Concurrent Session

Consumer Workshop I: "Around the World in 80 Days"- Circuit Splits, Pending Cases and Confusing Consumer Cases

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Educational Materials

2011

"Around the World in 80 Days"
Bankruptcy Case Update

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A. U.S. Supreme Court Decisions

***Milavetz, Gallop & Milavetz, P.A. v. United States*, 130 S.Ct. 1324 (March 8, 2010).**

Attorneys providing bankruptcy assistance can also qualify as debt relief agencies and therefore cannot encourage a debtor to incur more debt based solely on the debtor's intention to file bankruptcy.

***United Student Aid Funds, Inc. v. Espinosa*, 130 S.Ct. 1367 (March 23, 2010).**

A confirmation order that provided for discharge of a portion of a student loan debt was not void despite no finding by the bankruptcy court of undue hardship because the creditor had actual notice of the filing and contents of the debtor's plan. Bankruptcy courts should not, however, confirm a plan that discharges student loans without first finding undue hardship, even if a creditor fails or appear and/or object.

***Hamilton v. Lanning*, 130 S.Ct. 2464 (June 7, 2010).**

A bankruptcy court has discretion to consider changes in a chapter 13 debtor's income or expenses that are known or virtually certain at the time of confirmation of the plan for purposes of determining a debtor's projected disposable income.

***Schwab v. Reilly*, 130 S.Ct. 2652 (June 17, 2010).**

An interested party can seek to recover any increase in value over the specified exempt amount of property, whether or not the party objected to the exemption, even if the increase occurs after discharge but prior to case closure. Even if the schedules indicate the entire value of property at that time is exempt, a later increase does not protect the entire value of the property—only the amount protected by an exemption.

***Ransom v. MBNA American Bank, N.A.*, cert. granted, 130 S. Ct. 2097 (2010), argued Oct. 4, 2010.**

The Court granted certiorari to resolve the split in the circuits on the question of whether an above-median income debtor may claim a vehicle ownership expense deduction on a vehicle that the debtor owns outright. Compare *Ransom v. MBNA American Bank, N.A.,* 577 F.3d 1026 (9th Cir. 2009) (vehicle ownership expense deduction may not be claimed), with *Ross-Tousey v. Neary*, 549 F.2d 1148 (7th Cir. 2009), *Tate v. Bolen*, 571 F.3d 423 (5th Cir. 2009) (vehicle ownership expense deduction may be claimed).

B. Tenth Circuit Court of Appeals Bankruptcy Decisions

DaimlerChrysler Fin. Servs. Ams. LLC v. Ballard (In re Ballard), **526 F.3d 634 (10th Cir. 2008).**

The surrender of a vehicle subject to a "910 motor vehicle lender claim" under the hanging paragraph of 11 U.S.C. § 1325(a) does not prevent the assertion of a deficiency claim authorized by state law.

***Ford v. Ford Motor Credit Corp. (In re Ford)*, 574 F.3d 1279 (10th Cir. 2009).**

The cost of paying off the debtor's negative equity on trade-in vehicle was an "expense incurred in connection with the acquisition of rights" in the new vehicle as required under Kansas law for a "910 motor vehicle lender" to have a purchase money security interest and be protected by the hanging paragraph of 11 U.S.C. § 1325(a).

***Melnor, Inc. v. Corey (In re Corey)*, 583 F.3d 1249 (10th Cir. 2009).**

A default judgment in a state court action for fraud was given preclusive effect in an adversary proceeding seeking a determination of nondischargeability of a debt under 11 U.S.C. § 523(a)(2)(A).

***Beaumont v. Dep't of Veteran Affairs (In re Beaumont)*, 586 F.3d 776 (10th Cir. 2009).**

A reduction of benefits by the Department of Veteran Affairs did not qualify as a violation of the automatic stay or discharge injunction.

***Johnson v. Riebesell (In re Riebesell)*, 586 F.3d 782 (10th Cir. 2009).**

A loan from an attorney's client to the attorney was determined to be non-dischargeable because the attorney had committed fraud upon his client, in part, at least, demonstrated by his failure to comply with the ethical rules governing business transactions with a client. The client's reliance was justified to extend the first couple loans, but by the time of a later extension was sufficiently aware of the attorney's financial difficulties as deem the reliance unjustifiable.

