AMERICAN BANKRUPTCY INSTITUTE

2025 Midwestern Bankruptcy Institute

Case Law Updates

Hon. Brian T. Fenimore
U.S. Bankruptcy Court (W.D. Mo.) | Kansas City

Hon. Shon K. Hastings
U.S. Bankruptcy Court (D. N.D.) | Fargo

Hon. Dale L. Somers
U.S. Bankruptcy Court (D. Kan.) | Topeka

Hon. Brian C. Walsh
U.S. Bankruptcy Court (E.D. Mo.) | Saint Louis

2025

Case Law Update

October 2024 through September 2025

Hon. Shon Hastings
Hon. Dale L. Somers
Hon. Brian C. Walsh
Hon. Brian T. Fenimore

Supreme Court

Hon. Brian C. Walsh
United States Bankruptcy Court for the Eastern District of Missouri

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604 U.S. 518(2025) (Jackson, J.).

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109 F.4th 438 (6th Cir. 2024) (Lasen, J.),
cert. granted, 145 S. Ct. 2775 (2025).

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Hon. Shon Hastings

United States Bankruptcy Appellate Panel for the Eighth Circuit
United States Bankruptcy Court for the District of North Dakota

BEWARE OF MOOTNESS…

If you are challenging the validity of a sale authorized by a bankruptcy court.

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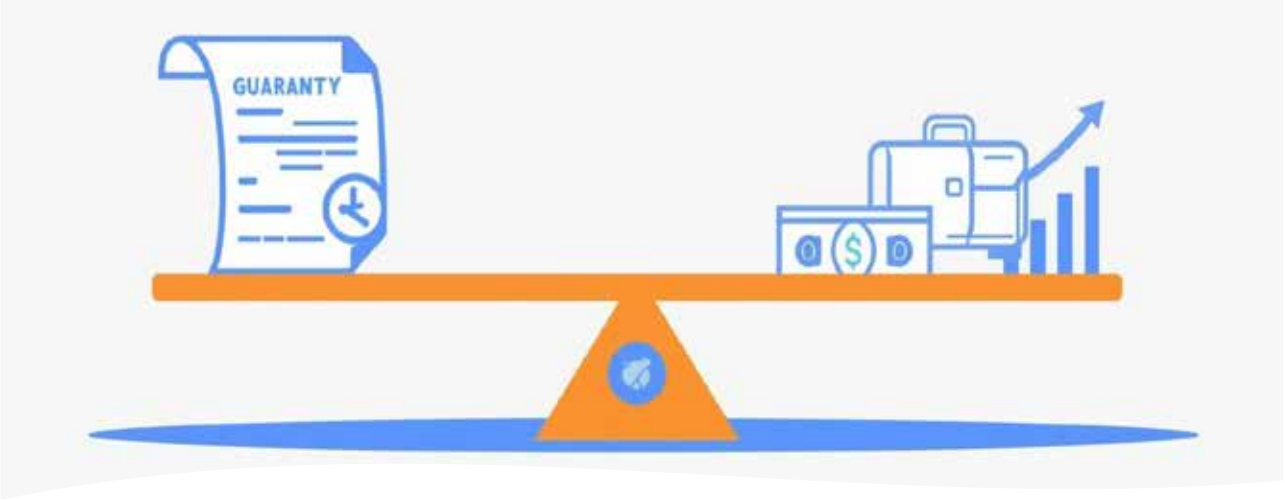

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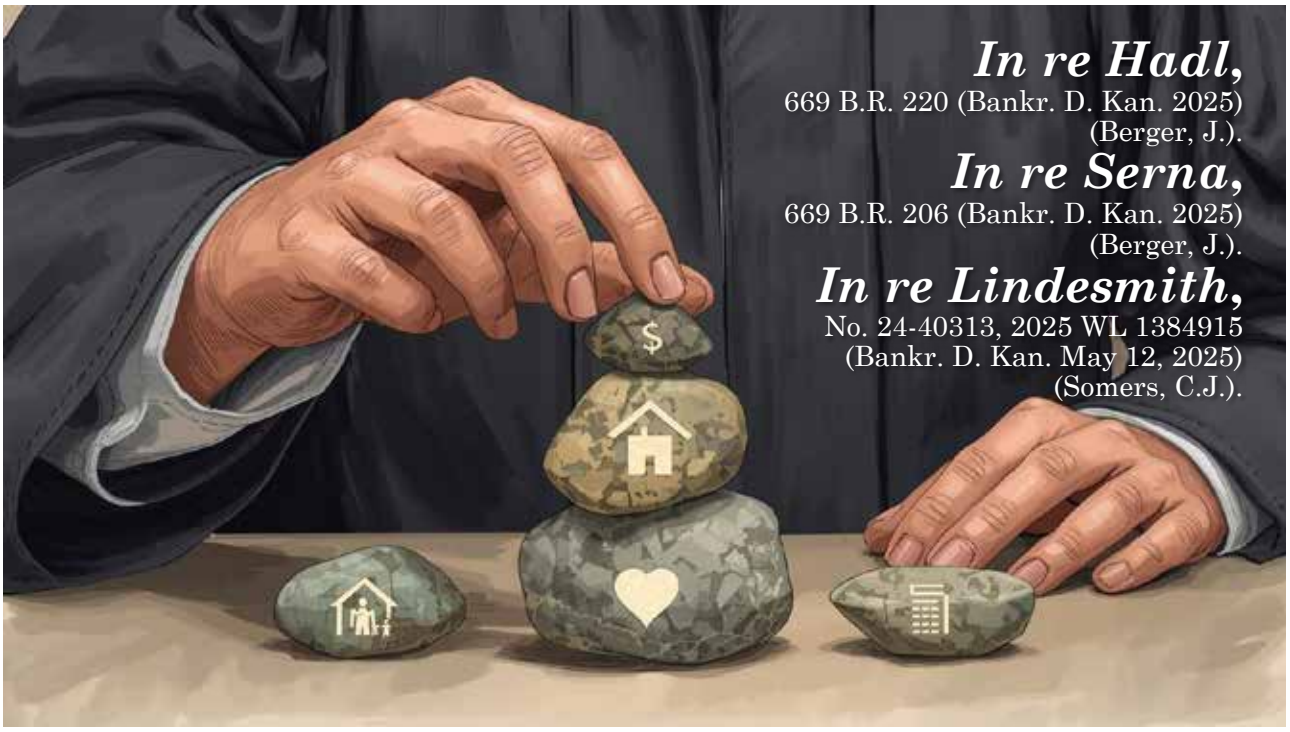

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Questions?

Case Law Update

October 2024 through September 2025

Midwestern Bankruptcy Institute
presented by the
American Bankruptcy Institute
and the
University of Missouri-Kansas City

Hon. Brian T. Fenimore
U.S. Bankruptcy Court for the Western District of Missouri, Chief Judge

Hon. Shon Hastings
U.S. Bankruptcy Appellate Panel for the Eighth Circuit, Chief Judge and U.S. Bankruptcy Court for the District of North Dakota, Chief Judge

Hon. Dale L. Somers
U.S. Bankruptcy Appellate Panel for the Tenth Circuit and U.S. Bankruptcy Court for the District of Kansas, Chief Judge

Hon. Brian C. Walsh
U.S. Bankruptcy Court for the Eastern District of Missouri

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I. Supreme Court

A. Section 106 does not abrogate sovereign immunity as to the hypothetical state-law fraudulent-transfer claim that underlies an action under § 544(b). *United States v. Miller*, 604 U.S. 518 (2025) (Jackson, J.).

Debtor All Resort Group, a transportation company based in Utah, filed for bankruptcy after struggling financially due to "poor management and financial malfeasance." Prior to bankruptcy, two of its shareholders caused the company to transfer around $145,000 to the IRS to satisfy their own personal tax obligations. All Resort Group received nothing in return for the transfers. The trustee sought to avoid the transfers and recover the funds for the estate under § 544(b). Under § 544(b)(1), a trustee may "avoid any transfer of an interest of the debtor ... that is voidable under applicable law by a creditor holding an unsecured claim." The trustee asserted that the transfers would be voidable under Utah's fraudulent-transfer law. The government did not contest that the transfers would qualify as fraudulent transfers but rather argued that the trustee could not avoid the transfers because the trustee did not satisfy the "actual-creditor requirement" of § 544(b). That is, the trustee could not point to a creditor who could prevail on a fraudulent-transfer claim against the government because such a claim would be barred by sovereign immunity outside of bankruptcy.

The bankruptcy court agreed with the trustee. It construed § 106(a), which abrogates sovereign immunity with respect to § 544, to waive the government's sovereign immunity not solely as to the trustee's § 544(b) claim, but also as to the underlying state-law claim. The district court adopted the bankruptcy court's decision, and the Tenth Circuit affirmed. The Supreme Court granted certiorari to resolve a conflict among the circuits about whether § 106(a) abrogates sovereign immunity as to the underlying state law claim that serves as the "applicable law" for a § 544(b) claim.

The Court held that the sovereign-immunity waiver in § 106(a) only applies to the § 544(b) claim and not to state-law claims that are "nested" within the § 544(b) claim. Sovereign-immunity waivers are jurisdictional statutes that allow courts to hear claims against the government, but such waivers generally do not establish new substantive rights against the government. The Court concluded that § 106(a) fits into that general rule. Because § 106(a)(5) provides that "[n]othing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law," the Court concluded that § 106(a) "operates like any other waiver of sovereign immunity" and "does not establish any substantive rights against the Government."

The Court also looked to the language of § 544. Section 544(b) requires trustees to identify an actual creditor that could void the transfer "under applicable law," while § 544(a) allows trustees to avoid transfers "*whether or not* such a creditor exists." The Court observed that Congress chose "to tie the trustee's rights under subsection (b) to the rights of an actual creditor under 'applicable law,'" and doubted that Congress intended to alter that result when it included § 544 in the list of provisions in § 106(a).

The Court noted that Congress must use "unmistakable language" when it intends to abrogate sovereign immunity, and that sovereign-immunity waivers are construed narrowly. Here, Congress did not unambiguously waive sovereign immunity for the nested state-law claims.

Justice Gorsuch dissented and would have allowed the trustee to avoid the fraudulent transfers to the government under § 544(b).

B. Supreme Court will determine whether a motion for relief from a judgment alleged to be void, because service did not comply with Rule 7004(b)(3), must be filed within a reasonable time. *Burton v. Coney Island Auto Parts Unlimited, Inc. (In re Vista-Pro Automotive, LLC)*, 109 F.4th 438 (6th Cir. 2024) (Lasen, J.), *cert. granted*, 145 S. Ct. 2775 (2025).

Debtor Vista Pro filed an adversary proceeding against Coney Island Auto Parts, seeking recovery of $50,000 in unpaid invoices. The summons and complaint were addressed to Coney Island Auto Parts' business address, not a corporate officer or individual, because the corporation itself was listed as the registered agent according to New York State Department records. After the debtor received no response, the debtor sought a default judgment. After notice of the impending default was sent to the same address with no response, the court entered default judgment. The court subsequently converted the case to chapter 7, and a trustee began attempting to collect on the default judgment. The trustee identified Coney Island Auto Parts' CEO and sent him a letter in April 2016 notifying him of the default judgment. The CEO admitted he received the letter but did not respond to the trustee. For several years, the trustee attempted to collect the default judgment until in October 2021, Coney Island Auto Parts moved to have the default judgment vacated by the bankruptcy court for the Southern District of New York. The court, however, denied the motion, deciding that Coney Island Auto Parts needed to seek relief in the Middle District of Tennessee—where Vista Pro's bankruptcy was filed. In July 2022, Coney Island Auto Parts filed a Rule 60(b)(4) motion in the Middle District of Tennessee bankruptcy court to have the default judgment vacated for lack of personal jurisdiction. The bankruptcy court denied the motion, determining that the motion was not filed within a reasonable time. Coney Island Auto Parts appealed to the district court, which

affirmed the bankruptcy court. Coney Island Auto Parts then appealed to the Sixth Circuit Court of Appeals.

The Sixth Circuit held that Rule 60(b)(4) requires the movant to file its motion to set aside a judgment within a reasonable amount of time after being provided with actual notice of the judgment. Judge Larsen, writing for the majority of the panel, recognized that the Sixth Circuit approach was the minority view but decided that the "reasonable time" requirement was consistent with the plain text of Rule 60(b)(4) and equitable principles. Specifically, the majority relied on the text of Rule 60(c)(1), which says that all Rule 60(b) motions must be filed within a reasonable time. The court concluded that the several-year delay in this case was unreasonable. Addressing Coney Island Auto Parts' due process argument, Judge Larsen noted that any due process concerns can be dealt with when the court considers whether a reasonable amount of time has elapsed. Here, the trustee provided actual notice by mailing the CEO of Coney Island Auto Parts, but Coney Island Auto Parts waited years before attempting to vacate the judgment.

Judge McKeague, dissenting, argued that courts have no authority to enforce void judgments. He said he would vacate the bankruptcy court holding that the motion was untimely and would remand for the bankruptcy court to determine whether the judgment was void.

The Supreme Court recently granted certiorari to decide whether Rule 60(c)(1) imposes any time limit to set aside a void judgment for lack of personal jurisdiction.

II. Eighth Circuit

A. Section 363(m) statutorily moots reversal of a non-stayed completed sale. *Humphrey v. Christopher*, 146 F.4th 682 (8th Cir. 2025) (Smith, J.).

Anthony Christopher and his company, Absolute Pediatric Therapy, obtained a $3,570,977.88 judgment in Arkansas state court against former employee LaDonna Humphrey for Humphrey's alleged theft of information and false statements. Humphrey appealed the state court judgment and petitioned for relief under Chapter 7. Christopher and Absolute filed an adversary proceeding against Humphrey, alleging that the state court judgment was nondischargeable under § 523(a)(6). The bankruptcy trustee filed a motion to approve the sale of all claims and potential claims that Humphrey had that were part of the estate to Absolute for $12,500. The bankruptcy court approved the sale over Humphrey's objection, concluding that the sale satisfied the business judgment rule.

Humphrey appealed the bankruptcy court's order approving the sale to the district court. On the same date, the Arkansas Court of Appeals entered a stay of the state

court appeal pending resolution of Humphrey's bankruptcy, but Humphrey never requested any stay of the sale in the bankruptcy court. The trustee and Christopher and Absolute consummated the sale.

The district court reversed the bankruptcy court's order approving the sale, concluding that the sale was not fair or equitable or in the best interests of the estate. The district court reasoned that the $12,500 purchase price for Humphrey's appellate rights was not reasonable because Humphrey lost the opportunity to contest the validity of the $3.5 million debt without legal expense. The court rejected Christopher and Absolute's argument that the appeal was moot under 11 U.S.C. § 363(m) because Humphrey obtained a stay of the state court appellate proceedings that were the subject of the sale. Christopher and Absolute appealed.

The Eighth Circuit vacated the district court's order and dismissed Humphrey's appeal from the bankruptcy court as statutorily moot under § 363(m). Disagreeing with the district court that the state court stay was sufficient, the Eighth Circuit held that § 363(m) operates to statutorily moot reversal of a non-stayed completed sale.

B. Bankruptcy court appropriately weighed the applicable factors in determining settlement was reasonable. *TooBaRoo, LLC v. Western Robidoux, Inc.*, 135 F.4th 1133 (8th Cir. 2025) (Kelly, J.).

Western Robidoux, a chapter 11 debtor, brought adversary proceedings against two creditors, alleging that indemnity payments it made pursuant to contracts between the parties were recoverable in bankruptcy. Western Robidoux later converted to chapter 7, and the trustee amended the adversary claims to include claims for avoidance of fraudulent transfers, indemnity, and money had and received. The creditors filed counterclaims for breach of contract, breach of the duty of good faith and fair dealing, and setoff. After the parties reached a settlement through mediation, the trustee submitted the settlement proposal, and one creditor, TooBaRoo, objected. The bankruptcy court overruled the objection and approved the settlement agreement.

The district court affirmed, and TooBaRoo appealed to the Eighth Circuit. The Eighth Circuit affirmed, concluding that the bankruptcy court did not abuse its discretion in weighing the factors for determining whether a settlement is reasonable: the probability of success in the litigation; the difficulties, if any, to be encountered in the matter of collection; the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and the paramount interest of the creditors and a proper deference to their reasonable views.

C. Eighth Circuit holds that *Benn* and *Abdul-Rahim* remain binding on Missouri exemption issue. *Shoults v. Brown (In re Shoults)*, 143 F.4th 976 (8th Cir. 2025) (Loken, J.).

The debtors sought to exempt a contingent and unliquidated personal injury claim under § 513.427, RSMo. The Eighth Circuit concluded that its prior decisions in *In re Benn*, 491 F.3d 811 (8th Cir. 2007), and *In re Abdul-Rahim*, 720 F.3d 710 (8th Cir. 2013), barred the debtors from exempting the personal injury claim. *Benn* established that Section 513.427 is an "opt-out" statute that prevents Missouri debtors from claiming exemptions listed in 11 U.S.C. § 522(d) and that Section 513.427 does not create any new exemptions under Missouri law. Consequently, debtors in Missouri may only exempt property when a Missouri statute specifies that certain property is exempt. In *Abdul-Rahim*, the Eighth Circuit followed *Benn* and held that personal injury claims were not exempted from the bankruptcy estate under other Missouri law or federal law other than the § 522(d) exemptions.

The Eighth Circuit rejected the debtors' argument that the Supreme Court's decision in *Rodriguez v. FDIC*, 589 U.S. 132 (2020) effectively overturned *Abdul-Rahim* and abrogated *Benn*. The Eighth Circuit noted that, while the Court in *Rodriguez* cautioned "federal courts to guard against *creating* federal common law on an issue governed by state law," it did not address the key issue in this case. Specifically, "*Rodriguez* did not even address how federal courts should interpret ambiguous or unsettled state law that governs an issue of federal statutory law implicating important federal issues, here, whether property is exempt from a federal bankruptcy debtor's estate." *In re Shoults*, 2025 WL 1935427, at *3.

D. No Missouri exemption for unliquidated contingent causes of action. *In re Shoults*, 649 B.R. 885 (Bankr. E.D. Mo. 2023) (Clair, C.J.), *aff'd*, No. 23 CV 557, 2024 WL 836951 (E.D. Mo. Feb. 28, 2024) (White, J.), *aff'd*, 143 F.4th 976 (8th Cir. 2025) (Loken, J.).

The co-debtors scheduled an interest in a potential personal injury claim against earplug manufacturer 3M for faulty earplugs one of the debtors used while in the military. The debtors claimed an exemption in the personal injury claim under § 513.427, RSMo. The trustee objected, arguing that § 513.427 was Missouri's opt out statute, that it does not create any substantive personal injury exemption, and that no exemption in Missouri law would shelter the debtors' interest in the contingent unliquidated claim.

Relying on the Eighth Circuit's holdings in *Benn v. Cole* (*In re Benn*), 491 F.3d 811 (8th Cir. 2007), and *Abdul-Rahim v. LaBarge (In re Abdul-Rahim)*, 720 F.3d 710 (8th Cir. 2013), the bankruptcy court determined that because exemptions are created by statute and because there is no Missouri statute (including § 513.427) creating an

exemption in contingent unliquidated claims, the 3M claim was subject to attachment.

Further, the court rejected the debtors' argument that *Rodriguez v. FDIC*, 140 S. Ct. 713 (2020), overturned *Benn* and *Abdul-Rahim*. The debtors claimed that *Benn* and *Abdul-Rahim* were examples of the Eighth Circuit creating federal common law, which, according to *Rodriguez*, is only permitted in limited circumstances, and such circumstances were not implemented in this case. The court disagreed with the debtors' interpretation of the Eighth Circuit precedent and determined that both *Benn* and *Abdul-Rahim* only involved statutory interpretation, not the creation of federal common law.

E. District Court erred by resolving threshold question of arbitrability of newly pleaded counts where parties' agreement delegated arbitrability to an arbitrator. *Lackie Drug Store, Inc. v. OptumRx, Inc.*, 143 F.4th 985 (8th Cir. 2025) (Shepherd, J.).

Lackie Drug Store brought a putative class action against pharmacy benefit manager OptumRx for alleged under-reimbursement. After more than two years of litigation, Lackie filed an amended complaint asserting two new counts and narrowing the scope of the putative class, among other things. In the amended complaint, Lackie also referenced for the first time a manual that the contract governing the parties' relationship incorporated by reference. Though the governing contract contained a mediation provision, the newly referenced manual contained an arbitration clause. Optum moved to compel arbitration, arguing that the manual required arbitration and delegated threshold questions of arbitrability to the arbitrator. The district court denied Optum's motion to compel arbitration, concluding that the agreement's mediation provision and manual's arbitration clause conflicted and the agreement controlled.

The Eighth Circuit affirmed in part and reversed in part. First, the circuit court determined Optum waived its right to compel arbitration of the counts that predated the amended complaint, but not the newly asserted counts. A party waives arbitration if it knows of its arbitration rights and acts inconsistently with those rights. Here, Optum knew of its purported arbitration rights because it possessed the manual containing the arbitration provision and had previously argued that the manual applied. Optum also acted inconsistently with its arbitration rights when it "'substantially invoke[d] the litigation machinery by filing' dispositive motions 'and participating in the early stages of discovery.'" The amended complaint did not revive Optum's right to compel arbitration as to the claims asserted in the original complaint because those claims were present before Optum requested arbitration and because the amended complaint did not materially change their scope or theory. In contrast, Optum did not waive its right to seek arbitration of the newly added claims. But

because the parties' agreement delegated the question of arbitrability to an arbitrator and Lackie did not explicitly challenge the delegation clause, the district court lacked authority to determine whether the agreement and manual conflicted and erred in denying the motion to compel arbitration of the new counts. The Eighth Circuit remanded with instructions that the district court should grant Optum's motion to compel arbitration of the new counts.

For more on a party waiving its right to arbitration, see the Eighth Circuit's decision in *Parker v. Kearney School District*, 130 F.4th 649 (8th Cir. 2025) (Shepherd, J.) (affirming district court's conclusion that the defendants waived any right to compel arbitration when it knew of its right and waited to assert its right until after it lost its motion to dismiss, engaged in discovery, and then lost its motion for summary judgment).

F. Bankruptcy court's finding that debtors abandoned their homestead was not supported by the record, and its dismissal of adversary proceeding without affording debtors the presumptions they were entitled was erroneous. *Jencks v. AgVantage FS (In re Jencks)*, 671 B.R. 252 (B.A.P. 8th Cir. 2025) (Hastings, C.J.).

Twelve days before they filed for bankruptcy relief, the debtors agreed to purchase a new home. The sellers of the new home signed a warranty deed which was escrowed until the transaction was complete several months later. When the debtors petitioned for bankruptcy relief, they listed three contiguous parcels as their residence (not the property they purchased 12 days earlier) and claimed the parcels exempt under Iowa homestead statutes. No one objected to the debtors' homestead exemption.

Three months after they petitioned, the county recorder filed the warranty deed conveying the new home to the debtors. The following week, the debtors sold two of the parcels they claimed as exempt as their homestead, retaining the third parcel, a vacant lot.

The debtors received their discharge, and the bankruptcy court closed the case. Three months later, a judgment creditor executed against the vacant lot and purchased it through a credit bid at auction. After the creditor initiated the collection action, but before the sale, the debtors sought to reopen their bankruptcy case. After the bankruptcy court reopened the case, the debtors filed a motion to avoid the creditor's lien, claiming that it impaired their homestead exemption. The judgment creditor objected. The debtors also initiated an adversary proceeding against the creditor, seeking contempt sanctions for violating the discharge injunction by selling the vacant lot. The creditor filed a motion to dismiss the case for failure to state a claim.

The bankruptcy court considered both matters at the same hearing and found that the debtors were not entitled to exempt the vacant lot as their homestead because the

vacant lot lost its homestead status when the debtors purchased the new property and used the new property as their homestead, effectively abandoning the third parcel.

Because it concluded that the debtors did not properly claim their homestead exemption, the bankruptcy court found that the creditor's lien did not impair an exemption and denied the debtor's motion to avoid the lien. The court also granted the creditor's motion to dismiss the adversary proceeding because the creditor held a valid lien and the debtors did not meet their burden of proving the judgment creditor violated the discharge injunction by selling the vacant lot.

The B.A.P. concluded that the bankruptcy court's findings regarding the debtors' use of the new property as their homestead on the date of the petition was not supported by the record. The only evidence of the debtors' residency and intent on the petition date was the petition and schedules. The B.A.P. also concluded that the bankruptcy court erred in reaching the merits of the debtors' claim in the context of a Rule 12(b)(6) motion in the adversary proceeding without affording the debtors the presumption that their homestead claim was valid.

G. B.A.P. affirms discharge of one of debtor's two student loan debts. *Duncanson v. Bank of North Dakota (In re Duncanson),* 671 B.R. 269 (B.A.P. 8th Cir. 2025) (Jones, J.).

The debtor filed an adversary proceeding seeking to discharge her student loan debts owed to the Department of Education and the Bank of North Dakota. After a trial and a supplemental evidentiary hearing, the bankruptcy court determined that not discharging one of the debtor's student loan debts would create an undue burden on the debtor. It concluded that the debt to the DOE was not dischargeable under 11 U.S.C. § 523(a)(8) but discharged the debt to the Bank under § 523(a)(8). The Bank appealed.

The B.A.P. opined that the bankruptcy court did not err in rejecting the Bank's argument that the debtor was underemployed or in considering the debtor's age in concluding her future financial resources were limited. The B.A.P. also ruled that the bankruptcy court properly considered the debtor's testimony about her mental health without requiring expert testimony and properly considered all the relevant circumstances. Additionally, the B.A.P. determined that the bankruptcy court properly differentiated between the debts to the DOE and the Bank and did not err in discharging the debt to the Bank.

H. Bankruptcy court's s*ua sponte* dismissal under 11 U.S.C. § 1307 was harmless error but imposition of one-year bar to refiling without notice of the possible sanction was an abuse of discretion. *Smith v. Gooding (In re Smith)*, 671 B.R. 260 (B.A.P. 8th Cir. 2025) (Hastings, C.J.).

The *pro se* debtors failed to appear at a claim-objection hearing. The bankruptcy court issued an order to appear and show cause why their case should not be dismissed for their failure to appear at the hearing. The order did not apprise the Smiths that the bankruptcy court may consider other sanctions, including a bar to refiling.

At the hearing, the bankruptcy court rejected the debtors' explanation for missing the hearing and announced its intention to dismiss the case and bar the debtors from filing another bankruptcy case for one year. In its written ruling, the bankruptcy court found cause to dismiss debtors' case under § 1307(c) and imposed the one-year bar on refiling.

On appeal, the record revealed that the debtors had filed three bankruptcy cases, moved to continue many hearings, retained and then terminated four attorneys during the bankruptcy cases, and filed pleadings that delayed confirmation of their numerous Chapter 13 plans. The B.A.P. noted that bankruptcy courts lack authority to *sua sponte* dismiss a case under § 1307. It concluded, however, that the error was harmless because bankruptcy courts have the authority to dismiss a case *sua sponte* under § 105(a) where necessary or appropriate to enforce court orders or to prevent an abuse of process. It affirmed the bankruptcy court's decision to dismiss the case. The B.A.P. reversed the bankruptcy court's decision to impose a one-year bar on debtors filing another case because the court did not provide notice to the debtors that it might consider a sanction other than dismissal at the show cause hearing.

