulent, settlor-controlled arrangement, not a properly structured trust).

BankFirst v. Legendre (2002) (Debtor jailed five days for contempt ~~of court until~~after withholding information about his assets ~~were turned over five days later~~, then agreed to cooperate; he had funded the trust only after the bank's judgment and kept the beneficial use of assets left within U.S. reach. This was a textbook fraudulent conveyance, not a properly structured trust. See news article on the case **HERE**).

And here are even more cases in which the debtor was ~~jailed for refusing to repatriate assets~~held in contempt of court …

Morris v. Morris, Case Nos. 4D04-3812, 4D04-4621, 4D04-4763, aff'd Appeal No. SC05-1166 (Fla.S.Ct. April 13, 2006); Morris v. Wroble, Case No. CIV-O6-80479 (S.D. Fla.) aff'd Appeal No. 06-80452-CV-DTKH (11th Cir. Nov. 16, 2006). ~~(Debtor jailed for contempt of court for refusing to repatriate assets~~(Debtor jailed, by her own account, for indirect criminal contempt for failing to appear in court, not for the Cook Islands trust, which was never set aside; the parties ultimately settled, and Wroble was the same litigant's suit against the judges rather than a separate trust case).

Barbee V. Goldstein, 2006 U.S.Dist. LEXIS 82945. (Goldstein funded offshore trust over a year before filing for bankruptcy. ~~Bankruptcy~~The U.S. District Court in Colorado, in the related Paoloni v. Goldstein action, not this ruling, ordered Goldstein to repatriate funds from the Cook Islands Trust. Goldstein failed to comply and was jailed for contempt. ~~Goldstein finally agreed to terminate~~After his release the trust was terminated with the trustee's and ~~repatriate the~~ protector's consent and its assets reverted to Goldstein; Barbee itself decided only a motion to dismiss, making no factual findings, and the corpus was never invaded by court order. A settlor able to have his own trust ended holds a power a properly structured trust would not confer).

Chadwick v. Green, Civ. No. 09-2134 (Del. County Ct. Com. Pl. July 10, 2009) (H. Beatty Chadwick was released after serving 14 years in jail for refusing to obey a court order to turn over $2,500,000 that a judge believed was hidden offshore. No trust was involved: the money sat in offshore annuities and a Panamanian bank account the courts found he still controlled. The court said that after 14 years, the contempt order "has lost its present coercive effect and that it is unlikely that the continued incarceration of Petitioner Chadwick will result in his compliance with [that order].")

SEC v. Jamie Solow, 682 F.Supp.2d 1312 (2010). (Debtor jailed for contempt ~~of court~~ for ~~refusing~~failing to ~~repatriate~~make reasonable efforts to recover assets he had shifted to his wife after the verdict; the Cook Islands trust, settled by his wife, was never itself tested by the court) (case affirmed by 11th Circuit).

Debtor Paid Settlement ~~to Avoid Jail~~:

Bank of America v. Weese, 277 B.R. 241 (D.Md. 2002) (Debtors paid settlement of over $12,000,000 ~~in order to avoid incarceration~~; the trust, created the day the arbitration notice was sent, was never pierced, and its corpus remained undisturbed).

Debtor Held In Contempt of Court & Threatened With Jail Time:

U.S. v. Plath, 2003-1 USTC 50,729 (U.S. District Court, So. Dist. Fla. 2003) (Debtor held in contempt for refusing to obey court order to disclose details about offshore accounts (offshore credit card accounts, not any offshore trust) despite the fact that there was no fraudulent transfer).

Eulich v. U.S., (N.D.Tex. Case No. 99-CV-01842, August 18, 2004) (Debtor found in contempt, fined and threatened with ~~fines and~~ jail ~~time~~ until documents held by the offshore trustee were produced; Eulich ultimately obtained and produced every requested document and was purged of contempt. The proceeding sought documents, not trust assets, which were never repatriated or reached).

FTC v. AmeriDebt, Inc., 373 F. Supp. 2d 558 (D Md. 2005) (Debtor, who created the trusts less than two months after the FTC served its investigative demands, aware of the investigation, was found in contempt and ~~threatened with jail time until~~jailed for concealing and refusing to turn over other assets ~~repatriated~~, not for any failure to repatriate the Nevis or Cook Islands trusts).