***Search Mkt. Direct, Inc. v. Jubber (In re Paige)*, 584 F.3d 1327 (10th Cir. 2009).**

Appellees did not satisfy their burden of proof to show a court order could not provide relief by failing to provide any evidence that appellants could not fund their proposed plan; the appeal was thus not constitutionally moot. Further, the doctrine of "equitable mootness" could be applied if a confirmed plan has been substantially consummated and a reversal would have negative effects on third parties, but reversing the confirmation of the plan in this case would not unwind a complex transaction or significantly harm third parties

among several other factors.

***In re Antrobus*, 562 F.3d 1092 (10th Cir. 2009).**

The law of the case doctrine bars reopening a question already decided in an earlier stage of the same litigation except in narrow and exceptional circumstances. We have recognized only three such circumstances, One of which is the new evidence rule that applies when a party can produce substantially different evidence from that which was available at the time of the original decision. The evidence must not only be different, but so different and so central to the decision of the case that we are left with substantial doubt as to the correctness of the prior decision. A party may not rely on evidence that was available to it at the time of the prior ruling. The new evidence exception will not be applied unless we are certain that it specifically and unquestionably applies.

***Creative Consumer Concepts, Inc. v. Kreisler*, 563 F.3d 1070 (10th Cir. 2009).**

A party may only make an offer of proof under FRE 103 if the court has excluded some evidence tendered by the party. The purpose of FRE 103 is to allow the trial judge to make an informed evidentiary ruling and to create an adequate record for appellate review to determine whether exclusion of the evidence was reversible error.

***In re Ford*, 574 F.3d 1279 (10th Cir. 2009).**

A trade-in exchange is essentially a single transaction. The expense incurred in retiring the lien on the trade-in vehicle, therefore, is an "expense incurred in connection with acquiring rights" in the new car. A debtor may not bifurcate the negative equity portion of a trade in vehicle from the debt owed on a 910 vehicle under the "hanging paragraph" found in § 1325(a).

***Emann v. Latture (In re Latture)*, 605 F.3d 830 (10th Cir. 2010).**

A failure to timely file a notice of appeal precludes an appellate court from exercising jurisdiction over the parties.

***Rodriguez v. Drive Fin. Servs., L.P. (In re Trout)*, 609 F.3d 1106 (10th Cir. 2010).**

After avoiding preferential transfers made within ninety days of a bankruptcy filing, a court has discretion as to whether it will grant a money recovery for the property transferred or its equivalent value.

***Weinman v. Graves (In re Graves)*, 609 F.3d 1153 (10th Cir. 2010).**

A trustee's motion to turnover funds used to prepay taxes was unsuccessful because the parties had only a contingent reversionary interest in those funds and did not have

possession, custody or control of their interest. A tax refund in the coming year attributable to prepetition earnings would be subject to turnover.

***Sovereign Bank v. Hepner (In re Roser)*, 613 F.3d 1240 (10th Cir. 2010).**

A postpetition perfection of a purchase money security interest by a financing bank was valid to perfect the lien and not a violation of the automatic stay. Under Colorado's Commercial Code, the trustee's rights as a hypothetical lien creditor did not supersede those of the bank.

***In re Mountain Highlands, LLC*, F.3d (10th Cir. 2010).**

An agreement conditioned upon the bankruptcy court's approval of a debtor's plan of reorganization is not a contract until the plan is approved by the bankruptcy court. Without a contract being formed, there is no implied covenant of good faith and fair dealing.

***In re Baldwin*, 593 F.3d 1155 (10th Cir. 2010).**

A trustee who holds an interest in a limited partnership is bound by the limited partnership's buy/sell and dissolution terms as written.

***U. S. v. Lewis*, 594 F3d 1270 (10th Cir. 2010).**

FRE 1006 requires a party offering a summary exhibit to make available to the opposing party the underlying records summarized in the exhibit, but it does not override the work-product privilege with respect to worksheets or a database created by the offering party.

C. Tenth Circuit BAP Decisions

Available: http://www.bap10.uscourts.gov/decisions/chronological_index_bap_opinions_ojs.pdf

***In re Garland*, 417 B.R. 805 (10th Cir. B.A.P. 2009).**

A false oath is "material" if it bears a relationship to debtor's business transactions or estate, or concerns discovery of assets, business dealings, or existence and disposition of debtor's property. "Materiality" is not defeated by the fact that the undisclosed property was without value.

