This article explains that Domestic Asset Protection Trusts (DAPTs) introduce liability districts that create a new marketplace that attract capital in flight from creditors of a highly distressed debtor. A “liability district” is a jurisdiction that suppresses liability by immunizing the assets of a debtor from local civil enforcement of a judgment. While the DAPT debtor thwarts enforcement and suppresses the debtor’s liability, the true beneficiary is the liability district and its constituent members including attorneys, professional trustees, banks, and financial advisors. As a contributing factor to Adam Smith’s “invisible hand” in the marketplace, DAPTs open the door for fleeing capital to the liability districts for sovereign and nearly “judgment proof” safekeeping. DAPTs suppress liability and give near immunity from enforcement under a civil judgment, which is all closely analogous to the state legislatures who suppressed voter turnout from 2008 to 2016.

This article also appeals to the large and growing international legal and financial audience that focuses on offshore havens and their efficacy in thwarting repatriation of capital fleeing from creditors. Under the aegis of Adam Smith, all havens offer safe harbor to capital fleeing from ravages of enforcement at the hands of tort, tax, family support, contract, or restitution claimants. Like U.S. liability districts, offshore havens suppress a wide

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range of liability. The marketplace is the trust bar and trust institutions that are domiciled in the liability districts that shelter fleeing capital. These offshore havens offer nearly absolute immunity against repatriation, converting offshore havens into Adam Smith’s quintessential and sovereign “liability districts.”

The UK is an entire liability district that deters litigation including fraudulent conveyance cases. For example, UK law imposes “winner takes all” fee shifting and nearly bars contingency fees (except conditional fees). “Winner takes all” fees impose risk that deters most litigants from pursuing litigation, other than the 100% guaranteed winner. Hourly fees hobble all litigants, except for the exceptionally well-heeled. Constricting access to the courts suppresses liability, which is no less than a moat that safely ensconces wealth behind the feudal walls of an Old World liability district.¹

The inevitable conclusion is that the UK, and particularly the City of London, is a liability district and given the legal framework that bars difficult or speculative litigation.² Further, fraudulent conveyance law is an English export to the U.S.³

DAPTs suppress liability because they hobble, if not constrict, any and all relief under the Uniform Voidable Transaction Act (UVTA). Hence, the DAPT suppression of liability is Adam Smith’s invisible hand of the market.

ADAM SMITH RESIDES IN DAPT LAND

Seventeen states offer expansive immunity from the enforcement of a civil judgment if the debtor shielded its property under a Domestic Asset Protection Trust.⁴ While DAPTs do not per se immunize the debtor’s

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² JAN E G. GRAVELLE, CONG. RESEARCH SERV., R40623, TAX HAVENS: INTERNATIONAL TAX AVOIDANCE AND EVASION 8-9 (2015) (“Nicholas Shaxson, in his book Treasure Islands, organizes tax havens into four categories: (1) continental European havens such as Switzerland and Luxembourg; (2) a British zone of influence (which includes the City of London as well as countries formally related to the UK, such as Jersey, Guernsey, the Isle of Man, Bermuda, and many of the islands in the West Indies and Caribbean, and those influenced by the UK) . . . .”)


property from any civil enforcement, DAPTs severely suppress the potential recourse under the fraudulent conveyance law whether the statutory or common bodies of law. DAPTs authorize “self-settled” trusts, which enable the debtor to drape a “trust” upon assets and constrict, if not nearly preclude any meaningful remedies under the UVTA to reach these assets. Depending on the state, DAPTs shorten the statute of limitation for initiating an UVTA action, require the creditor to meet the clear and convincing evidentiary burden of proof, and limit relief to claims based on the “intent to hinder, delay and defraud” for a specific creditor as opposed to all creditors which is allowed under the UVTA.

DAPTs impose bone-crushing expenses upon the creditor who is attempting to recapture the DAPT assets under the UVTA or general trust law. Stepping ashore from offshore jurisdictions, DAPTs are quintessential asset protection schemes that seek to, and even succeed in, thwarting an involuntary creditor from access to the assets of the recalcitrant debtor to satisfy a large tort judgment. Some DAPTs escalate the risk borne by the creditors.

5. Shaftel 2016, supra note 4. Each state is different, but the current studies rate the states according to ability to “judgment proof” assets. Id. These states are Alaska, Colorado, Delaware, Hawaii, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming. Id.

6. Nienhuser, supra note 4, at 553 (“A trust is a legal arrangement in which a settlor appoints a trustee to hold property as a fiduciary for one or more beneficiaries. A valid trust must include a settlor and trustee, intent to create a trust, ascertainable trust res, sufficiently ascertainable beneficiaries, a legal purpose, and a legal term. The settlor is the individual who creates the trust. Creation includes . . . designating beneficiaries, declaring terms for distribution, designating a trustee and successor trustee, and determining what property will be transferred into the trust.”).