I. Debtor's noncompliance with Rule 8014's appellate brief requirements serve as grounds to dismiss appeal and bankruptcy court's *sua sponte* dismissal of *pro se* chapter 13 case appropriate for debtor's noncompliance with credit counseling requirements *Rivett v. Carlson (In re Rivett),* 670 B.R. 786 (B.A.P. 8th Cir. 2025) (Constantine, J.).

The bankruptcy court dismissed *pro se* debtor William Rivett's chapter 13 case after he failed to pay filing fee installments and failed to file a credit counseling certificate. Rivett appealed.

After filing the notice of appeal, Rivett failed to submit a brief. The Clerk entered an order compelling Rivett to file a brief. Rivett re-dated and filed his notice of appeal as his appellate brief.

The B.A.P. concluded that Rivett failed to comply with nearly every appellate brief requirement in Rule 8014 of the Federal Rules of Bankruptcy Procedure, subjecting the case to summary dismissal of the appeal.

Reaching the merits of the appeal, the B.A.P. affirmed the bankruptcy court's *sua sponte* dismissal of Rivett's case based on his failure to comply with the credit counseling certification requirements provided in § 109(h)(1) and FRBP 1007(c)(3).

J. Debtor's failure to obtain stay pending appeal moots appeal. *Jackson v. United States* (*In re Jackson*), 663 B.R. 738 (B.A.P. 8th Cir. 2024) (Hastings, C.J.).

Jackson owed several million dollars to the IRS pursuant to a district court judgment for unpaid taxes. Jackson filed for bankruptcy relief the day before the IRS was scheduled to seize his property. Unaware of the bankruptcy, the IRS seized Jackson's property the next day. After learning of the bankruptcy, the IRS sought to retroactively annul the automatic stay. Jackson, proceeding *pro se*, opposed the IRS's motion and sought a contempt judgment ruling that the IRS violated the stay and ordering turnover of the property seized. After an evidentiary hearing, the bankruptcy court annulled the automatic stay and denied Jackson's motion for contempt and turnover. Jackson appealed to the B.A.P He did not seek a stay of the order pending appeal.

While the appeal was pending, Jackson filed an emergency motion with the district court, seeking to prevent the auction of his properties. While the motion was pending, the IRS sold the properties at auction. The district court denied Jackson's motion to stay the sale and confirmed the sale. The IRS then filed a status report with the B.A.P. asserting that Jackson's appeal was moot.

The B.A.P. agreed with the IRS that the appeal was moot. It explained that a sale in a bankruptcy case cannot be modified by an appellate court unless the appellant receives a stay pending appeal. Because Jackson failed to seek a stay with the bankruptcy court preventing the sale from proceeding, the IRS proceeded with the sale, rendering moot Jackson's appeal of the order denying turnover and annulling of the automatic stay. The B.A.P. also reasoned that the order denying contempt sanctions was moot because there could "be no basis for contempt based on a violation of the stay once the stay is annulled." The B.A.P. dismissed Jackson's appeal without reaching the merits of Jackson's claims.

K. B.A.P. remands to bankruptcy court to hold evidentiary hearing on damages for involuntary case dismissed under § 305. *Jackson v. Gosset (In re Jackson)*, 665 B.R. 395 (B.A.P. 8th Cir. 2024) (Constantine, J.).

Debtor was forced into an involuntary bankruptcy after multiple creditors received judgments against the debtor but were unable to collect. Debtor filed a motion to dismiss the bankruptcy proceeding and a motion for damages, sanctions, and other remedies. The bankruptcy court, after reviewing voluminous pleadings from both sides and conducting oral argument, entered an order abstaining and dismissing the involuntary petition. The court, however, denied Jackson's request for sanctions, damages, and other relief—citing several reasons why damages were not appropriate. Jackson appealed, seeking a remand to the bankruptcy court to hold a separate evidentiary hearing to establish whether sanctions and other remedies were appropriate.

The appellees in turn argued that the B.A.P. lacked jurisdiction over the dismissed bankruptcy proceeding because sanctions are only allowed when a bankruptcy court dismisses a case under § 303.

The panel rejected the appellees' argument, pointing out that the Eighth Circuit had recently determined in *Stursberg v. Morrison Sund PLLC,* 112 F.4th 556 (8th Cir. 2024), that the bankruptcy court had exclusive jurisdiction to determine appropriate remedies under § 303 and that these remedies are available whether the court dismisses the involuntary case under § 303 or § 305.

The B.A.P. concluded that it was unclear from the record whether damages or sanctions were appropriate because Jackson on appeal noted several potential arguments that she did not present to the bankruptcy court. Thus, the panel remanded to the bankruptcy court to have a separate evidentiary hearing on damages, sanctions, and other relief.

L. Orders approving employment of professionals are not final and appealable. *TooBaRoo, LLC v. Olsen (In re Western Robidoux, Inc.)*, 663 B.R. 731 (B.A.P. 8th Cir. 2024) (Jones, J.), *appeal docketed,* No. 24-3372 (8th Cir. Nov. 21, 2024).

Breht Burri and TooBaRoo were involved in federal litigation against Western Robidoux and several other members of the Burri family. Attorney Daniel Blegen and his firm Spencer Fane represented debtor Western Robidoux, as special litigation counsel, and members of the family who operated the debtor. The chapter 7 trustee sought to employ Spencer Fane as special counsel to represent the estate in multiple appeals against TooBaRoo LLC. TooBaRoo argued that Spencer Fane could not represent the estate because it previously represented members of the Burri family,

creating a conflict of interest. The bankruptcy court granted the trustee's application to employ, concluding that the estate's interests were aligned with the family members previously represented by Spencer Fane and that there were no actual conflicts of interest beyond those based on conjecture. TooBaRoo appealed. The B.A.P. requested briefing on whether the bankruptcy court's order was reviewable under either 28 U.S.C. §§ 158(a)(1) or (a)(3).

To determine whether the bankruptcy court's order approving the application to employ was final and appealable that panel weighed three factors: "(1) the extent to which the order leaves the bankruptcy court with nothing to do but execute the order; (2) the extent to which delay….would prevent the aggrieved party from obtaining effective relief; and (3) the extent to which reversal on that issue would require recommencement of the entire proceeding." The panel concluded that the bankruptcy court's order was not appealable.

First, the panel discussed how the court has more to do than just execute the order and will continue to be involved until Spencer Fane's employment as special counsel ends. If counsel needed to be removed or replaced, then the bankruptcy court could do that at a later time. Second, the panel reasoned that delay in obtaining appellate review would not prevent TooBaRoo from obtaining relief or subsequent appellate review of these issues piecemeal. Instead, Judge Jones said TooBaRoo retains the right to object to fee applications and renew the objection if conflicts arise in the future. Third, the panel explained that a reversal would not require recommencement of either the bankruptcy case or the federal litigation. The court emphasized that special counsel will serve at the direction of the chapter 7 trustee to the benefit of the estate. Thus, "no actions would need to be ratified or revisited" in the event of a reversal.

Because the parties agreed that the elements were not present, the court did not address whether the bankruptcy courts order was a reviewable interlocutory order under 28 U.S.C. § 158(a)(3).

M. Debtor's omissions and misrepresentations regarding sale of a car results in an MMPA violation and a nondischargeable debt. *Walton v. Pavel (In re Pavel)*, 663 B.R. 750 (Bankr. W.D. Mo. 2024) (Fenimore, J.).

Walton filed an adversary proceeding against debtor Pavel because Pavel sold her a car while knowing the car had mechanical issues, effectively rendering it totaled. She alleged that Pavel violated the Missouri Merchandising Practices Act (MMPA) and sought a determination that her claim was nondischargeable under § 523(a)(2)(A) of the Bankruptcy Code. The court conducted a trial and concluded that Pavel had violated the MMPA and that Walton's claim was nondischargeable.

First, addressing the MMPA issue, Judge Fenimore applied the elements under Mo. Rev. Stat. § 407.025.1(1). At issue was whether Pavel committed an unlawful act under § 407.020, which broadly prohibits sellers from using any form of deception including misrepresentations and omissions of material facts. The court concluded that Pavel made multiple misrepresentations and omissions by providing an incomplete and misleading service record on the vehicle and by making multiple statements to make Walton believe the car was in good working condition. The court also considered the elements under § 407.025.1(2), which were added to the MMPA in 2020. These elements require that the (1) plaintiff acted as a reasonable consumer; (2) that a reasonable person would have entered the transaction; and (3) that the plaintiff suffered objective damages. The court reasoned that Walton acted as a reasonable consumer and a reasonable person would have entered the transaction because Pavel made multiple assurances to Walton that the car was in good condition, and Walton could not have known that the service record Pavel provided was incomplete. The court also found that Walton suffered objective damages because she paid for a functioning car, which she did not receive.

The court next addressed the issue of nondischargeability. Judge Fenimore concluded that Pavel "made several false representations regarding the condition of the car, and he omitted material facts." The court was persuaded that Pavel knew his representations were false when he made them because he had taken the car to a repair shop before selling it and the mechanic told him that the car needed new timing chains. The court also reasoned that Pavel deliberately deceived Walton because even though Pavel argued that he did not believe the timing chains were faulty—he lied when he told Walton that the mechanics did not find anything wrong with the car. Walton justifiably relied on Pavel's misrepresentations despite Pavel's argument that she should have had the car inspected because Pavel effectively convinced her that she did not need to by making several representations that the car did not need any repairs. Lastly, the court concluded that Pavel's misrepresentations were the proximate cause of Walton's injury because he persuaded her to purchase the vehicle without the inspection.

Lastly, the court discussed its damages calculations. Applying the benefit of the bargain rule, the court reasoned that because Walton received a car needing repairs costing more than the value of the car, she should be awarded the entire purchase price with interest and attorney's fees.

N. Debtor's violations of the Missouri merchandising practices act were nondischargeable under the bankruptcy code. *Missouri ex rel. Schmitt v. Fawcett (In re Fawcett)*, 664 B.R. 748 (Bankr. E.D. Mo. 2024) (Surratt-States, J.).

Missouri, on behalf of a class of consumers who had paid down payments to the debtor's business for construction services that were never refunded when services were not performed, sought to liquidate its monetary claims against the debtor pursuant to the Missouri Merchandising Practices Act ("MMPA"). Additionally, the state sought a determination that its claims were nondischargeable under 11 U.S.C. §§ 523(a)(2)(A) and (a)(7).

The bankruptcy court first evaluated whether the consumers held viable claims against the debtor under the MMPA. The debtor's defense was that he was unaware of his company's insolvency and undercapitalization, and that he intended to perform the services. The bankruptcy court held, however, that the debtor's position as sole owner and manager of the company should have imbued him with the knowledge of his company's precarious financial condition. Likewise, the debtor's employees induced the consumers into furnishing down payments by making representations that were deceptive. Regarding the ascertainability of the losses, the bankruptcy court found that only a portion of the consumers had proven the ascertainability of their losses. Hence, while all the consumers likely suffered losses, only those with ascertainable, proven losses held MMPA claims against the debtor.

Next, the bankruptcy court found that statements made by the debtor's employees to induce consumers into paying down payments and the service contracts entered by the parties evidenced that the debtor made representations that justifiably induced the consumers into making the down payments and proximately caused the consumers' damages. Likewise, because of the debtor's role as sole owner and manager of the company, the debtor knew or should have known that his representations were false. Hence, all elements of § 523(a)(2)(A) were met and the restitution judgment of the consumers holding ascertainable, proven losses was nondischargeable.

Finally, the bankruptcy court found that an MMPA violation requires a credit to the merchandising practices revolving fund for cases where restitution is awarded. Additionally, the court had discretion to award the state a civil penalty. Since both the credit and penalty are for the state's benefit, the fine and penalty were nondischargeable under § 523(a)(7).

O. Paid workers' compensation benefits do not qualify for exemption under Missouri law. *In re Logan*, 666 B.R. 801 (Bankr. E.D. Mo. 2024) (Walsh, J.).

The debtors settled and received a workers' compensation award prepetition. The funds were held in the debtors' attorney's trust account at the time the debtors filed their chapter 7 petition. The day after filing their petition, the debtors received a check for their share of the funds—totaling $27,082.57. The debtors claimed an exemption in the worker's compensation claim under Mo. Rev. Stat. § 287.260, and the trustee objected. Section 287.260 provides, in relevant part, that workers' compensation funds that are "payable… , whether or not [they have] been awarded or [are] due, … shall be exempt…" The trustee argued that because the debtors had been paid the workers' compensation award prepetition, the exemption did not apply. The debtors argued that (1) the *Erie* doctrine does not apply to a bankruptcy court's application of state exemption statutes; (2) the funds are exempt under the language of the statute; and (3) the funds were "payable" at the time of filing because the debtors' attorney had possession of the funds. The court sustained the trustee's objection.

The court determined that the *Erie* doctrine applies to state exemption laws. The court disagreed with the debtors' arguments that the Eighth Circuit rejected the application of the *Erie* doctrine in *In re Benn*, 491 F.3d 811 (8th Cir. 2007) and *In re Abdul-Rahim,* 720 F.3d 710 (8th Cir. 2013). First, Judge Walsh noted that the Eighth Circuit performed an *Erie* analysis two years after *Abdul-Rahim* in *In re Dittmaier,* 806 F.3d 987, 989 (8th Cir. 2015). Second, Judge Walsh reasoned that the Eighth Circuit precedent cited by the debtors did not expressly "rework[] [] fundamental principles of federalism laid out by the Supreme Court seventy-five years earlier." Third, Judge Walsh, while recognizing that federal law or principles of equity often govern bankruptcy issues, emphasized that the issue in this case is unambiguously governed by a state statute.

The court then applied § 287.260 to the facts of this case and concluded that the plain language of the statute makes clear that, to qualify for the exemption, the funds must be payable at the time of filing. But here, the funds had already been paid to the debtors prepetition. The debtors urged the court to focus on the language "whether or not it has been awarded or due," but the court reasoned that "awarded" and "due" can only be understood in relation to "payable." Thus, if the funds were not payable at the time of filing, they cannot be exempt.

Lastly, the court rejected the debtors' argument that the funds were payable at the time of filing because their attorney held the money in a trust account. The court concluded that the debtors did not need to have direct control over the funds to be

considered "paid" because an agency relationship existed between the attorney and the debtors.

P. Section 363(b)(1) does not preempt non-bankruptcy laws restricting the sale or transfer of personally identifiable information. *In re 23andme Holding Co.*, No. 25-40976, 2025 WL 1791166 (Bankr. E.D. Mo. June 27, 2025) (Walsh, J.).

The Debtors, collectively referred to as 23andMe, operate a direct-to-consumer genetic-testing company, which provides customers with an analysis of their genetic data based on saliva samples that customers send to 23andMe. 23andMe retains the saliva samples and customers' electronic account information, including genetic profiles, names, and email addresses. This data is personally identifiable information, or PII, as used in the Bankruptcy Code. 23andMe filed a motion sell its assets, including the PII of customers, pursuant to § 363. Section 363(b)(1) prohibits a debtor from selling PII unless (1) such sale is consistent with a debtor's privacy policy or (2) the court approves the sale after considering the facts, circumstances, and conditions of the sale and finding that the sale does not violate applicable nonbankruptcy law. Various states objected to the sale, arguing, among other things, that the sale violated 23andMe's privacy policy and state law. 23andMe countered, arguing that the sale complied with its privacy policy and that § 363(b)(1) preempts state restrictions on PII transfers if the transaction complies with a debtor's privacy policies.

Although § 541(c) preempts state law as property moves into the bankruptcy estate, § 363 concerns property leaving the bankruptcy estate, and § 363 does not expressly preempt, nor require compliance with, state law. The Eighth Circuit case *In re Shauer,* 835 F.2d 1222 (8th Cir. 1987), and other cases suggested that § 363 does not generally preempt state-law restrictions on transfers. 23andMe argued that the disjunctive subsections of § 363(b)(1) provide two avenues to sell PII: (1) a debtor can comply with its privacy policy, or (2) it can violate the policy if the court approves the transaction after considering the facts and circumstances of the sale and finding that the sale does not violate state law. When a transaction complies with a privacy policy, 23andMe reasoned that § 363(b)(1) preempts state law. Agreeing that the sale complied with the Debtors' privacy policy, Judge Walsh nevertheless determined that state law was not preempted. Looking to the structure of the statute, the disjunctive provides separate limitations on the power to sell PII. Meeting either requirement of § 363(b)(1) is not alone sufficient to allow a sale. The absence of language expressly preempting state law signaled that Congress did not intend to preempt state law because "Congress ... does not, one might say, hide elephants in mouseholes." A House Committee report that said that the § 363(b)(1) PII exception for sales did not preempt applicable nonbankruptcy law further supported the court's interpretation. Considering the possible harm to consumers if § 363(b)(1) preempted state law

restrictions on PII transfers and the less than clear congressional intent, Judge Walsh rejected 23andMe's preemption argument.

The facts, circumstances, and conditions of the sale favored approval of the sale, including the substantial benefit to creditors, the buyer's proposed privacy enhancements, and the recognition that the customers would have essentially the same relationship with the buyer that they did with 23andMe. The court also noted that, even if the proposed sale was not approved, 23andMe and the buyer could conduct the same transaction through a Chapter 11 plan, but with an additional cost of an estimated $20 million. After analyzing the applicable laws of the states actively opposing the sale, Judge Walsh concluded that the proposed transaction did not violate these laws. Thus, he approved the sale after overruling the remaining objections.

III. Tenth Circuit

A. Debtor received reasonably equivalent value for guaranty and transfer of cash. *Bird v. Wardley (In re White)*, 144 F.4th 1216 (10th Cir. 2025) (Rossman, J.).

The Trustee in the chapter 7 debtors' case initiated an adversary proceeding against the prepetition business associate of one of the debtors under § 544 and the Utah Uniform Fraudulent Transfer Act. The debtor and the associate had formed a company, the associate loaned money to the company, and the debtor guaranteed the loans up to a given dollar amount and offered security via the debtor's interest in a separate judgment. The debtor would receive an interest in the company and be employed by the company with a salary. The debtor ultimately paid the associate $750,000 to satisfy the debt incurred by his personal guaranty. The Trustee sought to avoid the $750,000 transfer as a constructively fraudulent transfer made by the debtor in connection with their failed venture.

The bankruptcy court—on motions for summary judgment—rejected the Trustee's claims. The Trustee then appealed to the BAP, which agreed with the bankruptcy court that White received reasonably equivalent value for both the guaranty and the transfer.

On appeal, the Tenth Circuit affirmed the bankruptcy court's summary judgment orders. The Circuit applied the following governing principles: (1) the reasonably-equivalent-value analysis generally involves asking whether value was given, if value was given, whether it was given in exchange for the transfer or obligation, and whether what was transferred or promised was reasonably equivalent to what was received; (2) value is assessed as of the date of the transfer or obligation and without the benefit of hindsight; (3) to determine whether an investment that fails to generate

a positive return nevertheless confers reasonably equivalent value, courts should focus on the circumstances existing when the investment is contemplated; (4) the exchange of value need not be dollar-for-dollar but rather approximately or roughly equivalent; and (5) contextual factors other than amount must be assessed in the fact-intensive inquiry.

The Tenth Circuit found the debtor received reasonably equivalent value for the guaranty through benefits such as employment, a 15% equity stake, cash incentives, and a business opportunity. The Tenth Circuit also concluded the $750,000 transfer was a dollar-for-dollar exchange that constituted reasonably equivalent value. The Circuit rejected the Trustee's argument that the indirect-benefit rule should apply, which would have shifted the burden to the associate to prove the value of the benefits. The Tenth Circuit found that the benefits were direct and that the value received was approximately equivalent to the debt the debtor took on.

B. Judicial estoppel properly applied. *Mitchell v. Dejoy*, No. 24-3039, 2025 WL 304178 (10th Cir. Jan. 27, 2025) (Phillips, J.).

The debtor worked for the U.S. Postal Service. She alleged her request for a disability accommodation was denied. She claimed USPS retaliated against her by placing her on unpaid leave and terminating her employment. The debtor filed a claim with the Equal Employment Opportunity Commission and later filed a chapter 13 bankruptcy petition in which she did not disclose her claims against USPS. She amended her bankruptcy pleadings to mention a "pending" "wage class action lawsuit" of "unknown" value. The bankruptcy court confirmed her Chapter 13 plan.

The debtor subsequently filed a lawsuit against USPS, alleging disability discrimination and retaliation under the Rehabilitation Act. The USPS moved to dismiss the case, arguing the claims should be barred by judicial estoppel because the debtor did not disclose the claims in her bankruptcy petition. The district court agreed with USPS and dismissed the complaint based on judicial estoppel, finding her positions in the bankruptcy and district courts inconsistent.

On appeal, the Tenth Circuit reviewed the district court's decision for abuse of discretion and affirmed the dismissal. The Court considered whether the debtor's positions were inconsistent, whether she succeeded in persuading a court to accept her former position, and whether she would gain an unfair advantage if not estopped. The Tenth Circuit found her disclosure of a "wage class action lawsuit" did not adequately notify the bankruptcy court of her discrimination and retaliation claims. The Court also noted the debtor did not argue she lacked knowledge of her claims or a motive to conceal them. Ultimately, the Tenth Circuit concluded the district court did not abuse its discretion in applying judicial estoppel.

C. Entire tax refund was exempt under Colorado law. *Co hen v. Garcia-Morales (In re Garcia-Morales)*, — F.4th —, No. 24-1384, 2025 WL 2394816 (10th Cir. Aug. 19, 2025) (Federico, J.).

The debtor filed a chapter 7 petition and claimed an exemption for the full amount of the tax refund he expected for the year in which he filed. By stipulation, the debtor agreed for the full amount of his federal tax refund to be held by the trustee pending a ruling on the exemption claim. The couple's tax return showed they were entitled to a refundable child tax credit of almost $2,000, earning a federal refund of about $1,500.

The chapter 7 trustee contended the debtor was not entitled to exempt the entire $1,500 refund because the state exemption covered only the percentage of the refund attributable to the child tax credit. Thus, the trustee claimed the debtor was entitled to exempt only 18% of the refund, or $263.

The bankruptcy court ruled in favor of the debtor and exempted the entire refund. When the district court affirmed, the trustee appealed.

The Tenth Circuit affirmed, relying on the Colorado statute which exempts "[t]he *full amount* of any federal or state income tax refund *attributed to* an earned income tax credit or a child tax credit." [Emphasis added.] The Tenth Circuit agreed with the bankruptcy and district courts' conclusion that the phrase "attributed to" means some degree of causation. "Hence, without (or but for) the refundable tax credit, the tax refund would not have occurred." Furthermore, "a *pro rata* method would devalue the 'full amount' language that also appears in the statute." The Tenth Circuit noted, importantly, that exemption statutes must be liberally construed in Colorado.

D. Contempt sanctions in the form of liquidated damages fell within the § 362(b)(4) exception to the automatic stay. *Markham v. Auto Cycle Exchange Services, Inc. (In re Markham)*, No. CO-24-19, 2025 WL 2374880 (B.A.P. 10th Cir. Aug. 15, 2025) (Jacobvitz, J.).

Pre-petition, the debtor breached both a settlement agreement and a related state court injunction by publicly disparaging his former employer and harassing its principal and employees. Post-petition, the debtor repeated this behavior, including by tracking the principal's family in person and online, following the principal's son, and allegedly maintaining a "kill list" naming the principal and his family as targets. In 2022, the former employer and its principal moved for contempt sanctions in state court—seeking both incarceration and liquidated damages under the parties' pre-petition settlement agreement and the injunction. Among other things, the principal testified at the contempt hearing: "I don't care about the [liquidated damages] that we can't ever collect. I just want to live in peace." The state court held the debtor in

contempt, sentenced him to ninety days' incarceration, and awarded the former employer and its principal $20,000 plus attorneys' fees. In bankruptcy court, the debtor filed an adversary proceeding, alleging the contempt motion violated the automatic stay. The bankruptcy court granted summary judgment in favor of the former employer and its principal, holding, among other things, that § 362(b)(4) (which excepts from the automatic stay actions "to enforce [a] governmental unit's police or regulatory power") applied.

The Bankruptcy Appellate Panel affirmed. Two tests govern a court's determination of whether the § 362(b)(4) exception applies: (1) the pecuniary purpose test, which excepts actions from the stay that relate primarily to public policy but not those that relate primarily to pecuniary interests; and (2) the public policy test, which excepts government proceedings aimed at effectuating public policy but not those aimed at adjudicating private rights. Actions only need to satisfy one test to escape the automatic stay. Though § 362(b)(4) expressly applies to actions "by a governmental unit," the BAP "assume[d] without deciding that § 362(b)(4) applies even though [the former employer and principal], private actors, commenced the relevant proceeding," because the debtor waived "the issue of whether a creditor who brings an action to enforce a court order is invoking the power of the court as a 'governmental unit'" under § 362(b)(4). Applying the public policy test, the BAP concluded the monetary award served primarily to enforce the public policies of "deter[ring] future misconduct and ensur[ing] [the debtor's] compliance with the injunctive portions of the Stipulated Order." This was true even though "Colorado law requires that punitive contempt fines imposed to vindicate the court's authority are to be paid to the court rather than to a party" because "[t]he applicability of the police and regulatory power exception to the automatic stay depends not on the purpose for which the state court imposed the monetary award but [on] the purpose for which the [former employer and its principal] requested the award." Ultimately, "the *primary purpose* of the request for contempt sanctions was a method of enforcing public policy to censure misconduct and the repeated violations of court orders." Consequently, the bankruptcy court did not err.

E. Findings under § 1191(c)(3) are required for confirmation of non-consensual subchapter V plan. *Busch Law Firm, LLC v. Frontline Medical Services LLC (In re Frontline Medical Services LLC)*, 665 B.R. 818 (B.A.P. 10th Cir. 2024) (Loyd, J.); *Busch Law Firm, LLC v. Frontline Medical Services LLC (In re Frontline Medical Services LLC)*, No. CO-25-009, 2025 WL 2754614 (B.A.P. 10th Cir. Sept. 29, 2025) (Thurman, J.).

The debtor retained a law firm to represent it in a dispute. The firm's billing was sporadic, but the debtor paid invoices upon receipt. When it received a large invoice

covering nine months of services, however, the debtor and the law firm had a falling out. The law firm terminated its engagement and filed suit in state court to recover its fees. The debtor counterclaimed. After the law firm moved to dismiss the counterclaims, the debtor filed its chapter 11 subchapter V bankruptcy petition.

The law firm objected to the debtor's proposed plan and moved to dismiss the case for bad faith. The bankruptcy court, in confirming the plan under § 1191(b) as a nonconsensual plan, addressed the factors enunciated in *In re Laguna Associates Ltd. P'ship*, 30 F.3d 734 (6th Cir. 1994), concerning bad faith. The court also addressed the requirements for plan confirmation under § 1129(a). It found the debtor satisfied its burden of proving feasibility under § 1129(a)(11), and the plan was fair and equitable under § 1191(c)(2). Finally, the bankruptcy court found no cause to warrant dismissal under § 1112(b).

On appeal, the law firm argued the bankruptcy filing essentially involved a two-party dispute and was used as a litigation tactic to avoid paying the law firm. The BAP concluded that the bankruptcy court did not clearly err by determining the debtor did not file its petition or propose its plan in bad faith but instead was attempting to reorganize—the bankruptcy court clearly analyzed the *Laguna* factors as they applied to the facts. The BAP also concluded that the bankruptcy court did not abuse its discretion in denying the motion to dismiss for the same reason, noting whether the filing involved a two-party dispute is merely one factor to consider.