***Williamson v. Hall (In re Hall)*, 2009 WL 4456542 (10th Cir. B.A.P. 2009).**

Debtor-husband was permitted to use Kansas exemption on house occupied by debtor-wife, despite not living in the house. In addition, debtor's interest in payable on death account was not property of the estate, despite receiving payment shortly after

petition filing.

***Hatch Jacobs, LLC v. Kingsley Capital, Inc. (In re Kingsley Capital, Inc.)*, 423 B.R. 344 (10th Cir. B.A.P. 2010).**

A failure to timely appeal a final order prevented the panel from being able to reach the merits of the appeal. A court's need to return to the litigated issue to determine fees and costs did not prevent the judgment on the merits from being a final order. Further, once consent has been given to a bankruptcy court to enter final orders, a district court can withdraw the reference of the case only upon finding good cause.

***C.O.P. Coal Dev. Co. v. C.W. Mining Co. (In re C.W. Mining Co.)*, 422 B.R. 746 (10th Cir. B.A.P. 2010).**

A lease giving only the right to the lessor to terminate the lease upon failure to cure within 60 days did not require automatic termination and thus the lessor was prohibited from terminating such lease when the 60 days expired postpetition. The lease thus became property of the estate and assumable by the trustee.

***Torrington Livestock Cattle Co. v. Berg (In re Berg),* 423 B.R. 671 (10th Cir. B.A.P. 2010).**

A debtor in a chapter 11 case can be denied a discharge only upon finding all three elements of 11 U.S.C. § 1141(d)(3) are satisfied. Thus a solitary finding by the bankruptcy court that the debtor had maintained inadequate records and would have been denied a discharge under 11 U.S.C. § 727(a)(3)—fulfilling 11 U.S.C. § 1141(d)(3)(C)—was insufficient to deny a discharge.

***Copper v. Lemke (In re Lemke)*, 423 B.R. 917 (10th Cir. B.A.P. 2010).**

Debtor-wife's only involvement of signing a trust deed did not constitute a representation for purposes of 11 U.S.C. § 523(a)(2)(A). Creditor failed to satisfy its burden of proof to show that debtor-husband's representations were false as evidence existed to support debtor-husband's story and creditor had not provided contrary evidence. Further, creditor's reliance was not justified as it performed no investigation as to debtor-husband's ability to construct a house, required few details in loan draws as to expenditures, ignored warnings signs like a request to use funds for vehicle loan consolidation, and failed to visit the construction site until after default.

***Bryner v. LeBaron (In re Bryner)*, 425 B.R. 601 (10th Cir. B.A.P. 2010).**

A motion by defendants to set aside a default judgment was not a violation of the automatic stay as it was an action taken in defense to the lawsuit filed by the debtor.

***Wodark v. Wodark (In re Wodark)*, 425 B.R. 834 (10th Cir. B.A.P. 2010).**

Despite the lack of a "hold harmless" or indemnification agreement, a marital debtor assumed by the debtor in a separation agreement constituted a nondischargeable debt to a former spouse under 11 U.S.C. § 523(a)(15). This conclusion was appropriate because the separation agreement anticipated that the non-debtor spouse was the intended beneficiary of the agreement and because the agreement was valid and enforceable under state law.

***Morris v. Kasparek (In re Kasparek)*, 426 B.R. 332 (10th Cir. B.A.P. 2010).**

Under state law, a bona fide purchaser—and thus a bankruptcy trustee—has superior rights to an equitable trust beneficiary if the trust is unrecorded. Further, absent inquiry notice, the trustee had no duty to investigate possible encumbrances on the property. Although the transfer was not made by the debtor, the trustee's avoidance powers extend to transfers made by others.

***Bank of the Prairie v. Picht (In re Picht)*, 428 B.R. 885 (10th Cir. B.A.P. 2010).**

In a chapter 13 case in which no discharge is available to a debtor, a debtor cannot avoid a lien without paying the full amount of the underlying debt as determined by nonbankruptcy law. The plan must provide for retention of the lien until such time.

***Crowson v. Zubrod (In re Crowson)*, 431 B.R. 484 (10th Cir. B.A.P. 2010).**

In determining the allocation of a tax refund between a debtor-spouse and non-debtor-spouse, a court must consider whether income has been withheld only for one spouse and whether any refundable credits were received such as the earned income credit, the additional child tax credit, and the recovery rebate credit. A court should determine what the corresponding tax returns would be if the couple filed separately and assign tax liabilities and refunds accordingly.

