2025 Steven W. Rhodes Consumer Bankruptcy Conference

CASE LAW UPDATE

Presenters:

Hon. James W. Boyd
U.S. Bankruptcy Court
Western District of Michigan

Thomas D. DeCarlo
John A. Steinberger & Associates

Laura J. Genovich
Foster Swift
Chapter 7 & Chapter 12 Trustee, Western District of Michigan

The presenters gratefully acknowledge the work of the Honorable John P. Gustafson, Thomas D. DeCarlo, and Michelle H. Bass in preparing these materials, which are used with their generous consent. Special thanks to Alexis Behnke, Summer Associate at Foster Swift, for her assistance in assembling and supplementing the materials for this conference.

TABLE OF CONTENTS

1. In re Lauber

2024 WL 1775257, 2024 Bankr. LEXIS 998 (Bankr. W.D. Mich. 2024)

The bankruptcy court has the authority to enforce Payroll Order through contempt power. The Employer failed to comply with the Payroll Order when the Employer withheld funds from Debtor's pay but did not remit payments to Chapter 13 Trustee. The Employer had knowledge of the Order as Employer partially complied by withholding payments from Debtor's pay. Employer had notice of the obligation to withhold and remit, and continued to withhold the funds even after the entry of an Order to Show Cause. Contempt powers are limited to remedies designed to compel or coerce compliance and compensate a person who suffers injury from non-compliance. The bankruptcy court entered an Order requiring the Employer to turn over the funds that were withheld, and entered judgment against the Employer for the amount of withheld funds, which Debtor was permitted to enforce immediately after entry of the Order. The court also found that Employer's actions constituted a willful violation of automatic stay for which award of attorney's fees was warranted. Employer's actions in withholding funds triggered the requirement of Debtor to seek counsel who took repeated and costly steps in effort to convince the Employer to remit payments. This is the easiest case for enforcement – monies are withheld, but not turned over. More difficult, is situations where employers just ignore the payroll deduction order. The First level problem is that almost all such orders are entered without notice or the opportunity for a hearing.

2. In re M.V.J. Auto World, Inc.

661 B.R. 186 (Bankr. S.D. Fla. 2024)

The proposed Subchapter V Chapter 11 plan could not be consensually confirmed, an impaired class of creditors did not accept the plan, but the Plan could be confirmed as a nonconsensual plan because the only other impaired class did vote to accept the plan. *See also*, ***In re Thomas Orthodontics***, 2024 WL 4297032 at *7, 2024 Bankr. LEXIS 2334 at *18 (Bankr. E.D. Wisc. Sept. 25, 2024)("a clear majority of courts have held that an impaired class cannot accept a chapter 11 plan by silence."); ***In re Florist Atlanta, Inc***., 2024 WL 3714512 at *2 n.5, 2024 Bankr. LEXIS 1842 *3 n.5 (Bankr. N.D. Ga. Aug. 7, 2024); ***In re Creason***, 2023 WL 2190623 (Bankr. W.D. Mich. 2023); ***In re Lupton Consulting LLC***, 633 B.R. 844, 862, n.20 (Bankr. E.D. Wis. 2021)("a failure to cast a ballot is not consent"); ***In re Sushi Zushi of Texas, LLC***, 2025 WL 957792 at **2-5, 2025 Bankr. LEXIS 787 at **7-17 (Bankr. W.D. Tex. March 28, 2025); COLLIER ON BANKRUPTCY ¶¶ 1126.04, 1129.02[8], 1191.02.

3. In re Franco's Paving LLC

654 B.R. 107 (Bankr. S.D. Tex. 2023)(Jones, J)

The Debtor filed a subchapter V chapter 11 case and a proposed plan. The plan was subsequently amended to address certain objections raised by the trustee. The United States Trustee asserted that the Debtor's plan could not be confirmed under 11 U.S.C. §1191(a) due to a

failure of all classes to affirmatively accept the plan under 11 U.S.C. § 1129(a)(8). The court found that a creditor class in which no votes are cast will not be considered for purposes of 11 U.S.C. §1129(a)(8).

4. In re Hot'z Power Wash, Inc.

655 B.R. 107 (Bankr. S.D. Tex. 2023) (Rodriguez, J)

Hot'z Power Wash, Inc proposed a subchapter V plan which contained three impair classes. Two impaired classes voted to accept the plan, and one class did not vote. The United States Trustee raised two objections under 11 U.S.C. § 1129(a). The court held that the use of a notice on the face of the plan to deem non-voting creditors as having accepted the plan violates Fed.R.Bankr.P.3018(c), and that the non-voting impaired creditor classes would not be counted for purposes of whether 11 U.S.C. § 1129(a)(8) was satisfied.

5. In re Klemkowski

664 B.R. 681 (Bankr. D. Md. 2024)

Mortgage loan servicer violated the automatic stay under §362(a)(3) because prior to bankruptcy, the debtor could use the online portal to make her mortgage payments, but after the bankruptcy petition, because of the servicer's action, the debtor could no longer use that service. The debtor's interests in the parties' online access agreement and her contractual right to use the online portal were property interests under Maryland and New Jersey law and became part of the property of the estate when she filed her bankruptcy petition. The servicer's restriction of debtor's access to the online portal prevented debtor from being able to use the portal and removed the value of the online access agreement itself from the estate. Because the action taken by the servicer violated the automatic stay, it was void *ab initio*. While there was no evidence introduced that would provide a basis for an award of monetary damages for servicer's stay violation under §362(k), and the appropriate remedy for the stay violation was not clear, the parties would be allowed an opportunity to further address an appropriate remedy under the facts of this case.

6. Saldana v. Bronitsky (In re Saldana)

122 F.4th 33 (9th Cir. 2024).

The Petition for Writ of Certiorari to the U.S. Supreme Court was filed in February 24, 2025. The petition for certiorari was denied on June 23, 2025.

The Ninth Circuit Court of Appeals issued a ruling (a 2-1 decision), holding that Chapter 13 debtors may exclude their voluntary contributions to employer-managed retirement plans from their disposable income calculation. This decision rejected some earlier Ninth Circuit decisions, including *In re Parks*, 475 B.R. 703 (9th Cir. BAP 2012), which had held that 401(k) contributions were not deductible from disposable income. Saldana rejected the Sixth Circuit's analysis in *Seafort* and *Davis*. The dissent relies, in part, on the analysis in *Davis*. As has been pointed out (in Cathy Moran's article on The Academy website) *Saldana* – while debtor friendly – only benefits debtors whose employers offer a qualified retirement plan. It leaves out the self-employed, gig workers, and employees without a retirement plan option through their work.

7. In re Perkins

2023 WL 2816687, 2023 Bankr. LEXIS 946 (Bankr. S.D. Tx. 2023)

Debtor is permitted to deduct any voluntary retirement contributions up the statutory limit per year without limitation, even if Debtor was not contributing at the time of filing. Debtor can commence or increase the contribution amount post-petition and deduct the contribution from disposable income. Debtor's decision to continue, commence or increase the contribution amount up to the statutory maximum does not constitute a lack of good faith as Debtor is merely doing what the Code permits. "It is undisputed that unsecured creditors would receive a higher distribution if the Debtors did not take advantage of the Code's allowance of post-petition 401(k) contributions. However, it is difficult to find unreasonableness, even though the Debtors are using Code provisions for their own benefit at their unsecured creditors' expense, when the mechanisms used to do so are expressly allowed by the Code.

8. In re Morgan

2024 WL. 4760948, 2024 Bankr. Lexis 2741 (Bankr. N.D. Ohio Nov 12, 2024)

Relying on binding Sixth Circuit precedent, confirmation of debtors' Chapter 13 plan was denied because the debtors failed to commit all their projected disposable income to the plan. Debtor(s) had certain 401(k) loan(s) that would be paid off during the life of the Chapter 13 plan, and debtors had to increase the total amount to be paid into the Chapter 13 plan based on the 401(k) loans being paid off. The initial Line 45 amount on the Means Test did not determine the total amount required to be paid to the trustee when that initial figure was based on 401(k) loan deductions that would end during the pendency of the Plan.

9. In re Delaney

110 F.4th 565 (2nd Cir. 2024)

Pro se debtor moved to dismiss the Chapter 7 case. The bankruptcy court denied the Motion, finding dismissal was not in the best interest of all parties. On appeal, the Circuit Court held that denial of dismissal was not a final appealable order.

10. United States v. Miller,

___ U.S. __, 145 S. Ct. 839, 221 L. Ed. 2d 373 (2025).

In *United States v. Miller*, the U.S. Supreme Court addressed the scope of sovereign immunity waivers under the Bankruptcy Code.

Facts: All Resort Group, a Utah-based company, used approximately $145,000 of its funds to pay off its shareholders' personal federal tax liabilities. After the company filed for bankruptcy, trustee Miller sought to recover those payments under § 544(b), relying on Utah's Uniform Fraudulent Transfer Act. Miller argued that the transfers were avoidable because an unsecured

creditor could have challenged them under state law. The lower courts agreed, ruling that §106(a) waived sovereign immunity for such claims—even when based on state law.
The Supreme Court reversed the lower courts' decisions. Justice Ketanji Brown Jackson, writing for the majority, emphasized that § 544(b) allows trustees to assert only the rights of an actual creditor under applicable law. If no such creditor could sue the government outside of bankruptcy due to sovereign immunity, neither can the trustee. The Court stressed that sovereign immunity waivers must be "unequivocally expressed" in the statutory text—and found no such clarity in state-law-based claims embedded in § 544(b).
This decision narrows the tools available for trustees when attempting to recover assets transferred to the federal government. Trustees must consider creditor rights under the applicable non-bankruptcy law before pursuing claims against the government, ensuring that an actual creditor could have brought the claim outside of bankruptcy without being barred by sovereign immunity.
Ruling: Section 106(a) waives the federal government's sovereign immunity for specific provisions, including § 544(b). However, this waiver does not extend to state-law-based claims incorporated via § 544(b) unless an actual unsecured creditor could have pursued such claims outside of bankruptcy proceedings. Sovereign immunity waivers must be explicit and cannot be implied through incorporation of state law into federal bankruptcy provisions.

11. In re Packet Constr., LLC

2024 WL 1926345, 20 Bankr. LEXIS 1053 (Bankr. W.D. Tex. April 30, 2024).

There was no general requirement for a subchapter V debtor to "true up" its payments to its creditors when its actual income exceeded its projected disposable income, §1191(b), and there were no circumstances presented that could warrant consideration of a departure from the general rule. Thus, no "true up" would be required or imposed. *See also*, *In re Nelkin & Nelkin, P.C.*, 662 B.R. 550, 564-567 (Bankr. S.D. Tex. 2024).

12. Matter of Edgewood Food Mart, Inc.

2024 WL 4712996 Bankr. LEXIS 2712 (Bankr. N.D. Ga. Nov. 7, 2024)

A three year Subchapter V plan filed by a gas station/convenience store was confirmed after an evidentiary hearing. Plan was found to have been proposed in good faith, and was feasible, met the liquidation test, and was "fair and equitable". Section 1191(c)(2) sets a three to five year Plan period – which does not automatically mandate a five year Plan. Both "true up" and five year Plan lengths may be used as bargaining chips to obtain a consensual Plan (assuming all the creditors will vote).

13. Stein v. United States (In re Stein)

665 B.R. 320 (Bankr. W.D. Ky. 2024)

While older tax obligation may be generally subject to discharge, there is an exception where the debtor willfully attempted to evade or defeat payment of those taxes. *See*,

§523(a)(1)(C). To except a tax debt from discharge under §523(a)(1)(C), the government must prove by a preponderance of evidence that the debtor: (1) engaged in evasive conduct, and (2) acted with knowledge or deliberation in that evasion. In *Stein*, the court denied of discharge of taxes under section 523(a)(1)(C). Applying the Sixth Circuit's standards for exception from discharge of taxes under section 523(a)(1)(C), "the government must prove, by a preponderance of the evidence, that the debtor (i) engaged in evasive conduct; and (ii) acted with knowledge or deliberation in that evasion. *Stamper v. United States (In re Gardner)*, 360 F.3d 551, 557-558 (6th Cir. 2004); *United States v. Storey*, 640 F.3d 739, 744–45 (6th Cir. 2011). The standard of proof notwithstanding, because an exception to discharge is a harsh remedy, actions brought to achieve this end should be 'strictly construed in favor of the debtor.' *Storey*, 640 F.3d at 743.

Here, the debtor was a PI attorney had a good income for much of the relevant time period, but not such a good history of paying his taxes. In fact, Debtor had not paid taxes for 14 years while making large discretionary expenditures - like private school tuition for his children. Further, Stein had switched to using only cash, and had titled assets in others' names after his pizza businesses failure. Stein also misled the IRS about his ability to pay, and concealed assets from the IRS, causing delays in the IRS's assessment and collection efforts. All of his efforts to avoid IRS collection efforts led to his tax debts being held nondischargeable under 11 U.S.C. §523(a)(1)(C)'s discharge exception.

14. In re Lewis

2024 WL 4763004, 2024 Bankr. LEXIS 2747 (Bankr. D.D.C. Nov. 12, 2024)

The question of who has standing to bring actions in Chapter 13 cases – the debtor(s) or the trustee – remains unclear. In *Lewis*, the bankruptcy court held that a chapter 13 debtor had standing to file an action under §549 for avoidance of an unauthorized post-petition transfer of property of the estate because the listing of the trustee's exclusive duties under §1302 and the listing of the debtor's exclusive duties under §1303 did not provide clear guidance as to which of the two had authority to file the action. The court refused to imply a complete absence of authority for either potential party, which would leave no authorized party to pursue avoidance actions in a chapter 13 case, and no clear recourse to recover property transferred or used post-petition without court approval. The court held that because neither the chapter 13 trustee nor the chapter 13 debtor had exclusive authority to file avoidance actions, each of them had concurrent authority to file an avoidance action seeking to recover and preserve property of the estate.

15. In re Irigoyen

659 B.R. 1 (9th Cir. BAP 2024)

The issue in this appeal was whether the debt in issue was within the scope of §523(a)(8). The Panel held: "a more prudent interpretation is that § 523(a)(8) is 'self-executing' in the sense that neither party is required to file a lawsuit to determine the dischargeability of the debt. However, the lack of a determination does not change the nature of the debt. The debt is excepted from the general discharge order only if it actually qualifies as the type of educational loan covered by § 523(a)(8). Otherwise, the debt is discharged with every other dischargeable debt. This interpretation harmonizes §§523, 524, and 727, such that only the specific debts

enumerated by Congress are excepted from the general discharge." *Irigoyen*, 6459 at 12. The bankruptcy court had held that the debt was not discharged until an order was entered discharging it. Because the bankruptcy court was held to be wrong on that, the case was remanded for a determination was to whether or not there was a "fair ground of doubt" regarding the discharge of the debt under *Taggert*.

