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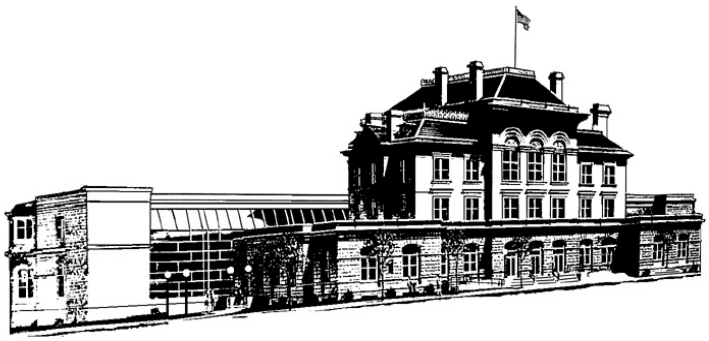

BY JUDGE JAMES G. MIXON
UNITED STATES BANKRUPTCY JUDGE
EASTERN AND WESTERN DISTRICTS OF ARKANSAS

1984—April 2006

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In re Melvin and Wendy Bass, **LR** 00-42447M

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Oct. 26, 1989: Order denying confirmation of amended plan under 1225(a)(4) (liquidation value), 1225(b)(1) (disposable income), feasibility, misc. plan provisions (adequate protection, absolute writedown, creditor remedies, collateral appreciation).

AP 88-81, Jan. 9, 1989: Complaint to determine validity of lien in crop of

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In re Baugh, **PB** 84-144

Feb. 19, 1986 **(60 Bankr. 102**): Fraudulent conveyance suit re debtor and father and issue of wife's separate property.

April 28, 1987 **(73 B.R. 414): Ch. 11.** Plan unfairly discriminated against one unsecured creditor and equitable subordination of claim not warranted where there was no evidence of inequitable conduct pursuant to 510(c) and 1129(b)(1); plan violated absolute priority rule, pursuant to section 1129(b)(2)(B)(i,ii), where debtor retained all ownership of property even though unsecured claimants might not be paid in full.

In re Bearhouse, Inc., **ED** 87-42

Dec. 8, 1987, AP 87-1056: District Court dismissed as moot appeal of bankruptcy court's order directing trustee to sell grain; grain already sold and appellant did not request order to be stayed pending appeal.

June 23, 1988, AP 87-186: Motion to strike interpleader overruled because of FRCP liberal amendment policies.

Feb. 13, 1989 (**99 Bankr. 926**): Trustee could not avoid lien of mortgage which was not acknowledged according to Arkansas law, but appeared on its face to be properly acknowledged.

Jan. 22, 1988 (**84 Bankr. 552**): Trustee ordered to distribute grain sale proceeds among parties (storage and reclamation issues).

In re Darrwin Anthony Ben, **LR**, 03-17928

March 18, 2004: Notice of foreclosure met requirements of statute; Debtor did not meet burden of proof to show that description of the property was not attached to deed of trust on file at clerk's office; Debtor failed to meet burden that Bank was not the beneficial owner or that the Debtor was not in default.

In re Benefield, **HE** 86-166

July 14, 1989 (**102 Bankr. 157**): Stay applies to unscheduled property of estate; child support issue.

In re Bennett, **LR** 85-32

Adjudication of involuntary debtor who was incarcerated in prison; issue of not

paying debts as due. Appointment of attorney for incarcerated debtor.

In re Bernard, **JO** 85-151

Nov. 5, 1986 (**70 Bankr. 181**): Confirmation by cramdown.

In re Bibbs, **LR** 00-40266

Aug. 20, 2002, **(282 B.R. 876) Ch. 13:** pursuant to section 362(b)(1), automatic stay does not stay criminal proceedings including enforcement of orders to pay fines and restitution; if proceeding is veiled attempt to collect debt, proper remedy is injunction under section 105.

In re Big River, **HE** 89-20063M, AP 89-2008M

Sept. 13, 1991: Creditor filed complaint against debtor and various other parties under Rico, defendants alleged bankruptcy court lacked jurisdiction, court held it had both subject matter and in personem jurisdiction.

In re Billingsley, **175 B.R. 286**, No. 93-2011M

July 12, 1994, Debtor's motion to set aside an alleged preferential transfer of a mortgage lien in the debtor's homestead is denied. The reimposition of the mortgage lien didn't cause an interest of the debtor in property of the estate to be transferred.

In re Harold and Kathryn Black, **LR**, **260 B.R. 134**, No 00-42539M, AP 00-4103, Ch. 13.

March 27, 2001: upon debtors' objection to Conseco's claim under second mortgage lien on home and complaint to determine extent and priority of lien, court determined fair market value of home was less than first lien so that Conseco was wholly undersecured; since Conseco was unsecured under 506(a), it was not entitled to anti-modification treatment of 1322(b)(2) and its claim could be treated as unsecured.

In re Blackmon, **LR** 87-1501

June 19, 1988: Abandonment of property in **Ch.13** is irrevocable.

In re Daniel Blair d/b/a Dan's Auto Sales, and Edna Blair, **FA** 90-15528

Co-debtor automatic stay provision, 11 U.S.C. § 1301, and impairment of creditor's right to collect full amount of debt.

In re Charles & Deborah Blevins, No. 91-15614 (**Ch 13**)

Sept. 9, 1992 **(150 B.R. 444)**. Bank failed to meet burden of proof in valuation.

In re Bolin, **LR** 86-1018

Reclamation hearing by alleged defrauded creditor to recover tractors bought with NSF check.

In re Kenneth Bolin, 89-11041

Mar. 15, 1991 (**1991 WL 58389**): IRS objection to confirmation of Ch.13 plan sustained; debtor could not avoid statutory tax lien; IRS could allocate secured claim to oldest taxes first; interest, but not penalties, given same priority as taxes.

In re Bonds Lucky Foods, Inc., No. 1, Cons. **HE** 85-10

May 13, 1986 **(76 Bankr. 664)**: Attorney's fee application issues (paralegal services, duplicative services, case conferences, 341(a) meetings).

In re Bookout, **231 B.R. 306, BA** 98-10272M

March 18, 1999: objection to confirmation by bank of **Ch. 13** plan modifying home mortgage; court held bank's security interest survived foreclosure judgment, but since claim was also secured by judgment lien in other property by virtue of foreclosure judgment, bank's claim could be modified.

In re Borden, **JO** 86-44

Debtor's claim of personal injury suit proceeds as exempt property denied because exemption filed too late.

In re Borek, **260 B.R. 886, Fla**. 99-11741-BKC-RAM, AP No. 00-1136

April 4, 2001: Ct. ruled tomato broker did not charge double commissions in violation of federal PACA law and technical violations by broker did not result in damages to Debtor so that recovery of commissions by trustee would not be allowed.

In re Boston, 89-11066

Aug. 2, 1990 (**119 Bankr. 162**): **Ch.7** debtor did not establish undue hardship and could not discharge student loans.

In re Boyd, **JO** 82-158

Coercive conduct by creditor after discharge resulted in contempt, fines, dismissal of state court suit and release of post-discharge lien (cow prod case).

In re Boykin, 89-41214

May 24, 1990: Personal property acquired by parties during marriage was held in tenancy by the entirety under Arkansas law and could be sold by the trustee under 363(h) in a proper adversary proceeding.

In re Bradshaw, **ED** 83-65

Aug. 1, 1986: Fee application.

In re Bratton, **HA** 84-47

AP 87-706, Nov. 17, 1988: Bankruptcy court lost jurisdiction over property which trustee abandoned to SBA; recommended that District Court withdraw reference.

AP 89-98, Sept. 11, 1989: Motion for summary judgment granted in favor of defendant, Mitchell Law Firm, because no facts presented in opposition.

AP 89-98, Nov. 16, 1989: Motion for recusal denied; facts that court has ruled adversely to debtor in discovery dispute or that debtor is required to be sworn when testifying while attorneys are not are insufficient basis to warrant recusal.

Feb. 26, 1990: Attorney found in summary contempt for disrupting judicial process, and ordered incarcerated. REVERSED, because Bankruptcy Court did not have power to incarcerate (**117 Bankr. 430**) (J.Waters); AFFIRMED, Found contempt and sentenced to time served (J. Wright).

Aug. 2, 1990 (**119 Bankr. 166**): Motion for sanctions and attorney's fees granted against debtor and his attorney for Rule 9011 violations.

In re William K. Brewer, **JO** 97-31440M

May 3, 1999 (**233 B.R. 825)**: statute requiring debtor to continue to perform under lease until rejected allowed landlord administrative expense for postpetition, pre-rejection rent without showing of benefit to estate.

In re Brittenum & Associates, Inc., SIPA AP 86-50

June 24, 1987 (**82 Bankr. 64**): Claims litigation re customer status. AFFIRMED (J.Howard 6/14/89, LR-C-88-474)

Aug. 29, 1987 (**97 Bankr. 503**): Certificate of deposit held as property of estate and not subject to turnover. AFFIRMED (J.Roy) (86 Bankr. 574), AFFIRMED (8th Cir 2/14/89)

AP 86-305, Feb. 26, 1987: Referred action by District Court to Bankruptcy Court re automatic stay, core, noncore.

Sept. 28, 1988: Motions to dismiss granted for failure to state cause of action

under sections 10(b), 15(c)(1), (10) of Securities Exchange Act or RICO, and for failure to plead fraud allegations with particularity.

AP 86-206, 86-143, Jan. 23, 1987 & Aug. 13, 1986: Motion to dismiss complaint granted because of verbose pleading.

Aug. 12, 1986: Overruled trustee's motions to dismiss for failure to properly plead.

AP 88-20: Motions to dismiss denied.

In re Belford T. Brown, Sr, d/b/a Brown's Aero Service, **PB** 85-90M, AP 85-206M

June 7, 1985: Bankruptcy court may halt criminal proceeding for hot check charge if a veiled attempt to collect a prepetition debt, although generally the automatic stay does not stay a criminal proceeding; court did not enjoin the proceeding because circumstances not extraordinary enough but did enjoin prosecutor from collecting restitution.

In re Elvis Brown. 91-40390 **Ch 13**

Dec. 1992, CMS 92-893. IRS allowed relief from automatic stay in order to setoff debtor's tax liability against his refund.

In re Joe T. Brown, **FS** 84-01

AP 84-192: **(51 Bankr. 51)** Discharge and dischargeability complaint re whether claim was for alimony or support.

In re John H. Brown, **LR** 02-13140M

August 23, 2002 **(282 B.R. 876)**. **Ch. 13**: Debtor could maintain payments and cure arrearage on his home pursuant to section 1322(b)(2) even though sold at judicial foreclosure auction where confirmation of sale was not filed such that sale was not final under section 1322(c) and state law.

In re Lance Brown, **JO 265 B.R. 167**, No. 00-30017M, AP 00-3030 Ch 7

July 20, 2001: court dismissed trustee's claim that Debtor fraudulently conveyed leased property to his corporation such that trustee could not avoid the conveyance under 544; badges of fraud not present to prove actual fraud and transfer was for reasonably equivalent value, precluding claim for constructive fraud.

In re Clarence and Frances Burnett, **ED** 01-90019

Oct. 25, 2002: **Ch. 13:** Objection to Conf. by child support creditor sustained where debtor did not propose to pay child support debt as required under 1322(a)(2); where debtor disputed claim, objection to claim must be lodged pursuant to Rule 3001.

In re Burns, **JO** 89-51

Involuntary adjudication.

In re DeWitt Busby, **HE**, No. 00-20283M, **Ch 7**.

March 9, 2001: Debtor could avoid lien impairing his exemption in certain tools of the trade pursuant to 522(d)(5)&(6); extent of exemption is determined under the formula provided in 522(f)(2)A).

In re Gwendolyn Bush, **HE** 99-20274M

October 20,2000. Objection to confirmation overruled, counsel for creditor failed to prove property included in **Ch. 13** plan had previously been foreclosed upon; Creditor then filed numerous pleadings to undo the ruling on the objection.

In re Oregon Butler, **PB** 93-101

June 15, 1984 (**42 Bankr**. **777**): Confirmation of **Ch.11** plan denied.

In re Gerald Butler, **HE** 88-45

Nov. 4, 1988 (**97 Bankr. 508**): Order denying confirmation of **Ch.12** plan on basis of retention of liens, valuation (daily accrual of interest reduced equity cushion), payment of secured claim (length of payment period, interest rate), misc. plan provisions.

June 9, 1989 (**101 Bankr. 566**): Order denying confirmation of amended plan as not feasible and granting motion to dismiss for inability to effectuate any plan of reorganization.

In re Albert Caldwell, **895 F.2d 1123**, Nos. 88-6404, 88-6405

February 9, 1990, Sixth Circuit affirming Tennessee District Court, which held that **Ch. 13** debtor proposing to repay 36% of debt that would have been nondischargeable in a Ch. 7 was not acting in good faith; it is not conclusively bad faith for a debtor to seek to discharge a debt incurred through his own criminal or tortious conduct through a Ch. 13, but factor may be considered.

In re Chester and Melinda Calvert, No. LR-C-91-472.

November 8, 1991, Judge Susan Wright affirming bankruptcy court's decision that vehicle was not property of estate in **Ch. 13** because sold prior to filing of bankruptcy petition.

In re William and Harriett Cates, **JO** No., 01-32104M, AP. No. 01-3051

Feb. 24, 2003 (**289 B.R. 389)**: Determination of nondischargeability of tax debt in debtor-taxpayer's prior bankruptcy case did not, under principles of res judicata, bar redetermination of issue in subsequent Ch. 7.

In re Catfish Galley, Inc., No. 93-30171.

Jan. 27, 1995 (No. J-C-94-124): Affirmed order setting aside debtor's **Ch. 11** plan and granting the motion for a new trial by the I.R.S.

In re Claudene Cato, No. 86-567M, AP. No. 86-466M.

Feb. 5, 1987. Objection to discharge sustained and discharge denied for faulty financial statement and missing assets.

In re Central Arkansas Broadcasting Company, Inc.

March 30, 1994 **(170 B.R. 143)**: Trustee's Objection to Bank's claims is sustained and trustee is ordered to disburse to bank $35,000 value of equipment sold by Trustee though its stipulated value is $5000.

In re Chambers, No. 85-902M,

(Oct. 17, 1985): Creditor's judicial lien as to exempt personal property and homestead avoided; lien in television and satellite dish is not avoided.

In re Bobby and Sherry Chambers, **Tex.** No. 02-72834

April 10, 2003: **Ch. 7** Debtors' homestead on city limits of Nashville, Ar. was urban and would be exempt under section 522(b)(2)(A) according to urban constitutional limits.

In re Circle J Dairy, Inc., **FA** 85-139

Oct. 18, 1988 (**92 Bankr. 832**): Objection to claim overruled because objecting party failed to carry burden of proof. REVERSED, **112 Bankr. 297** (J. Waters)

In re Paula Clingingsmith, No. **LR** 86-466F, AP No. 86-315

April 21, 1987: Trustee's complaint for turnover for tax refund paid to Debtor and seized by S.B.A. post-petition pursuant to federal statute was denied; S.B.A. had right of set-off because right to refund accrued prepetition; bankruptcy set-off provision did not negate federal statute regarding right of federal agency to refund.

In re Clinicare Inc. **LR** 84-1369M, AP 84-461M

September 3, 1985: **Ch. 11**. Upon objection to compromise settlement of Debtor's turnover and fraudulent conveyance complaint, court declined to approve because not in the best interests of creditors and no benefit to estate.

In re Marty Cloud, **LR**, **215 B.R. 870**, 96-42046M, AP 96-4174

July 17, 1997: equitable lien in automobile that creditor had purchased for her step-son, the debtor, was not judicial lien impairing an exemption and not subject to avoidance by debtor.

In re Cockrum, 90-11193

July 2, 1993, AP. No. 91-1501: dischargeability - debtor not liable for corporate debts if not alter ego

In re Coleman, **PB** 86-55M

February 4, 1987, AP. No. 86-176M: district court order referring case to bankruptcy court is inconsistent with Local Rule 32 and 28 U.S.C. § 157 which automatically grants bankruptcy court original jurisdiction; district court improperly changed venue of the case as well; court recommends d.ct. Order be set aside and venue remain in Ft. Smith until party in interest files a motion to change venue.

In re Kenneth Collins, 91-15499 **Ch 7**

Oct. 21, 1992 **(152 B.R. 570)**. Head of household exemption allowed to debtor with live-in girlfriend and his baby.

In re Contractor's Glass, 89-12444 **Ch 7**

Nov. 18, 1992 **(152 B.R. 270)**. (Ap No. 91-2053) Future advances clause preserved first lien holder's priority over second lien holder.

In re Farrell and Janet Copeland, **238 B.R. 801**, 98-31598M **Ch. 13.**

Sept. 7, 1999: Determination of whether debtors' pre-petition transaction to acquire portable building was a sale and security interest or a true lease; most significant factor in determination is whether there is residual value at the end of

the lease term; here, there was little residual value because lessees could purchase building for nominal price, but under Arkansas case law, fact that lessee has right to terminate lease at will is deciding factor so transaction was ostensibly a lease.

In re Cossey, No. 92-42161M

July 7, 1994 **(172 B.R. 597)**, Order sanctioning Ron Goodman for violation of Bankruptcy Rule of Procedure 9011 and fining him $500 for preparing and filing a bankruptcy petition containing false statements.

In re Couch, **LR** 80-457

Sept. 11, 1985 (**54 Bankr. 682**): Discharge revoked because of fraud.

Sept. 24, 1984 (**43 Bankr. 56**): Untimely motion to revoke discharge.

In re Danny Ray Crawford, **LR** 98-4341M, AP 98 4179, **236 B.R. 673**

July 26, 1999. Non-support divorce debt owed to former spouse was nondischargeable, as were attorneys fees nondebtor spouse owed to her attorney to collect on the debt.

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M.

November 28, 2001 **(271 B.R. 138)**: **Invol. Ch. 7** cases: Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player.AFFIRMED BY DISTRICT COURT, Eisele, J.

In re Roy and Susan Crews, **LR** No. 04-14692M, **2005 WL 1420842**

June 16, 2005: **Ch. 13**. Ruling that Debtor's confirmed plan was not res judicata as to lack of insurance on real property being purchased under contract for sale but creditor's acceptance of payments for years knowing Debtor was unable to insure property pursuant to contract constituted waiver. Alternatively, creditor was equitably estopped from asserting breach of contract.

In re Keith Criswell, No. 92-40865 **Ch 7**

Dec. 14, 1992 (**152 B.R. 264)** Opt-in by state to federal exemptions scheme is constitutional.

In re Cross, **HE** 86-13

Feb. 7, 1989: Attorney's fees for creditor which successfully challenged debtor's discharge denied because creditor did not obtain prior court approval to represent estate or trustee (503(b)(3)(B)).

In re Crull, **HA** 87-61

June 8, 1989 (**101 Bankr. 60**): Motion to reopen **Ch.7** case to add omitted creditor granted; gave parties 20 days to file complaint to determine dischargeability.

In re Cupp, **HE** 91-20126, AP 95-2007M

July 25, 1996. Bank held a perfected lien in part of the sale proceeds of the debtors' property but two debts owed to Bank by debtors were unsecured and no valid lien in debtors' property existed as to these two debts.

In re Cupples Farms, **HE** 90-55, AP 90-2017

Mar. 8, 1991 (**128 B.R. 769**): Motion to reconsider relaxation of stay denied because debtor had no legal or equitable interest in real property being foreclosed upon.

In re Curtis, **LR** 84-1187

Jan. 13, 1987 (**70 Bankr. 712**): Itemization insufficient in attorney fee application; performance bonus denied.

In re D & D Builders, Inc., **TX**

July 7, 2003: Judgment by Judge Harry Barnes, District Court, affirming B.R. court's bench ruling denying mandatory or permissive abstention. Judge Barnes' ruling on file.

In re Dang (Nguyen), LR 88-589

Nov. 4, 1988 (**96 Bankr. 185**): Objection to confirmation of Ch.13 plan sustained because violated 1322(b)(5) by proposing long-term payout of debt that matured prepetition.

In re Danny Thomas Properties II and III Limited Partnership, **231 B.R. 298, LR** 96-42482M

March 18, 1999: secured creditor's objection to Ch. 11 plan sustained; plan not feasible because it would generate a deficit over five years period, could not fund deferred maintenance, and capital contribution was not forthcoming. AFFIRMED, 8TH Circuit, **241 F.3d 959** (March 5, 2001).

In re Dardwin, **HA** 86-77

June 16, 1988: Attorney's fee received post-petition without notice to creditors must be returned to estate.

In re Bob & Debra Daugherty, NO. 92-80161

Dec. 14, 1992. Debtors failed to prove Bob's curtsey and homestead rights in Debra's property.

In re David Hodges Farms, Inc., **JO** 85-73M

AP No. 85-124. August 28, 1985. Order denying motion to transfer trial on amount of Bank's claim against debtor to district court; removal proper if district court has jurisdiction; bankruptcy court had jurisdiction over claims against the estate and can adjudicate jury trial if right to jury exists in a core proceeding.

AP No. 85-314M. January 9, 1986. Order granting relief from stay to secured creditor to foreclose its lien in Mallard Farm.

January 13, 1986. Order outlining required modifications and additions in debtor's disclosure statement.

AP No. 85-124M. February 2, 1986. Pre-trial order on complaint for judgment and foreclosure of liens determining which matters core and non-core; David Hodges disqualified from representing debtor in possession since he is equity security holder and debtor of dip.

October 10, 1986. District Court order affirming bankruptcy court's granting of relief from automatic stay to John Hancock.

In re Annie Marie Davis, **PB** 82-165M, AP 85-580M

September 17, 1986. In state court action, judgment was for plaintiff and against defendant, but no specific finding of fraud was made. Judgment had collateral estoppel effect in subsequent dischargeability action for fraud as this was the only possible basis for the judgment and debtor did not prove otherwise.

In re Davis Industries, Inc., **PB** 83-56M, AP No. 85-515M

January 9, 1987. In involuntary bankruptcy proceeding, Trustee's preference action was denied: Bank held perfected lien in debtor's accounts receivable; transfer made to bank pre-petition was account receivable of the debtor and Bank did not receive more than it would have in a Ch. 7 since Bank held valid perfected lien in accounts.

In re Dean, No. 93-1052M

July 29, 1994. Order awarding trustee assets held by corporate defendants to satisfy judgement.

July 29, 1994. Opinion: Judgment against several individuals in which they were found to have defrauded debtors. (AP No. 93-1502M)

Oct. 19, 1994. Order upholding the transfer restrictions set forth in the joint venture agreement between the debtor and other investors in certain Captain D's restaurants.

April 10, 1996: Eighth Circuit affirmed Bankruptcy Court and District Court's ruling holding president of corp. in criminal contempt for violating court's order prohibiting removal of corporate funds. **80 F.3d 1248**

Feb. 20, 1997: Eighth Circuit affirmed Bankruptcy Court's refusal to abstain, the ruling that trustee was entitled to turnover and that defendants must refrain from disposing of assets. **107 F.3d 579**

In re Timothy A. Dennis, **218 B.R. 52**, **HE** 96-20351M

September 8, 1997: Court permissively abstained from considering Ch. 13 debtor's motion to avoid judicial lien on residence which was to have been sold pursuant to prepetition divorce decree, with proceeds to be divided between debtor and estate of ex-spouse.

In re Diamonds Plus, Inc. **233 B.R. 829**, **JO** 98-30906M

May 12, 1999: unsuccessful bidder on sale of assets of **Ch. 11** debtor could not recover breakup fee, in absence of any binding agreement with debtor for payment of such a fee, but bidder could recover as administrative expense costs and attorneys fees in helping to coordinate liquidation sale.

In re William David Dickey, **LR** 85-1406M, AP No. 86-304M

September 18, 1986: No order abandoning debtor's exempt property had been entered so property of estate includes the debtor's exempt property.

In re Dillon Construction Co., Inc., **LR** 88-789

June 28, 1988: Motion for recusal denied because impartiality of judge could not reasonably be questioned.

AP 88-217, Aug. 10, 1989: Lender granted judgment against debtor on "usurious" promissory notes. Lender granted judgment under debtor's lender liability counterclaim because parol evidence rule precluded variance of

integrated written loan agreements; debtor's damages claim denied as speculative and not entitled to equitable relief. Materialman's lien valid. AFFIRMED (J. Wright, Aug. 22, 1990), RECOMMENDATIONS ADOPTED as to individuals (J. Howard), AFFIRMED, 922 F.2d 495 (8th Cir. 1991).

AP 88-143, 88-144, 89-4096, Apr. 5, 1991: Complaint for turnover of professional fees paid to state court-appointed receiver -- receiver ordered to pay $32,750 to trustee.

In re Dipzinski, **JO** 97-10389M

June 16, 1999 (**234 B.R. 746)**: Trustee's objection to debtor's amendment to claim of exemptions sustained; debtor intentionally omitted the exempt asset from schedules until it was discovered.

In re Direct Transit, **226 B.R. 198**, **BAP** No. 98-6039NI

October 26, 1998: provision in employment agreement was true liquidated damages provision; liquidated damages provision was enforceable under South Dakota law and reasonable; therefore, claim including liquidated damages was allowed.

In re Tonie B. Dixon, **LR** 87-1550M

February 24, 1988. FSLIC's objection sustained to debtor's claim of exemption of IRA account where debtor closed account in May and opened a different account with another institution in the same amount of money in June; Arkansas law only exempts IRA contributions made more than a year before bankruptcy.

In re Randy Dodd, **TX**. No. 96-14040M

September 8, 1997: debtor objected to attorney's fees of counsel for fully secured creditor; court found fees allowable, reasonable and justified.

In re Irene Thelma Doles, HE 84-52M, AP 84-480M.

June 17, 1985. No proper ground for objection to discharge was cited; complaint dismissed for failure to state a cause of action.

In re Dollar Time Group, Inc., **223 B.R. 237**, **S.D. Florida** 95-22816-BKC, RBR, AP 96-0380-BKC, RBR

July 20, 1998: recommended findings of fact and conclusions of law in noncore, related proceeding; loan from corporate debtor to employees did not violate fiduciary duty of employees, but undisclosed transfers when employees were

board members violated duty of loyalty, judgment against employees would be reduced by amount previously paid by employees' business to debtor.

In re Phyllis Michele Dove-Nation, **318 B.R. 147, H.S., BAP**

Dec. 17, 2004: affirming the bankruptcy court which overruled objection to claim by debtor; proof of claim was prima facie valid; insufficient documentation is not a basis to disallow a proof of claim where there was no evidence debtor disputed claim. Rule 3001, 3002, 11 U.S.C. § 501, 502, 101(5), 101(10).

In re Draper, **HE** 84-036

Jan. 31, 1985 (**48 Bankr. 37**): Debtor's agreement to pay children's educational expenses was in nature of child support. AFFIRMED **790 F.2d 52**

In re Dunlap, **215 B.R. 867**, **HE** 95-20169M

July 16, 1997: secured creditor objected to confirmation of third modified plan proposing to surrender vehicle to creditor and treat balance of debt as unsecured--court ruled this is not authorized by the code.

In re Eaton, **HE** 97-20382M

March 31, 1998 **(220 B.R. 629)**: Debtor not entitled to damages or attorney's fees for violation of stay when vehicle repairman retained possession of debtor's car to retain artisan's lien pursuant to state statute providing for perfection of lien by possession. (See 546(b)(1)(B) and 362(b)(3)).

In re E. I. Parks, **FA** 88-261

Oct. 19, 1990 **(122 Bankr. 549)**: Interest rate for purposes of Ch. 11 confirmation calculated on basis of government securities plus risk factor; plan was feasible.

In re El Ark Industries, Inc., **ED**

Sept. 20, 1990 **(122 Bankr. 87)**: Confirmation of C**h. 11** plan denied where plan proposed to convey polluted property to EPA over its objection.

In re Endicott, **239 B.R. 529**, **JO** 99-30499M

September 21, 1999: Bank granted relief from stay to liquidate security interest in proceeds of crop loss program even though proceeds had not been assigned by debtor to Bank.

In re Richard and Jane English, **LR** 98-42005

May 7, 1999: AP 98-4071: income tax debt was nondischargeable priority claim because unsecured as provided by section 507(a)(8); even though tax lien had been filed, there was no property to which it could attach.

In re Charles Leo and Rachelle Louise Evans, **LR** 03-15810, **Ch. 7**

March 9, 2004: AP 03-01336: Under totality of circumstances test, Debtor could repay his student loan without undue hardship; the debt would be excepted from discharge under section 523(a)(8).

In re Charles and Sylvia Evans, **PB** No. 94-50037M

Aug. 25, 1995 (**190 B.R. 1015) Ch. 7**: Sustaining objection to rural homestead exemption when debtor's abandoned portion of property for commercial operation and property was urban rather than rural despite being outside city limits of Pine Bluff.

In re Floyd Evans, **FA** 97-80694M, AP No. 98-8034.

March 10, 2000 **(245 B.R. 852)**: pending state criminal prosecution of debtor was not action to collect a debt and didn't violate discharge injunction under 524(a)(2).

June 25, 2003 **(294 B.R. 732):** Denial of motion for sanctions pursuant to Rules 9011 and 7054; no evidence bank committed fraud on the court by testifying falsely at previous hearings.

In re Larry Evans, **LR** 85-376M, AP 85-335M.

April 15, 1986 **(245 B.R. 852)**: Defendant held in contempt; fined and sanctioned for proceeding against **Ch. 13** Debtor in state court to collect child support, maintenance, payments for insurance and medical bills; Court held violations of automatic stay are never excused because of erroneous advice of counsel.

In re Farmers Co-op, **FS** 84-46

Oct. 17, 1985: In attorneys fees application, charges for word processing disallowed as overhead expense; fees allowed otherwise without prejudice to parties who could object after fee application no longer confidential.

Oct. 10, 1985: Motion for jury trial overruled for failure to timely file, which constitutes waiver of right to jury trial.

Sept. 9, 1985 **(53 Bankr. 600)**: Removal of trustee because of conflict of interest.

Sept. 5, 1985: Jury trial motion overruled for failure to make a timely demand.

August 8, 1985: Trustee's motion for a new trial on preference action denied; Trustee had access to "newly discovered evidence" which could have been presented at first trial.

July 30, 1985: An implied agreement existed between the Debtor and the Thurmans that they personally guaranteed the original note given by them to the Debtor when Debtor forebore from foreclosure.

June 14, 1985: Prepetition attorneys fees were general unsecured claim and postpetition fees were administrative expense.

June 17, 1985: Court allows about half of fees applied for by unsecured creditors' committee counsel; active participation in only two proceedings did not warrant applied for fees.

Oct. 23, 1984 **(43 Bankr. 619)**: Objection to claim sustained because debtor had rejected guaranty contract.

In re Farney, **LR** 87-2367

Aug. 29, 1989: Trustee has status of bona fide purchaser only as to real property and thus could not avoid unperfected assignment of judgment re personal property.

In re Faucett, **LR** 85-617

June 17, 1988: Negligence, late filing and underpayment penalties allowed as part of IRS claim.

In re Ferguson, **LR** 90-2272

May 5, 1991: Motion to reopen case to determine dischargeability of student loan under hardship exception granted.

In re Fourth, **LR** 84-235M

June 12, 1985. On Bank's motion to dismiss and to appoint Trustee, court found cause to appoint trustee for debtor's failure to timely confirm a plan, abide by court's operating requirements and illegal postpetition payments to counsel for debtors.

In re Mark Francis, **252 B.R. 143**, **JO** 97-31344M, AP 99-3050.

August 23, 2000: Earmarking doctrine precluded Trustee's recovery in preference action.

In re Frazier, **ED** 90-11013

Oct. 8, 1991 (**136 B.R. 199):** Objection to confirmation of **Ch.13** plan; issue of marshaling of assets.

In re Thomas Freeman, **LR** 03-11514M

Aug. 5, 2003 **Ch. 13**: On objection to claim of contractor for work done on Debtor's home, Debtor carried his burden of going forward to rebut claim, shifting burden to contractor who failed to present evidence proving claim's validity.

In re Gardner, **139 B.R. 460**, **HE** 88-20027

December 31, 1991 (**139 B.R. 460**): Ark. Code Ann. § 16-66-217 (1991) allows Arkansas residents a choice of federal or state exemptions; choice of election is not retroactive to those debtors filing for bankruptcy before the effective date of the amendment.

In re Garland Coal, **FS** 84-71

July 2, 1985: Motion for relief from stay to continue litigation against the Debtor in District Court and before National Labor Relations Board. Denied pending trial on the merits of whether involuntary petition would be dismissed.