***Zeman v. Liehr (In re Liehr)*, Nos. CO-09-071, 08-21528, CO-09-072, 2010 WL 4359232 (10th Cir. B.A.P. 2010).**

The BAP determined, relying on the reasoning of *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), and *In re Darrohn*, 615 F. 3d 470 (6th Cir. 2010), that a calculation for disposable income should not include an expense deduction for contractual mortgage payments on property that the debtor intends to surrender.

***Williams v. Meyer (In re Williams)*, No. CO-10-020, 2010 WL 4462153 (10th Cir. B.A.P. 2010).**

A criminal prosecution for securities fraud and subsequent judgment and receipt of restitution payments from the defendant are not a violation of the discharge injunction despite the debt which arose from the same transaction having been discharged in a bankruptcy case. Restitution payments are separate from the contract debt and are automatically nondischargeable.

D. Local Opinions - District of Utah

Available: http://www.utb.uscourts.gov/lopinions.htm

***In re Timothy*, No. 08-28332, 2009 WL 1349741 (Bankr. D. Utah May 12, 2009) (unpublished).**

The forward looking approach to disposable income under Hamilton v. Lanning, 130 S. Ct. 2464 (2010), may be applied to debtors with negative disposable income under 11 U.S.C. § 1325(b) and the projected disposable income may by calculated based on Schedules I and J. If the disposable income under this test is a positive number, the applicable plan term is five years. The debtor's social security income will be included in determining projected disposable income under the forward looking approach.

***In re Underhill,* 425 B.R. 614 (Bankr. D. Utah 2010).**

Despite the automatic stay not automatically arising in a third bankruptcy petition within one year, a plan can effectively create a stay of certain rights of a secured creditor by permitting a cure of a prepetition default. A debtor has the burden of persuasion to establish the petition and plan were filed in good faith upon a creditor's objection to confirmation of the plan.

***In re Bryner,* No. 08-26804 (Bankr. D. Utah Mar. 10, 2010) (unpublished), https://ecf.utb.uscourts.gov/doc1/182111518784 (Pacer).**

Parents may have standing to represent their minor children with respect to proofs of claim if interests are aligned. However, a trustee of a trust must have attorney representation. A motion to reconsider a ruling on a proof of claim follows the same analysis as a motion under Federal Rule of Civil Procedure 60(b), considering mistake, inadvertence, surprise, or excusable neglect.

***In re Cranmer*, 433 B.R. 391 (Bankr. D. Utah 2010).**

A debtor's social security income must be included in the calculation of projected disposable income. An attempt by debtors to "exempt" part of their social security income

through a line item expense on schedule J is indicative of a bad faith bankruptcy filing.

***In re Carroll*, Adv. No. 10-2259, Case No. 10-20642 (Bankr. D. Utah Sept. 30, 2010).**

A debtor may seek a court order determining a lien to be wholly unsecured under 11 U.S.C. § 506(a), but it cannot attempt to avoid a wholly unsecured lien under 11 U.S.C. § 506(d) if such claim has been allowed.

***In re Woolsey*, No. 10-25893, 2010 WL 4249216 (Bankr. D. Utah Oct. 12, 2010).**

A lien secured only by a debtor's primary residence can only be avoided through a chapter 13 plan if it is wholly unsecured and upon either a discharge or a payment in full of the underlying obligation as determined by nonbankruptcy law. A plan must provide for retention of the lien until either of those two events occurs.

E. Local Opinions - District of Colorado

Available: http://www.cob.uscourts.gov/opinions.asp

***In re Olguin*, 429 B.R. 346 (Bankr. D. Colo. 2010).**

Debtors who receive regular contributions to household expenses from grandparents are required to include such contributions in the calculation of current monthly income in Form B22C, despite grandparents receiving their income from social security benefits. Once those funds were transferred to the debtor, they no longer constitute "benefits" under 11 U.S.C. § 101(10A).

***Banbury v. Banbury (In re Banbury)*, 430 B.R. 242 (Bankr. D. Colo. 2010).**

When a bankruptcy court determines that many claims being litigated are state law claims that satisfy only "related to" jurisdiction and would require re-referral to the district court for final order or jury trial, it may exercise permissive abstention to permit the state court to hear all of the claims and later determine the dischargeability of any liabilities determined by the state court.