7. Domestic Asset Protection Trust State Rankings Chart, L. OFFICES OSHINS & ASSOCIATES, LLC (Jan. 2016), https://www.oshins.com/state-rankings-charts (follow the hyperlink by clicking the the chart titled “Domestic Asset Protection Trust State Rankings Chart” to view an enlarged image) (Most DAPTs provide for a clear and convincing burden of proof and limit relief to a specific creditor). Depending on the state, the failure to timely file the UVTA extinguishes the UVTA claim. See, e.g., UTAH CODE ANN. § 25-6-14(9)(a)(i) (Westlaw through 2016 4th Special Sess.) (Permitting a two-year statute of repose). A statute of repose extinguishes the claims and renders the property immune from enforcement. Other limitations are that the creditor cannot rely on the fraudulent conveyances claims of other creditors. See, e.g., NEV. REV. STAT. § 166.040(1)(b) (Westlaw through the 78th Regular Sess. and 30th Special Sess.) (Including the intent to defraud a specific creditor); S.D. CODIFIED LAWS § 55-16-10 (Westlaw through the 2016 Sess.) (Including two year statute of repose, a clear and convincing standard, and a specific creditor); TENN. CODE ANN. § 35-16-104 (Westlaw through 2016 2d Regular and Extraordinary Sess.) (Including a two year statute of repose, a clear and convincing standard, and a specific creditor). A statute of repose enhances property titles because a transferee takes free of any colorable claims.

8. See, e.g., Cardinale v. Miller, 166 Cal. Rptr. 3d 546, 550 (Ct. App. 2014). The UVTA does not award fees. Creditors, or their attorneys, self-fund fees and costs. UFCA, the predecessor to UVTA, does award fees.

creditor by awarding fees to the prevailing party.\textsuperscript{10} Paraphrasing \textit{Nienhuser} would not do this notion justice in explaining the benefits of a DAPT as follows:

The most obvious benefit of a self-settled spendthrift trust is that trust property is shielded from involuntary creditors, such as tort claimants. Self-settled spendthrift trusts serve as a ‘safeguard against financial uncertainties and unanticipated litigation.’ The United States litigation system is often viewed as pro-plaintiff, giving injured plaintiff’s more than their fair share when it comes to monetary judgments. Proponents of self-settled spendthrift trusts argue such trusts protect settlors from meritless claims. While all people should pay their bills, ‘not all bills are just.’ ‘Deep pocket defendants’ frequently become targets of tort litigation. The self-settled spendthrift trust is less of a means to avoid debts and more a mechanism to protect individuals from losing everything they have spent years earning.\textsuperscript{11}

\textit{Nienhuser’s proposal describes liability suppression, front and center.}\textsuperscript{12} Exposure to civil liability is well understood given that tort law is a first-year law school course and a mandatory subject on every bar exam.\textsuperscript{13} No “claim” or litigation is unanticipated, absent the most bizarre.\textsuperscript{14} Nienhuser suggests that the U.S. litigation “system” is “pro-plaintiff.”\textsuperscript{15} However, federal and state judges rigorously supervise all civil litigation and assiduously instruct juries according to the law.\textsuperscript{16} Losing parties can move passed statutes authorizing some form of APT . . . ”). Under the Alaska statute, the settlor’s creditors have no recourse against the settlor’s interest in a self-settled discretionary trust provided the transfer was not fraudulent. ALASKA STAT. § 34.40.110(e) (Westlaw through 2016 Regular Sess. through 5th Special Sess.).

\textsuperscript{10} S.D. CODIFIED LAWS § 55-16-13 (Westlaw through 2016 Sess.) (deviating from the UVTA and adopting the English rule of fees awarded to the prevailing party). Prevailing party fees deter plaintiffs by escalating the risk borne by plaintiffs and plaintiff’s counsel who may face a malpractice lawsuit based on a “bad ending.” \textit{See, e.g.,} Thomas D. Rowe, Jr., \textit{The Legal Theory of Attorney Fee Shifting: A Critical Overview}, 1982 DUKE L.J. 651, 652 (1982) (discussing the various theories regarding shifting of attorney’s fees).

\textsuperscript{11} \textit{Nienhuser, supra} note 4, at 563-64.

\textsuperscript{12} \textit{See} Stewart E. Sterk, \textit{Asset Protection Trusts: Trust Law’s Race to the Bottom?}, 85 CORNELL L. REV. 1035, 1073 (2000) (“Asset protection trusts do, nonetheless, undermine the impact of background legal rules by sheltering from liability tortfeasors who would otherwise be required to compensate their victims.”).

\textsuperscript{13} \textit{See} \textit{Nienhuser, supra} note 4, at 563.

\textsuperscript{14} \textit{See id.}

\textsuperscript{15} \textit{Id.} Why go to Harvard if the system is rigged? Would not a J.D. degree from a correspondence law school be just as good if the “pro-plaintiff” courts guaranteed the million-dollar payday?