Dec. 16, 1985: On motion for reconsideration of order sanctioning debtor and debtor's attorney for failure to comply with discovery order and misrepresenting terms of settlement and order of district court, court granted motion as to attorney and denied as to Debtor; attorney order to show cause why he should not be held in contempt.

Feb. 20, 1986: Recommended findings to district court that attorney's pro hac vice status be revoked and attorney be fined for failure to comply with discovery order and misrepresenting previous district court order and settlement to bankruptcy court.

July 18, 1986 **(67 Bankr. 514)**: Involuntary proceeding could be initiated by one eligible creditor as there were fewer than 12 eligible creditors; pension trusts' claims were subject to bona fide dispute; employer was not paying its debts as due even though most creditors were being paid.

In re Garth, **LR** 81-587

AP 87-717, Nov. 8, 1988: Allowability of IRS claim.

In re Gaston, **Jo** 84-226M

August 1, 1985: Relief from co-debtor stay granted.

In re Gibson, **218 B.R. 900, LR** 96-41062M

Dec. 27, 1997): Insurance proceeds were property of estate and loss payee had insurable interest in insurance proceeds only to extent of its allowed, secured claim; court order of surrender of insured automobile was not an order of abandonment of all insurance proceeds; debtor's use of excess insurance proceeds was reasonable.

In re Giller, **ED** 89-11-104

Oct. 24, 1990 **(127 B.R. 215)**: Homestead exemption limited to 1/4 acre; personal property exemptions limited to $500, including IRA, car, wedding bands, tools of trade; could not exempt partnership interests.

In re Giller, **ED** 91-1647, appeal to **EIGHTH CIRCUIT**

April 23, 1992 (962 F.2d 796): **Affirming** bankruptcy court and district court allowing substantive consolidation of six corporate debtors which shared common shareholder; post-consolidation, trustee could still avoid transfers by one debtor for benefit of another debtor.

In re Gordon, **PB** 85-425M

April 16, 1987: Default judgment granted as to damages for violation of stay but denied as to motion for contempt because no evidence of willfulness.

In re Gore, **LR** 88-2284

Dec. 20, 1989 **(113 B.R. 504**): Confirmation of **Ch.12** plan denied.

Oct. 1, 1990 (**124 B.R. 75**): SBA could not offset CRP payments due to debtors postpetition; Ch.12 plan confirmed.

In re Gosnell, **HS** 04-75975, **336 B.R. 133**

December 19, 2005. **Ch. 7:** Portion of debtor's IRA not exempted under the wild card exemption, § 522(d)(5), could not be exempted under § 522(d)(10)(E) because not reasonably necessary for the debtors' support.

In re Gran, **LR** 87-1460

Nov. 27, 1989 **(108 Bankr. 668)**: Debtors' objection to claim of IRS overruled because purported sale of cattle was sham transaction. (ON APPEAL to J. Eisele 7-10-90, LR-C-90-480)

In re Jerry Henry Grant, **ED** 02-70071, AP 02-7047

Feb. 18, 2004 (**305 B.R. 484):** Student loans to pay for debtor's medical school costs would not be discharged for undue hardship pursuant to section 523(a)(8).

In re Forest and Melanie Gray, **L.R.**, 92-2743.

May 21, 1993: on appeal from District Court's affirmance of B.R. Court's bench ruling, 8th Cir. **Affirms** finding that **Ch. 13** debtors filed plan in good faith despite the fact that debtors' largest debt resulted from fraud.

In re Green, **ED** 85-02

Sept. 26, 1986 **(70 Bankr. 164)**: Confirmation of **Ch.13** plan denied because of unfair discrimination (1322(b)(1)).

July 30, 1985: objection to plan sustained; plan did not propose to pay present value of secured claim.

In re Gribble, **FA** 90-15085

December 31, 1991: Ark. Code Ann. § 16-66-217 (1991) allows Arkansas residents a choice of federal or state exemptions; choice of election is not retroactive to those debtors filing for bankruptcy before the effective date of the amendment.

In re Stephen Griffin, **FS** 02-70245**, Ch. 7**

August 27, 2003: Court removed Diane Sexton as attorney for Ms. McGehee because of conflict of interest.

September 11, 2003 **(302 BR 1)**: on objection to claim of Debtor's mother in law, court held mother-in-law's attorney would be removed for conflict of interest in also representing daughter whose interests were adverse to mother; court reduced attorney's legal fees because of unjustified or overstated charges. APPEAL DISMISSED BY BAP. NO. 03-6069: June 3, 2004: **310 BR 610:** an order disqualifying an attorney is not a final appealable order. 28 U.S.C. § 158(C). BR court affirmed as to ruling that attorneys fees would be disallowed because they did not benefit oversecured creditor and were not related to protecting her claim. 11 U.S.C. § 506(b). See September 12, 2003 order below.

Nov. 21, 2003: **302 B.R. 9**
Ch. 7. Attorney for secured creditor sanctioned under Rule 9011 for filing frivolous pleadings and fraudulent fee application in connection with representation of secured creditor. AFFIRMED ON APPEAL TO BAP NO. 03-6090, June 3, 2004: **310 B.R. 617:** Sanctions order for continuing to represent creditor after having been removed from the case was not abuse of discretion.

December 2, 2003: Order of contempt entered by the Court finding attorney Diane Sexton continued to represent Mary McGehee after being removed from that representation.

January 8, 2004: Secured creditor (McGehee) appealed denial of motion to abandon property from estate (bench ruling) to district court where it was denied; creditor appealed to Eighth Circuit Ct. Of Appeals which dismissed interlocutory appeal for want of jurisdiction.

June 3, 2004: creditor Mary McGehee appealed the denial of the motion to reconsider the court's order authorizing the trustee to sell the debtor's lake home. **BAP** decided the appeal was rendered **moot** by the sale of the property, in the absence of a stay of sale that had already occurred. 11 B.R. § 363(m).

September 9, 2004: Trustee v. Stephen Griffin and Barbara Griffin, 03-7039: In bench ruling, Court found transfer of liquor store stock and payment of store's funds to Debtor's wife was not fraudulent conveyance under theory of actual fraud under 11 U.S. C. § 548(a)(1)(A), but transfer of real estate was void as against the interest of the Trustee under 11 U.S.C. § 544 and 549, and post-petition checks to Barbara were subject to Trustee's recovery under 549. **AFFIRMED BAP 319 B.R. 609:** JANUARY 27, 2005: language in pre-nuptial agreement did not transfer a present interest in property of the Debtor. Any interest through prenuptial agreement was not enforceable against the Trustee's strong-arm powers. Wife owned half of liquor store corporation that had no assets.

In bench ruling, court denied motion to close case because matters still pending and denied debtor's motion to compel debtor and counsel to mediate disputes because no jurisdiction to order mediation between client and attorney. Ruling appealed to **US District Court (Hendren);** by order dated **March 28, 2006**, D.Ct. ruled order was not a final order and circumstances did not warrant leave to appeal of an interlocutory order.

In re Michael and Peggy Grimes, **Jo** 98-31455M

April 6, 2000: judgment for defendant in Debtors' objection to secured claim of Bank in not giving notice of right to rescind their loan agreement; Truth in Lending Act statute not applicable if debtor refinancing or consolidating loans.

In re Grisham's of Harrison, **HA** 88-142

AP 89-53M, Jan. 5, 1990: Note was not usurious where Bank did not charge or collect excessive interest.

In re Haimes, AP # 91-0242, **S.D. Florida**

Aug. 12, 1994 (**173 B.R. 777)** Denied debtor's discharge pursuant to 727(a)(2)(A) due to the nondischargeability of his taxes pursuant to 523(a)(1).

In re James and Carrie Hall, **HS** 02-70062

July 24, 2003, **295 B.R. 877,** AP 02-7090: court denied motion dismiss filed under Rule 7012; creditor may proceed with dischargeability complaint under either § 523(a)(4)for embezzlement or § 523(a)(6) for willful and malicious conduct; pursuant to § 509 creditor is equitably subrogated to the rights of another creditor which first creditor is obligated to pay if debtor doesn't pay.

In re Harper, **HE** 91-20002

August 13, 1993 **(157 B.R. 858)**: confirmation of **ch 12** - valuation of closely held corporate stock - interest rate

In re Linda Harper, **FS** 84-198M, AP 86-141M.

April 15, 1987: Discharge revoked when debtor failed to satisfactorily explain why Bank's collateral was missing after Bank had obtained relief from stay to seize collateral and objection to discharge date had passed.

In re Harr, **ED** 86-142

June 29, 1988: Collateral estoppel did not apply to establish nondischargeability of debt because plaintiff did not meet burden of proof in establishing elements of collateral estoppel.

In re Bobbie Harrell, **HE** 03-16983 **Ch 13**

Jan. 5, 2005, **318 B.R. 692**: State's claim for unassessed but assessable tax debts paid untimely and postpetition was not entitled to priority under section 507(a)(8)(A)(iii) and could be discharged in a chapter 13 under section 1328(a), even though the debts were nondischargeable in a chapter 7 under section 523(a)(1)(B)(ii).

In re Billy Edgar Harris, **HE** 86-116M, AP 86-159M

June 30, 1986: **Ch. 7:** Debts to ex spouse for mortgage, utilities, home maintenance, medical bills and attorney fees were nondischargeable support.

In re Jimmy H. Harris, Jr., **JO** 99-31282M, AP 00-3010

September 18, 2001: **Ch. 7**: farmer's debts to creditor were nondischargeable for submitting a false financial statement pursuant to section 523(a)(2)(B).

In re Harris, **LR** 90-40042

December 31, 1991: Ark. Code Ann. § 16-66-217 (1991) allows Arkansas residents a choice of federal or state exemptions; choice of election is not retroactive to those debtors filing for bankruptcy before the effective date of the amendment.

In re Hartman, 89-13019

June 1, 1990 (**115 Bankr. 171**): Because **Ch.13** debtor was entitled to lump-sum distribution of his vested benefits upon voluntary termination of employment, Erisa-qualified retirement plan did not qualify as spendthrift trust under Arkansas law and plan's anti-alienation provision was unenforceable in bankruptcy. Plan confirmation denied because debtor's vested interest in plan was estate property and should be included in liquidation analysis.

In re Hayes, **LR** 88-1997

June 28, 1989 **(101 Bankr. 569)**: Debtor's interest in real estate installment sales contract was property of estate; seller waived right of forfeiture, and debtor could treat balance due as long-term debt in **Ch.13** plan.

In re Hensley, 87-41460

Nov. 17, 1989: Debtor not permitted to amend schedules after discharge was denied for false statements in the schedules. AFFIRMED IN PART, REVERSED IN PART (as to failure to delete debtor's spouse as party defendant) (J. Wright, LR-C-90-449, Feb. 26, 1991).

In re Henson, 92-70580

April 20, 1993 **(157 B.R. 867)**: objection to confirmation of **Ch 13**; under state statutory foreclosure procedure, right to deed of trust property belonged to purchaser so that property was no longer property of estate and could not be included in the plan; proceeding to determine status of property in bankruptcy was inappropriate to set aside sale based on irregularities under state law.

In re Herbst Corporation, **LR** 86-1821

AP 88-533, Sept. 8, 1989, August 24, 1990: Order granting motion to dismiss for failure to state cause of action under BR 7012 (FRCP 12(b)(6)); also discusses FRCP 8 and 9 (pleading fraud with particularity).

In re Hermitage Pink Tomato Marketing Assoc., Inc.

PB 85-440M, ORDER: Denying an involuntary petition, alleged debtor can petition for damages, fees and costs pursuant to § 303(i).

In re David Herndon, **LR** 01-40158, AP 01-4082

May 16, 2002 (**277 B.R. 765) Ch. 7:** Debtor contractor's debt nondischargeable when he violated fiduciary duty in express trust stated in indemnity agreement by using money allocated for one project to pay debts for another and, therefore, was liable for defalcation pursuant to section 523(a)(4).

In re Hilyard Drilling, **ED** 85-10

November 5, 1987, AP No. 86-745M: Allowing administrative claims of debtor company against debtor subsidiary and subsidiary against parent arising post-petition; declining to equitably subordinate parent's claim because no evidence of inequitable conduct; declining to set-off pre and post petition claims.

October 21, 1987, AP No. 86-715M: Denying offeror's breach of contract claim when booster and compressor not sold with truck per agreement between trustee and buyer; no manifestation of assent as to the items; offeror's unilateral mistake as to the terms was not grounds to excuse the contract, absent fraud; trustee entitled to keep offeror's nonrefundable deposit but not entitled to liquidated or actual damages.

July 9, 1987, No **ED** 85-10M: Pursuant to Mississippi law, trustee in bankruptcy took priority over statutory lien creditor because he was without notice of the lien; Thus, creditor has only a general unsecured claim.

May 27, 1987, AP No. 86-560M: Denying Trustee's motion for turnover against Bank asking that interest on debtor's receivable checking accounts be paid by Bank because they were special accounts; no evidence in the record to show contract between Bank and debtor agreed to interest-bearing checking account.

Oct. 30, 1986, AP ED No.85-120M: Motion for relief from stay by Insurer to set off debt denied without prejudice to refile once retrospective adjustments in premiums are calculated.

AP 85-346, (**60 Bankr. 500**): NBC's second financing statement was not a continuation statement; NBC's perfection lapsed and other creditors advanced. AFFIRMED (J. Harris, 74 Bankr. 125), and 8th Cir. (840 F.2d 596)

Eighth Circuit No. 87-1045 (**840 F.2d 596**):Affirming AP 85-346 And the District Court; holding that NBC's perfection lapsed such that junior lien holder had superior lien.

June 7, 1985 (**58 Bankr. 616**): Court would not enjoin cancellation of debtor's insurance coverage; insurer was not required to renew.

January 28, 1986, No. **ED** 85-10M: DIP's post-petition sales of drilling equipment was not in the ordinary course of business and not authorized under 363(c)(1); application for ex post facto approval of the sales denied.

DC No. 86-1052 (**74 Bankr. 5**): DIP's post-petition sales of equipment not in ordinary course of business and not authorized (363(c)(1) (affirming JGM).

In re Hoffinger Industries, Inc., **HE** 01-20514M, **Ch. 11**

Feb. 28, 2002 **(273 B.R. 777):** Court retroactively annulled the automatic stay to validate a postpetition notice of appeal filed by the Debtor in state court litigation pending in California; cross appeal right probably not lost until 30 days after notice of termination of the stay under section 108(c). **AFFIRMED** by District Court (J. Wright) (Aug. 29,2002) and **AFFIRMED** by 8th Cir. (J. Morris Arnold writing opinion) (June 2, 2003) **329 F.3d 948.**

May 12, 2003, BAP affirmed B.R. court bench ruling granting extension of exclusivity periods, **292 B.R. 639**

April 16, 2004 (**308 B.R. 362):** Debtor's former president ordered by BR court to turnover funds to the Debtor that he paid himself through unauthorized expense reimbursement and other means**;** President's employment contract had expired under its own terms and it was unnecessary for the Debtor to later reject the contract pursuant to section 365.

Sept. 27, 2004: Because judgment against Debtor's former president was based on tort of conversion and not on breach of employment contract, Debtor was not entitled to attorneys fees under state law

In re Hoffman, **ED** 85-27

Sept. 16, 1986 (70 Bankr. 155): Debtor transferred fully encumbered farm equipment and crops. Followed Long and denied discharge of debt under 523(a)(6) and (4), but did not deny debtor's discharge under 727.

Aug. 16, 1985 (**53 Bankr. 564**): Counsel's simultaneous representation of **Ch.11** corporate DIP and equity security holder/DIP/creditor created conflict of interest.

May 30, 1985 (**51 Bankr. 42**): Administrative freeze of debtor's accounts did not violate automatic stay.

In re Holthoff, **PB** 84-221, 223 and 224

July 12, 1985 (**55 Bankr. 36**): Attorney's fee application reduced (duplicative services, grouping, benefit to estate of researching abstract legal question, vague entries, preparation of fee application, ministerial tasks).

Dec. 12, 1985 (**58 Bankr. 216**): Confirmation of **Ch.11** plan denied.

In re Hooten, **HS** 04-73821

November 29, 2005: Discharge denied under 727(a)(4) for giving false oaths with fraudulent intent when debtor quitclaimed his future interest in real property, later disclaimed future interest in favor of his heirs, and then listed real property on schedules in bankruptcy.

In re Hopkins, **ED** 85-38

Aug. 5, 1986 (**66 Bankr. 828**): Firing of debtor violated debtor discrimination statute but contempt was improper remedy.

Aug. 7, 1987 (**81 Bankr. 491**): Violation of debtor discrimination statute found.

In re William Horne, **PB** 85-365M

August 18, 1986: Motion for summary judgment granted as to murder victim's estate's dischargeability action against the debtor for debt arising from willful and malicious conduct; debtor's conviction for 2nd degree murder established the elements of willfulness and malice under theory of collateral estoppel; offensive collateral estoppel not available to other plaintiffs because debtor's liability for battery did not establish willfulness and malice.)

In re Horton Vaults, **LR** 87-371

Aug. 31, 1989 (**109 Bankr. 356**): Property description in material man's lien statement held to be sufficient.

In re Hot Shots Burgers, 91-41298

Aug. 10, 1992, (**147 B.R. 484**). Modular building and its contents annexed to real property were removable trade fixtures.

March 23, 1994, **(169 B.R. 920)**(No. 92-4130M): Proceeds from sale of personal property should be paid to Bank. Modular building not part of real estate and not subject to other Bank's mortgage lien.

March 27, 1995, **(183 B.R. 848)** (No. 92-4130M): Seller's security interest in modular building was unperfected; debtor-individuals were proper debtors under Article 9, claims of trustees of debtor individuals' bankruptcy estates had priority over unperfected security interest of seller in proceeds from sale of modular building.

In re Howard, **JO** 87-260

AP 88-390, Sept. 18, 1989: Absence of statutory three days notice entitled party which had filed answer but failed to appear at trial to relief from default judgment.

In re Howell Enterprises, **HE** 88-58

Feb. 27, 1989 (**99 Bankr. 413**): Denial of motion for default judgment.

Sept. 8, 1989 (**105 Bankr. 494**): Although funds were held by debtor subject to

constructive trust in favor of plaintiff, defendant defeated trust as bona fide purchaser for value. AFFIRMED (J. Reasoner, No. H-C-89-86, 4-16-90) REVERSED 934 F.2d 969 (McMillan, Beam, Rosenbaum), No. 90-1785,(Debtor did not have any right in buyer's account or proceeds of letter of credit and thus creditor's perfected security interest in debtor's accounts did not attach to letter of credit)

In re Hubbard, **LR** 82-451

Sept. 26, 1985 (**70 Bankr. 122**): Mortgagee held in contempt for violating bankruptcy court orders. AFFIRMED 810 F.2d 778 (penalty imposed on mortgagee for violating bankruptcy court's orders was not abuse of discretion, though district court not only released trust lien, but imposed $7649 fine, and district court's judgment did not deprive mortgagee of property without due process).

In re Hudspeth, **HA** 87-02

Aug. 22, 1988 (**92 Bankr. 827**): Arkansas' unlimited insurance exemption statute violates the Arkansas constitution's personal property exemption limit of $500.

In re Barry Hudspeth, **LR** 85-1439M

AP 85-509M (March 26, 1986): relief from automatic stay not granted to ex-spouse to pursue pending contempt action against debtor in state court where state court refused to dismiss contempt action because ex-spouse did not fully explain to state court that action was in violation of the automatic stay.

In re Huntsman Farms, Inc.

LR 82-935-940: Numerous requirements for confirmation of **Ch. 11** plan not met, including not meeting fair and equitable test and best interests of creditors test; not providing for class of interest holders; attempting to substantively consolidate several cases without explanation or disclosure or following the requirements of rule 1015.

In re Hurt,

Attorney fee application for Ch.**13 debtor**.

In re Irons,

October 6, 1994, No. 93-50341: Order denying motion to set aside order to allow claim and objection to claim.

In re Edward and Shirley Inman

March 25, 1986, No. **Jo** 72-76/77M: Bankruptcy court lacks jurisdiction to decide equitable defense to nondischarged tax liability or to adjudicate negligence claim of debtors vs. trustee who failed to pay nondischargeable tax debt from estate proceeds, resulting in penalties and interest accrued to debtors.

In re Kathleen Inmon, **LR** No. 96-43020M

November 27, 1996 (**208 B.R. 455**): **Ch. 13** case dismissed with prejudice on the grounds of bad faith and fraud on the court.

In re Roger Clifton and Fannie Lynne Jackson, **ED, 265 B.R. 176** No 00-11532M, Ch. 7.

June 26, 2001: court sustained Trustee's objection to Bank's motion for surrender of collateral; Bank was unperfected under state motor vehicle laws and its security interest could be avoided under 544.

In re Marvin and Constance Jarrett, **HE** No. 03-13489

2003: Granting debtor's motion to dismiss under Rule 7012 dischargeability complaint for attorneys fees assessed debtor in state civil rights suit: attorneys' cause of action for willful and malicious injury (523(a)(6)) would not lie where attorneys were not injured party; 523(a)(7)not applicable as fine or forfeiture due a governmental entity; 523(a)(17) not applicable because only applies to debtors who are in forma pauperis prisoners, 523(a)(4) not applicable because debtor did not commit defalcation.

In re Jenkins, **JO** 89-208

Jan. 12, 1990: **Ch.13** case dismissed as bad-faith filing; debtor enjoined from refiling.

In re Carl and Linda Johnson, **ED** 88-76

June 28, 1989 **(113 B.R.514)**: Debtor could not discharge ex-wife's entitlement to one-half of debtor's military retirement pay because right to payment was property awarded to ex-wife prepetition.

In re Carl and Maxine Johnson, **LR** 85-772M

June 5, 1986: motion to dismiss for failure to allege fraud with particularity overruled; objection to discharge sustained upon evidence of plan to sell mortgaged property and illegally convert the proceeds.

In re Gaylen N. Johnson, **LR**, **262 B.R. 75**, No 00-44103M, **Ch.7**.

April 18, 2001 : Court denied debtor's motion to convert to 13 upon Trustee's

objection; 706(a) does not provide an absolute right to convert when extreme circumstances exist (minority view); here debtor's misconduct may have warranted denial of discharge under 727 and motion to convert was in bad faith.

In re Harold and Cibul Johnson, **PB** 87-473M

September 28, 1988: **Ch. 12** plan could not be confirmed because secured creditor's real estate collateral was undervalued.

In re Jones Truck Lines, Inc., No. 91-15475

Jones Truck Lines v. Target Stores, **196 B.R. 123**, November 13, 1996, Opinion: Target's prepetition contingent liability on its guaranty to Standard arose at time of contract; so when Target paid on the guaranty during the 90 days prior to bankruptcy because Jones did not pay Standard, it was not prohibited from asserting set-off under 553(a)(2)(B).
Affirmed by District Court November 12, 1996 and by 8th Cir. December 19, 1997, 133 F.3d 922.

Central States I
196 B.R. 483, September 27, 1995, Opinion: Debtor (Jones) allowed to recover preferential transfers from Central States (pension fund) for executory promissory notes payable to Central States from the Debtor for unpaid and accrued pension contributions and health and welfare contributions.

Central States Summary Judgment
166 B.R. 885, January 12, 1994, denying summary judgment to Jones because genuine issue as to insolvency during preference period; denying s.j. to Central States because Collective Bargaining agreement was not defense to preference.

Central States I
July 17, 1996, No 96-5040: District Court (Waters) affirming September 27, 1995 opinion allowing Jones to recover preferential transfers and January 12, 1994 denial of summary judgment.

Central States I
130 F.3d 323, November 25,1997, No. 96-3224, 96-3305.
Court of Appeals (8th Cir.) (Loken) **reversing and remanding 196 B.R. 483**, Jones received new value in exchange for weekly employee benefits payments in form of continued employee services.

Jones v. Amerex Corporation
May 24, 1995: (AP # 93-8741) Order: Jones filed a turnover action against Amerex Corp. to recover $17,424.26 plus interest representing undercharges for transportation of freight. The matter was stayed pending the ICC's

administrative ruling on the issues of: contract versus common carriage, (2) unreasonable rate practice, and (3) rate unreasonableness.

Jones v. Foster's Truck and Equipments Sales, Inc.,
172 B.R. 264, May 13, 1994: (AP # 93-8700) Order: Denied Foster's motion for new trial since Foster's counsel failed to file a timely answer and there was no evidence to constitute excusable neglect.

63 F.3d 685, August 7, 1995: (#94-3860) (8th Cir.): **Reversed Bankruptcy Court and District Court.** Found Bankruptcy Court was clearly erroneous in failing to find that Foster's had demonstrated excusable neglect based on Pioneer factors. Judgment of District Court affirming Bankruptcy Court's denial of the motion to set aside the default judgment is reversed.

Jones v. IXL Manufacturing Company
October 14, 1994: **172 B.R. 602**, (AP # 93-8858) Order: IXL filed a motion for summary judgment regarding Jones' complaint for turnover of $15,703.34 representing undercharges. IXL's motion was denied because the provisions of the NRA are unenforceable in a bankruptcy case because of the anti-forfeiture provisions of 11 U.S.C. § 541(c)(1)(B).

MDFC Equipment Leasing Corp. v. Jones Truck Lines, Inc., District Court No. 93-5170 (Feb. 23, 1994), affirming unpublished bankruptcy order approving form of settlement notice and global settlement and holding that settlement was not de facto plan and court can approve settlement over objections of some parties if in best interest of estate.

In re Ernest and Mary Jones, **LR** 85-1115

January 30, 1987, fees denied to creditor's attorney who pursued successful discharge-dischargeability action against debtors; attorney not employed by trustee or approved by court pursuant to section 503(b)(3)(B).

In re Guy Jones, Jr., **LR** 92-42755M

August 18, 1995**,193 B.R. 503**, substituted order after new trial on merits of objection to homestead exemption, objection overruled because creditor failed to show present attempt to abandon homestead.

April 25, 1995, AP No. 94-4125, order denying debtor's motion to dismiss trustee's complaint for turnover of retirement funds on grounds of lack of subject matter jurisdiction and Erisa argument but granting dismissal without prejudice for failure to join proper parties.

August 2, 1994, AP No. 93-4057M, **(175 B.R. 994)** Order denying debtor's discharge for fraud.

July 12, 1994, ORDER granting objecting creditors new trial on whether or not debtor had abandoned his homestead.

In re Irene Jones, **LR** 85-385

(54 B.R.697): Contract for deed was security device rather than executory contract.

In re Lisa Jones, **LR** 88-1495

Jan. 9, 1989 (**99 B.R. 412)**: Dismissal of case under 109(g)(2) proper only if contested matter pending when debtor voluntarily dismisses prior case.

In re Howard and Betty Juhl

June 30, 1986: district court (Howard) remanded court's sua sponte dismissal of **Ch. 11** debtors petition for a hearing to receive evidence of debtor's lack of good faith.

In re Kerr, **LR** 84-967

Aug. 6, 1985 **(58 B.R.171)**: Objection to discharge; fraud pleading issue, elements under 523(a)(2)(A).

In re Jimmy D. Keller, **LR** 03-16095

Feb. 18, 2005 **(2005 WL 435212)**: Cattle farmer's discharge denied for failure to keep records sufficient to show debtor's financial condition under section 727(a)(3).

In re Bryan Kogut, **HS** 04-72452

June 1, 2005 **(325 B.R. 400)**: Objection to confirmation of **Ch. 13** plan overruled; if tax debt was excise tax governed by 3-year limitation on priority under section 507(a)(8)(E) it was too old to be entitled to priority, and creditor did not establish debt was trust fund tax entitled to priority under section 507(a)(8)(C).

In re Kuebler, 89-40146

June 24, 1993, AP No. 92-4037 **(156 B.R. 1012)**: dischargeability of IRS claim - plan listed secured debt as priority and didn't provide for full payment. (AFFIRMED - Judge Woods).

In re Jacqueline P. L'Heureux, 04-6060

Feb. 25, 2005: **BAP affirmed** bankruptcy court's bench ruling that creditor's six-day delay in removing notice of foreclosure sale cancelled after debtor filed for

bankruptcy was not a willful violation of the automatic stay under section 362(a)(1); even if there was a violation, the debtor failed to prove damages for emotional distress; granting of a motion to dismiss at end of plaintiff's case is authorized by F.R.Civ.P. 52 and F.R.B.P. 7052.

In re Lake Hamilton Resort, Inc., **HS** 04-72002, AP 04-7108

March 10, 2005, Civil Nos. 04-6089: Bob Fewell v. Christmas Mountain, LLC, DISTRICT COURT (JUDGE HENDREN) **AFFIRMED** bankruptcy court's bench ruling denying motion to remand removed action against Debtor to state court but remanding Fewell AP to state court; AP was related matter requiring only proposed findings of fact and legal conclusions; remand was based on equitable grounds under US Code section 1452.

Sept. 14, 2004, Civil No.04-6063: Christmas Mountain v. Lake Hamilton Resort; DISTRICT COURT (JUDGE HENDREN) **DECLINED TO REVIEW** bankruptcy court's permission for debtor to use cash collateral and denial of adequate protection payments to Christmas Mountain; order was not final and not appropriate for interlocutory review under 28 U.S.C. § 158(a) and 1292.

In re Landmark Park & Associates. **LR** 83-258M

May 15, 1986: Motion for reconsideration of court's previous ruling not treated as motion for new trial because no new facts alleged and not valid as motion to amend judgment since Hud reargues its previous position

U.S. v. Landmark Park (**795 F.2d 683**) reversing JGM and J. Roy: HUD had perfected prepetition security interest in rents and profits and was entitled to postpetition collections from mobile home park operation. See **87 Bankr. 565** (J. Arnold).

In re Landscape Associates, Inc., **LR** 85-663

July 1, 1987 (**81 Bankr. 485**): Confirmation of **Ch.11** plan denied because proposed interest rate was not market rate. See related District Court and Court of Appeals Opinions about collusive sale of property of the estate brought by Rick Ramsay, Trustee.

In re Larry Moyer Trucking Inc., **LR** 97-40968M, AP 98-4124.

September 9, 1999: in related proceeding, judgment for contractor on breach of contract claim against project developer; no accord and satisfaction when developer's agent partially paid contractor for extra work performed; Debtor recovered under theories of express and implied contract, quantum meruit, unjust enrichment.

In re Gregory L. Latimer, **LR** 00-43630, AP 02-1114.

Aug. 22, 2002, **Ch. 7**: Discharge injunction under sections 727 and 524 did not enjoin determination of dischaargeability of alimony or support debt under 523(a)(5) by bankruptcy or state court, which has concurrent jurisdiction; seeking dischargeability and entry of judgment after discharge did not violate stay which was no longer in force as to property of the debtor after discharge under section 362(c).

In re Lavender, **TX** 82-037

Aug. 1, 1986. Bank with security interest in stock was not entitled to dividends under section 105(a) because of delay in liquidating the stock.

82-037,Dec. 17, 1984 **(48 Bankr. 393)**: **Ch. 11**. Attorneys required to reimburse estate for unauthorized payment of fees. AFFIRMED 785 F.2d 247

In re Herman and Marilyn Lee, **HA** 89-13051, CMS 89-2545

Sept. 12, 1990:**Ch. 7** Creditor's motion for relief from stay denied because likelihood of successful attack on creditor's lien as a preference.

In re Lee's National Pump and Supply Co, **JO** 86-161M, AP 86-518M

February 1, 1988: **Ch. 7.** Method of perfection of security interest in Mack truck rig was by filing financing statements pursuant to 4-9-302(1) and not by vehicle registration.

In re Leird Church Furniture Mfg. Co., Inc., **LR** 84-855

March 19, 1986 **(61 B.R. 444)**: Plaintiff is entitled to jury trial, Rule 9015 governs, trustee is proper plaintiff, not debtor.

AP 84-40855: Attorney's fees? ON APPEAL (J. Eisele, 2-15-90, LR-C-90-105).

AP 84-558M: June 11, 1985: Case improperly removed to bankruptcy court from state court is transferred to district court.

In re Leonard, 90-12796

Aug. 12, 1992 (**150 B.R. 709**): undistributed funds held by **Ch 13** trustee prior to conversions of case to **Ch 7** did not have to be turned over to Ch 7 trustee

In re Marco Levy, **221 B.R. 559**, **Fla.** 95-22861-BKC-PGH.

March 27, 1998, AP 95-1597-BKC-PGH-A: court sustained objection to discharge and claim of exemptions; Canadian debtor had failed to explain loss of assets to meet liabilities so discharge denied; claim of exemption in homestead denied because debtor lacked domicile in 180 days preceding bankruptcy.