16. In re Keels

661 B.R. 929 (Bankr. D. Md. 2024)

Debtor inherited property with a home equity lien (a second mortgage) attached. In her Chapter 13 case, the bankruptcy court held that she could avoid the home equity lien even though the lien was in existence prior to her ownership of the property. The amount of the Creditor's claim was determined under Section 1322 and 1325 of the Code. The language of those sections is focused on the amount of the Creditor's claim, not on the Debtor's interest or ability to claim an exemption. Thus, Debtor could strip off the Creditor's lien, provided that Creditor's claim was wholly unsecured.

17. Cooper v. Social Security Administration

131 F.4th 995 (9th Cir. 2025)

Following his no-asset discharge, Chapter 7 debtor reopened his bankruptcy and moved to hold the Social Security Administration (SSA), which, through its own error, had paid him some $73,000 in retroactive Social Security Disability Insurance (SSDI) benefits to which he was not entitled, in contempt for violating the discharge injunction by recouping the overpaid benefits through reduction of his monthly benefits two years after his discharge. The bankruptcy court and the BAP ruled in favor of SSA, determining that equitable recoupment allowed SSA to recover the discharged overpayment.

The Ninth Circuit Court of Appeals held that: 1) the logical relationship test used to determine whether claims in bankruptcy arise from the same transaction or occurrence, for recoupment purposes, demands consideration of both equitability and the purpose of the Bankruptcy Code, in each individual case; and 2) as a matter of first impression in the Circuit, the SSA could not recoup the SSDI benefits it overpaid, through its own error, from debtor, who had already received a no-asset discharge and had engaged in no malfeasance himself. Bottom line – recoupment is an equitable doctrine, and it would not be equitable to apply it here, where the debtor did nothing wrong. (So much for bankruptcy courts moving away from being courts of equity in light of *Law v. Siegel*, 571 U.S. 415 (2014) . . . .).

The decision goes deep into the history of recoupment (who knew it was the "ancestor" of the compulsory counterclaim?) and setoff in bankruptcy. The decision also followed earlier Ninth Circuit precedent that an unlisted debt is discharged in a no-asset Chapter 7 case (the same as Sixth Circuit precedent – *Rosinski* and *Madaj*). The case does not discuss the possibility that the overpayment might be held non-dischargeable under Section 523(a)(5) as a support obligation owed to a governmental entity.

18. In re Moreno

2023 WL 8519682 (Bankr. D.N.M. Dec. 7, 2023)

In this Means Test case, the court followed *In re Currie*, 537 B.R. 884 (Bankr. C.D. Ill. 2015) and held that the full mortgage deduction was allowed – even though the Debtor was not obligated on the home mortgage and did not pay on it. What the Debtor did pay on was utilities (cell phone and fuel expenses, which the IRS defines as "utilities") and under *Currie* (taking a plain language view of § 707(b)(2)(A)(ii)(I)) the mortgage and utilities deduction are not split from each other – even though the U.S. Trustee asserted that they should be. Rejecting the U.S. Trustee's arguments, the court followed the IRS standards – as the Code requires – which do not split mortgage and utility expenses.

The decision in *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61, 131 S. Ct. 76, 178 L. Ed. 2d 603 (2011), which found the ownership expense inapplicable when there was no debt, was distinguishable because in that case the IRS does split the ownership expense from the operating expense. But because the IRS lumps mortgage and utilities, the Debtor get the full deduction, even though the Debtor only pays "utilities".

[E]ven though dividing the Housing and Utilities Standard into 'Mortgage or Rent Expenses' and 'Insurance and Operating Expenses' with separate deductible limits for each category may further an overarching policy underlying BAPCPA . . . it conflicts with § 707(b)(2)(A)(ii)(I) of the Bankruptcy Code, which requires above-median-income Debtors to use the applicable monthly expense amounts specified under the IRS National and Local Standards. The IRS Local Standard for Housing and Utilities specifies 'a single amount that is inclusive of all housing expenses,' . . . without breaking the amount down into any categories. . . . The division of the IRS Local Standard for Housing and Utilities into two categories with separate deductible limits . . . would impermissibly and materially affect substantive rights. . . . [T]he Court does not have discretion to deny the full deduction based solely on bankruptcy policy."

Another example that shows *Law v. Siegel*'s focus on "plain meaning" - and not "equity" – is not always creditor friendly.

19. In re Talley

652 BR 422 (Bankr. E.D. Mich. 2024)

A discharge in bankruptcy does not extinguish debt, but merely releases a debtor from personal liability. The discharge does not affect liability of any other entity on or property of any other entity for debts and does not eradicate liability of third parties such as contractually responsible insurance companies. Chapter 7 discharge does not extinguish liability and personal injury action but renders collection of debtor's personal liability unenforceable. A creditor does not violate the discharge injunction by proceeding and the lawsuit against a Debtor in order to determine liability for purposes of collection from a 3rd party. The Bankruptcy Code is not intended to provide a method by which an insurer can escape its obligations based on the financial misfortune of an insured.

20. In re Cmelka

661 B.R. 626 (Bankr. N.D. Ill. 2024)

In Debtor's third Chapter 13 case, Creditor was not scheduled and did not receive notice. The confirmed Plan paid out 100%, with Debtor receiving back $163,000 – which would have satisfied Creditor's unscheduled claim in full. Under §523(a)(3)(A), made applicable in Chapter 13 under §1328(a)(2), the unscheduled debt was not discharged.

21. Chicago & Vicinity Laborers' District Counsel Pension Plan et al. v. R&W Clark Construction Inc.

2024 WL 4789403, 2024 U.S. Dist. LEXIS 207230 (N.D. Ill. Nov. 14, 2024)

Another decision illustrating that bankruptcy courts and appellate courts often view statutory interpretation issues very differently. While the initial decisions out of the bankruptcy courts almost universally held that non-dischargeability actions could not be brought against SubChapter V corporate debtors (based on § 523(a) stating it was limited to "an individual debtor"), the appellate courts have disagreed – including this District Court case out of Illinois. It joins the Fourth and Five circuit court of appeals in its holding that Section 1192(2) reference to the "any debt of the kind" listed in §523(a) cannot be read to be limited to the "kind of debtor" so listed. *See also*, *In re Cleary Packaging, LLC*, 36 F.4th 509, 514 (4th Cir. 2022); *Avion Funding v. GFS Indus., LLC (In re GFS Indus., LLC)*, 99 F.4th 223, 227 (5th Cir. 2024); *In re ETG Fire, LLC*, ___ B.R. ___, 2025 WL 915381 at **9-15, 2025 Bankr. LEXIS 671 at **34-47 (Bankr. D. Colo. March 17, 2025).

22. Gold v. Williams (In re Williams)

2025 WL 454925, 2025 U.S. App. LEXIS 2934 (6th Cir. Feb. 7, 2025)

Reversing the District Court's reversal of the Bankruptcy Court, the Sixth Circuit held (in an unpublished opinion) that the probate exception to federal jurisdiction is narrowly limited to three circumstances: (1) if the plaintiff seeks to probate a will, (2) if the plaintiff seeks to annul a will, and (3) if the plaintiff seeks to reach property over which a state court had custody.

Accordingly, the "probate exception does not divest a federal court (including a bankruptcy court) of subject-matter jurisdiction unless a probate court is already exercising *in rem* jurisdiction over the property at the time the plaintiff files their complaint in federal court.

In this case, the property that a party had removed from a decedent's estate prior to death was not part of the *res* that is distributed by the probate court, and thus does not trigger the "probate exception". Therefore, the district court erred in holding that the probate exception applied and that the bankruptcy court lacked subject-matter jurisdiction because no probate court had custody over the property in issue, and the exception does not apply when property is removed from the decedent's estate before death, as the children claimed in this case.

23. PCC Rokita S.A. v. HH Tech Corp. (In re HH Tech Corp.)

659 B.R. 788 (1st Cir. BAP 2024)

The two Petitioning Creditors had the burden of proof as to the existence of less than 12 creditors holding unsecured claims. Which is a substantial risk for a single creditor filing an involuntary petition. But *HH Tech* also held that in attempting to meet that burden of proof by eliminating creditors who received preferential transfers, "the bankruptcy court also correctly placed on Rokita and Morimatsu [Petition Creditors] the burden of establishing the unavailability of §547(c) affirmative defenses to claims of preferential transfers." 659 B.R. at 807.

24. In re Rillema

2024 WL 1261868, 2024 Bankr. LEXIS 723 (Bankr. N.D. Ohio 2024)

An involuntary case may be commenced only by the holders of claims that are not contingent as to liability or the subject of a *bona fide* dispute as to liability or amount. The creditor bears the burden of establishing the requirements under Section 303. A debt is subject to *bona fide* dispute if there is any legitimate factual or legal basis for Debtor not paying the debt – either the existence of a genuine issue of material fact(s) that bears upon Debtor's liability, or meritorious contention as to application of the law to the undisputed facts. The court will not resolve disputed issues of fact or law, but only determine whether such issues exist. Federal Rule of Civil Procedure 12 applies to involuntary petitions under Rule 1011 but the court may convert the Motion to one for Summary Judgment where materials beyond the four corners of the Petition are considered. Although the Debtor submitted hundreds of pages in response to the Petition - amounting to a statement that "there is a lot of litigation pending" - Debtor did not deny that Debtor was indebted to Creditor and that proceedings in the other court(s) were largely procedural. Pending litigation may strongly suggest the existence of *bona fide* dispute, but litigation does not necessarily establish the existence of a *bona fide* dispute, and the court must consider how the litigation relates to the claim, status of litigation, including whether there are affirmative defenses, whether there are counterclaim,(s), whether there is a judgment, and whether there is a pending appeal. The four corners of the Involuntary Petition, taken as true for purposes of Rule 12, contains specific allegations regarding amount of the debt, and the Petition at least infers that Debtor has fewer than 12 creditors. It also contains a statement that the Creditor is eligible to file the Petition, and includes all the elements required to support relief. While the Petition did not contain additional information or attachments to show the nature of the claims and the basis for finding a lack of a *bona fide* dispute, the Creditor used Official Form 105 as required, which assumes legal sufficiency.

25. Alabama Creditors v. Doran

2024 WL 1100315 (11th Cir. 2024)

The Full Faith and Credit statue requires Courts in United States to provide same effect to state judicial *proceedings as provided by law of state where judgment issued*. A final judgment rendered by a court with adjudicatory authority over the subject matter and persons, qualifies for

recognition. The Debtor's litigation in the bankruptcy court regarding the possible exemption of his retirement account was not barred by Full Faith and Credit Act, where the Debtor was not contesting or asking Bankruptcy court to ignore a prior state court judgment that determined that the account was not exempt, but was only asking the bankruptcy court to determine the meaning of the state court judgment. Collateral estoppel did not prevent the bankruptcy court from determining the exemption issue. Collateral estoppel bars re-litigation of issues of fact or law litigated and decided in a prior suit and requires: (1) the issue in the present action must be identical to the issue litigated in the prior action; (2) the issue must have been actually litigated in prior action; (3) resolution of the issue must have been a necessary part of the prior judgment; and (4) the same parties must be involved in the two actions. Debtor's claims in Bankruptcy Court were not barred as it was not clear that the determination of the claimed exemption was necessary to the resolution of the State Court matter. The State Court had denied Debtor's claimed exemption on both "procedural and substantive" grounds, but Court could not determine whether State Court denied the exemption based on procedural reasons or for substantive ones. Where a judgment does not distinguish between which of two (or more) independently adequate grounds is relied on, the bankruptcy court cannot determine what issues were in fact adjudicated, and the judgment has no preclusive effect.

26. Bercy v. City of Phoenix

103 F.4th 591 (9th Cir. 2024)

A hostile work environment suit was filed based on conduct that began before the Chapter 7 case was filed, and continued afterward. The Ninth Circuit held that the action accrued prepetition and was property of the Chapter 7 estate under §541(a)(6). The Chapter 7 trustee had reopened the case, and was the only party with authority to pursue the cause of action. The debtor had no standing based on the failure to list the claim.

27. In re Insight Terminal Solutions, LLC

657 BR 78 (6th Cir. BAP 2024)

Bankruptcy court's decision to not admit deposition testimony was not erroneous where the witness had died before direct examination could be completed, and before opposing parties could conduct any cross-examination.

28. In re Tarpley

2024 WL 13133315, 2024 Bankr. LEXIS 742 (Bankr. E.D. Mich. March 27, 2024)

Section 521 requires a reaffirmation agreement to be made before the granting of the discharge. Once the discharge order has been entered, there are no grounds to permit reaffirmation. The reaffirmation agreement is "made" when the agreement is signed by both parties. The Debtor timely signed the reaffirmation agreement, but due to system processing error the Creditor did not sign the reaffirmation agreement until after the discharge was granted. Accordingly, the bankruptcy court lacked authority to allow reaffirmation agreement made after discharge to be effective.

29. Department of Agriculture and Rural Development Rural Housing Service v. Kirtz

601 US 42. 144 S.Ct 457, 217 L.Ed.2d 361 (2024)

The United States, as a sovereign, is generally immune from suit seeking money damages. Congress may choose to waive immunity through a clear statement that unmistakably allows suit against the United States. Congress need not state its intent to waive sovereign immunity in any particular way and need not use magic words but congressional waiver must be unmistakably clear in language of statute with any ambiguity construed in favor of sovereign immunity. Where a statute creates a cause of action and explicitly authorizes suit against the government, but does not discuss sovereign immunity in so many words, dismissing the claim against the government would effectively negate a claim that Congress clearly authorized by effecting a clear waiver of sovereign immunity. The Fair Credit Reporting Act provides for a clear waiver of sovereign immunity where the Act authorizes suits against any person who willfully or negligently violates Act. The term "person" is defined broadly to include "any" governmental agency. Accordingly, dismissing the suit based on sovereign immunity would effectively negate suits that Congress clearly authorized in the statute.

30. In re Teter

90 F.4th 493 (6th Cir. 2024)

Debtor could not recover attorney fees against UST through Equal Access to Justice Act (EAJA) after United States Trustee withdrew motion to dismiss case.