\textsuperscript{16} \textit{See, e.g.,} CODE OF CONDUCT FOR U.S. JUDGES Canon 3A(5) cmt. (“A judge should monitor and supervise cases to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.”).
Many parties settle their civil cases because the parties perceive an uncertain outcome, and therefore labeling the U.S. “pro-plaintiff” suggests that the judiciary bears an institutional bias, and that is a very tall order (or tale) indeed. 18

Next, Nienhuser intimates that a person should not pay an unjust bill—a position, which is embracing civil and legal disorder. 19 To many Americans, parking tickets, taxes, and cell phone bills are “unjust,” but they are nonetheless paid timely. If Nienhuser worries about “deep pockets,” this worry is unfounded. 20 The inference is that “deep pockets” attract shakedown lawsuits. 21 The other inference that some “tort litigation” is meritless which presumptively might include all mass torts (i.e. asbestos, the Dalkon Shield and silicon breast implant mass cases, and all 9/11 litigation). 22 The uninsured class of claims is the intentional torts, and that includes sexual assaults, hate crimes, domestic violence and mayhem, murder, battery, toxic torts, and the endless lists of financial injuries. 23 If the property of the perpetrator is immunized, these wrongdoers further exacerbate the anguish, pain, and permanent losses suffered by the victims of uninsured torts who are cheated out of any recompense, including a sense of justice in the collection of the judgment. 24 DAPTs suppress liability by rendering the defendant near “judgment proof,” precluding potential enforcement, and deterring counsel from accepting an uncollectible case. 25 Nienhuser suggests that plaintiffs bring “meritless claims” which threaten “individuals [with] losing everything they have spent years earning.” 26

Professor Lynn M. LoPucki [UCLA SOL] authored the leading “asset protection” article entitled The Death of Liability. 27 Professor LoPucki explained that successful asset protection might well immunize all assets from any civil enforcement that render the defendant “judgment-proof . . . .” 28 LoPucki states that, “To hold a defendant liable is to enter a money judgment against the defendant. Unless that judgment can be enforced,

17. See, e.g., FED. R. CIV. P. 59; FED. R. CIV. P. 60.
19. See Nienhuser, supra note 4, at 563.
20. See id.
21. See id.
22. See id.
23. See Shaftel, supra note 4 (noting examples of states with DAPTs that exempt certain claims, such as fraudulent transfers, from their protection).
24. Immunizing the property of perpetrators of crimes conflicts with any notion of restitution and civil justice.
25. Nienhuser, supra note 4, at 562.
26. See id. at 563-64.
28. Id. at 4.
liability is merely symbolic.”

LoPucki’s estimation that “tort lawyers are already accustomed to the reality that, upon the failure of the typical business with assets worth $500,000 to $1 million, the secured banks and finance companies will take everything, and their own claims will be discharged without payment” could lead to a legal marketplace where attorneys cease accepting tort cases, because even though the plaintiff may win, the attorney could never collect on the judgment. In *The Death of Liability*, LoPucki further suggests that American persons, or entities, could make use of offshore havens to escape civil liability by moving their assets beyond the court’s grasp. Replicating the paradigm of asset protection that Professor LoPucki constructs, the DAPTs provide a closely aligned method to immunize the assets of a debtor from the enforcement of a civil judgment and therefore suppress the burgeoning liability footprint in the face of tort claimants who face terrible barriers in seeking compensation for grievous losses. In addition to the tort claimant, many worker’s compensation carriers, first party insurers, medical, health care, and rehabilitation providers likewise seek payment arising from personal injury settlements or judgments for their advances.

LoPucki hypothesizes that allowing some companies to become judgment proof will cause others to seek the same protection (i.e., judgment proof) that could result in those companies to withhold goods or services until they are also accorded “judgment proofing.” The possibility that providers of basic societal needs, such as medical and health providers, could adopt this strategy via the use of a DAPT is particularly disconcerting and might undermine the settled expectations of the patients and purchasers of health, drug, and other medical care. LoPucki recognizes that liability suppression that hobbles, or even forecloses, access to the courts, which is

29. *Id.* at 4, 32 (revealing that judgment proofing suppresses liability); see *Grupo Mexicano de Desarrollo v. All. Bond Fund, Inc.*, 527 U.S. 308, 338-39 (1999) (Ginsburg, J., dissenting) (“Moreover, increasingly sophisticated foreign-haven judgment proofing strategies, coupled with technology that permits the nearly instantaneous transfer of assets abroad, suggests that defendants may succeed in avoiding meritorious claims in ways unimaginable before the merger of law and equity.”).

30. *LoPucki*, *supra* note 27, at 14, 52-53 (“The liability system works solely through the entry and enforcement of money judgments. Debtors can defeat it by rendering themselves judgment proof.”).