In re Lewis, 86-20024

September 6, 1990

AP 88-413, Sept. 6, 1990: Objection to discharge dismissed as untimely.

AP 88- , Sept. , 1990: Trustee's objection to discharge and complaint for turnover denied because no obligation to turn over postpetition estate property to **Ch.13** trustee and no proof that property still in existence upon conversion to **Ch.7**.

AP 88-456, Oct. 2, 1990: Creditor's security interest in destroyed truck continued in insurance proceeds; insurer liable to creditor for value of truck but entitled to indemnity from debtors.

In re Lifesaver Center, Inc. **LR** 85-1894M

August 5, 1986, **Ch. 11:** DIP's motion to use cash collateral from rents and profits granted; Dip's status as perfected judgment lien creditor under 544 is superior to creditor's unperfected lien in rents and profits under UCC 9-312(5)(a).

In re W.R. Lile, **LR** 97-45878M, AP 99-4008

August 8, 2000: Denying Debtor's discharge upon Trustee's complaint for false oath regarding household furnishings, failing to explain deficiency of assets; failing to keep and preserve records of financial condition; failing to turn over records to Trustee without justification.

In re Catherine Lindsey, **208 B.R. 169, BA** 96-10020, AP 96-1007M

April 21, 1997: Granting Trustee's motion to be substituted for creditor seeking to dismiss its complaint objecting to **Ch. 7** debtor's discharge, even though bar date had passed for objections to discharge.

In re Johnny and Patricia Lindley, **HE** 82-17M

Oct. 17, 1985: Debtors ordered to show cause why they should not be required to return the surplus from the estate to benefit creditors filing untimely claims.

In re Darrow Linn, **HE** 82-72M, CMS 85-213M

August 12, 1985: Relief from stay granted for creditors to dispute lien priorities in state court; outcome will not affect unsecured creditors.

August 9, 1985: AP 84-505M: Purchaser of property of estate bought subject to lien for state property taxes because state not joined as a party under adversary proceeding to sell property.

In re Lloyd, **LR** 86-1880

AP 86-792, Oct. 5, 1987: Prejudgment interest awarded in preference action from date of commencement of suit.

AP 88-332, **142 B.R. 866**: debtor's criminal conviction collaterally estopped his defense in bankruptcy proceeding regarding false statement under oath and withholding info regarding his property.

In re Locke, **LR** 83-204

April 1, 1985 (**50 Bankr. 443**): **Invol. Ch.7** discharge denied under 727(a)(2).

May 7, 1985: Trustee's settlement of denial of discharge claim is approved but that of Bank is denied because of no benefit to estate.

In re Benjamin Long, **HE** 87-21

AP 87-303, June 16, 1988: Lien in mobile home perfected only per Arkansas statutes.

In re Duane Long, **PB** 86-41

Oct. 21, 1987 (**83 Bankr. 579**): Debtor/accommodation maker entitled to notice of sale of collateral; without notice, creditor may not claim a deficiency. **Affirmed,** Judge Howard, May 20, 1988.

In re Evelyn Long, **LR** 81-906M, CMS 86-80M

June 30, 1986. **Ch. 13.** An allowed, post-confirmation claim requires modification of the plan meeting confirmation requirements; creditor's claim allowed as filed unless debtor objects to claim.

In re Anthony and Micki Lybrand, **HS** 04-78412

March 9, 2006 **(2006 WL 581038):** On objection to confirmation of **Ch. 13** plan, court found IRS could allocate prepetition tax refund to setoff the prepetition tax liability of its choice, in this case against its general unsecured claim instead of the unsecured priority claim under section 507(a)(8).

In re Michael and Barbara Lyle, **PB** 85-69M

July 18, 1985. **Ch. 13.** Debtors must cure arrearage under executory contract (lease of vehicle) upon confirmation of plan; cure and provision of payments under plan is adequate assurance.

In re M & P Equipment Co., **LR** 84-455M, AP 85-46M

July 23, 1985. **Ch. 7.** In determination of secured status of Bank's lien, Bank's

security interest in Debtor's accounts did not include proceeds from settlement of Debtor's tort claim for negligence; collateral estoppel of state court judgment precluded characterizing judgment proceeds as accounts; security interest can't attach to judgment for tort claim under 9-104(h)(k).

In re MPG, Inc. **FS** 95-40532M

July 28, 1998, **222 B.R. 862**, AP 97-8054: Creditor's pre-petition exercise of right of reclamation by oral demand, while valid under Arkansas law, was subject to Trustee's power to recover preference because Code requires written demand of return of goods.

December 22, 1997: Order: Bank properly perfected its security interest in rent proceeds by recording mortgage and assignment of rents; Article 9 does not afford means for perfecting such rents; pre-petition security interest is valid in post-petition rent proceeds.

In re Albert and Earlene Macklin, **236 B.R. 403**, **JO** 99-30014M

July 26, 1999, court overruled objection to confirmation by secured creditor; court found, under UCC, no agreement between the parties as to Debtor's right to terminate the lease so the transaction was a sale subject to 1325 and not lease subject to 365.

In re MacMillan Petroleum, **ED** 87-149

Sept. 9, 1988: Fee application for debtor's attorney reduced because services did not benefit estate (should have been liquidated as Ch.7), hourly rates too high, duplicative services, pleadings filed in violation of court order, preparation of fee application, grouping, ministerial tasks.

April 20, 1989 **(1989 WL 162963)**:under consent decree, three former employees entitled to priority for wages under section 507(a)

DC No. ED-89-1057, Oct. 11, 1989 (J. Harris): Affirmed JGM order reducing auctioneer's fee and allowing auction expenses.

June 6, 1990 (**115 Bankr. 175**): Summary judgment as to governing law denied. Summary judgment in favor of MCorp granted because MCorp, which held floating security interest in debtor's inventory, qualified as good faith purchaser for value and defeated equitable rights of reclaiming sellers.

AP 88-392, 88-433, July 24, 1990: Lessor (Moore & Munger) of debtor's pipeline system liable for reasonable rent even though prepetition lease rejected because trustee did not assume it within 60 days. Lessor was entitled to offset repairs from rentals. Lessor was not required to pay prejudgment interest for time it failed to make lease payments because there was no bad faith. Division order

agreement was not executory contract and trustee did not have to assume it. Lessor liable for balance of purchase price of division orders since trustee's breach was not material.

DC No. **ED**-90-1120, Oct. 7, 1991 (J. Harris): Affirmed JGM's holding regarding reasonable rent on pipeline system.

In re Mammoth Springs, **FA** 90-15286

CMS 91-1112, January 17, 1992 (**139 B.R. 205**): Debtor's tax refund considered pre-petition property because cause of refund, loss carry-back from later tax year, occurred pre-petition, even though debtor applied for refund post-petition. Thus, creditor's after-acquired property lien attached to refund.

In re Frankie and Betty Mancle, **HE** 03-18756

Sept. 14, 2004 **(314 BR 397) Ch. 13**: even if future advances by bank to debtors were payoffs and not renewals of original debt, they were secured by original mortgage that provided lien would secure future advances of every kind and character. (Discussion modified by subsequent order to accurately reflect creditor's argument but outcome and holding were the same).

In re Manes, **PB** 85-330

June 25, 1986 (**67 Bankr. 13**) **Ch. 13** (Malicious conduct was not bad faith sufficient to warrant denial of confirmation of **Ch.13 plan**; plan was not feasible).

In re George Markham, **LR** 96-42121

December 5, 1996: Debtor refusing to disclose social security number on petition for religious reasons was not sincere, using religion as pretext; no substantial burden on his freedom of religion; no constitutional privacy rights impugned by disclosure.

In re John Samuel Marlar, **ED** 98-11358

Feb. 18, 2003, AP 02-7067, **Ch. 7., 288 B.R. 823:** B.R. Court bound by mandate of 8th Cir. in earlier appeal of fraudulent transfer action that proceeds of trustee's fraudulent transfer claims were not to be used to satisfy claim filed by debtor's ex-wife.

January 23, 2004: Court previously denied Debtor's motion for reconsideration of its order dismissing appeal of order allowing Trustee's attorneys fees because debtor did not timely file designation of record pursuant to Rule 8006. On appeal to **District Court, Judge Barnes**, Court found B.R. court was without subject

matter jurisdiction to dismiss appeal once timely notice of appeal was entered pursuant to Rules 8001 and 8002; only district court or BAP may dismiss appeal after timely notice of appeal is filed. No local rule of the BAP allows bankruptcy court to retain jurisdiction after notice of appeal.

Feb. 2, 2004, 02-CV-1185, Amendment of Judgment of Jan. 23, 2004, under F.R. Civ. Proc. 59, **District Court, Judge Barnes**: District Court erred in finding that no local rule exists to allow Bankruptcy court to dismiss an appeal where transcript has not been lodged. Local rule of district court exists (Local Rule 83.1 (II)(d)(A))but provides that the reconsideration of the dismissal must be referred to the district court; also, there was no evidence of bad faith or prejudice to the appellee.

Sept. 7, 2004, 04-CV-1001, **REMAND BY DISTRICT COURT (JUDGE BARNES)**: on appeal of bankruptcy court's order granting Trustee's attorney fees and sanctioning debtor by awarding Trustee's attorney an additional fee, bankruptcy court must expressly follow or reject lodestar calculation in findings of fact.

Sept. 27, 2004, On remand, bankruptcy court found fees for chapter 7 trustee's attorney were reasonable under lodestar method and section 330; Johnson factors used to determine reasonableness.

March 21, 2005, 04-CV-1025: On appeal of Sept. 27, 2004 order of bankruptcy court, **DISTRICT COURT (JUDGE BARNES)** affirmed award of attorney's fees pursuant to section 330.

March 8, 2005, 04-CV-1047, **DISTRICT COURT (JUDGE BARNES): Affirming** bankruptcy court denying debtor's motion to dismiss case (bench trial) based on purported fact that debtor is a farmer and could not have been placed in involuntary bankruptcy five years previously pursuant to section 303(a); fact that debtor was farmer must be timely raised as an affirmative defense or defense is waived. **Affirmed by 8th Circuit**, December 22, 2005: status as a farmer is affirmative defense that mus be timely raised and is not jurisdictional.

In re Van and Sarah Martin, **ED** 94-11210M, Civil No. 95-1048.

September 15, 1995: District Court for Western District (Barnes, J.) **Affirming** B.R. Court's bench ruling denying confirmation and giving Debtors 20 days to convert or case would be dismissed; on grounds that plan not feasible; secured creditors received less under the plan than in a Ch. 7, lacked adequate protection for collateral.
Prtys: Debtors, Smackover State Bank.
Attys: Robert Depper, W.H. Armstrong.

In re Martin, **LR** 90-41066

Nov. 30, 1990: **Ch. 11** Priority of liens in sale proceeds of home; validity of assignment of mortgage and note irrelevant because note was properly negotiated when indorsed in blank.

In re Mastercraft, **157 B.R. 914**, 92-0682, **S.D. Fla**.

Aug. 13, 1993: ordinary course of business; **affirmed**, 94-6125-civ-Aronovitz.

In re Steve Masters, **HE** 00-20359M, AP 01-2008

Jan. 2002 (**273 B.R. 773)**: Trustee could not avoid Government's liens in debtor's personal property despite the fact that error in clerk's office resulted in temporary loss of perfection by Government.

In re Mathis Ins. Agency, Inc., **LR** 84-1191, 1192
In re Clemothene Mathis, **LR** 84-1192M

May 29, 1985 (**50 Bankr. 482**): Debtors' Motions to dismiss **Ch.7** case denied.

In re Matlock, 92-30527

April 22, 1993 **(154 B.R. 867)**, AP No. 92-3034: objection to **Ch 13** plan - statutory foreclosure, court abstained in interests of comity.

In re Michael and Cindy May, **ED 02-71935**

April 3, 2006: court held that **Ch. 7** debtors, who exempted real property pursuant to section 522(b)(1), could avoid creditor's judicial lien pursuant to formula set out in 522 (f)(2)(A).

In re B.J. McAdams Inc., 90-40695M

August 28, 1997: court declined to recuse, but upon a subsequent motion by B.J. McAdams, the court did recuse.

In re McCarther Enterprises, Inc., **LR** 86-539

AP 88-52, Aug. 24, 1988: Trustee's complaint dismissed for failure to establish all elements of preference. AFFIRMED (J. Howard, 3/6/89, LR-C-88-697)

In re McCrary's Farm Supply, Inc., **LR** 81-666, **Ch. 11**

July 25, 1985, AP 84-149: (**57 Bankr. 423**) Pretrial order granting demand for jury trial.

Nov. 11-1-85, AP 84-149M: Motion for Summary judgement denied in preference

action in which movant-defendant asserted contemporaneous exchange and new value exceptions.

In re McCraw, **FS** 84-331

Aug. 6, 1985 (**58 Bankr. 175**): Homestead exemption available to debtor married when property purchased and who lived with husband on property.

In re Scottie McDonald, **ED** 01-90070, AP 02-7024

April 1, 2003: **Ch. 7**: Denying motion for summary judgment on judicial estoppel principles that are based on unresolved material facts

In re Pat Hardy and Charlotte Cecille McGowan, **FS** 85-166M, AP 85-551M, 552M

August 13, 86: **Ch. 7.** Assignment to Bank of limited partnership by debtors was not prohibited by partnership agreement and was valid; no equity was left for the estate so motion to abandon was granted.

In re McMullan, **196 B.R. 818**, **ED** 94-11228M, AP 94-1516

April 18, 1996: Mortgagee moved to foreclose on notes and mortgages secured by oil and gas leases and equipment in case removed to BR court; court allowed Trustee to sell property to be distributed pursuant to the Code; court held: no accord and satisfaction; no evidence of forgery; other indebtedness clauses valid to secure notes and bind debtors; no evidence of Mortgagee's disposal of collateral without owners' consent; no violation of Equal Credit Opportunity Act when Mortgagee required wife to sign notes since leases and equipment used as collateral were community property; wife acted in bad faith in subsequently filing a Ch. 13 when she had no income and her debt total made her ineligible for consumer reorganization. **Affirmed, District Court and 8th Circuit, cert. denied by U.S. Supreme Court.**

Sept. 30, 2002: District Court, Judge Barnes, affirmed B.R. court bench ruling denying motion to value claims and set priorities, order denying motion to abandon, and order approving Trustee's amended application for compensation and expenses.

Dec. 16, 2002: District Court, Judge Barnes, denies Debtors' motion to amend his finding that their brief contains no legal authority for their argument as to how proceeds from sale of the property should be disbursed.

In re Mark McNutt, **LR**

Court denied attorneys' (Crockett & Brown) claim for fees in oral findings from the bench. AFFIRMED, District Court (Judge Woods), No. LR-C-99-399 (Aug.

26, 1999).

In re Gale McVicker, **234 B.R. 732**, **LR** 98-42405M, AP 98-4169.

June 14, 1999: credit card debt to Sears nondischargeable when Debtor committed actual fraud in incurring the debt because she did not intend to repay when making the charges; court using totality of circumstances analysis.

In re Medical Professional, Ltd. **LR** 84-1367M

In re Jimmy Richard Medlock, **FS** 85-306M, AP 86-166M

August 1, 1986: **Ch. 7.** In dischargeability suit, debt was in the nature of a property settlement and not alimony, maintenance or support, despite being called alimony in divorce proceeding.

In re Mel-Hart Products, Inc., **LR** 90-40399

Nov. 13, 1991 (**136 B.R. 197**): Trustee's objections to two claims: 1. debtor's landlord's claim for administrative priority for rent due to trustee's use of premises; and 2. administrative claim due to loss of adequate protection by purchaser of debtor's assets.

June 23, 1993 (**156 B.R. 606**): temporary employee organization seeking priority status.

In re Mencer, **LR** 84-865

May 6, 1985 (**50 Bankr. 80**): Debtor's obligations under "marital settlement agreement" were nondischargeable alimony, maintenance or support under 523(a)(5).

In re Mendenhall, **ED** 84-052

Aug. 13, 1985 (**54 Bankr. 44**): Burden of proof in objection to confirmation of **Ch.13** plan.

In re Alex Merayo, **LR** 04-17258

Jan. 27, 2005, **319 BR 883, Ch. 13:** where no proof of egregious conduct was adduced prior to dismissal with prejudice, court interpreted phrase to mean dismissal with bar to refiling for 180 days pursuant to section 109(g).

Nov. 8, 2005: court denied confirmation and converted case from **ch. 13 to 7** upon showing of bad faith under section 1325(a)(3).

In re Mid-America Travel, **HE** 90-20060M

April 20, 1992 **Ch. 11.** Creditor that acquired claim under equitable subrogation pursuant to section 507 was precluded from claiming the priority of the original holder in liquidating plan.

In re Mid-South Auto Brokers, Inc., **LR** 99-40839

April 1, 2003, **290 B.R. 658, Ch. 7**: Payments made by Debtor to Bank to satisfy loans guaranteed by shareholders benefitted shareholders who were insiders, but Bank actually received payments and was not insider for preference purposes; Trustee failed to prove Bank received more than in a hypothetical Ch. 7 liquidation; Debtor received reasonably equivalent value for payments on loans.

In re Mid-South Cabinets & Millwork, Inc., **LR** 86-1773

AP 88-503, Sept. 5, 1989 : Bank paid creditor for check transferred by debtor but not paid by Bank's midnight deadline. Motion for summary judgment denied in preference action where affidavits did not establish which party's funds were transferred in satisfaction of the check.

AP 88-511, Oct. 24, 1990 (**125 B.R. 16**): Trustee entitled to judgment against creditor in preference action; creditor failed to establish affirmative defense of ordinary course of business but was entitled to offset subsequent unsecured credit extended to debtor.

In re Charles Delano and Linda Carol Miller, **JO** 90-30378M, AP 92-3035

August 17, 1993 (**159 B.R. 849)**: In action to determine dischargeability of omitted debt after discharge, pursuant to 727(b); in no asset case, creditors don't file proofs of claim unless notified to do so. So an unscheduled creditor in a no asset case is not deprived of right to file proof of claim; therefore, claim is dischargeable despite the wording of 523(a)(3)(A).

In re Warren and Joann Miller, **HE** 90-20025

** Conf. of **ch. 12** debtors' plan: creditor FmHA attended first meeting of creditors. Debtors filed plan, and filed subsequent modified plan. Court sustained trustee's objection to plan, but objection was taken care of by modification. Court entered ex parte order confirming modified plan. FmHA filed objection based order of filing of documents: modification was filed before objection to plan granted. Also FmHA argued that it lacked notice due to insufficient service. FmHA appealed to Dist. Ct. D.C. remanded to Bankr. Ct. for determination regarding sufficiency of notice to FmHA.

140 B.R. 499: plaintiff's motion to set aside order confirming plan was treated as motion for new trial for lack of notice and granted. Affirmed, District Court and 8th Cir.

In re Franklin Doty Miller, **FA** 89-15098, 89-125

Jan. 30, 1990: Fescue seed delivered to debtor by farmers was held pursuant to bailment contracts and was not property of estate; therefore, it was not subject to security interests granted by debtor in its after-acquired inventory. REVERSED (J. Waters, 9-14-90, No. 90-5026)

AP 89-5507, Mar. 14, 1990: Bank claimed lien in cattle. Court found cattle owned by partnership and not individual debtor who was partner in the partnership. Cattle not estate property; court did not have jurisdiction over partnership so complaint dismissed.

AP 89-5506, March 8, 1991: FmHA claimed a lien in equipment, which FmHA claims is property of the debtor. Creditors' committee argued that the equipment is property of the partnership; thus, FmHA does not have a valid lien in the equipment. The committee filed AP against FmHA to recover a payment as a postpetition transfer to an unsecured creditor. Court: the creditors' committee did not establish a prima facie case that the lien was invalid. REVERSED (J. Waters, 10-11-91, 91-5051)

In re Minnis, **PB** 89-30235

Aug. 3, 1990: Objections to confirmation of **Ch.12** plan sustained (unfair discrimination in one class of claims, inappropriate interest rate without evidence of market rate of interest, liquidation analysis, discussion of misc. provisions contra to Code).

In re Ramona Moix-McNutt, **LR** 97-40003M

April 29, 1998 (**220 B.R. 631**): Sanctioning Debtor's attorneys for preparing false petition, unauthorized transfers under Rule 9011, 105(a); sanctions included fining law firm; reimbursing estate for monies acquired in real estate transaction; removing Brown and firm from case and denying all fees; suspending Brown and firm from representing debtors for four years.

March 15, 1999: District Court (Wright) **reversing** in part April 29, 1998, order: No violation of Rule 9011 because Brown did not sign the petition; former rule did not allow sanctions of law firm; thus no fine can be levied under Rule 9011; no fine can be levied under 105(a) if punitive in nature; 105(a) permits reimbursement, removal, and disallowance of fees but not suspension of attorneys.

August 22, 1997: Debtor's motion to recuse pursuant to 28 U.S.C. 455(a)

denied; court's inquiry into Debtor's part in the family business was necessary to determine whether to grant relief from stay, not denigrate her role as housewife. **Affirmed** by 8th Circuit BAP, **215 B.R. 405**

In re Molitor, 93-20101

March 15, 1995 (**183 B.R. 547)**: (AP # 94-2007) Order denying defendant's motion for summary judgment dismissing AP was denied. Trustee filed AP to determine possession of property of trust and sought its turnover.

In re John R. Moody, **LR** 86-702M, AP 86-398M

June 9, 1987 **Ch. 7** Debtor denied motion for turnover and damages in connection with the sale of antique automobile by wife while Debtor was incarcerated; Debtor gave wife permission to sell; car no longer property of estate.

In re Rosalee Clara Moody, **FS** 90-12069, AP 2527M

July 14, 1992: **Ch. 7: Widow-ch. 7** debtor endorsed checks from Ch. 13 Trustee to deceased husband without authority; Ch. 13 Trustee's complaint against bank dismissed because No direct cause of action for breach of warranty is created by virtue of 4-4-207; funds received by Ch. 7 trustee must be turned over to decedent's estate for proper administration.

In re Aubrey and Rebecca Morgan, **JO** 98-31402, AP 99-3004
In re Clarence Cearley, **JO** 99-40758, AP 99-4078

247 B.R. 776, April 25, 2000: In complaints for dischargeability of student loans for undue hardship, Morgans' loans were discharged while Cearley's were not; court used totality of circumstances approach endorsed by BAP and 8th Cir.

In re Joe B. Morris **FA** 91-15568
In re Virginia Morris **FA** 91-15649

May 28, 1992: Granted creditor's motion for joint administration. Debtors had to choose between state or federal exemptions, husband couldn't take state while wife take federal.

In re Terri Lynn Morris, **ED** 00-11167M; AP 00-1517.

November 16, 2001: **Ch. 7.** Court granted State's motion to dismiss debtor's dischargeability of student loan complaint; state correctly asserted 11th amendment immunity.

May 20, 2002 **(277 B.R. 910)**: Pursuant to section 523(a)(8), largest debt to student loan creditor was dischargeable for undue hardship, but six other student

loans were nondischargeable because Debtor was able to pay.

In re Mothershed, **JO** 85-176

March 26, 1986 (**62 Bankr. 113**): **Ch.13** plan cramdown would not be permitted without payment of market rate of interest; issue of adequate protection could not be decided until plan modified.

In re National Hydro-Vac Industrial Services, **PB**, No. 01-50466M, **Ch 11, later 7**.

May 24, 2001: **262 B.R. 781**: court denied Bank's motion for relief from stay to terminate bank card merchant agreement; Agreement was executory contract under 365 but not contract to extend financing so 365(c)(2) n/a; not a personal services contract under 365(e); code invalidates terminable at will clauses in contracts when reason of termination is predicated on condition of bankruptcy filing.

June 15, 2004: **314 B.R. 753**: Upon motion for turnover of equipment by trustee, court held two pieces legally sold upon debtor's acceptance of buyer's offer but failure to remit proceeds in which defendant was to act as broker was conversion and defendant could not set off proceeds against debt to defendant; punitive damages were warranted.

In re National Transport Services, 90-12044

July 2, 1993 **(156 B.R. 615)**, AP No. 92-7673: denial of jury trial because creditor filed claim, even though claim withdrawn before motion for jury trial. AFFIRMED: Judge Hendren, July 13, 1994.

In re Nolen Tool Co., **FS** 84-151

May 30, 1985 (**50 Bankr. 488**): **Ch.11**. Objection to confirmation sustained; Plan cramdown of creditor's debt did not pay present value of impaired claim at market rate of interest, did not maintain indubitable equivalent of collateral, so was not fair and equitable.

In re N.S. Garrott & Sons, **JO** 83-215
In re Eastern Arkansas Planting Co., **JO** 83-216M

March 26, 1986 (**63 Bankr. 189**): On remand from District Court, Court clarified previous order as to why attorneys fees were reduced for conflict of interest in that same attorneys represented the two estates which were indebted to each other.

Sept. 11, 1985: Wells Fargo failed to file timely notice of appeal in AP 84-310M; time would not be extended for excusable neglect.

Sept. 9, 1985: **772 F.2d 462**, 8th Cir. **REVERSED** district court (J. Woods) and bankruptcy court's ruling (unpublished, not on file). 8th Cir held escrow fund was property of the estate but state law imposed constructive trust on fund to satisfy mortgages of the bank when debtor submitted false information to title insurer upon which Bank relied, debtors and title insurer intended payment of mortgages through escrow as essential part of title insurance arrangement.

July 23, 1985 (**54 Bankr. 221**): Attorney Fee application reduced because of conflict of interest, excessive fees, blended rate.

June 27, 1985, AP 84-310M: SBA had prior lien to Wells Fargo in Debtors' equipment because subordination agreement from SBA to Wells Fargo had expired

Dec. 7, 1984 (**48 Bankr. 13**): Confirmation denied of **Ch.11** plan calling for substantive consolidation of estates; plan faulty because incorrect classification of debtor partnerships, improper cramdown where present value of secured claim not paid at market rate; disclosure statement did not propose consolidation; attorneys for the two DIPs had conflicts of interest because they also represented interest holders of each estate.

In re O'Connor, **JO** 83-225

June 11, 1984 (**42 Bankr. 390**) **ch. 13**: Taking of default judgment in garnishment proceeding violated automatic stay, was wilful and would result in damages, costs and attorneys fees from creditor to debtor.

In re John E. Oldner, **LR** 94-42031M,

September 10, 1998: **224 B.R. 698**, AP 96-4205: Trustee's fraudulent conveyance action brought under constructive fraud theory alleging transfers from Debtor through his corporation to defendant for payroll services were for less than reasonably equivalent value to the Debtor. Court held first transfer was a loan; second transfer was for reasonably equivalent value; no fraudulent conveyance.

Aug. 18, 1995: **191 B.R. 146,** AP 94-42031M: Holding Debtor could not exempt homestead outside city limits as rural because character of the property was urban "megalapolitan."

In re Owens, **LR** 89-42664

Aug. 3, 1990 (**120 Bankr. 487**) **Ch 13**: GMAC's objection to confirmation of **Ch.13** plan sustained; wholesale value as of date of confirmation hearing is proper standard for valuing collateral; no evidence that contract rate is current market rate so contract rate not approved.

In re David and Glinda Owens, **HE** 03-17378, AP No. 04-1171

March 7, 2005 **(322 B.R. 411)** Bank failed to show that it reasonably relied on debtor-farmer's materially false financial statement or that debtor omitted liabilities with intent to deceive pursuant to section 523(a)(2)(B).

In re Ozark Acoustical Const., 90-42175

AP. NO. 91-4049: Plaintiff waived right to setoff for materialmen's lien owed by Debtor and paid by Plaintiff when Plaintiff paid Trustee money Plaintiff owed to Debtor.

In re Parker, 91-11139 **Ch 7**

June 23, 1992 (**142 B.R. 327**): debtor could retain mobile home while making monthly payments without reaffirming debt.

In re Janet Lynn Parker, **HE** 04-18019

April 12, 2005 (**322 B.R. 856)** AP 04-1316: Court determined school teacher's student loan debt would be discharge because repayment would impose undue hardship pursuant to 523(a)(8)(2000). **Reversed, 8th Cir. BAP, 328 B.R. 548**, August 8, 2005: Debtor could repay debt through William D. Ford Consolidation Program without undue hardship.

In re Patel, **ED** 89-30

AP 89-1503, Sept. 11, 1989: Dischargeability complaint under 523(c) timely where clerk's notice erroneously stated deadline was "to be set."

In re Dipakkumar and Kokilaben Patel, **HS** 05-73715

Jan. 10, 2006: Court sustained creditor's objection to confirmation of **Ch. 13** plan but found contract for deed (contract for sale of real property) was unconscionable and would not be enforced.

In re Paul and Myra Pearson, **PB** 84-327, CML 85-17M

March 25, 1986: Complaint to avoid lien impairing an exemption dismissed with prejudice when parties agreed to submit upon stipulations; only stipulations submitted were photographs without any brief or explanation.

In re Roy & Elizabeth Peeler, 88-20142 **CH 7**

145 B.R. 973: action to determine extent and validity of claim of a security interest. Claim denied due to inadequate property description.

In re Gary and Nancy Pendleton, **225 B.R. 425**, **LR** 95-43358M.

September 29, 1998: Personal injury award claimed as exempt was disposable income and not reasonably necessary for the Debtors' expenses such that the proceeds would be used to fund the plan.

In re Donald Lynn Pierce, 02-24536, **LR, Ch. 13**

Nov. 15, 2004, 04-0040, **DISTRICT COURT (JUDGE WILSON) AFFIRMED** bankruptcy court's policy of granting objections to claims unless a response and request for hearing is filed within 30 days; creditor filed no response to objection to his claim but appealed on the basis that he had no evidentiary hearing as prescribed under section 502(b). Rule 9007 grants bankruptcy courts discretion to set the particularities of notice procedures. **Affirmed, 8th Circuit,** Jan. 25, 2005: section 102 defines "notice and a hearing" to authorize an act on negative notice without hearing if notice is given properly and hearing not requested by a party in interest.

In re Nguyen (See Dang, above), LR 88-589

Nov. 4, 1988 (**96 Bankr. 185**): Objection to confirmation of **Ch.13** plan sustained because violated 1322(b)(5) by proposing long-term payout of debt that matured prepetition.

In re Plafcan, **HE** 89-20021

Oct. 24, 1989: Order denying confirmation on basis of feasibility.

Feb. 3, 1988 (**93 Bankr. 176**): Consolidated **Ch.12** plan of individual debtors and corporation not confirmable; individual debtors not eligible under 101(17)(a) and 109(f).

In re Price, **264 B.R. 8**, **LR** No. 98-44537M, AP No. 99-4190

June 15, 2001: debt for injuries from gunshot wound inflicted by debtor on plaintiff was dischargeable because evidence did not show willful and malicious injury by preponderance of evidence under 523(a)(6).

In re Roy and Lavonda Price, **313 B.R. 805, LR** No. 03-13601, AP No. 03-1258

July 22, 2004: court denied motion for summary judgment filed by financial services company; sale of debtor-serviceman's future military pension rights for lump sum payment was prohibited by federal law, 37 U.S.C § 701, and fact that debtor redirected payments to himself contrary to the contract did not constitute larceny or embezzlement under section 523(a)(4).

In re Prieto, **258 B.R. 518**, **Fla**. No. 00-12476 BKC-RAM

Jan. 30, 2001: credit card debt to American Express was nondischargeable because of fraud under 523(a)(2)(A).

In re Prime Motors, Inc., **Fla.** No. 90-16604

June 29, 1993 - Administrative expense claimant not entitled to priority status under 1114(a) because neither retiree nor dependant.

In re James Pruett, **220 B.R. 624**, **LR** 97-41491M, AP 97-4072

December 15, 1997: Insurance company advancing monies on future commissions may recoup advances from agent as they accrue post-petition; no employment discrimination against Debtor by employer based on the evidence.

In re Christine A. Ragar, **LR** 91-41490

140 B.R. 889: ct. held debtor's attorney in criminal contempt for continued representation after being removed by the court for conflict of interest. AFFIRMED **3 F3d 1174** (8th Cir. Aug. 30, 1993).

In re Rainey, Dist. Ct. No. PB-C-425E (J. Eisele)

Dec. 16, 1988: Debtor could not amend petition to add wife as a joint debtor. Reversing JGM bench ruling.

In re Ramey, **HE** 85-01

Jan. 6, 1986 (**59 Bankr. 527**) **Ch. 7**: Dischargeability of support obligations to former wife; joint debts to bank and landlord were property settlement, not alimony, maintenance and support and was dischargeable under former law, 523(a)(5).

In re Tommy Ramey, **HE** 02-20705M

Nov. 11, 2003, **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in Ch. 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.