31. TICO Constr. Co. v. Van Meter (In re Powell)

119 F.4th 597 (9th Cir. 2024)

Another Court of Appeals decision upholding a Debtor's "absolute" right to dismiss a case filed as a Chapter 13 (and unconverted). Creditor sought conversion. The Ninth Circuit held that even assuming the term "debtor" refers only to someone who meets Chapter-specific eligibility requirements, a court does not need to determine that a debtor meets those requirements before allowing voluntary dismissal. And, under the circumstances, upon debtor's motion to dismiss, the bankruptcy court was required to dismiss Debtor's case without further inquiry. There was a Dissent, that would have ruled that Chapter-based eligibility requirements have jurisdictional significance, and the right to dismiss under Section1307(b) would only apply if the debtor were properly a debtor in Chapter 13. The majority holding is in line with the Sixth Circuit's position set forth in *In re Smith*, 999 F.3d 452 (6th Cir. 2021). Unless a circuit court latches on to the rationale of the dissent (or an older circuit court holding gets upheld) it appears unlikely this issue will be the subject of a Supreme Court decision.

32. In re Ramirez

2024 WL 5203398, 2024 Bankr. LEXIS 3065 (Bankr. D. Ariz. Dec. 23, 2024).

A Chapter 13 following an Chapter 7 case concluded 15 years earlier. Mortgage

creditor basically took no action. Disallowance of mortgage creditor's claim and discharge of the personal obligation in a prior Chapter 7 case did not: 1) accelerate the debt for purposes of the statute of limitations; nor 2) eliminate the creditor's lien on the property. The interesting part of this is the holding that while the prior Chapter 7 did not void the mortgage lien *in rem* (of course) – and creditor could enforce the debt against the property - it did say that the in personam liability was eliminated (of course) – but also held the creditor may not enforce its lien against the "Estate of the Current Bankruptcy Case." That seems to be contrary to the holding in *Johnson v. Home State Bank*, 501 U.S. 78 (1991). Not sure if it is based on the particular facts – prior claim disallowance – or just a misstatement, or it is debtor's decision whether there will be a claim against the estate for an arrearage?

33. In re Bishop

665 B.R. 289 (Bankr. D.S.C. 2025)

A post-*City of Chicago v. Fulton* case that suggests that creditors are using possession of a vehicle as leverage. The court suggests debtor's counsel should have moved for turnover. The court was on board with requiring proof of insurance – but how much more was regarded as legitimate as "adequate protection" is questionable.

34. In re Denton

2024 WL 5251904, 2024 Bankr. LEXIS 3090 (Bankr. E.D. Okla. Dec. 30, 2024).

Debtor's claim against the IRS for violation of the automatic stay was not barred by sovereign immunity. But, certain damages would require going through IRS administrative procedures – specifically attorney fees and costs. It is unclear – to me – from the opinion whether actual damages could be awarded by the bankruptcy court.

35. In re Mitchell

2024 WL 4941045, 2024 Bankr. LEXIS 2884 (Bankr. E.D. Tenn. Dec. 2, 2024).

Interprets "good faith purchaser" in a way that makes the automatic stay continue to have some effect. Purchaser at foreclosure sale asserted it was a good faith purchaser without notice, and therefore the automatic stay did not apply to its purchase of the property under 11 U.S.C. §362(b)(24). The court held that it did, because the definition of "purchaser" was limited to purchaser from the debtor in a voluntary sale situation – not a foreclosure.

36. In re Parrott

118 F.4th 1357 (11th Cir. 2024)

The 11 Circuit Court of Appeals reversed a District Court's dismissal of debtors' appeal(s). The issue arose following the granting of extensions of time for Chapter 13 debtors to make interim plan payments. Debtors' counsel moved to withdraw, but before his motion was ruled on, Chapter 13 trustee submitted an affidavit of default on the Plan payments, and

requesting that case be dismissed. After issuing order that the case would be dismissed in 15 days if debtors did not convert the case to another chapter, the bankruptcy judge struck debtors' Notice of Appeal for its failure to include their counsel's signature, and subsequently, on same day dismissal order took effect, granted counsel's motion to withdraw. Debtors, proceeding *pro se*, filed a second notice of appeal of the dismissal order, which was now arguably untimely. After *sua sponte* ordering debtors to show cause as to why appeal should not be dismissed for lack of subject-matter jurisdiction, the District Court determined that there was a lacked jurisdiction to hear the appeal and dismissed case. Debtors appealed to the Circuit.

The 11th Circuit held that although debtors' initial, timely filed notice of appeal had a signature defect, it was promptly cured by their second-filed notice of appeal, thereby conferring jurisdiction on the District Court. Second, the District Court abused its discretion in dismissing debtors' case as a sanction for their noncompliance with court rules and orders. A somewhat standard result in a *pro se* appeal where the appellate court is more sympathetic to the debtor than to strict adherence to procedural rules – finding an abuse of discretion. A point of interest to those doing appeals was the quotation from the Supreme Court decision Becker v. Montgomery, 532 U.S. 757, 767 (2001): "imperfections in noticing an appeal should not be fatal where no genuine doubt exists about who is appealing, from what judgment, to which appellate court."

37. In re Valdellon

659 B.R. 377 (9th Cir. BAP 2024)

Holds that it was error to dismiss complaint under Section 524(i) for failure to properly apply cure payments, and to continue to assert past due amounts, and – ultimately – to accelerate the note. One factual issue was that the claim was being paid according to the Debtor's proof of claim – PHH never filed its own claim, nor sought to amend Debtor's claim. The second issue was that PHH agreed with the 3002.1 Notice of Final Cure – and then (after the case was closed) disputed that Debtors had been current. Debtor did allege a violation of the discharge injunction. The court also rejected the bankruptcy court's holding that compensatory damages for emotional distress were not available as a matter of law.

What is more interesting to practitioners, and Chapter 13 trustees, is the concurrence of Judge Tjoflat, who placed the blame for the situation on three parties: debtors' counsel, the bankruptcy court, and the Chapter 13 trustee. Going through the timeline, each party had a chance to avoid confusion, and none of them took it. Primary blame was place on debtors' counsel because he had a duty (under Florida ethics rules) to continue representation until the Order granting withdrawal was actually granted. "[W]hile the motion was pending, counsel's duties remained unchanged." 118 F.4th at 1365. Counsel's failure to act – to at least inform the court of the debtor's dilemma re: counsel's signature – is what put the debtors' in the Catch 22.

Second, the bankruptcy court should not have imposed new duties on the debtor while the motion to withdraw was pending. Third, the Chapter 13 trustee should have acted, even in the absence of a statutory requirement to do so. The trustee should have alerted the court of the reality of what the debtors were facing – they could not have even converted their case to a Chapter 7 without their counsel's signature prior to their case being dismissed. "By remaining silent, however, the trustee further complicated an already precarious situation." *Id*., at 1366.

The concurrence concludes: "The lesson is clear: when a lawyer moves for leave to withdraw, he must stay vigilant to any developments that might affect his clients while the

motion is pending. The duty of representation does not disappear until the court grants the motion, and any lapse can trigger serious procedural consequences. The court, too, must recognize how the timing of its decisions can impact parties caught in the uncertainty of shifting representation. The trustee shares this duty, ensuring that the administration of the bankruptcy estate is not imperiled due to such transitions. Here, those failures left the Parrotts—*pro se* and unprepared—to navigate the complexities of bankruptcy law alone, leading to predictable and preventable out-comes." *Id*., 1366-1367.

38. In re Landon

657 B.R. 128 (Bankr. N.D. Okla. 2024).

Judgment-creditor's pre-petition state court judgment for $144,000 for defamation was held dischargeable because debtor believed the defamatory statements to be true. A church member (and "sometimes legal counsel") obtained the judgment based on debtor calling the church (that her late husband had belonged to) a cult that had engaged in attempted payoffs of debtor's lawyer, judges, and law enforcement. Non-dischargeability under 11 U.S.C. Section 523(a)(6) requires intent to harm. Debtor, who sincerely believed each and every allegation made about the judgment creditor in the defamatory social media post, neither knew nor was substantially certain that her statements were false, and so she did not act "willfully" under the statute. Further, debtor's injury to judgment creditor was neither desired nor practically certain to occur, and thus was not "malicious". Accordingly, the judgment was dischargeable.

39. In re Malloy

666 B.R. 548 (Bankr. E.D. Va. 2024)

Chapter 13 Plan in which debtor attempted to reject a contract to sell real property, would not be confirmed. The Plan called for rejection of the "executory contract" at the time of confirmation, and the state court had already ordered specific performance – thus the contract had been merged into the final judgment and was no longer executory. Once specific performance is decreed, failure to act is no longer a breach of contract, it is the violation of a court order. Debtor owed about $400,000 on the contract, so the Chapter 13 Plan was underfunded. It appears the court
was holding that the $400,000 would have to be paid in full, or the property sold to the purchaser.

40. Harrington v. Purdue Pharma, LP

603 US ___, 144 S.Ct. 2071, 219 L.Ed.2d 721 (2024)

Bankruptcy Code does not authorize bankruptcy court's to approve non-consensual release of non-debtors. Section 1123(b) contains provisions which "may" be included in reorganization plan. Catchall phrase of Subsection 6 relates to prior 5 subsections that concern Debtor's rights and responsibilities and relationship with creditors and cannot be fairly read to provide bankruptcy courts with the power to discharge the debts of nondebtor without consent of affected non-debtor's claimants. Court retains authority to resolve "derivative" claims as those claims belong to Debtor's estate and are asserted by third party on behalf of the estate. Third party release would substantively extinguish all claims against the released party including claims that belong to the victims. The Code expressly allows third party

injunctions in asbestos cases only, making it unlikely that Congress intended for broad power to include non-consensual releases in Chapter 11 reorganization plans.

41. Truck Insurance Exchange v. Kaiser Gypsum Company, Inc.

602 US 268, 144 S.Ct. 1414, 219 L.Ed.2d 41 (2024)

Section 1109 allows a "party in interest" to raise and be heard on any issue in a Chapter 11 case including ability to file a Chapter 11 plan when the trustee has been appointed, request appointment or removal of the trustee, challenge good faith of persons voting to approve the plan, and object to confirmation. Whether the prospective party has sufficient stake to be a "party in interest" is determined on a case-bycase basis. An insurer with financial responsibility for a bankruptcy claim is a "party in interest" that may raise and be heard on any issue in a Chapter 11 case, including an objection to a proposed plan of reorganization. The Chapter 11 Plan substantially impaired insurer's interests where the Plan would channel all asbestos claims to asbestos insurers leaving the insurer exposed for millions of dollars and potentially fraudulent tort claims.

42. Office of the United States Trustee v. John Q Hammons Fall 2006, LLC

___U.S. ___, 144 S.Ct. 1588, 219 L.Ed.2d 210 (2024)

Appropriate remedy for short-lived and small disparity created by unconstitutional bankruptcy fee statute was prospective only, and did not require refund or retrospective raising of fees.

43. In re Elassal

654 BR 434 (Bankr. E.D. Mi. 2023)

Proceeds from the sale of Debtor's residence after confirmation of a Chapter 13 Plan are not property of the Chapter 13 estate. On confirmation, residence vested in Debtor free of any claims of pre-petition creditors. The proceeds were not "disposable income" as the proceeds represented the sale of capital asset, not recurring stream of payments, and the proceeds were not "known or virtually certain" at the time of confirmation. Disposable income does not include pre-petition property or proceeds of a sale. Under the "estate replenishment" theory, the estate is replenished only with new assets acquired by Debtor post-petition. The proceeds could not be separated from the underlying property and so did not constitute a "new" asset under Section 1306. Judge Randon noted in footnote 3 that the Plan or Order Confirming the Plan could have left the property vested in the estate which would result in proceeds remaining property of the estate.

44. In re Baker

620 B.R. 655 (Bankr. D. Colo. 2020).

Debtor gets the non-exempt surplus upon the sale of a residence during the Chapter 13.

45. In re Marsh

647 B.R. 725 (Bankr. W.D. Mo. 2023).

Proceeds from the post-confirmation sale of debtors' residence, but before the end of the case, were property of the estate under an estate replenishment approach. ***In re Adams***, 654 B.R. 703 (Bankr. M.D.N.C. 2023). Proceeds from the post-confirmation sale of Debtors residence in Chapter 13 warranted modification requiring turnover of the non-exempt proceeds of the sale, because the property did not vest until Plan completion based on a local rule in the district.

46. In re Masingale

644 B.R. 530 (9th Cir. BAP 2022)

Affirming the bankruptcy court, the BAP held that in a case converted from Chapter 11 to Chapter 7, Debtors' claim of a homestead exemption equal to "100% of FMV" included post-Petition appreciation – where there was no timely objection to the exemption in the Chapter 11 – despite the "snapshot rule". It's a straight *Taylor v. Freeland & Kronz* analysis - no timely objection to exemption so blah blah blah.. A bit too slick by the Debtors, but not all that controversial. Until. . . . Boom! from the Ninth Circuit: ***In re Masingale***, 108 F.4 th 1195 (9 th Cir. 2024). There is a lot in this Opinion, on lower courts reading *Taylor* and *Schwab* too broadly, the exemption claim form changing (but not at the time this case was pending, and the effect of essentially disclaiming the benefits of the exemption in the Chapter 11 Plan. Perhaps the bottom line is, Chapter 11 debtors have statutory fiduciary obligations to creditors which was inconsistent with claiming an exemption in excess of the statutory limit. Accordingly, in the Chapter 7 case "Masingale's homestead exemption is thus limited to the amount of the statutory cap. The remaining proceeds of the sale of the Greenacres residence are property of the estate." *Masingale*, 108 F.4th at 1208. Are other courts going to follow the Ninth Circuit's lead and use a different rule for Chapter 11 debtors claims of exemption? And how "controversial" or "cutting edge" or "dishonest" does the claimed exemption have to be to warrant disallowance upon conversion to a Chapter 7 (or even during the Chapter 11, raised late?).

47. Goetz v. Weber (In re Goetz)

95 F.4th 584 (8th Cir. 2024)

Post-petition appreciation in the value of property inures to the benefit of the Chapter 7 estate on conversion under Section 348. Court rejected Debtor's argument that the entire property had been claimed as exempt, noting that the exemption was not "in-kind" but was limited to the statutory amount. The Court also rejected Debtor's "vesting" argument, noting that no provision of Chapter 13, including "vesting", applies once a case is converted. The Court recognized the policy implications of the ruling and noted that allowing the Trustee to sell the house would produce a hardship, but stated that policy arguments cannot overcome the plain language of the statute.

48. In re Castleman

75 F.4th 1052 (9th Cir. 2023)

In a case converted from Chapter 13 to Chapter 7, a postpetition, pre-conversion increase in the equity of an asset belongs to the Chapter 7 estate, not to the Debtor, even if the Debtor has converted the case in good faith.

49. In re Barrera

22 F.4th 1217 (10th Cir. 2022)

The property was sold during the Chapter 13 and Debtor remained in possession of proceeds when Debtor converted their case to a Chapter 7. Tenth Circuit held that proceeds were not property of the estate because the proceeds of sale are separate from the underlying property. When Debtor sold their house, Debtor no longer has possession of "property of the estate" that Debtor had as of the petition date. Instead,, Debtor had a separate, entirely new asset (the proceeds) acquired post-petition which are not brought into a Chapter 7 estate absent bad faith.