The BAP concluded, however, that the bankruptcy court erred by not applying the correct legal standards for confirmation. Because the subchapter V plan was nonconsensual, the debtor had to satisfy the requirements of § 1191(c)(3) to demonstrate feasibility. The BAP found that despite the bankruptcy court's detailed analysis under § 1129, it did not apply the correct legal standard to determine feasibility because it did not make explicit findings under § 1191(c)(3). The BAP remanded that specific issue for further findings.

On remand, the Bankruptcy Court reviewed the record and determined the plan was feasible, entered additional findings and conclusions, and confirmed the plan over the creditor's continued objection and without further hearing. The creditor appealed the remand findings. The BAP affirmed, concluding the bankruptcy court complied with the remand order and made the required findings and conclusions based on the evidence.

F. BAP affirms conversion to chapter 7 when debtor was not in financial distress. *McHugh v. Lofstedt (In re McHugh)*, No. CO-24-20, 2025 WL 2779101 (B.A.P. 10th Cir. Sept. 30, 2025) (Hall, J.).

The debtor's former business partner filed suit against him in state court, alleging breach of partnership agreement. The state court entered judgment against the

debtor, and he filed a chapter 11 petition. The bankruptcy court converted the case to chapter 7, finding the debtor was not in financial distress, the filing served as a tactical advantage in ongoing litigation, and this was primarily a two-party dispute. The BAP affirmed, noting the debtor's significant pre- and post-petition spending, the debtor's use of chapter 11 as a substitute for a supersedeas bond, and the fact that the two-party dispute was but one factor indicating bad faith and supporting conversion.

G. Bankruptcy court did not err in its determination of alter ego. *LuMee, LLC v. Fernandez (In re LuMee, LLC)*, No. UT-24-001, 2024 WL 4948610 (B.A.P. 10th Cir. Dec. 3, 2024) (Hall, J.).

The chapter 11 debtor filed an adversary proceeding against a company with which it previously did business, seeking to avoid transfers made to that company. The company did not answer the complaint, and a default judgment was entered. The company owner continued operating a nearly identical business under a different name. The debtor then filed an adversary proceeding against the individual, asserting various claims, including alter ego liability. The bankruptcy court found the individual to be the alter ego of the first company, making him liable for the company's debts, including the default judgment previously entered against the company.

The individual appealed, arguing the bankruptcy court erred by allowing the debtor to pursue claims against him both as an individual and a subsequent transferee and by finding him to be the alter ego of the company.

The BAP concluded the bankruptcy court did not err in allowing the debtor to pursue alternative recovery theories, concluding § 550(a)'s use of "or" permits a trustee to pursue alternative theories of liability while being limited to a single satisfaction. The BAP also concluded the bankruptcy court did not err in its alter ego determination. However, the BAP found the bankruptcy court failed to adequately address the individual's defenses related to his initial transferee status, necessitating a remand for further analysis.

H. Settlement agreement properly approved by bankruptcy court. *Roberts v. Sender (In re Roberts)*, 667 B.R. 147 (B.A.P. 10th Cir. 2025) (Michael, J.).

The debtor was involved in prepetition state court litigation over fraud connected with real estate investments. The debtor filed a chapter 11 bankruptcy petition, and his case was ultimately converted to chapter 7. The chapter 7 trustee negotiated with the creditors involved in the state court litigation and entered into a settlement agreement with those creditors that allowed the creditors' claim in a reduced amount, withdrew other proofs of claim in the case, released any lien interest the creditors

had in property of the estate, relinquished any appeal rights the trustee had in the state court litigation, and allowed for entry of final judgment in the litigation in the amount of the creditors' allowed claim.

The bankruptcy court held an evidentiary hearing on the propriety of the settlement under Rule 9019 and approved the settlement. On appeal, the debtor argued that the bankruptcy court abused its discretion in approving the settlement agreement. The BAP rejected the debtor's arguments, concluding the bankruptcy court properly found the settlement fell well within the discretion of the chapter 7 trustee and was properly approved after a fully developed evidentiary hearing where the bankruptcy court considered the probability of success of each of the potential appellate issues. The BAP affirmed.

I. Chapter 7 debtor does not have an absolute right to dismiss. *McGann v. Jagow (In re McGann)*, No. CO-24-4, 2025 WL 501958 (B.A.P. 10th Cir. Feb. 14, 2025) (Parker, J.).

The debtor, who owned real property in Colorado, filed a chapter 7 bankruptcy petition. The real property was subject to four claims, two of which were released following a settlement agreement. The Trustee sought access to the real property to determine its liquidation value, but the debtor opposed the Trustee's efforts, so the Trustee filed a motion for turnover. The bankruptcy court granted the Trustee's motion for turnover, and the debtor subsequently filed a motion to dismiss her case, claiming she intended to pay the remaining claims against the property. The bankruptcy court denied the debtor's motion to dismiss, concluding that no cause existed for dismissal under the totality of the circumstances.

The central issue on appeal was whether the bankruptcy court abused its discretion in determining that no cause existed under § 707(a) to dismiss the debtor's Chapter 7 case. The BAP affirmed the bankruptcy court's decision, finding no abuse of discretion. The BAP emphasized that a debtor does not have an absolute right to dismiss a chapter 7 case, and the bankruptcy court provided a detailed and reasoned explanation for its conclusion there was no cause for dismissal. A bankruptcy court must assess cause under § 707(a) based on a multi-factor totality of the circumstances test, and the prejudice a dismissal might cause a bankruptcy estate's creditors is the foremost issue which should weigh heavily in the court's analysis.

J. Attorney's fee sanction was appropriate for civil contempt. *McGann v. Jagow (In re McGann)*, No. CO-24-7, 2025 WL 249990 (B.A.P. 10th Cir. Jan. 21, 2025) (Thomas, J.).

The chapter 7 debtor appealed a contempt order issued by the bankruptcy court based on the debtor's failure to comply with a court order requiring her to provide a key to her real property to the chapter 7 Trustee by a given date. The debtor had mailed the

key to the U.S. Trustee instead and only did so approximately eleven weeks after the deadline. The bankruptcy court found the debtor in contempt and awarded attorney's fees to the Trustee as a sanction against the debtor.

On appeal, the debtor argued the Trustee suffered no damages and that the fees were obtained through "unclean hands." The BAP noted bankruptcy courts have the authority to hold parties in civil contempt and award sanctions under § 105. The Court pointed out that the bankruptcy court must find that a party violated a specific and definite court order with notice of the order, and the proof of contempt must be clear and convincing. The BAP found the debtor had notice of the order and failed to comply with its specific terms. It concluded the estate incurred attorney's fees due to the debtor's failure to comply, justifying the compensatory nature of the sanctions. Additionally, the BAP found no evidence of unlawful or inequitable conduct by the Trustee. The debtor also argued that stress and mental anguish interfered with her compliance, but the BAP determined this argument was waived and not supported by the record. The BAP affirmed the bankruptcy court's decision, concluding there was no abuse of discretion in issuing the contempt order.

K. Appeal dismissed as moot. *Lopez v. Jenkins (In re Lopez)*, No. UT-25-1, 2025 WL 2254648 (B.A.P. 10th Cir. Aug. 7, 2025) (Marker, J.).

An individual was involved in a series of property transfers and bankruptcy filings to shield real property from the mortgage holder. Over ten years prior, the individual executed a promissory note secured by real property. At some point, the individual transferred the property to an LLC, which later transferred the real property to a different LLC. After several years of insufficient payments, a foreclosure sale was scheduled. The individual filed a Chapter 13 petition the day before the sale, which was dismissed. A second foreclosure was then scheduled, and the individual again filed a Chapter 13 petition, which was dismissed. Before a scheduled third foreclosure sale, the real property was transferred to the debtor, who filed his own chapter 13 petition. The mortgage holder filed a motion to dismiss the debtor's chapter 13 case and for relief from the automatic stay. The debtor filed a motion to voluntarily dismiss his case. The next day, the bankruptcy court granted the motion for relief from stay and later the same day, dismissed the debtor's chapter 13 case.

The bankruptcy court's stay relief order allowed the mortgage holder to foreclose on the property and was binding for two years if recorded in state real property records. The foreclosure sale was completed, and the debtor appealed the stay relief order and the dismissal order. The BAP issued an order to show cause, questioning jurisdiction due to mootness. The debtor argued the stay relief order was void as it was entered after the bankruptcy court was allegedly divested of jurisdiction due to the motion to

dismiss filed by the debtor. The debtor also claimed the foreclosure sale was void due to an automatic stay in a separate individual's bankruptcy case (as that individual had acquired an interest in the property). The debtor contended that effective relief could still be granted by declaring the foreclosure sale void.

The BAP examined jurisdiction, noting that an appeal of a bankruptcy court order granting relief from stay is moot if the debtor fails to obtain a stay pending appeal and a foreclosure sale occurs. However, a judgment is void if the court lacked jurisdiction or acted inconsistently with due process. The BAP determined it had jurisdiction when the stay relief order was entered, as it was before the entry of the dismissal order. Consequently, all the debtor's arguments were moot, and the appeal was dismissed.

L. Conversion of nonexempt funds into exempt homestead not permitted. *Ranta v. Krigsman (In re Ranta)*, No. CO-24-21, 2025 WL 2529610 (B.A.P. 10th Cir. Sept. 3, 2025) (Somers, J.).

A chapter 7 debtor claimed a $175,000 homestead exemption in a Colorado residence purchased with more than $300,000 of nonexempt funds within two years of filing his bankruptcy petition. Creditors objected to the claimed exemption. The bankruptcy court reduced the exemption to zero under § 522(o), finding the debtor acted with the intent to hinder or delay creditors. The debtor appealed.

The BAP concluded the bankruptcy court did not err in finding the debtor acted with intent to hinder, delay or defraud creditors as it conducted a fact-specific analysis of multiple "badges of fraud" in making the determination. Further, the bankruptcy court made specific findings about the debtor's credibility. Next, the BAP concluded the bankruptcy court properly interpreted and applied § 522(o), rejecting the debtor's interpretation of the statute. Lastly, the BAP found the bankruptcy court correctly applied the burden of proof, citing Rule 4003(c). The bankruptcy court's order was thus affirmed.

M. Claim disallowed for failure to assert it against the proper party. *Winick v. Rosemarie Pelfrey Revocable Trust (In re Harding)*, No. WO-24-15, 2025 WL 2619281 (B.A.P. 10th Cir. Sept. 11, 2025) (Parker, J.).

Plaintiff hired G&D Construction, an entity owned by the debtors, to construct an addition to his home. Plaintiff sued one of the debtors in state court for breach of contract and fraud, listing the defendant as "Greg Harding d/b/a G & D Construction, L.L.C., and d/b/a G & D Construction." The debtors filed a chapter 7 petition days before the scheduled trial.

Plaintiff filed a proof of claim. A creditor objected, asserting that because the construction contract was between the plaintiff and G&D, not the debtors, the latter were not liable for breach of contract damages. The bankruptcy court agreed and disallowed the plaintiff's claim. The plaintiff appealed.

Relying on the contract itself, the BAP concluded there was no indication that the debtor, rather than G&D, was to perform the construction work. The BAP also concluded the bankruptcy court did not abuse its discretion by declining to pierce the corporate veil or find fraud given the evidence presented. Additionally, the Court found that the bankruptcy court did not err by interjecting questions during the trial. The decision of the bankruptcy court was affirmed.

N. Debtor's financial situation did not demonstrate abuse warranting dismissal under § 707(b)(3). *In re Hadl*, 669 B.R. 220 (Bankr. D. Kan. 2025) (Berger, J.).

The chapter 7 debtors were above-median income earners, and their case was not presumptively abusive under § 707(b)(2) (i.e., the "means test"). After subsequent amendments to their schedules, the debtors' monthly net income decreased to zero, which they attributed to general increases in expenses and additional medical care for their family of five, soon-to-be six. The U.S. Trustee filed a motion to dismiss or convert under § 707(b)(3), asserting the debtors had the ability to pay their creditors, they did not include bonuses in their income, their expenses were overstated, and their case and conduct demonstrated a lack of good faith.

Applying the factors set forth in the Tenth Circuit's decision *Stewart v. U.S. Trustee (In re Stewart)*, 175 F.3d 796 (10th Cir. 1999), the bankruptcy court denied the U.S. Trustee's motion as it found the debtors did not have the ability to pay their creditors a significant return. The bankruptcy court determined a few of the debtors' claimed expenses were not supported by the evidence but did not find any substantial miscalculation or excessive spending that would suggest the debtors' net income was significantly higher. The court analyzed the debtors' reported income, concluding even if the debtors had factored in their bonuses, their expenses were such that they still would not be able to pay their creditors a substantial return. The bankruptcy court further found the application of the remaining *Stewart* factors (e.g., unique hardships, cash advances in excess of ability to repay) did not suggest dismissal or conversion was warranted. Finally, the court determined the question of bad faith was not whether the debtors had acted in bad faith throughout the case but instead whether the debtors had filed their petition in bad faith—there was no evidence suggesting the debtors filed their petitions with non-economic motives or for the purposes of frustrating proceedings in other courts, targeting a particular creditor, or achieving any non-bankruptcy-related goal. For those reasons, the bankruptcy court

found the debtors' chapter 7 petition was not filed in bad faith and the totality of the circumstances of the debtors' financial situation did not demonstrate abuse.

O. Chapter 7 case not abusive despite understated income and overstated expenses where accurate budget would only yield hypothetical 5% distribution. *In re Serna*, 669 B.R. 206 (Bankr. D. Kan. 2025) (Berger, J.).

The chapter 7 debtors indicated on their schedules that their monthly disposable income was $3,580.89. Shortly after filing their petition, the debtors amended their schedules, reporting decreased monthly income and increased expenses, leaving them with no disposable income. The U.S. Trustee filed a motion to dismiss or convert under § 707(b)(3)(B), arguing the totality of the circumstances of the debtors' case was abusive—the debtors underestimated their monthly income, did not amend their schedules to reflect income increases, inflated their expenses, and improperly deducted expenses from their disposable income.

Applying the factors set forth in the Tenth Circuit's decision *Stewart v. U.S. Trustee (In re Stewart)*, 175 F.3d 796 (10th Cir. 1999), the bankruptcy court denied the U.S. Trustee's motion as it found the debtors did not have the ability to pay their creditors a substantial return in a hypothetical chapter 13. The court determined the debtors had underestimated their income by failing to incorporate post-petition wage increases; however, the inclusion of those increases did not bring the debtors out of the red such that they could pay their creditors a substantial return. The bankruptcy court also found a few of the debtors' claimed expenses were double counted (e.g., their property taxes and insurance premiums were already factored into their monthly mortgage payments) but most of their expenses were otherwise reasonable in the context of a hypothetical chapter 13, allowing them to deduct retirement contributions and student loan payments from their disposable income calculation. With the bankruptcy court's adjustments to income and expenses, the debtors would only be able to pay a five percent distribution to their creditors, not a significant nor meaningful return. As for the remaining *Stewart* factors, the court concluded dismissal or conversion was not warranted. For those reasons, the bankruptcy court held the totality of the circumstances of the debtor's financial situation did not demonstrate abuse.

P. Significant expenses reasonably reduced disposable income so as to prevent dismissal or conversion for abuse under § 707(b)(3). *In re Lindesmith*, No. 24-40313, 2025 WL 1384915 (Bankr. D. Kan. May 12, 2025) (Somers, C.J.).

The debtors filed a chapter 7 bankruptcy petition due to significant debt accrued after a period of unemployment. The U.S. Trustee moved to dismiss or convert the case

under 11 U.S.C. § 707(b)(3), arguing the debtors had the ability to pay their unsecured creditors which would make granting relief under Chapter 7 an abuse of its provisions. The debtors moved to Coffeyville, Kansas with their two young children for family support and began renting a home. One debtor worked at a fertilizer plant and the other worked as a hospice nurse. Despite their combined monthly net income of $10,212.31, their expenses left them with a small monthly net income of $318.58.

The bankruptcy court considered several factors under the totality of the circumstances test, including the debtors' ability to repay debts, their unique hardships, and their good faith in filing for bankruptcy. The court found the debtors' expenses were reasonable given their circumstances and one of the debtor's jobs was not sustainable long-term. The bankruptcy court concluded the debtors did not have a realistic ability to pay a dividend to creditors and that their financial situation did not demonstrate abuse under § 707(b)(3).

Q. Debtor's counsel denied fees because plan was not confirmed. *In re Estanol*, No. 24-40454, 2025 WL 1419563 (Bankr. D. Kan. May 14, 2025) (Somers, C.J.).

The bankruptcy court ordered the chapter 13 debtors to file an amended plan, and if they failed to do so, their case would be dismissed. The debtors failed to comply. Prior to the order for dismissal, the debtors' bankruptcy counsel filed an "application" with a notice of attorney's lien under Kan. Stat. Ann. § 7-108, seeking the return of pre-confirmation plan payments made pursuant to § 1326(a)(1), or alternatively, a notation on the funds remitting instrument acknowledging his lien. The chapter 13 Trustee and the debtors, acting pro se, objected to counsel's application.

The bankruptcy court denied the application, finding the attorney's lien was void as it was perfected in violation of the automatic stay under § 362(a)(4). The court further decided that even if the lien was not void, counsel was not entitled to the requested fees or expenses because the debtors' plan was not confirmed, and no fees or expenses had been awarded under the plan or approved by the bankruptcy court. The bankruptcy court emphasized the need for compliance with the statutory scheme set forth in §§ 1326(a)(2), 330(a), and 503(a), which, if complied with, would entitle counsel to payment of his reasonable fees before the pre-confirmation plan payments were returned to the debtors. The bankruptcy court gave counsel additional time to file an application for compensation that complied with the process for allowance of fees as administrative expenses under §§ 1326(a)(2), 330(a), and 503(a).

R. Use of "LLC," rather than "LC" in debtor's name on UCC-1 rendered financing statement ineffective. *In re TW Automation, LC*, No. 23-21184, 2024 Bankr. LEXIS 2955 (Bankr. D. Kan. Dec. 2, 2024) (Berger, J.).

The SBA filed a UCC-1 financing statement, incorrectly naming the debtor "TW Automation LLC" rather than "TW Automation, LC." The court concluded this filing was not effective. Kan. Stat. Ann. § 84-9-503(a) provides that a financing statement correctly identifies a debtor if it "provides the name that is stated to be the registered organization's name on the public organic record." Though Kansas law permits minor errors or omissions, if an error makes the financing statement seriously misleading, the financing statement is ineffective. Under Kan. Stat. Ann § 84-9-506, the name on a financing statement is materially misleading if a search of the filing office's records using the correct name would not disclose the existence of the financing statement. In determining the results of a search, § 7-17-22(a) states both that "words and abbreviations at the end of a name that indicate the existence or nature of an organization," including "LLC," "are disregarded" and, in prefatory language at the beginning of the statute, that "[h]uman judgment shall not play a role in determining the results of the search." Here, the court determined that "[i]f human judgment cannot be used, then the list of disregarded terms in § 7-17-22(a)(5) must be exhaustive—even though introduced by the exemplary word 'include.'" "LC" was not among the statutory list of disregarded terms, so "a search of the name 'TW Automation, LC' would not (and did not) disclose a financing statement under the name 'TW Automation, LLC.'" As a result, the creditor's financing statement was ineffective.

IV. Other

A. Collateral estoppel can apply to default judgments entered as litigation sanction. *Buscone v. Botelho (In re Buscone)*, 133 F.4th 196 (1st Cir. 2025) (per curiam).

Pre-petition, the creditor obtained a state court default judgment against the debtor. The debtor later filed a chapter 7 bankruptcy case, and the creditor brought a nondischargeability adversary proceeding. To sanction repeated discovery abuses, the bankruptcy court entered its own default judgment, determining the creditor's state-court judgment was nondischargeable. The debtor then filed the present chapter 13 case, and the creditor filed a proof of claim for the nondischargeable judgment. The debtor objected to the creditor's claim in the chapter 13 case, raising (among other arguments) a judicial-estoppel defense she had raised in the chapter 7 nondischargeability adversary proceeding. The bankruptcy court overruled the debtor's objection to the proof of claim, and the district court affirmed.

The First Circuit also affirmed. Rejecting the debtor's argument that collateral estoppel did not apply because her defense to nondischargeability was not "actually litigated," the court explained that, though a default judgment ordinarily does not satisfy the "actual-litigation" element of collateral estoppel, an exception applies "where the default judgment was entered as a sanction for the estopped litigant's misconduct, and that litigant had the opportunity to participate in the case before the default judgment's entry." The circumstances here satisfied this exception because the bankruptcy court had issued the sanction as a "last resort" in response to the debtor's "blatant recalcitrance throughout discovery," and the debtor had had an opportunity to participate in the prior adversary proceeding. Consequently, collateral estoppel applied, and the bankruptcy court did not err in allowing the creditor's claim.

B. A chapter 13 trustee must return all pre-confirmation payments to the debtor if no plan is confirmed. *Soussis v. Macco (In re Soussis)*, 136 F.4th 415 (2d Cir. 2025) (Carney, J.).

Debtor Julia Soussis proposed a Chapter 13 plan and made $362,100 in pre-confirmation payments to the Chapter 13 trustee. Pursuant to § 1326(a)(2), the trustee retained the payments pending plan confirmation. The Debtor's case was dismissed before plan confirmation and the trustee returned most of the payments, but the trustee kept 5.7% of the payments for his fee. The bankruptcy court denied the Debtor's motion for disgorgement of the fee, the district court affirmed, and the Debtor appealed.

The Second Circuit held that a Chapter 13 trustee cannot retain any percentage fee collected from a debtor's pre-confirmation payments if a plan is not confirmed, joining the Seventh, Ninth, and Tenth Circuits. Under 28 U.S.C. § 586(e)(2), the trustee collects his or her percentage fee from "all payments received" by the trustee under the plans that the trustee administers. The Second Circuit concluded that this percentage fee is part of the payments "proposed by the [debtor's] plan" under § 1326(a)(1) that must be returned if the plan is not confirmed under § 1326(a)(2) because the fee is "taken from" those payments.

Because § 1326(a)(2) contains two exceptions to the requirement that trustees must return pre-confirmation payments and neither of those exceptions includes the trustee's percentage fee, the court inferred that there was no exception for the trustee's percentage fee. The court also concluded that § 586(e)(2), which states that the trustee "shall collect" his or her percentage fee, did not alter its interpretation of § 1326(a)(2). Section 586(e)(2) merely establishes the source of compensation for the trustee. The court also noted that Chapter 12 and Subchapter V explicitly authorize the trustee to deduct his or her percentage fee before returning pre-confirmation payments to the debtor if a plan is not confirmed, while Chapter 13 does not. Finally,

the court concluded that prohibiting the trustee from retaining a fee when a plan is not confirmed is consistent with Chapter 13's underlying policy goals.

C. Second Circuit adopts "billing method" in determining the timing of debtor's post-petition lease obligations under § 365(d)(5). *Avianca Holdings S.A. v. Burnham Sterling & Company LLC (In re Avianca Holdings S.A.)*, 127 F.4th 414 (2d Cir. 2025) (Lynch, J.).

Debtor Avianca entered into prepetition brokerage agreements with Burnham Sterling and Babcock & Brown Securities (the "Initiators"), where the Initiators obtained (brokered) 20 airplane leases for the debtor, all before debtor filed its bankruptcy petition. Instead of paying the Initiators their entire brokerage fee up front, the debtor agreed as part of each lease agreement to pay those fees over time as "additional rental" under the leases. After the debtor filed its case, it paid the lessors their portion of the rental payments, but it did not pay the Initiators for their additional rental payments. Eventually, the debtor rejected all 20 leases. At issue in this appeal was the payments owed to the Initiators that came due between 60 days after the petition date and when the debtor rejected the leases over the course of about two years, which amounted to about $4.3 million.

Section 365(d)(5) requires debtors to "timely perform all of the obligations of the debtor … first arising from or after 60 days after the order for relief in a case under Chapter 11 of this title under an unexpired lease of personal property … until such lease is assumed or rejected."[1] The debtor argued that its obligations came due prepetition because the Initiators had already completed their services before the debtor filed its case (the "Accrual Method"). The Initiators in turn argued that the debtor's obligations arose when payments under the lease came due (the "Billing Method"). The bankruptcy court and the district court agreed with the Initiators and awarded them with a priority claim for the payments that came due between 60 days after the petition date and the date the debtor rejected each of the leases. The debtor appealed.

The Second Circuit had to decide whether the debtor's obligation to pay additional rental payments first arose 60 days after the petition date. The court acknowledged a split in authority, with some circuit courts and bankruptcy appellate panels applying the "accrual method," *El Paso Props. Corp. v. Gonzales (In re Furr's Supermarkets, Inc.)*, 283 B.R. 60 (B.A.P. 10th Cir. 2002) (analyzing § 365(d)(3)); *In re Handy Andy Home Improvement Ctrs., Inc.*, 144 F.3d 1125 (7th Cir. 1998) (same), and others applying the "billing method." *Burival v. Creditor Comm. (In re Burival)*, 406 B.R. 548 (B.A.P. 8th Cir. 2009) (analyzing § 365(d)(3)), *aff'd*, 613 F.3d 810 (8th Cir.

[1] The same language is found in § 365(d)(3) for unexpired leases of nonresidential real property, except the debtor must timely perform those obligations arising from and after the petition date until the lease is assumed or rejected.

2010); *Counterpoint Props. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 268 F.3d 205 (3d Cir. 2001) (same); *Koenig Sporting Goods, Inc. v. Morse Road Co. (In re Koenig Sporting Goods, Inc.)*, 203 F.3d 986 (6th Cir. 2000) (same).

The Second Circuit, adopting the "billing method," turned to the text of § 365(d)(5) for clues as to the correct method. The court first looked to the word "perform" in the context of § 365(d)(5) and determined that for the debtor to be required to "perform" its obligations, there needs to be some "presently existing duty that the debtor must fulfill." Similarly, the word "obligations" refers to a legal duty the debtor is required to perform. The court reasoned that the debtor's obligation to pay an additional rental payment first arises when the payment comes due under the lease. Thus, the debtor incurred new obligations to make payments 60 days after the petition date.

The Second Circuit explained that the "billing method" aligns with the structure of the Bankruptcy Code. First, the court noted that § 365(d)(5) focuses on the debtor's obligation and when it arises, unlike elsewhere in the Code where the emphasis is on the creditor's claim and when that claim arises. The court reasoned that the "accrual method" conflates this by focusing on when the creditor performed its services rather than when the debtor's payment obligations arose. Next, the court noted that § 503(b)(1) provides that a creditor will receive a priority claim for services it performs benefiting the estate post-petition. Thus, the court reasoned, § 365(d)(5) should not be read to impose the same requirement that the debtor receive a post-petition benefit because it would make § 503(b)(1)'s requirements superfluous. Rather, the court said, § 365(d)(5) focuses on the debtor's obligations rather than the timing of the creditor's performance under the contract.

Lastly, the court explained that its holding is consistent with policy justifications of § 365(d)(5). The court also pointed out that the debtor could have rejected the lease within 60 days of filing its petition or could have sought a court order altering its payment obligations, which is expressly contemplated by § 365(d)(5). Thus, the Second Circuit affirmed the district court.