In re Leroy and Necie Randolph, **LR** 99-45183M

September 27, 2000: denying U.S. Trustee's motion to dismiss Debtors' Ch. 7 petition for substantial abuse.

In re Martin and Monica Ray, **LR** 97-44059M, AP 97-4191

April 9, 1998: Prior to bankruptcy, chancery court decree awarded forfeiture and immediate possession of Debtors' home to creditor under contract for sale when Debtors defaulted such that Debtors had no property interest when petition filed.

In re Reddell, **HE** 87-12M

August 31, 1987; **Ch. 12.** Confirmation denied based on various plan provisions not in compliance with 1225 because of improper classification, improper subordination of liens, and other issues.

In re Reed, **PB** 86-450

Aug. 3, 1988 **(95 Bankr. 626)**: Fees for **Ch.11** debtor's attorney incurred in defending dischargeability complaint not compensable from estate because did not benefit estate. AFFIRMED (J. Woods), AFFIRMED (8th Cir. **890 F.2d 104**)

September 6, 1987: court denied motion to dismiss dischargeability complaint for fraud, embezzlement, defalcation under 523(a)(4); facts pleaded with sufficient particularity.

In re Reeves, **HE 87-159**, **Ch. 7**,

Feb. 24, 1989: Writ of execution expired which was returned unsatisfied prior to bankruptcy.

June 6, 1990: Motion for recusal denied; entry of discovery order is not evidence of bias in this case.

AP 89-2018, Feb. 20, 1991: Motion to dismiss granted as to RICO allegations; trustee did not have standing to assert as to prepetition conduct because debtor did not have prepetition cause of action (no injury); postpetition conduct did not amount to "pattern of racketeering activity."

Ap. Nos. 89-2018; 89-2019; 89-2020: Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied. AFFIRMED, District Court, Judge Eisele, with remand for an accounting by Reeves Trucking Inc to see if any of the assets are not reachable by Trustee under the constructive trust; 8th Circuit affirmed in part and reversed in part with remand to determine if involuntary liquidation of farm corp. is appropriate as this can be determined by BR and District Court as a related matter; br court must decide if RFI was mere conduit under 550

In re James & Sarah Rhodes, **Ch 7**

June 23, 1992, **(147 B.R. 492)**: IRS in willful contempt of automatic stay by

refusing to discontinue its postpetition tax lien until debtors agreed to convey refund checks in partial payment. AFFIRMED, **155 B.R. 491**, District Court (Feb. 18, 1993).

In re Richter, **LR** 90-193

Mar. 7, 1991: Objection to confirmation of **Ch.13** denied even though filed on heels of chap 7; no evidence of bad faith, no evidence debt could not have been discharged in the Ch. 7.

In re Riley, **LR** No. 01-42071

August 22, 2003, **297 B.R. 122,** AP 02-1364: Trustee could avoid Debtor's payments on credit card pursuant to section 547(b); Affirmative defense of contemporaneous exchange for new value under 547(c)(1), but 547(c)(4) might have been available if pleaded.

In re Roberts, **LR** 02-1345

2003 **Ch. 7**: Under article 9-302, only way for creditor to perfect security interest in automobile not held as inventory by debtor is to file under the state Motor Vehicle Act; Act gives trustee, as perfected judgment lien creditor under section 544, priority over liens not perfected under the act; bank's security interest unperfected under Act may be avoided by Trustee.

In re Rose, **HE** 85-138M, AP 85-427M.

September 25, 1986, **Ch. 7**: Debtors not denied discharge under 727 because fully encumbered property which was transferred did not deplete assets available to pay creditors; debt did not arise from willful and malicious injury under 523(a)(6) but was the result of embezzlement and would be nondischargeable under 523(a)(4).

In re Rodriguez, **ED** 86-139

June 19, 1987 (**82 Bankr. 74**): Debtor could not exempt interest in employer-sponsored Erisa savings plan since could receive trust corpus at discretion (not spendthrift).

In re Mae Rolle, **218 B.R. 636**, **Fla.** 96-17214-BKC-AJC, AP 97-0280-BKC-AJC-A.

February 20, 1998: **Ch. 13**: Under complaint to determine extent of Mortgagee's lien, Mortgagee did not take security interest in collateral in addition to the Debtor's residence such that Debtor was bound by anti-modification provision of 1322(b)(2).

In re Maria Ruiz, **LR** 00-44294M, AP 004157

December 12, 2001: **Ch. 7:** Debtor could partially discharge one of two student loans because of undue hardship.

In re Russell, **ED** 84-58

March 28, 1985 (**60 B.R. 42)** Appointment of trustee in **Ch.11** case.

April 5, 1985: Motion to recuse by Debtor denied.

September 12, 1985: Compromise settlement approved except as to co-trustees' agreement to compromise their right to object to debtor's discharge with regard to Emerald Isle transaction.

October 3, 1985: application for payment for two appraisals granted as to one but denied as to second because work proceeded after Trustee was appointed and directed work cease.

April 21, 1986: Trustees prevailed on defense of usury when Bank attempted to secure repayment of debt by filing complaint for recovery of lease payments that were collateral for note.

AP 87-103, June 21, 1988: Debtor's election to carry forward net operating loss irrevocable and trustee could not set aside, summary judgment granted. **AFFIRMED** (J. Harris 10/4/89, No. 88-1112) **REVERSED** (3-7-91, **927 F.2d 413**)

June 14, 1989 (**101 B.R. 62)**: Trustee's objection to claims of Snider and Gibson; equitable subrogation and perfection of security interest in stock without possession issues. AFFIRMED (J. Harris 11/30/89, No. 89-1110).

Oct. 19, 1989 (**109 Bankr. 359**): Trustee's objection to claim of creditor for deficiency from foreclosure sale sustained because trustee was not party to foreclosure action and claim was unconscionable.

Aug. 24, 1990 (**121 Bankr. 16**): Creditor of corporation wholly owned by estate was entitled to corporate funds because not property of estate.

AP 89-1514, Sept. 7, 1990 (**123 Bankr. 48**): Complaint for turnover brought by trustee dismissed because corporation was real party in interest, even though its charter had been forfeited for nonpayment of franchise taxes.

April 23, 1993, **154 B.R. 723**, AP No. 87-103: On remand from **reversal** by 8th Circuit, 927 F.2d 413, turnover of NOL carryforwards denied because no intentional fraud proved. **Reversed** and remanded by district Court (Barnes): Trustee could recover because no equivalent value for the transfers. **189 B.R. 190** (April 22, 1994).

August 10, 1993, AP No. 91-1505: denied termination of condo project by tenants.

September 26, 1994, AP No. 87-103M: upon remand from District court (**189 B.R. 190**), court found NOL carry forward election was transfer for less than reasonably equivalent value when debtor insolvent. **Affirmed**, District Court, **187 B.R. 287** (July 31, 1995).

In re Annette B. Sabala, **HS** 05-6029

Dec. 8, 2005, appeal from bench ruling sanctioning creditor for violating discharge injunction by filing second complaint to determine dischargeability after dismissal of first complaint and granting of debtor's discharge. **AFFIRMED, BAP 8TH CIR.**: Appeal of sanctions was timely, but award of sanctions was appropriate.

In re Sanders, **ED** 84-90

Aug. 26, 1987 (**81 Bankr. 496**): Confirmed plan releasing guarantor's liability had res judicata effect in subsequent proceeding.

Jan. 21, 1987, AP 85-184M: Debtor's guaranty of assignment of cd to secure note did not apply when loan renewed at higher interest rate without notification to guarantor; lien on Debtor's cd was released. AFFIRMED: District Court, Judge Harris, March 11, 1988.

Jan. 21, 1987, **(75 B.R. 751)** AP 85-186M: Debtor who was accommodation maker or endorser on note by virtue of mortgage lien on her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note. Affirmed, District Court, Judge Harris, March 11, 1988.

Jan. 21, 1987; **75 B.R. 746;** AP 85-185M: Debtor who was accommodation maker or endorser on note by virtue of lien on cd as her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note, Debtor husband not agent for wife such that his consent implied her consent. Affirmed, District Court, Judge Harris, March 11, 1988.

Jan. 21, 1987; **75 B.R. 761**, AP 85-189M: Identical issues and outcomes as above with regard to co-maker, accommodation maker's liability on note extended without her consent, issues decided as to Merchants & Planters Bank. Affirmed, District Court, Judge Harris, March 11, 1988.

Jan. 21, 1987; **75 B.R. 757**, AP 85-188M: Identical issues, outcomes and parties as above, with wife as co-maker on note who did not consent to extension and higher interest rates. Affirmed, District Court, Judge Harris, March 11, 1988.

Jan. 21, 1987; AP 85-183M: Identical issues, outcomes and parties as above, with collateral being real property. Affirmed, District Court, Judge Harris, March 11, 1988.

In re Scott, **ED** 87-177

Jan. 17, 1990 (**113 Bankr. 516**): (1) Individual debtors created corporation and transferred business assets to it; corporation acquired inventory and granted security interest to creditor. Bank's security interest in after-acquired property of individual debtors was defeated by inventory creditor under Ark. Code Ann. 9-402(7). (2) Bank wrongfully attached business assets, but debtors did not prove damages. AFFIRMED (J. Harris 4/19/90 No. 90-1014)

In re Sellers, **ED** 89-11071

July 15, 1991: Court applied Johnson factors to determine attorney's compensation for services rendered to debtors.

In re Craig Shackleford, Jr. **ED** 85-29M
In re Craig Shackleford Farms, Inc. **ED** 85-30M

Aug. 17, 1987: court sua sponte converted **Ch. 11** case to Ch.7 for failure to obtain a confirmed plan within a reasonable time, failure to file operating reports, selling stock without authorization in violation of 363(c).

Aug. 16, 1985 (**53 Bankr. 564**): Counsel's simultaneous representation of Ch.11 corporate DIP and equity security holder/DIP/creditor created conflict of interest. See In re Hoffman (above), which is indexed according to all issues in this case.

In re Steven and Linda Simpson, **JO** Bap 99-6030EA **240 BR 559**

Nov. 5, 1999: **Ch. 13.** 8th Cir. Bap upheld BR bench ruling that because purchaser of foreclosed property had not filed deed of trust before debtors filed bankruptcy and automatic stay went into effect, sale not final. Bap said appeal was moot because plan curing default was confirmed while appeal pending and trust holder did not appeal confirmation order.

In re Bobby & Drucella Sisco, No. 91-13175 **Ch 7**

Nov. 16, 1992 (**147 B.R. 495**): IRA exemption allowed because reasonably necessary for support.

In re Larry Slaughter d/b/a Ark-La Wood Co., **ED** 87-11039

AP 90-1523, 3-year statute of limitations applies to an action based upon an oral contract, holding against the trustee who contended that the written portion of the contract was breached, thus applying the shorter statute of limitation applicable to breach of written contracts.

In re Ben Smith, **TX** 02-74250

December 4, 2002, **286 B.R. 104, Ch. 13:** Objection to confirmation sustained where Debtor who filed Ch. 13 less than 180 days after former case dismissed had burden of showing eligibility because prior case was not dismissed due to willful violation of court order.

In re Elmer Smith, **ED** 03-74055, **Ch. 13**

Sept. 20, 2004, **315 B.R. 77**: Damages flowing from breach of lease assumed by debtor in first case but later rejected were administrative expense under 503(b)(1)(A), 364(g); debtor's second confirmed plan did not address lessor's claim for administrative expense sufficiently to satisfy due process so as to bar claim under res judicata

In re Grady Smith, **LR** 85-40055

Feb. 4, 1992, (AP. NO. 91-4046, **142 B.R. 862**): plan reducing tax claim was confirmed without notice to IRS. Ct. set aside discharge & confirmed plan.

In re Jim and Alisa Smith, **LR** 85-56M

May 29, 1985: **Ch. 11**. DIP would violate fiduciary duty to other creditors by selling car pursuant to 363 and contributing proceeds to his company to purchase inventory.

In re Dudly Dale Smith, **LR** 90-40192

March 1, 1990: Dismissal of **Ch.12** because abusive, serial filing. AFFIRMED (J. Roy 1/3/91 No. 90-40192) (on file)

In re John and Mary Snider, **FS** 84-190M, AP No. 85-33M

July 30, 1985: **Ch. 7.** Pursuant to 523(a)(1)(B)(i), taxes are nondischargeable without regard to time limits if a return was never filed.

In re Solomon, **HE** 86-152

April 17, 1987 (**72 Bankr. 506**): **Ch.11** case could not be converted to **Ch.12** case pursuant to section 302(c)(1) stating that no debtor whose case was pending on the date of amendment to the law may convert to Ch. 12.

In re Paul Edward Speers, **244 B.R. 142**, **LR** 99-41105M, AP 99-4126

February 2, 2000, upon dischargeability complaint for willful and malicious injury, debt was nondischargeable when Debtor sold Bank's collateral and used the proceeds for business purposes.

In re Cecil Speight, No. 91-15648 **Ch 7**

June 5, 1992 **147 B.R. 489)**: exemption of IRA not allowed

June 23, 1992, (**147 B.R. 489**): collateral estoppel in discharge of debt, **Reversed,** May 28, 1993, Judge Hendren**:** D.Ct. **Affirmed,** 8th Cir. Feb. 9, 1994.

In re Stafford, **LR** 84-98M

May 20, 1985: Court refused to enjoin municipal judge and prosecutor from prosecuting debtors in criminal proceedings because not stayed by automatic stay under 362(b)(1).

In re Stanley, No, 93-11190 **Ch 13**

Sept. 9, 1994 **(182 B.R. 241)**: Order granting Bank's objection to debtor's plan of reorganization. Debtor's interest in real property barred when equity of redemption extinguished 10 days after entry of foreclosure decree but before foreclosure sale.

In re Starks, **LR** 05-10728

Dec. 12, 2005: Upon motion for relief from stay in **Ch. 13** case, court held movant was not bound by confirmed plan as res judicata because no due process where movant not a creditor and received no notice of plan's treatment of movant's interest in property purchased in pre-bankruptcy foreclosure; court would abstain from deciding issue of irregularities of sale under state law in interests of comity and pursuant to 28 U.S.C. § 1334(c)(1).

In re Billy and Carollee Starnes, **208 B.R. 688, JO** 95-30588M

April 16, 1997: Debtors may not modify plan to surrender burned house to HUD pursuant to 1325(a)(5)(c) and treat deficiency as unsecured because section 1329 requires that plan comply with anti-modification provision of home mortgage in 1322(b)(2)&(5).

In re Willie Joe Stephens, **TX** 95-14064M.

June 23, 1997: State court judgment against debtor-roofer for shoddy roof job was dischargeable since creditor did not prove debtor intended to defraud her by installing roof that developed subsequent problems; negligence and/or breach of

contract is not same as fraud.

In re Jerry and Linda Stewart, **LR** 97-43241M

March 31, 1998: Appeal by a debtor of a judgment adverse to the debtor is subject to automatic stay; but Debtor's motion to void acts taken in violation of stay is moot because parties had already received relief from stay.

In re Stogsdill, 89-03-0001

Sept. 10, 1990: Confirmation of **Ch.12** plan denied (interest rate, ambiguous provisions, misc. provisions).

In re James and Wanda Stogsdill, **JO** 84-148M

March 5, 1986, **Ch. 13:** SBA's mortgage entitled SBA to rents and profits if mortgagor became in default, but SBA not entitled to rents accruing when mortgagor-debtor not in default; SBA didn't object to confirmation of plan not addressing SBA's secured lien in rents and profits; plan was res judicata on the issue.

In re Studdard, **LR** 92-42707

Aug. 31, 1993 (**159 B.R. 852)**: **Ch 7** dismissal for bad faith filing

In re Thomas Sturdivant, **LR** 02-70130

Feb. 6, 2003 (**289 B.R. 392): Ch 7** debtor's obligation to ex-wife not in the nature of support under section 523(a)(5) but was nondischargeable under section 523(a)(15) because debtor failed to carry burden to show he lacked ability to pay or that the benefit of a discharge of the debt outweighed detriment to ex-wife.

In re Joe and Sandra Swaffar, **LR** 95-40532M, AP 96-4146

July 8, 1998, **222 B.R. 326**, **222 B.R. 330**: McCallum not a partner when property conveyed without McCallum's consent from partnership to corporation and then to defendants so plaintiff's consent to conveyance not necessary; Motion for summary judgment granted as to Patels and AMBA who had no knowledge of allegedly invalid transfer from partnership to corporation and then to them; Motion for summary judgment granted as to Steve and Linda Wood-nothing in chain of title gave Woods notice of McCallum's alleged interest in property they subsequently purchased from the Spears.

Sept. 29, 2000, **253 B.R. 441**, No. 98CV00202 GH, modifying bankruptcy court's recommended findings of fact that Debtors were in criminal contempt, district court, Judge Howard, ruled Debtors did not receive due process in show cause hearing, notice of show cause hearing was defective, fine was excessive, court could not impose fine and sentence for single act of contempt.

In re Swink & Co., 90-4106 **Ch 7**

June 29, 1992 (**142 B.R. 874**): determining "customer" of security broker for purposes of priority status

In re Tainter, **JO**. No. 99-31381M, AP No 00-3008, Ch 7

Feb. 14, 2001: court held debt arising out of plaintiff's sale of convenience store business to debtor was dischargeable and not based on fraud under 523(a)(2)(A); without intent to deceive at time of making of contract, breach of contact is not fraud.

In re Tarbox, **234 B.R. 832, S.D.Fla**. (Miami) 98-23241-BKC-RBR, AP 98-2330-BKC-RBR-A.

April 26, 1999: In dischargeability dispute, marital debt to ex-wife was not in the nature of support under 523(a)(5); and Debtor did not have ability to pay the debt under 523(a)(15) test so debt was dischargeable.

In re Tarver, **LR**-C-89-254

(Aug. 14, 1989). District Court (J. Howard) AFFIRMED bench ruling of bankruptcy court that garnishment proceeding and efforts to obtain default judgment against the employer violated the automatic stay.

In re Taylor, **LR** 90-831

Mar. 1991 (**130 B.R. 849**): Objection to **Ch.13** confirmation; agreements regarding personal property were leases rather than purchases and debtor would have to assume or reject the unexpired leases under 365.

In re Terra Vision, Inc., **LR** 85-1294M
In re George and Rebecca Gibson, **LR** 85-129M

January 25, 1988: No cause of action under 523(a)(2) exists in Ch. 13 or in a Ch. 7 case involving a corporation, complaint dismissed, counter claim of objectionn to claim overruled.

In re Marilyn Ann Terry, **HE** 95-20191M, AP 96-2003M

April 16, 1997: Debtor was denied damages and attorney's fees under 362(h) when Debtor's complaint for turnover of vehicle did not allege and evidence did not prove willful violation of automatic stay.

In re Thielemier, **JO** 84-271M

Oct. 1, 1985: United States granted right of setoff in crop diversion payments, subject to other, superior liens in the payments.

In re Thomas, **ED** 89-11010

Mar. 22, 1990 (**1990 WL 300700**): Debtor could not exempt more than $500 in workers' compensation benefits despite Ark. Statute because state Constitution set the limit.

In re Jimmy Lynn Thomas, **TX** 03-73985

July 7, 2005 **(331 B.R. 798)**: Upon Trustee's motion for turnover of two IRA accounts, court held funds were not Erisa qualified because accounts did not restrict alienation or transfer so IRAs were property of estate under section 541(c)(2); estranged wife had only an inchoate marital property interest in the accounts because she was married to the debtor on the day bankruptcy was filed.

In re Thompson, **ED** 86-109

May 29, 1990 (**116 Bankr. 679**): Debtor's attorney ordered to repay $4,500 as sanctions for Bankruptcy Code and ethical violations (conflict of interest, concealing creditor status in preparing petition, holding secret mortgage and recording in violation of stay, receiving compromise payment in violation of stay).

In re Tim Wargo & Sons, Inc., **PB** 86-474

June 5, 1987 **(74 Bankr. 469**): Receipt of rents from debtor's tenant farmer does not meet **Ch.12** eligibility requirements for family farmer. AFFIRMED (J. Reasoner 86 Bankr. 150) AFFIRMED (8th Cir. 869 F.2d 1128).

In re James M. Tomlin, **228 B.R. 916**, LR 98-41988M.

January 22, 1999: Order overruling creditor's objection to confirmation and allowing Debtor to cure arrearage and pay homestead mortgage through the plan even though home had been sold at auction in non-judicial foreclosure sale prior to bankrutpcy; bankruptcy occurred before the deed was recorded such that Debtor was still in legal possession of property and sale was thus not complete under the code at time of filing.
(Case subsequently superceded by amendment of state law statute declaring sale final when auction complete).

In re Jerry and Penny Toombs, 01-30784, AP 01-3053

September 25, 2002 (**Ch. 13):** Bank's motion for summary judgment denied; insufficient evidence to show Bank had perfected security interest in after-acquired property under Ark Code Ann 4-9-303(1); conflict as to whether

government payments constitute proceeds under section 552.

In re Joe Torcise Jr., No. 89-16287, **Florida**

February 23, 1994 **(1994 WL 162404)**: Order denying Bank's application for anticipated expenses of liquidating abandoned real estate, granting Bank's application for attorney's fees, and granting debtor's claim for a surcharge against Bank. **Reversed by District Court,** 187 B.R. 18, **District Court Reversed and Bankruptcy Court Affirmed by 11th Circuit,** 162 F.3d 1084.

In re Edmond Torelli, **LR** 04-23884

Feb. 2, 2006 **(2006 WL 490574)**: Court denied confirmation of **Ch. 12** plan because it failed to pay present value of creditor's claim with appropriate market rate of interest under section 1225(a)(5)(B)(ii); was not feasible in that debtor did not have sufficient disposable income to fund plan under section 1225(a)(6); however, debtor did meet eligibility requirements of family farmer under section 101(18).

In re Tracy's Flowers and Gifts, Inc., **264 B.R. 1**, **ED** 00-11308, AP 00-1518

June 12, 2001: court dismissed trustee's complaint to determine validity of Bank's lien in property of debtor; Bank's lien was properly perfected even though no express grant of a security interest was present in the security agreement.

In re Donald Trimble

March 14, 1995: Eighth Circuit Opinion (not dealing with Mixon opinion) stating that lender's secured claim was either the debt on the vehicle or the retail value of the encumbered vehicle.

In re James Tripcony, LR, Case No.-C-95-346.

May 4, 1998: District Court for Eastern District (Moody, J.) **Reversing** Bankruptcy court's bench ruling finding judgment debt nondischargeable for fraud or defalcation while acting in a fiduciary capacity in winding down affairs of law partnership; partners are not within class of fiduciaries intended by 523(a)(4).

In re Truck Accessories Distributing Inc., **238 B.R. 444**, **JO** 98-3173M.

September 1, 1999: Debtor's agreement with inventory supplier was sale-or-return so goods were subject to liens of Debtor's other creditors and not consignment because creditor did not use statutory procedures to protect its interest in the goods under UCC.

In re Turner Memorial Hospital, **FS** 85-62M

January 9, 1986: interim fee petition pursuant to 331 by accountant denied without prejudice to reapply with additional documentation so that court can apply Johnson factors.
Prtys: Frost and Company Accountants
Attys: Richard Ramsay, Barbara Bonds, David Powell

In re U.S.A. Inns, No. 89-13136

Sept. 30, 1992, AP. NO. 89-3509 (**151 B.R. 486**): Bank's acceptance of late loan payments not in ordinary course of business. REVERSED by Waters (Sept. 30, 92); 8th Cir. Affirmed District Court.

In re Unit Development Partnership, **ED** 84-85M, CMS 85-516

October 15, 1986: District Court (J. Harris) granting debtor leave to appeal conversion order from Ch. 7 to 11 and stating that appeal would be of a final order, not interlocutory order.

In re Van Camp, **TX** 96-14011M, AP 96-4505

August 8, 1997, **Ch. 7:** Insufficient showing that debtors fraudulently incurred credit card debt; debt was dischargeable; debtors were denied attorneys fees as creditor's position was substantially justified even though creditor lost fraud claim.

In re Mary Frances Vance, **JO** 85-266M

September 18, 1986, **Ch. 13:** Sustaining objection to confirmation of plan because allowed amount of claim was higher than the appraised value of property the debtor proposed to surrender in full satisfaction of the claim.

In re Vee Jay, Inc., **FS** 86-407

Sept. 25, 1987 (**104 Bankr. 101**) **Ch. 11**: Debtor's interest in escrow contract for sale of real estate was property of estate because of equitable defense. APPEAL DISMISSED (J. Arnold, 104 Bankr. 105)

In re F. Randolph Vestal Enterprises, Inc. d/b/a Cinesport, Inc., **LR** 87-42457

AP 90-4011, June 11, 1991: Complaint to recover on trustee's blanket bond for negligence and breach of fiduciary duty; issue re "real party in interest" pursuant to B.R. Rule 2010.

In re Vincent Gaines Implement Co., Inc., **LR** 86-30

Aug. 5, 1986 (**71 Bankr. 14**) **Ch. 11**: Incorrect continuation financing statement was not seriously misleading and lien not subject to avoidance by Dip under

section 544.

In re Johnny L. Vincent, **HE** 98-20387M

May 16, 2003, **293 B.R. 467: Ch. 13** debtor's objection to creditor's claim would have had merit in that creditor failed to object to a plan not providing interest on the claim or conforming to the code on residential mortgages and plan was confirmed, but Debtor's objection to the claim was overruled as a sanction for failing to comply with discovery under Rule 7037 and creditor's objection to Debtor's modified plan was sustained. On appeal to **BAP**, Dec. 1, 2003, 03-6025E, **301 B.R. 734**: Appeal dismissed for lack of jurisdiction because the order denying debtor's motion to modify his plan was not a final order pursuant to 28 U.S.C. § 158.

December 1, 2003: Appeal to **BAP** dismissed for lack of jurisdiction; order denying modification of plan (like order denying confirmation of plan) is not a final order.

In re Virotech, **FA** 87-224, 218, 219

AP 88-74, 75, 76, Sept. 14, 1988: Res judicata did not bar trial of claims where no final judgment rendered in prior proceeding; compulsory counterclaim rule (5013) did not bar subsequent litigation where the former litigation was dismissed by the plaintiff.

In re Vought, **PB** 85-120M

June 26, 1986: **Ch. 13.** Sustaining objection to confirmation where Debtors failed to disclose assets on original schedules as required by section 1325 and 521.

In re Velma Gayle Wallace, **LR** 05-40004

March 3, 2006 (**2006 WL 581038)**: **Ch. 13.** Court dismissed debtor's case for failure to receive credit counseling prior to bankruptcy and failure to file certificate of exigent circumstance pursuant to sections 109(h)(1) and (h)(3)(A).

In re Wallace, **FS** 84-256

March 13, 1986 (**61 Bankr. 54**): Financing statements filed under trade name of debtors insufficient pursuant to 9-402 so creditor not perfected; **Ch. 11** plan not confirmed because dissenting creditor not classified.

In re Walters & Ray, Inc., **LR** 84-514

July 30, 1985: **Ch. 11:** No Preference under 547 when no interest of the debtor was ever transferred.

In re Thomas Warren, **LR** 05-40022

March 20, 2006: **(2006 WL 701144) Ch. 13:** denying Trustee's motion to dismiss for failure to file credit counseling certificate with petition under BR Rule 1007(b)(3) and section 521(b)(1) and failure to complete counseling at least one day prior to petition filing pursuant to 109(h)(1). Debtor had 15-day extension to file certificate and complied with statute by completing counseling prior to time of petition filing.

In re William Harold Watson, **HE** 04-10488, AP 04-1166.

Dec. 1, 2004: **(2004 WL 2755542)** under section 523(a)(18) and 42 U.S.C. § 456(b) of Social Security Act, Debtor's debt for child support was nondischargeable even though children were later proven through scientific testing not to be children of the debtor.
February 16, 2005: upon further stipulations by the parties, the court reconsidered and ruled the amount of the nondischargeable debt was the amount owed to the Office of Child Support and did not include the debt owed to the mothers of the children that were not children of the debtor.

In re Watts, **PB** 85-36

August 1, 1985: **Ch. 7:** No evidence that interest rate charged debtor was in violation of federal statute and therefore usurious.

In re Weaver, **FS** 89-12493

Jan. 17, 1991 (**128 B.R. 224**) **Ch. 7**: Debtor would be allowed to exempt property as homestead where it was rural in nature and all lots owned by debtor were contiguous.

In re Webb, **PB** 84-38

March 10, 1987, **Ch. 13:** If plan confirmed prior to deadline for filing proofs of claim and objections thereto, creditor is collaterally estopped from having claim allowed if it differs from claim's treatment in the plan, under 1327(a).

In re Westside Creek Limited Partnership, **LR** 87-1987

Aug. 10, 1988 (**93 Bankr. 177**) **Ch. 11**: Attorney's fee application in **Ch.11**; no adverse interest under section 327, but no order entered authorizing attorney to represent estate (discusses nunc pro tunc), grouping problem, unauthorized interim payment under section 330(a).

In re W. E. Tucker Oil Co., Inc., **ED** 84-11

AP 86-45, Sept. 18, 1989: Order approving settlement set aside under Rule 9024 because of fraud on Court and Trustee by Commercial Bank. (Motion for leave to appeal denied 12/4/89, J. Harris)

DC No. CIV-ED-90-05, Dec. 12, 1990, J. Harris (**122 BR 719**): Creditor Commercial Bank waived right to jury trial by filing claim in debtor's bankruptcy case; remanded to bankruptcy court.

AP 86-544M, May 22, 1987: Attorney's fees paid to Debtor's former attorneys were not fraudulent conveyances or preferential payments because made in the ordinary course of business, but fees paid for post-petition work were ordered disgorged because attorney had a conflict of interest that precluded attorney from representing the estate.

August 8, 1986: Attorney for DIP would not be allowed post-petition fees for work for DIP before Trustee appointed because of conflict of interest between the DIP and equity security holders.

Sept. 5, 1985 (**55 Bankr. 78**): Transfers of property by granting liens were constructively fraudulent under 548. AFFIRMED (J. Harris, **64 Bankr. 183**)

Sept. 18, 1984 (**42 Bankr. 897**): Relief from automatic stay would not be granted to bank despite that there was no equity in property and property not needed for reorganization where issue existed as to transfer of certain liens from the DIP to the bank.

In re Rick Welch and In re Arkansas General Agency, **FS** 96-70128M & 70129M, **244 B.R. 802**.

Feb. 10, 2000: Court would not authorize payment of attorneys fees from property of estate where attorneys filed complaint on behalf of debtor, netting estates settlement proceeds, but did so without prior court approval.

In re Westfall, **FS** 84-316

June 14, 1985: Under 1104, court appointed trustee for cause, including fraud, incompetence and gross mismanagement of the affairs of the debtor.

In re Chad Whisenant, **ED**, **265 B.R. 164**, No. 99-43741M, Ch. 7

July 5, 2001: court denied debtor's motion to hold former wife in contempt for violation of discharge injunction of 524(a)(2) for filing state court contempt action against the debtor for not paying her debt under a reaffirmation agreement, pursuant to 524, because the wife did not know the agreement was invalid because clerk mistakenly failed to file it.

In re Joe and Dorothy White, **253 B.R. 253**, **ED** 99-11777M, AP 11-1502

September 13, 2000: arrearage on court-ordered child support payments are dischargeable because DNA tests proved children were not a child of the debtor.

In re White Rock, Inc. **LR** 01-44553M

May 17, 2002: creditor requested administrative expense of legal fees and costs for security to protect creditor's property adjacent to debtor's property pursuant to 503(b)(1)(A) as necessary for preserving estate or actual and necessary costs of estate; court denied request as expenses protected creditor's interests, not debtor's.

In re Whitfield, **ED** 83-058

Aug. 10, 1984 (**41 Bankr. 734**) **Ch. 7**: Objections to discharge under 727 and dischargeability under 523(c) must be timely under Rule 4004 or 4007; excusable neglect is not applicable for untimely filing; fraud must be pleaded with particularity under Rule 7009.

In re Bill Allen Whitfield, **LR** 84-1416, AP 85-231

Jan. 8, 1986: Law of Missouri applied to contract so interest rate charged to debtor was not usurious.

In re Alfred and Sharon Whitson, **LR** 02-20854

Jan. 19, 2005: Trustee failed to carry burden of proof under BR Rule 4003 that proceeds from settlement of debtors' personal injury claims were not exemptible; proof did not show proceeds were not compensation for lost earnings or were not reasonably necessary for debtors' support as required by section 522(d)(11)(E).