50. In re Pugh

2024 WL 1161439 (Bankr. E.D. Mi. 2024)

Attempting to seize on the footnote in *Elassel*, the Trustee objected to confirmation where the Pan proposed to vest property in Debtor. Court rejected the Trustee's argument, noting that the Trustee cannot unilaterally impose a change in the vesting provision – only the Debtor may propose a Plan or modify the Plan before confirmation. Trustee may object but any objection must be based on some provision of the Code including Sections 1322 and 1325. Court concluded that it could override Debtor's vesting election for "good cause" such as bad faith or material undervaluation of the property, neither of which were present here.

51. Trantham v. Tate

112 F.4th 223 (4th Cir. 2024)

Chapter 13 trustee objected to confirmation of a proposed Plan which altered the standard default language as to the vesting of property of the estate found in local model plan approved for use in all cases filed in district. Reversing both the bankruptcy court and the district court, the Court of Appeals held that the debtor suffered an injury in fact being prohibited from having property vest upon confirmation, and thus had constitutional standing to appeal the Bankruptcy Court's ruling. As to the merits, the bankruptcy court's use of a default vesting provision in its local form was permissible, but by making the local form's default vesting provision mandatory, the bankruptcy court abridged debtor's right to propose a plan with her preferred vesting provision and to have her plan confirmed. Finally, in the absence of a substantive objection, the bankruptcy court also erred in rejecting debtor's proposed vesting provision (upon confirmation) simply because she did not explain why she diverged from the local form. Notably, the bankruptcy court (the proposer of local rules and forms) and the district court (which approves local rules and forms) both upheld the local form being mandatory. It was only when the case got to the appellate court level that the contradictions between the Code and the required local form gained traction,

52. In re Arias

2024 WL 1710899, 2024 Bankr. LEXIS 938 (Bankr. D. Puerto Rico April 19, 2024)

While this case is a Chapter 13, it is a decision with lessons applicable to cases under other Chapters. Debtor served "Franklin Credit Management" with notice of the Chapter 13 filing at a P.O. Box address. The Plan was served at the same address, and was subsequently confirmed. More than two years later, "Bosco" – which was not included in the matrix or schedules – filed a Motion for Relief from Confirmation Order. The argument was that Bosco was not served, and its servicer – Franklin Credit Management – was "registered with the National Creditor Registration Service Bankruptcy Noticing Center" with a designated preferred address in New Jersey pursuant to 11 U.S.C. §342(f). The Debtor did not use that designated national address for service, as the Code requires. *See*, §342(g); F.R.Bankr.P. 2002(g)(5). Section 342(g)(1) states that: "Notice provided to a creditor by the debtor or the court other than in accordance with this section (excluding this subsection) shall not be effective notice until such notice is brought to the attention of such creditor." Because notice was not effective, confirmation of the Chapter 13 Plan was not effective to bind Bosco, and its debt cannot be discharged. Bankruptcy court websites assert that: "So long as the creditor has provided the National Creditor Registration Service (NCRS) with all of the names and addresses used by them and the debtor has provided the Court the full name and address on their matrix, attorneys with access to CMECF will be able to determine if a creditor has requested a Preferred Address." So, this may impact attorney malpractice liability.

53. In re Thurman-Pryor

2023 WL 7794678 (Bankr. W.D. Mi. 2023)

Inadequate notice of the bankruptcy case may result in a debt being excepted from discharge under section 523(a)(3) if the creditor did not receive notice in time to file an objection to dischargeability, unless the creditor had notice or actual knowledge of the case in time to file an adversary complaint. Adversary proceeding under section 523(a)(3) based on a lack of notice may be filed at any time. Notice to Michigan Department of Health and Human Services insufficient where the address listed was not the correct address for the creditor. Listing the creditor at an incorrect address amounts to "neither listed nor scheduled" for purposes of Section 523. The question is whether scheduling of the debt fulfills the purpose of the noticing requirement - which is to enable creditors to receive timely notice of proceedings and, at a minimum, must comport with established standards of due process amounting to notice that is reasonably calculated to apprise interested parties of the pendency of the case. Minor errors in scheduling addresses will not necessarily render notice insufficient as long as the error does not deprive a creditor of reasonable notice. The burden of providing adequate notice falls on the Debtor. A creditor may file with the Bankruptcy Court and serve on Debtor notice of the address to be used in the case; or may provide notice of an address to be used by all bankruptcy courts or a particular bankruptcy court in all cases. 11 U.S.C. §342(f). When a creditor is a federal or state government unit or taxing authority, the creditor may also file a designation of mailing address with the Clerk of Court. While the Debtor's designation of mailing addresses for State of Michigan did not include the address for MDHHS and only identified the creditor generically as "State of Michigan" (without listing MDHHS) notice was insufficient where debtor knew that

the actual creditor was MDHHS. Debtor compounded this error by using an address shown on a demand letter which tied to the Department of Treasury causing BNC to mail notice to the Department of Treasury, which would not be imputed to MDHHS. Debtor could have avoided the issue by scheduling MDHHS' additional or alternative readily available addresses, including the name and address on the letterhead; or it could have listed MDHHS' Director at an easily ascertainable address which would have constituted appropriate notice. Debtor's choice to list the debt as being owed to the "State of Michigan" and utilizing an incorrect address resulted in the lack of appropriate notice such that MDHHS did not have notice in time to file a nondischargeability complaint allowing MDHH to pursue nondischargeability under §523(a)(3).

54. In re Mine Hill Anesthesia LLC

658 B.R. 214 (Bankr. S.D. Fla. 2024).

Chapter 11 debtor listed and provided notice to the accounts receivable creditor that obtained a judgment lien. It did not provide notice to a second major creditor. The second creditor made its first appearance in the case 143 days after confirmation. While the Plan could not be vacated under §1144, because more than 180 days had passed since confirmation (and confirmation was not obtained by fraud) the Chapter 11 Plan and related orders are not binding on the second creditor, and the creditor may pursue all of its claims and rights unaffected by the Chapter 11 case.

55. Licup v. Jefferson Avenue Temecula, LLC

95 F.4th 1234 (9th Cir. 2024) – Chapter 7

Debtor's failure to list a creditor in an "asset" Chapter 7 case renders the entirety of the debt non-dischargeable. The matrix included an incorrect address for creditor's attorney and the parties did not dispute that the creditor lacked actual notice of the case. In a no asset case, Section 523(a)(3) is irrelevant as creditors need not be notified if filing a claim would be meaningless and worthless. But where the case is an "asset" Chapter 7, due process requires proper notice to creditors. The plain language of §523(a)(3) specifies that the discharge does not affect a debt if a creditor was not notified. The court would not infer a limitation not expressly stated in the statute itself.

56. In re Evans

656 B.R. 776 (Bankr. N.D. Ill. 2024)

Chapter 13 Debtor had no duty to discover and provide notice of the bankruptcy case (and the Chapter 13 Plan) to an unknown post-petition assignee ("LaSalle") from another assignee ("Pine Valley") who got the tax claim from the county. The county received notice at its preferred electronic address, and Pine Valley received notice by mail. LaSalle/Tax claim assignee's Motion to vacate the order confirming the Chapter 13 Plan was denied. In addition to rejecting the arguments based on notice, and the attempt to claim that Pine Valley did not get good Rule 7004 service of the Plan (as opposed to "Notice" of the bankruptcy), the bankruptcy court noted that the tax claim assignee (LaSalle) had not filed a proof of claim. Moreover, a Chapter 13 Plan may - but did not have to - treat unfiled claims, and neither LaSalle nor Pine

Valley were treated in the Plan. Further, the court held that a Chapter 13 Plan is not a contested matter until someone files an objection to the Chapter 13 Plan. Under *Espinosa*, the confirmed Chapter 13 Plan was binding on LaSalle

57. In re Wieder

659 B.R. 21 (Bankr. M.D. Fla. 2024)

Objecting to a claim filed by a credit union does not require service by certified mail. Rule 3007(a)(2)(A)(ii) does not require service of a claim objection on a credit union by certified mail under Rule 7004(h), because a credit union is not a defined insured depository institution. Thus, service of the objection by first class mail was sufficient.

58. In re Raitford

2024 WL 4997342, 2024 Bankr. LEXIS 2904 (Bankr. M.D. Ala. Dec. 5, 2024).

Debtor eligible for Chapter 13 discharge under Sections 1328(h)(2), 522(q)(1)(A) and (q)(1)(B) despite pending criminal charges. Charges were post-Petition – so they did not apply to the filing of the case. And, there was no evidence – either in the indictment(s) or the statutory requirements for the offense – that anyone was actually injured. So, the discharge was granted.

59. In re Gillis

664 B.R. 1 (Bankr. D. Mass. 2024)

Undisclosed personal injury claims discovered by the Chapter 13 trustee belonged to debtors, because they had been abandoned to the debtor upon completion of their Chapter 13 plans. Accordingly, there was no reason to reopen – and convert to Chapter 7 – their long-closed cases. This case does not solve the problem of judicial estoppel applying against the debtors who failed to list these litigation assets – or the possibility of criminal prosecution for a false oath if they intentionally failed to list the assets. It just holds that reopening and converting the cases to Chapter 7 was not an available remedy.

60. In re Sanders

664 B.R. 371 (Bankr. M.D. Ala. 2024)

After the foreclosure sale of Chapter 11 debtor's property, debtor re-entered the property and re-established possession of the property. The purchaser sought *in rem* relief from stay. The debtor asserted he was a sovereign citizen, and that the court therefore had no jurisdiction over him. The court disagreed and granted *in rem* relief.

61. In re Dorvil

665 B.R. 35 (Bankr. N.D. Tex. 2024)

In a Chapter 7 case, judgment creditor reinstated (post-petition and post-discharge) a state court appeal in an attempt to add "fraud language" to the default judgment that was the subject of a bankruptcy court nondischargeability action. The bankruptcy court held that the creditor's actions violated the discharge order. Therefore, the state court's "findings" were void. The default judgment in favor of creditor "on all causes of action pled" did not have collateral estoppel effect as to whether or not the judgment debt was non-dischargeable. And the *Rooker-Feldman* doctrine did not apply to strip the bankruptcy court of jurisdiction over the pending dischargeability action. Accordingly, the bankruptcy court stripped the state court's findings from the summary judgment record.

62. In re Zaepfel

665 B.R. 58 (Bankr. W.D. Ky. 2024)

A pre-petition divorce decree directed debtor-former-husband to repay a now adult son $139,690 that was taken from the son's trust account but not used for his benefit. Both the ex-wife and the adult son filed an action for non-dischargeability in ex-husband's Chapter 7 case. The question was – is this debt non-dischargeable under Section 523(a)(15), as a non-support debt arising in a divorce decree. The court said yes, and both the ex-wife and the adult son (who had sued jointly) had standing to bring the action. And under Section 523(a)(15) an adult child is a "child" for purposes of (a)(15). Accordingly, the debt was non-dischargeable without need to prove – for example – fraud, embezzlement, breach of fiduciary duty, or the like. (Although you'd probably still want to make sure you pled those and did not blow the 523(c) deadline for those claims.)

63. Stewart v. Warren (In re Warren) & In re Okeiyi

2025 WL 720446, 2025 Bankr. LEXIS 508 (Bankr. N.D. Ohio March 4, 2025) and ***In re Okeiyi***, 664 B.R. 225 (Bankr. M.D.N.C. 2024).

Immigrants to the United States are ineligible for admission under they show that they will not become a "public charge". This is typically done through an Affidavit of Support signed by the person or persons supporting the admission of the immigrant. This Affidavit requires that the immigrant receive this income until death, leaving the U.S., working for 40 quarters, becoming a citizen, etc. Divorce does not end the obligation. In *Warren*, the court denied a Motion to Dismiss a non-dischargeability complaint against debtor by a former spouse-immigrant seeking to have the obligation held non-dischargeable under Section 523(a)(5). In *Okeiyi*, the court found the debt to be dischargeable because the Affiant was not one of the "enumerated payees" under Section 523(a)(5) – defendant was a brother-in-law, and that is not one of the relationships listed in (a)(5).

64. In re Gaylen

664 B.R. 711 (Bankr. S.D. Miss. 2024). Pre-petition loans obtained by

Chapter 13 debtor did not transform from Purchase Money Security Interests (PMSIs) into non-PMSIs when the underlying collateral was used to secure other loans (pursuant to

cross-collateralization provision). The court had discretion as to how the loans would be characterized upon a refinancing or consolidation – and held the character of the loans was not transformed. Thus, on the "910" motor vehicle loans, creditor was protected from cramdown by the "hanging paragraph".

65. In re Powell

119 F.4th 597 (9th Cir. 2024)

Debtor moved to dismiss their Chapter 13 case as a matter or right under Section 1307(b). Judgment creditor objected and sought conversion – arguing that debtor was not eligible for Chapter 13 and therefore did not have a right to voluntarily dismiss the case over creditor's motion to convert. The court need not definitively determine that debtor meets the Chapter 13 eligibility requirements before allowing voluntary dismissal of the case. The court was required to dismiss the case without further inquiry on debtor's motion, even assuming he was actually ineligible or acted in bad faith in certifying eligibility in his petition.

66. In re Savinell

661 B.R. 829 (Bankr. S.D. Ohio 2024)

State court default judgment had res judicata effect on existence of debt but not on dischargeability of debt. Applying Sixth Circuit authority on the effect to be given to state court judgments, the pre-bankruptcy default judgment was given res judicata effect for purposes of establishing the existence of a debt, but insufficient evidence had been presented in the record on why the state court awarded the judgment for it to be conclusive as to the elements required for nondischargeability based on fraud and willfull and malicious injury. The judgment was not entitled to collateral estoppel effect on the dischargeability of the debt on summary judgment.

67. In re Mirabal

2024 WL 4941044, 2024 Bankr. LEXIS 2893 (Bankr. D.N.M. Dec. 2, 2024)

The judgment lien was avoidable under Section 522(f) notwithstanding the fact that the judgment was based on fraud. The Chapter 7 debtors claimed the homestead exemption and moved to avoid judgment liens under section 522(f). In response, the creditors asserted that the judgments were based on debts incurred by fraud. Citing *Law v. Siegel*, the bankruptcy court held it lacked the power to exercise equitable discretion in contravention of the statutory language in section 522(f). That section contains no fraud exception to lien avoidance.