D. Claim preclusion cannot be applied offensively if its application would be unfair. *Thermal Surgical, LLC v. Brown*, 150 F.4th 115 (2d Cir. 2025) (Robinson, J.).

Debtor Jeff Brown formerly worked for Thermal Surgical, LLC as a medical sales representative. Thermal Surgical sued Brown in federal district court, alleging that Brown had breached a non-compete agreement and his duty of loyalty and had misappropriated trade secrets. Brown subsequently filed a Chapter 7 petition, which stayed the district-court litigation. Thermal Surgical filed a proof of claim for $315,000 for lost commissions based on Brown's alleged conduct. Brown did not object to the proof of claim and waived his right to receive a discharge. The claim was

allowed in full, and Thermal Surgical received a distribution from the estate. After the district court lifted the stay, Thermal Surgical invoked claim preclusion and sought summary judgment as to the remaining amount of the allowed claim. Brown argued that claim preclusion should not apply because the bankruptcy proceeding did not provide him with sufficient due process. While the district court initially concluded that it would be unfair to allow Thermal Surgical to offensively use claim preclusion, the district court later concluded that claim preclusion applied and entered a judgment for Thermal Surgical. Brown appealed. The Second Circuit considered whether Thermal Surgical could use the bankruptcy court's order allowing the claim offensively to prevent Brown from defending against Thermal Surgical's claims. It held that "claim preclusion cannot apply offensively where its application would be unfair," and concluded that applying claim preclusion would be unfair in this case.

The Second Circuit determined that its prior case, *EDP Medical Computer Systems, Inc. v. United States*, 480 F.3d 621 (2d Cir. 2007), was inapposite because it involved invoking claim preclusion defensively to bar an affirmative claim. It further noted that claim preclusion is generally understood as "a *defensive* tool." Citing *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 590 U.S. 405 (2020), the Second Circuit doubted whether a litigant could ever successfully invoke claim preclusion offensively "to preclude a party from *defending* against a claim based on a prior judgment, rather than to preclude a party from advancing a claim." But the Second Circuit did not decide that issue, because it determined that even if offensive claim preclusion can apply in some circumstances, it cannot be applied when doing so would be unfair. The Second Circuit cited *Parklane Hosiery Co., Inc., v. Shore*, 439 U.S. 322 (1979), which was an issue-preclusion case, to support its conclusion. In assessing fairness, the Second Circuit determined that Brown had different incentives to litigate in the bankruptcy proceeding than in the district-court case because an "allowed claim in bankruptcy is not an enforceable money judgment that can be attached to a debtor's future assets." Additionally, in defending against Thermal Surgical's claims against him, Brown was seeking to defend against additional liability above the amount that Thermal Surgical received in the bankruptcy case. Brown was not seeking a refund of the sums already distributed in the bankruptcy case.

E. Solvent chapter 11 debtor's plan impaired noteholders and violated absolute priority rule by denying them contract rate of interest (including make-whole payments) while paying distribution to equity holders. *Wells Fargo Bank v. Hertz Corp. (In re Hertz Corp.)*, 120 F.4th 1181 (3d Cir. 2024) (Ambro, J.), *petition for cert. filed,* 93 U.S.L.W. 3278 (U.S. Apr. 4, 2025) (No. 24-1062).

Hertz filed a chapter 11 petition because of a COVID pandemic-induced liquidity crisis. By the time Hertz emerged from bankruptcy a year later, it was so solvent that it paid more than $1.1 billion in cash, stock, and warrants to its prepetition equity owners. But in doing so, Hertz deprived a group of prepetition noteholders more than a quarter billion dollars of contract interest and make-whole payments and, instead, paid them post-petition interest at the much lower federal judgment rate.

Wells Fargo served as the indenture trustee for the unsecured noteholders. Initially, Hertz and Wells Fargo fought over whether the noteholders were unimpaired (as Hertz believed) and thus not entitled to vote on the plan. To avoid delaying confirmation of the plan, Hertz and Wells Fargo worked a deal that allowed them to litigate post-confirmation (and even post-effective date) whether the noteholders were entitled to more than the federal judgment rate of interest to make them "unimpaired" under the plan. So, after confirmation, Wells Fargo filed an adversary proceeding asking the bankruptcy court to require Hertz to pay the make-whole premiums and post-petition interest at the contract rate under the notes, which together amounted to more than $270 million.

The bankruptcy court determined that the noteholders were only entitled to post-petition interest at the federal judgment rate, and that the make-whole premiums should be disallowed under § 502(b)(2) as unmatured interest. The bankruptcy court then certified its decision for direct appeal to the Third Circuit.

Among other issues, the court addressed two overriding questions: (1) whether the § 502(b)(2) prohibition on claims for unmatured interest prevents noteholders from being paid make-whole premiums as part of their claims and (2) whether solvent debtors must pay creditors contract rate interest if they want to deem those creditors unimpaired and thus not entitled to vote on the plan and make distributions to their prepetition equity owners.

Judge Ambro, writing for the majority agreed with the bankruptcy court that "make-whole" premiums were in essence compensation for lost unmatured interest. Thus, the make-whole premiums, in cases where the debtors are solvent, cannot be part of the claim because § 502(b)(2) disallows "[] claim[s] for unmatured interest if it is either definitionally interest or its economic equivalent."

Next, the court addressed whether Hertz, as a solvent debtor, had to pay the noteholders post-petition interest at the contract rate. The court assessed Supreme

Court precedent spanning more than a century that makes it clear that shareholders are not entitled to anything until after all a corporation's debts are paid. Judge Ambro noted that the Bankruptcy Code's absolute priority rule extended this principle. And relying heavily on the decision in *Czyzewski v. Jevic Holding Corp.,* 580 U.S. 451 (2017), he emphasized that the Supreme Court has made clear that the absolute priority rule ought to apply to treatment of all creditors—not just dissenting impaired creditors under a plan of reorganization.

Having been persuaded by Hertz that the make-whole premiums were contractual interest accruing postpetition, Judge Ambro turned that decision around on Hertz and held that the absolute priority rule required Hertz to pay the noteholders their post-petition contract rate interest, including the make-whole premiums, in order to deem the noteholders unimpaired and not entitled to vote on the plan.

F. Section 363(m) mootness applies to a sale of assets under a plan, including an insurer's buyback of its policies. *In re Boy Scouts of America*, 137 F.4th 126 (3d Cir. 2025) (Krause, J.).

The Boy Scouts of America (BSA) filed for bankruptcy to address abuse claims against it. BSA's Chapter 11 plan established a settlement trust containing $2.48 billion in assets, the majority of which came from the sale of BSA's liability insurance policies back to some of its insurers. The plan included nonconsensual third-party releases that provided those insurers with a release of liability for abuse claims. Four groups—two groups of insurers and two groups of claimants—appealed the district court's decision to affirm the bankruptcy court's order confirming the plan.

The Third Circuit first concluded that the bankruptcy court properly exercised "related-to" jurisdiction over claims against certain non-debtors because BSA and the non-debtors had shared liability insurance coverage and BSA was obligated to indemnify the non-debtors, and thus claims against those non-debtors would have a "conceivable effect" on the estate.

The Third Circuit then considered whether the appeals were statutorily moot under § 363(m). Section 363(m) provides that "reversal or modification on appeal of an authorization . . . of a sale or lease of property does not affect the validity of a sale" to a good-faith purchaser, unless the authorization and sale were stayed pending appeal. The Third Circuit concluded that the appeals of the two groups of insurers did not trigger § 363(m) because those insurers sought targeted relief that did not implicate the terms of the insurance policy buyback. However, the court determined that § 363(m) required it to dismiss the appeals of the two claimant groups because the claimants had appealed the authorization of the sale of the insurance policies, the insurers who bought back their policies were good-faith purchasers, the confirmation order that authorized the buyback was not stayed, and the claimants sought relief that would implicate the validity of the insurers' buyback of their policies. The court

rejected the claimants' argument that they only challenged the nonconsensual third-party releases and did not seek to upset the buyback, because the releases constituted a part of the consideration for the buyback. The court concluded that § 363(m) prevented it from disturbing the non-consensual third-party releases in the plan and dismissed the claimants' appeals as statutorily moot, but noted that "[i]f proposed today, the Plan would be unconfirmable in the wake of *Purdue*."

The court addressed the two groups of insurers' appeals that remained and determined that those appeals also were not equitably moot. As to one of the insurer groups, the court rejected the argument that the plan and confirmation order failed to preserve the insurers' rights and defenses under the insurance policies. But as to the other group of insurers, the court determined that *Purdue* controlled and that the plan and confirmation order impermissibly released contribution and indemnification claims that the group of insurers could otherwise assert.

Judge Rendell concurred and would have dismissed the two groups of claimants' appeals as equitably moot rather than statutorily moot.

G. A magistrate judge may hear and decide an appeal from the bankruptcy court, with the consent of the parties. *Chenault-Vaughan Family Partnership, LTD v. Mdc Energy, LLC (In re MTE Holdings LLC)*, 136 F.4th 506 (3d Cir. 2025) (Freeman, J.).

In an adversary proceeding, the Chenault-Vaughan Family Partnership sued Centennial Resources Operating, LLC for wrongly withholding royalties. After both parties moved for summary judgment, the bankruptcy court granted summary judgment in favor of Centennial. Chenault appealed to the district court. The parties then consented to proceed with a magistrate judge for all proceedings, including final judgment. Thus, the district court referred the case to the magistrate judge. The magistrate judge *sua sponte* raised the issue of jurisdiction and whether magistrate judges may issue final judgments in bankruptcy appeals. Given the uncertainty surrounding the issue of jurisdiction, the magistrate judge issued an opinion that had sufficient detail to also be treated as a report and recommendation under 28 U.S.C. § 636(b). The magistrate judge affirmed the bankruptcy court's judgement. Chenault appealed to the Third Circuit Court of Appeals.

Before considering the merits of the appeal, the Third Circuit discussed whether the magistrate judge had jurisdiction to enter a final judgment. The court noted that the Fifth and Seventh Circuits have held that magistrate judges cannot enter final orders on bankruptcy appeals, and the Tenth Circuit has suggested in dicta that it believes the same. For the following reasons, however, the Third Circuit held that magistrate judges may enter a final judgment in a bankruptcy appeal. Section 636(c)(1) of Title 28 authorizes magistrate judges to enter final judgments in civil cases with the

consent of the parties and when referred a matter by the district judge. In a previous decision, the Third Circuit held that this statute did not allow magistrate judges to enter final orders on bankruptcy appeals. But, since that decision, there have been important statutory changes. The court based its prior decision on the Bankruptcy Reform Act of 1978, which specifically said that district judges could not refer bankruptcy appeals to magistrate judges. Congress later enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984, which did not include language stating that district judges could not refer bankruptcy appeals to magistrate judges. Citing the Fifth Circuit, the court noted that this omission effectively repealed the exclusion of magistrate judges. The court also noted that the Federal Magistrate Act of 1979 greatly expanded the authority of magistrate judges. Importantly, § 636(c)(1) expanded the authority of magistrate judges to enter final orders in all civil proceedings notwithstanding any provision of law to the contrary. As illustrated by these statutory changes, magistrate judges now have a wide range of authority upon party consent and referral by a district court. Because magistrate judges are an integral part of the district court, allowing district courts to refer bankruptcy appeals to magistrate judges is consistent with 28 U.S.C. § 158, which grants district courts the authority to decide bankruptcy appeals. Allowing magistrate judges to enter final orders on bankruptcy appeals thus follows separation-of-power principles because the jurisdiction of magistrate judges is based on proper designation by Article III judges who maintain supervisory authority over the case. Having decided that the magistrate judge had authority to enter a final order on the bankruptcy appeal, the court moved on to the merits of the appeal and affirmed the magistrate judge's decision in part.

H. A claim that becomes time-barred after the petition date is not subject to disallowance as unenforceable. *In re Promise Healthcare Group, LLC*, 130 F.4th 56 (3d Cir. 2025) (Rendell, J.).

Debtors Promise Healthcare Group, LLC and its affiliates, operators of various hospitals and nursing facilities, filed a Chapter 11 petition. Before the claims bar date, Patrick Wassmann filed a $100 million proof of claim based on allegedly negligent care received at one of Promise Healthcare's facilities. Wassmann never filed a state-court action against Promise Healthcare, and the statute of limitations for initiating such a suit expired during the bankruptcy case. The liquidating trustee filed a motion for summary judgment to disallow Wassmann's claim because Wassmann failed to file a timely state-court complaint and because the claim was untimely. The bankruptcy court denied the motion, noting that the claims-allowance process does not require a creditor to timely file a non-bankruptcy complaint to preserve its claim. The bankruptcy court also rejected the trustee's argument that the claim was not timely because the statute of limitations had expired by the time the trustee objected to and evaluated the claim. The bankruptcy court determined

that the proper date to determine enforceability of the claim was the petition date. The Third Circuit granted leave to appeal the interlocutory order.

A creditor is entitled to file a proof of claim in a bankruptcy case. When a party objects to a proof of claim, § 502(b) requires that a court determine the amount of the claim as of the petition date and that the court allow the claim in such amount unless it falls under one of the exceptions in the statute. One exception is if such claim is unenforceable against the debtor. Claims that are untimely under an applicable statute of limitations are unenforceable and will not be allowed in the bankruptcy case. Section 502(b)(1) does not clarify whether enforceability should, like the amount of the claim, be analyzed as of the petition date. The exceptions to allowance of claims in § 502(b)(1)–(9) all refer to "such claim." The court determined that "such claim" means the claim mentioned in § 502(b) that the court must determine the amount of as of the petition date. To have cohesion in the statute, enforceability of the claim under § 502(b)(1) must be determined as of the petition date. Conversely, § 502(e) and (f) expressly direct the court to look to times other than the petition date. If Congress had intended courts to evaluate the enforceability of claims under § 502(b)(1) as of a date other than the petition date, it would have said so. This interpretation complies with the understanding that a creditor's claim against a debtor is transformed into a bankruptcy claim on the petition date. Because Wassmann timely filed his claim before the bar date and the statute of limitations had not passed as of the petition date, his claim was allowed.

The trustee next argued that Wassmann needed to file a state-court action to protect his bankruptcy claim under § 108(c)(2), which provides that a limitations period that would otherwise expire after the petition date does not expire until 30 days after notice of termination of the automatic stay. The trustee asserted that § 108(c)(2) would be rendered meaningless if creditors did not also have to file state-court claims against a debtor. But the bankruptcy court and court of appeals said that § 108(c) would still be relevant for a creditor holding a nondischargeable debt that will collect its pro rata share of the bankruptcy estate and then seek to recover on the debtor's post-bankruptcy assets in state court after conclusion of the bankruptcy case. A creditor wishing to commence a state-court action after the automatic stay is lifted must comply with the timing requirement of § 108(c), but a creditor wishing to assert its claim in a bankruptcy case does not have to file a state-court complaint against the debtor.

I. Fourth Circuit upholds $31 million default judgment as discovery sanction. *Smith v. Devine*, 126 F.4th 331 (4th Cir. 2025) (Alston, J.).

The chapter 11 trustee in this case brought adversary proceedings against the debtor's owners and the owners' affiliates, alleging those parties were the debtor's alter egos, engaged in misconduct under North Carolina's Unfair and Deceptive

Trade Practices Act, and received fraudulent transfers, among other things. The defendants' responses to the trustee's discovery requests were repeatedly "cursory, evasive, and partially responsive," despite several hearings and court orders requiring the defendants to correct past poor responses and provide the requested discovery. Finding the defendants' evasive conduct extraordinarily egregious, "[t]he bankruptcy court ultimately ordered [the defendants'] answers and defenses stricken, entered default judgment against [the defendants] on a joint and several basis, and taxed [the defendants] with [the trustee's] costs and attorneys' fees." The default judgment totaled more than $31 million, including an award of treble damages recoverable under the Unfair and Deceptive Trade Practices Act. The district court affirmed.

The Fourth Circuit also affirmed. First, the default judgment was an appropriate sanction for the defendants' discovery abuses. Because default judgments conflict with defendants' key rights to a jury trial and fair day in court, courts must consider a four-factor test before imposing a default judgment as a sanction, analyzing the defendants' bad faith, the opposing party's prejudice from the defendant's misconduct, the need for deterrence, and whether less drastic sanctions would be effective. Here, the bankruptcy court clearly and correctly analyzed those factors, concluding the defendants engaged in a pattern of bad faith refusal to comply with court orders and engage in discovery, the discovery abuses prejudiced the opposing party by withholding essential evidence, the need for deterrence was particularly strong because the defendants willfully obstructed the judicial process, and a less dramatic sanction was not possible because the defendants' discovery abuses made resolution on the merits impossible. Second, the amount of the $31 million judgment was not excessive in light of the defendants' patent disregard for the bankruptcy court's authority, lack of viable alternative sanction, and the plaintiff's claim for a sum certain. Finally, the bankruptcy court did not clearly err by piercing the corporate veil under applicable state law.

J. On remand from the Supreme Court, Fourth Circuit upholds confirmation on the merits. *Truck Insurance Exchange v. Kaiser Gypsum Company, Inc. (In re Kaiser Gypsum Company, Inc.)*, 135 F.4th 185 (4th Cir. 2025) (Agee, J.).

The chapter 11 debtors faced significant liability for their prepetition manufacture and sale of asbestos-containing products. The debtors' plan funneled asbestos personal injury claims into a trust. Claims not covered by the debtors' insurance plans would be paid entirely by the trust but were subject to anti-fraud safeguards. Claims covered by insurance would be litigated in the tort system, paid by insurance up to a limit, and receive only the safeguards available through the tort system. The insurer objected to confirmation, arguing, among other things, that (1) the debtors did not propose the plan in good faith because the plan did not give the insured claims

the protections it gave the uninsured claims, and (2) "the proposed Trust did not comply with several of 11 U.S.C. § 524(g)'s requirements for asbestos-driven reorganization plans." The bankruptcy court concluded the insurer was not a party-in-interest, and, therefore, could not object to the plan. The court alternatively rejected the insurer's objections on the merits. The district court adopted the bankruptcy court's decision, and the Fourth Circuit affirmed. The Supreme Court, however, reversed and remanded, determining the insurer had standing.

On remand, the Fourth Circuit upheld the lower courts' decisions on the merits. First, the district court did not err in concluding the plan was proposed in good faith under § 1129(a)(3). The lower court determined that, under the totality of the circumstances, the plan was a product of arm's-length negotiations and maximized the value of the assets—two results consistent with the Code's purposes and objectives. The debtors were merely using their contractual insurance rights, and their "desire to maximize the relevant asset (here, the Debtors' non-eroding asbestos insurance provided through [the insurer]) does not constitute bad faith." The insurer's concern with the unequal treatment of insured claims did not suggest bad faith; the tort system could effectively protect the insurer against fraud. Second, the plan satisfied § 524(g)'s requirement concerning asbestos-trust plans. The trust effectively assumed the debtors' liabilities; satisfied § 524(g)'s funding requirement; entitled the trust to own the reorganized debtors if specified contingencies occurred, as § 524(g)(2)(B)(i)(III) requires; and satisfied § 524(g)'s "equitable necessity requirement." Because the insurer "failed to identify any reversible error," the Fourth Circuit affirmed on the merits.

K. Bankruptcy courts have subject-matter jurisdiction over bankruptcy cases involving solvent debtors. *Bestwall LLC v. Official Committee of Asbestos Claimants of Bestwall,* 148 F.4th 233 (4th Cir. 2025) (Quattlebaum, J.).

Georgia-Pacific LLC, seeking to address mounting personal-injury claims related to asbestos, enacted a strategy known as the Texas two-step, through which it created a new entity that held all asbestos liabilities and some assets. That company, Bestwall, then filed for bankruptcy. The Official Committee of Asbestos Claimants sought to dismiss the bankruptcy case, arguing that it was filed in bad faith because Bestwall was not insolvent. The bankruptcy court denied the motion, saying that wanting to resolve asbestos claims under § 524(g) is a valid reorganizational purpose. Years later, the Committee again moved to dismiss, this time asserting a lack of subject-matter jurisdiction. The bankruptcy court rejected the Committee's argument that Congress cannot open bankruptcy proceedings to solvent debtors and denied the motion. The Committee appealed to the Fourth Circuit Court of Appeals.

Judge Quattlebaum, writing for the majority, noted that the Constitution provides Article III judges with power over all cases arising under the laws of the United States, and the Bankruptcy Code is a law of the United States. 28 U.S.C. § 1334 provides district courts with jurisdiction over all cases arising under the Bankruptcy Code. Similarly, Congress provided bankruptcy courts with jurisdiction over matters arising under or related to the Bankruptcy Code pursuant to 28 U.S.C. § 1334 and 157. But the Committee asserted that bankruptcy, as understood when the Constitution was written, excluded those who could pay their debts. The court noted that this argument is a constitutional challenge and not an issue of jurisdiction. The majority limited its decision to whether the court had subject-matter jurisdiction, not whether solvent debts are entitled to bankruptcy protection. The majority thus held that federal courts have subject-matter jurisdiction over bankruptcy cases filed by solvent debtors.

Judge Agee concurred fully in the majority opinion but wrote separately to address the dissent. Judge Agee noted the issues with defining debtors who are actually bankrupt and those who are not as the dissent had suggested. Such limited and vague definitions could deny relief to those who deserve it. Further, § 109 does not require that debtors proceeding under Chapters 7, 11, or 13 be insolvent, whereas debtors proceeding under Chapter 9 must be insolvent. The concurrence also highlighted that the court was given a question of subject-matter jurisdiction, not eligibility of debtors for bankruptcy.

Judge King dissented, arguing that Bestwall is solvent and should not be allowed to access the protections of the Bankruptcy Code. The dissent highlighted that Georgia-Pacific is a multi-billion-dollar company that is capable of handling tort claims outside of bankruptcy. Judge King expressed frustration with the Texas two-step because it allows companies to weaponize the Bankruptcy Code against tort victims. The dissent also criticized the majority opinion for not addressing the constitutional issues raised by this case. Under the history-and-tradition test, the word bankruptcy as used in the Constitution refers to a process for those who were financially distressed. And Bestwall was not in financial distress. The dissent concluded by asserting that the majority opinion effectively re-wrote the Constitution, authorized an improper corporate strategy, and denied tens of thousands of asbestos victims their Seventh Amendment right to be heard by a jury. For those reasons, Judge King would have the bankruptcy case dismissed.

L. Court may not both avoid a lien and award the estate the value of the subject collateral. *Ad Hoc Group of Senior Secured Noteholders v. Delaware Trust Company (In re Sanchez Energy Corporation)*, 139 F.4th 411 (5th Cir. 2025) (Jones, J.), *petition for cert. filed,* 94 U.S.L.W. 3046 (U.S. Aug. 18, 2025) (No. 25-208).

Prepetition, a group of secured lenders discovered their liens on the debtor's oil leases might not have been properly perfected. The oil lease lenders filed correction affidavits to properly perfect their interests, but the debtor commenced a chapter 11 case within the preference period, making the lenders' liens arguably vulnerable to avoidance under § 547 and recovery under § 550. The debtor's confirmed plan extinguished all liens and gave lien rights to the reorganized debtor but entitled a subgroup of secured creditors (DIP lenders) to twenty percent of the reorganized entity's stock in exchange for release of their post-petition DIP liens (their liens did not encumber the preference causes of action concerning the oil-lease liens). The remaining eighty percent of the equity shares would be allocated among the secured and unsecured creditors based primarily on the relative value of the oil-lease liens to the estate (value that depended on whether the oil lease lenders' liens were avoidable under § 547). The bankruptcy court ultimately determined the oil-lease liens were avoidable. But in valuing the debtor's assets to determine the proper allocation of the remaining eighty percent of the debtor's stock, the court included the estimated value of the avoidance claims—effectively creating a double recovery by including the oil-lease liens' value in the calculation of the eighty percent despite the return of the value of the liens to the estate through extinguishment at confirmation.

On appeal, the Fifth Circuit determined "the [bankruptcy] court's equity allocation contravened the Bankruptcy Code, 11 U.S.C. §§ 550(a) and (d), because it incorrectly approved more than a 'single satisfaction' as a remedy for the avoided secured creditors' liens." When a trustee or debtor in possession avoids a transfer as preferential under § 547, § 550(a) entitles the estate to recover either (a) the property transferred "or" (b) its value. Section 550(d), however, "limits recovery under Section 550(a) to 'only a single satisfaction.'" The Fifth Circuit first rejected the argument that § 550 did not apply. "[T]he plan's terms and the parties' longstanding interpretation" prevented the court from disregarding § 550 and "it is dubious in any event that the parties could agree to ignore a controlling provision of the Bankruptcy Code when seeking a preference recovery." Second, the court determined § 550(a)'s use of the word "or" to describe the available recoveries (i.e., the property transferred or its value) was disjunctive. Though § 102(5) states that the use of "or" is "not exclusive," "the Bankruptcy Code, like other statutes, does not apply the background Rule of Construction when surrounding context makes 'A and B' logically impossible

or dictates otherwise." In this circumstance, § 550(d) provides the "surrounding context" that "dictates otherwise": "By limiting recovery to a 'single satisfaction,' Section 550(d) compels the conclusion that Section 550(a) uses 'or' in its disjunctive form. Indeed, it is logically impossible to 'recover' both transferred property and the 'value' of that property as a 'single satisfaction.'" Thus, "[a] trustee cannot use Section 550(a) to recover the value of property that was already returned to the estate." Here, "when the secured creditors returned their liens to the debtors' estate, they effectuated the estate's 'recovery' of a 'single satisfaction' for the preferential transfers." The statute compels this result even if the lien release did not return the estate to its pre-transfer position. Accordingly, "the bankruptcy court was required to award the DIP Lenders one hundred percent of the equity in [the reorganized debtor], because the value of their superpriority liens exceeded the stipulated enterprise value." The Fifth Circuit vacated and remanded for further proceedings consistent with its opinion.

M. A trustee cannot assign a cause of action in violation of state champerty law. *Crabtree v. Allstate Property & Casualty Insurance Company*, 140 F.4th 623 (5th Cir. 2025) (Smith, J.).

Casey Cotton rear-ended Caleb Crabtree, leaving Crabtree severely injured. Cotton was insured by Allstate, but Crabtree's injuries exceeded the policy limit, leaving Cotton personally liable for any damages above the limit. Cotton alleged that Allstate refused to settle with Crabtree and that Allstate did not inform Cotton of the settlement negotiations or the possibility of liability beyond the insurance limit. Crabtree sued Cotton, resulting in a $4 million judgment. Cotton filed a bankruptcy petition and listed a bad-faith claim against Allstate as an asset. As part of a settlement of Crabtree's personal-injury judgment, the bankruptcy court allowed Crabtree to purchase Cotton's bad faith claim against Allstate for $10,000. However, Crabtree did not have the money, so he contracted with Court Properties, Inc., which purchased the bad-faith claim and assigned it to Crabtree. Crabtree then sued Allstate, asserting Cotton's bad-faith claim. The district court dismissed the case for lack of subject-matter jurisdiction, stating that the assignments to Court Properties and then to Crabtree were champertous and void under Mississippi law. Because the assignments were void and Crabtree was not injured by Allstate, Crabtree lacked standing to sue.