31. *Id.* at 6, 38-39 (“From such an analysis, this Article concludes that currently effective judgment-proofing strategies are fully capable of defeating the liability system. The remaining barriers that constrain use of these strategies—principally expense and cultural resistance—are in decline.”).

32. See, e.g., *CAL. PENAL CODE* § 1214(a) (West 2016) (providing civil judgments to victims of crime for financial loss).

33. See generally *CAL. CIV. CODE* § 3045.1 (West 2016).

34. See *LoPucki*, *supra* note 27, at 45.

35. See *id.* Absent third parties, plaintiffs would be relegated to health care provided by local governments that can encumber the settlement and judgment. Non-payment of health charges shifts the burden to the taxpayers to subsidize medical costs caused by the party at fault, meaning the defendant. Asset protection evaporates in the face of cost shifting to the liable party to protect the public from billions in recoverable expenses.
no different from voter suppression that hobbles access to the polls. LoPucki’s article highlights the suppression of accepted rules of liability, which state that it is “the owner’s duty, as in other similar situations, to provide against resulting injuries . . .”

DAPTs create pitfalls for creditors looking at financial statements, credit applications, and uniform loan applications. Nearly every credit transaction (from credit cards to million-dollar refinances or commercial loans) requires borrowers to make various financial disclosures including completing a detailed financial statement. Financial statements compel borrowers to disclose all assets, liabilities, income, and expenses. DAPTs become the legal owner of the borrower’s assets as they essentially drape a trust title over the property that nearly immunizes the assets from claims of creditors including, no less, the prospective lender. Should the borrower disclose that the DAPT “owns” the borrower’s assets, it is foreseeable that lenders would (or should) reject the loan because the borrower (i.e., the trustor) is judgment proof. DAPTs therefore hinder the trustor’s access to home, car, business, student, or personal loans.

Moreover, lying on financial statements is a federal and state crime, and therefore it is foreseeable that the post-loan DAPT, rendering the borrower immediately “judgment-proof,” could be considered bank fraud, mail fraud, or wire fraud, and a RICO violation, among other federal crimes. Fraud judgments arising from DAPT financial statements are potentially non-

36. See id. at 52-53; see also Yale Study, supra note 9, at 385 n.89.
38. Applications include filings for student loans, tuition grants, financial hardships, and just about any other public or private program that requires disclosure for a financial benefit.
40. See generally id.
42. See Shaftel 2016, supra note 4. If originating from a federally insured financial institution, the loan fails to meet the federal standards for prudent loan practices. See id.
43. See Pagliarini, Nevada Assets, supra note 41. DAPTs claim to defeat enforcement, render the debtor “judgment proof,” and quash civil liability. See id.
dischargeable, which enables creditors to emerge unscathed from a bankruptcy filing.45

The Self Interest of Each Liability District is the Liability District Itself

Now ignore Nienhuser’s contrivances and drop LoPucki polemics for the moment. Adam Smith better lifts the veil off DAPTs and explains that self-interest drives commercial activity.46 At first glance, DAPTs immunize the assets of the judgment debtor from enforcement, and that in turn enhances the debtor’s net worth by suppressing liability.47 The cost is that the judgment debtor must relocate to a DAPT state, warehouse his or her assets in a DAPT state, or invoke the jurisdiction of the DAPT state in the DAPT device.48 In order to access the commercial marketplace, it could be presumed that a judgment debtor may be compelled to engage in DAPT machinations to live off the DAPT device, or engage in wholesale perjury and fraud.49 In fact, DAPTs serve the self-interest of the liability states and their own business community, because DAPTs attract capital and vast profits based on the professional and financial services.50 For every state, David Shaftel has demonstrated that the “trustor” must deposit funds in a bank account located in the state, hire a local “trustee,” administer the “trust” in that state, and the assets must be domiciled in the state, or some other DAPT nexus.51

The seventeen DAPT states are onshore “havens” that compete with offshore havens including the Cayman Islands, Belize, Nevis, Panama,

47. See LoPucki, supra note 27, at 4.
48. See Yale Study, supra note 9, at 383 (“Many of the APT statutes condition their applicability on the appointment of an in-state trustee.”).
49. This is called “living underground” because the debtor traffics in cash, debit cards, and cashier’s checks.
50. See Yale Study, supra note 9, at 376; see also 1 ADAM SMITH, THE WEALTH OF NATIONS 56-57 (P.F. Collier & Son 1902) (1776) [hereinafter SMITH, WEALTH OF NATIONS] (“It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.”).
Switzerland, and the City of London. The DAPT is the “dog whistle” that enriches the banking, trust, legal, real estate, and financial communities that are domiciled in the liability district, and it offers state sponsored asset protection sans the expense, risk, and/or burden of an offshore haven.