68. In re Stewart

2025 WL 715494, 2025 Bankr. LEXIS 521 (Bankr. N.D. Ohio March 5, 2025)

A copy of a Domestic Relations Order prohibiting the listing of the divorce obligations imposed by the Order in any bankruptcy case was submitted to the bankruptcy court by letter sent by Debtor's former spouse. The Order stated that the Domestic Relations Court retained

jurisdiction to enforce the bankruptcy prohibition in its Order. The bankruptcy court held that: 1) the requirements for filing bankruptcy were set by federal law pursuant to Constitutional authority, and could not be altered by a state court judgment; 2) federal law pre-empted state law or state court orders restricting an individual's ability to file bankruptcy; 3) the prohibition against listing the debts in Debtor's Chapter 7 case – as required by federal law - was barred by the Supremacy Clause; and 4) state courts could not pre-determine dischargeability of debts prior to a bankruptcy case being filed.

69. In re Litten

663 B.R. 813 (Bankr. C.D. Ill. 2024)

Retirement funds are protected from creditors . . . except the taxing authorities (here the IRS sought relief). In this case, the court held that "cause" existed in an individual subchapter V Chapter 11 case to lift the automatic stay to allow the Internal Revenue Service to levy on debtor's retirement funds in order to satisfy his tax debts from the $200,000 debtor had in his retirement account. The debtor had over $400,000 in tax debts that were required to paid over a maximum of 5 years – and the proposed Plan would not do that. Accordingly, the IRS was not adequately protected and relief to take the monies from the retirement account was granted. Notably, the Sixth Circuit recently ruled on the tax consequences of taxing authorities seizing retirement accounts as part of a criminal forfeiture action. *See*, *Hubbard v. CIR*, ___ F.4th ___, 2025 WL 852366 (6th Cir. March 19, 2025). Arguably, under *Hubbard*, if the monies go directly to the IRS through a seizure, there should be little in the way of additional tax consequences to the debtor-taxpayor (or maybe more properly non-payor). This holding may have broader application – to cases like *Litten* - because it focuses on who was the "payee" or "distributee" of the funds – in the *Hubbard* case. The decision held that the government, rather than taxpayer, was "payee" or "distributee" of the forfeited IRA and, thus, taxpayer was not liable for additional taxes and penalties (as they would be for a withdrawal) when government simply liquidated funds from IRA and deposited the money in another government fund

70. In re Claybrook

665 B.R. 613 (Bankr. N.D. Tex. 2024)

Creditor filed a nondsichargeability action against the debtor in a Chapter 7 case. However, the debt was owed to the creditor by a separate business that was owned by debtor's wife and operated by debtor. The creditor did not establish that the debtor owed the debt, and therefore, creditor could not maintain a non-dischargeability action against the debtor on a debt owed by the business. The court went on to find that even if there was a debt owed by the debtor, creditor had not established grounds to hold the debt non-dischargeable under Sections 523(a)(2), (4) or (6). The court did make it clear that the lack of a debt owed by debtor "resolves this action in [debtor's] favor before addressing the specific causes of action under Section 523, and relied on that finding in its discussions.

71. In re Dawson

605 B.R. 706 (Bankr. S.D. Ohio 2025)

In foreclosure actions, the event which prevents the debtor from cure defaults is when "the hammer falls" at the auction. *See*, *In re Glenn*, 760 F.2d 1428 (6th Cir.), *cert. denied*, 474 U.S. 849, 106 S.Ct. 144, 88 L.Ed.2d 119 (1985); *Cain v. Wells Fargo Bank (In re Cain)*, 423 F.3d 617 (6th Cir.2005); *In re Woodford*, 354 B.R. 153, 155-157 (Bankr. W.D. Ky. 2006). But what about a motor vehicle – when do a creditor's rights effectively becomes full ownership? In *Dawson*, the bankruptcy court held that the point is not when the creditor receives a repossession title to the vehicle pre-petition. Debtor had possession of the vehicle and a right of redemption – so the post-Petition repossession of the vehicle (despite having an allegedly valid repossession title) violated the automatic stay and debtor was entitled to actual and punitive damages. *Glenn* and *Cain* were not discussed, perhaps because the issue arose under Section 362 and not 1322(c) – and Section 1322(c)(1) deals exclusively with a debtor's residence, not personal property. *Dawson* focuses on whether the debtor had an interest in the property when the creditor engaged in self-help without seeking relief from stay. Because the debtor had an interest, the stay was violated.

72. In re Smith

665 B.R. 807 (Bankr. D. Minn. 2024)

Creditor filed a proof of claim, there was an objection, and the claim was settled at $9,000. Creditor then filed a second (latefiled in a Chapter 7) claim – and the court disallowed it based on res judicata. The court states that: "Allowed proofs of claim are equivalent to a final judgment and thus, a predicate for res judicata." 665 B.R. 817 (citing, Katchen v. Landy 382 U.S. 323 (1966)("a creditor who offers a proof of claim and demands its allowance is bound by what is judicially determined.") An interesting case – but allowed claims constituting "final judgments" opens up a number of issues.

73. In re Kal

665 B.R. 688 (Bankr. E.D.N.Y. 2024)

Debt arising from Chapter 7 debtor's failure to pay employee at least the minimum wage feel within the discharge exception for willful and malicious injury.

74. In re Dulaney

666 B.R. 178 (Bankr. S.D. Ohio 2024)

In broad terms, there are three kinds of liens in bankruptcy – statutory, consensual and judicial. The issue presented in this case it, if you have an agreed consent judgment, is the lien a judicial lien or a consensual lien? Only a judicial lien is avoidable under Section 522(f). The court held that the lien arising out of an Ohio state court's judgment, entered by consent, was a judicial lien and therefore avoidable.

75. In re Church

663 B.R. 796 (Bankr. D.S.C. 2024)

Creditors' filing of affidavits of service in state court litigation was purely a matter of procedure and did not violate the automatic stay. And post-petition service on non-debtor spouse did not violate the automatic stay.

76. In re Marks

666 B.R. 104 (Bankr. S.D.N.Y. 2024)

Chapter 7 debtor's willful and malicious actions in distributing intimate images of creditor in violation of New York laws cause injury to the creditor and the default judgment for $1.2 Million Dollars was nondischargeable. The court held that collateral estoppel applied to the default state court judgment, but also held that Plaintiff established non-dischargeability without reference to collateral estoppel principles.

77. In re Wilson

663 B.R. 806 (N.D. Ill. 2024)

The district court affirmed the bankrupty court's holding that an overpayment of a refund of by creditor-university of student loan monies was a student loan. Accordingly, the debt for the overpayment refund was nondischargeable.

78. In re Chapman

___ B.R. ___, 2025 WL 303774, 2025 Bankr. LEXIS 135 (Bankr. N.D. Ohio 2025)

Debtor claimed two homestead exemptions, one in her residence, and one in the property where a dependent resided. The court held that the language of 2329.66(A)(1)(b), limiting the homestead to "one parcel", prevented the debtor from claiming more than one homestead exemption. The homestead exemption could be used on either parcel – but not both.

79. In re Lee

2024 WL 1202481, 2024 Bankr. LEXIS 704 (Bankr. W.D. Mich. March 20, 2024)

11 USC Section 362(h) requires Debtor to file their Statement of Intention indicating whether debtor must surrender or retain property and, if retained, either redeem or enter into a reaffirmation agreement or assume unexpired lease. If debtor does not take timely action to complete their stated intention, the automatic stay terminates and property is no longer property of the estate (if the trustee takes no action). Where Debtor did not comply with Section 362(h), Debtor's vehicle was automatically removed from the bankruptcy estate ending the Court's *in rem* jurisdiction over the motor vehicle. Competing interest of Debtor and Creditor in vehicle is then governed by applicable non- bankruptcy law and state courts. [The Creditor went on to screw up by violating the discharge injunction, but was not sactioned. *In re Lee*, 2024 WL 3092581, 2024 Bankr. LEXIS 1472 (Bankr. W.D. Mich. June 21, 2024).]

80. In re Cupples

2024 WL 1143957, 2024 Bankr. LEXIS 642 (Bankr. Del. March 15, 2024)

How bad do the fact have to be before you can't file a Chapter 13 to repay the debt? In this case, the Debtors had been found guilty by a jury in federal court of stealing $275,000 from a dead woman's home. The Bankruptcy Judge dismissed the Chapter 13, finding it had been filed in bad faith. The Debtors' motive for filing the Chapter 13 was to avoid paying the judgment, not a desire to reorganize. Notably, the creditor-probate estate filed their complaint to determine dischargeability late – and the complaint was dismissed with prejudice. Section 1307(c) allows cases to be dismissed "for cause." "While Section 1307 does not explicitly list a good-faith requirement, the 3rd Circuit Court of Appeals has consistently held that a bankruptcy filing may be dismissed 'for cause' under § 1307(c) if it is not made in good faith," citing e.g.,. *In In re Myers*, 491 F.3d 120 (3d Cir. 2007). The appeals court added that bankruptcy courts can "reasonably find bad faith" if the purpose of the bankruptcy filing was to defeat litigation without a reorganization purpose. The Cuppleses retained their bankruptcy attorney 20 days after the judgment was entered and filed their bankruptcy petition less than 90 days after the judgment was recorded in Delaware.

81. In re Page

658 B.R. 178 (Bankr. E.D. Wash. 2024)

Debtor's Chapter 13 Plan proposed to re-amortize 910 car loans, which resulted in monthly loan payments being higher than the contractual auto payments, thereby reducing the Debtors' disposable income. The court found the Plan could not be confirmed because it was harmful to unsecured creditors, and under the totality of the circumstances the plan was not proposed in good faith. The court also found cause to dismiss the case. Pigs. Hogs. Fed. Slaughtered.

82. In re Savinelli

661 B.R. 829 (Bankr. S.D. Ohio 2014).

A default judgment established the amount of the debt, but on Summary Judgment, there was insufficient evidence to determine whether the default judgment had collateral estoppel effect as to the debt's dischargeability. Every aspect of the Complaint, other than the amount of the debt, was denied summary judgment. Bankruptcy courts deal with overly optimistic nondischargeability summary judgment filers a lot. Some would say, too much.

83. In re Wagner

115 F.4th 1296, 2024 WL 4142990, 2024 U.S. App. LEXIS 23139 (11th Cir. Sept. 11, 2024)

The bankruptcy court determined, after a hearing, that debtor was entitled to a discharge, despite failing to list an ownership interest in a show horse. The district court reversed, holding that the bankruptcy court's decision was "clearly erroneous", and instead found that debtor knowingly and fraudulently made a false oath in omitting his ownership interest. The 11th

Circuit reversed the district court and upheld the bankruptcy court because the district court misapplied the "clearly erroneous" standard in its review. Thus, the bankruptcy court did not clearly err in determining that the debtor was entitled to a discharge.

84. In re Williams

636 B.R. 484 (Bankr. E.D. Mich. 2022)

20 month was too long – debtor was required to make a showing of "cause" under Rule 1007(b): "This Court has denied motions to reopen in numerous cases, where the delay ranged from 10 months to more than 11 and a half years. *See In re Lewis*, 635 B.R. 157 (Bankr. E.D. Mich. Jan. 20, 2022) (Chapter 13 case) (delay of more than two years); *In re Motley*, 635 B.R. 150 (Bankr. E.D. Mich. Jan. 14, 2022) (delay of almost 3 years); *In re Brown*, 634 B.R. 748 (Bankr. E.D. Mich. 2022) (delay of 15 months); *In re Rivera*, 628 B.R. 309 (Bankr. E.D. Mich. 2021) (delay of 2 years and 9 months); *In re Szymanski*, 625 B.R. 875 (Bankr. E.D. Mich. 2021) (delay of more than 18 months); *In re Hendricks*, 625 B.R. 694 (Bankr. E.D. Mich. 2021) (delay of more than 14 months); *In re Smith*, 625 B.R. 41 (Bankr. E.D. Mich. 2021) (delay of almost 17 months); *In re Lemon*, 625 B.R. 47 (Bankruptcy E.D. Mich. 2021) (delay of 15 months); *In re Aziz*, 622 B.R. 694 (Bankr. E.D. Mich. 2020) (delay of four years and eight months); *In re Smith*, 620 B.R. 888 (Bankr. E.D. Mich. 2020)(delay of two and a half years); *In re Suell*, 619 B.R. 642 (Bankr. E.D. Mich. 2020) (delay of almost two years); *In re Raza*, 617 B.R. 290 (Bankr. E.D. Mich. 2020) (delay of 11 and a half years); *In re Locklear*, 613 B.R. 108 (Bankr. E.D. Mich. 2020) (delay of nearly 12 months); *In re Jackson*, 613 B.R. 113 (Bankr. E.D. Mich. 2020) (delay of 13 months); *In re Szczepanski*, 596 B.R. 859 (Bankr. E.D. Mich. 2019) (delay of more than 15 months); *In re Lockhart*, 582 B.R. 1 (Bankr. E.D. Mich. 2018) (delay of more than 1 year); Barrett, 569 B.R. at 688 (delay of more than 8 years); *In re Kessler*, 588 B.R. 191 (Bankr. E.D. Mich. 2018) (delay of 5 years); *In re Moore*, 591 B.R. 680 (Bankr. E.D. Mich. 2018) (delay of 10 months)(string cite continues. . .). While this approach is not actually the majority view (although it is the view in the majority of published cases – they are mostly from one judge). This is not to say that judges are not concerned about the delay in filing motions to reopen to file debtor education certificates – the concern is: are creditors going to get actual notice of the Chapter 7 discharge after this long passage of time? And, that has to be weighed against putting the burden on the debtor – who caused the problem by failing to complete the required debtor education/or by not filing the certificate – to simply file another bankruptcy case (which they can do because they have not received a discharge within 8 years, because they still have not received a discharge.)

85. Smith v. Kleynerman

647 B.R. 196 (E.D. Wis. 2022)

The bankruptcy court did not abuse its discretion in granting a motion to reopen the case to allow the avoidance of a judicial lien on exemption-impairment grounds. There are cases (including the ones cited below from the 6th Cir. BAP) that hold that it is reversible error to DENY a motion to reopen to allow lien avoidance. *In re McCoy*, 560 B.R. 684 (6th Cir. BAP 2016)(denial of reopening reversed where case had been closed nearly 4 years); *In re Yonish*, 2016 WL 832587, 2016 Bankr. LEXIS 650 (6th Cir. BAP March 3, 2016)(denial based on laches

without analysis was reversed where motion to reopen was filed after case had been closed two years).

86. In re Walker

427 B.R. 471, 478 (B.A.P. 8th Cir. 2010), *aff'd*, 650 F.3d 1227 (8th Cir. 2011)

(finding "no Rule or Code-based time limitation at all as to when a bankruptcy court may adjudicate the dischargeability of student loans").