***In re Kirksey*, 433 B.R. 46 (Bankr. D. Colo. 2010).**

Debtors seeking to set aside their own discharges are unable to do so because (1) debtors are not authorized under 11 U.S.C. § 727(d) to seek revocation of a discharge; (2) revocation of a discharge is reserved for improper behavior by a debtor, not subsequent payment after discharge; (3) revocation cannot be sought after the time limits established by 11 U.S.C. § 727(e). Further, permitting the discharge order to stand was not inequitable against the debtor and it had functioned as designed.

***Containment Sys. v. Jenkins (In re Jenkins)*, 434 B.R. 604 (Bankr. D. Colo. 2010).**

A creditor who does not receive notice of a bankruptcy case is not barred from filing a complaint to determine dischargeability of a debt after the established deadline. Undue delay—lack of diligence—by the creditor and prejudice to the debtor in bringing the complaint, however, will permit the debtor to defend on a theory of laches.

***Weinman v. Allison Payment Sys., LLC (In re Centrix Fin., LLC)*, 434 B.R. 880 (Bankr. D. Colo. 2010).**

An assumption of an executory contract prohibits a trustee from later avoiding payments made under that contract. A contract integration clause that combined a prepetition and postpetition contract and was assumed as an executory contract was protected.

***In re Wilcox*, No. 09-35891 HRT, 2010 WL 3501841 (Bankr. D. Colo. Sept. 7, 2010).**

A plan provision is not in violation of 11 U.S.C. § 1322(b)(2) if it only reflects a settlement agreement in which a secured creditor accepts modification of its rights and waives the protections of 11 U.S.C. § 1322(b)(2).

***In re Grein*, 435 B.R. 695 (Bankr. D. Colo. 2010).**

In a case that is converted from chapter 7 to chapter 13 and back to chapter 7, the determination of what is property of the second chapter 7 estate is retroactive to the commencement of the original chapter 7. Thus, non-exempt property—or the corresponding value of such—that was used or sold during the time the case was in chapter 13 must be turned over to the trustee upon the conversion to chapter 7.

***In re Wing*, 435 B.R. 705 (Bankr. D. Colo. 2010).**

An above-median debtor's plan must provide for payments for 60 months or provide for payment in full of unsecured creditors. Although a debtor may have negative disposable income, 11 U.S.C. § 1325(b)(1)(B) does not permit for a shorter commitment period, but only sets for the amount that must be paid during the applicable commitment period.

***In re Beaudin*, No. 09-35557 EEB, 2010 WL 3748735 (Bankr. D. Colo. Sept. 21, 2010).**

An eleventh-hour funding of an IRA before bankruptcy filing may not be deemed fraudulent if a debtor can show (1) the assets transferred were modest in amount, (2) a full disclosure of the transaction, and (3) a complete absence of an intent to evade creditors.

***Spectrum Scan LLC v. Valley Bank & Trust Co. (In re Tracy Broad. Corp.)*, Ch. 11 Case No. 09-27059 ABC, Adv. No. 10-1130 ABC, 2010 WL 4226537 (Bankr. D. Colo. Oct. 19, 2010).**

A prepetition security interest in an FCC broadcasting license will not permit the creditor to receive proceeds from a postpetition transfer of that license without a prepetition agreement covering such transfer.

***Liberty Acquisitions, LLC v. Colombo Cordova (In re Colombo Cordova)*, Ch. 7 Case No. 09-17258 SBB, Adv. No. 09-1603 SBB, 2010 WL 4386720 (Bankr. D. Colo. Oct. 18, 2010). http://www.cob.uscourts.gov/opinions%5C09-01603_Memorandum_Opinion.pdf.**

A domestic support obligation assigned to a third-party collections agency by a child and family investigator (CFI) was dischargeable. A CFI is not a legal guardian or responsible relative of the children and the CFI voluntarily assigned the claim to the collections agency, thus removing it from the protections of 11 U.S.C. § 523(a)(5).