Asset protection is not cheap. DAPTs sop up capital because the business community (and the state coffers) profit from the influx of capital. The seventeen DAPT states reel in capital that otherwise would remain in non-DAPT states, even in face of the public policy of protecting creditors against fraudulent conveyances, criminal conduct, or contempt.

The fact that seventeen states now offer DAPTs suggests that the invisible hand of a competitive marketplace offers the “best deal” to the “consumer” when the real beneficiary is the business community in the DAPT states sopping up the influx of fleeing capital. While the DAPT legislation suppresses the UVTA exposure, most DAPT states offer complete immunity from civil liability in the creation and administration of trusts on behalf of attorneys and trustees, among others. Virtually free of

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52. See Richard Murphy, World’s Best Tax Havens, FORBES (July 6, 2010, 6:55 PM), https://www.forbes.com/2010/07/06/tax-havens-delaware-bermuda-markets-singapore-belgium.html; see also In re Lawrence, 227 B.R. 907, 914 (Bankr. S.D. Fla. 1998) (“The purpose of the [Mauritian Trust] was clearly to shield the Debtor’s assets from a creditor which the Debtor feared was about to obtain a staggering $20 Million arbitration award against him.”) (alteration in original); United States v. Hall, No. 2:03-MC-2-FTM-29DNF, 2003 WL 23239979, at *2 (M.D. Fla. Dec. 1, 2003) (“Generally, these taxpayers place money in an offshore account, and then obtain a credit card. The taxpayers use this credit card to repatriate the money from their offshore account. The offshore credit card looks like a regular credit card.”); GRAVELLE, supra note 2, at 4 (listing fifty countries in the report).

53. See generally Leslie Wayne, Cook Islands, A Paradise of Untouchable Assets, N.Y. TIMES (Dec. 14, 2013), http://www.nytimes.com/2013/12/15/business/international/paradise-of-untouchable-assets.html?emc=eta1 (noting that Cook Island “[b]usiness generated by the trusts . . . accounts for just above 8 percent of the $300 million Cooks economy . . . Cash and investment accounts, along with real estate and businesses, are typically registered in the trusts. None of the items have to be physically located in the Cooks, and business can be conducted electronically.”).

54. See, e.g., Deborah Grandinetti, Protect Your Assets—Set up a Trust, MED. ECON., Apr. 26, 1999, at 80, 80 (“You’ll pay only about $500 to $2,500 to set up a basic trust. But more complex arrangements such as those in which a foreign trustee takes title to your property to keep creditors at bay—can run tens of thousands. While that may seem like a lot, attorney Barry Engel, an asset-protection specialist in Englewood, CO, says it’s not, in light of what you’re getting.”).

55. See Nienhuser, supra note 4, at 557. This capital might consist of bank deposits, stock and money market accounts, or real estate purchased with fleeing capital. Nienhuser clearly reflects this sentiment. See id.

56. See Shaftel 2016, supra note 4; see also Mejia v. Reed, 74 P.3d 166, 173 (Cal. 2003) (“The California Legislature has a general policy of protecting creditors from fraudulent transfers, including transfers between spouses.”); In re Marriage of Dick, 18 Cal. Rptr. 2d 743, 752 (1993) (“It is well-settled that a trust created for the purpose of defrauding creditors or other persons is illegal and may be disregarded.”); Huxley, 136 S. Ct. at 1587 (noting the expansion of 11 U.S.C. § 523(a)(2) fraud to include fraudulent conveyances renders a debt non-dischargeable).

57. See Murphy, supra note 52 (evidencing a competitive market through the existence of fifty or more sovereign tax havens).

any civil liability, the ultimate consumers (banks, attorneys, and trustees) can offer their services absent recourse from the aggrieved creditors’ conspiracy claims, and as a result, malpractice premiums would shrink.59

DAPTs render nearly immune the assets of the judgment debtor by suppressing accessible UVTA relief.60 In the post-2016 lexicon, DAPTs can now “rig” enforcement sought by the plaintiff in order to reach the defendant’s assets after judgment.61 The vulnerable assets include all real estate holdings, such as farms, ranches, grazing lands, homes, and industrial and investment property.62

Like a public school or water district, DAPTs are “liability districts” that enhance value of it to the real estate by hindering, if not precluding, access to enforcement at the hands of involuntary creditors. If a property is worth $1,000,000 and the judgment is $1,000,000 in a non-DAPT state, the property is valueless to the owner. Assuming the judgment creditor declines to storm the DAPT barrier, the $1,000,000 real estate in a DAPT state is immune from the $1,000,000 involuntary claim, and necessarily increases the net worth of the judgment debtor, dollar for dollar based on immunity from the involuntary creditor. Buying a home in the liability district is a near guaranteed defeat of the tort judgment. For example, a school district enhances the value of the real estate by sending the children to Ivy League school sans the cost of private schools. DAPTs in comparison then create “liability districts” that increase the market value of the real property given the near immunity from involuntary creditors. The liability district is the state. Offshore countries are “foreign” liability districts. Therefore, real estate prices benefit from transactions in a liability district, because the seller (i.e., the trustor and judgment debtor) can resell, or refinance, the property free of enforcement lien or levy.63