87. In re Kapsin

265 B.R. 778, 781 (Bankr. N.D. Ohio 2001)

(denying motion to reopen case to determine dischargeability of student loan because "if a change of circumstances were, standing alone, sufficient to reopen a case for the sole purpose of discharging a student loan obligation, then any debtor who filed for bankruptcy relief could at any time—say even ten or twenty years later—invoke the jurisdiction of this Court for solely that purpose. This, of course, would create the anomalous situation of a perpetual Chapter 7 case, and thus would render superfluous, for purposes of a student loan obligation, paragraph (a) of § 350").

88. In re Reichel

645 B.R. 620 (8th Cir. BAP 2022)

Obtaining relief from his criminal conviction for bankruptcy fraud was an improper purpose that could not constitute cause to reopen Debtor's Chapter 7 case.

89. In re Maldonado

646 B.R. 917 (Bankr. D. Utah 2022)

Debtors could not reopen their bankruptcy case more than five years after the first Chapter 13 Plan payment, and after completing their Plan. Debtors failed to list a personal injury claim, but the case should not be reopened to relieve a party of the consequences of his own mistake or ignorance, nor is good cause to reopen established by mere inattention or neglect.

90. In re Stehrenberger

665 B.R. 402 (9th Cir. BAP 2024)

The bankruptcy court had held that Section 523(a)(19) required that another court – other than the bankruptcy court – have found securities law violations in order for the debt to be non-dischargeable. Because the court had so held, pro se Plaintiff did not present evidence regarding securities law violations. Moreover, while a default had been entered in the state court, in favor of Plaintiff, that default appears to have been vacated prior to the filing of the Chapter 7 case – and both the bankruptcy court and the BAP appeared to agree it was not a final judgment. On appeal, the BAP held that the bankruptcy court erred in requiring a judgment from another court

– the statute refers to "any judgment", and the bankruptcy court had jurisdiction to not only determine dischargeability, but also issue a judgment for the amount that would be non-dischargeable. The BAP also cited an earlier Ninth Circuit BAP decision that held: "The scienter requirement for a fraudulent misrepresentation [under § 523(a)(2)(B)] is established by showing 'either actual knowledge of the falsity of a statement, or reckless disregard for its truth . . . .'" *Gertsch v. Johnson & Johnson, Fin. Corp. (In re Gertsch)*, 237 B.R. 160, 167 (9th Cir. BAP 1999). The lower courts holdings denying non-dischargeability under other §523(a) provisions were affirmed.

91. In re Mitchell

2024 WL 4941045, 2024 Bankr. LEXIS 2884 (Bankr. E.D. Tenn. Dec. 2, 2024)

Debtor's husband had filed 4 Chapter 13 cases, which had all been dismissed for non-payment, although two of them had continued for two years. Debtor filed her own Chapter 13, which was dismissed after a year and half. Debtor's sixth case was filed on the eve of foreclosure – and the foreclosure went forward and the property was sold to an (arguably) good-faith purchaser without notice. The purchaser asked for annulment of the stay, but also argued that under 11 U.S.C. §362(b)(24), the sale was excepted from the automatic stay. The court acknowledged that the provision was intended to "shield postpetition purchasers of property of the estate without knowledge of the filing of a bankruptcy case." However, the court held that that protection was limited to voluntary transfers, not an involuntary transfer like a foreclosure sale. The court also applied the criteria in *In re Benchmark Capital, Inc*., 490 B.R. 566 (Bankr. E.D. Tenn. 2014), and denied the buyer's request for an annulment of the stay.

92. McGruder v. Metropolitan Government of Nashville & Davidson County, Tennessee

99 F.4th 336 (6th Cir. 2024)

Judicial Estoppel does not apply to equitable relief such as the reinstatement of prior employment. Preventing a party from seeking reinstatement would not serve bankruptcy goals as the nondisclosure did not materially affect the bankruptcy proceedings because injunctive relief does not generate funds that can be distributed to creditors. The claim for reinstatement likely would not be relevant to the bankruptcy court's determination of the disposition of the Debtor's assets, and the omission of the reinstatement claims did not minimize Debtor's assets as Debtor's future earnings are not pertinent to Chapter 7 proceedings.

93. Moore v. Reliable Home Health Care, LLC

2024 WL 1049895, 2024 U.S. Dist. LEXIS 42237 (S.D. Ohio March 11, 2024)

Judicial Estoppel is an equitable doctrine that bars a party from (1) asserting a position that is contrary to one that party asserted under oath in a prior proceeding, (2) if the prior court adopted a contrary position either as preliminary matter or as part of final disposition; and (3) if the Debtor's failure to disclose was not due to mistake or inadvertence meaning where the Debtor lacked knowledge of the factual basis of the undisclosed claim(s) and 'the Debtor has no motive for concealment or acted in bad faith.' Debtor did not disclose an already pending employment

discrimination case in their bankruptcy schedules and the bankruptcy court adopted Debtor's assertion that no causes of action existed in entering an Order of Discharge. Debtor had knowledge of factual basis of her claims and had motive to conceal the action to allow the Debtor, not the Estate, to financially benefit from the judgment. The bankruptcy case was reopened after Defendant filed its motion to dismiss based on judicial estoppel, evidencing the effort to conceal the pending action in bad faith.

94. Snyder v. Polymer Mach. Co

2023 WL 2734687, 2023 U.S. Dist. LEXIS 57563 (N.D. Ohio March 31, 2023)

Judicial estoppel prevents party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase. Judicial estoppel preserves the integrity of courts by preventing a party from abusing the judicial process through cynical gamesmanship. When a party has sought bankruptcy protection, judicial estoppel bars undisclosed suit(s) when: (1) Debtor assumed a position contrary to one she asserted under oath in bankruptcy; (2) bankruptcy court adopted a contrary position either as preliminary matter or as part of final disposition; and (3) Debtor's omission did not result from mistake or inadvertence. A debtor has an ongoing duty to amend their schedules to disclose all potential causes of action that arise during a Chapter 13 case. Two years into the Chapter 13 case, Debtor filed suit against Employer for alleged violations of the Fair Labor Standards Act. Debtor did not make effort to notify the bankruptcy court until 3 months after the Debtor filed the case, and one month after the FLSA Defendant moved for dismissal based on judicial estoppel. Allowing the Debtor to simply correct omissions only after opposing party raises the issue would encourage gamesmanship. Plaintiff-Debtor became aware of the claims before Defendant filed the Motion to Dismiss, but made no attempt to amend the Schedules or Plan, or alert bankruptcy court of the claims.

95. Todd v. Quin (In re Todd)

2023 WL 8284792, 2023 Bankr. LEXIS 2852 (Bankr. S.D. Miss. Nov. 30, 2023)

Judicial estoppel does not apply to Chapter 13 Debtors' post-petition malpractice action because the cause of action was not concealed; intervention by the Chapter 13 trustee in the lawsuit does not upset the Debtors' rights to all future proceeds. Here, the Chapter 13 Debtors adequately scheduled contingent and unliquidated postpetition medical malpractice claim. At completion of payments and discharge the malpractice claim was "technically" abandoned to the Debtors under §554(c) and no portion of any future recovery belongs to the Chapter 13 estate.

96. Kari Beeman, et al. v. Muskegon County Treasurer

(No. 24-858)

Petitioners, former property owners in Muskegon County, Michigan, challenge the state's tax foreclosure process under MCL 211.78t. Petitioners argue that the requirement to file a notice of intent by July 1 following foreclosure to claim surplus sale proceeds violates the Takings Clause and due process rights under the U.S. Constitution, as no taking occurred when they failed to comply and forfeited their claims. The Muskegon County Circuit Court denied

petitioners' motions for surplus proceeds in 2022; the Michigan Court of Appeals affirmed in a unanimous published decision, finding the law constitutional under precedents like Tyler v. Hennepin County and Nelson v. City of New York; the Michigan Supreme Court denied leave to appeal; and petitioners are now seeking a writ of certiorari from the U.S. Supreme Court.

97. In re Donna J. Staker

Case No. 24-30527-grh, 667 B.R. 556 (Bankr. S.D. Ohio March 10, 2025)

In re Donna J. Staker involves the question of whether a Chapter 7 trustee is entitled to compensation under § 326(a) if no funds were distributed before conversion.

Facts: In this case the Chapter 7 trustee identified potential assets in a trust where the debtor held a beneficial interest and initiated actions to administer these assets. Subsequently, the debtor moved to convert the case to Chapter 13, citing increased income that would allow for a 100% repayment plan to unsecured creditors. The Trustee opposed the conversion, arguing that the trust assets were part of the bankruptcy estate, raising concerns about the debtor's good faith. An agreed order allowed the conversion to Chapter 13, preserving the Trustee's right to pursue the trust assets if the case reconverted to Chapter 7.

Post-conversion, the former Chapter 7 Trustee sought compensation under § 326(a) and an award of attorney fees for her firm. The court denied the Trustee's request for a statutory commission, reasoning that no funds were disbursed or turned over during the Chapter 7 phase, a prerequisite for such compensation under § 326(a). The court did grant the law firm's application for attorney fees as an allowed administrative claim, acknowledging the legal services provided during the Chapter 7 proceedings.

Ruling: Attorney fees incurred by counsel for a trustee may be allowed as administrative expenses under 11 U.S.C. § 503(b), provided they are actual, necessary services that benefit the estate. This is distinguishable from an award of compensation under § 326(a), which can only be ordered if funds recovered by a Chapter 7 trustee are actually disbursed while in Chapter 7.

98. In re Parkcliffe Development LLC

Case No. 24-30814-jpg, 2025 WL 320909 (Bankr. N.D. Ohio Jan. 28, 2025)

In re Parkcliffe Development LLC deals with the court’s discretion concerning the acceptance of late bid offers in asset sales.

Facts: The debtor, a provider of long-term residential care, filed for Chapter 11 due to declining demand and financial instability. The debtor attempted to sell its assets through a court-approved auction process, designating STVJ LLC as the stalking horse bidder with a $2.2 million offer. The bidding procedures required any competing bids to exceed the stalking horse bid by at least $200,000 and to comply with specific terms, including submission deadlines and form requirements.

Two competing bids were received before the initial deadline but failed to meet all procedural requirements. The debtor extended the bidding deadline by 30 days, during which additional bids were submitted, including a $2.65 million bid from Spectranet Holdings, LLC. STVJ LLC filed motions to disregard these late and non-compliant bids and to halt the auction, arguing that the bidding procedures had not been properly followed.

The Bankruptcy Court for the Northern District of Ohio denied STVJ LLC's motions, emphasizing the primary objective of maximizing the value of the debtor's estate for the benefit of creditors.

Ruling: In bankruptcy asset sales, the court may exercise discretion to consider late or procedurally non-compliant bids if doing so serves the paramount goal of maximizing the value of the debtor's estate for the benefit of creditors. Strict adherence to bidding procedures should not override this fundamental objective, especially when higher bids could provide greater returns to the estate.

99. Gold v. Williams (In re Williams)

Case No. 24-1162, 2025 WL 454925 (6th Cir. February 7, 2025)

In *In re Williams*, the Sixth Circuit addressed whether the probate exception to federal jurisdiction barred a bankruptcy trustee's action to include certain real property in the debtor's bankruptcy estate.

Facts: Edward Stephone Williams filed for Chapter 7 bankruptcy, and the trustee sought to recover a home that Williams had inherited from his late wife under Michigan's intestacy laws. The debtor's adult children contested the trustee's claim, arguing that the probate exception deprived the bankruptcy court of jurisdiction over the property.

The bankruptcy court initially ruled in favor of the trustee, determining that the property was part of the bankruptcy estate. However, the district court reversed this decision, holding that the probate exception applied and thus barred federal jurisdiction. On appeal, the Sixth Circuit vacated the district court's ruling, concluding that the probate exception did not apply because the trustee's action did not involve probating a will or administering an estate, nor did it interfere with property under the custody of a state probate court. The case was remanded for further proceedings consistent with this interpretation.

Ruling: The probate exception to federal jurisdiction is narrow and does not preclude federal courts from adjudicating matters that do not involve the probate of a will, the administration of a decedent's estate, or the control of property in the custody of a state probate court. Bankruptcy courts retain jurisdiction over actions to determine whether property is part of the bankruptcy estate, even if the property was acquired through intestate succession.

100. In re Jeff L. Dulaney

Case No. 24-50458-mnk, 666 B.R. 178 (Bankr. S.D. Ohio December 18, 2024)

In re Jeff L. Dulaney deals with avoidance of judicial liens.

Facts: In this case, the Bankruptcy Court for the Southern District of Ohio addressed the debtor's motion to avoid a judicial lien held by S&T Bank on his real property under § 522(f)(1)(A). The debtor had previously guaranteed obligations of LSP Technologies, Inc. to S&T Bank but had not granted any security interest in his personal property. S&T Bank obtained a monetary judgment against the debtor and subsequently filed a certificate of judgment, creating a lien on his real property.

The debtor claimed a homestead exemption of $161,375 in the property. Applying the statutory formula under § 522(f)(2)(A), the court determined that the lien impaired the debtor's exemption because the total of all liens and the exemption amount exceeded the value of the

debtor's interest in the property. The court rejected S&T Bank's argument that the lien was consensual, finding instead that it was a judicial lien arising from a court judgment. Consequently, the court granted the debtor's motion to avoid the lien.

Ruling: A lien arising from a court judgment, even if consented to by the debtor, is considered a judicial lien and may be avoided under § 522(f)(1)(A) if it impairs the debtor's exemption.

101. In re Lopez

Case No. 22-40478-tjt, 666 B.R. 555 (Bankr. E.D. Mich. January 21, 2025)

In re Lopez deals with whether, and on what grounds a debtor may overcome the strong presumption in favor of access to court records in seeking a court order to seal one's records.

Facts: Two and a half years after obtaining a chapter 7 discharge, the debtor filed a pro-se motion for sealing bankruptcy records, issuance of damages and redress of unjust enrichment, which the Bankruptcy Court for the Eastern District of Michigan treated as a motion to reopen the case. The debtor sought to have a forensic audit performed, release of bonds, and an order sealing the bankruptcy case records related to the case. In bringing this motion, the debtor generally alleged that the public access to his bankruptcy record caused him to be subject to identify theft and financial exploitation, posed a threat to his livelihood and safety, represented a systemic flaw in the handling of sensitive personal information, as well as the "monetization of financial instruments" linked to debtor's case.

In considering the relief sought, the court construed the debtor's motion within the context of § 350(b) and local bankruptcy rule 5010-1, which provide that a case may be reopened to administer assets, accord relief to the debtor, or for other cause, a burden which the debtor was required to establish as a threshold matter. In considering whether cause existed for the court to reopen the debtor's case, the court relied upon § 107 which for public access to bankruptcy papers, as well as exceptions to the rule and the procedure for restricting access to same.

