**15.46 Bankruptcy Fraud—Scheme or Artifice to Defraud**

**(18 U.S.C. § 157)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with bankruptcy fraud in violation of Section 157 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant devised or intended to devise a scheme or plan to defraud;

Second, the defendant acted with the intent to defraud;

Third, the defendant’s act was material; that is, it had a natural tendency to influence, or was capable of influencing the acts of an identifiable person, entity, or group; and

Fourth, the defendant [filed a petition] [filed a document in a proceeding] [made a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding] under a Title 11 bankruptcy proceeding to carry out or attempt to carry out an essential part of the scheme.

It does not matter whether the document, representation, claim, or promise was itself false or deceptive so long as the bankruptcy proceeding was used as a part of the scheme or plan to defraud, nor does it matter whether the scheme or plan was successful or that any money or property was obtained.

**Comment**

Unlike the historic bankruptcy crimes described in 18 U.S.C. § 152, bankruptcy fraud under § 157 concerns a fraudulent scheme outside the bankruptcy that uses the bankruptcy as a means of executing or concealing the fraud or artifice. *United States v. Milwitt*, 475 F.3d 1150, 1155-56 (9th Cir. 2007) (bankruptcy fraud requires specific intent to defraud identifiable victim or class of victims of identified fraudulent scheme).

This statute is modeled after the mail and wire fraud statutes and therefore requires a specific intent to defraud and deceive. *Id*. (citing *United States v. Bonallo*, 858 F.2d 1427, 1433 (9th Cir. 1988)); *see also United States v. Miller*, 953 F.3d 1095, 1103 (9th Cir. 2020) (holding that wire fraud requires the intent to “deceive *and* cheat—in other words, to deprive the victim of money or property by means of deception”).

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