Adam Smith’s competitive market drives DAPTs because the trust and legal market situated in the liability districts, profits from the DAPT immunity.64 In his 2000 article entitled Asset Protection Trusts: Trust Law’s Race to The Bottom?, Stewart Sterk found “the start of the race within the United States itself” was beginning, and noted that when the same race occurred in offshore jurisdictions, those jurisdictions found that

59. See, e.g., Cardinale, 166 Cal. Rptr. 3d at 548-49 (mortgage broker liable for aiding and abetting debtor to extract money from refinances, free of the claims of the creditor).
60. See Pagliarini, Domestic Assets, supra note 41.
61. See id.
62. See id.
63. The property held in a trust would be immune to liens and levies if the judgment debtor were the trustor, unless the judgment creditor could, or would, take legal action. Toppling a DAPT is not impossible, but it is an uphill battle and expensive. The creditor self-finances the UVTA action and cannot recover fees, which is an additional burden.
64. See generally SMITH, WEALTH OF NATIONS, supra note 50.
for individual jurisdictions to “compete for trust business by offering attractive packages of trust law provisions, many of them will have incentives to adopt inefficient, externality-generating trust law rules.” 65

Sterk also states, “This race to capture trust business has been in progress offshore for at least a decade.” 66 Sterk adds that the 1984 Cook Islands APT laws are “a sure sign that the purpose of the statute was to attract foreign capital.” 67 In the 2005 Yale Study, Robert H. Sitkoff and Max M. Schanzenbach wrote:

As a theoretical matter, if domestic APTs become more popular, there is reason to suppose that a race to validate APTs will ensue. As we have seen in the case of the RAP, local banks and lawyers are adept at obtaining legislation to make them more competitive in the national market for trust business.68

In Fear Not the Asset Protection Trust, Adam J. Hirsch notes that these trusts have been labeled “iniquitous[.], in a bid by politicians to increase their states’ market share of trust business . . . .”69 Hirsch claims, “If states have indeed embarked on a ‘race to the bottom,’ there is a floor beneath which lawmakers are unwilling to descend. No domestic asset protection trust jurisdiction has matched the general immunity from fraudulent conveyance law that some foreign trust havens offer settlors, for example.”70 This statement is incorrect, however; liability districts offer immunity that clone offshore havens (such as those described by attorney Barry Engel) by suppressing any viable relief under the UVTA.71

In Domestic Asset Protection Trusts: What’s the Big Deal? Darsi Newman Sirknen writes, “Corporate trustees, estate planning lawyers, and settlors presumably all benefit financially from the use of APTs.”72 Sirknen admits that trust funds are not chump change, and acknowledges this when submitting that “The rise of domestic APTs should allow substantial amounts of assets to be invested in the United States rather than being transferred to the foreign trustee of an offshore trust.”73 Implicit in this choice is the presence of the angry litigant who is about to pounce, which

65. See Sterk, supra note 12, at 1114.
66. Id.
67. Id. at 1048.
68. Yale Study, supra note 9, at 415.
70. Id. at 2710.
71. See id.; see also generally Grandinetti, supra note 54.
73. Sirknen, supra note 72, at 150.
mobilizes the settlor to decide, very quickly, whether to wire the funds offshore or down the street.\footnote{74}{See id.}

In \textit{Innovation or a Race to the Bottom? Trust “Modernization” in New Hampshire}, Christopher Paul writes, \textquote{Although DAPTs may also have tax and other advantages, DAPT statutes are designed to attract trust assets primarily for creditor protection—assets that would otherwise flow overseas.}\footnote{75}{Christopher Paul, \textit{Innovation or a Race to the Bottom? Trust “Modernization” in New Hampshire}, 7 PIERCE L. REV. 353, 362 (2009) (noting that New Hampshire is a DAPT state). As of the date of Paul’s article, nine states were liability districts. See generally id.} In her 2015 article \textit{Developing Trust in the Self-Settled Spendthrift Trust}, Ms. Nienhuser explains that \textquote{self-settled spendthrift trust statutes benefit the United States by attracting trust business to local banks and trust companies. These statutes allow sizable domestic investment and make offshore trusts inessential.}\footnote{76}{Nienhuser, \textit{supra} note 4, at 564-65 (noting that Wyoming is a DAPT state and a leader in trust law).} Offshore trusts are \textit{per se} fraudulent, and implicit in the sentence is that onshore trusts offer the same service.\footnote{77}{See, e.g., \textit{In re Lawrence}, 227 B.R. at 914 (“The purpose of the trust was clearly to shield the Debtor’s assets from a creditor which the Debtor feared was about to obtain a staggering $20 Million arbitration award against him.”). Cook Islands virtually bars any UVTA access to a domestic trust by imposing a proof of insolvency for all UVTA claims, a one-year statute of limitation, a refusal to recognize offshore judgments if they are inconsistent with local law, and the burden of proof must be \textquote{beyond a reasonable doubt.”} See Sterk, \textit{supra} note 12, at 1048-49. Other offshore jurisdictions track the Cook Island statutes. See id. at 1050.} Nienhuser claims, \textquote{It is better to keep trust business domestic by endorsing a restricted self-settled spendthrift trust rather than invalidating these trusts and pushing settlors into foreign jurisdictions to protect their assets.}\footnote{78}{Nienhuser, \textit{supra} note 4, at 564-65.} While the beneficiary of \textquote{better} is not directly identified, the \textquote{better} is the liability district, i.e., the State of Wyoming and its constituent trust bar and trust institutions who offers DAPTs that rival offshore protection through the guise of UVTA suppression.\footnote{79}{See id. at 564-65.}