The court denied the debtor's motion, finding that the debtor failed to provide any justification or compelling reason supported by specific facts such that the presumption in favor of public access to court records could be overcome pursuant to § 107.

Ruling: To seal bankruptcy court records, a party must present compelling reasons supported by specific factual findings that outweigh the public's interest in having access to them.

102. In re Long

Case No. 24-30074-grh, 667 B.R. 546, 2025 WL 721124 (Bankr. S.D. Ohio March 4, 2025)

In re Long deals with what constitutes "commercial information" under §107(b)(1) for purposes of overcoming the presumption in favor of access to court records in the face of a party's request to seal same.

Facts: The debtors filed for relief under chapter 13, disclosing as one of their assets a pending lawsuit for claims against two debt resolution companies under the Fair Credit Reporting Act, for alleged improper use of the debtor's private consumer data from his credit report. The debtors properly sought and obtained court approval to employ non-bankruptcy counsel for continued representation in that action.

Upon reaching a settlement agreement, the debtors filed their motion to approve settlement agreement, and motion to seal same, which the court required the debtors to amend to provide sufficient notice to all parties in interest, as well as to state an appropriate basis under § 107 which would justify the sealing of the settlement agreement. In filing their amended motion to seal under § 107(b)(1), the debtors argued that the contents of the settlement agreement, if made public, would expose confidential commercial information or trade secrets, detrimental to the debt resolution companies.

The U.S. Trustee filed an objection to the amended motion to seal the settlement agreement, arguing that the debtors failed to demonstrate that one of the limited exceptions to the strong presumption in favor of public access to records applies. The U.S. Trustee also argued that even if an exception under the statute exists, that because the settlement agreement contains a request for compensation, that the request made to seal the entire settlement agreement was not narrowly tailored. The court ruled in favor of the U.S. Trustee, finding that the contents of the settlement agreement did not constitute commercial information subject to protection under § 107(b), such that the presumption of allowing public access was not outweighed.

Ruling: Restricting public access to a settlement motion containing a request to approve compensation for special counsel is overbroad and contrary to the requirements of § 107(b)(1). A request to seal under § 107(b)(1) requires evidence demonstrating a need to restrict public assess as containing confidential information or trade secrets.

103. Magaliff v. 430 Central Drive LLC (In re Christenson)

Case No. 20-23224-kyp Adv. Pro. No. 22-07020-kyp, 667 B.R. 770 (Bankr. S.D.N.Y. February 10, 2025)

In re Christenson considered whether there was reasonably equivalent value for property transfers in a court-approved divorce judgment, or whether such transfers could be construed as fraudulent.

Facts: A Chapter 7 trustee attempted to recover three properties transferred to the debtor's ex-husband and related entities as part of a divorce settlement. The trustee argued that these transfers were fraudulent conveyances under § 548 and applicable state law, asserting that the debtor did not receive reasonably equivalent value in exchange for the properties.

The Bankruptcy Court for the Southern District of New York found that the transfers were made pursuant to a court-approved divorce judgment consisting of an equitable distribution of marital assets. The court concluded that the debtor received reasonably equivalent value considering the overall divorce settlement, which included custody arrangements, spousal support, and division of other assets. As a result, the court granted summary judgment in favor of the defendants, determining that the trustee could not avoid the transfers as fraudulent conveyances.

Ruling: Transfers of property made pursuant to a court-approved divorce judgment, following contested litigation and equitable distribution, are presumed to be for reasonably equivalent value. Such transfers are not avoidable as fraudulent conveyances under § 548 or applicable state law, provided they result from a fair and equitable division of marital assets.

104. In re Rhodes

Case No. 24-20838-beh, 666 B.R. 487 (Bankr. E.D. Wis. January 22, 2025)

In re Rhodes resolves a dispute concerning the commencement date for accruing interest on a secured claim under a Chapter 13 plan.
Facts: The debtor proposed a modified plan that did not include interest payments on a secured vehicle claim from the petition date to the plan's confirmation date. The Chapter 13 trustee objected, arguing that interest should accrue from the petition date, aligning with the precedent set in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).
The Bankruptcy Court for the Eastern District of Wisconsin overruled the trustee's objection, determining that under § 1325(a)(5)(B)(ii), the requirement is for the value of payments to equal the allowed secured claim "as of the effective date of the plan," which is the confirmation date.
Ruling: Interest on secured claims in Chapter 13 plans begins accruing from the plan's effective date, not the petition date. This interpretation aligns with the statutory language and prevailing case law within the jurisdiction.

105. In re Jude-Weathersby

Case No. 24-03393-jpc, 666 B.R. 601 (Bankr. N.D. Ill. January 14, 2025)

In re Jude-Weathersby deals with the fairness of bifurcated fee agreements in chapter 7 cases.
Facts: A chapter 7 debtor entered into a pre-petition agreement indicating that the attorney would handle all aspects of the bankruptcy case for no fee. However, a subsequent post-petition agreement required the debtor to pay $3,200 for the same services. The court found material inconsistencies between the two agreements and determined that the debtor was not adequately informed about the fee structure. As a result, the court concluded that the attorney violated § 526 and § 528. The Bankruptcy Court for the Northern District of Illinois voided the fee agreements § 526(c) and ordered the attorney to refund any payments made toward the $3,200 fee.
Ruling: Attorneys representing Chapter 7 debtors must ensure that fee agreements comply with the disclosure and fairness requirements set forth in §§ 526 and 528. Bifurcated fee arrangements, where services are divided between pre-petition and post-petition agreements must be clearly disclosed, fair, and entered into with the debtor's fully informed consent. Failure to meet these standards can result in the agreements being voided and the attorney being required to disgorge fees received.

106. In re Rohwedder

Case No. 24-30227-lkg, 666 B.R. 479, 2025 WL 1089154 (Bankr. S.D. Ill. Mar. 13, 2025)

In re Rohwedder deals with whether above-median income debtors may deduct tobacco expenses as a "special circumstance" under § 707(b)(2)(B), to reduce their disposable income for purposes of calculating their required dividend to unsecured creditors.
Facts: Above-median income debtors claimed a monthly expense of $400 for tobacco products in their means test. They did so under the "special circumstances" provision of § 707(b)(2)(B), arguing that this expense was necessary due to Mr. Rohwedder's long-standing addiction to tobacco, which they contended was akin to a medical condition. The Chapter 13 Trustee objected to the confirmation of the debtors' amended plan, arguing that the tobacco expense was not a permissible deduction under the means test. The Trustee contended that tobacco use is a

discretionary expense and does not qualify as a "special circumstance" warranting an adjustment to the debtors' disposable income calculation.
The Bankruptcy Court for the Southern District of Illinois held that the debtors failed to demonstrate that their tobacco expenses constituted a "special circumstance" under § 707(b)(2)(B). As a result, the $400 monthly tobacco expense was disallowed in the means test calculation. Consequently, the debtors were required to increase their plan payments to reflect the higher disposable income.
Ruling: Under § 707(b)(2)(B), debtors may rebut the presumption of abuse by demonstrating "special circumstances" that justify additional expenses or adjustments to current monthly income. Such circumstances must be extraordinary and compelling, such as a serious medical condition or a call to active military duty. Routine or discretionary expenses, like tobacco use, do not meet this standard and are not deductible under the "special circumstances" provision.

107. In re Himes

Case No. 19-21083-gmh, 668 B.R. 214 (Bankr. E.D. Wis. March 3, 2025)

In re Himes deals with the issue of whether a mortgage creditor's failure to provide a detailed itemization of post-petition arrears in its response to the trustee's Notice of Final Cure Payment, as required by Rule 3002.1(g), warrants the imposition of sanctions and the award of attorney's fees and costs to the debtors.
Facts: Debtors confirmed their chapter 13 bankruptcy plan, which required them to maintain ongoing mortgage payments, as well as to cure and maintain pre-petition arrears through their plan payments. At the conclusion of payments under their plan, the chapter 13 trustee filed its Notice of Final Cure Payment under Fed. R. Bankr. P. 3002.1(f), stating that pre-petition arrears had been paid in full, and that the debtors were current on post-petition payments. The mortgage company responded under Rule 3002.1(g), agreeing with the cure of pre-petition payments. It asserted, however, that the debtors had accrued post-petition arrears in a specific amount without providing a detailed itemization of the alleged post-petition arrearage claim. The debtors objected to the mortgage company’s response by filing a motion under 3002.1(h) to determine the amount of the final cure. The debtors argued that they were current on all post-petition mortgage payments and requested an award of fees and costs for the mortgage company’s failure to attach a detailed itemization to its response to the Trustee’s Notice of Final Cure.
The court found that the mortgage company’s response was deficient under Rule 3002.1(g) because it failed to provide an itemized statement of the post-petition amounts allegedly due. This deficiency impeded the debtors' ability to challenge the asserted arrears. Consequently, the court awarded the debtors $1,650.00 in attorney's fees and prohibited the mortgage company from collecting any related fees or costs from the debtors.
Ruling: Under Federal Rule of Bankruptcy Procedure 3002.1(g), a creditor must include an itemized statement of the amounts owed post-petition, if any. Failure to comply with this requirement can result in the court awarding reasonable expenses and attorney's fees to the debtor under Rule 3002.1(i), and may preclude the creditor from presenting the omitted information in any form as evidence in any contested matter or adversary proceeding.

108. Allen v. Coleman (In re Coleman)

Case No. 23-01548-swd, Adv. Pro. No. 23-80069-swd, 2024 WL 2478193 (Bankr. W.D. Mich. May 23, 2024)

In re Coleman deals with whether a debtor can be found liable for the fraud committed by his ex-spouse by virtue of criminal and civil judgments which preceded the bankruptcy.

Facts: Prior to filing for chapter 13, the debtor had been involved in legal proceedings related to his now-ex-spouse's embezzlement from a dental practice, the ex-spouses' employer. The dental practice obtained both criminal and civil judgments against the debtor, asserting that he was complicit in the embezzlement scheme. The dental practice initiated an adversary proceeding within the chapter 13 case, seeking a determination that the debts owed by debtor were nondischargeable under §§ 523(a)(2)(A), (a)(4), and (a)(6). The dental practice filed a motion for summary judgment, arguing that the prior judgments should have preclusive effect, thereby establishing nondischargeability of the debts.

The debtor contested the motion, arguing that the prior judgments did not conclusively establish the elements required under the cited provisions of § 523.The Bankruptcy Court for the Western District of Michigan denied the dental practice's motion for summary judgment, finding that the prior judgments did not necessarily establish all the elements required under the cited provisions of § 523. Specifically, the court determined that the judgments did not resolve whether the debtor's actions met the standards for false pretenses, false representation, actual fraud, fiduciary fraud, embezzlement, larceny, or willful and malicious injury as defined under bankruptcy law. Therefore, further proceedings, including potentially a trial, were necessary to determine the dischargeability of the debts.

Ruling: For a debt to be excepted from discharge under §§ 523(a)(2)(A), (a)(4), or (a)(6), the creditor must establish that the debtor's conduct satisfies the specific criteria outlined in these provisions. Prior judgments may have preclusive effect only if they necessarily decided the same issues required under § 523. If the prior judgments did not address or conclusively determine these specific elements, summary judgment on the basis of issue preclusion is inappropriate, and the court must conduct further proceedings to assess the dischargeability of the debts. This case has the effect of limiting *Bartenwerfer's* potentially far-reaching consequences for a so-called innocent spouse who may have imputed liability.

109. In re Bizeau

Case No. 24-11074-rmb, 668 B.R. 493 (Bankr. W.D. Wis. March 21, 2025)

In re Bizeau addressed whether a debtor's inclusion of significant non-consumer debt in his schedules was appropriate for determining the applicability of 11 U.S.C. § 707(b).

Facts: Debtor filed for Chapter 7 bankruptcy, listing a $425,088.66 debt owed to the U.S. Small Business Administration (SBA) as a non-consumer obligation. This debt originated from a loan guaranteed solely by his non-filing spouse in connection with her former business. The debtor argued that, under Wisconsin law, he and/or his property were liable for this debt, thereby classifying it as a non-consumer debt and exempting his case from dismissal under § 707(b). The court found that the Debtor neither signed nor agreed to be bound by the SBA loan documents. Additionally, it found that Wisconsin's marital property laws did not render him or his property liable for the debt, especially since his wife had received a Chapter 7 discharge in

2023, which protected their marital property from collection efforts. Consequently, the court determined that the SBA did not have a claim against the debtor or his property. Without the SBA debt, Bizeau's obligations were primarily consumer debts, making his case subject to review for abuse under § 707(b).

Rule of Law: For a debt to be considered in determining whether a debtor's obligations are primarily consumer debts under § 707(b), there must be a valid claim against the debtor or the debtor's property. A debt solely guaranteed by a non-filing spouse, without the debtor's agreement or liability under applicable state law, cannot be attributed to the debtor for this purpose.

110. Colebrook v. Thompson (In re Thompson)

2025 U.S. App. LEXIS 9114, 2025 WL 1132295 (April 17, 2025)

In *In re Thompson,* 2025 U.S. App. LEXIS 9114, the United States Bankruptcy Appellate Panel for the Sixth Circuit reviewed the dismissal of an adversary complaint filed by creditor Teena Colebrook against debtor John Preston Thompson.

Facts: Colebrook alleged that Thompson and unnamed co-conspirators committed fraud by failing to repay a debt dating back to 2012 and sought to have this debt declared nondischargeable under 11 U.S.C. § 523(a).

The Bankruptcy Court for the Middle District of Tennessee dismissed the complaint under 28 U.S.C. § 1915(e)(2)(B)(ii), determining that Colebrook's claims were time-barred and failed to state a claim upon which relief could be granted. The court noted that since the underlying debt was unenforceable due to the statute of limitations, there was no basis to declare it nondischargeable.

On appeal, the Bankruptcy Appellate Panel affirmed the dismissal, agreeing that the complaint was properly dismissed for failure to state a claim and that the bankruptcy court did not err in its application of the law.

Ruling: Under 28 U.S.C. § 1915(e)(2)(B)(ii), courts are required to dismiss in forma pauperis complaints that fail to state a claim upon which relief can be granted. Additionally, for a debt to be declared nondischargeable under 11 U.S.C. § 523(a), there must be an enforceable underlying obligation; time-barred debts do not meet this criterion.

111. In re Kadiric

Case No. 24-03325-wsd, 2025 WL 1024138, (Bankr. W.D. Mich. April 3, 2025)

In *In re Kadiric*, the United States Bankruptcy Court for the Western District of Michigan addressed the United States Trustee's motion to convert the debtors' Subchapter V Chapter 11 case to Chapter 7.