In re Roy and Juanita Wilcox, **251 B.R. 59, JO** 099M

July 19, 2000, order overruling Bank's objection to confirmation of **Ch. 13** plan based on Debtors' pre-petition conduct as used car dealers where conduct would have resulted in nondischargeable debts in a Ch. 7 because arising from willful and malicious conduct; plan was proposed in good faith.

In re Wild Turkey Ranch, Inc., **JO** 84-57,

October 9, 1985: **Ch. 11:** court determined valuation of ranch, portion of which was to be deeded to satisfy impaired claim of secured creditor as indubitable equivalent; confirmation denied because plan didn't specify which portions of the ranch would be deeded to creditor.

In re David Williams, **HE** 88-04

Nov. 1, 1988 (**93 Bankr. 181**): Effect of Hudspeth re Arkansas' unconstitutional

exemption statute, debtor was limited to constitutional exemption in insurance proceeds.

In re Twila Williams, **LR** 83-626

Aug. 17, 1984 (**42 Bankr. 474**): **Ch. 13** debtor's proposal to pay back 37% of student loans demonstrated bad faith warranting denial of confirmation.

In re Wayne Williams, **JO** 83-137M, CMS No. 85-514M

July 19, 1985: **Ch. 11**: Order denying relief from stay on condition that debtor get casualty insurance to protect bank's interest in property of estate and file all schedules and disclosure statement and plan within 20 days.

In re Wilson, **LR** 86-1422

Aug. 8, 1989: Amended claim of creditor allowed because debtor's plan created ambiguity regarding amount to be paid.

In re Wise, **LR** 90-04-0893

Jan. 2, 1991 (**127 B.R. 20)**: Three-year period of limitation for determining tax priority under 507(a)(7)(A) suspended during pendency of previous bankruptcy case pursuant to section 108(c) and section 6503(b) and (i).

In re Woodall, **LR** 81-69

Jan. 22, 1987 (**81 Bankr. 17**): Computation of 60 months in **Ch. 13** begins with date order for payment entered, which is 30 days after filing of petition under 1326; plan may not exceed 60 months under 1322; property of estate in ch.13 is property and earnings acquired by debtor post-petition under 1306 so not fair to postpetition creditors to stave off their collection efforts longer than 5 years; IRS has standing to file post-petition claim for taxes under 1305.

In re Worden d/b/a Worden & Associates, **LR** 85-351, AP No. 85-474

August 13, 1986: **Ch. 7:** Debtor defrauded creditor to whom he sold his business by misrepresenting that the business owned equipment that was really leased; debt nondischargeable under 523(a)(2)(A) & (B).

In re Yates, **HE** 88-38

Aug. 18, 1989: Creditor ordered to dismiss garnishment proceedings against **Ch. 13** trustee which was holding funds after case dismissed but not yet closed.

In re Zenone, **LR** 99-44146M

June 6, 2002 (**278 B.R. 792)**: Debtor could not amend exemptions to include an IRA account, pursuant to section 522(d)(10) and BR Rule 1009, that was not previously scheduled as exempt because of bad faith and prejudice to creditors and trustee.

In re Zepecki, **JO** 96-30125M

June 22, 2000: After Court ordered Debtor's tax attorney to appear and account for funds he received from Debtor pre and post-petition, court ruled funds were property of estate and Attorney not entitled to be compensated from estate without court approval. AFFIRMED: 8TH Cir. BAP, No. 00-6074EA (February 12, 2001), AFFIRMED: 8TH Cir. No. 1554 (January 25, 2002) **277 F.3d 1041**.

April 5, 2000, AP 98-3039: Debtor's discharge denied for giving false oaths in failing to schedule pre-petition transfer of sale proceeds from himself to Alabama attorney for suspect real property transaction. AFFIRMED: District Court (Judge Howard) No. 3:00CV00252 GH; Debtor subsequently indicted and convicted by a jury in district court of bankruptcy fraud.

September 24, 1999 (**224 B.R. 907**): attorneys fees and travel expenses awarded to two attorneys as sanctions under 105(a) when Debtor's attorney failed to appear at scheduled hearing.

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BANKRUPTCY CODE SECTIONS

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TITLE 11

101(5)

In re Phyllis Michele Dove-Nation, **318 B.R. 147, H.S., BAP** (Dec. 17, 2004): affirming the bankruptcy court which overruled objection to claim by debtor; proof of claim was prima facie valid; insufficient documentation is not a basis to disallow a proof of claim where there was no evidence debtor disputed claim. Rule 3001, 3002, 11 U.S.C. § 501, 502, 101(5), 101(10).
Prtys: Phyllis Dove-Nation, eCast Settlement Corporation
Attys: Barbara May, Robert Lowry, Kimberly Wood Tucker, Alane A. Becket.

101(17)

In re John J. and Betty Plafcan, **HE** 87-30M; In re Plafcan Farms, Inc., **HE** 87-31M (Feb. 3, 1988 (**93 Bankr. 176**) **Ch. 12**: Consolidated chap. 12 plan of individual debtors and corporation not confirmable; individual debtors not eligible under 101(17)(a) and 109(f).
Prtys: Debtors, A.L. Tenney-Trustee
Attys: A.L. Tenney, Charles Baker, William A. Waddell for Federal Land Bank.

In re Tim Wargo & Sons, Inc., **PB** 86-474 (June 5, 1987) **74 Bankr. 469**, **Ch. 12**: Receipt of rents from debtor's tenant farmer does not meet chap. 12 eligibility requirements for family farmer. AFFIRMED (J. Reasoner 86 Bankr. 150) AFFIRMED (8th Cir. 869 F.2d 1128).
Prtys: Debtor, Equitable Life Assurance Society of the U.S.
Attys: Richard Alexander, William C. Adair, A.L. Tenney, Billy Hubbell.

101(18)

In re Edmond Torelli, **LR** 04-23884 (Feb. 2, 2006 **)(2006 WL 490574)**: Court denied confirmation of **Ch. 12** plan because it failed to pay present value of creditor's claim with appropriate market rate of interest under section 1225(a)(5)(B)(ii); was not feasible in that debtor did not have sufficient disposable income to fund plan under section 1225(a)(6); however, debtor did meet eligibility requirements of family farmer under section 101(18).
Prtys: Debtor, Regions Bank
Attys: Michael Knollmeyer, Kimberly Burnett

101(20)

In re Tim Wargo & Sons, Inc., **PB** 86-474 (June 5, 1987) **74 Bankr. 469**, **Ch. 12**: Receipt of rents from debtor's tenant farmer does not meet chap. 12 eligibility requirements for family farmer. AFFIRMED (J. Reasoner 86 Bankr. 150) AFFIRMED (8th Cir. 869 F.2d 1128).
Prtys: Debtor, Equitable Life Assurance Society of the U.S.
Attys: Richard Alexander, William C. Adair, A.L. Tenney, Billy Hubbell.

101(36)

In re Marty Cloud, **LR**, 215 B.R. 870, 96-42046M, AP 96-4174 (July 17, 1997) **Ch. 7** (equitable lien in automobile that creditor had purchased for her step-son, the debtor, was not judicial lien impairing an exemption and not subject to avoidance by debtor).
Prtys: Marty Ray Cloud, Betty Cloud.
Attys: Keith B. Faulkner, Jimmy D. Eaton.

101(54)

In re Billy G. and Ruth Ann Billingsley, 175 B.R. 286, **HE** 93-20096M, AP No. 93-2011M (July 12, 1994) **Ch. 7.** (Mistaken lien release on deed of trust granted by Debtors to Bank was corrected within 90 day preference period but was not a transfer within the statute because the Bank was without authority to release the lien as the deed of trust had been previously assigned to a third party; therefore, reimposition of lien was not a transfer.)
Prtys: Billy and Ruth Ann Billingsley, Helena National Bank, Charles Roscopf, Gene and Wanda Ridge.
Attys: Ashley Higgins, Charles Roscopf, Daniel Schieffler, A. Jan Thomas.

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In re MacMillan Petroleum, **ED** 87-149M, AP 88-392, 88-433, (July 24, 1990) **Ch. 7** (Lessor (Moore & Munger) of debtor's pipeline system liable for reasonable rent even though prepetition lease rejected because trustee did not assume it within 60 days. Lessor was entitled to offset repairs from rentals. Lessor was not required to pay prejudgment interest for time it failed to make lease payments because there was no bad faith. Division order agreement was not executory contract and trustee did not have to assume it. Lessor liable for balance of purchase price of division orders since trustee's breach was not material).
Prtys: Moore & Munger Marketing and Refining, Claude Hawkins-Trustee, MBank Dallas
Attys: Thomas Williams, Peter Franklin, Charles Camp, Derrell Dickens, Bobby Shepherd.

In re Mendenhall, **ED** 84-052 (Aug. 13, 1985 (**54 Bankr. 44**) **Ch. 13** (allocation of

burden of proof in objection to confirmation of chap. 13 plan; burden of persuasion always on objecting creditor; burden of production shifts; creditor did not prevail on valuation issue so plan would be confirmed; notice and hearing only needed on confirmation if party in interest objects).
Prtys: Debtors, General Electric Credit Corporation
Attys: Henry Kinslow, Mel Sayes.

In re Donald Lynn Pierce, 02-24536, **LR, Ch. 13**
Nov. 15, 2004, 04-0040, **DISTRICT COURT (JUDGE WILSON) AFFIRMED** bankruptcy court's policy of granting objections to claims unless a response and request for hearing is filed within 30 days; creditor filed no response to objection to his claim but appealed on the basis that he had no evidentiary hearing as prescribed under section 502(b). Rule 9007 grants bankruptcy courts discretion to set the particularities of notice procedures. **Affirmed, 8th Circuit,** Jan. 25, 2005: section 102 defines "notice and a hearing" to authorize an act on negative notice without hearing if notice is given properly and hearing not requested by a party in interest.
Prtys: Donald Lynn Pierce, Myron Roberts
Attys: John Ogles

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in chapter 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

105(a)

In re Bibbs, **LR** 00-40266 (Aug. 20, 2002) **Ch. 13** (pursuant to section 362(b)(1), automatic stay does not stay criminal proceedings including enforcement of orders to pay fines and restitution for hot checks; if proceeding is veiled attempt to collect debt, proper remedy is injunction under section 105).
Prtys: Debtor Pulaski Co., City of Sherwood, Pulaski Co. Prosecuting Attorney's Office, Larry Jegley
Attys: Kathy Cruz, David Fuqua, Karla Burnett, Kimberly Burnett.

In re Belford T. Brown, Sr, d/b/a Brown's Aero Service, 51 B.R. 51, **PB** 85-90M, AP 85-206M (June 7, 1985) **Ch. 7.** (generally the automatic stay does not stay a criminal proceeding, but Bankruptcy court may, under 105(a), halt criminal hot check proceeding if a veiled attempt to collect a prepetition debt; court did not enjoin the proceeding because circumstances not extraordinary enough but did enjoin prosecutor from collecting restitution).

Prtys: Belford Brown, Fred Hampton, Sam Pope (prosecutor)
Attys: Bob Lawson, David S. Mitchell, Danny Thrailkill.

In re Hilyard Drillling Co., 58 Bankr. 616, **ED** 85-10M, AP 85-120M, 85-176M (Juen 7, 1985) **Ch. 11**. (Court would not enjoin cancellation of debtor's insurance coverage under 105(a) equitable powers, but insurer was not required to renew).
Prtys: U.S.F.& G, United Insurance Agency, Debtor-in-possession
Attys: William Prewett, Charles Baker, Greg Hopkins, Peter Heister, Ian Vickery, James Smith.

In re David and Mary Hopkins, 81 B.R. 491, **ED** 85-38M (August 7, 1987) **Ch. 13:** (holding section 105 gives court authority to fashion a remedy for a 525 employment discrimination violation; guided by cases under Title 7 and ADEA, court orders back-pay and reinstatement for bank employee fired because she filed bankruptcy).
Prtys: Debtors, Bank of Bearden.
Attys: Jack Dickerson, Joseph A. Strode.

In re Hubbard, 70 B.R. 122, **LR** 82-451M, AP 82-1129M (Sept. 26, 1985) **Ch. 13.** (Recommending to district court that mortgagee be held in criminal contempt for violating court's order to repair damages to debtor's property resulting from eviction in violation of automatic stay; that mortgagee be fined sum equal to claim and that other sanctions be imposed).
Prtys: Debtor, Fleet Mortgage Co.
Attys: Andree Roaf, James Stanley.

In re Newton Jenkins, **JO** 89-208M (January 12, 1990) **Ch. 13.** (Dismissing case on grounds of bad faith where debtor used chapter 13 to litigate with its only creditor, IRS, rather than reorganize; enjoining re-filing under section 105(a) equitable powers).
Prtys: Debtor, IRS.
Attys: Pat Harris, Bill Adair, Bob Leslie.

In re Lavender, **TX** 82-037, AP 86-52M (Aug. 1, 1986) **Ch. 11**. (Bank with security interest in stock was not entitled to dividends under section 105(a) because of delay in liquidating the stock).
Prtys: Claude Hawkins, Trustee, Bank of Prescott, Debtors
Attys: Joe Fore, Charles Honey, Phil Cockrell, Randal Wright, Richard Smith, Danny Rogers.

In re Patel, **ED** 89-30; AP 89-1503 (Sept. 11, 1989) Dischargeability complaint under 523(c) timely where clerk's notice erroneously stated deadline was "to be set."
Prtys: Debtors, First Financial Bank
Attys: Ian Vickery, Steve Gershner.

In re Zepecki, **JO** 96-30125M (June 22, 2000) **Ch. 7: (**After Court ordered, pursuant to 105(a), Debtor's tax attorney to appear and account for funds he received from Debtor pre and post-petition, court ruled funds were property of estate and Attorney not entitled to be compensated from estate without court approval).Affirmed by District Court and 8th Cir.
Prtys: Steven C.R. Brown, Jim Luker-T.
Attys: David Lewis.

In re Ramona Moix-McNutt, **LR** 97-40003M

April 29, 1998 (220 B.R. 631): Sanctioning Debtor's attorneys for preparing false petition, unauthorized transfers under Rule 9011, 105(a); sanctions included fining law firm; reimbursing estate for monies acquired in real estate transaction; removing Brown and firm from case and denying all fees; suspending Brown and firm from representing debtors for four years.

March 15, 1999: District Court (Wright) **reversing** in part April 29, 1998, order: No violation of Rule 9011 because Brown did not sign the petition; former rule did not allow sanctions of law firm; thus no fine can be levied under Rule 9011; no fine can be levied under 105(a) if punitive in nature; 105(a) permits reimbursement, removal, and disallowance of fees but not suspension of attorneys.
Prtys: R.J.Brown, C.Richard Crockett, Crockett and Brown.

In re Robert Zepecki, 224 B.R. 907, **JO** 96-30125M (September 24, 1999) **Ch. 7.** (Awarding attorneys fees and travel expenses to trustee and creditor's attorney as sanctions under 105(a) when Debtor's attorney failed to appear at scheduled hearing)**.**
Prtys: Debtor, Fred Hart, Jim Luker-T, Guy Brinkley.
Attys: Fred Hart, Jim Luker, Guy Brinkley.

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In re Hoffinger Industriees, Inc., **HE** 01-20514M (Feb. 28, 2002) **Ch.11** (Court retroactively annulled the automatic stay to validate a postpetition notice of appeal filed by the Debtor in state court litigation pending in California; cross appeal right probably not lost until 30 days after notice of termination of the stay under section 108(c))
Prtys: Hoffinger Industries, Leesa Bunch.
Attys: Charles Camp, Lance Miller, James F. Dowden, Ben Arnold, Allen Bird, Charles Coleman.

In re Wise, **LR** 90-04-0893 (Jan. 2, 1991) **127 B.R. 20, Ch. 13**: Three-year period of limitation for determining tax priority under 507(a)(7)(A) suspended during pendency of previous bankruptcy case pursuant to section 108(c) and section 6503(b) and (i).
Prtys: IRS, Debtor

Attys: Kimberley S. Forseth, Michael Knollmeyer, A.L. Tenney, Trustee, William Adair

109(e)

In re McMullan, **196 B.R. 818**, **ED** 94-11228M, AP 94-1516 (April 18, 1996) **Ch. 11.** (Mortgagee moved to foreclose on notes and mortgages secured by oil and gas leases and equipment in case removed to BR court; court allowed Trustee to sell property to be distributed pursuant to the Code; court held: no accord and satisfaction; no evidence of forgery; other indebtedness clauses valid to secure notes and bind debtors; no evidence of Mortgagee's disposal of collateral without owners' consent; no violation of Equal Credit Opportunity Act when Mortgagee required wife to sign notes since leases and equipment used as collateral were community property; wife acted in bad faith in subsequently filing a chapter 13 when she had no income and her debt total made her ineligible for consumer reorganization).
Prtys: Debtors, National Bank of Commerce of El Dorado
Attys: Steve Gershner, Charles Camp, Michael Massey, Herman Ivester.

109(f)

In re John J. and Betty Plafcan, **HE** 87-30M; In re Plafcan Farms, Inc., **HE** 87-31M (Feb. 3, 1988 (**93 Bankr. 176**) **Ch. 12**: Consolidated chap. 12 plan of individual debtors and corporation not confirmable; individual debtors not eligible under 101(17)(a) and 109(f).
Prtys: Debtors, A.L. Tenney-Trustee
Attys: A.L. Tenney, Charles Baker, William A. Waddell for Federal Land Bank.

In re Tim Wargo & Sons, Inc., **PB** 86-474 (June 5, 1987) **74 Bankr. 469**, **Ch. 12**: Receipt of rents from debtor's tenant farmer does not meet chap. 12 eligibility requirements for family farmer. AFFIRMED (J. Reasoner 86 Bankr. 150) AFFIRMED (8th Cir. 869 F.2d 1128).
Prtys: Debtor, Equitable Life Assurance Society of the U.S.
Attys: Richard Alexander, William C. Adair, A.L. Tenney, Billy Hubbell.

109(g)

In re Lisa Woodard Jones, **99 B.R. 412**, **LR** 88-1495M, CMS 88-1537M (January 9, 1989) **Ch. 13.** (Holding section 109(g)(2) dismissal only applies if there was a previous voluntary dismissal of debtor's previous case when a contested matter was pending).
Prtys: Economy Motors, Inc., debtor.
Attys: Larry Hartsfield, Malcolm Bobo.

In re Alex Merayo, **LR** 04-17258 (Jan. 27, 2005) **319 BR 883, Ch. 13:** where no proof of egregious conduct was adduced prior to dismissal with prejudice, court interpreted phrase to mean dismissal with bar to refiling for 180 days pursuant to

section 109(g).
Prtys: Debtor, Tracy and Tammy Heffington
Attys: Geoffry Treece, Thomas Byarly.

In re Ben Smith, **TX** 02-74250 (December 4, 2002) **286 B.R. 104, Ch. 13:** Objection to confirmation sustained where Debtor who filed Chapter 13 less than 180 days after former case dismissed had burden of showing eligibility predicated on proving that Debtor's prior case was not dismissed due to willful violation of court order.
Prtys: Debtor, MHC Financial Services, Inc.
Attys: Rodney McDaniel, Chris Frank

109(h)

In re Velma Gayle Wallace, **LR** 05-40004 (March 3, 2006) **2006 WL 581036: Ch. 13.** Court dismissed debtor's case for failure to receive credit counseling prior to bankruptcy and failure to file certificate of exigent circumstance pursuant to sections 109(h)(1) and (h)(3)(A).
Prtys: Debtor, Chapter 13 Trustee-Jo-Ann Goldman
Attys: Henry Means, Linda McCormack

In re Thomas Warren, **LR** 05-40022 (March 20, 2006) **(2006 WL 701144) Ch. 13:** denying Trustee's motion to dismiss for failure to file credit counseling certificate with petition under BR Rule 1007(b)(3) and section 521(b)(1) and failure to complete counseling at least one day prior to petition filing pursuant to 109(h)(1). Debtor had 15-day extension to file certificate and complied with statute by completing counseling prior to time of petition filing.
Prtys: Debtor, Jo-Ann Goldman-Trustee
Attys: Jean Madden, Linda McCormack

302

In re Huntsman Farms, Inc. **LR** 82-935-940 (Dec. 7, 1984) **Ch. 11**: (Numerous requirements for confirmation of chapter 11 plan not met, including not meeting fair and equitable test and best interests of creditors test; not providing for class of interest holders; attempting to substantively consolidate several cases without explanation or disclosure or following the requirements of rule 1015).
Prtys: Huntsman Farms, Huntsman Farm Store, Huntsman Enterprises, Ralph and Olivia Huntsman, Wayne Huntsman, Harold and Maudie Huntsman, John Hancock Life Insurance Co., Northwestern National Life Insurance Co.
Attys: Susan Gunter, Jim Smith, Allen Bird, Thomas Thrash, Stanley Price, Edward Bisno.

In re Solomon, **HE** 86-152 (April 17, 1987) **72 Bankr. 506**: **Chap. 11** case could not be converted to chap. 12 case pursuant to section 302(c)(1) stating that no debtor whose case was pending on the date of amendment to the law may convert to chapter 12.
Prtys: Debtor, First National Bank of Eastern Arkansas.
Attys: John Bridgforth, Gregory Hopkins, James Van Dover.

303

In re B&G Sand & Gravel Co.**, FS** 86-200M (June 3, 1987) **Ch. 7** (dismissing creditors' involuntary petition for lack of undisputed claims required to commence involuntary bankruptcy.)
Ptys: K&K Oil Co., Max Denadel, Ark. Valley Electric Cooperative, Welsco Inc., Perkins & Associates, Rushing & Mason Eqpt. Co., Electric Center Inc., Mitchell Machinery Co.
Attys: Herschel Cleveland, Jan Nielsen, Frank Barker, F.J. Garner, Robert Pummill

In re Bennett **LR** 85-32M (April 10, 1987) **Ch. 7** (Finding incarcerated man was involuntary debtor with two creditors owed restitution for debtor's aggravated robbery; fraudulent conveyance as to fees paid to atty for services not yet rendered; preference as to fees paid from debtor to atty during preference period).
Ptys: Gary Bennett, Robert and Sandra Vowell
Attys: Allen Bird, Mark Riable, Michael Durham, Charles Davidson

In re Burns, **JO** 89-30051M (January 12, 1990) **Invol. Ch. 7** (Involuntary petition may be commenced by fewer than three petitioning creditors if the alleged debtor has fewer than 12 creditors; Debtor must timely contest involuntary petition).
Ptys: Debtor, Betty Ward, Danny Gibson.
Attys: Dick Jarboe, Warren Dupwe, Charles Tucker.

In re Garland Coal & Mining Co., **67 B.R. 514**, **FS** 84-71M (July 18, 1986) **Invol. Ch. 7:** (determining number of creditors needed for invol. petition is decided on petition date; creditors paid in full before petition could not be counted to decide if 12 or more creditors existed such that three or more creditors were required to file petition; claims of union would not be counted to determine if 12 or more eligible creditors existed because they were former employees of Debtor; debtor had fewer than 12 eligible creditors so that one creditor holding unsecured claim of $5000 or more and not subject to bona fide dispute was sufficient to bring petition; pension trusts' claims were subject to bona fide dispute so trusts could not be counted as eligible creditors; burden of proof of bona fide dispute begins with prima facie case of creditors and then shifts to Debtor; debtor was not paying debts as they became due.)
Prtys: Debtor, Trustees fo United Mine Workers of America, 1950 pension Trust, 1974 Pension Trust, 1950 Benefit Plan and Trust, International Union united Mine Workers of America.

Attys: Allen Bird, Thomas Thrash, Richard Noble, Joel Pelofsky, Isaac Scott, Gary Ford, Robert Gallagher.

In re Hermitage Pink Tomato Marketing Association, Inc., **PB** 85-440M (June 5, 1986) **Ch. 7:** (petitioning creditors failed to prove value of unsecured portion of secured claim such that provisions of 303 were not met and petition would be denied; debtor could petition the court for damages).
Prtys: Warren Bank and Trust; First State Bank of Warren, Debtor.
Attys: Joseph Strode, Charles Baker.

In re John Samuel Marlar, **ED Involuntary chapter 7**
March 8, 2005, 04-CV-1047, **DISTRICT COURT (JUDGE BARNES): Affirming** bankruptcy court's denial of debtor's motion to dismiss case based on purported fact that debtor is a farmer and could not have been placed in involuntary bankruptcy five years previously pursuant to section 303(a); fact that debtor was farmer must be timely raised as an affirmative defense or defense is waived. **Affirmed by 8th Circuit,** December 22, 2005: status as farmer is affirmative defense that must be timely raised.
Prtys: Debtor
Attys: Pro Se.

323(a)

In re Herbert Russell, 109 B.R. 359, **ED** 84-58M (October 19, 1989) **Ch. 11.** (Trustee's objection to claim of vendor for deficiency from foreclosure sale sustained because trustee was not party to foreclosure action, so res judicata not applicable; claim was unconscionable because vendors paid only a fraction of value).
Prtys: William Gibson-Trustee, Furrow family.
Attys: William Gibson, Geoffrey Treece, Susan Gunter.

324

In re Farmers Co-Op of Ark. And Okla., Inc., **53 B.R. 600**, **FS** 84-46M (Sept. 9, 1985) **Ch. 7.** (Court disqualified Trustee from representing estate in suit against the Bank when Trustee's law partner was formerly on board of directors of bank; law partner was in confidential relationship with Bank such that disqualification had to be imputed to other members of the same law firm and conflict of interest was apparent; cotrustee's co-counsel appointed to pursue estate's cause of action against the Bank).
Prtys: Trustee, Citizens Bank and Trust Co. Of Van Buren.
Attys: Thomas Robertson, Reuben and Proctor, Jerry Canfield.

326

In re Arkansas Communities, Inc., **HS** 80-22M (Sept. 28, 1988) **Ch.11** (granting trustee's attorney's fees; denying request for enhancement of fee)

Ptys: Mitchell Law Firm
Attys: Maurice Mitchell, Mike O'Malley, R.J. Brown

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In re Arkansas Communities, Inc., **HS** 80-22M (Oct. 18, 1985) **Ch.11** (denying objection to Mitchell Law Firm's fees on basis of conflict of interest; review of Johnson factors)
Ptys: Mitchell Law Firm, R.J. Brown
Attys: Bob Shults, R.J. Brown, Maurice Mitchell, Dick Crockett

In re Arkansas Communities, Inc., **HS** 80-22M (June 19, 1985) **Ch.11** (denying R.J. Brown's fee request based on conflicts of interest in case; discussion of fiduciary duties of DIP)
Ptys: Mitchell Law Firm, R.J. Brown
Attys: R.J. Brown, Maurice Mitchell, Herb Rule, Gary Garrett

In re Hoffman, 53 B.R. 564, **ED** 85-27M, 85-29M and 85-30M (Aug. 16, 1985) **Ch. 7.** (Disqualifying conflict of interest existed as result of counsel's simultaneous representation of Chapter 11 corporate debtor in possession and an individual equity security holder who was also a debtor in possession and who was also a creditor of the debtor corp).
Prtys: Debtor, National Bank of Commerce
Attys: Isaac Scott, Joseph Strode.

In re David Hodges Farms, Inc., **JO** 85-73M, AP No. 85-124M (Feb, 4, 1986) **Ch. 11**. (Pre-trial order on complaint for judgment and foreclosure of liens determining which matters core and non-core; David Hodges disqualified from representing debtor in possession since he is equity security holder and debtor of dip).
Prtys: David Hodges Farms, Inc., Mallard Farms Holding Co, David Hodges, Marian Hodges, Otis Reynolds, Mary Reynolds, John Hancock Mutual Life Insurance Company, Cache River Production Credit Association, Three Rivers Production Credit Association, Farmers Home Administration, White River Production Credit Association, Heuer Truck Sales Corporation, Elmer Heuer, and Geneva Nadine Heuer, Northwestern Mutual Life Insurance Company, Travelers Insurance Co., Fred Pickens.
Attys: David Hodges, Michael Coury, Donald Raney, Lindsey Fairley, George Proctor, Tom B. Smith, V. Markham Lester, Timothy W. Grooms, James W. O'Mara, Stanley R. Langley, Charles T. Coleman, Darrell Dover, Fred Pickens, G.D. Walker, Marvin Thaxton, James Sprott, Lance Miller, Greg Hopkins, Gary Rogers, Don Henry, Joseph Russell, Doug Chavis, Edward Wright, Fletcher Jackson, Ralph Cotham, Ed Penick, John Blodgett, Ralph Waddell, Bob Abbot.

In re Arkansas General Agency and In re Rick Welch,244 B.R. 802, **FS** 96-70128M & 70129M (Feb. 10, 2000) **Ch. 7**. (Court would not authorize payment of

attorneys fees from property of estate where attorneys filed complaint on behalf of debtor, netting estates settlement proceeds, but did so without prior court approval).
Prtys: Trustees for AGA and Rick Welch estates, Trip Wetzel and John Lee; James O. Cox and Ron Metcalf.
Attys: James O. Cox, Ron Metcalf, James Dowden, John Lee.

In re N.S. Garrott & Sons, **JO** 83-215
In re Eastern Arkansas Planting Co., **JO** 83-216M (March 26, 1986) **63 Bankr. 189**, **Ch. 11**: On remand from District Court, Court clarified previous order as to why attorneys fees were reduced for conflict of interest in that same attorneys represented the two estates which were indebted to each other, as well as other abuses.
Prtys: Debtors, Attorneys
Attys: Richard Frockt, James E. Smith

In re W.E. Tucker Oil Co., **ED** 84-11M (August 8, 1986) **Ch. 11**: Attorney for DIP would not be allowed post-petition fees for work for DIP before Trustee appointed because of conflict of interest between the DIP and equity security holders which attorney also represented.
Prtys: W.E. Tucker Oil Company, unsecured creditors' committee.
Attys: R.J. Brown, Claude Hawkins, Hani Hashem, David Kirk, Griffin Smith, Don Eilbott, Basil Hicks, Rick Ramsay, Richard Griffin, Thomas Streetman, Don Henry, W.P. Hamilton, Paul Long, James Barker.

In re Westside Creek Limited Partnership, **LR** 87-1987 (Aug. 10, 1988)**93 Bankr. 177, Ch. 11**: Attorney's fee application in chap. 11; no adverse interest under section 327, but no order entered authorizing attorney to represent estate (discusses nunc pro tunc), grouping problem in billing, unauthorized interim payment under section 330(a).
Prtys: Gill Law Firm, Dwyer & Collora, Paine Webber Qualified Plan Property fund III, Debtor.
Attys: Glenn E. Kelley, Charles Baker, John Jewell, Mark Polebaum, Andrew Owens, Isaac Scott, Tim Grooms, Michael Collora

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In re N.S. Garrott & Sons, **JO** 83-215
In re Eastern Arkansas Planting Co., **JO** 83-216M (March 26, 1986) **63 Bankr. 189**, **Ch. 11**: On remand from District Court, Court clarified previous order as to why attorneys fees were reduced for conflict of interest in that same attorneys represented the two estates which were indebted to each other, as well as other abuses.
Prtys: Debtors, Attorneys
Attys: Richard Frockt, James E. Smith

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In re Bennett **LR** 85-32M (April 10, 1987)Ch. 7 (Finding incarcerated man was involuntary debtor with two creditors owed restitution for debtor's aggravated robbery; fraudulent conveyance as to fees paid to atty for services not yet rendered; preference as to fees paid from debtor to atty during preference period).
Ptys: Gary Bennett, Robert and Sandra Vowell
Attys: Allen Bird, Mark Riable, Michael Durham, Charles Davidson

In re W.E. Tucker Oil Co., **ED** 84-11M, AP 86-544M (May 22, 1987) **Ch. 11** (Attorney's fees paid to Debtor's former attorneys were not fraudulent conveyances or preferential payments because made in the ordinary course of business, but fees paid for post-petition work were ordered disgorged because attorney had a conflict of interest that precluded attorney from representing the estate).
Prtys: Debtor, Claude Hawkins, Trustee; R.J. Brown and R.J. Brown P.A.
Attys: R.J. Brown, Scott Vaughn, Paul H. Long, W.P. Hamilton, David Kirk, Jams Barker, Thomas Streetman, Griffin Smith.