SEC v. Greenberg, 2015 WL 2450500 (S.D.Fla., May 21, 2015). In May 2015 the District Court upheld a Magistrate Judge's order holding Debtor (Greenberg) in contempt for failure to pay on a 2002 Judgment. Greenberg lived a lavish lifestyle using an Offshore Trust and several entities as his private piggy banks while claiming he had no ability to pay the judgment. Although Greenberg made a few small payments on the judgment beginning in 2010, it wasn't enough to prove that he was unable to pay, i.e. claim an impossibility defense. The contempt rested on Greenberg's retained access and control. He had been using the trust as his personal account, not on any piercing of a properly structured trust, which would not permit the settlor such use.

State Law Applies (Not Law of Bahamas Where Trustee Was Located):

U.S. v. Rogan, 2012 WL 1107836 (N.D.Ill. 2012) (Peter Rogan transferred assets to an offshore trust in 1996. The Bahamas Trust included all the traditional offshore trust provisions and it gave no apparent control to Peter Rogan on paper. In November of 2002 he was sued. Judgments were entered against him in 2006. The court held that Illinois law applied instead of the laws of the Bahamas, and Rogan was ordered to turn over the assets because Illinois law does not protect the assets of a self-settled trust. An FBI affidavit showed Rogan had in fact directed roughly $8.15 million in trust distributions to himself or persons he specified between 1996 and 2004, and the court found the trust was his mere alter ego. Rogan has since fled the country. Rogan and the attorney who helped create the trust have been indicted for perjury for claiming that they had no control over the trust. The court held that "Notwithstanding the terms used to create the trust, Rogan and Cuppy controlled the [Trust]." They were also indicted for obstruction of justice and conspiracy to obstruct justice. A trust the settlor secretly directs fails for retained control. It is not a properly structured offshore trust.)

~~Another~~Domestic Structure Halted Before Control Could Shift Offshore ~~Trust Defeated~~:

Indiana Investors, LLC v. Hammon-Whiting Medical Center, LLC No. 45D02-0807-CT-201 (Lake Superior Court, Lake County, Indiana); Indiana Investors v. Victor Fink, No. 12-CH-02253 (Circuit Court of Cook County, Illinois, Chancery Division), Victor Fink transferred assets to a Cook Islands trust provided by one of the popular asset protection providers found on the internet. That law firm claimed that the control could be shifted offshore in the event of duress. The plaintiffs were able to obtain temporary restraining orders which prevented the trustees and protectors from shifting the control to the offshore trustee (South Pac Trust International, Inc.) and the bank accounts were all frozen. Because control remained with persons subject to U.S. jurisdiction until a duress event, the injunction could stop the handoff. This is a defect of that spring-offshore design, not of a trust already established offshore under an independent foreign trustee.

IRS ~~Defeats~~Enjoins Settlor Whose Own Transfers Showed Control Over Offshore Trust ~~(Debtor Must Permanently Leave U.S. To Get Access to Trust)~~

The **Second Pillar of Asset Protection** is that creditors cannot limit how you use and enjoy your assets. This seems pretty basic. Why would you possibly "protect" your money if you can't actually use it??? It makes no sense. Yet, this doesn't stop people from making this stupid mistake.

US v. Grant, 2013 WL 1729380 (S.D.Fla., April 22, 2013) (Raymond Grant created two offshore trusts, one for his benefit and one for the benefit of his wife, and he funded them years before incurring substantial tax liabilities. Raymond later died and the IRS obtained a $36 million dollar judgment against Raymond’s wife Arline. The US moved to hold Arline in contempt of court for failing to repatriate funds. Initially, the court refused to do so, but later when it was proven that Arline had received funds from the trust through her children’s accounts, the court issued a permanent injunction prohibiting Arline and her children from ever receiving any benefits from the trusts. Her transfers to herself, through her children’s accounts, are what revealed her apparent control. This was a personal-conduct failure on the settlor’s side, not a structural defeat of the offshore trusts, whose corpus was never seized.)

U.S. Court has Personal Jurisdiction Over Offshore Trust Company

Gilmore v. AsiaTrust New Zealand Ltd., 2014 WL 684377 (Cal.App.Distr. 4, Feb.21, 2014). (California court of appeals finds personal jurisdiction over AsiaTrust, an offshore trust company, and can therefore sue AsiaTrust in California, even though there was no physical connection to California. Jurisdiction over the trustee, however, is not access to the trust: the corpus was never reached.).