Crabtree appealed, and in a 2024 decision, the Fifth Circuit held that Crabtree lacked Article III standing if either assignment was champertous under Mississippi law. Court Properties clearly did not have an interest in the bad-faith claim and was a disinterested stranger. The Fifth Circuit then asked the Mississippi Supreme Court whether the state champerty statute allows a creditor in bankruptcy to engage a disinterested third party to purchase a cause of action from a debtor. The Mississippi

court responded that it does not, meaning the assignments of Cotton's claim were champertous and void. Because the Mississippi court's conclusion was dispositive, when the case came back to the Fifth Circuit, the circuit court affirmed the district court's dismissal of the case.

N. Bankruptcy courts may not impose gatekeeping injunctions against non-debtors. *Highland Capital Management Fund Advisors, L.P. v. Highland Capital Management, L.P. (In re Highland Capital Management, L.P.)*, 132 F.4th 353 (5th Cir. 2025) (Elrod, J.), *petition for cert. filed,* 94 U.S.L.W. 3021 (U.S. July 28, 2025) (No. 25-119).

Earlier in this chapter 11 case, the creditors' committee forced the debtor's prior CEO out and installed three independent directors. After much litigation, the committee and independent directors obtained confirmation of a cramdown plan that exculpated a number of "protected parties," including the debtor, its employees and CEO, the independent directors, the committee, professionals retained in the case, and a broad group of "related persons." The confirmed plan also imposed a "gatekeeping" injunction, which required that any party seeking to pursue a claim against a protected party first obtain permission from the bankruptcy court to determine whether the claim was colorable. In 2022, the Fifth Circuit determined the exculpation provisions went too far in releasing non-debtor parties from potential liability. On remand, the bankruptcy court narrowed the third-party exculpation provisions but left gatekeeping injunction intact. Entities controlled by the former CEO appealed again.

The Fifth Circuit again reversed and remanded. "[T]he bankruptcy court exceeded its power under the Bankruptcy Code by allowing the plan to improperly protect non-debtors from liability" though the broad gatekeeping injunction. The Supreme Court and Fifth Circuit "have definitively held" that bankruptcy courts lack authority to issue third party releases. Though injunctions are "not themselves releases, [they] similarly act to shield persons and entities from liability and therefore may not be entered to protect non-debtors not legally entitled to release." Third-party injunctions contravene § 524(e)'s mandate that a debtor's discharge "does not affect the liability of any other entity" and exceed bankruptcy courts' authority under § 105. The *Barton* doctrine (which requires bankruptcy court approval of suits against trustees or bankruptcy-court appointed officers in non-bankruptcy court) also did not authorize other forms of gatekeeping against non-debtors. Finally, both the Fifth Circuit's 2022 opinion and a one-sentence alteration the Fifth Circuit made on rehearing already "require[d] that the definition of 'Protected Parties' used in the Plan's Gatekeeper Clause be narrowed coextensively with the definition of

'Exculpated Parties' used in the Exculpation Provision." The Fifth Circuit directed the bankruptcy court to adopt the narrowed definition on remand.

O. A Chapter 13 debtor who elects to pay unsecured claims in full under § 1325(b)(1)(A) must pay long-term debts such as student loans during the term of the plan. *Bassel v. Durand-Day (In re Durand-Day)*, 134 F.4th 846 (5th Cir. 2025) (Ramirez, J.).

Two Debtors, Victoria Florita Durand-Day and Lavonda Latrece Evans filed separate Chapter 13 petitions. Both debtors had above-median income, making their applicable commitment periods five years. With the five-year commitment period and the relatively high monthly disposable income of each Debtor, the unsecured creditors in both cases would be paid in full. However, neither plan provided for payments on student loans by the trustee during the plan. Durand-Day had two student loans totaling $54,195.00 and listed one loan as "in deferment" on her petition. The debtor proposed to pay the lender directly rather than through the trustee. The plan did not clarify whether the loan would be paid off during the plan. Evans had twelve student loans totaling $73,927.00 and all were listed as being "in forbearance." Evans elected to pay the lender directly but did not state in her plan whether the loan obligations would be fully paid during the five-year plan. In both cases, the trustee objected under § 1325(b)(1), arguing that the plans did not commit to pay all allowed, unsecured claims. The Debtors replied that their student loans were paused and thus did not need to be paid during the five-year plans. The bankruptcy court determined that the Debtors were not required to make all payments during the five-year plan period. Section 1325(b)(1)(A) was satisfied because the student loans would be paid in full according to their contractual terms, which is permissible under § 1322(b)(5). The trustee appealed. The district court consolidated the cases and affirmed.

Judge Ramirez, writing for a divided Fifth Circuit, began the opinion's analysis by reviewing the purpose of Chapter 13 and the flexibility debtors have when creating their plans. Under § 1325(b), however, after the trustee objects, a court may not confirm a plan unless a debtor uses all disposable income received during the commitment period in the plan or all unsecured claims are paid in full. The Debtors elected to pay unsecured claims in full through their plans. Thus, under § 1325(b)(1)(A), the Debtors were required to pay the full value of the allowed, unsecured claims under the plans. The Debtors and trustee disagreed about what is required by the "under the plan" language and whether all payments must be completed during the life of the plan.

Judge Ramirez reviewed the ordinary meaning of "under the plan," which is that the value of the property to be distributed under the plan must be distributed subject or pursuant to or by reason of the authority of a Chapter 13 plan. Given that the ordinary meaning did not provide a clear answer, the court then looked to the

statutory scheme. Section 1325(a)(5)(B)(ii) concerns property to be distributed under the plan; and the Supreme Court has said that this language means that debtors must complete the payments during the life of the plan. To have a coherent statutory structure, the Fifth Circuit concluded that "under the plan" in § 1325(b)(1)(A) must also mean that payments have to be made before the end of the plan. As further support, one goal of BAPCPA was to ensure debtors repay creditors as much as they can afford. That goal is accomplished by requiring payments to be made during the pendency of the plan. Accordingly, the Fifth Circuit held that § 1325(b)(1)(A) required both debtors to pay their student loans during the life of their plans.

Judge Richman dissented, noting that "during the plan" is narrower than the statutory language of "under the plan." The student loans would be paid under the plan because the plans contemplated that the debts would be repaid with interest. Judge Richman also cited § 1322(b)(5) as allowing long-term debts to be paid after the end of the plan. Beyond the statute, Judge Richman highlighted the practical effect of the majority's holding; the Debtors will have their student loan debts accelerated and repaid years earlier than would otherwise be required.

P. Courts must use discretion to exclude or admit a deposition under Federal Rule of Civil Procedure 32(a) when the opposing party had no opportunity to cross-examine a deponent who has since died. *Insight Terminal Solutions, LLC v. Cecelia Financial Management*, 148 F.4th 869 (6th Cir. 2025) (Murphy, J.).

John Siegel was a businessman who sought to develop a port terminal for coal shipments in Oakland, California. Siegel operated this project through family-owned limited liability companies. Terminal Logistics Solutions, LLC ("Terminal") paid $700,000 for an option to enter a 66-year sublease of the Oakland port terminal. Terminal was owned by Bowie Resource Partners, LLC ("Bowie"), which was in turn owned by a Siegel family company and a business partner's company. Bowie eventually assigned its interest in Terminal's business to Cecelia Financial Management, LLC ("Cecelia"), and Terminal assigned its interest in the sublease option contract to Insight Terminal Solutions, LLC ("Insight"). Both Cecelia and Insight were Siegel family companies.

Over time, Cecelia advanced $5.7 million to Insight for the project, but Insight did not repay any of the debt. Insight also received two loans from third-party companies: Insight received a $5 million loan from Bay Bridge Exports, LLC ("Bay Bridge") and a $6.8 million loan from Autumn Wind Lending, LLC ("Autumn Wind"). Autumn Wind received a security interest in Insight's assets and required Insight to restructure the loan with Bay Bridge. Under the new Bay Bridge Loan, Siegel, not Insight, would be personally liable for $5.5 million. Insight finally entered the sublease of the port terminal, but it generated no revenue. As a result, Insight filed

a Chapter 11 petition. The bankruptcy court confirmed a Chapter 11 plan proposed by Autumn Wind that provided for Autumn Wind to acquire Insight and obtain the right to the port terminal sublease. Before plan confirmation, Cecelia filed a proof of claim for $6 million based on the amounts it provided to Insight. Insight filed an adversary complaint against Cecelia and Siegel that sought to recharacterize Cecelia's claim for debt as an equity contribution. Such a recharacterization would extinguish Cecelia's claim because equity holders received no distributions under the plan. Cecelia later assigned its claim to Bay Bridge.

Before the trial, Siegel developed cancer. Insight deposed Siegel as Cecelia's corporate representative, but it did not complete its direct examination due to Siegel's health. Cecelia and Bay Bridge could not cross-examine Siegel before Siegel died. At trial, Insight sought to use Siegel's deposition testimony to show that Cecelia had provided an equity contribution to Insight, rather than a loan. Bay Bridge argued that the deposition was inadmissible hearsay. The bankruptcy court concluded that the deposition was inadmissible and ultimately declined to recharacterize Cecelia's loans as equity contributions, adopting Bay Bridge's proposed opinion verbatim. The Bankruptcy Appellate Panel affirmed. Insight appealed, arguing that the deposition should not have been excluded from trial, that the bankruptcy court erred in refusing to recharacterize Cecelia's loans as equity contributions, and that the bankruptcy court improperly adopted Bay Bridge's proposed opinion without making changes. The Sixth Circuit reversed on the deposition issue and declined to resolve the remaining two issues.

The parties agreed that Siegel's deposition testimony was hearsay, but they disagreed about whether it fell into an exception to the rule against hearsay. Insight argued that bankruptcy court should have admitted the deposition under Federal Rule of Civil Procedure 32(a) and Federal Rule of Evidence 801(d)(2).

Rule 32(a) provides that "all or part of a deposition may be used against a party" at trial if the party was "present or represented at the taking of the deposition or had reasonable notice of it," the deponent's statements would be "admissible under the Federal Rules of Evidence if the deponent were present and testifying," and the use is allowed by "Rule 32(a)(2) through (8)." Specifically, Rule 32(a)(4)(A) allows a party to use the deposition of a witness who is dead "for any purpose." Bay Bridge did not dispute that these three express conditions were satisfied but argued that there was also an implied condition that the opposing party must have had an opportunity to cross-examine the declarant before the declarant's death. The bankruptcy court adopted that view, concluding that Rule 32(a) requires a court to exclude a deposition if there was no opportunity to cross-examine the deponent. The Sixth Circuit disagreed, noting that "[n]othing in the text of Rule 32(a) adopts Bay Bridge's categorical cross-examination requirement." Rather, Rule 32(a) provides that a deposition "*may* be used" if the three conditions are satisfied, and courts have

uniformly held that trial courts exercise discretion about whether to admit a deposition when there has been no opportunity for cross-examination because the declarant has died. The Sixth Circuit concluded that the bankruptcy court erred in holding that the deposition must be excluded as a matter of law and remanded the case for the bankruptcy court to exercise its discretion to admit or exclude the deposition.

Insight also argued that the deposition should have been admitted under Rule 801(d)(2). Rule 801(d)(2) excludes a statement "offered against an opposing party" from the definition of hearsay if the statement satisfies one of four conditions. Because Siegel had testified as Cecelia's Rule 30(b)(6) representative, Bay Bridge did not dispute that the deposition could have been admitted if Insight sought to use the deposition against Cecelia, but argued that because Cecelia had transferred its claim to Bay Bridge, the deposition could not be admitted against Bay Bridge because Siegel was not connected to Bay Bridge. The bankruptcy court agreed with that view. The Sixth Circuit noted that there had been a conflict among the circuits as to whether Rule 801(d)(2) allowed a party to introduce an out-of-court statement against an opponent that had obtained the claim derivatively from a different entity if the rule would have allowed the statement to be used against that entity, the Supreme Court amended Rule 801(d)(2) to provide that if "a party's claim, defense, or potential liability is directly derived from a declarant or the declarant's principal, a statement that would be admissible against the declarant or the principal under this rule is also admissible against the party." The Sixth Circuit determined that this amended rule would govern on remand.

Judge Murphy wrote a concurring opinion expressing concerns about the Sixth Circuit's precedent that allows bankruptcy courts to recharacterize loans as equity contributions. Judge Murphy agreed with the two circuits that have concluded that state law governs whether a payment of money qualifies as a loan or an equity security and doubted that bankruptcy courts possess free-standing federal power to recharacterize a loan as a purchase of equity because (1) the Bankruptcy Code did not expressly permit the practice; (2) the statutory history does not suggest that bankruptcy courts have such implied authority; (3) the courts authorizing the practice improperly relied on § 105(a); and (4) the Sixth Circuit's 11-factor test for recharacterization was borrowed from a tax case, and tax law allows for recharacterization while bankruptcy law does not.

Q. Appeal of bankruptcy sale dismissed on standing, mootness, and waiver grounds. *Clearview Eastern Fund, LLC v. Woodward (In re Human Housing)*, 666 B.R. 332 (B.A.P. 6th Cir. 2025) (Mashburn, C.J.).

The Subchapter V debtor's owners and a related non-creditor bidder appealed orders approving the sale of the debtor's real property. They argued that the trustee could have received a higher bid for the property, and that the sale was conducted in an unfair manner. The panel's decisions hinged on issues of standing, mootness, and waiver.

The court first considered whether a competing bidder in a court-approved, private sale has standing to appeal the sale order. The court took issue with whether the non-creditor bidder had standing to appeal the sale order because even though it alleged that the sale process was unfair, the court noted that "alleged unfairness in the process is not, by itself, sufficient for standing in a private sale context where there is no required process and there are no bidding rights." Because the trustee had broad discretion in conducting the sale, the bidder was unable to sufficiently explain how the sale process injured it for the purpose of establishing standing.

Next, the court discussed whether the mootness rule in § 363(m) prevented the appeal. The mootness rule, the court explained, is meant to encourage participation in bankruptcy sales without the risk of the sale being modified. Because the appellants failed to obtain a stay of the sale and the sales were completely consummated, the court concluded that the appeals were moot.

Finally, the court addressed whether the appellants waived several arguments they made on appeal. Specifically, the bidder argued that the court-approved purchasers were not acting in good faith. But the appealing bidder never raised these issues when it presented itself as a competing bidder. Moreover, the bidder never objected to the trustee's request for language in the sale order stating that the purchasers were found to be acting in good faith. In sum, the bidder never sufficiently communicated its arguments against the sales to the bankruptcy court before the sales were final, and any argument as to the purchasers' good faith had been waived.

R. Section 1322(c)(2) authorizes a Chapter 13 debtor to cram down a residential mortgage that is scheduled to mature during the term of the plan. *Mission Hen, LLC v. Lee*, 137 F.4th 1008 (9th Cir. 2025) (Fletcher, J.).

Debtors Jason Lee and Janice Chen filed a Chapter 13 bankruptcy petition. One of the assets listed in their petition was their residence, which was subject to two mortgages. Mission Hen, LLC held the second mortgage on the property, which was only partially secured and scheduled to mature just before the final payment under

their chapter 13 plan. The Debtors sought to cram down Mission Hen's debt in their plan. Mission Hen asserted various objections to plan confirmation, including that the plan violated § 1322(b)(2), which prevents debtors from modifying the rights of claims that are secured by a security interest in the debtors' principal residence. The Bankruptcy Court overruled Mission Hen's objections, determining that § 1322(b)(2) did not prohibit the plan's cramdown of Mission Hen's claim. Mission Hen appealed, and the Bankruptcy Appellate Panel for the Ninth Circuit affirmed, concluding that § 1322(c)(2) provides an exception to § 1322(b)(2) that allows the Debtors to bifurcate Mission Hen's claims. Mission Hen again appealed.

The Ninth Circuit affirmed. Judge Fletcher, writing for a unanimous panel, discussed *Nobelman v. American Savings Bank,* 508 U.S. 324 (1993), in which the Supreme Court agreed with Mission Hen's argument that § 1322(b)(2) prevents bifurcation of claims secured by a debtor's principal residence. Congress, however, added § 1322(c)(2) after that case was decided. That section provides an exception to § 1322(b)(2) for loans that mature during the pendency of the Chapter 13 plan. Because Mission Hen's loan would mature before the Debtors make their last payment under their plan, this exception applied. Mission Hen, however, cited the last clause of § 1322(c)(2), "the plan may provide for the payment of the claim as modified pursuant to § 1325(a)(5) of this title." Mission Hen reasoned that the bifurcation of its claim is not within the scope of this exception. The Ninth Circuit, as a matter of first impression, analyzed whether the final clause of § 1322(c)(2) refers to modification of the payment terms, in which case the claim could not be bifurcated, or to modification of the claim itself, meaning it can be bifurcated. Looking to the text, § 1322(c)(2) provides an exception to subsection (b)(2). Because § 1322(b)(2) concerns modifying the claim, not just the payments, § 1322(c)(2)'s exception must also allow modification of the entire claim itself. Judge Fletcher also noted that the Fourth, Fifth, and Eleventh Circuits have held that § 1322(c)(2) permits bifurcation in similar cases. As further support for this conclusion, § 1322(c)(2) references § 1325(a)(5), which controls plan treatment of secured creditors and allows bifurcation of secured claims in subsection (B). The Ninth Circuit determined that the reference to § 1325 reflects Congress's intent to allow debtors to bifurcate and cram down claims under § 1322(c)(2). Relying on this statutory interpretation, the Ninth Circuit rejected Mission Hen's argument and held that § 1322(c)(2) allows a Chapter 13 debtor to bifurcate and cram down partially secured claims that mature during the term of the plan.

S. A Chapter 13 debtor may exclude voluntary retirement contributions from disposable income. *Saldana v. Bronitsky (In re Saldana)*, 122 F.4th 333 (9th Cir. 2024) (Thomas, J.), *cert. denied*, 145 S. Ct. 2815 (2025).

In this case, the Ninth Circuit addressed whether voluntary contributions to an employer-managed retirement plan are considered disposable income in a chapter 13 bankruptcy. The debtor was an above-median income debtor who calculated her disposable income by subtracting, among other things, her qualified retirement contributions from her monthly income. The chapter 13 trustee objected to the debtor's plan, arguing that the Bankruptcy Code did not permit the debtor to exclude voluntary retirement contributions from her disposable income. Following a prior decision by the Ninth Circuit Bankruptcy Appellate Panel in *Parks v. Drummond (In re Drummond)*, 475 B.R. 703 (B.A.P. 9th Cir. 2012), the bankruptcy court sustained the chapter 13 trustee's objection. So, the debtor revised her disposable income to include the ongoing voluntary retirement contributions and amended her plan to increase her plan payment accordingly. After the bankruptcy court confirmed that plan, she appealed both that confirmation order and the prior order sustaining the trustee's objection to her deducting the voluntary retirement contributions. On appeal, the district court affirmed.

The Ninth Circuit held that the plain text of § 541(b)(7)—one of the infamous "hanging paragraphs" gifted to us under BAPCPA—unambiguously excludes voluntary contributions from a debtor's disposable income in a chapter 13 case and, accordingly, debtors can exclude their voluntary retirement contributions to an employer-managed plan from their disposable income calculation.

The Ninth Circuit expressly rejected the other three interpretations of the § 541(b)(7) "hanging paragraph" that some courts have adopted: (1) all voluntary retirement contributions are included in disposable income in chapter 13, (2) disposable income does not include voluntary retirement contributions to the extent the debtor was making those same contributions prepetition, and (3) disposable income does not include the six-month average of voluntary retirement contributions made before filing bankruptcy. In doing so, the Ninth Circuit said its interpretation of the unambiguous language in the hanging paragraph is the only interpretation that gives it meaning and avoids violating the rule against surplusage—a core canon of statutory construction.

The majority opinion pointed out that a debtor's ability to shield retirement plan contributions from disposable income is not without limitation because there are annual contribution limits that apply, and all chapter 13 plans are still subject to the good-faith requirement.

T. Fees and costs incurred during an attorney's suspension proceedings are not excepted from discharge under § 523(a)(7). *State Bar of Nevada v. Wike (In re Wike)*, 145 F.4th 1221 (9th Cir. 2025) (McKeown, J.).

Debtor Terry Wike, an attorney, attended two separate disciplinary proceedings in 2018 and 2019 for allegedly mishandling client funds in violation of the Nevada Rules of Professional Conduct. Wike was suspended from practicing law and ordered to pay the Nevada State Bar $21,138.15 in fees and costs, including a $2,500 fee per proceeding that is mandated by Nevada Supreme Court Rule 120. Soon after his suspension ended, Wike filed a chapter 7 petition and related documents, listing a $25,000 nonpriority unsecured debt owed to the State Bar of Nevada. During his bankruptcy case, Wike petitioned the State Bar for reinstatement. The Southern Nevada Disciplinary Board recommended to the Nevada Supreme Court that Wike be reinstated if he pays the fees and costs owed to the Nevada State Bar. On May 21, 2021, Wike's debts were discharged pursuant to § 727. Approximately nine months later, the Nevada Supreme Court agreed with the disciplinary board's recommendation, including the condition to pay the fees. The court, citing public-policy concerns, rejected Wike's argument that he did not have to pay the fees because this debt had been discharged. In April 2023, Wike reopened his bankruptcy case and filed a motion for sanctions against the State Bar, alleging a violation of § 525(a)'s prohibition against governmental units' denying, revoking, suspending, or refusing to renew a license based on the debtor's not paying a discharged debt. The State Bar argued that the debt was non-dischargeable under § 523(a)(7), which prevents debtors from discharging a debt that is a fine or penalty that is payable to a government unit and that is not compensation for actual pecuniary loss. The bankruptcy court agreed with the State Bar and denied the motion for sanctions. The Ninth Circuit B.A.P., however, determined that the fees do not fall under § 523(a)(7) and reversed, noting that the costs were automatically imposed and not sanctions serving a penal purpose.

After determining that the *Rooker-Feldman* doctrine did not bar this appeal because it concerned the applicability of § 523(a)(7) and is thus within the exclusive jurisdiction of federal courts, the Ninth Circuit reviewed the elements of § 523(a)(7). For a debt to be non-dischargeable, (1) it must be a fine or penalty, (2) it must be payable to and for the benefit of a governmental unit, and (3) it must not constitute compensation for actual pecuniary loss. The second element was clearly satisfied in this case. The Ninth Circuit reviewed its past cases evaluating whether attorney-discipline payments in California were subject to § 523(a)(7). For example, costs imposed pursuant to a California statute that stated the costs were penalties intended to promote rehabilitation and protect the public were non-dischargeable. But an arbitration fee award that a disciplined attorney was required to pay before

reinstatement to the practice of law was dischargeable because that debt was compensatory and to be paid to private parties. Court-ordered discovery sanctions were also not excepted from discharge under § 523(a)(7) because the sanctions were to be paid to parties that incurred expenses from the discovery abuse rather than to a governmental entity. Similarly, required payments that would be given to victims of a disbarred attorney's misconduct were dischargeable because they were intended to remedy pecuniary losses.

Turning to the present case, the costs and fees imposed were commensurate with the costs of the disciplinary proceeding. The costs were required under Nevada Supreme Court Rule 120, which mandates that disciplined attorneys pay costs related to the proceeding. In contrast, Nevada Supreme Court Rules 102 and 102.5 allowed discretionary penalties or sanctions to protect the public. Comparing these rules supported the conclusion that the mandatory costs imposed upon Wike did not fall under § 523(a)(7). Although the Nevada Supreme Court's decision assessing the costs upon Wike suggested that the costs were fines and penalties intended to protect the public, the Ninth Circuit noted that this unpublished opinion was not mandatory precedent and that it was in tension with a published Nevada Supreme Court case that suggested that Rule 120 costs were not fines. The Ninth Circuit rejected the State Bar's argument that the costs assessed under Rule 120 represented government expenditure rather than actual pecuniary loss, citing conflicting circuit precedent. The Ninth Circuit remanded the case with instructions to grant Wike's motion for sanctions based on the State Bar's stipulation that Wike has completed all requirements for reinstatement except payment of fees.

U. Ninth Circuit BAP affirms minority view that bad faith does not constitute "cause" under § 707(a). *White v. United States Trustee (In re White)*, 74 Bankr. Ct. Dec. 113 (B.A.P. 9th Cir. 2025) (per curiam).

Debtor initially filed a Chapter 11 Subchapter V petition, hoping to reorganize his finances. However, despite numerous warnings by the bankruptcy court, the debtor failed to provide accurate and complete disclosures in his schedules, statements, reports, and other court filings. As a result, the bankruptcy court ordered the debtor to appear and show cause why his case should not be dismissed or converted. Subsequently, the debtor filed a motion to convert his case to a chapter 7, which the bankruptcy court granted. Although the bankruptcy court granted the motion to convert, the court still required the debtor to appear and show cause why his case should not be dismissed. After holding a hearing on the show cause order, the court held that "cause" existed under § 707(a) to dismiss based on the debtor's inadequate disclosures as a debtor-in-possession, and "cause" existed under § 707(a)(1) for "unreasonable delay by the debtor that is prejudicial to creditors."

In a nonprecedential, per curiam opinion, the Ninth Circuit BAP reversed the bankruptcy court's dismissal of the debtor's bankruptcy under § 707(a). The BAP relied heavily on the Ninth Circuit's precedents in *Neary v. Padilla (In re Padilla)*, 222 F.3d 1184 (9th Cir. 2000) and *Sherman v. S.E.C. (In re Sherman)*, 491 F.3d 948 (9th Cir. 2007). As the Ninth Circuit noted in *Sherman*, *Padilla* created a two-part inquiry: the court must determine (1) whether the facts establishing "cause" are contemplated under a specific Code provision applicable to chapter 7, and (2) if not, whether the facts otherwise meet the criteria for "cause" under § 707(a). "If the asserted 'cause' is contemplated by a specific Code provision, then it does not constitute 'cause' under § 707(a)." Crucially, *Padilla* held that bad faith per se cannot constitute "cause" under § 707(a). This holding is a minority view, with the Third, Fourth, Fifth, Sixth, Seventh, and Eleventh Circuits all holding that "bad faith" is an appropriate ground for dismissal under § 707(a). Moreover, the Supreme Court held in *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007), which was decided after *Padilla*, that a debtor's bad faith conduct in his chapter 7 case precluded conversion to a chapter 13.

Nevertheless, the BAP held it was still bound by *Padilla*, notwithstanding the Court's decision in *Marrama*. The BAP determined that *Marrama* did not overrule *Padilla,* given that a "chapter 7 case is itself a remedy to bad faith conduct in a chapter 11 or chapter 13 case, and because of the different relationship a chapter 7 debtor has with the estate" (e.g., chapters 11 and 13 allow debtors to retain assets and continue their relationship with creditors). Remaining bound to *Padilla*, the BAP found "no meaningful distinction between the conduct at issue in this case and the conduct at issue in *Sherman*." Specifically, the BAP held that the debtor's conduct was governed by § 727(a)(4) and thus could not constitute cause under § 707(a). Therefore, the BAP reversed the bankruptcy court's holding that the debtor's misconduct in chapter 11 amounted to "cause" for dismissal under § 707(a).