These articles reveal a growing market that includes nine more states that have become liability districts since 2006.\footnote{80}{See Hirsch, \textit{supra} note 69, at 2685, 2709-10, 2710 n.111 (noting that Wilmington Trust Co. minimum fees range from $3,000 to $10,000 annually and that represents a steep burden for managing a stock or bank account).} States offer DAPTs that meet the growing demand for trust business and incoming flow of capital sought by the business and trust communities.\footnote{81}{Florida is not a DAPT state, but a liability district given the state constitutional immunity from enforcement against a home. See \textit{In re Davis}, 403 B.R. 914, 918 (Bankr. M.D. Fla. 2009) (noting that a home is immune from enforcement even if purchased with fraudulently conveyed funds and adjudicated by a court).} Suppression of liability, by statute no less, is the marketing ploy that the liability districts peddle for the...
benefit of their “trust business.”82 Given the influx of these nine states in the last ten years, the trust business must be booming, even in the face of the greatest recession since the Great Depression of the 1930’s.83

While DAPT states are becoming more prominent, competitors to them are present both domestically and offshore.84 Who are the competitors to the DAPT states? The fact that seventeen states are offering themselves as liability districts85 reveals a robust, expanding, and competitive “trust” market. Offshore havens are the other competitors whose sovereign laws preclude enforcement against flight capital, prohibit its own financial institutions from responding to subpoenas, and foster a legal and financial community to facilitate asset protection.86 While the sovereign “liability districts” serve the market for individuals who shelter fleeing capital, these liability districts feed the fleeing capital to their own business communities.87

Like domestic liability districts, offshore liability districts serve their own self-interests; no doubt, the absolute immunity from repatriation comes with a hefty premium.88 The fact that there are seventeen states competing with the offshore markets reveals Adam Smith’s competitive market of the “[j]urisdictions seeking to become trust havens, on the other hand, [who] appear . . . to draw business to their local financial institutions and lawyers, even without direct benefit to the public fisc.”89

Havoco of Am. Ltd. v. Hill is another dog whistle for Florida and the liability districts that attract fleeing capital.90 Havoco held that the creditor could not circumvent the Florida homestead protections even though the debtor used non-exempt funds to acquire an exempt homestead with the

82. “Local banks and lawyers, who stand to benefit from an influx of trust assets, are the principal supporters of APTs.” Yale Study, supra note 9, at 383. “Thus, as with the abrogation of the Rule Against Perpetuities, validation of APTs has the potential to attract trust funds.” Id. at 385. 83. See Hirsch, supra note 69, at 2685. 84. See United States v. Cohen, No. 08-3282, 2012 WL 505918, at *2 (C.D. Ill. Feb. 15, 2012); WILLIAM S. REED, BULLETPROOF ASSET PROTECTION 153-54 (2004). 85. Shaftel 2016, supra note 4, at 1. 86. See Cohen, 2012 WL 505918, at *2. As for Liechtenstein, Reed states, “Liechtenstein still has some of the best bank secrecy laws in the world. . . . [and] [i]n spite of this waiver, Liechtenstein is still one of the best offshore havens in the world.” REED, supra note 84, at 153-54 (alteration in original). 87. See generally REED, supra note 84. Liability districts reap additional trustee fees, attorneys’ fees, and transactional fees, if not more, plus capture-fleeing capital. 88. See generally id. 89. Sterk, supra note 12, at 1060 n.126 (“Organized interest groups, including the bar and trust companies, seek legislation that will enable them to generate more business, even at the expense of other local residents (particularly creditors).”). 90. See generally Havoco of Am., Ltd. v. Hill, 790 So. 2d 1018 (Fla. 2001); Havoco of Am., Ltd. v. Hill, 255 F.3d 1321 (11th Cir. 2001). As of 2000, Alaska did not have a UFVA statute on its books. Sterk, supra note 12, at 1052.
intent to hinder creditors. Havoco offers Florida citizens a state constitutional right to invoke a homestead protection, even if they are purchasing the property with UVTA accessible funds. Applying Havoco to the liability districts under the DAPT rubric, the liability district becomes a “sanctuary district.” A liability district immunizes the assets domiciled in the district claims by suit or enforcement; a “sanctuary district,” on the other hand, immunizes the fleeing capital itself, even if it originates from a non-DAPT jurisdiction and is fueled by the debtor’s UVTA intent to hinder, delay, and defraud. Liability districts virtually replicate Florida’s near sovereign immunity by suppressing the UVTA exposure; they essentially hang out a sign that says “Creditors go Home.” Better yet, sanctuary districts effectively hang out a sign that says “Don’t Bother.”