F. Opinions of National Interest

***In re Howard*, 597 F.3d 852 (7th Cir. 2010); *Nuvell Credit Corp. v. Westfall (In re Westfall)*, 599 F.3d 498 (6th Cir. 2010); Contra *In re Penrod*, 611 F.3d 1158 (9th Cir. 2010).**

A debtor's negative equity on a traded-in motor vehicle that is rolled into a new loan is also protected by the hanging paragraph of 11 U.S.C. § 1325(a).

***Orange Blossom Ltd. P'ship v. S. Cal. Sunbelt Developers, Inc. (In re S. Cal. Sunbelt Developers, Inc.)*, 608 F.3d 456 (9th Cir. 2010).**

Attorney fees to defend an involuntary bankruptcy petition and punitive damages were awarded to the debtor, despite a lack of actual damages. Although federal law usually does not permit punitive damages, 11 U.S.C. § 303(i)(2) specifically permits such. Alternatively, the attorney fees could be considered actual damages upon which an award of punitive damages can be based.

***Salta Group, Inc. v. McKinney (In re McKinney)*, 610 F.3d 399 (7th Cir. 2010).**

The denial of a creditors objection to confirmation of a debtor's plan did not qualify as an appealable final order.

***Tex. Comptroller of Pub. Accounts v. Liuzza (In re Tex. Pig Stands, Inc.)*, 610 F.3d 937 (5th Cir. 2010).**

A liquidating trustee who failed to pay sales taxes on operations while winding down a business was personally liable for those taxes. The failure to pay was considered

"willfull" because the trustee knew the taxes were due, but paid other creditors instead.

***Whaley v. Tennyson (In re Tennyson)*, 611 F.3d 873 (11th Cir. 2010).**

Under 11 U.S.C. § 1325(b)(4) an above median income debtor is required to stay in a Chapter 13 plan for a five year term, notwithstanding that the disposable income calculated under section 1325(b)(2) is a negative number. "Applicable commitment period" is a temporal term that prescribes the minimum duration of a Chapter 13 plan, not a multiplier that is used to determine required amounts to be paid to unsecured creditors.

***Carpenter v. Ries (In re Carpenter)*, 614 F.3d 930 (8th Cir. 2010).**

A lump sum payment of retroactive disability benefits was not necessary to be included in the debtor's estate under the anti-assignment provision in 42 U.S.C. § 407.

***Darrohn v. Hildebrand (In re Darrohn*), 615 F. 3d 470 (6th Cir. 2010).**

Applying *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010), the bankruptcy court erred in determining disposable income solely on the basis of the six month look-back period rather than on the basis of the debtor's newly secured job. The bankrupt court also erred in permitting the expense deduction of contractual payments for real property that the debtor intended to surrender. The court determined that the *Hamilton v. Lanning* approach governs the determination of appropriate expense deductions in light of a change in circumstances.

***In re Myers*, 616 F.3d 626 (7th Cir. 2010).**

Because a debtor's income and tax withholdings did not fluctuate wildly from month-to-month and had a steady rate of increase, the pro-rata-by-days method of allocating postpetition tax refunds to estate property and non-estate property was appropriate. The debtor's filing seventy-three percent of the way through the year required seventy-three percent of the tax refund, less any exempted portion, to be given to the trustee.

***Adams v. Zarnel (In re Zarnel)*, 619 F.3d 156 (2d Cir. 2010).**

Even if a debtor is later found to not qualify as a debtor under 11 U.S.C. § 109, a filing by that individual or entity nonetheless commences a bankruptcy case and triggers the automatic stay.

***Gebhart v. Gaughan (In re Gebhart)*, 621 F.3d 1206 (9th Cir. 2010).**

In accordance with Schwab v. Reilly, 130 S. Ct. 2652 (2010), a chapter 7 trustee was not prevented from selling the debtor's house, despite not having objected to the debtor's

exemption, because the house appreciated in value above the claimed exemption amount prior to the closing of the case.

***Vizcaya Argentaria v. Wiscovitch-Rentas (In re Net-Velazquez)*, No. 09-1816, 2010 WL 4342205 (1st Cir. Nov. 2, 2010).**

Funds of the debtor deposited into an account held by a business entity wholly owned by the debtor and his spouse were still deemed to be property of the bankruptcy estate. A garnishment of that account by a creditor was thus found to be an avoidable transfer by the lower court and not appealed. New arguments on appeal will not be heard absent extraordinary circumstances.