Additionally, the BAP held that the bankruptcy court erred in dismissing the debtor's case under § 707(a)(1). The BAP could not find "any cases regarding whether § 707(a)(1) applies to conduct that delayed a case under a different chapter prior to conversion of the case to a chapter 7." Regardless, the BAP held that Congress likely intended § 707(a)(1) to apply only to conduct that delays a chapter 7 case. The BAP based its decision on Congress's decision to draft separate statutes of dismissal for each bankruptcy chapter, and § 103's instruction to apply § 707(a)(1) only to chapter 7 cases. Therefore, "the court must analyze whether the delay caused by the debtor delayed the chapter 7 case, and whether such delay caused prejudice to creditors in the chapter 7 context." Because the bankruptcy court's analysis of § 707(a)(1) was limited to the debtor's conduct in his chapter 11 case, the BAP reversed and remanded for the court to assess "whether Debtor's conduct caused unreasonable delay to the chapter 7 case."

V. Failure to disclose loss of largest customer was a fraudulent omission under § 523(a)(2)(A), not a misstatement. *Manion v. Strategic Funding Source, Inc. (In re Manion)*, 667 B.R. 473 (B.A.P. 9th Cir. 2025) (Lafferty, J.).

Around the time the debtor began negotiating a factoring agreement with creditor Kapitus and provided financial statements disclosing significant revenue from the debtor's main customer, the main customer terminated its contract with the debtor's business. The debtor did not disclose the customer's termination before the debtor executed the factoring agreement, which included a representation that the debtor's company had undergone "no material adverse changes" since the debtor provided the financial documents. The debtor subsequently commenced a chapter 7 case, and Kapitus filed an adversary proceeding alleging, among other things, the debtor's debt to it was nondischargeable under § 523(a)(2)(A). The bankruptcy court held the debt nondischargeable.

The Ninth Circuit Bankruptcy Appellate Panel affirmed. Section 523(a)(2)(A) excepts from discharge debts for material omissions and other forms of fraud "other than a statement respecting the debtor's or an insider's financial condition." Section 523(a)(2)(B), on the other hand, excepts debts for written fraudulent misstatements respecting a debtor's financial condition. The debtor argued in relevant part that § 523(a)(2)(B)—not § 523(a)(2)(A)—governed because, if the debtor made any misstatement, it was an affirmative representation that his company had experienced no material changes—not an omission. The BAP disagreed, explaining § 523(a)(2)(A) and § 523(a)(2)(B) may overlap "where a debtor fraudulently induces a creditor to enter into a transaction and, in so doing, makes both fraudulent representations and omissions." When the fraudulent omission is the direct inverse of an affirmative misrepresentation, such as if "a debtor fraudulently represented that he had $1 million in the bank, and also . . . omitted the fact that he had $0 in the bank," the statutory scheme might arguably require the debtor bring the action as one for fraudulent misrepresentation respecting financial statement under § (a)(2)(B) rather than for fraudulent omission under § (a)(2)(A). But the court did not need to resolve that question in this case. "Where an affirmative representation is as broad and ambiguous as [the statement here that the debtor's company experienced no material changes], we see no reason to foreclose plaintiffs from prosecuting a claim for a fraudulent omission under § 523(a)(2)(A) simply because the omission is related to an affirmative representation made by the debtor." Cases involving fraudulent omissions are less difficult to prove because, "[i]n cases involving fraudulent **omissions**, instead of fraudulent **representations**, 'the nondisclosure of a material fact in the face of a duty to disclose has been held to establish the requisite reliance and causation for actual fraud under the Bankruptcy Code.'" Permitting debtors to "simply reference loosely related affirmative representations and require

plaintiffs to prove their claims under the stricter standards related to fraudulent representations," would create an "impossible feat for plaintiffs, who would then have to demonstrate reliance on a fact they never knew." The bankruptcy court also did not err in determining the omission was material or that the debtor had a duty to disclose the customer loss. The BAP also was bound by its prior holding that an omission could not be a "statement respecting the debtor's or an insider's financial condition" that would exclude the omission from § 523(a)(2)(A). Thus, the BAP affirmed.

W. A court may annul the automatic stay without violating the Supreme Court's restrictions on *nunc pro tunc* orders. *Patel v. Patel (In re Patel)*, 142 F.4th 1313 (11th Cir. 2025) (Pryor, C.J.).

Debtor Rajesh Patel, known as R.C., filed a voluntary petition in August 2016 after his family's business collapsed. Along with the failing business, R.C.'s relationship with his brother also broke down, triggering years of litigation between the two brothers and their families. After he filed his bankruptcy petition and the automatic stay went into effect, R.C. actively participated in an arbitration between his and his brother's family. R.C. pursued his own claims in the arbitration, one of which was not disclosed in his schedules and the other of which was under-valued. During the arbitration, R.C. did not mention his bankruptcy case or the automatic stay. After learning that the arbitration did not go in his favor, R.C. finally asserted that the automatic stay should have paused the arbitration. R.C.'s attorney later admitted that he intentionally downplayed the effect of the automatic stay on the arbitration to use the stay violation as a tool to void an unfavorable award. Back in bankruptcy court, R.C. sought to stay the enforcement of the arbitration award and sought damages against his brother's family for intentionally violating the stay. After his brother sought to annul the stay, R.C. argued that the Supreme Court's *Acevedo* decision prevented the court from annulling the automatic stay. In *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 589 U.S. 57 (2020), the Supreme Court determined that a district court could not retroactively validate a state trial-court order by making a remand retroactively effective before the state trial court entered its order. The bankruptcy court rejected the argument that *Acevedo* applied to the power to annul the automatic stay. Citing R.C.'s attempt to weaponize the automatic stay, the court annulled the stay for cause pursuant to § 362(d)(1). R.C. appealed to the district court. The district court noted that there was a split in authority about how *Acevedo* applies to the power to annul the stay but ultimately affirmed the lower court decision. R.C. then appealed to the Eleventh Circuit Court of Appeals.

The Eleventh Circuit held that *Acevedo* did not prevent the bankruptcy court from retroactively annulling the stay. The court discussed the importance of the automatic

stay in bankruptcy and its purpose to provide debtors with breathing room by pausing outside legal proceedings. Although actions that violate the stay are typically void, the stay can be modified for cause. The court noted that *Acevedo* involved an attempted jurisdictional workaround through a *nunc pro tunc* order. Unlike the court in *Acevedo*, the bankruptcy court had jurisdiction over R.C.'s case at all times. And § 362(d) provides bankruptcy courts with broad power to modify or annul the stay. The bankruptcy court was exercising its statutory authority, not seeking to supply jurisdiction where it did not exist. An alternative holding would strip the bankruptcy court of its power to modify the automatic stay, which is a fundamental power of bankruptcy courts that was granted by Congress to manage bankruptcy estates. Having determined that *Acevedo* did not prevent retroactive annulment, the court considered R.C.'s procedural objection that annulment was improper because there was no formal motion that complied with notice and hearing requirements. The Eleventh Circuit determined that, if the bankruptcy court did err, it was harmless because R.C. was on notice of the relief sought.

X. Exceptions to discharge under § 523(a) apply to corporate Subchapter V debtors. *Benshot, LLC v. 2 Monkey Trading, LLC (In re 2 Monkey Trading, LLC)*, 142 F.4th 1323 (11th Cir. 2025) (Lagoa, J.).

Before bankruptcy, creditor BenShot LLC sued Debtors 2 Monkey Trading, LLC and Lucky Shot USA, LLC under the Lanham Act and Wisconsin common law. A jury found for BenShot on all claims, including answering yes when asked if the Debtors acted maliciously toward, or in intentional disregard of, BenShot and its rights. The jury also awarded punitive damages. After the Debtors tried to discharge this debt under Subchapter V of Chapter 11, BenShot filed an adversary proceeding, asserting that the debt was non-dischargeable because it was a debt for a willful and malicious injury under §§ 523(a)(6) and 1192(2) of the Bankruptcy Code. The Debtors moved to dismiss, arguing that § 523(a)(6) was inapplicable because it applied only to individual, not corporate, debtors. The bankruptcy court agreed and dismissed the complaint, citing other courts that reached the same conclusion.

Reversing the bankruptcy court's order, a divided Eleventh Circuit agreed with the Fourth and Fifth Circuits and concluded that, in Subchapter V proceedings, § 523(a) applies to both corporate and individual debtors. If a Subchapter V debtor non-consensually confirms a plan under § 1191(b), then it is governed by § 1192(2), which grants a debtor a discharge of all debts except those of the kind specified in § 523(a). Section 523(a) lists several exceptions to discharge for debts owed by "an individual debtor." "Debtor," as used in the Code, includes both individuals and corporations. Although some sections of the Code specifically limit the word "debtor" to individual debtors or corporate debtors, using the unlimited "debtor" refers to both individual

and corporate debtors. Because § 1192 says "debtor," this section applies to individual and corporate debtors. Section 1192(2)'s mention of debts of the kind specified in § 523(a) refers to the category of debts in that section but does not incorporate § 523(a)'s exclusion of corporate debtors. Further, § 1141(d)(6) prevents corporate debtors from discharging debts of a kind specified in certain subsections of § 523(a). Section 1141(d)(6), which only applies to corporate debtors, would be meaningless if the reference to the category of debts listed in § 523(a) also incorporated § 523(a)'s exclusion of corporate debtors. The Debtors countered by suggesting that there is a meaningful difference between "the kind" in § 1192(2) and "a kind" in § 1141(d)(6). The court rejected this argument and determined that, even if there was such a difference, it would not help the Debtors' position.

The Debtors also cited the canon against surplusage to support their position, noting that the preamble of § 523(a) was amended to reference § 1192, which would be unnecessary if § 1192 made § 523(a) applicable to all debtors. The court noted the unambiguous language and concluded that, if Congress had intended to amend § 1192 by adding a reference to this section in § 523(a), it would not have made such a radical change implicitly. The Debtors also argued that, because § 523(a) is more specific than § 1192(2), the general/specific canon informs the court that the limitation of § 523(a) should control. The Court was not convinced, noting that these sections do not necessarily conflict and that § 1192(2) is the more specific. Finally, the court acknowledged that corporate debtors may be treated differently under §§ 1141 and 1192, depending on whether they confirm a plan consensually or not, but this different treatment reflects a congressional intent to encourage consensual plans.

In a dissent, Judge Luck concisely stated that the majority of other courts, including every bankruptcy court in the Eleventh Circuit, have reached the opposite conclusion and determined that § 1192(2) does not apply to corporate debtors.

Y. Personal-injury settlements received post-petition did not require modification of chapter 13 plans under § 1329. *Conte v. Hill (In re Hill)*, No. 24-10264, 2025 WL 2179249 (11th Cir. Aug. 1, 2025) (per curiam).

In these consolidated cases, Debtors Lisa Jo Ann Boutwell and Peggy Proffitt were injured after filing their bankruptcy petitions. After confirming their Chapter 13 plans, the Debtors received large settlements related to the post-petition injuries. The trustee in both cases sought to modify the Debtors' plans under § 1329 to include payment of all of the net personal-injury settlement proceeds to the trustee. Under the confirmed plan, Boutwell's unsecured creditors would receive 40.25% of their full claims, and they would receive 77.07% if the settlement proceeds went to creditors. Proffitt's unsecured creditors would receive 62.19% of their total claims under her

confirmed plan and would receive 76.86% if the settlement proceeds were added to the plan. The bankruptcy court determined that the net settlement proceeds were property of the estates, but the Bankruptcy Code did not require the court to modify the plans to include the settlement proceeds. The court concluded that there was no legitimate reason to modify the plans as requested because the settlement proceeds did not increase the Debtors' ability to pay their unsecured creditors. The trustee appealed, and the district court affirmed. The trustee appealed to the Eleventh Circuit.

Reviewing the bankruptcy court's decision for abuse of discretion, the Eleventh Circuit noted that bankruptcy courts have the discretion to refuse to modify a confirmed plan even if the requirements of § 1329 are met. Under § 1329(b)(1), modifications to plans must comply with several other sections of the Code, including § 1325(a)(4)'s liquidation test, which requires unsecured creditors to receive in a Chapter 13 plan as much as they would in a hypothetical Chapter 7 liquidation. Because the Debtors did not contest that the trustee's proposed plan modifications met the applicable statutory requirements, the court assumed that the trustee's proposed plan complied with § 1329. The bankruptcy court determined that the Debtors needed the settlement proceeds, citing their continued pain from their injuries and their precarious financial positions, and thus the settlements did not increase the Debtors' ability to pay their unsecured creditors. There was ample support in the record for the bankruptcy court's conclusion. Although a change in financial circumstances could warrant modification under § 1329, such modification is not required. The Eleventh Circuit determined that the bankruptcy court acted within its discretion in denying the Trustee's proposed modifications.

Z. Equitable tolling does not apply to the Rule 4007(c) deadline to file a complaint under 11 U.S.C. § 523(c). *TL90108 LLC v. Ford*, 147 F.4th 1351 (11th Cir. 2025) (Pryor, J.).

Debtor Joseph Ford purchased a partial interest in a rare, but missing, car. The car resurfaced years later, when Ford and the other owner were notified that TL90108 LLC ("TL") had attempted to register the vehicle. Litigation over ownership and possession of the vehicle began soon thereafter. Ford filed a Chapter 11 petition during the litigation, but prior to discovery. Notably, Ford did not list TL as a creditor, and TL did not receive notice of any deadlines in the bankruptcy case. Ford, however, filed a "Suggestion of Bankruptcy" in the state-court case. Pursuant to Rule 4007(c), the deadline for creditors to file a complaint to determine dischargeability under § 523(c) was in April 2019. Discovery in the state-court case began, and TL learned, after the Rule 4007(c) deadline had passed, that Ford conspired with another party to sell TL the car and then recover it in a replevin action. TL filed a motion to extend the Rule 4007(c) deadline based on equitable tolling. The bankruptcy court denied TL's motion because it was untimely and the Eleventh Circuit's prior decision in *In*

re Alton, 837 F.2d 457 (11th Cir. 1988), did not allow equitable tolling to extend the Rule 4007 deadline to file a § 523(c) complaint.

This appeal to the Eleventh Circuit followed. TL contended that the bankruptcy court erred in denying its motion because recent Supreme Court decisions abrogated *Alton*. TL cited *Kontrick v. Ryan*, 540 U.S. 443 (2004), in which the Supreme Court left open the question of whether Rule 4004, a nonjurisdictional claim-processing rule, is subject to equitable tolling, and *Holland v. Florida*, 560 U.S. 631 (2010), which held that a non-jurisdictional federal statute of limitations is normally subject to a rebuttable presumption in favor of equitable tolling. TL argued that these cases, taken together, suggested that nonjurisdictional claim-processing requirements, like the Rule 4007(c) deadline, should be afforded a rebuttable presumption that equitable tolling applies. These cases thus abrogated *Alton's* bar on equitable tolling. Additionally, TL argued that courts have discretion to consider extending the Rule 4007(c) deadline on due process grounds.

The Eleventh Circuit held that *Alton* was still controlling precedent and that due process had been satisfied by TL's actual notice of the bankruptcy proceeding. Judge Jill Pryor began her analysis by stating that, for a Supreme Court decision to abrogate panel precedent, it must be "clearly on point and clearly contrary" to the precedents' issue and holding, rather than "merely weaken the holding." Applying this standard, the Eleventh Circuit distinguished *Alton* from *Kontrick* and *Holland*: *Kontrick* expressly declined to address the issue of equitable tolling in Rule 4004, and *Holland* addressed the issue of equitable tolling in the Antiterrorism and Effective Death Penalty Act, not the Bankruptcy Rules. Judge Pryor also cited the Supreme Court's decision in *Nutraceutical Corp. v. Lambert*, 586 U.S. 188 (2019), which prohibited courts from reading equitable tolling into Civil and Appellate Rules where "the text of the rule [does not] leave room for such flexibility," "even where good cause for equitable tolling might otherwise exist." Thus *Alton*, which focused on "a plain reading of Rule 4007(c) and the absence of any express language in the rule indicating that its deadline was subject to equitable doctrines," remained good law. Judge Pryor considered TL's due process argument and determined that its due process rights had not been violated because TL had received actual notice of the bankruptcy case before the Rule 4007(c) deadline. TL thus had a duty to inquire into any relevant deadlines.

AA. "The notice" in Rule 3002(c)(7), which determines whether the court may extend the time to file a proof of claim, refers to notice of the bar date, not general notice that the bankruptcy case is pending. *In re Aguilar*, 668 B.R. 512 (Bankr. S.D. Fla. 2025) (Grossman, J.).

Married debtors each separately borrowed money from a bank. The bank then assigned the loans to a company named Cadles of West Virginia ("Cadles WV").

Cadles WV sent the husband notice that it was the holder of the claim against him. Cadle, servicer for Cadles WV, sent the wife notice that it was trying to collect on the loan she originally owed the bank. When the Debtors filed a bankruptcy petition, they listed the bank as the holder of the loans and added it to the mailing matrix. The bank received notice of the bankruptcy case and the deadline to file a proof of claim, but Cadles WV and Cadle did not. Cadle became aware of the bankruptcy after running a credit report on the husband. It timely filed a proof of claim on behalf of Cadles WV related to the husband's loan. This proof of claim listed the names of both Debtors but was related to the husband's loan only, not the wife's. Twelve days after the claims bar date, the wife informed the Cadle account officer assigned to her account about the bankruptcy case. Cadle then filed an untimely proof of claim related to the wife's loan. The Debtors objected to this proof of claim because it was untimely. Cadle filed a motion to allow Cadles WV to file a late proof of claim under Rule 3002(c)(7) because it did not receive actual notice of the deadline to file a claim related to the wife's loan.

Rule 3002 (c)(7) provides that, on the motion of a creditor, a court may extend the time to file a proof of claim "if the court finds that the notice was insufficient to give the creditor a reasonable time to file." This rule has caused much debate and disagreement among bankruptcy courts. The court here adopted the analysis of *In re JC Farms*, No. 23-10278-357, 2024 WL 3352120 (Bankr. E.D. Mo. July 9, 2024). In that case, the court recognized the ambiguity of the phrase "the notice" in Rule 3002(c)(7). The notice could refer to actual knowledge of the bankruptcy case or formal notice of the bar date. A prior version of the rule expressly said, "notice of the time to file a proof of claim." Although an amendment removed this language, the Advisory Committee's notes explained that the amendment was intended to expand exceptions to the claims bar date for insufficient notice of time to file a proof of claim, suggesting that "the notice" still refers to notice of the deadline to file a proof of claim. Further, there is no reason to think the amendment changed the meaning of notice because other exceptions in the rules contemplate notice of the claims bar date. Relying on this analysis from *In re JC Farms,* the court concluded that "the notice" mentioned in Rule 3002(c)(7) is notice of the claims bar date. Because Cadles WV did not receive notice of the deadline to file a proof of claim, the court granted the motion to extend the deadline.

BB. Deposit of debtor's funds into principal's bank account before payment of principal's personal debt to IRS did not make the IRS a subsequent transferee. *Hayes v. United States (In re Applied Machinery Rentals, LLC)*, 670 B.R. 452 (Bankr. W.D.N.C. 2025) (Kahn, J.).

Rather than depositing business loan proceeds into the debtor LLC's bank account, the lender deposited the proceeds into the debtor's principal's personal account. The principal then transferred the loan proceeds to the IRS to satisfy the principal's and his wife's personal tax liabilities. In bankruptcy, the LLC's chapter 7 trustee filed an adversary proceeding to avoid and recover the principal's tax payment to the IRS. Among other things, the IRS defended on the ground that it was a subsequent transferee that took for value and in good faith, such that the transfer was not recoverable under § 550. The parties filed cross motions for summary judgment.

The bankruptcy court entered summary judgment in favor of the trustee and against the IRS. The court first determined that the principal's payment was a "transfer of an interest of the debtor" LLC under § 548(a)(1)(A) and (B). Here, the transferred funds were the debtor's property even while in the principal's bank account under state law. The debtor incurred the loan for the purpose of funding its operations, and under state law, the debtor's principal held the loan proceeds in trust for the debtor. The IRS did not dispute the other elements of § 548(a)(1)(A) (and had even conceded the debtor acted with actual intent to defraud its creditors), so the trustee was entitled to summary judgment under § 548(a)(1)(A). Alternatively, the trustee also was entitled to summary judgment under § 548(a)(1)(B) because "it is well-established that a debtor receives less than reasonably equivalent value when paying personal obligations of its principal." Finally, the court rejected the IRS's good faith subsequent transferee defense because the IRS was the initial—not subsequent—transferee. The principal lacked legal dominion and control of the funds even while they were in the principal's bank account because the principal "held the proceeds of the loan for the benefit of [the] Debtor and did not have the *right* to apply those proceeds to his own purpose," despite having the *ability* to direct the payment to the IRS. Consequently, the debtor always retained its interest in the funds, and the payment to the IRS "was a direct and initial transfer of an interest in property of [the] Debtor."

CC. To determine whether a debtor may sell an asset free and clear of a lien under § 363(f)(5), the court should look at hypothetical legal or equitable proceedings that would be realistically possible if the automatic stay were not an obstacle. *In re Urban Commons 2 West LLC*, 668 B.R. 42 (Bankr. S.D.N.Y. 2025) (Bentley, J.).

The Debtors, five affiliated LLCs holding long-term leasehold interests in a hotel that closed during the Covid-19 pandemic, sought to sell their lease interests to fund a plan of liquidation. The Debtors filed a motion to sell these interests free and clear of all liens, claims, interests, and encumbrances pursuant to § 363(f). One creditor, which the court described as an "out-of-the-money junior lien holder," objected to the sale, asserting that the sale did not satisfy § 363(f)(5), which allows a sale free and clear of liens if the lienholder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. The creditor cited *Dishi & Sons v. Bay Condos LLC*, 510 B.R. 696 (S.D.N.Y. 2014), in which the court, concerned that § 363(f)(5) was impermissibly broadened by other courts to include any hypothetical proceeding regardless of the likelihood that such proceeding could occur, limited § 363(f)(5) to only those proceedings that could be brought by the debtor or the trustee as the holder of property. Thus, the creditor argued that the sale was not authorized under § 363(f)(5) because the Debtors could not compel the creditor to accept a money satisfaction in any legal or equitable proceeding.

Judge Bentley began the opinion by noting that there are two lines of cases construing § 363(f)(5), the narrow view of *Dishi* and the broader view of the majority, which holds that the proceedings contemplated by § 363(f)(5) include foreclosure sales. Under the *Dishi* construction, a hypothetical foreclosure sale brought by a creditor would not satisfy § 363(f)(5).

Judge Bentley held that § 363(f)(5) applies to "proceedings that might realistically be brought in the case before the court if the automatic stay were lifted or did not apply." Looking to the statutory language, § 363(f)(5) is written in the passive voice. It requires that a creditor could be compelled to accept a money satisfaction in a proceeding without reference to, or limitation of, which parties could initiate such a proceeding. Thus, there is no requirement that a debtor or a trustee be able to bring a proceeding to force a creditor to accept a money satisfaction. Judge Bentley rejected the *Dishi* interpretation as unduly narrow. The *Dishi* construction of § 363(f)(5) gives undue power to creditors holding junior liens that are rendered worthless because of the security interests held by senior lienholders. Such creditors, even though they are unsecured, could disrupt a sale supported by higher priority lienholders. Judge Bentley recognized *Dishi's* concern with impermissibly broadening the statute and clarified that he did not read § 363(f)(5) to cover any hypothetical proceeding. Under Judge Bentley's interpretation of § 363(f)(5), foreclosure sales and UCC sales, to the

extent allowed under state law, would fall under this section but hypothetical eminent-domain proceedings would not without some realistic possibility that such a proceeding would take place if not for the automatic stay. For these reasons, Judge Bentley overruled the creditor's objection to the sale and allowed the Debtors to sell their hotel interests free and clear of all liens.

DD. Debtor lacked standing under § 363(h) to sell real property free and clear of estranged ex-spouse's interest. *Sliwinski v. Sliwinski (In re Sliwinski)*, 668 B.R. 841 (Bankr. E.D.N.C. 2025) (McAfee, J.).

The chapter 13 debtor's estranged ex-spouse resided in real property the debtor and the ex-spouse jointly owned. The debtor filed an adversary proceeding seeking authority to sell the property free and clear of the ex-spouse's interest under § 363(h). The bankruptcy court dismissed the debtor's adversary proceeding for lack of standing. Section 363(h) states in relevant part, "the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety" if statutory conditions are satisfied. Under § 1303, a chapter 13 debtor has "the rights and powers of the trustee under sections 363(b), 363(d), 363(e), 363(f), and 363(l)." Notably, § 1303 does not give the debtor rights under subsection (h) of § 363 but does give the debtor rights under subsection (b) to sell an interest in property of the estate. A minority of courts have determined § 363(h)'s cross-reference to § 363(b) incorporates subsection (b) into subsection (h) by reference, such that § 1303's inclusion of subsection (b) in the list of rights a debtor may exercise also bestows on the debtor the right under subsection (h) to sell a co-owner's interest. The court here rejected the minority approach, following the majority of courts that have determined a debtor lacks standing to sell a co-owner's interest under § 363(h) because § 1303 unambiguously omits subsection (h) from its list of subsections under which the debtor has rights, and § 363(h)'s reference to subsection (b) is not an incorporation by reference. Reasoning that the minority decisions primarily construed the debtor's rights under subsection (h) in dicta or without thorough statutory analysis and § 1303 unambiguously omits subsection (h) from its list, the court here explained that the majority was both persuasive and consistent with the Fourth Circuit's narrow construction of § 363(h). Concluding the debtor lacked standing, the court dismissed the debtor's adversary proceeding.

EE. *Purdue Pharma* does not prevent injunctions protecting § 363 sale buyers. *In re Hopeman Brothers, Inc.*, 667 B.R. 101 (Bankr. E.D. Va. 2025) (Phillips, J.).

Debtor operated as a contractor outfitting ship interiors until it ceased operations during the 1980s. The debtor has since faced over 126,000 asbestos-related lawsuits.

With only 2,700 unresolved claims remaining, the debtor filed its chapter 11 bankruptcy petition. The debtor still had several unexhausted asbestos insurance policies, but there remained several coverage disputes. To resolve the coverage disputes and raise funds to pay the remaining asbestos claims, the debtor entered a buyback with its insurers where the insurers bought back the policies as if the policies had never been issued. The debtor would then use the funds from the sale to pay the remaining asbestos claims. The buyback agreement included injunctions preventing the asbestos claimants from suing the purchasing insurers. The § 363 sale was approved over objections by the United States Trustee and one of the debtor's codefendants. Both objectors sought a stay pending appeal of the sale order. Specifically, the objectors argued that *Purdue Pharma* prevents the bankruptcy court from enjoining litigation against the purchasing insurers.

The court denied the request for a stay because the objectors failed to demonstrate that they would likely succeed on the merits of their appeal. The court described the objectors' application of *Purdue Pharma* as novel and cited two other cases (*In re Roman Cath. Diocese of Rockville Centre*, 665 B.R. 71 (Bankr. S.D.N.Y. 2024) & *In re Bird Global, Inc.*, No. 23-20514-CLC (Bankr. S.D. Fla. 2024)) where courts determined that *Purdue Pharma* does not affect the bankruptcy court's authority to approve "free and clear" property sales. Judge Phillips found nothing in the *Purdue Pharma* decision to make him believe that § 363 sales are affected. The court also emphasized that if *Purdue Pharma* were extended to § 363 sales, there could be a chilling effect preventing buyers from wanting to purchase assets out of bankruptcy. After discussing the potential harms to the debtor if the sale were postponed as well as public policy concerns, the court denied the objectors' request for a stay pending appeal.