In re Zepecki, **JO** 96-30125M (June 22, 2000) **Ch. 7: (**After Court ordered, pursuant to 105(a), Debtor's tax attorney to appear and account for funds he received from Debtor pre and post-petition, court ruled funds were property of estate and Attorney not entitled to be compensated from estate without court approval) Affirmed by BAP and 8th Circuit.
Prtys: Steven C.R. Brown, Jim Luker-T.
Attys: David Lewis

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In re Arkansas Communities, Inc., **HS** 80-22M (Sept. 28, 1988) **Ch.11** (granting trustee's attorney's fees; denying request for enhancement of fee)
Ptys: Mitchell Law Firm
Attys: Maurice Mitchell, Mike O'Malley, R.J. Brown

In re Arkansas Communities, Inc., **HS** 80-22M (Oct. 18, 1985) **Ch.11** (denying objection to Mitchell Law Firm's fees on basis of conflict of interest; review of Johnson factors)
Ptys: Mitchell Law Firm, R.J. Brown
Attys: Bob Shults, R.J. Brown, Maurice Mitchell, Dick Crockett

In re Arkansas Communities, Inc., **HS** 80-22M (June 19, 1985) **Ch.11** (denying R.J. Brown's fee request based on conflicts of interest in case; discussion of fiduciary duties of DIP)
Ptys: Mitchell Law Firm, R.J. Brown
Attys: R.J. Brown, Maurice Mitchell, Herb Rule, Gary Garrett

In re Bradshaw, **ED** 83-65M (August 1, 1986) **Ch. 7.**
(BOP of reasonableness of fee application is upon the applicant; court applies

Johnson factors to find fees reasonable; court has an independent duty to investigate fees; attorneys fees and expenses incurred in chapter 11 case converted to chapter 7 are entitled to administrative expense status in chapter 7).
Ptys: Debtor, R.J. Brown, Trustee Claude Hawkins.
Attys: R.J. Brown.

In re Curtis, **LR** LR 84-1187, 70 B.R. 712 (January 13, 1987)**Ch. 11** (Applying Johnson factors, court found itemization insufficient in attorney fee application; uncompensable work included tasks grouped together under a single billing, work preparing fee applications, two hours reviewing notice of trial; performance bonus denied because surplus in estate resulted from death of debtor and subsequent insurance proceeds, not from counsel's skill).
Ptys: Carla Curtis, R.J. Brown, Trustee.
Attys: John Jewell, Donald Henry, R.J. Brown, Basil V. Hicks.

330

In re Bonds Lucky foods, Inc., No. 1, 76 B.R. 664, **HE** 85-10M (May 13, 1986) **Ch. 11.** (Finding attorneys would not be compensated for unnecessary time spent by law clerks and paralegals, unnecessary prep work for case conference, overhead expenses including secretarial work, messenger service, clerical tasks.)
Prtys: Bonds Lucky Foods, Inc.
Attys: Jim Smith, Susan Gunter.

In re Dean and Tina Dardwin, **HA** 86-77M (June 16, 1988) **Ch. 7**. (Finding attorney could not appropriate property of the estate in satisfaction of a claim for an attorney's fee without the bankruptcy court's permission; debtors' attorney required to return unauthorized fee taken from estate as sanction for not following proper channels).
Prtys: Mike Hulen, Debtors.
Attys: Mike Hulen, William R. Gibson, Mark Cooper.

In re Lavender, **TX** 82-37M (Sept. 18, 1986) **Ch. 11:** 82-037, Attorneys denied fees under improperly drawn fee application.
Dec. 17, 1984 (48 Bankr. 393) Attorneys required to reimburse estate for unauthorized payment of fees. AFFIRMED 785 F.2d 247.
Prtys: Debtors, Wood Law Firm
Attys: Raymond Weber, Claude Hawkins, James Pilkinton, James Pedigo, Phillip Cockrell, Richard Smith, Charles Walker, Charles Honey, Steven Cuffman.

In re MacMillan Petroleum, **ED** 87-149M (Sept. 9, 1988) **Ch. 7**. (Fee application for debtor's attorney reduced because services did not benefit estate (should have been liquidated as Chap. 7), hourly rates too high, duplicative services, pleadings filed in violation of court order, preparation of fee application, grouping, ministerial tasks).
Prtys: Smith, Stroud, McClerkin, Dunn & Nutter Law Firm; First National Bank of

El Dorado and Mbank Dallas.
Attys: Charles Coleman, Peter Franklin, Hayes C. McClerkin, Charles Camp, John Unger, Geoffrey Treece.

In re John Samuel Marlar, **ED** 98-1358, **Ch. 7** (Sept. 27, 2004) On remand, bankruptcy court found fees for chapter 7 trustee's attorney were reasonable under lodestar method and section 330; Johnson factors used to determine reasonableness.
Prtys: Debtor, Trustee-Renee Williams
Attys: Bob Depper, Thomas Streetman

In re John Samuel Marlar, **ED** 98-1358, **Ch. 7** (March 21, 2005) 04-CV-1025: On appeal of Sept. 27, 2004 order of bankruptcy court, **DISTRICT COURT (JUDGE BARNES)** affirmed award of attorney's fees pursuant to section 330.
Prtys: Debtor, Trustee
Attys: Bob Depper, Thomas Streetman.

In re Reed, **PB** 86-450 (Aug. 3, 1988) **95 Bankr. 626**: Fees for chap. 11 debtor's attorney incurred in defending dischargeability complaint not compensable from estate because did not benefit estate. AFFIRMED (J. Woods), AFFIRMED (8th Cir. 890 F.2d 104)
Prtys: Roderick Reed, Debtor; FSLIC
Attys: Joel Taylor, Tim Grooms, John Pruniski, Isaac Scott.

In re Westside Creek Limited Partnership, **LR** 87-1987 (Aug. 10, 1988)**93 Bankr. 177, Ch. 11**: Attorney's fee application in chap. 11; no adverse interest under section 327, but no order entered authorizing attorney to represent estate (discusses nunc pro tunc), grouping problem in billing, unauthorized interim payment under section 330(a).
Prtys: Gill Law Firm, Dwyer & Collora, Paine Webber Qualified Plan Property fund III, Debtor.
Attys: Glenn E. Kelley, Charles Baker, John Jewell, Mark Polebaum, Andrew Owens, Isaac Scott, Tim Grooms, Michael Collora

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In re Arkansas Communities, Inc., **HS** 80-22M (June 19, 1985) **Ch.11** (denying R.J. Brown's fee request based on conflicts of interest in case; discussion of fiduciary duties of DIP)
Ptys: Mitchell Law Firm, R.J. Brown
Attys: R.J. Brown, Maurice Mitchell, Herb Rule,Gary Garrett

In re Bonds Lucky foods, Inc., No. 1, 76 B.R. 664, **HE** 85-10M (May 13, 1986) **Ch. 11.** (Finding attorneys would not be compensated for unnecessary time spent by law clerks and paralegals, unnecessary prep work for case conference, overhead expenses including secretarial work, messenger service, clerical tasks.)

Prtys: Bonds Lucky Foods, Inc.
Attys: Jim Smith, Susan Gunter.

In re Dean and Tina Dardwin, **HA** 86-77M (June 16, 1988) **Ch. 7**. (Finding attorney could not appropriate property of the estate in satisfaction of a claim for an attorney's fee without the bankruptcy court's permission; debtors' attorney required to return unauthorized fee taken from estate as sanction for not following proper channels).
Prtys: Mike Hulen, Debtors.
Attys: Mike Hulen, William R. Gibson, Mark Cooper.

In re Lavender, **TX** 82-37M (Sept. 18, 1986) **Ch. 11:** 82-037, Attorneys denied fees under improperly drawn fee application. Dec. 17, 1984 (48 Bankr. 393) Attorneys required to reimburse estate for unauthorized payment of fees. AFFIRMED 785 F.2d 247.
Prtys: Debtors, Wood Law Firm
Attys: Raymond Weber, Claude Hawkins, James Pilkinton, James Pedigo, Phillip Cockrell, Richard Smith, Charles Walker, Charles Honey, Steven Cuffmana.

In re Turner Memorial Hospital, **FS** 85-62M (January 9, 1986) (interim fee petition pursuant to 331 by accountant denied without prejudice to reapply with additional documentation so that court can apply Johnson factors).
Prtys: Frost and Company Accountants
Attys: Richard Ramsay, Barbara Bonds, David Powell

341(a)

In re Patel, **ED** 89-30; AP 89-1503 (Sept. 11, 1989) Dischargeability complaint under 523(c) timely where clerk's notice erroneously stated deadline was "to be set."
Prtys: Debtors, First Financial Bank
Attys: Ian Vickery, Steve Gershner.

350(b)

In re Crull, **HA,** 101 B.R. 60 (June 7, 1989) **Ch. 7.**
(Where debtor moved to reopen case to include debt inadvertently omitted, Court held that dischargeability would be determined not by amendment of schedules but by adversary proceeding).
Prtys: Gary and Karen Crull, H.J. Scheirich Co.
Attys: Roger Morgan, James Stanley, William Robinson.

361

In re Franklin Doty Miller, **FA** 89-15098M, AP 90-5506 (March 8, 1991) **Ch. 11** (FmHA claimed a lien in equipment allegedly property of the debtor. Creditors'

committee argued that the equipment is property of the partnership; thus, FmHA does not have a valid lien in the equipment. Court H: the creditors' committee did not establish a prima facie case that the lien was invalid; complaint dismissed). REVERSED (J. Waters, 10-11-91, 91-5051)
Prtys: Debtor, Farmers Home Administration, Creditors Committee
Attys: Michael Fitzhugh, Paul Bowen, Don Taylor, Deborah Groom, Claude Skelton, Marilyn Byington, Jack Butt.

362

In re Bearhouse, 84 B.R. 552, **ED** 87-42M, AP Nos. 87-134M, 87-139M, 87-186M and 87-209M (Jan. 22, 1988) **Ch. 7.** (Farmer with postpetition order of reclamation of grain sold to debtor-warehouseman was not entitled to all proceeds of trustee's sale of grain in that reclamation order, entered without first obtaining relief from stay, was void even if creditor lacked notice of bankruptcy.)
Prtys: Claude Hawkins-Trustee, Ladd Farms, National Bank of Commerce of Pine Bluff, U.S. Dept. Of Agriculture, Farmers Rice Mill Co, U.F. Coleman, Monticello Gin and Elevator Co., Commodity Credit Corp., Edward Oltmann, Gary Shrum, Virgie and Virginia Ray, Aetna Casualty and Surety Co.
Attys: Wililam Meeks, Terry Wynne, Claude Skelton, Thomas Streetman, Bob Lawson, Larry McCord, William Ball, Overton Anderson.

In re Brittenum & Associates, Inc., **LR** AP 86-50M, AP 86-305M (Feb. 26, 1987) **Ch. 7.** (Automatic stay applies to pending actions against the debtors but not co-defendants, even if the actions are filed in district court and in the same venue as the bankruptcy court.)
Prtys: Brittenum & Associates, Inc., Fred Halstead, John Brittenum, Melvyn L. Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware.
Attys: Mark Hampton, Steve Vaughn, Tripper Cronkhite, Steven Harbeck, Gary Corum, Robert Cabe, Richard Steinkamp, Michael Thomson, Richard D. Taylor, Peter Kumpe, John Jewell.

In re David Hodges Farms, Inc., **JO** 85-73M, AP No. 85-314M. (January 9, 1986) **Ch. 11**. (Ordering relief from stay to secured creditor to foreclose its lien in Mallard Farm because property had no equity and was not producing income so not needed for reorganization).
Prtys: John Hancock Mutual Life Insurance Co, David Hodges Farms, Inc.
Attys: David Hodges, Michael P. Coury, Tom B. Smith, Mark Lester, Marvin Thaxton, Fred Pickens, G.D. Walker, Darrell Dover, Donald Raney, James D. Sprott, Charles Coleman, Fletcher Jackson, Tim Grooms, Lance Miller, James O'Mara, Lindsey Fairly.

In re Dipzinski, **JO**, No. 97-10389M (June 16, 1999) **Ch. 7.** (Trustee's objection to debtor's amendment to claim of exemptions sustained; debtor intentionally omitted from schedules the exempt asset, sale proceeds from sale of marital real property due to debtor in divorce; debtor's divorce attorney violated automatic stay by disbursing proceeds to debtor and retaining his attorney's fee from

proceeds).
Prtys: Trustee-Warren Dupwe, Debtor-Patricia Dipzinski.
Attys: Warren Dupwe, Louis J. Nisenbaum, Richard D. Hitt.

In re Gaston, **JO** 84-226M, CMS No. 84-870M (August 1, 1985) **Ch. 13.** (Relief from stay granted to creditor as to co-debtor since plan proposed to pay creditor nothing and there was no reason to prohibit creditor to pursue remedy with co-debtor.)
Prtys: CIT Financial Services, H.W. Gaston.
Attys: Jim Lyons, Brent Martin, Elbert Johnson.

In re Gordon, **PB** 85425M, AP 86-441M (April 16, 1987) **Ch. 13.** (Section 362 does not stay act against the debtor to collect postpetition debt but does stay act against property of the estate when a Chapter 13 is pending.)
Prtys: Joe Gordon, El Dorado Trailers, Doyle Butcher
Attys: George Proctor, Walter Lopez, Jr.

In re Hoffinger Industriees, Inc., **HE** 01-20514M (Feb. 28, 2002) **Ch.11** (Court retroactively annulled the automatic stay to validate a postpetition notice of appeal filed by the Debtor in state court litigation pending in California; cross appeal right probably not lost until 30 days after notice of termination of the stay under section 108(c))
Prtys: Hoffinger Industries, Leesa Bunch.
Attys: Charles Camp, Lance Miller, James F. Dowden, Ben Arnold, Allen Bird, Charles Coleman.

In re Hoffman, 51 B.R. 42, **ED** 85-27M, 85-29M, 85, 30M, AP 85-318M, 85-320M (May 30, 1985) **Ch. 7, 11:** (It is not a violation of the automatic stay for a bank to place administrative freeze on debtors' demand accounts upon receipt of knowledge of filing of bankruptcy; bank would not be granted relief from stay to exercise right of set off if adequate protection for use of cash collateral could be offered by the debtors.)
Prtys: Debtors Charles Hoffman, Craig Shackleford, Craig Shackelford Farms, Portland Bank, National Bank of Commerce of Pine Bluff.
Attys: Isaac Scott, Thomas Streetman, Joseph Strode.

In re Barry Hudspeth, **LR** 85-1439M, AP 85-509M (March 26, 1986) **Ch. 7.** (relief from automatic stay not granted to ex-spouse to pursue pending contempt action against debtor in state court where state court refused to dismiss contempt action because ex-spouse did not fully explain to state court that action was in violation of the automatic stay and ex-spouse had remedy in bankruptcy court).
Prtys: Barry Hudspeth, Jenna Maria Hudspeth.
Attys: Geoff Treece, Dan Harmon, Basil Hicks, Jr.

In re Jacqueline P. L'Heureux, 04-6060 (Feb. 25, 2005): **BAP affirmed** bankruptcy court's bench ruling that creditor's six-day delay in removing notice of

foreclosure sale cancelled after debtor filed for bankruptcy was not a willful violation of the automatic stay under section 362(a)(1); even if there was a violation, the debtor failed to prove damages for emotional distress; granting of a motion to dismiss at end of plaintiff's case is authorized by F.R.Civ.P. 52 and F.R.B.P. 7052.
Prtys: Jacqueline L'Heureux, Homecomings Financial Network
Attys: Robert Lowry, Harry Light

In re Gregory L. Latimer, **LR** 00-43630, AP 02-1114 (Aug. 22, 2002) **Ch. 7**: (Discharge injunction under sections 727 and 524 did not enjoin determination of dischargeability of alimony or support debt under 523(a)(5) by bankruptcy or state court, which has concurrent jurisdiction, even if Debtor listed debt as dischargeable on his petition; seeking dischargeability and entry of judgment after discharge did not violate stay which was no longer in force as to property of the debtor after discharge under section 362(c).
Prtys: Debtor, Dan West, Bill Flannery
Attys: Paul Schmidt, Michael Reif.

In re Edward P. Molitor, **183 B.R. 547**, **HE** 93-20101M, AP 94-2007 (March 15, 1995) **Ch. 7.** (Denying defendant's motion for summary judgment on grounds of res judicata and collateral estoppel; voiding state court judgment finding Debtor's mother transferred her property to his spendthrift trust and removed it from her estate such that it was out of reach of his creditors; judgment was entered after Debtor was in bankruptcy and in violation of the automatic stay).
Prtys: Daniel Schieffler-T; Pulaski Bank and Trust Co. as Trustee for Edward-Megan Trust; Molly Molitor as trustee of the Molly-Andria Trust.
Attys: Warren Dupwe, James Luker, Raymond Abramson.

In re O'Connor, **JO** 83-225 (June 11, 1984) **42 Bankr. 390; ch. 13**: (Taking of default judgment in garnishment proceeding violated automatic stay, was wilful and would result in damages, costs and attorneys fees from creditor to debtor).
Prtys: Debtors, Methodist Hospital of Jonesboro
Attys: Gary Johnson, James Lyons.

In re Jerry and Linda Stewart, **LR** 97-43241M (March 31, 1998) **Ch. 13**. (Appeal by a debtor of a judgment adverse to the debtor is subject to automatic stay; however, Debtor's motion to void its efforts at appeal was moot because parties had received relief from stay, nunc pro tunc, before appeal taken).
Prtys: Debtors, Norton Automotive Enterprises, Allen Norton, and Dan Kennedy
Attys: Grisham Phillips, Richard Kalkbrenner.

In re James Pruett, 220 B.R. 624, **LR** 97-41491M, AP 97-4072 (December 15, 1997) **Ch. 13.** (Insurance company advancing monies on future commissions may recoup advances from agent as they accrue post-petition; recoupment not subject to automatic stay; no employment discrimination against Debtor by employer based on the evidence).
Prtys: Debtor, American Income Life Insurance Company; Richard Neal, Debbie

Gamble.
Attys: Jean Madden, R.F. Brown

In re W.E. Tucker Oil, Inc., **ED** 84-011M, (Sept. 18, 1984) **Ch. 11** (**42 Bankr. 897**): Relief from automatic stay would not be granted to bank despite that there was no equity in property and property not needed for reorganization where issue existed as to transfer of certain liens from the DIP to the bank.
Prtys: First State Bank of Crossett, Debtor in Possession, Portland Bank-Intervenor
Attys: R.J. Brown, Richard E. Griffin, Thomas Streetman

362(a)(4)

In re Benefield, **HE** 102 B.R. 157 (July 13, 1989) **Ch. 7** (holding that debtor's granting of leasehold interest in bankruptcy estate's undivided one-half interest in real property was in violation of automatic stay, and thus was avoidable by trustee, absent showing that lessee had given any present value for his right to use the land).
Ptys: Debtor Dwight W. Benefield , Steve Davis and Viola Benefield Burroughs, Daniel K. Schieffler-Trustee.
Attys: James Luker, Baird Kinney.

362(b)(1)

In re Bibbs, **LR** 00-40266 (Aug. 20, 2002) **Ch. 13** (pursuant to section 362(b)(1), automatic stay does not stay criminal proceedings including enforcement of orders to pay fines and restitution for hot checks; if proceeding is veiled attempt to collect debt, proper remedy is injunction under section 105).
Prtys: Debtor Pulaski Co., City of Sherwood, Pulaski Co. Prosecuting Attorney's Office, Larry Jegley
Attys: Kathy Cruz, David Fuqua, Karla Burnett, Kimberly Burnett.

In re Belford T. Brown, Sr, d/b/a Brown's Aero Service, 51 B.R. 51, **PB** 85-90M, AP 85-206M (June 7, 1985) **Ch. 7.** (generally the automatic stay does not stay a criminal proceeding, but Bankruptcy court may halt criminal hot check proceeding, under 105(a) if a veiled attempt to collect a prepetition debt; court did not enjoin the proceeding because circumstances not extraordinary enough but did enjoin prosecutor from collecting restitution).
Prtys: Belford Brown, Fred Hampton, Sam Pope (prosecutor)
Attys: Bob Lawson, David S. Mitchell, Danny Thrailkill.

In re Stafford, **LR** 84-98M (May 20, 1985) (Court refused to enjoin municipal judge and prosecutor from prosecuting debtors in criminal proceedings because not stayed by automatic stay under 362(b)(1)).
Prtys: Debtors, Hon. Edwin Keaton, Ralph Faulkner
Attys: Henry Kinslow, William Randal Wright.

362(b)(3)

In re Eaton, **HE** 97-20382M (March 31, 1998) **Ch. 13.** (Debtor not entitled to damages or attorney's fees for violation of stay when vehicle repairman retained possession of debtor's car to perfect artisan's lien pursuant to state statute; see also 546(b)(1)(B)).
Prtys: Vickie Eaton, River City Body Shop.
Attys: J.F. Valley, David Solomon.

362(c)

In re Garth, **LR** 81-587M, AP No. 87-717M (Nov. 4,1988) **Ch. 13.** (Payments made by the Trustee exceeded allowed claims of I.R.S.; even if I.R.S. doesn't file a proof of claim for postpetition tax, it may pursue its claim after discharge, closing, or dismissal of case; court without jurisdiction to decide postpetition tax liability, case dismissed because objection to claim moot after claim allowed and paid.)
Prtys: Buford and Ruby Garth, I.R.S.
Attys: Jack Sims, William Adair, Richard Neubauer, Steven Shapiro, Michael Wilcove.

362(c)(2)(C)

In re Joe T. Brown, **FS** 84-01, AP 84-192 (July 19, 1985) **Ch. 7.** (Ex-spouse filed motion for contempt because debtor failed to pay alimony after discharge denied; court has no jurisdiction once the discharge is denied and stay is automatically lifted as to actions against the debtor; court has no power to enforce another court's order.)
Prtys: Evaleen Brown, Joe T. Brown
Attys: Bob Keter, Herman Hankins Jr., Ben T. Barry.

362(d)(2)

In re Endicott, 239 B.R. 529, **JO** 99-30499M (September 21, 1999) **Ch. 7.** (Bank granted relief from stay to liquidate security interest in proceeds of crop loss program even though proceeds had not been assigned by debtor to Bank; Bank entitled to relief where no equity in proceeds existed for benefit of unsecured creditors).
Prtys: Gary and Judy Endicott, MidSouth Bank.
Attys: Warren Dupwe, Jay Scholtens, James Luker--Trustee.

362(h)

In re Gordon, **PB** 85425M, AP 86-441M (April 16, 1987) **Ch. 13.** (Motion for contempt for violation of stay is contested matter and does not require an answer, so trial on the merits proper even though no answer filed; motion denied because stay violation not willful.)

Prtys: Joe Gordon, El Dorado Trailers, Doyle Butcher
Attys: George Proctor, Walter Lopez, Jr.

In re National Hydro-Vac Industrial Services, **PB**, No. 01-50466M, **Ch 11, later 7** (June 15, 2004): **314 B.R. 753**: Upon motion for turnover of equipment by trustee, court held two pieces legally sold upon debtor's acceptance of buyer's offer but failure to remit proceeds in which defendant was to act as broker was conversion and defendant could not set off proceeds against debt to defendant; punitive damages were warranted under state law on conversion, but not due under section 362(h), willful violation of the stay, because debtor is corp.
Prtys: Trustee, Transamerica Equipment Financial Services, Federal Signal Corp.
Attys: Thomas Streetman, Stephen Gershner.

In re James & Sarah Rhodes, **FA** 147 B.R. 492 (June 23, 1992) **Ch 7.** (IRS in willful contempt of automatic stay by refusing to discontinue its postpetition tax lien until debtors agreed to convey refund checks in partial payment. AFFIRMED, 155 B.R. 491, District Court (Feb. 18, 1993).
Prtys: Debtors, I.R.S.
Attys: John D. Russell, John T. Lee-T, Stephen E. Adams.

In re Marilyn Ann Terry, **HE** 95-20191M, AP 96-2003M (April 16, 1997) **Ch. 13.** (Debtor denied damages and attorney's fees under 362(h) when Debtor's complaint for turnover of vehicle did not allege and evidence did not prove willful violation of automatic stay).
Prtys: Debtor, Chrysler Credit Corporation.
Attys: J.F. Valley, Stephen Hale.

363

In re MacMillan Petroleum, **ED** 87-149M, AP 88-392, 88-433, (July 24, 1990) **Ch. 7** (Lessor (Moore & Munger) of debtor's pipeline system liable for reasonable rent even though prepetition lease rejected because trustee did not assume it within 60 days. Lessor was entitled to offset repairs from rentals. Lessor was not required to pay prejudgment interest for time it failed to make lease payments because there was no bad faith. Division order agreement was not executory contract and trustee did not have to assume it. Lessor liable for balance of purchase price of division orders since trustee's breach was not material).
Prtys: Moore & Munger Marketing and Refining, Claude Hawkins-Trustee, MBank Dallas
Attys: Thomas Williams, Peter Franklin, Charles Camp, Derrell Dickens, Bobby Shepherd.

In re McMullan, 196 B.R. 818, **ED** 94-11228M, AP 94-1516 (April 18, 1996) **Ch. 11.** (Mortgagee moved to foreclose on notes and mortgages secured by oil and

gas leases and equipment in case removed to BR court; court allowed Trustee to sell property to be distributed pursuant to the Code; court held: no accord and satisfaction; no evidence of forgery; other indebtedness clauses valid to secure notes and bind debtors; no evidence of Mortgagee's disposal of collateral without owners' consent; no violation of Equal Credit Opportunity Act when Mortgagee required wife to sign notes since leases and equipment used as collateral were community property; wife acted in bad faith in subsequently filing a chapter 13 when she had no income and her debt total made her ineligible for consumer reorganization).
Prtys: Debtors, National Bank of Commerce of El Dorado
Attys: Steve Gershner, Charles Camp, Michael Massey, Herman Ivester.

In re Jim and Alisa Smith, **LR** 85-56M (May 29, 1985) **Ch. 11 (**DIP would violate fiduciary duty to other creditors by selling car pursuant to 363 and contributing proceeds to his company to purchase inventory).
Prtys: Debtors in Possession
Attys: Charles Ward, Lance Hanshaw

363(b)(1)

In re Benefield, **HE** 102 B.R. 157 (July 13, 1989) **Ch. 7** (Stating that only Trustee, after notice and hearing, may grant lease of property of estate).
Ptys: Debtor Dwight W. Benefield , Steve Davis and Viola Benefield Burroughs, Daniel K. Schieffler-Trustee.
Attys: James Luker, Baird Kinney.

363(c)(1)

In re Hilyard Drilling, **ED** No. 85-10M (January 28, 1986) **Ch. 11.** (DIP's post-petition sales of drilling equipment was not in the ordinary course of business and not authorized under 363(c)(1); application for ex post facto approval of the sales denied).
Prtys: Hilyard Drilling Co.
Attys:

In re Craig Shackleford, Jr. ED 85-29M (Aug. 17, 1987) (court sua sponte converted **Ch. 11** case to chap. 7 for failure to obtain a confirmed plan within a reasonable time, failure to file operating reports, selling stock without authorization in violation of 363(c)).
Prtys: Debtor
Attys: Charles Coleman, Joseph Strode.

363(m)

In re Stephen A. Griffin, **FS** Chapter 7: June 3, 2004: creditor Mary McGehee appealed the denial of the motion to reconsider the court's order authorizing the trustee to sell the debtor's lake home. **BAP** decided the appeal was rendered

moot by the prior sale of the property, in the absence of a stay of sale. 11 B.R. § 363(m).
Prtys: Mary McGehee, Stephen Griffin, Barbara Griffin, Richard Cox-Trustee
Attys: Barbara Griffin, Stephen Griffin-pro se; Richard Cox.

364(c)(1)

In re Mel-Hart Products, Inc.,**LR** 90-40399M (November 14, 1991) **Ch. 7** (court denied value of creditor's secured claim; no evidence that creditor advanced money after cash collateral order entered)**.**
Prtys: Randy Rice-T; Debtor, American Heavy Industries.
Attys: Charles Baker, Randy Rice, William Adkisson, Rita Brown Wells, Marilyn Byington, Charles Coleman.

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In re Keith and Karrie Bailey, **HS** 04-73199 (May 10, 2005) **326 B.R. 156**. **Ch. 13** (Construing Missouri law under UCC 1-201(37), transaction between debtor and creditor was a secured sale under § 1325 (a)(4) and (5) and not a lease under § 1322(b)(7) and 365).
Prtys: Debtors, Lafayette Investments, Inc.
Attys: Thomas Byarlay, Charles Davidson

In re Farrell and Janet Copeland, **JO** 98-31598M (Sept. 7, 1999) **Ch. 13.** (Court looks to state law to determine if debtors' pre-petition transaction to acquire portable building was a sale and security interest or a true lease; most significant factor in determination is whether there is residual value at the end of the lease term; here, there was little residual value because lessees could purchase building for nominal price, but under Arkansas case law, fact that lessee has right to terminate lease at will is deciding factor so transaction was ostensibly a lease).
Prtys: Farrell and Janet Copeland, Cook Sales, Inc.
Attys: Joe Barrett, Gregory Veach.

In re Gore, 124 B.R. 75, **LR** 88-04-2284M, 89-570M (Oct. 1, 1990) **Ch. 12**. (Holding that debtors' prepetition contract with government to hold land fallow in exchange for payments was executory contract which became postpetition contract with debtors-in-possession following their assumption thereof.)
Prtys: Debtors; Small Business Administration.
Attys: Lance Hanshaw, William Adair.

In re Hoffinger Industries, Inc., **HE** 01-20514M, **Ch. 11** (April 16, 2004) **308 B.R. 362:** Debtor's former president ordered by BR court to turnover funds to the Debtor that he paid himself through unauthorized expense reimbursement and other means**;** President's employment contract had expired under its own terms

and it was unnecessary for the Debtor to later reject the contract pursuant to section 365.
Prtys: Brad Rinehart, Debtor
Attys: Frederick Wetzel, Lance Miller, Stan Smith.

In re Irene Jones, 54 B.R. 697, **LR** 85-385M, CMS No. 85-438M (October 16, 1985) **Ch. 13.** (Ruling that land sales contract or contract for deed on the debtors' residence is not an executory contract to be treated under section 365(b)(1)(A), (B)(C), but is a security device warranting treatment as a long-term debt secured by a lien in the debtor's residence).
Prtys: Dan and Betty Thorpe, Debtor
Attys: M.W. Villines, Stephen Bennett.

In re Michael and Barbara Lyle, **PB** 85-69M (July 18, 1985). **Ch. 13.** (Debtors must cure arrearage under executory contract (lease of vehicle) upon confirmation of plan; cure and provision of payments under plan is adequate assurance).
Prtys: Debtors, Ford Motor Credit Corporation.
Attys: David Duke, Gregory Bryant

In re Albert and Earlene Macklin, 236 B.R. 403, **JO** 99-30014M (July 26, 1999) **Ch. 13** (court overruled objection to confirmation by secured creditor; court found, under UCC, no agreement between the parties as to Debtor's right to terminate the lease so the transaction was a sale subject to 1325 and not lease subject to 365).
Prtys: Debtors, Mirly Truck Sales.
Attys: Ralph Waddell, Constance Grayson.

In re MacMillan Petroleum, **ED** 87-149M, AP 88-392, 88-433, (July 24, 1990) **Ch. 7** (Lessor (Moore & Munger) of debtor's pipeline system liable for reasonable rent even though prepetition lease rejected because trustee did not assume it within 60 days. Lessor was entitled to offset repairs from rentals. Lessor was not required to pay prejudgment interest for time it failed to make lease payments because there was no bad faith. Division order agreement was not executory contract and trustee did not have to assume it. Lessor liable for balance of purchase price of division orders since trustee's breach was not material).
Prtys: Moore & Munger Marketing and Refining, Claude Hawkins-Trustee, MBank Dallas
Attys: Thomas Williams, Peter Franklin, Charles Camp, Derrell Dickens, Bobby Shepherd.

In re National Hydro-Vac Industrial Services, **PB**, 262 B.R. 781, No. 01-50466M, **Ch. 11**, later 7 (May 24, 2001) (court denied Bank's motion for relief from stay to terminate bank card merchant agreement; Agreement was executory contract under 365 but not contract to extend financing so 365(c)(2) n/a; not a personal services contract under 365(e); code invalidates terminable at will clauses in

contracts when reason of termination is predicated on condition of bankruptcy filing).
Prtys: National Hydro-Vac, Simmons First National Bank.
Attys: Kevin Keech, Brian Rosenthal, Rosalind M. Mouser.

In re Taylor, **LR** 90-831 (Mar. 1991)**130 B.R. 849**: Objection to **Ch. 13** confirmation; agreements regarding personal property were leases rather than purchases and debtor would have to assume or reject the unexpired leases under 365.
Prtys: Debtors, Fastway, Inc.
Attys: Phil Shoffner, Frederick Wetzel.