***Treadwell v. Glenstone Lodge, Inc. (In re Treadwell)*, 423 B.R. 309 (8th Cir. B.A.P. 2010).**

Although debtor-husband and debtor-wife each owned fifty percent of a business, debtor-husband's lack of involvement in the business permitted his debt to be dischargeable, whereas debtor-wife's debt was not due to her fraudulent operating of the business. Further, justifiable reliance was found to be a lower standard than reasonable reliance and thus the creditor did not have a duty to investigate as no warning signs of fraud were known by the creditor.

***Zotow v. Johnson (In re Zotow)*, 432 B.R. 252 (9th Cir. B.A.P. 2010).**

Information mailed to the debtor by the mortgage servicer regarding a new escrow payment did not violate the automatic stay as the information did not include a payment demand or other action to collect the debt. Also, receiving the increased escrow payments did not violate the automatic stay.

***Maali v. United States (In re Maali)*, 432 B.R. 348 (1st Cir. B.A.P. 2010).**

A bankruptcy court cannot consider whether payment of a tax debt would be a hardship for the debtor when determining whether that debt should be dischargeable.

***Mwangi v. Wells Fargo Bank, N.A. (In re Mwangi)*, 432 B.R. 812 (9th Cir. B.A.P. 2010).**

A bank's policy of comparing bankruptcy filings with its account holders' identities and freezing corresponding accounts was found to be impermissible. The bank did not claim a right of setoff, but indicated it was preserving assets for the trustee. The trustee failed to provide any guidance to the bank as to what it should do with the account funds, but the debtor had standing to pursue an action for violation of the automatic stay. The bank was not permitted to indefinitely hold the funds waiting for instructions from the trustee.

***Premier Capital, Inc. v. Pagnini (In re Pagnini)*, 433 B.R. 455 (1st Cir. B.A.P. 2010).**

A chapter 7 debtor was able to avoid a judgment lien against her one-half interest in a homestead that she owned jointly with a child.

***Phillips v. Weissert (In re Phillips)*, 434 B.R. 475 (6th Cir. B.A.P. 2010).**

A default judgment by a creditor against debtor for abuse of process and other claims for pursuing a false rape charge was given preclusive effect by the bankruptcy court. The bankruptcy court found the rape never occurred and that the pursuit of the charge was a willful and malicious injury. The bankruptcy court found preclusive the state court default as to damages and liability in the action to determine dischargeability of the debt.

***Harman v. Fink (In re Harman)*, 435 B.R. 596 (8th Cir. B.A.P. 2010).**

Joint chapter 13 debtors who maintained separate households were required to submit a single Form B22C, including the current monthly income of both spouses for purposes of determining the appropriate applicable commitment period under 11 U.S.C. §1325(b)(4).

***Smith v. Rojas (In re Smith)*, 435 B.R. 637 (9th Cir. B.A.P. 2010).**

Claims of wholly unsecured lienholders had to be characterized as unsecured debt when determining satisfaction of debt limits under 11 U.S.C. § 109(e).

***Rea v. Federated Investors*, 431 B.R. 18 (W.D. Pa. 2010).**

While 11 U.S.C. § 525(b) protects current employees, a private employer could discriminate against a prospective employee on the basis of a prior bankruptcy of the individual. Government entities are also prohibited from considering a prior bankruptcy in a hiring decision, but under 11 U.S.C. § 525(a).

***In re Chapman*, 431 B.R. 216 (Bankr. D. Minn. 2010).**

11 U.S.C. § 707(b) does not apply to debtors who initially file a Chapter 13 bankruptcy and then converts to Chapter 7.

***In re Buck*, 432 B.R. 13 (Bankr. D. Mass. 2010).**

A chapter 13 case initiated for the sole purpose of paying debtor's attorney fees when the debtor was otherwise eligible for a chapter 7 discharge was not filed in good faith and the attorney was required to disgorge any fees received.

***In re Alvarez*, 432 B.R. 839 (Bankr. S.D. Cal. 2010).**

A creditor's repossession of a vehicle that had become property of the estate in a chapter 13 case violated the automatic stay, despite the termination of the stay with respect to the debtor under 11 U.S.C. § 362(c)(3)(A). That section does not cause the stay to automatically terminate with respect to the bankruptcy estate as well as the debtor.