FF. Bankruptcy court declines to compel arbitration of, among other causes of action, claim objection premised on usury. *Samson v. LCF Group, Inc. (In re Bridger Steel, Inc.)*, Case No. 23-bk-20019, Adv. No. 24-ap-2003, 2024 WL 4377452 (Bankr. D. Mont. Sept. 30, 2024) (Hursh, J.).

Pre-petition, the debtor and a creditor entered into a "Merchant Agreement" containing an arbitration provision. In bankruptcy, the chapter 7 trustee filed an adversary proceeding against the creditor under the theory that the merchant agreement was really a loan that violated Montana's usury laws. The trustee asserted five counts, seeking (1) a declaratory judgment that Montana law applied to the Merchant Agreement, (2) a declaratory judgment that the Merchant Agreement was a loan, (3) avoidance and recovery of preferential transfers, (4) a penalty for the creditor's alleged violation of Montana's usury laws, and (5) disallowance of the creditor's claim. The creditor moved to compel arbitration under the Merchant Agreement.

The bankruptcy court denied the creditor's motion to compel arbitration. First, the court concluded that the adversary proceeding was not subject to the arbitration agreement because the trustee asserted the causes of action on behalf of the estate and creditors and the causes of action were not derivative of the debtor's rights. As the court explained, "only the parties to an arbitration agreement are bound by it." Thus, if a cause of action derives from the debtor's rights, a debtor's agreement to arbitrate could bind the trustee. But if a cause of action is exclusive to the trustee in bankruptcy, it belongs to nonparties to the agreement who are not bound by the debtor's agreement to arbitrate. Here, the trustee asserted the preference cause of action and claim objection on behalf of the estate, and the other causes of action were "components of the trustee's claim objection." Thus, no causes of action were derivative, and the arbitration agreement did not apply. Though "th[e] Court's analysis could [have] stop[ed] here," the court next determined arbitration was not necessary because the causes of action were core proceedings (i.e., those that "invoke[] a substantive right created by federal bankruptcy law or . . . that could not exist outside of bankruptcy") and arbitration would conflict with the purposes of the Bankruptcy Code. As the court explained, though "existing case law weighs in favor of compelling arbitration if the disputes involve noncore proceedings," "[i]f the disputes at issue are core proceedings, arbitration may be denied if enforcement conflicts with underlying purposes of the Code." And "[b]ecause noncore issues are necessarily determined in claim objections, underlying contract claims are 'subsumed' into the core proceeding of claim allowance." Here, the only arguably noncore claims—the counts seeking declaratory judgments and the usury count—were components of the claim objection and, therefore, were subsumed and became proceedings as actions "inextricably tied to a core proceeding." Finally, enforcing the arbitration provision would have conflicted with the Bankruptcy Code's purposes of a collective claims allowance process by forcing a piecemeal resolution of the trustee's claims. The court declined to enforce arbitration in this case.

GG. Ad hoc committee could not recover its professional fees from the debtors' estate under §§ 363(b) or 503(b). *Coalition of Abused Scouts for Justice v. U.S. Trustee* (*In re Boy Scouts of America)*, 666 B.R. 489 (D. Del. 2025) (Andrews, J.), *appeal docketed*, No. 25-1136 (3d Cir. Jan. 30, 2025).

After the United States Trustee appointed two official committees—a trade committee and a tort committee—and a future claims representative, a group of personal injury law firms that represented sexual abuse claimants formed its own ad hoc committee (the "Coalition"), hired bankruptcy counsel, and began participating in the debtors' chapter 11 case. To entice the Coalition and others to agree to support their plan, the debtors sought to enter into a restructuring support agreement (RSA) and proposed, among many other things, to pay the Coalition's professional fees

incurred in the case. The bankruptcy court never approved the RSA after determining that the proposed payment of the Coalition's professional fees could not be approved at that time. The bankruptcy court eventually confirmed the debtors' "third modified fifth amended plan" and ordered that the treatment of the Coalition's fees was to be addressed separately. When the debtors did not seek approval of the Coalition's fees, the Coalition itself moved for payment of $21 million in fees and expenses billed by its professionals. The Coalition argued that the professional fees should be paid by the debtors' bankruptcy estate either as an administrative expense under § 363(b), as a sound exercise of the debtors' business judgment, or as a substantial contribution award under §§ 503(b)(3)(D) and (b)(4).

The bankruptcy court denied the Coalition's request under § 363(b) as procedurally improper because the debtors did not file or join the request. With respect to the substantial contribution request under § 503(b), the bankruptcy court found that the services provided by the Coalition's professionals "supplemented or overlapped with services provided by" the debtor's professionals "or duplicated services provided by" the official tort committee's professionals.

The district court affirmed the bankruptcy court's holding. First, it held that the Coalition's request to approve its fees as administrative expenses was procedurally improper, since § 363(b) permits only a debtor in possession or the trustee to request court authorization to use estate property outside the ordinary course of business. Additionally, the bankruptcy court's earlier orders declining to allow the fee arrangements under the RSA or the plan merged with the debtors' plan confirmation, which was never appealed by the Coalition. Equally, even if § 363(b) had applied, the debtors' failure to review or request information about the Coalition's fees when negotiating the RSA, and failure to make necessary showings for court approval of the fees when it filed an amended plan, demonstrated that the debtors failed to exercise their business judgment when authorizing the Coalition's fees.

The district court also concluded that the Coalition failed to show that it made a substantial contribution to the bankruptcy case and could not obtain payment under § 503(b). The bankruptcy court had found that the Coalition's services were duplicative of services provided by other professionals in the case. Additionally, to establish a substantial contribution, the Coalition had to overcome the presumption that the Coalition was acting in its own interests. The Coalition had failed to assert how its actions transcended its own self-interest and, therefore, could not overcome the presumption.

HH. Absent consent, expansion of subchapter V trustee's powers to pursue avoidance actions not an available alternative to conversion for cause. *Ghatanfard v. Zivkovic (In re Ghatanfard)*, 666 B.R. 14 (S.D.N.Y. 2024) (Seibel, J.).

After creditors obtained a jury verdict and multi-million-dollar judgment against the debtor, the debtor allegedly transferred millions worth of property to his life partner. By the time the debtor later filed an individual chapter 11 subchapter V case, he was allegedly insolvent. The debtor sought to settle any avoidance actions against his life partner for $500,000. Creditors moved to convert the case to chapter 7, arguing the debtor "had a profound conflict of interest with his life partner" and the extent of the life partner's fraudulent transfer liability was a central issue in the case. The debtor sought authority to expand the subchapter V trustee's powers to include pursuit of any avoidance actions as an alternative to conversion, but creditors objected to expansion of the trustee's powers. The bankruptcy court determined it lacked authority to expand the trustee's powers over the creditors' opposition, and determined the debtor's conflict of interest gave the court cause to convert.

The district court affirmed the bankruptcy court's decision to convert the case for cause. The bankruptcy court did not err in determining that "cause" to dismiss or convert under § 1112(b)(4) included the debtor's conflict with his life partner; the list of permissible causes in § 1112(b)(4) is not exhaustive, the circumstances here justified conversion, and no unusual circumstances established that dismissal or conversion was not in the best interests of creditors and the estate. Finally, the debtor "failed to show that the bankruptcy court abused its discretion in determining that it did not have the authority, over the objection of a creditor, to expand the Subchapter V Trustee's powers to include litigation of the fraudulent conveyance claims on behalf of the estate." Though § 1183(b)(2) authorizes a court to expand a subchapter V trustee's power "to include the powers specified in sections 1106(a)(3) and (4)," those additional powers enabled the subchapter V trustee to investigate the debtor and file a statement of investigation—not to bring avoidance actions. Lacking either the statutory authority to expand the trustee's powers or the creditors' consent, the bankruptcy court did not err in electing to instead convert the case to chapter 7.

II. Arbitration provisions did not apply to debtor's pursuit of claims for violation of the automatic stay and the discharge injunction. *Rogne v. Digital Forensics Corp.*, No. 24-cv-2612, 2025 WL 80244 (D. Minn. Jan. 13, 2025) (Menendez, J.).

The debtor had two contracts with DFC in which DFC was to provide its services in assisting him with "combatting extortion and blackmail involving invasion of privacy." Facing financial difficulties, the debtor filed a chapter 7 bankruptcy. DFC received notice of the bankruptcy and was listed as a creditor. DFC, however,

continued to call the debtor to collect payment. After the debtor and his counsel again informed DFC of the bankruptcy and automatic stay, DFC nevertheless continued to call and request payment. DFC continued its collection efforts even after the debtor received his discharge and again notified DFC of his bankruptcy. The debtor brought actions against DFC for violating the automatic stay, violating the discharge injunction, and for common law tort of invasion of privacy. DFC argued that the court should compel arbitration under the broad arbitration provisions in their contracts. In response, the debtor argued that the arbitration agreement was unenforceable because (1) the discharge relieved the debtor of the obligations of the arbitration agreement; (2) there is a conflict between the Bankruptcy Code and the arbitration agreement; and (3) the contracts were unconscionable contracts of adhesion.

The court only truly addressed the debtor's first argument. Judge Menendez agreed with the debtor that the discharge injunction made the arbitration agreement unenforceable. Because the debtor did not reaffirm either contract it had with DFC, the "discharge terminated [the debtor's] obligations under the contracts by eliminating his debt to DFC." Judge Menendez acknowledged several cases that recognize that if the debtor is not seeking to use the contract as a "weapon" against his creditor post-discharge, then the debtor is not bound by the arbitration provisions in the contract. Here, the debtor's causes of action had nothing to do with the contracts themselves and instead dealt with DFC's conduct violating the discharge injunction and automatic stay. Thus, the debtor was not using the contract as a weapon, and the arbitration provisions did not apply to require arbitration of the debtor's claims against DFC.

JJ. District court will not disturb bankruptcy court order on scope of automatic stay protecting nondebtors. *McLemore v. County of Mahoning*, No. 23-cv-1144, 2024 WL 5247847 (N.D. Ohio Dec. 30, 2024) (Lioi, J.).

The plaintiff asserted § 1983 claims against several defendants, including Wellpath, LLC, the debtor. After Wellpath notified the parties that it had filed bankruptcy, the district court directed all the defendants to address whether the automatic stay would stay the § 1983 proceedings. Wellpath had obtained an "interim order" from the bankruptcy court in the Southern District of Texas that said the automatic stay applied to any lawsuits against Wellpath, including claims against non-debtor co-defendants, and Wellpath argued the bankruptcy court's order stayed the entire § 1983 action. The plaintiff did not oppose or otherwise respond.

The district court considered whether the stay would protect non-debtors. Judge Lioi first pointed to several district court decisions espousing differing views on the scope of the automatic stay. Some district courts have reasoned that the district court possesses concurrent jurisdiction with the bankruptcy court to determine the

applicability of the automatic stay. In exercising their jurisdiction, these district courts determined that the bankruptcy courts' interim orders do not engage in a properly sufficient analysis to warrant extending the stay on an interim basis.

Judge Lioi, however, disagreed. She reasoned that in this case, it appeared that the bankruptcy court intended the automatic stay to protect the non-debtor codefendants. To the extent the analysis was insufficient, Judge Lioi reasoned that that could be corrected in the bankruptcy court's final order. The court also noted that if the plaintiff sought relief from the automatic stay to pursue its causes of action against the nondebtors, then the plaintiff could resolve that issue with the bankruptcy court. Thus, the court stayed the proceedings against all defendants.

KK. Court declined to extend or impose automatic stay where debtors had two pending chapter 13 cases dismissed within one year of their current case. *In re Hardin*, 664 B.R. 707 (Bankr. D.S.C. 2024) (Gasparini, J.).

Debtors filed three recent bankruptcy cases—the last of which was filed exactly a year from the date the first bankruptcy case was dismissed. Debtors filed a motion to extend the automatic stay under § 362(c)(3) six days after filing their third petition, but a hearing was not scheduled until more than 30 days after the filing of the petition. A creditor objected to the motion to extend the stay, arguing that the debtor should have filed a motion to impose the stay under § 362(c)(4) because the debtors had two cases pending within a year of filing their current petition, and therefore no automatic stay ever came into effect. The debtors disagreed, arguing that only one case was pending within a year of filing the current petition.

The court first addressed the § 362(c)(3) argument. Because the debtor did not seek a temporary extension of the automatic stay, the stay would have terminated after 30 days under § 362(c)(3)(B) because the debtors had at least one case pending within a year of their current petition. The court pointed out that the Code does not provide the court with the authority to extend the stay before it terminates if a hearing has not been conducted before the termination.

Regardless, the court agreed with the creditor that the motion should have been brought under § 362(c)(4) because the debtors had two prior cases pending within a year of their case petition date. The court applied Rule 9006(a)(1) of the Federal Rules of Bankruptcy Procedure and concluded that if you "exclude the day of the event that triggers the period" as Rule 9006(a)(1)(A) requires, then the two cases were pending within a year of the instant petition. Thus, under § 362(c)(4)(A) no automatic stay came into effect when the debtors filed their current case. As a result, there was no automatic stay to extend, and to impose the stay, the debtor would have to overcome the presumption that the case was filed in bad faith. Even though the debtors filed the wrong motion, the court presented them with the opportunity to prove good faith,

but counsel for the debtors declined. Thus, the court denied the motion to extend the stay.

LL. Mortgage servicer's termination of debtor's right to use online payment platform violated the automatic stay. *Klemkowski v. CitiMortgage, Inc. (In re Klemkowski)*, 664 B.R. 681 (Bankr. D. Md. 2024) (Harner, J.).

Pre-petition, the debtor was able make mortgage payments through an online payment platform under an Online Access Agreement with her mortgage servicer. The mortgage servicer, however, shut off the debtor's access to the online payment portal due to her bankruptcy filing. Facing several impediments to in person, mail, and telephone payment, the debtor ultimately defaulted on the mortgage. Though the parties settled the creditor's subsequent stay relief motion, the creditor refused to reinstate the debtor's online access. The debtor asked the court to compel the servicer to accept the debtor's online mortgage payments.

The court determined that termination of the debtor's online payment rights violated the automatic stay. Among other things, § 362(a)(3) prohibits "any act to . . . exercise control over property of the estate." The debtor's contractual right to use the online portal under the Online Access Agreement was property of the estate under § 541(a)(1), which captures for the estate "all legal or equitable interests of the debtor in property as of the commencement of the case." So, by terminating the debtor's online access, the lender exercised control over the debtor's right to use the online payment platform, an act akin to a contract termination (not just a breach of the agreement) and an exercise of control over property of the estate under § 362(a)(3). The lender's termination of this right was also an affirmative action that altered the status quo, and was, therefore, a stay violation under *City of Chicago v. Fulton*, 592 U.S. 154 (2021). But because the debtor did not seek damages under § 362(k) and did not present evidence of monetary loss, the court did not determine damages and instead provided the parties an opportunity to brief and be further heard concerning the appropriate relief.

MM. Counsel retained to represent individual chapter 11 debtor, not estate, and paid from non-estate funds, need not comply with requirements of §§ 327 and 330. *In re Schlomer*, — B.R. —, 74 Bankr. Ct. Dec. 84 (Bankr. W.D. Tex. 2025) (Bradley, J.).

Two days before commencing a chapter 11 case, the debtor paid litigation counsel a flat fee of $60,000, correctly anticipating that a creditor would file an adversary proceeding seeking to except a debt from the discharge. The court approved an employment application for litigation counsel under § 327(e) and ordered that counsel's final fee application would be reviewed under § 330.

Several months later, the court issued this opinion as a prelude to reconsidering its order approving the employment. The court recognized that § 330(a)(4)(B) permits counsel to a chapter 12 or chapter 13 debtor to be compensated for services that benefit the debtor but do not benefit the estate, but no such exception applies to an attorney for a Chapter 11 debtor. This aspect of § 330 did not directly present an obstacle in this case because counsel was paid from non-estate assets, but the court indicated that its earlier order requiring a § 330 review of counsel's fees was likely inappropriate. Similarly, the court identified situations in which a chapter 11 debtor may need counsel who would not satisfy the standards of § 327(a) or (e), including tax issues, criminal cases, family-law matters, and disputes about the discharge. The court concluded that in these circumstances, counsel may represent the chapter 11 debtor but not the estate, and may receive compensation from non-estate assets, without complying with § 327(a) or (e).

NN. Counsel entitled to keep post-petition retainer. *In re John R. Kearney M.D. Eye Physician and Surgeon P.C.*, 74 Bankr. Ct. Dec. 194 (N.D.N.Y. 2025) (Radel, J.).

Post-petition, the debtor retained substitute bankruptcy counsel and paid a retainer, which the counsel was holding in escrow pending court approval of any fees and expenses. The substitute counsel immediately began work and the debtor moved to retain the counsel *nunc pro tunc* and asked the court to approve the post-petition retainer. The United States Trustee filed a limited objection, arguing the debtor's post-petition payment of the retainer violated § 363(b) as an unauthorized payment outside the ordinary course of business. The court approved the retainer. Though "the Debtor used property of the estate to pay the retainer and . . . the payment was outside the ordinary course of business . . . the payment [was] permissible because another section of the Bankruptcy Code authorizes it." Specifically, § 328(a) governs and permits post-petition retainers. Though many courts follow a four-factor test in determining whether to approve a post-petition retainer, Judge Radel instead "agreed with those courts that hold these arrangements must be reviewed on a case-by-case basis and finds that § 328 permits a wide variety of payment arrangements that are 'restricted only by the reasonableness of the retention terms.'" Here, the retainer was appropriate because the new counsel "righted the ship" when the case "was on the verge of dismissal," the funds remained in escrow, and counsel's compensation was still subject to court approval under § 329. "Absent the ability to obtain post-petition retainers from clients, attorneys may be unwilling (or less willing) to take over a case midstream." Consequently, the retainer was appropriate, and the funds could remain in escrow pending final approval of subsequent fee applications.

OO. Exculpation provision protects chapter 11 lawyers from malpractice suit. *Murray v. Dinsmore & Shohl, LLP (In re Murray Energy Holdings Co.)*, 665 B.R. 347 (Bankr. S.D. Ohio 2024) (Hoffman, J.).

Plaintiffs sued a law firm and several of its partners for malpractice for their conduct negotiating and seeking confirmation of Murray Energy's Chapter 11 plan. Specifically, the plaintiffs allege that the defendants "(1) exposed the plaintiffs to billions of dollars of liability, and (2) failed to advise the plaintiffs on how to protect themselves from that liability." The defendants moved for dismissal under Rule 12(b)(6) and argued that the exculpation provision and third-party release in Murray Energy's plan protected them from the malpractice suit. The exculpation provisions and releases at issue broadly protected several parties, including the defendants, from conduct that was not "actual fraud, willful misconduct, or gross negligence."

The court determined that the defendants were generally protected by the exculpation provisions as attorneys involved in Murray Energy's reorganization. But before determining whether the exceptions to the exculpation provisions applied, the court first determined that the Supreme Court's *Purdue Pharma* decision was inapplicable to the exculpation provisions and releases at issue because the releases were consensual, and the plan had already been substantially consummated. Next, the court rejected the plaintiffs' argument that New York law, which requires courts to strictly construe exculpation provisions, prevented the exculpation provisions from protecting the defendants because the defendants were clearly protected by the plain language of the exculpation provisions.

The court then considered whether the exception to the exculpation provision and release applied. Although the plaintiffs said that the defendants engaged in "willful misconduct" and "gross negligence," the court determined that the plaintiffs' allegations were too nonspecific and amounted to legal conclusions that were insufficient under Rule 12(b)(6). The court reasoned that even if the defendants advocated for confirmation of Murray Energy's plan without informing the plaintiffs of potential liability, the plaintiffs' allegations were insufficient to establish that the defendants acted willfully.

Lastly, "for the sake of completeness" the court rejected the defendants' two other arguments in favor of dismissal at the pleading stage: (1) that the plaintiffs failed to plead proximate cause, and (2) that the court's order granting the defendants' fee applications barred the malpractice claims.

PP. Two bankruptcy courts discuss the scope of judicial liens under § 101(36) and whether they are subject to avoidance under § 522(f). *Gramigna v. Roumeliotis (In re Gramigna)*, No. 24-50464, 2024 WL 5248223 (Bankr. D. Conn. Dec. 20, 2024) (Manning, J.); *In re Dulaney*, 666 B.R. 178 (Bankr. S.D. Ohio 2024) (Nami Khorrami, J.).

In *Gramigna*, the debtor sought avoidance of a deficiency judgment lien as an impairment of his homestead exemption under § 522(f). The creditor argued that the deficiency judgment was unavoidable under § 522(f)(2)(C), which generally prevents debtors from avoiding liens arising from mortgage foreclosures. The creditor also argued that the lien was consensual because it was the product of a stipulated judgment.

The court agreed with the debtor as well as the majority of courts that have addressed this issue. Judge Manning looked to the plain language of § 101(36)'s definition of judicial lien which broadly includes liens "obtained by judgment." Further, § 522(f) allows debtors to avoid a lien impairing an exemption to which the debtor would be entitled. Deficiency judgments, Judge Manning reasoned, do not arise from mortgage foreclosures. Instead, a judicial lien is a remedy at law for breach. Thus, the lien did not fall under the § 522(f)(2)(C) and should be subject to avoidance.

The court also rejected the creditor's argument that the lien was consensual. Judge Manning cited several cases for the proposition that even a stipulated judgment is a judicial lien, not a consensual lien, because it is ordered by a court.

Similarly, the debtor in *Dulaney* sought to avoid a $9 million judgment lien against his home. In this case, the creditor argued that because the judgment lien arose from consensual guarantees and a forbearance, the lien was unavoidable.

Judge Nami Khorrami analyzed the Code's definition of "judicial lien" in § 101(36) and applied the causation test from the Seventh Circuit. The court emphasized that "[c]lassification of a lien depends on the events, if any, that must occur before the lien attaches." Because the lien was created by a judgment and not directly created by the underlying agreement itself, the court concluded that it was a judicial lien subject to avoidance.

The court also rejected the creditor's argument that the forbearance agreement created a security interest because the court found no evidence that any of the relevant documents created a security interest. Instead, the documents left it to the creditor's "sole judgment and discretion whether to take the further actions necessary to create the [judgment lien]."

QQ. What is ordinary in times of financial distress is not necessarily ordinary course of business for preference defense. *FI Liquidating Trust v. C.H. Robinson Company, Inc. (In re Fred's Inc.)*, Case No. 19-11984, Adv. No. 21-51065, 2025 WL 208536 (Bankr. D. Del. Jan. 15, 2025) (Goldblatt, J.).

When the debtor, an operator of retail stores, ran into financial distress, its transportation broker reduced the debtor's credit limit, conditioned continued transportation on a next-day payment, shortened the debtor's ongoing payment deadline, and otherwise tightened the terms under which the broker had previously extended credit. This credit pressure was the broker's standard practice when a customer experienced financial distress and was standard practice in the industry. After the debtor filed a bankruptcy petition and vested its chapter 5 causes of action in a liquidating trust, the liquidating trustee asserted an action to recover preferential transfers the debtor had paid the broker. The broker asserted the ordinary course of business defense. The primary legal issue was "whether 'ordinary course' means terms that are ordinary when dealing with a *healthy* company, or whether the defense is still available when the defendant was imposing credit pressure on the debtor, so long as the defendant can show that it was customary in the relevant industry to impose such credit pressure on customers in financial distress."

The court determined that the defense did not apply. The court explained that the purpose of the defense is to encourage creditors to continue to conduct ordinary business with distressed debtors and to discourage measures that might further destabilize a financially distressed debtor. Third Circuit precedent convinced the court the defense would not apply when a defendant altered its credit terms due to a debtor's financial distress, and "[o]ne's dealings with companies facing financial distress is not the measure of ordinariness." Thus, "the standard is based on the terms that prevail when the debtor is healthy, not in financial distress." In this case, because the broker was applying credit pressure and treating the debtor differently than vendors ordinarily would treat a financially healthy debtor, the ordinary course of business defense was unavailable.

RR. Imposition of independent manager in operating agreement can inhibit bankruptcy filing without violating public policy. *In re 301 W. North Avenue, LLC*, 666 B.R. 583 (Bankr. N.D. Ill. 2025) (Cleary, J.).

The debtor owned as its primary asset a mixed-use real estate development project. The debtor's loan agreement with its primary secured lender required the debtor to have a lender-approved independent director or manager on its governing body. The debtor's LLC agreement required, through a series of provisions, that the debtor

obtain the independent manager's consent before filing a bankruptcy petition. But after the lender commenced foreclosure, the debtor filed a chapter 11 petition without the independent manager's knowledge or consent. The lender moved for dismissal and requested the bankruptcy court bar refiling.

The bankruptcy court determined cause existed to grant the motion to dismiss under § 1112(b) but declined to impose a bar to refiling. The motion to dismiss raised two primary issues: "(1) was the Debtor authorized to file the Petition; and (2) if not, did Debtor's corporate documents impermissibly restrict its right to file?" As to the first issue, a court must dismiss a petition when a debtor files the petition without authority under local law. Here, the debtor lacked authority to file the petition under Delaware law because the LLC agreement required the debtor to obtain the independent manager's consent before filing, and the debtor filed the petition without obtaining that consent (and the independent manager neither acquiesced nor ratified the filing post-petition). As to the second issue, the requirement that the lender-approved independent director consent to the bankruptcy filing did not impermissibly restrict the debtor's right to file as a matter of public policy. Though courts generally do not enforce pre-petition agreements that purport to restrict a debtor's right to file a bankruptcy petition, "[p]rovisions that place an independent manager on the board of a limited liability company, with requirements that the independent manager must participate in certain corporate decisions, such as the filing of a bankruptcy petition, are not *presumptively* void," but instead are unenforceable as violative of public policy only if they "effectively nullify or eliminate the right to file bankruptcy" by "restricting the exercise of fiduciary duties." Here, because the independent manager was required to consider the debtor's interests and owed fiduciary duties to the debtor, the relevant documents did not impermissibly restrict the debtor's rights to seek bankruptcy relief. Thus, public policy did not excuse the debtor's noncompliance with Delaware law, and dismissal was appropriate. A bar to refiling, however, was unnecessary: "If an independent manager is selected according to the applicable provisions of Debtor's organizational documents, that independent manager should be able to act in accordance with his or her duties and determine whether to consent to the filing of a new bankruptcy case."

SS. Judge Goldblatt of Delaware and Judge Maddox of Mississippi analyze notice requirements under the WARN Act. *Moore v. Yellow Corp. (In re Yellow Corp.)*, No. 23-11069, Adv. No. 23-50457, 2024 WL 5181660 (Bankr. D. Del. Dec. 19, 2024) (Goldblatt, J.); *Neal v. United Furniture Industries, Inc. (In re United Furniture Industries, Inc.)*, 667 B.R. 441 (Bankr. N.D. Miss. 2024) (Maddox, J.).

The Federal Worker Adjustment Retraining Notification Act ("WARN Act") requires employers to provide 60-days advance notice to employees before mass layoffs. Yellow Corporation, formerly one of the largest trucking companies in the United States,

employed about 22,000 union workers and about 3,500 non-union workers. When Yellow failed to make a payment to its pension fund, the union publicly threatened a strike. As a result, Yellow's customers fled, and the business failed. All employees were fired prior to Yellow's bankruptcy filing without receiving the 60-day notice. The employees signed agreements releasing their WARN claims in exchange for severance payments, but Yellow decided to give all employees severance pay even if they refused to sign the release. After being fired, some of the employees sued under the WARN Act, and Yellow argued several defenses under the WARN Act's exceptions.