365(d)(3)

In re William K. Brewer, **JO** 97-31440M, 233 B.R. 825 (May 3, 1999)
Ch. 13 (debtor was tenant at will of nonresidential real property; statute requiring debtor to continue to perform under lease until rejected allowed landlord administrative expense for postpetition, pre-rejection rent without showing of benefit to estate; rent payable under debtor's lease during the postpetition, pre-rejection period must be paid at full contract rate.)
Prtys: William K Brewer, Dr. Glenn Dickson.
Attys: Joe C. Barrett, Chris Gardner.

365(g)

I In re Elmer Smith, **ED** 03-74055, **Ch. 13** (Sept. 20, 2004) **315 B.R. 77**: Damages flowing from breach of lease assumed by debtor in first case but later rejected were administrative expense under 503(b)(1)(A), 364(g); debtor's second confirmed plan did not address lessor's claim for administrative expense sufficiently to satisfy due process so as to bar claim under res judicata.
Prtys: Debtor, General Electric Capital Corp.
Attys: John Phillips,

501

In re Phyllis Michele Dove-Nation, **318 B.R. 147, H.S., BAP** (Dec. 17, 2004): affirming the bankruptcy court which overruled objection to claim by debtor; proof of claim was prima facie valid; insufficient documentation is not a basis to disallow a proof of claim where there was no evidence debtor disputed claim. Rule 3001, 3002, 11 U.S.C. § 501, 502, 101(5), 101(10).
Prtys: Phyllis Dove-Nation, eCast Settlement Corporation
Attys: Barbara May, Robert Lowry, Kimberly Wood Tucker, Alane A. Becket.

In re Grady Smith, 142 B.R. 862, **LR** 85-40055M, AP 91-4046 (February 4, 1992)
Ch. 13. (IRS' claim was erroneously reduced by Trustee such that confirmation

and discharge order were subject to collateral attack since reduction was effected without notice to IRS; confirmation order reducing claim cannot be substituted for objection to claim).
Prtys: Debtor, I.R.S., A.L. Tenney-Trustee.
Attys: Raymond Weber, Bill Adair, A.L. Tenney.

502(a)

In re Bancroft Cap Company, **LR,** 182 B.R. 538, No. 95-41058M (Feb. 24, 1995) **Ch. 11, Reversed, Wright, J.** (Debtor's plan set time limit for debtor's objections to claims; plan confirmed and debtor failed to object to creditor's claim within time limit; court could not reconsider, under 502(j), allowing debtor to object because no court order had been entered allowing or disallowing the claim; claim was allowed by section 502(a) and confirmation of plan, which was res judicata and was not timely appealed from.) (Reversed and remanded by Judge Wright)
Prtys: Bancroft Cap Company, Bower and Bonanno Co.
Attys: Kimberly Tucker, Charles W. Baker.

In re Circle J Dairy, Inc., **FA,** 92 B.R. 832**,** No. 85-139 (Oct. 18, 1988) (claim deemed allowed unless party objects; here, court allowed claim over objections because opposing parties failed to carry burden of proof). REVERSED, 112 B.R. 297 (J. Waters).
Ptys: Debtor-in-possession, Dairy Farm Leasing Co., First National Bank of Fayetteville, Agristor Leasing.
Attys: William R. Gibson, Thomas Carroll, Mark Lindsay, James M. Dunn.

In re Phyllis Michele Dove-Nation, **318 B.R. 147, H.S., BAP** (Dec. 17, 2004): affirming the bankruptcy court which overruled objection to claim by debtor; proof of claim was prima facie valid; insufficient documentation is not a basis to disallow a proof of claim where there was no evidence debtor disputed claim. Rule 3001, 3002, 11 U.S.C. § 501, 502, 101(5), 101(10).
Prtys: Phyllis Dove-Nation, eCast Settlement Corporation
Attys: Barbara May, Robert Lowry, Kimberly Wood Tucker, Alane A. Becket.

In re Farmer's Co-Op of Arkansas and Oklahoma, Inc., **FS** 84-046M (Oct. 23, 1984) **Ch. 11.** (Properly filed claim is presumptively allowed unless objected to by a party in interest who has burden of going forward with the evidence to rebut the presumption of validity).
Prtys: Farmer's Co-Op, Citizens Bank and Trust Co. Of Van Buren
Attys: Diane Mackey.

In re Thomas Freeman, **LR** 03-11514M (Aug. 5, 2003) **Ch. 13**: On objection to claim of contractor for work done on Debtor's home, Debtor carried his burden of going forward to rebut claim, shifting burden to contractor who failed to present evidence proving claim's validity.
Prtys: Debtor, Harold Washington

Attys: Robert Danecki, James W. Stanley

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in chapter 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

In re Grady Smith, 142 B.R. 862, **LR** 85-40055M, AP 91-4046 (February 4, 1992) **Ch. 13.** (IRS' claim was erroneously reduced by Trustee such that confirmation and discharge order were subject to collateral attack since reduction was effected without notice to IRS; confirmation order reducing claim cannot be substituted for objection to claim).
Prtys: Debtor, I.R.S., A.L. Tenney-Trustee.
Attys: Raymond Weber, Bill Adair, A.L. Tenney.

502(b)

In re Benefield, **HE** 102 B.R. 157 (July 13, 1989) **Ch. 7** (holding that debtor's ex wife had perfected lien in debtor's interest in real property to the extent child support arrearage accrued prepetition, but no lien for postpetition arrearage which had not accrued when petition was filed; act to perfect this lien was void as violation of automatic stay.)
Ptys: Debtor Dwight W. Benefield , Steve Davis and Viola Benefield Burroughs, Daniel K. Schieffler-Trustee.
Attys: James Luker, Baird Kinney.

In re Phyllis Michele Dove-Nation, **318 B.R. 147, H.S., BAP** (Dec. 17, 2004): affirming the bankruptcy court which overruled objection to claim by debtor; proof of claim was prima facie valid; insufficient documentation is not a basis to disallow a proof of claim where there was no evidence debtor disputed claim. Rule 3001, 3002, 11 U.S.C. § 501, 502, 101(5), 101(10).
Prtys: Phyllis Dove-Nation, eCast Settlement Corporation
Attys: Barbara May, Robert Lowry, Kimberly Wood Tucker, Alane A. Becket.

In re Donald Lynn Pierce, 02-24536, **LR, Ch. 13**
Nov. 15, 2004, 04-0040, **DISTRICT COURT (JUDGE WILSON) AFFIRMED** bankruptcy court's policy of granting objections to claims unless a response and request for hearing is filed within 30 days; creditor filed no response to objection to his claim but appealed on the basis that he had no evidentiary hearing as prescribed under section 502(b). Rule 9007 grants bankruptcy courts discretion to set the particularities of notice procedures. **Affirmed, 8th Circuit,** Jan. 25, 2005: section 102 defines "notice and a hearing" to authorize an act on negative

notice without hearing if notice is given properly and hearing not requested by a party in interest.
Prtys: Donald Lynn Pierce, Myron Roberts
Attys: John Ogles

502(j)

In re Bancroft Cap Company, **LR,** 182 B.R. 538, No. 95-41058M (Feb. 24, 1995) **Ch. 11, Reversed, Wright, J.** (Debtor's plan set time limit for debtor's objections to claims; plan confirmed and debtor failed to object to creditor's claim within time limit; court could not reconsider, under 502(j), allowing debtor to object because no court order had been entered allowing or disallowing the claim; claim was allowed by section 502(a) and confirmation of plan, which was res judicata and was not timely appealed from.)
Prtys: Bancroft Cap Company, Bower and Bonanno Co.
Attys: Kimberly Tucker, Charles W. Baker.

503(b)(1)

In re William K. Brewer, **JO** 97-31440M, 233 B.R. 825 (May 3, 1999) **Ch. 13** (statute (365(d)(3) requiring debtor to continue to perform under lease until rejected allowed landlord administrative expense for postpetition, pre-rejection rent without showing of benefit to estate.)
Prtys: William K Brewer, Dr. Glenn Dickson.
Attys: Joe C. Barrett, Chris Gardner.

In re Mel-Hart Products, Inc., 136 B.R. 197, **LR** 90-40399M (November 13, 1991) **Ch. 7** (allowing administrative claim for post-petition rent since Trustee had constructive possession of entire premises and for postpetition insurance costs; holding administrative expenses of the chapter 7 case have priority over those in the prior Chapter 11 case under 726(b))(In accompanying order, court denied value of creditor's secured claim; no evidence that creditor advanced money after cash collateral order entered)**.**
Prtys: Randy Rice-T; Debtor, FabuGlass.
Attys: Charles Baker, Randy Rice, William Adkisson, Rita Brown Wells, Marilyn Byington, Charles Coleman.

In re Mel-Hart Products, Inc.,**LR** 90-40399M (November 14, 1991) **Ch. 7** (court denied value of creditor's secured claim; no evidence that creditor advanced money after cash collateral order entered)**.**
Prtys: Randy Rice-T; Debtor, American Heavy Industries.
Attys: Charles Baker, Randy Rice, William Adkisson, Rita Brown Wells, Marilyn Byington, Charles Coleman.

In re Elmer Smith, **ED** 03-74055, **Ch. 13** (Sept. 20, 2004) **315 B.R. 77**: Damages flowing from breach of lease assumed by debtor in first case but later rejected were administrative expense under 503(b)(1)(A), 364(g); debtor's second

confirmed plan did not address lessor's claim for administrative expense sufficiently to satisfy due process so as to bar claim under res judicata.
Prtys: Debtor, General Electric Capital Corp.
Attys: John Phillips,

In re White Rock, Inc. **LR** 01-44553M (May 17, 2002) **Ch. 11**: (creditor requested administrative expense of legal fees and costs for security to protect creditor's property adjacent to debtor's property pursuant to 503(b)(1)(A) as necessary for preserving estate or actual and necessary costs of estate; court denied request as expenses protected creditor's interests, not debtor's).
Prtys: Debtor, Metropolitan Bank
Attys: Allen Bird, Stephen B. Niswanger.

503(b)(3)(4)

In re Charles and Margaret Cross, **HE** 86-13M (Feb. 6, 1989) **Ch. 7.** (Denying creditor's request for attorneys' fees for successfully prosecuting objection to discharge and providing substantial benefit to estate; Such motions may be granted under section 503(b)(3)(4) as an administrative expense, but not without prior court approval.)
Prtys: First National Bank of Eastern Arkansas, Jim Luker-Trustee.
Attys:

In re Ernest and Mary Jones, **LR** 85-1115 (January 30, 1987) **Ch. 7.** (Denying fees to creditor's attorney who pursued successful discharge-dischargeability action against debtors; attorney not employed by trustee or approved by court pursuant to section 503(b)(3)(B)).
Prtys: Evans Benton, Randy Rice-Trustee.
Attys: Robert Batton, Barbara Bonds.

In re Diamonds Plus, Inc. 233 B.R. 829, **JO** 98-30906M (May 12, 1999) **Ch. 11.** (unsuccessful bidder on sale of assets of Chapter 11 debtor could not recover breakup fee, in absence of any binding agreement with debtor for payment of such a fee, but bidder could recover as administrative expense costs and attorneys fees in helping to coordinate liquidation sale which was substantial contribution to bankruptcy estate.)
Prtys: Diamonds Plus, Inc., Silverman Jewelers Consultants, Inc.
Attys: Warren Dupwe, Charles Coleman.

506(a)

In re Harold and Kathryn Black, **LR**, 260 B.R. 134, No 00-42539M, AP 00-4103, **Ch. 13** (March 27, 2001) (upon debtors' objection to Conseco's claim under second mortgage lien on home and complaint to determine extent and priority of lien, court determined fair market value of home was less than first lien so that Conseco was wholly undersecured; since Conseco was unsecured under 506(a),

it was not entitled to anti-modification treatment of 1322(b)(2) and its claim could be treated as unsecured).
Prtys: Harold and Kathryn Black-Debtors; Conseco Financing Servicing Corp.
Attys: Steve Bennett, Kimberly Burnette.

In re Danny Thomas Properties III Limited Partnership, 231 B.R. 298, **LR** 96-42482M (March 18, 1999) **Ch. 11.** (claim is secured only to value of creditor's interest in estate's interest in property; secured creditor's objection to chapter 11 plan sustained; plan not feasible because it would generate a deficit over five year period, could not fund deferred maintenance, and capital contribution was not forthcoming).
Prtys: Danny Thomas Properties III Ltd. Partnership, Beal Bank.
Attys: Gregory M. Hopkins, Joyce Bradley Babin.

In re J.W. Gore, 113 B.R. 504, **LR** 88-2284M, CMS 89-489M, 89-675M and 89-570M (Dec. 20, 1989) **Ch. 12.** (Plan must propose to pay present value of creditor's secured claim as determined by value of collateral securing claim).
Prtys: Debtors, Kansas City Life Ins. Co., Farmers and Merchants Bank of Des Arc., Travelers Ins. Co., U.S. Small Business Admin.
Attys: Lance Hanshaw, Phillip Hout, Robert Abney, David Henry, William Adair.

In re Owens, **LR** 89-42664 (Aug. 3, 1990) **120 Bankr. 487; Ch 13.** (GMAC's objection to confirmation of chap. 13 plan sustained; wholesale value as of date of confirmation hearing is proper standard for valuing collateral; no evidence that contract rate is current market rate so contract rate not approved).
Prtys: Debtors, General Motors Acceptance Corp.
Attys: Richard Kalkbrenner, Aaron Fuller.

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in chapter 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

506(b)(c)

In re Direct Transit, 226 B.R. 198, **BAP** No. 98-6039NI
(October 26, 1998) **Ch. 11 (**provision in employment agreement was true liquidated damages provision; liquidated damages provision was enforceable under South Dakota law and reasonable; therefore, claim of oversecured creditor that included liquidated damages was allowed).
Prtys: Direct Transit, Inc., South Dakota Governor's Office of Economic Development.

Attys: John R. Weiss, Roger Wilgers Damgaard.

In re Randy Dodd, TX. No. 96-14040M (September 8, 1997) **Ch 12.** (Overruling debtor's objection to attorney's fees of counsel for fully secured creditor; court found fees allowable under 506(b), reasonable and justified).
Prtys: Randy Dodd, Davenport Land and Cattle Co.
Attys: Terry Zelinski, Kimberly Tucker.

In re Dang, 96 B.R. 185, **LR** 88-589 (Nov. 4, 1988) **Ch. 13.** (Objection to confirmation of chap. 13 plan sustained because violated 1325(a)(5)(B) and 506(b) in that it misstates the amount of the Bank's claim, which was oversecured; plan must provide for retention of Bank's lien and that claim be paid in full with interest at market rate and costs).
Prtys: Tien Nguyen and Phung Dang, Debtors; Worthen Bank.
Attys: William Owen, Judy Henry

In re Stephen Griffin, **FS** 02-70245**, Ch. 7**
August 27, 2003: Court removed Diane Sexton as attorney for Ms. McGehee (creditor) because of conflict of interest and disallowed attorneys fees. APPEAL DISMISSED BY BAP. NO. 03-6069: June 3, 2004: an order disqualifying an attorney is not a final appealable order. BR Code 28 U.S.C. § 158(C). BR court affirmed as to ruling that attorneys fees would be disallowed because they did not benefit oversecured creditor and were not related to protecting her claim. 11 U.S.C. § 506(b).
Prtys: Mary McGehee, Richard Cox, Trustee
Attys: Diane Sexton, Richard Cox

In re Joseph A. Torcise d/b/a Joe Torcise Farms and TIJODEE, Inc., 1994 WL 162404, **S.D.Fla. (Miami)** 89-16287-BKC-AJC, 89-16286-BKC-AJC (February 23, 1994) **Ch. 11.** (Holding the following: creditor's anticipated expenses of liquidating repossessed collateral may not be charged to estate; under 506(b) attorneys fees not allowed to oversecured creditor to defend avoidance actions, not allowed in general case when inappropriately billed or grouped, but allowed as to appeal of confirmation order even though appeal unsuccessful; reducing debtor's surcharges on collateral as being either unreasonable or of no benefit to creditor under 506(c); ruling interest on indebtedness to accrue as provided in foreclosure judgment).Reversed by District Court and Affirmed by 11th Cir.
Prtys: Debtor, Community Bank of Homestead
Attys: Robert Hustead, Martin Sandler, Hywel Leonard, Karen Kantner.

In re Herbert Russell, 109 B.R. 359, **ED** 84-58M (October 19, 1989) **Ch. 11.** (Trustee's objection to claim of vendor for deficiency from foreclosure sale sustained because trustee was not party to foreclosure action, so res judicata not applicable; claim was unconscionable because vendors paid only a fraction of value).
Prtys: William Gibson-Trustee, Furrow family.

Attys: William Gibson, Geoffrey Treece, Susan Gunter.

507

In re Melvin and Wendy Bass, **LR** 00-42447M (November 6, 2000) **Ch. 13** (Order allowing nondischargeable criminal restitution to be paid through plan even though the payments are modified, but restitution claim is not priority claim; plan may not unfairly discriminate as to other unsecureds in paying claim in full).
Prtys: Debtors, Roger Richmond
Attys: Randolph Satterfield, Lawrence Yancey.

In re Bryan Kogut, **HS** 04-72452, June 1, 2005 **(325 B.R. 400)**: Objection to confirmation of **Ch. 13** plan overruled; if tax debt was excise tax governed by 3-year limitation on priority under section 507(a)(8)(E) it was too old to be entitled to priority, and Creditors did not establish debt was trust fund tax entitled to priority under section 507(a)(8)(C).
Prtys: Debtor; Monroe County, Alabama; Monroeville, Alabama
Attys: Sherry Daves, Jeffrey Reynerson

In re Anthony and Micki Lybrand, **HS** 04-78412, March 9, 2006 **(2006 WL 581038):** On objection to confirmation of **Ch. 13** plan, court found IRS could allocate prepetition tax refund to set off the prepetition tax liability of its choice, in this case against its general unsecured claim instead of the unsecured priority claim under section 507(a)(8).
Prtys: Debtors, IRS
Attys: Henry Means, Larry McCord

In re Mel-Hart Products, Inc., 156 B.R. 606, **LR** 90-40399M (June 23, 1993) **Ch. 7.** (Creditor who paid Debtor's employees under contract was not entitled to third priority under 507(a)(3) as assignee of employees because no consideration for assignment or to fourth priority under 507(a)(4) as remitter of employee benefits.
Prtys: Randy Rice-Trustee, Sunmark Holding Company, Inc.
Attys: Randy Rice, Mark Nichols.

In re MacMillan Petroleum, **ED** 87-149M (April 20, 1989) **Ch. 7** (under consent decree, three former employees entitled to priority for wages under section 507(a))
Prtys: Equal Employment Opportunity Commission, Debtor
Attys: None listed

In re Mid-America Travel, **HE** 90-20060M (April 20, 1992) **Ch. 11.** (Creditor that acquired claim under equitable subrogation pursuant to section 507 was precluded from claiming the priority of the original holder in liquidating plan).
Prtys: First National Bank of Eastern Arkansas, debtor in possession.
Attys: Charles Baker, John D. Bridgforth.

507(a)(7)

In re Bolin, **ED** 89-041M (Mar. 15, 1991) **Ch.13, 1991 WL 58389** (Objection to confirmation; held IRS could allocate lien to oldest taxes to maximize recovery; held debtor could not avoid judicial tax lien under § 522(f)(2); determined which taxes had priority status; prepetition interest is included in tax priority claim, penalties are subordinated to claims of general unsecured creditors)
Ptys: Kenneth Bolin and Internal Revenue Service)
Atty: William Johnson, Michael Fitzhugh, Karen Osborne, A.L. Tenney

In re Kuebler, 156 B.R. 1012, **LR**89-40146, AP 92-4037 (June 24, 1993) **Ch. 13.** (plan listed IRS's secured debt as priority and didn't provide for full payment; plan confirmed without objection by IRS was res judicata on incorrect claim classification because IRS didn't plead lack of notice and opportunity to object; secured debt untreated by plan is discharged as to debtor's personal liability but IRS retains lien which passes through bankruptcy and remains attached to debtor's property, affording IRS an in rem cause of action on the debt)(AFFIRMED - Judge Woods).
Prtys: IRS, Leonard and Laura Kuebler.
Attys: Keith Grayson, David Coop-T., Tamera Fine-Trail, Robert Millstone.

In re McCarther Enterprises, Inc., **LR** 86-539, AP 88-52 (Aug. 24, 1988) **Ch. 7:** (Trustee's complaint dismissed for failure to establish all elements of preference). AFFIRMED (J. Howard, 3/6/89, LR-C-88-697).
Prtys: Trustee-Charles Davidson, I.R.S.
Attys: Michael Wilcove, Mark Colbert, Jack Sims, Bill Adair.

In re Wise, **LR** 90-04-0893 (Jan. 2, 1991) **127 B.R. 20, Ch. 13**: Three-year period of limitation for determining tax priority under 507(a)(7)(A) suspended during pendency of previous bankruptcy case pursuant to section 108(c) and section 6503(b) and (i).
Prtys: IRS, Debtor
Attys: Kimberley S. Forseth, Michael Knollmeyer, A.L. Tenney, Trustee, William Adair

507(a)(8)

In re Richard and Jane English, **LR** 98-42005 (May 7, 1999) AP 98-4071: **Ch. 7:** income tax debt was nondischargeable priority claim because unsecured as provided by section 507(a)(8); even though tax lien had been filed, there was no property to which it could attach.
Prtys: Debtors, I.R.S.
Attys: Mary J. Pruniski, Laurence Williams.

In re Bobbie Harrell, **HE** 03-16983 **Ch 13** (Jan. 5, 2005) **318 B.R. 692**: State's claim for unassessed but assessable tax debts paid untimely and postpetition was not entitled to priority under section 507(a)(8)(A)(iii) and could be discharged in a chapter 13 under section 1328(a), even though the debts were nondischargeable in a chapter 7 under section 523(a)(1)(B)(ii).

Prtys: Debtor, Arkansas Department of Finance and Administration
Attys: Greg Niblock, Michelle Baker.

509

In re James and Carrie Hall, **HS** 02-70062 (July 24, 2003) **295 B.R. 877,** AP 02-7090: court denied motion to dismiss filed under Rule 7012; creditor may proceed with dischargeability complaint under either § 523(a)(4)for embezzlement or § 523(a)(6) for willful and malicious conduct; pursuant to § 509 creditor is equitably subrogated to the rights of another creditor which first creditor is obligated to pay if debtor doesn't pay.
Prtys: Debtors, Reggie Jones
Attys: David Grace, Martha McAlister

510

In re: N.S. Garrott & Sons, **JO** 83-215M; In re: Eastern Arkansas Planting Co., **JO** 83-216M; AP 84-310M (June 27, 1985) **Ch. 7,** (SBA had prior lien to Wells Fargo in Debtors' equipment because subordination agreement from SBA to Wells Fargo had expired)
Prtys: Small Business Administration, Wells Fargo Ag Credit Corp., John Deere Co.
Attys: Richard Frockt, Lindsey Fairley, Michael Killin, Katherine McGovern, Jim Smith, Diane Mackey.

510(c)

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **73 B.R. 414 Ch. 11** (Plan can be confirmed over objecting creditors under 1129(b)(1) if the plan does not unfairly discriminate; here plan discriminated against judgment creditor; claim could not be equitably subordinated because creditor not guilty of inequitable conduct that injured other creditors or conferred unfair advantage; plan violated absolute priority rule, pursuant to section 1129(b)(2)(B)(i,ii), where debtor retained all ownership of property even though unsecured claimants might not be paid in full).
Ptys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Dillon Construction Co., Inc., **LR** 88-789M, AP No. 88-217M (August 10, 1989), **Ch. 11.** (Court did not consider equitable subordination as a remedy where Debtor did not request such relief in the pleadings, present evidence, or argue the rule in briefs).
Prtys: Dillon Construction Co. Home Federal Savings and Loan, Schrader Construction, Pine Lake Country Club, Phyllis and Gerald Dillon.
Attys: R.J. Brown, Michael G. Smith, Walter Murray, Robert L. Brown, William L. Owen, Joe Bell, Steve Quattlebaum, Watt Gregory.

521

In re Oregon Butler, 42 B.R. 777, **PB** 93-101 (June 15, 1984) **Ch. 11** (Confirmation of chap. 11 plan denied, plan failed to state percentage to be paid to unsecureds over $500 when plan impaired their interests and was not accepted by them, plan misclassified corporation and shareholder to which debtors had conveyed assets, plan misclassified secured creditors and did not list debtors' inherited property, in absence of election requirements, plan did not meet statutory election requirements and did not provide for full payment of all claims.)
Prtys: Oregon and Lavelle Butler, John Deere Co, International Harvester Credit Corp., Massey Ferguson Credit Corp, Pioneer Production Credit Association, and the Federal Land Bank of St. Louis.
Attys: Jack Sims

In re Michael and Cheryl Parker, 142 B.R. 327, **ED** 91-11139M (June 23, 1992) **Ch. 7.** (Debtors current on mobile home payments could retain collateral and continue payment and were not required to either reaffirm, redeem, or surrender property).
Prtys: GreenTree Acceptance Inc., Debtors
Attys: Martha McAlister, Jimmy Eaton.

In re Vought, **PB** 85-120M (June 26, 1986) **Ch. 13.** (Sustaining objection to confirmation where Debtors failed to disclose assets on original schedules as required by section 1325 and 521).
Prtys: Debtors, Integon Indemnity Corp.
Attys: William Benton, David Grace, A.L. Tenney-T.

521(b)

In re Thomas Warren, **LR** 05-40022 (March 20, 2006) **(2006 WL 701144) Ch. 13:** denying Trustee's motion to dismiss for failure to file credit counseling certificate with petition under BR Rule 1007(b)(3) and section 521(b)(1) and failure to complete counseling at least one day prior to petition filing pursuant to 109(h)(1). Debtor had 15-day extension to file certificate and complied with statute by completing counseling prior to time of petition filing.
Prtys: Debtor, Jo-Ann Goldman-Trustee
Attys: Jean Madden, Linda McCormack

522(a)

In re Butler, **HE** 99-54M, (Nov. 4, 1988) **Ch.12**, 97 B.R. 508 (Chapter 12 confirmation hearing; confirmation denied for various reasons; objection to provision not allowing lien on after-acquired property overruled pursuant to § 552(a))
Ptys: First National Bank of Eastern Arkansas and Farm, Credit Bank of St. Louis
Attys: Charles Baker, John Bridgforth, Gerald Coleman, David Solomon, A.L.

Tenney

In re Chambers, **LR** No. 85-902M,(Oct. 17, 1985) **Ch. 7**: (Creditor's judicial lien as to exempt personal property and homestead avoided; lien in television and satellite dish is not avoided).
Prtys: North Arkansas Industrial Services, Debtors.
Attys: David Clark, Tom Allen, Jack Sims, Larry V. Alpom.

In re Dipzinski, **JO**, No. 97-10389M (June 16, 1999) **Ch. 7.** (Trustee's objection to debtor's amendment to claim of exemptions sustained; debtor intentionally omitted from schedules the exempt asset, sale proceeds from sale of marital real property due to debtor in divorce so debtor could not later claim exemption when it was discovered.)
Prtys: Trustee-Warren Dupwe, Debtor-Patricia Dipzinski.
Attys: Warren Dupwe, Louis J. Nisenbaum,Richard D. Hitt.

522(b)

In re Bobby and Sherry Chambers, **Tex.** No. 02-72834
(April 10, 2003) **Ch. 7** Debtors' homestead on city limits of Nashville, AR was urban and would be exempt under section 522(b)(2)(A) according to urban constitutional limits.
Prtys: Trustee-Richard Cox, Debtors
Attys: Richard Cox, Billy Moritz

In re Charles and Sylvia Evans, **PB** No. 94-50037M (Aug. 25, 1995) **190 B.R. 1015: Ch. 7**: Sustaining objection to rural homestead exemption when debtor's abandoned portion of property for commercial operation and property was urban rather than rural despite being outside city limits of Pine Bluff.
Prtys: Debtors, Trustee-Walter Dickinson, Worthen National Bank
Attys: Charles Clawson, Frederick Wetzel, Joseph Strode

In re Keith Criswell, **LR, 152 B.R. 264,** No. 92-40865M (Dec. 14, 1992) **Ch. 7.** (Court held Arkansas statute repealing previous law and providing that bankruptcy debtors have the right to use federal or state exemptions did not violate the Arkansas Constitution which limits personal property exemptions to less than provided by federal exemptions; if statute conflicts with state's constitution, conflicting portion can be severed from the valid portions; state's decision to opt out of federal exemption scheme is not irrevocable).
Prtys: Keith Criswell, Beth Passmore, Rick Ramsay, Trustee.
Attys: Stephen Bennett, Jack Waggoner.

In re Gardner, In re Harris, In re Gribble, 139 B.R. 460, **HE** 88-20027 (December 31, 1991) **Ch 7**: (Ark. Code Ann. § 16-66-217 (1991) allows Arkansas residents a choice of federal or state exemptions; election is not retroactive to those debtors filing for bankruptcy before the effective date of the amendment when only state exemptions were available).

Prtys: Leonard and Conus Gardner, Paul and Elizabeth Harris, James Gribble.
Attys: James C. Luker, Daniel Schieffler, Stephen Bennett, Terry Zelinski.

In re Giller, 127 B.R. 215, **ED** 89-11-104 (Oct. 24, 1990) **Ch. 11**: (Urban homestead exemption limited to 1/4 acre; personal property exemptions limited to $500, including IRA, car, wedding bands, tools of trade; could not exempt partnership interests because they are personalty and not within the exemption limit; partner's interest in partnership (share of profits and surplus) are property of estate).
Prtys: Debtor, FSLIC
Attys: Robert Depper, Barbara Hollis.

In re Kenneth Hudspeth,92 B.R. 827, **HA** 987-02M (Aug. 22, 1988) **Ch. 7**: (Arkansas' unlimited insurance exemption statute violates the Arkansas constitution's personal property exemption limit of $500).
Prtys: Debtors, Trustee.
Attys: Willliam Gibson, Claude Jones.

In re Marco Levy, 221 B.R. 559,**S.D. Fla. (Ft. Lauderdale)** 95-22861-BKC-PGH, AP 95-1597-BKC-PGH-A (March 27, 1998)**Ch. 7.** (court sustained objections to discharge and claim of homestead exemption; Canadian debtor had failed to explain loss of assets to meet liabilities so discharge denied; claim of exemption in homestead denied because debtor lacked domicile in Florida during 180 days preceding bankruptcy so Florida exemptions not available to Debtor).
Prtys: Debtor, Attorney General of Quebec, Lucy C. DeBraccio-T.
Attys: Robert Fracasso, Ronald G. Neiwirth, Robert Meyer.

In re Michael and Cindy May, **ED 02-71935 (**April 3, 2006) court held that **Ch. 7** debtors, who exempted real property pursuant to section 522(b)(1), could avoid creditor's judicial lien pursuant to formula set out in 522 (f)(2)(A).
Prtys: Debtors, Equipment Supply and Distribution Co.
Attys: Kenneth Harper, Arnold Goodman

In re Joe B. Morris **FA** 91-15568
In re Virginia Morris **FA** 91-15649 (May 28, 1992) **LR** (granting creditor's motion for joint administration. Debtors had to choose between state or federal exemptions, husband couldn't take state while wife take federal).
Prtys: Debtors, Citizens Bank of Northwest Arkansas, Vance Harp, Claude Jones-Trustee
Attys: Marcia Brinton, Lamar Pettus, Charles Trantham, Stanley Leasure, William Clark, Larry Thompson

In re John E. Oldner, **LR** 94-42031M, (Aug. 18, 1995) **191 B.R. 146,** AP 94-42031M: Debtor could not exempt homestead outside city limits as rural because character of the property was urban "megalapolitan."
Prtys: Trustee-Richard Ramsay, Debtor

Attys: Richard Ramsay, David Jacobs

In re Weaver, 89-12493 (Jan. 17, 1991) **128 B.R. 224, Ch. 7**: Debtor would be allowed to exempt property as homestead where it was rural in nature and all lots owned by debtor were contiguous.
Prtys: Debtor, Tom Robertson, Trustee, Michael Wiseman.
Attys: Fines Batchelor, Phillip Taylor, Robert Blatt, Thomas Robertson

522(d)

In re DeWitt Busby, **HE**, No. 00-20283M, **Ch 7**. (March 9, 2001). Debtor could avoid lien impairing his exemption in certain tools of the trade pursuant to 522(d)(5)&(6); extent of exemption is determined under the formula provided in 522(f)(2)A).
Prtys: DeWitt Busby-Debtor; Bob Cole Bail Bonds, Inc.
Attys: Richard Rhodes, Jim Luker.