Havoco-supercharged liability and sanctuary districts are the invisible hand of the marketplace to attract capital fleeing from the non-DAPT states, subject to UVTA enforcement at the hands of involuntary creditors and their professionals, who are “sue proof.” Liability districts immunize property domiciled in the district from the claims of primarily involuntary tort creditors. Liability districts burden the creditor with extraordinary expense and effort in attempting to enforce a judgment against the DAPT assets. Absent the well-heeled, motivated, and angry person, many judgment creditors would push back from

91. Havoco, 255 F.3d at 1321-22.
92. See id. (rendering Florida a liability district to the extent of immunizing the residence from the reach of creditors imbued with UVTA claims).
93. See In re Abrass, 268 B.R. 665, 677 (Bankr. M.D. Fla. 2001) (“In Havoco, the Florida Supreme Court determined that ‘the transfer of nonexempt assets into an exempt homestead with the intent to hinder, delay, or defraud creditors is not one of the three exceptions to the homestead exemption provided in article X, section 4’ of the Florida Constitution.”).
94. See, e.g., CAL. CIV. CODE § 3439.04(a)(1) (West 2016) (emphasis added) (“With actual intent to hinder, delay, or defraud any creditor of the debtor.”). Aside from the debtor, Havoco insulates banks, trustees, repositories, and third parties in possession of fleeing capital. See generally Havoco, 790 So. 2d 1018.
95. See WILLIAM SHAKESPEARE, THE LIFE OF KING HENRY V act 3, sc. 1 (“Once more unto the breach, dear friends, once more; Or close the wall up with our English dead!”).
96. See In re Abrass, 268 B.R. at 677. All offshore havens are sanctuary districts because they immunize any fleeing capital and immunize all attorneys, trustees, and financial institutions in their domiciles. See REED, supra note 84, at 153-54.
97. See generally Havoco, 790 So. 2d 1018. The short summary of the invisible hand of the marketplace is that sellers offer products and services that meet and maximize the buyer’s needs, fantasies, requirements, or whims, whether they may be rational or irrational. See generally SMITH, WEALTH OF NATIONS, supra note 50.
99. See, e.g., JORDAN, supra note 98, at 2-4.
enforcement.\textsuperscript{100} Given the shortened statute of limitations, increased evidentiary burdens, and limitations on proof (among other defenses), the liability districts suppress a viable UVTA claim to recapture the property warehoused in the DAPT.\textsuperscript{101} This UVTA suppression reveals the “LoPucki” public policy that embraces liability districts and eschews the public policy in Mejia \textit{v. Reed},\textsuperscript{102} which protects creditors from fraudulent conveyances.\textsuperscript{103} Liability districts empty out the Learned Hand judgment, “[c]ourts must in the end say what is required; there are precautions so imperative that even their universal disregard will not excuse their omission.”\textsuperscript{104}

Sooner rather than later, by bestowing profits upon trust bars and institutions, other states will enter the liability district market. Rest assured, however, because those states will hit bottom as a result of lunging for the competitive edge, and—to remain competitive—Adam Smith warns, so will everyone else.\textsuperscript{105}

\textsuperscript{100} Self-funding is required. For example, in South Dakota, the loser pays fees that impose additional risk borne by the creditor in a UVTA action. S.D. CODIFIED LAWS § 55-15-13 (2016).

\textsuperscript{101} A statute of repose extinguishes the claim, the “clear and convincing” standard shrinks the doors of viable UVTA claims where only circumstantial evidence is available, and showing that the debtor intended to “hinder, delay, and defraud” the specific creditor is even more rigorous. See, e.g., 11 U.S.C.A. § 548(e); S.D. CODIFIED LAWS § 55-15-13.

\textsuperscript{102} 74 P.3d at 166.

\textsuperscript{103} See, e.g., Mejia, 74 P.3d at 169, 172-73; In re Marriage of Dick, 18 Cal. Rptr. 2d at 752.

\textsuperscript{104} The T. J. Hooper, 60 F.2d 737, 740 (2d Cir. 1932).

\textsuperscript{105} See generally SMITH, WEALTH OF NATIONS, supra note 50.