Presented with cross-motions for summary judgment, Judge Goldblatt first considered whether the "faltering company" exception applied. The faltering company exception provides that if a company is actively seeking new capital or business and reasonably believes that a WARN notice would stymie their efforts, then the 60-day notice period can be shortened. Similarly, the 60-day period can be shortened if the layoffs were caused by "unanticipated business circumstances." After considering the record evidence, Judge Goldblatt concluded that both exceptions applied. In particular, the court discussed how the looming strike dealt a fatal blow to Yellow's business even though the strike notice was intended as a bluff. Judge Goldblatt, however, concluded that even though the exceptions applied, the actual notice was insufficiently vague under the WARN act—even if the notice was justifiably delayed. Thus, Yellow was prevented from using the "faltering company" exception as a shield to WARN Act liability.

Judge Goldblatt, however, questioned whether Yellow was an "employer" under the WARN Act. Under the WARN Act, an employer must be a business enterprise. Because Yellow ended its operations before firing some of its employees, Judge Goldblatt reasoned that Yellow could have become a "liquidating fiduciary," not subject to the notice requirements of the WARN Act. Ultimately, the court concluded that this issue could not be resolved on the motions for summary judgment.

Lastly, Judge Goldblatt discussed the WARN Act claim releases. The plaintiffs argued that because Yellow gave severance payments to all employees, regardless of whether they signed the releases, Yellow fraudulently induced employees to sign the releases. Judge Goldblatt seemed skeptical of the plaintiff's argument, but, nevertheless, concluded that the record was insufficient on summary judgment to rule to grant summary judgment in favor of either party.

In *United Furniture*, Judge Maddox considered the adequacy of UFI's notice to its employees, and whether its communications were sufficient for invoking the faltering business or unanticipated business circumstances exceptions to the notice requirements of the WARN Act.

UFI provided three communications—two emails immediately before it laid off the plaintiffs and one email after the layoffs. The plaintiffs argued that the notice was insufficient under the WARN Act. First, the plaintiffs argue that UFI's notice did not provide specific details regarding the company's situation, and second, UFI did not sufficiently articulate why it was unable to give the required 60-day notice to employees.

In a thorough analysis, Judge Maddox reasoned that the court should apply a substantial compliance standard to the notice requirements. Specifically, Judge Maddox determined that "as long as employees receive sufficient information to understand their circumstances and plan accordingly," then the WARN Act's purpose is fulfilled by the employer's efforts to provide notice to its employees, despite minor deficiencies in its notice. Judge Maddox, however, said the "brief statement requirement serves a more specific and indispensable function" to "convey the concrete, factual reasons" the employer cannot follow the WARN Act's 60-day notice period. Thus, the court determined that the different functions of these requirements justify different levels of scrutiny in the court's analysis.

The court concluded that although UFI's communications provided sufficient notice of the layoffs, UFI failed to provide sufficient information justifying its invocation of the faltering business or unanticipated business circumstances exceptions because UFI's communications did not provide a "clear basis or reason for shuttering operations, much less information indicating why the Plaintiffs did not receive more advance notice prior to termination."

TT. Court could not extend chapter 13 plan length to 84 months now that the CARES Act has expired. *In re Cassalery*, 664 B.R. 480 (Bankr. D. Or. 2024) (McKittrick, J.).

The debtors obtained confirmation of their chapter 13 plan in 2019. They subsequently modified their plan length to 84 months under the CARES Act. The debtors, now on their fourth plan, sought to retain their 84-month plan length even though the CARES Act sunset on March 27, 2022. U.S. Bank objected to the plan, arguing that, as modified, the plan violated § 1329(c) because it exceeded 60 months. The debtors in turn argued that because they had multiple 84-month plans, including one confirmed without objection in 2023 after the expiration of the CARES Act, they should be grandfathered into an 84-month term.

The court disagreed, describing this case as a straightforward issue of statutory interpretation. Section 1329(b)(1) says that § 1325(a) applies to modified plans, and § 1325(a) requires that all plan provisions comply with applicable provisions of the Code. Thus, the 60-month limitation in § 1329 applies to the modified plan. Because the CARES Act provisions no longer apply, the court cannot approve a plan with an 84-month duration.

UU. Contractor must pay punitive damages for willful stay violation. *In re Edgewater Construction Group*, Inc., 665 B.R. 645 (Bankr. S.D. Fla. 2024) (Isicoff, J.).

Debtor Edgewater executed a subcontract with Balfour Beatty to perform stucco services. Shortly thereafter, Edgewater began experiencing financial difficulties and its employees left jobsites after not being paid. Edgewater then filed its Sub V bankruptcy. After being notified of Edgewater's bankruptcy, Balfour Beatty willfully violated the automatic stay by retaining Edgewater's scaffolding and stucco materials and sending the debtor multiple default letters. In total, Balfour Beatty retained the scaffolding for over 10 months, even after the court entered its stay violation order. During that time, Balfour Beatty, made several false claims, including that the scaffolding had been returned to a "mystery owner."

Judge Isicoff gave Balfour Beatty the hammer. She said that punitive damages were "not just appropriate, but also necessary." Balfour Beatty attempted to justify its wrongful retention of Edgewater's building materials by arguing that the court's stay violation order did not specifically demand that Balfour Beatty give back the property. In response, Judge Isicoff says "that a party who violated the automatic stay by wrongfully retaining an asset and lying about it, somehow tries to justify extending its wrongful retention because the Court did not specifically direct it to return the wrongfully retained asset, is just breathtaking in its audacity." The court reasoned that Edgewater's actual damages should be multiplied by ten—for each month Balfour Beatty unlawfully retained Edgewater's building materials—for a total of $400,000. In addition, the court awarded punitive damages in connection with attorney fees in the amount of $375,470.90.

VV. Creditor withdrew objection to confirmation then promptly lost nondischargeability adversary proceeding against subchapter V debtor because § 1192(2) does not apply to consensual plans. *Halo Human Resources, LLC v. American Dental of LaGrange, LLC (In re American Dental of LaGrange, LLC)*, No. 24-10485, Adv. No. 24-01004, 2025 WL 384536 (Bankr. M.D. Ga. Feb. 3, 2025) (Matson, J.).

The creditor filed a § 523(a) nondischargeability adversary proceeding against the subchapter V corporate debtor and also objected to confirmation of the debtor's plan. The creditor and debtor ultimately entered into a stipulation to resolve the creditor's objection to confirmation, and the creditor withdrew its objection but preserved its rights in the adversary proceeding. The court confirmed the debtor's subchapter V plan under § 1191(a) as a consensual plan. On the day of confirmation, the debtor moved to dismiss the adversary proceeding, arguing, among other things, that the § 523 exceptions to discharge do not apply when the court confirms a corporate debtor's plan under § 1191(a).

The bankruptcy court granted the debtor's motion to dismiss the § 523 claims with prejudice. In doing so, the court provided a primer on §§ 1191, 1141, and 523. The court explained that, under § 1141(d), non-subchapter V corporate debtors ordinarily receive a discharge of most debts, even of the kinds of debts listed in § 523. "[T]he discharge provisions of § 1141(d) apply when the debtor confirms [a] consensual plan under § 1191(a) but do not apply when the debtor confirms a nonconsensual plan under § 1191(b)." In nonconsensual cases, "§ 1192 governs the debtor's discharge instead of § 1141(d)" and courts disagree about "whether § 1192(2) either (a) makes the § 523(a) discharge exceptions applicable to any debtor who confirms a plan under § 1191(b), without regard to whether the debtor is a corporate entity or an individual, or (b) does not and was not intended to expand the universe of debtors subject to § 523(a) beyond individual debtors." In this case, however, "the court [did not] need to enter the debate" about the scope of a corporate debtor's discharge under 1191(b) and 1192, because the debtor's plan was confirmed consensually under § 1191(a). Consequently, "§ 1192, and by extension the exceptions to discharge, [did] not apply to the Debtor." The creditor's "reliance on § 1192 as a basis for asserting claims under § 523(a), therefore, [was] misplaced," and the complaint failed to state a claim under § 523(a) upon which relief could be granted.

WW. No stay violation for bank's temporary possession of debtor's personal property after post-foreclosure eviction when automatic stay had terminated under § 362(c)(3)(A) and court had granted separate stay relief. *In re Pinson*, No. 23 B 4039, 2025 WL 385370 (Bankr. N.D. Ill. Feb. 3, 2025) (Cleary, J.).

Debtor filed her second chapter 13 case less than three weeks after her prior case was dismissed. Debtor never filed a motion to extend the stay; so, the stay terminated under § 362(c)(3)(A). Several months before debtor filed the first chapter 13 case, U.S. Bank had completed a judicial foreclosure sale of the debtor's residence and was entitled to possession of the property, all pursuant to a final order of the state court. Prior to the date the stay terminated in the second case, U.S. Bank filed a motion for relief from the automatic stay to pursue nonbankruptcy remedies with respect to the property. After obtaining stay relief and returning to state court, the bank evicted the debtor and her non-filing spouse and changed the locks on the house. The bank then engaged a property manager to coordinate with the debtor so that she and her non-filing spouse could retrieve their personal property. After several communications, the property manager and the debtor's husband coordinated a time to let movers remove his and the debtor's property from the residence. But on the agreed date, the debtor's husband arrived without movers and only removed small items. So, the property manager canceled the move. The next day, the debtor filed a motion seeking sanctions for violations of the automatic stay. After unnecessarily involving the bankruptcy court, the debtor and her husband finally retrieved their personal

property from the residence. But the debtor alleged damages from the alleged stay violation including hotel costs, food, clothes, and medicine. U.S. Bank argued that (1) the stay terminated after 30 days because the debtor never moved to extend the stay, and (2) the bank properly sought stay relief and worked with the debtor for her to remove the personal belongings within the home. While the debtor acknowledged that the stay had terminated as to the bank's actions against her and her property, she argued that the stay did not terminate as to property of the estate.

The court briefly discussed the split in authority over whether the automatic stay terminates as to property of the estate and property of the debtor or just property of the debtor when the stay terminates under § 362(c)(3)(A). The debtor relied heavily on *In re Jones*, 339 B.R. 360 (Bankr. E.D.N.C. 2006), for the proposition that the stay only expires as to property of the debtor. The court noted that the *Jones* case has been rejected in its own district and within the Northern District of Illinois. But the court did not need to analyze that issue because the debtor had claimed as exempt the personal property in question, and after no party in interest filed a timely objection, that property was "pulled out of the bankruptcy estate and returned to their prior status as property of the debtor." So, under either interpretation, the automatic stay terminated as to the personal property in question.

The court also determined that the "Debtor [did] not connect the dots to explain why hotel, food and medical expenses are actual damages resulting from control over [any] items that remained property of the estate." The court pointed out that these costs do not appear to be associated with any property listed on Schedule B that might still be property of the estate.

The court also provided alternative bases for denying the debtor's motion for sanctions. First, the court found no instances where sanctions were awarded for an alleged stay violation occurring after the termination of the stay under § 362(c)(3)(A). And lastly, the court concluded that the bank did what it could to coordinate with the debtor to allow her to retrieve her property but that the debtor's own delay would be to blame if the debtor were injured—not a willful stay violation.

XX. Counsel violated Rule 9011 by citing non-existent cases generated by artificial intelligence. *Richburg v. Glyndon Square LLC (In re Richburg)*, 671 B.R. 918 (Bankr. D.S.C. 2025) (Gasparini, J.).

Debtors' counsel filed an adversary complaint and a motion for preliminary injunction. In the motion, he cited two non-existent cases to support his arguments. Upon discovering that the cited cases were not real, the Court scheduled a hearing and informed debtor's counsel that he should be prepared to explain the citation problems. Debtors' counsel then sent the Court a letter, apologizing for the erroneous citations, and filed an amended motion that replaced the incorrect citations. The day before the hearing, Debtors' counsel dismissed the adversary proceeding. The Court

then entered a show cause order, directing the parties to address whether sanctions were appropriate under Rule 9011 or whether disgorgement of fees was warranted under § 329 of the Bankruptcy Code. At the hearing, Debtors' counsel asserted that he used generative artificial intelligence (AI) for the first time in this case, and that he did not fully understand how it worked. He did not verify the authenticity of the cases he cited and was unaware that generative AI could "hallucinate" fake cases. Although the Debtors had paid $1,100 for representation in the main bankruptcy case, counsel had not and would not charge them any fee related to the adversary proceeding.

Federal Rule of Bankruptcy Procedure 9011, which mirrors Federal Rule of Civil Procedure 11, requires attorneys to conduct a reasonable inquiry to ensure that they are presenting arguments to the court that are supported by existing law or nonfrivolous arguments to change the law. Whether there has been a violation of this rule is a question of objective reasonableness. If it provides notice and a reasonable opportunity to respond, a court may *sua sponte* impose sanctions for a violation of Rule 9011. Sanctions should be limited to what is sufficient to deter repetition of the inappropriate conduct. Although Rule 9011 allows for nonmonetary and monetary sanctions, a court may not impose monetary sanctions if it *sua sponte* issues a show cause order after voluntary dismissal.

Misuse of AI and citations to fake cases increasingly have caused problems, with courts across the country confronting how to respond to this issue. The Court here looked to *In re Martin*, 670 B.R. 636 (Bankr. N.D. Ill. 2025), in which attorneys had violated Rule 9011 by using AI-generated citations to nonexistent authorities. The fake citations shattered their credibility and imposed various other harms. The attorneys were ordered to pay $5,500 and attend training on the proper use of AI in legal practice. Citing *Martin,* the Court determined that Rule 9011 must at least require that attorneys confirm that the cases they cite stand for the proposition asserted and that such cases exist. Thus, Debtors' counsel violated Rule 9011 by citing non-existent cases. The Court also concluded that an attorney's ethical duties require a reasonable understanding of AI and a careful review of cited authorities that were generated by AI. Noting that monetary sanctions were unavailable in this case under a strict reading of Rule 9011, the Court ordered counsel to complete three additional hours of continuing legal education on ethics, with at least two of those hours relating to the ethical use of AI in the legal practice.

YY. Judge in Western District of Texas disagrees with other Texas courts, determines consensual confirmation requires affirmative acceptance. *In re Sushi Zushi of Texas, LLC*, Case No. 24-51147, 2025 WL 957792 (Bankr. W.D. Tex. Mar. 28, 2025) (Parker, J.).

The debtor and its affiliates operated multiple sushi restaurants in San Antonio. Of the three impaired classes entitled to vote on the debtor's plan, two classes voted in favor of confirmation. The remaining impaired class, which consisted of the debtor's largest secured creditor, "affirmatively declined to submit a ballot in favor of the [] Plan—notwithstanding the Debtor's counsel's repeated requests." The debtor sought to confirm a consensual plan under § 1191(a) rather than a cramdown plan under § 1191(b). Disagreeing with other courts in Texas that have confirmed consensual plans with non-voting impaired classes, Judge Parker determined the secured creditor's decision not to vote made the plan nonconsensual.

"Plans may be confirmed only under § 1191(a) if all requirements of § 1129(a), other than paragraph (15) of that section, are met." Section 1129(a)(8), meanwhile, requires that "[w]ith respect to each class of claims or interests—(A) such class has accepted the plan; or (B) such class is not impaired under the plan." And under § 1126 "[a] class of claims has 'accepted' a plan if 'such plan has been accepted by creditors . . . that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors . . . that have accepted or rejected such plan.'" Thus, failure to vote is not acceptance under the Code, and confirmation must proceed under § 1191(b). Decisions from the Southern District of Texas that previously reached the opposite conclusion based on perceived congressional preference and mathematical absurdity did not persuade the court to disregard the Code's plan language. Despite the congressional preference, § 1126(a)'s provision that creditors "may" accept or reject "instead of the mandatory 'shall,' . . . left open a third option—the possibility that creditors could choose not to vote on a plan." "[N]othing in the Code converts a creditor's pacificity or affirmative decision *not* to vote (as in this case) into an affirmative vote in favor of the plan." And though "the Code allows *individual* creditors to 'accept' or 'reject' (via § 1126(a))," "[c]lasses, under the Code, can only 'accept' or simply do not accept—there is no definition of a 'rejecting class.'" Thus, § 1191(a) applies only if all impaired classes affirmatively accept. The statute also did not require mathematical calculation that would lead to an absurdity, "because when no creditors in a class affirmatively vote, the class cannot accept the plan, no matter what the denominator may be," and "engaging in the arithmetical exercise becomes futile." Policy was "not a sufficient reason to override what § 1129(a)(8) requires." The court's conclusion that § 1191(a) requires affirmative acceptance, however, was not fatal. After determining a nonconsensual plan may lien-strip as of the plan's effective date, the court confirmed the plan as non-consensual under § 1191(b).

ZZ. Equity cannot extend the 60-day deadline for nondischargeability complaints. *Legal Access Plans LLC v. Millinghausen (In re Millinghausen)*, 669 B.R. 580 (Bankr. E.D. Pa. 2025) (Mayer, J.).

The debtor filed for chapter 7 bankruptcy protection after the plaintiffs won a six-figure judgment against the debtor following years of litigation and arbitration. Subsequently, the trustee held the first meeting of creditors on July 24, 2024. The plaintiffs received notice of the § 341 meeting and had counsel attended the meeting. Pursuant to Rule 4007 of the Federal Rules of Bankruptcy Procedure, the deadline to file a nondischargeability complaint was September 23, 2024 (60 days after the first date set for the § 341 meeting). On August 22, 2024, the bankruptcy court entered an order extending the deadline to file a nondischargeability complaint to November 23, 2024, for the U.S. trustee and chapter 7 trustee. This deadline was not extended for creditors, including the plaintiffs. But the court changed the case docket to read as follows: "Deadline for objecting to discharge: 11/23/24," without specifying that the extended deadline applied only to the U.S. trustee and chapter 7 trustee. Relying on this information, the plaintiffs filed their nondischargeability complaint on November 22, 2024. The debtor filed a motion to dismiss the complaint since the plaintiffs missed the September deadline. The plaintiffs did not contest that they missed the deadline; instead, they argued that the bankruptcy court should extend the deadline using its equitable powers under § 105, as their reliance on the November deadline was reasonable.

The bankruptcy court held that it could not use its equitable powers to extend the deadline. The court noted that the deadline to file a nondischargeability complaint can only be extended if a motion is filed before the deadline. Moreover, Rule 9006(b)(3) states that the relevant deadline cannot be extended, except as provided by Rule 4007. Although "[a] bankruptcy court may use its [equitable] authority under § 105 to correct certain mistakes[,] . . . an equitable remedy . . . cannot be used to 'disregard unambiguous statutory language.'"

The court further acknowledged that there is a circuit split on whether statutory deadlines may be extended under § 105. The plaintiffs pointed to *Landmark Cmty. Bank, N.A. v. Perkins (In re Perkins)*, 271 B.R. 607 (B.A.P. 8th Cir. 2002), in arguing that equity dictates an extension of the deadline. In that case, the Eighth Circuit BAP held that the bankruptcy court should exercise its equitable powers and permit the nondischargeability complaint to proceed if the creditor's reliance on the misinformation was reasonable. Here, the Pennsylvania bankruptcy court held that the plaintiff's reliance on the November 23rd deadline was unreasonable. First, the plaintiffs received timely notice of the correct deadline. Second, the plaintiffs did not actually receive "notice" of the incorrect deadline. Specifically, the court noted that the plaintiffs did not receive a court order or form from the clerk's office indicating that the deadline had been changed. "Rather, the Plaintiffs glanced at the top heading

of the docket at some point, ignoring all other notices and legal parameters described above, and apparently independently concluded that the more favorable—though inaccurate—information was correct." Third, and finally, the plaintiffs had an obligation to investigate the relevant deadlines prescribed by the Code and Rules.

The bankruptcy court admitted "that the Plaintiffs' equitable argument is not without appeal." The court recognized that dismissing the complaint would discharge a significant debt owed by the debtor. "Yet this potential unfairness must be weighed against the prejudice the Debtor would endure by having the deadline extended due to an administrative error over which he had no control." The court noted that the debtor's reliance on the deadlines clearly imposed by the Code and Rules was "necessary, reasonable, and anticipated." Ultimately, the court found "the Debtor's reliance on the known and prescribed timeline for his fresh start [to be] more compelling [than] the [Plaintiffs'] unreasonable reliance on a plainly incorrect deadline."

AAA. Failure to opt out of a third-party release creates a rebuttable presumption of consent, thereby establishing a consensual release. *In re Lavie Care Centers*, LLC, No. 24-55507, 2024 WL 4988600 (Bankr. N.D. Ga. Dec. 5, 2024) (Baisier, J.).

The 282 debtors in this chapter 11 case were in the business of operating skilled nursing facilities, operating at one point over 140 such facilities. In September 2024, after two weeks of mediation, the debtors reached a global settlement with their secured creditors, primary landlord, "Plan Sponsor," and the Official Committee of Unsecured Creditors. The debtors subsequently filed their second amended plan and disclosure statement, which incorporated the mediated settlement. The mediated settlement included a "full release of claims against various third parties who made substantial contributions to this case and their affiliates by any creditor who does not affirmatively opt out of the release." The debtors sent the amended plan, disclosure statement, and ballots to around 6,400 creditors. The ballots contained a box that a creditor could check to opt out of the third-party release. If the creditor did not check the opt-out box, they would be bound by the release. Only 850 ballots (13%) were returned, with around 5,550 creditors taking no action. Four of the five voting classes voted to accept the amended plan, with the bankruptcy court confirming the plan by "cramdown." The U.S. Trustee (UST) argued that the plan's opt-out mechanism made the third-party release nonconsensual and thus barred under *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204 (2024). Adhering to a contract model, the UST claimed, "[N]otice and opportunity to opt out is inadequate to bind those that do not respond."

Reaching a contrary holding than Delaware Bankruptcy Judge Craig T. Goldblatt, Bankruptcy Judge Paul Baisier of Atlanta held that the plan's opt-out mechanism was valid, and the third-party release was thereby consensual. Judge Goldblatt held in *In re Smallhold Inc.*, 665 B.R. 704 (Bankr. D. Del. 2024), that a third-party release

would bind a creditor if it voted on the plan but failed to opt out. However, and crucial here, Judge Goldblatt held that a creditor would not be bound if it did not vote on the plan. While Judge Baisier also held that a release would bind a party that voted on the plan but failed to opt out, Judge Baisier held that a creditor would still be bound even if they did not vote on the plan. Thus, a third-party release is imposed on all creditors who do not opt out, including those who did not vote on the plan.

Dispelling with the contract model, Judge Baisier said "evidence of consent . . . appears to be the touchstone for determining whether a creditor can be bound to a release." Here, the bankruptcy court found that failing to act upon notice is sufficient consent. The court stressed that "creditors are obligated to pay attention to, and read, their mail, and that failure to do so has consequences. So, if a creditor gets materials in a bankruptcy case, and the materials say if you do not take an action, you will be bound by the consensual release, you must do something. You cannot simply ignore it." However, silence is not dispositive of consent. Instead, the court created a rebuttable presumption that silence is acceptance and held that a confirmation order must provide "an opportunity for those people and entities to make a case to this Court sometime after confirmation that they should not be bound, [and] that they should not be 'deemed' to have consented." Moreover, Judge Baisier stated that the "opportunity cannot be time-bounded but should include some provision that requires the party seeking relief to identify the claims or types of claims they seek to pursue and the identities or types of defendants they intend to seek them against." Accordingly, the court overruled the UST's objection to the third-party release.

Faculty

Hon. Brian T. Fenimore is a U.S. Bankruptcy Judge for the Western District of Missouri in Kansas City, appointed on Aug. 31, 2017. He served five years as Chief Judge, during which time he served on the Federal Judicial Center's Planning Committee for the 2024 National Leadership Conference for Chief Judges of U.S. District and Bankruptcy Courts. Prior to his appointment to the bench, he was a partner in the Kansas City, Mo., office of Lathrop & Gage LLP for more than 25 years and co-chaired its Banking & Creditors' Rights practice area, representing debtors, creditors and many other parties in interest. He also represented borrowers and lenders in problem loan matters, including loan enforcement, guarantor liability, workouts, reorganizations and bankruptcies throughout the U.S. Judge Fenimore is admitted to practice in Kansas and Missouri, and before the U.S. Bankruptcy Courts for the Eastern and Western Districts of Missouri and the District of Kansas, as well as the U.S. District Courts for the District of Kansas and the Eastern and Western Districts of Missouri. As a member of the National Conference of Bankruptcy Judges, he currently serves on the Federal Rules Advisory Committee and the Budget Initiatives Committee, and previously served on the Membership Services and New Member Committees. Judge Fenimore is AV-rated by Martindale-Hubbell and has been listed in *The Best Lawyers in America* every year since 2003, among other listings. He is also a frequent speaker and ABI member. Judge Fenimore received his B.S. *magna cum laude* in 1988 in agricultural economics from the University of Missouri-Columbia and his J.D. in 1990 from the University of Michigan Law School, after which he clerked for Hon. Arthur B. Federman.

Hon. Shon K. Hastings is Chief U.S. Bankruptcy Judge for the District of North Dakota in Fargo, appointed in September 2011. She is also designated to preside over bankruptcy cases in the Districts of South Dakota and Minnesota. From 2014-21, she was assigned bankruptcy cases in the District of Nebraska. Judge Hastings serves as a mediator for civil cases in the U.S. District Court for the District of North Dakota and bankruptcy cases in the District of Minnesota. She also has mediated bankruptcy cases in the Northern and Southern Districts of Iowa. In January 2022, she was appointed to the Bankruptcy Appellate Panel of the Eighth Circuit. She began serving as Chief Judge of the Eighth Circuit Bankruptcy Appellate Panel on Jan. 25, 2024. Prior to her appointment, Judge Hastings served as a federal judicial law clerk for two years, associate attorney for Bowman and Brook LLP in Minneapolis for several years and Assistant U.S. Attorney in Fargo for almost 14 years. She received her undergraduate degree and J.D. from the University of North Dakota.

Hon. Dale L. Somers is Chief U.S. Bankruptcy Judge for the District of Kansas in Topeka, initially appointed in September 2003. He hears cases in Topeka, Kansas City and Wichita. Previously, he was in private practice for 32 years and a partner in the law firms of Eidson, Lewis, Porter & Haynes and Wright, Henson, Somers, Sebelius, Clark & Baker. Judge Somers was appointed to the Bankruptcy Appellate Panel for the U.S. Court of Appeals for the Tenth Circuit in March 2010. He served as a member of the Judicial Resources Committee of the Judicial Conference of the United States. Judge Somers served on the Board of Governors for the Kansas Bar Association from 1988-98 and as president from 1995-96. He is a Fellow of the of the American College of Bankruptcy and of the American Bar Association. Judge Somers received his undergraduate degree from Kansas State University in 1968 and his J.D. from the University of Kansas School of Law in 1971.

Hon. Brian C. Walsh is a U.S. Bankruptcy Judge for the Eastern District of Missouri in St. Louis, appointed in January 2023. Before taking the bench, he practiced for more than 25 years in Atlanta and St. Louis, principally in bankruptcy, restructuring and related fields. Judge Walsh is a Fellow of the American College of Bankruptcy and began his legal career in Kansas City clerking for Judge Pasco Bowman of the U.S. Court of Appeals for the Eighth Circuit. He received his undergraduate degree from Duke University and his J.D. from Harvard Law School.