***In re Phila. Newspapers, LLC*, 433 B.R. 164 (Bankr. E.D. Pa. 2010).**

Back pay awarded in an arbitration for violation of a collective bargaining agreement was not allowed as an administrative expense because 11 U.S.C. § 503(b)(1)(A) restricts that status for back pay awarded only as a result of a violation of federal or state law. As violation of a collective bargaining agreement is not in contravention of either, the expense was not allowed as an administrative expense.

***In re Kraft*, No. 09-21052 (Bankr. D. Wyo. Aug. 13, 2010) (McNiff, J.) (unpublished), https://ecf.wyb.uscourts.gov/doc1/20611385353 (Pacer).**

11 U.S.C. § 707(b) is applicable to a debtor who initially files a Chapter 13 bankruptcy and then converts to Chapter 7.

***HHP-Brentwood, L.L.C. v. Aurora Loan Servs., LLC (In re Surti)*, 434 B.R. 515 (Bankr. M.D. Tenn. 2010).**

Although only debtor-wife signed the promissory note, because both debtors signed the trust deed giving a security interest in the property covered by the promissory note and because the property was held in tenancy by the entirety by debtors, debtor-husband's interest in the property was also encumbered by the deed of trust.

***In re Alessandro*, No. 10-12511, 2010 WL 3522255 (Bankr. S.D.N.Y. Sept. 7, 2010).**

Court order disgorgement of $4,000 in fees paid to debtors counsel in view of fact that counsel did not conduct a reasonable investigation prior to and after the filing of the Chapter 7 petition by checking the court's PACER system to determine whether prior bankruptcy cases had been filed.

***In re Blue Pine Group, Inc.*, No. 09-13274-BAM (Bankr. D. Nev. Oct. 7, 2010) (unpublished), https://ecf.nvb.uscourts.gov/doc1/114116741379 (Pacer).**

Debtor's counsel fully trusted a fifty percent owner that the board had passed a resolution permitting the bankruptcy filing despite receiving information from the other fifty percent owner that no such permission had been given. Acting without verifying facts and authority caused the attorney to be fined all of the attorney fees of the other owner.

***Asher v. Koper (In re Koper)*, 437 B.R. 829 (Bankr. W.D. Mich. 2010).**

Debtor entered into a consent judgment establishing a constructive trust which required her to repay insurance proceeds to her deceased spouse's ex-wife due to debtor's violation of the Uniform Fraudulent Transfer Act. Because of debtor's default on that consent judgment, the debt was nondischargeable on a theory of embezzlement.

***In re Boscaccy*, Nos. 10-11764-DWH, 10-11795-DWH, 10-11963-DWH, 2010 WL 4193074 (Bankr. N.D. Miss. Oct. 20, 2010).**

Placing unsecured student loans in a separate class from the residual unsecured creditors in order to cure the default for the student loans may or may not be permissible. The determination must be whether the discrimination is fair. A comparison to what the residual unsecured creditors would receive in a chapter 7 case and an analysis of the capitalization of student loan interest during the term of the bankruptcy case were instructive in differentiating what was fair.

***In re Halfpenny*, No. 10-16252-mdc, 2010 WL 4261223 (Bankr. E.D. Penn. Oct. 22, 2010).**

Incarceration was not a valid excuse for not receiving credit counseling as the debtor could have received such by telephone.

***In re Watson*, No. 10-1292, 2010 WL 4497477 (Bankr. N.D. W. Va. Nov. 1, 2010).**

A bankruptcy case became a one-creditor dispute subject to dismissal when the debtor indicated he would continue to pay for his house outside of bankruptcy, reaffirmed the debt on his vehicle, and was not seeking a discharge of his student loans.

***In re Ross-Tousey*, 549 F.3d 1148 (7th Cir. 2008).**

In this chapter 7 case, the Seventh Circuit held that Chapter 7 debtors who own their vehicles out right may nonetheless take advantage of the IRS vehicle ownership deduction. The court relied upon language of the statutory provision in the use of the word "applicable" monthly expenses when referring to the IRS "National Standards and Local Standards," which include the vehicle ownership expense, noting that the term "actual" monthly expenses as used in the IRS "Other Necessary Expenses," suggested to the court that the terms *actual* and *applicable* have different meanings. The court also noted that the means test allowing for secured debt payments as a deduction, rewards those with sizable car loans. To disallow a deduction for an unencumbered vehicle, according to the court, penalizes those debtors who are more budget-conscious.