Facts: The debtors, Muhamed and Mersiha Kadiric, faced allegations of prepetition misconduct, including unauthorized transfers of funds, their residence, and a vehicle, in violation of a state court restraining order. The court found both statutory and non-statutory cause for conversion under 11 U.S.C. § 1112(b), citing the debtors' failure to file a timely plan and their questionable conduct, which undermined their fitness to serve as fiduciaries and debtors in possession. Consequently, the court granted the motion to convert the case to Chapter 7.

Ruling: Under 11 U.S.C. § 1112(b), a bankruptcy court may convert a Chapter 11 case to Chapter 7 for "cause," which includes both statutory grounds, such as failure to file a plan timely, and non-statutory grounds, such as lack of good faith or debtor misconduct. The court has discretion to determine whether cause exists based on the totality of circumstances.

112. In re Davis-Peters

Case No. 24-09311-dlt, 2025 Bankr. LEXIS 949 (Bankr. N.D. Ill. April 15, 2025)

In *In re Davis-Peters*, the United States Bankruptcy Court for the Northern District of Illinois addressed whether projected escrow shortages claimed by mortgage servicers in Chapter 13 cases constitute prepetition or post-petition claims.

Facts: Debtors Michelle Davis-Peters and Gordon J. Woods objected to their servicers' proofs of claim in their respective cases, arguing that these projected shortages were not prepetition defaults and thus should be disallowed.

The court held that under the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and the Real Estate Settlement Procedures Act (RESPA), projected escrow shortages are prepetition claims. The court emphasized that even if the escrow analysis is conducted post-petition, the effective date for determining the escrow shortage is the petition date. Therefore, such shortages are considered prepetition obligations that can be addressed through the Chapter 13 plan. The court overruled the debtors' objections, except in the instance where a servicer calculated the shortage based on the conversion date rather than the original petition date; in that case, the servicer was permitted to amend its claim to align with the court's ruling.

Ruling: Projected escrow shortages, as defined by RESPA and applicable bankruptcy procedures, are treated as prepetition claims in Chapter 13 cases. The effective date for calculating such shortages is the petition date, regardless of when the escrow analysis is performed. Consequently, these shortages are subject to treatment under the debtor's Chapter 13 plan.

113. Eton Street Brewery LLC v. Nicholson Trust (In re Eton Street Brewery LLC)

Case No. 2:24-cv-12747 (E.D. Mich. July 1, 2025)

In *In re Eton Street Brewery LLC*, the United States District Court for the Eastern District of Michigan addressed whether the Eton Street Brewery's president had the authority to enter the company into bankruptcy, and if the president's actions constituted a cause to dismiss the case.

Facts: Eton Street Brewery ("the Company") was the result of a partnership by the LePages and the Nicholson Trust. Both parties held 50% of the Company, which was governed by an operating agreement which made Bonnie LePage the company's president. A promissory note was executed in favor of the Nicholson Trust ("Nicholson Note") by the Company for $3.9 million and upon the note's maturity date, the Company did not have the assets to pay. The Nicholson Trust sued the Company, and the Company began to explore chapter 11 bankruptcy. Bonnie Lepage filed for chapter 11 bankruptcy protection on behalf of the Company, and the Company moved to approve a sale process for all of its assets free and clear of any claims including the Nicholson Note. The Nicholson Trust moved to dismiss the petition and argued

that Bonnie LePage lacked authority to enter the bankruptcy and that the petition should be dismissed for cause under 11 U.S.C. § 1112(b)(1).
Ruling: Under the Company's operating agreement LePage's authority to act unilaterally for the Company was limited to "ordinary and usual" business activities, and entering bankruptcy was not "ordinary and usual." Therefore, LePage lacked the authority to enter into bankruptcy. 11 U.S.C. § 1112(b)(1) authorizes the bankruptcy judge to dismiss a chapter 11 case "for cause." One reason for a judge to find a basis for cause is the petitioner's lack of good faith. Because LePage both violated the Company's operating agreement and sought bankruptcy only after state court proceedings did not resolve in the Company's favor, there is a clear showing of bad faith by LePage. Therefore, the district court affirmed the decision to dismiss.

114. In re Sorrells

In re Sorrells, 671 B.R. 474 (Bankr. W.D. Va. 2025)

Facts:
The debtor had a confirmed Chapter 13 plan and had performed under the plan, with $14,913 remaining due—approximately ten months of payments—when he received an inherited IRA distribution totaling $26,236.47 (after taxes). The debtor sought to use this amount to pay off the remaining balance under the plan. The trustee moved to modify the plan to require additional funding sufficient to pay creditors 100% on their claims.

Held:
1. The receipt of the inherited IRA was unanticipated, and the debtor experienced a substantial change in his financial condition—he had no increase in liabilities, and the funds were liquid. Therefore, an exception to the res judicata effect of 11 U.S.C. § 1327 applied.
2. The claim to the inheritance (prior to liquidation) did not pierce the res judicata effect of plan confirmation under § 1327; however, the trustee was not precluded by § 1327 from seeking to modify the plan as to the liquidated inheritance proceeds ($26,236).
3. Under § 1325(a)(1), a plan must comply with the provisions of Chapter 13. Section 1326(a)(6) requires the debtor to make all payments under the plan and comply with the plan's terms. The court found that the debtor had legitimate and necessary expenses totaling $8,250 (for car repair, furnace repair, and driveway repaving) and required that the plan be modified to devote the balance—$14,896—to creditor payments.

115. In re Thomas

In re Thomas, 2025 WL 2442891 (Bankr. W.D. Tenn 2025)

- **Facts:**
  The debtor passed away after filing her Chapter 13 case but before plan confirmation. The debtor's daughter sought to confirm the debtor's Chapter 13 plan and filed an

amended plan to address the mortgage lender's objection. The bank objected, arguing that only a debtor may file a plan under § 1321.

- **Held:**
  1. Under Rule 1016(b), it is within the court's discretion to dismiss the case or allow it to proceed. The court must determine whether further administration is possible and whether continuation is in the best interests of the parties.
  2. Section 109(e) governs who may initiate a bankruptcy case; it does not apply to post-petition events.
  3. To the extent the debtor is required to attend a § 341 meeting, the Chapter 13 trustee noted that the meeting had been concluded.
  4. Because the daughter's payments were voluntary, § 1321 was not violated.
  5. Continuation of the case was in the parties' best interests:
     - Bank: The plan proposed to pay the bank in full—$39,189 plus 10.25% interest—an increase over the contract rate. The bank had also adopted the debtor's valuation of $37,000, meaning it would fare better under the Chapter 13 plan than through foreclosure.
     - Other creditors: No other creditors objected, and the general unsecured creditors might receive a distribution.

116. Insight Terminal Sols., LLC v. Cecelia Fin. Mgmt

Insight Terminal Sols., LLC v. Cecelia Fin. Mgmt., 148 F.4th 869 (6th Cir. 2025)

- **Facts:**
  After confirmation of the Chapter 11 plan, the reorganized debtor asked the court to recharacterize the $6 million claim of Cecilia—who was the assignee of former owner Siegel—as equity rather than debt, which would extinguish the claim. Siegel developed cancer, and the parties sought to preserve his deposition testimony in case he could not appear at trial. However, Siegel passed away before he could be cross-examined.
- The bankruptcy court held that Siegel's deposition testimony was inadmissible as hearsay because Bay Bridge, an intervening creditor, had not been able to cross-examine Siegel before his death. The court also rejected the argument that Cecilia's claim should be recharacterized as equity. The case was appealed to the Bankruptcy Appellate Panel (BAP), which affirmed.
- **Held:**
  1. Rule 32(a)(1) governs hearsay consisting of statements made during a deposition. A deposition may be used against a party at trial if (a) the party against whom it is offered was present or represented at the deposition, (b) the deponent's statements would have been admissible under the Federal Rules of Evidence if the witness were testifying live, and (c) the party seeking to use the deposition complies with Rule 32(a)(2)–(8), which includes use of a deposition of an "unavailable witness," such as one who "is dead," "for any purpose."
  2. The bankruptcy court committed legal error by reading Rule 32(a) as absolutely barring the use of a deposition if the opposing party lacked an opportunity to cross-examine the

declarant. Once the conditions of Rule 32(a) are met, there is a *right* to use the deposition. However, courts retain discretion to admit or exclude direct examination testimony from a witness who died before cross-examination, since reliability can be affected by the lack of cross-examination. Here, Siegel was *the* key witness, and admission of his deposition was a crucial evidentiary issue.

3. The bankruptcy court also ruled that the FRE 801(d)(2) (statement offered against an opposing party) exception did not apply to Bay Bridge merely because it could have applied to Bay Bridge's predecessor, Siegel. However, FRE 801(d)(2) was amended effective December 1, 2024, and applies to all proceedings then pending. The amendment provides that if a party's claim is directly derived from a declarant, a statement admissible against the declarant is also admissible against the party. This amended rule should apply on remand.

117. Sweet v. Recovery Law Group

Sweet v. Recovery Law Group, 2025 WL 2671579 (Bankr. E.D. Mi. September 17, 2025), *reh'g denied,* 2025 WL 2847889 (October 6, 2025) - Section 526 prohibits "debt relief agency" from failing to perform services or making statements that are untrue or misleading or that upon exercise of reasonable care, should have been known to be untrue or misleading. Court determined sanctions appropriate where Counsel spectacularly failed to comply.

Sweet v. Recovery Law Group, 2025 WL 439075 (Bankr. E.D. Mi. February 7, 2025), *rehearing denied* 2025 WL 667146 (Bankr. E.D. MI. 2025) – An amazing example of legal malpractice involving out of state counsel and local counsel, a chapter 7, Debtors' (age 81 and 65) loss of their home, and actions by UST to save Debtors' exempt value in their home after sale by the Chapter 7 Trustee.

118. *In re McKelvey*

In re McKelvey ___ WL ___ (Bankr. E.D. Mi. October 6, 2025) – A roadmap on how not to do bifurcated fees in Chapter 7.

119. *Warfield v. Nance*

Warfield v. Nance, 2025 WL 290823 (9th Cir. 2025) - Order sustaining objection to exemptions does not preclude Debtor from amending Schedule C to claim exemptions under different basis. Debtor originally claimed state exemptions for a recreational vehicle as "homestead". After the Court sustained Trustee's objection, Debtor amended Schedule C using federal exemptions to claim RV under Section 522(d)(1). Amending exemptions after Order denying exemption not barred by either res judicata or collateral estoppel as validity of federal exemption could not have been determined as part of prior proceedings regarding validity of state exemptions.

120. *Keathley v. Buddy Ayers Construction Co*

Keathley v. Buddy Ayers Construction Co. 2025 WL 673434 (5th Cir. 2025), *cert granted,* 2025 WL 2949568 (2025)

Facts:
The Supreme Court granted certiorari to determine the scope and applicability of **judicial estoppel** in bankruptcy cases.

Two years into the debtor's Chapter 13 case, the debtor was involved in a motor vehicle accident. The debtor allegedly disclosed the accident to bankruptcy counsel, but neither the debtor nor counsel disclosed the resulting personal injury action to the Bankruptcy Court. The debtor later filed several proposed plan modifications, all approved by the court, without disclosing the personal injury lawsuit.

Approximately one year after the court approved the modified plan—and 18 months after the accident—the defendant in the personal injury action moved for summary judgment based on judicial estoppel. Four days later, the debtor for the first time filed amended schedules disclosing both the pending personal injury litigation and a workers' compensation settlement related to the accident.

The trial court granted summary judgment based on judicial estoppel, and the District Court affirmed. The Fifth Circuit also affirmed, relying on its prior precedent and holding that judicial estoppel applied because the debtor failed to timely disclose the personal injury action and could not show the nondisclosure was an "inadvertent error."

Concurring Opinion:

The concurring judge noted that while the outcome was required under Fifth Circuit precedent, other circuits have adopted a more *holistic approach*, finding that judicial estoppel is not appropriate when the bankruptcy proceedings will not be prejudiced by a belated disclosure. When a claim is barred by judicial estoppel, alleged bad actors may receive a windfall.

Judicial estoppel exists to protect the integrity of the judicial process by preventing a party from "playing fast and loose with the court." That purpose does not appear to apply where the defendant benefits from nondisclosure to which it was not connected, and where applying the doctrine effectively sanctions the debtor—and potentially the debtor's creditors.

121. *Senate and Senate Majority Leader v House of Representatives and House Clerk*

Senate Majority Leader v House of Representatives and House Clerk, Michigan Court of Appeals No. 374786 (Oct. 27, 2025)

Facts:
At the end of the 102nd Michigan Legislature's term, nine House-originated bills had been passed by both chambers but had not yet been presented to the Governor for approval. When the 103rd Legislature convened, the House Clerk did not present those bills. The Senate and Senate Majority Leader filed suit, seeking declaratory and mandamus relief compelling the House to present the bills under Const 1963, art 4, § 33, which provides that every bill passed by the Legislature "shall be presented to the governor before it becomes law."

The Court of Claims held that Article 4, § 33 required presentment of all passed bills but denied mandamus and injunctive relief, finding the duty not ministerial. Both sides appealed.

Held:

1. **Standing:** The Senate and Senate Majority Leader had standing because their votes in favor of the bills were effectively nullified when the House refused to present them, depriving them of a distinct, cognizable legislative interest beyond that of the public.
2. **Justiciability:** The case was justiciable and not a political question. Although presentment is a legislative function, interpreting the Michigan Constitution is a judicial duty. The question—whether Article 4, § 33 requires presentment—fell squarely within the judiciary's constitutional authority.
3. **Constitutional Duty:** Article 4, § 33 imposes a mandatory, non-discretionary duty on the Legislature to present *every* bill passed by both chambers to the Governor. The obligation is not limited to the legislative session that passed the bills; the Legislature, as an institution, bears the ongoing duty of presentment. The absence of an express time frame for presentation does not eliminate the obligation—bills must be presented "as soon as reasonably possible" after passage.
4. **Mandamus:** The Court of Appeals reversed the Court of Claims and ordered issuance of a writ of mandamus compelling the House and its Clerk to present the nine bills to the Governor. The constitutional duty to present bills is ministerial, leaving no room for discretion. Declaratory relief alone was inadequate because it provided no enforcement mechanism. The judiciary has inherent authority to enforce constitutional mandates even where the Constitution lacks an express remedy.
5. **Separation of Powers:** Compelling legislative compliance with a constitutional duty does not violate separation of powers. Enforcing constitutional provisions is a quintessential judicial function, and the courts must ensure that constitutional rights and processes are not rendered "mere hopes or wishes."

Result:
Reversed and remanded to the Court of Claims for issuance of a writ of mandamus ordering the House and House Clerk to present the nine bills to the Governor.