In re Bob & Debra Daugherty, **FA** 92-80161 (Dec. 14, 1992) **Ch. 7**. (Ruling Debtors failed to prove Bob's curtsey and homestead rights in Debra's pre-marital real property; Trustee's objection to exemption by Bob sustained.)
Prtys: Bob and Debra Daugherty, Trustee--John T. Lee.
Attys: Marilyn Washburn, John T. Lee, Becket and Watkins.

In re Gosnell, **HS** 04-75975, **336 B.R. 133** (December 19, 2005) **Ch. 7. (**Ruling that portion of debtor's IRA not exempted under the wild card exemption, § 522(d)(5), could not be exempted under § 522(d)(10)(E) because not reasonably necessary for the debtors' support).
Prtys: Debtors, Trustee–Frederick Wetzel
Attys: Brian Trubitt, Frederick Wetzel

In re Guy Jones, Jr., **LR** 92-42755M (July 12, 1994) **Ch. 7.** (Granting parties new trial on issue of whether debtor abandoned homestead such that he was not entitled to exemption because debtor had misrepresented in first trial that he was living elsewhere when the bankruptcy petition was filed).
Prtys: Mary and Christopher Jones, Debtor, Trustee
Attys: Judy Henry, Charles Baker, Richard Ramsay.

In re Guy Jones, Jr., 193 B.R. 503, **LR** 92-42755M (August 18, 1995) **Ch. 7.** (In new trial on creditors' objection to claim of homestead exemption, court held creditors did not carry burden of proof to show that debtor had present intent to abandon homestead at time of filing petition; although he was in negotiations before and after bankruptcy filing to sell house, this was evidence of intent to abandon homestead in future and not present intent to abandon).
Prtys: Mary and Christopher Jones, Debtor, Trustee
Attys: Judy Henry, Charles Baker, Richard Ramsay.

In re Gary and Nancy Pendleton, 225 B.R. 425, **LR** 95-43358M (September 29, 1998) **Ch. 13.** (Personal injury award claimed as exempt under 522(d)(11)(D) and 522(d)(5) was disposable income and not reasonably necessary for the Debtors' expenses such that the proceeds would be used to fund the plan).
Prtys: David Coop-T; Debtors.
Attys: William Owens; David Coop.

In re Bobby & Drucella Sisco, 147 B.R. 495, **HA** 91-13175 (Nov. 16, 1992) **Ch. 7.** (IRA exemption allowed under 522(d)(10)(E) because reasonably necessary for support).
Prtys: Richard Nelson, Trustee; Debtors; First Federal Savings & Loan.
Attys: Richard Nelson, Frank H. Bailey, Claude R. Jones.

In re Cecil Speight, **FA** 91-15648F (June 4, 1992) **Ch. 7.** (Debtor could not exempt half his wife's IRA because not property of estate; no exemption in his IRA because not reasonably necessary for his support).
Prtys: Debtor, Joe Laughter.
Attys: Jimmy Eaton, Jackson Butt.

In re Alfred and Sharon Whitson, **LR** 02-20854, **319 B.R. 614** (Jan. 19, 2005) Trustee failed to carry burden of proof under BR Rule 4003 that proceeds from settlement of debtors' personal injury claims were not exemptible; proof did not show proceeds were not compensation for lost earnings or were not reasonably necessary for debtors' support as required by section 522(d)(11)(E).
Prtys: Debtors, Trustee-Richard L. Ramsay.
Attys: James O. Wyre, Richard L. Ramsay.

In re Zenone, **LR** 99-44146M (June 6, 2002) **Ch. 7**: (Debtor could not amend exemptions to include an IRA account, pursuant to section 522(d)(10) and BR Rule 1009, that was not previously scheduled as exempt because of bad faith and prejudice to creditors and trustee).
Prtys: Debtor, James Dowden, Trustee; Sherri Burks.
Attys: Paul Budd, James Dowden, Scott Vaughn.

522(f)

In re Trecee Lee Anderson, **ED** 02-72101 (September 6, 2002) **Ch. 7:** (Debtor could not avoid judicial lien under section 522(f)(1)(A) when she owned no property upon which lien could fix; creditor with prepetition claim could not reduce the claim to judgment with lien attached to debtor's property post-discharge because discharge renders judgment void under section 524).
Prtys: Debtor, Farmers Bank & Trust.
Attys: Jack Gooding, Henry Kinslow.

In re Bolin, **ED** 89-041M (Mar. 15, 1991) **Ch.13, 1991 WL 58389** (Objection to confirmation; held IRS could allocate lien to oldest taxes to maximize recovery; held debtor could not avoid judicial tax lien under § 522(f)(2); determined which

taxes had priority status; prepetition interest is included in tax priority claim, penalties are not)
Ptys: Kenneth Bolin and Internal Revenue Service)
Atty: William Johnson, Michael Fitzhugh, Karen Osborne, A.L. Tenney

In re DeWitt Busby, **HE**, No. 00-20283M, **Ch 7**. (March 9, 2001). (Debtor could avoid lien impairing his exemption in certain tools of the trade pursuant to 522(d)(5)&(6); extent of exemption is determined under the formula provided in 522(f)(2)A)).
Prtys: DeWitt Busby-Debtor; Bob Cole Bail Bonds, Inc.
Attys: Richard Rhodes, Jim Luker.

In re Marty Cloud, **LR**, 215 B.R. 870, 96-42046M, AP 96-4174
(July 17, 1997) **Ch. 7** (equitable lien in automobile that creditor had purchased for her step-son, the debtor, was not judicial lien impairing an exemption and not subject to avoidance by debtor).
Prtys: Marty Ray Cloud, Betty Cloud.
Attys: Keith B. Faulkner, Jimmy D. Eaton.

In re Michael and Cindy May, **ED 02-71935 (**April 3, 2006) court held that **Ch. 7** debtors, who exempted real property pursuant to section 522(b)(1), could avoid creditor's judicial lien pursuant to formula set out in 522 (f)(2)(A).
Prtys: Debtors, Equipment Supply and Distribution Co.
Attys: Kenneth Harper, Arnold Goodman

523(a)

In re Crull, **HA,** 101 B.R. 60 (June 7, 1989) **Ch. 7.** (Where debtor moved to reopen case to include debt inadvertently omitted, Court held that dischargeability would be determined not by amendment of schedules but by adversary proceeding or in nonbankruptcy forum as defense to suit for judgment on debt.)
Prtys: Gary and Karen Crull, H.J. Scheirich Co.
Attys: Roger Morgan, James Stanley, William Robinson.

In re Annie Marie Davis, **PB** 82-165M, AP 85-580M (September 17, 1986) **Ch**.**7**. (State court judgment against defendant-debtor did not make specific finding of fraud; judgment had collateral estoppel effect in subsequent dischargeability action for fraud as this was the only possible basis for the judgment and debtor did not prove otherwise).
Prtys: Pearl Suell, Annie Marie Davis
Attys: Angela Baxter, Andree Roaf, W.M. Dickinson, Margaret Turner Marshall.

523(a)(1)(B)

In re William and Harriett Cates, **JO** No., 01-32104M, AP. No. 01-3051 (Feb. 24,

2003)**289 B.R. 389**: Determination of nondischargeability of tax debt in debtor-taxpayer's prior bankruptcy case did not, under principles of res judicata, bar redetermination of issue in subsequent chapter 7.
Prtys: Debtors, Ark. Dept. Of Finance & Administration
Attys: Joe Barrett, James Luker, trustee

In re Bobbie Harrell, **HE** 03-16983 **Ch 13** (Jan. 5, 2005) **318 B.R. 692**: State's claim for unassessed but assessable tax debts paid untimely and postpetition was not entitled to priority under section 507(a)(8)(A)(iii) and could be discharged in a chapter 13 under section 1328(a), even though the debts were nondischargeable in a chapter 7 under section 523(a)(1)(B)(ii).
Prtys: Debtor, Arkansas Department of Finance and Administration
Attys: Greg Niblock, Michelle Baker.

In re John and Mary Snider, **FS** 84-190M, AP No. 85-33M (July 30, 1985) **Ch. 7.** (Pursuant to 523(a)(1)(B)(i), taxes are nondischargeable without regard to time limits if a return was never filed).
Prtys: Debtors, State of California
Attys: Dan McCraw, James O. Cox-Trustee, Dennis Sbanotto,

523(a)(1)(C)

In re Haimes, 173 B.R. 777, S.D. Florida, No. 90-39632, AP No. 91-0242 (Aug. 12, 1994) **Ch. 7.** (I.R.S. has bop that debtor violated bankruptcy section providing for discharge exception for fraudulent return or willful attempt to evade tax; exception for fraudulent return is broad enough to apply if debtor willfully conceals assets; corporations created by debtor were shams to disguise income and acquire assets in debtor's name that could be seized to pay taxes).
Partys: Debtor, I.R.S.
Attys: Lance Baker, Douglass Wendel.

523(a)(2)(A)

In re Avant, (August 30, 1988), **ED** 86-67M, Ch.**7** (§ 523(a)(2)(A) complaint, fraud and false representation, plfs failed to prove by clear & convincing evidence, speculative oil venture, statements made not fraud)
Ptys: Jack Molnaird, Billy Sandifer, et al
Attys: Henry Kinslow, Ian Vickery, Eugene Bramblett, Claude Hawkins, David Duke

In re Barnett, **ED** 85-42, AP 85-472M (November 17, 1986) **Ch. 7**.
(Lending institution and title company filed dischargeability complaint when wife failed to disclose state of title and other prior liens in granting mortgage to lender; debt to lender nondischargeable.)
Prtys: Willard and Lois Barnett, First South, Southern Title Insurance Co.
Attys: Layne Livingston, Henry Kinslow, Claude Hawkins.

In re Hoffman, 70 B.R. 155, **ED** 85-27M, AP 85-476M (Sept. 16, 1986) **Ch. 7.** (Holding that debt to bank was not nondischargeable under 523(a)(2) (A) where debtor sold collateral of secured creditor without consent and without remitting proceeds to secured creditor where fraudulent conversion occurred long after time loan was obtained and debt incurred).
Prtys: Debtor, National Bank of Commerce
Attys: Isaac Scott, Charles Coleman, Joseph Strode.

In re Harr, **ED** 86-142M, AP 87-180M (June 29, 1988) **Ch. 11**:(Collateral estoppel did not apply to establish nondischargeability of debt arising from fraud where state court judgment standards differed and determination of fraud was not essential to the former judgment).
Prtys: Don Goodwin, David Brown, Alexander Kermendy, Debtors.
Attys: John Pou, Ian Vickery, Don Gillaspie, Don Goodwin.

In re Randy Kerr, 58 B.R. 171, **LR** 84-967M, AP No. 84-492 (August 6, 1985) **Ch. 7.** (Plaintiffs did not carry burden by clear and convincing evidence that debtor had committed fraud by misrepresenting to them the extent of their liability in partnership formed to develop apartment complex).
Prtys: Debtor, Edward Bunch, James Burge, Gilbert Caver, David Gruenewald, Robert McKinney, Larry Motley.
Attys: John Tisdale, Steve Napper, Ralph Sloan.

In re Gale McVicker, 234 B.R. 732, **LR** 98-42405M, AP 98-4169 (June 14, 1999) **Ch. 7.** (Credit card debt to Sears nondischargeable when Debtor committed actual fraud in incurring the debt because she did not intend to repay when making the charges; court using totality of circumstances analysis).
Prtys: Debtor, Sears Roebuck & Co.
Attys: Patt Pine, Raymond Weber.

In re Willie Joe Stephens, **TX** 95-14064M (June 23, 1997) **Ch. 7**. (State court judgment against debtor-roofer for shoddy roof job was dischargeable since creditor did not prove debtor intended to defraud her by installing roof that developed subsequent problems; negligence and/or breach of contract is not same as fraud).
Prtys: Debtor, Virginia Flaherty
Attys: David Price,

In re Prieto, 2001 WL 114937, Fla. No. 00-12476 BKC-RAM (Jan. 30, 2001) **Ch. 7.** (credit card debt to American Express was nondischargeable because of fraud under 523(a)(2)(A)).
Prtys: American Express, Debtor-Francisco Prieto
Attys: Gary J. Lublin, Emmanuel Perez.

In re Tainter, **JO**. No. 99-31381M, AP No 00-3008, (Feb. 14, 2001) **Ch. 7.** (court held debt arising out of plaintiff's sale of convenience store business to debtor was dischargeable and not based on fraud under 523(a)(2)(A); without intent to

deceive at time of making of contract, breach of contract is not fraud).
Prtys: Roy Tainter, Debtor; Ken Short; Short Stop Inc.
Attys: Scott Davidson, Jeannette Robertson.

In re Terra Vision, Inc., **LR** 85-1294M
In re George and Rebecca Gibson, **LR** 85-129M(January 25, 1988). No cause of action under 523(a)(2) exists in **chapter 13** or in a **chapter 7** case involving a corporation, complaint dismissed, counter claim of objection to claim overruled.
Prtys: Debtors, Art Davis
Attys: Stephen Bennett, Vic Fleming, James Wallace, Fletcher Lewis, Basil Hicks, James Allen Brown, Middleton Ray.

In re Van Camp, **TX** 96-14011M, AP 96-4505 (August 8, 1997) **Ch. 7:** (Insufficient showing that debtors fraudulently incurred credit card debt; debt was dischargeable; debtors were denied attorneys fees as creditor's position was substantially justified even though creditor lost fraud claim.)
Prtys: Dorothy Van Camp, AT&T Universal Card Services Corp.
Attys: Spencer Robinson, Jimmy Eaton, Richard Cox.

523(a)(2)(B)

In re Jimmy H. Harris, Jr., **JO** 99-31282M, AP 00-3010 (September 18, 2001) **Ch. 7.** (Farmer's debts to creditor were nondischargeable for submitting a false financial statement pursuant to section 523(a)(2)(B)).
Prtys: Debtor, Agro Distribution, LLC.
Attys: Jan Thomas, Joe Strode.

In re David and Glinda Owens, **HE** 03-17378, AP No. 04-1171 (March 7, 2005) **2005 WL 610882:** Bank failed to show that it reasonably relied on debtor-farmer's materially false financial statement or that debtor omitted liabilities with intent to deceive pursuant to section 523(a)(2)(B).
Prtys: Debtors, First National Bank of Stuttgart
Attys: Edward Schieffler, Mr. Berry.

In re Worden d/b/a Worden & Associates, **LR** 85-351, AP No. 85-474 (August 13, 1986) **Ch. 7:** Debtor defrauded creditor to whom he sold his business by misrepresenting that the business owned equipment that was really leased; debt nondischargeable under 523(a)(2)(A) & (B).
Prtys: Claude Wallace, Debtor
Attys: Gregory Hopkins, Charles Davidson, Joel Price, Rick Taylor, James Glover

523(a)(3)(A)

In re Charles Delano and Linda Carol Miller,159 B.R. 849, **JO** 90-30378M, AP 92-3035 (August 17, 1993) **Ch. 7.** (In action to determine dischargeability of omitted debt after discharge, pursuant to 727(b); in no asset case, creditors don't file proofs of claim unless notified to do so. So an unscheduled creditor in a no

asset case is not deprived of right to file proof of claim; therefore, claim is dischargeable despite the wording of 523(a)(3)(A)).
Prtys: Debtors, Robert E. and Carl Schuchardt.
Attys: Warren Dupwe-T; Scott Emerson, Scott Davidson.

523(a)(4)

In re James and Carrie Hall, **HS** 02-70062
(July 24, 2003) **295 B.R. 877,** AP 02-7090: court denied motion to dismiss filed under Rule 7012; creditor may proceed with dischargeability complaint under either § 523(a)(4)for embezzlement or § 523(a)(6) for willful and malicious conduct; pursuant to § 509 creditor is equitably subrogated to the rights of another creditor which first creditor is obligated to pay if debtor doesn't pay.
Prtys: Debtors, Reggie Jones
Attys: David Grace, Martha McAlister

In re David Herndon, **LR** 01-40158, AP 01-4082 (May 16, 2002) (**277 B.R. 765) Ch. 7: (**Debtor contractor's debt nondischargeable when he violated fiduciary duty in express trust stated in indemnity agreement by using money allocated for one project to pay debts for another and, therefore, was liable for defalcation pursuant to section 523(a)(4)).
Prtys: International Fidelity Insurance Company, Debtor
Attys: Jack East, Keith Grayson.

In re Hoffman, 70 B.R. 155, **ED** 85-27M, AP 85-476M (Sept. 16, 1986) **Ch. 7.** (Holding that debt to bank was nondischargeable under 523(a)(4) where secured creditor made prima facie case of embezzlement against debtor who was in lawful possession of security of creditor, sold encumbered property without consent of creditor and misapplied proceeds; intent to repay is not defense to embezzlement).
Prtys: Debtor, National Bank of Commerce
Attys: Isaac Scott, Charles Coleman, Joseph Strode.

In re Marvin and Constance Jarrett, **HE** No. 03-13489 (2003) **Ch. 7**: Granting debtor's motion to dismiss under Rule 7012 dischargeability complaint for attorneys fees assessed debtor in state civil rights suit: attorneys' cause of action for willful and malicious injury (523(a)(6)) would not lie where attorneys were not injured party; 523(a)(7)not applicable as fine or forfeiture due a governmental entity; 523(a)(17) not applicable because only applies to debtors who are in forma pauperis prisoners, 523(a)(4) not applicable because debtor did not commit defalcation.
Prtys: Debtors, David Solomon, Edward Schieffler
Attys: James Valley, David Solomon, Edward Schieffler

In re Roy and Lavonda Price, **313 B.R. 805, LR** No. 03-13601, AP No. 03-1258 (July 22, 2004) court denied motion for summary judgment filed by financial services company; sale of debtor-serviceman's future military pension rights for

lump sum payment was prohibited by federal law, 37 U.S.C § 701, and fact that debtor redirected payments to himself contrary to the contract did not constitute larceny or embezzlement under section 523(a)(4).
Prtys: Debtors, Structured Investments Co.
Attys: Laura Grimes, Kimberly Tucker.

In re Reed, **PB** 86-450 (September 6, 1987) **Ch. 11.** (Court denied motion to dismiss dischargeability complaint for fraud, embezzlement, defalcation under 523(a)(4); facts pleaded with sufficient particularity).
Prtys: Roderick Reed, debtor in possession; FSLIC.
Attys: Isaac Scott, James Cherry, Peter Heister, Matthew Botica.

In re Rose, **HE** 85-138M, AP 85-427M (September 25, 1986) **Ch. 7**: (Debtors not denied discharge under 727 because fully encumbered property which was transferred did not deplete assets available to pay creditors; debt did not arise from willful and malicious injury under 523(a)(6) but was the result of embezzlement and would be nondischargeable under 523(a)(4)).
Prtys: Louis and Joan Rose, Hugh and Tamara Rose, Caruthersville Production Credit Association.
Attys: Warren Dupwe, Robert Branch, Jan Thomas, Donis Hamilton.

In re Speight, 147 B.R. 489, **FA** 91-15648F, AP 91-5557 (June 23, 1992) **Ch. 7.** (debt to former partner-creditor was dischargeable because collateral estoppel not applied; state court judgment for creditor left unclear whether issues in the two cases were identical). Reversed, Judge Hendren.
Prtys: Debtor, Joe Laughter, Claude Jones-Trustee.
Attys: Jackson Butt, Jimmy Eaton.

523(a)(5)

In re Billy Edgar Harris, **HE** 86-116M, AP 86-159M (June 30, 1986) **Ch. 7:** (holding that debts to ex spouse for mortgage, utilities, home maintenance, medical bills and attorney fees were nondischargeable support).
Prtys: Lula Bell Harris, Billy Harris.
Attys: Lohnes Tiner, John Henry, Loyal Barr, Tom B. Smith.

In re Gregory L. Latimer, **LR** 00-43630, AP 02-1114 (Aug. 22, 2002) **Ch. 7**: (Discharge injunction under sections 727 and 524 did not enjoin determination of dischargeability of alimony or support debt under 523(a)(5) by bankruptcy or state court, which has concurrent jurisdiction, even if Debtor listed debt as dischargeable on his petition; seeking dischargeability and entry of judgment after discharge did not violate stay which was no longer in force as to property of the debtor after discharge under section 362(c).
Prtys: Debtor, Dan West, Bill Flannery
Attys: Paul Schmidt, Michael Reif.

In re Jimmy Richard Medlock, **FS** 85-306M, AP 86-166M (August 1, 1986) **Ch. 7.** (In dischargeability suit, debt was in the nature of a property settlement and not alimony, maintenance or support, despite being called alimony in divorce proceeding).
Prtys: Teresa Medlock, Debtor
Attys: Ben Barry, Roy Gean, James Cox

In re Mencer, **LR** 84-865 (May 6, 1985) (**50 Bankr. 80**) **Ch. 7 (**Debtor's obligations under "marital settlement agreement" were nondischargeable alimony, maintenance or support under 523(a)(5)).
Prtys: Mary Elizabeth Mencer, Debtor
Attys: Susan Gunter, Ralph Sloan, William Kirby Mouser.

In re Ramey, **HE** 85-01 (Jan. 6, 1986) **59 Bankr. 527; Ch. 7** (Dischargeability of support obligations to former wife; joint debts to bank and landlord were property settlement, not alimony, maintenance and support and was dischargeable under former law, 523(a)(5)).
Prtys: Debtor, Brenda Ramey, Merchants and Farmers Bank, Charles Allen, Charles Thompson.
Attys: Daniel Schieffler, David Solomon, Ralph Murry, Charles Allen

In re Thomas Sturdivant, **LR** 02-70130 (Feb. 6, 2003)**289 B.R. 392: Ch 7** debtor's obligation to ex-wife not in the nature of support under section 523(a)(5) but was nondischargeable under section 523(a)(15) because debtor failed to carry burden to show he lacked ability to pay or that the benefit of a discharge of the debt outweighed detriment to ex-wife.
Prtys: Debtor, Dana Michelle Strudivant (Cross)
Attys: David Harrod, Joseph Kolb

In re Tarbox, 234 B.R. 832, **S.D.Fla.** (Miami) 98-23241-BKC-RBR, AP 98-2330-BKC-RBR-A (April 26, 1999) **Ch. 7.** (In dischargeability dispute, marital debt to ex-wife was not in the nature of support under 523(a)(5); and Debtor did not have ability to pay the debt under 523(a)(15) test so debt was dischargeable).
Prtys: Debtor, Marianne Tarbox.
Attys: Frank Brady, Eugene Lewis.

In re Joe and Dorothy White, 253 B.R. 253, **ED** 99-11777M, AP 11-1502 (September 13, 2000) **Ch. 7.** (arrearage on court-ordered child support payments are dischargeable because DNA tests proved children were not a child of the debtor).
Prtys: Debtors, Ouachita County Office of Child Support Enforcement.
Attys: William Meeks-T; Henry Kinslow, Andrew Best.

523(a)(6)

In re Albert Caldwell, 895 F.2d 1123, Nos. 88-6404, 88-6405 (February 9, 1990), **Sixth Circuit** affirming Tennessee District Court, finding

debt for willful and malicious injury can be discharged under **Chapter 13**, which allows debtor to repay his obligation over time from disposable income, although the debt would be nondischargeable under Chapter 7; Court held that chapter 13 debtor proposing to repay 36% of debt that would have been nondischargeable in a Chapter 7 was not acting in good faith; it is not conclusively bad faith for a debtor to seek to discharge a debt incurred through his own criminal or tortious conduct through a chapter 13, but factor may be considered.

In re James and Carrie Hall, **HS** 02-70062
(July 24, 2003) **295 B.R. 877,** AP 02-7090: court denied motion to dismiss filed under Rule 7012; creditor may proceed with dischargeability complaint under either § 523(a)(4)for embezzlement or § 523(a)(6) for willful and malicious conduct; pursuant to § 509 creditor is equitably subrogated to the rights of another creditor which first creditor is obligated to pay if debtor doesn't pay.
Prtys: Debtors, Reggie Jones
Attys: David Grace, Martha McAlister

In re Hoffman, 70 B.R. 155, **ED** 85-27M, AP 85-476M (Sept. 16, 1986)
Ch. 7. (Holding debt to bank would not be nondischargeable under 523(a)(6) because evidence of malice targeted at secured creditor when Debtor sold secured creditor's collateral was not sufficient)
Prtys: Debtor, National Bank of Commerce
Attys: Isaac Scott, Charles Coleman, Joseph Strode.

In re William Horne, **PB** 85-365M, AP 86-157M (August 18, 1986) **Ch. 7**: (Motion for summary judgment granted as to murder victim's estate's dischargeability action against the debtor for debt arising from willful and malicious conduct; debtor's conviction for 2nd degree murder established the elements of willfulness and malice under theory of collateral estoppel; offensive collateral estoppel not available to other plaintiffs because debtor's liability for battery did not establish willfulness and malice.)
Prtys: Bill Michel, John Lock, Matthew Webre, Debtor.
Attys: Henry Means, Randall Morley, W.M. Dickinson.

In re Marvin and Constance Jarrett, **HE** No. 03-13489 (2003) **Ch. 7**: Granting debtor's motion to dismiss under Rule 7012 dischargeability complaint for attorneys fees assessed debtor in state civil rights suit: attorneys' cause of action for willful and malicious injury (523(a)(6)) would not lie where attorneys were not injured party; 523(a)(7)not applicable as fine or forfeiture due a governmental entity; 523(a)(17) not applicable because only applies to debtors who are in forma pauperis prisoners, 523(a)(4) not applicable because debtor did not commit defalcation.
Prtys: Debtors, David Solomon, Edward Schieffler
Attys: James Valley, David Solomon, Edward Schieffler

In re Price, 264 B.R. 8, LR No. 98-44537M, AP No. 99-4190

(June 15, 2001) **Ch. 7.** (debt for injuries from gunshot wound inflicted by debtor on plaintiff was dischargeable because evidence did not show willful and malicious injury by preponderance of evidence under 523(a)(6)).
Prtys: Phillip A. Price, Debtor; Eddie Maxwell
Attys: Brad Cazort, Kathy Cruz.

In re Rose, **HE** 85-138M, AP 85-427M (September 25, 1986) **Ch. 7**: (Debtors not denied discharge under 727 because fully encumbered property which was transferred did not deplete assets available to pay creditors; debt did not arise from willful and malicious injury under 523(a)(6) but was the result of embezzlement and would be nondischargeable under 523(a)(4)).
Prtys: Louis and Joan Rose, Hugh and Tamara Rose, Caruthersville Production Credit Association.
Attys: Warren Dupwe, Robert Branch, Jan Thomas, Donis Hamilton.

In re Paul Edward Speers, 244 B.R. 142, **LR** 99-41105M, AP 99-4126 (February 2, 2000) **Ch. 7.** (Upon dischargeability complaint for willful and malicious injury, debt was nondischargeable when Debtor sold Bank's collateral and used the proceeds for business purposes).
Prtys: Debtor, Mercantile Bank of Arkansas.
Attys: Floyd Healy, Scott Vaughn.

523(a)(7)

In re Marvin and Constance Jarrett, **HE** No. 03-13489 (2003) **Ch. 7**: Granting debtor's motion to dismiss under Rule 7012 dischargeability complaint for attorneys fees assessed debtor in state civil rights suit: attorneys' cause of action for willful and malicious injury (523(a)(6)) would not lie where attorneys were not injured party; 523(a)(7)not applicable as fine or forfeiture due a governmental entity; 523(a)(17) not applicable because only applies to debtors who are in forma pauperis prisoners, 523(a)(4) not applicable because debtor did not commit defalcation.
Prtys: Debtors, David Solomon, Edward Schieffler
Attys: James Valley, David Solomon, Edward Schieffler

523(a)(8)(B)

In re Boston, 119 B.R. 162, **ED** 89-11066, AP No. 89-1508 (August 2, 1990) **Ch. 7.** (Debtor failed to carry burden to establish undue hardship because inability to repay loan was self-imposed and therefore could not discharge student loans; court applied three step analysis including mechanical, good faith and policy tests.)
Prtys: Catherine Boston, Utah Higher Education Assistance Authority.
Attys: Henry Kinslow, Steven McMaster.

In re Charles Leo and Rachelle Louise Evans, **LR** 03-15810, **Ch. 7 (**March 9, 2004): AP 03-01336: Under totality of circumstances test, Debtor could repay his

student loan without undue hardship; the debt would be excepted from discharge under section 523(a)(8).
Prtys: Charles Evans, Educational Credit Management Corporation
Attys: Larry Hartsfield, Kim Tucker

In re Jerry Henry Grant, **ED** 02-70071, AP 02-7047 (Feb. 18, 2004) (**305 B.R. 484):** Student loans to pay for debtor's medical school costs would not be discharged for undue hardship pursuant to section 523(a)(8).
Prtys: Debtor, Oklahoma State Regents for Higher Education
Attys: Teresa Wineland,

In re Aubrey and Rebecca Morgan, **JO** 98-31402, AP 99-3004
In re Clarence Cearley, LR 99-40758, AP 99-4078, 247 B.R. 776, (April 25, 2000) **Ch. 7** (In complaints for dischargeability of student loans for undue hardship, Morgans' loans were discharged while Cearley's were not; court used totality of circumstances approach endorsed by BAP and 8th Cir.)
Prtys: Debtors, U.S. Dept of Education, Sallie Mae, Student Loan Guarantee Foundation of Arkansas.
Attys: John Holstine, Gwendolyn Hodge, Connie Meskimen, Warren Dupwe.

In re Terri Lynn Morris, **ED** 00-11167M; AP 00-1517 (November 16, 2001) **Ch. 7.** (granting State's motion to dismiss debtor's dischargeability of student loan complaint as to U of A; state correctly asserted 11th amendment immunity).
Prtys: Debtor; University of Arkansas, et al.
Attys: Mark Drake, Scott Varady

May 20, 2002: Pursuant to section 523(a)(8), largest debt to student loan creditor was dischargeable for undue hardship, but six other student loans were nondischargeable because Debtor was able to pay.
Prtys: Student Loan Guaranty Foundation, Debtor.
Attys: Mark Drake, Connie Meskimen.

In re Janet Lynn Parker, **HE** 04-18019, April 12, 2005 (**322 B.R. 856)** AP 04-1316: Court determined school teacher's student loan debt would be discharge because repayment would impose undue hardship pursuant to 523(a)(8)(2000). **Reversed, 8th Cir. BAP, 328 B.R. 548**, August 8, 2005: Debtor could repay debt through William D. Ford Consolidation Program without undue hardship.
Prtys: Debtor, Student Loan Guarantee Foundation of Arkansas
Attys: Joe Barrett, Connie Meskimen

In re Maria Ruiz, **LR** 00-44294M, AP 004157 (December 12, 2001: **Ch. 7 (**Debtor could discharge one of two student loans because of undue hardship).
Prtys: Debtor; Sallie Mae Corporation.
Attys: James Dunham; Rick Taylor.

523(a)(15)

In re Danny Ray Crawford, **LR** 98-4341M, AP 98 4179, 236 B.R. 673 (July 26, 1999) **Ch. 7**. (Non-support divorce debt owed to former spouse was nondischargeable, as were attorneys fees nondebtor ex-spouse owed to her attorney to collect on the debt; nondebtor ex-spouse proved debt was of the kind specifed in section 523(a)(15) and debtor failed to carry burden of proof that he did not have the ability to pay or that the benefit of his discharge outweighed the burden to ex-spouse).
Prtys: Danny Ray Crawford, Kathy Salerno.
Attys: Dale Finley, Mary Jane Pruniski.

In re Thomas Sturdivant, **LR** 02-70130 (Feb. 6, 2003)**289 B.R. 392: Ch 7** debtor's obligation to ex-wife not in the nature of support under section 523(a)(5) but was nondischargeable under section 523(a)(15) because debtor failed to carry burden to show he lacked ability to pay or that the benefit of a discharge of the debt outweighed detriment to ex-wife.
Prtys: Debtor, Dana Michelle Strudivant (Cross)
Attys: David Harrod, Joseph Kolb

In re Tarbox, 234 B.R. 832, **S.D.Fla.** (Miami) 98-23241-BKC-RBR, AP 98-2330-BKC-RBR-A (April 26, 1999) **Ch. 7.** (In dischargeability dispute, marital debt to ex-wife was not in the nature of support under 523(a)(5); and Debtor did not have ability to pay the debt under 523(a)(15) test so debt was dischargeable).
Prtys: Debtor, Marianne Tarbox.
Attys: Frank Brady, Eugene Lewis.

523(a)(17)

In re Marvin and Constance Jarrett, **HE** No. 03-13489 (2003) **Ch. 7**: Granting debtor's motion to dismiss under Rule 7012 dischargeability complaint for attorneys fees assessed debtor in state civil rights suit: attorneys' cause of action for willful and malicious injury (523(a)(6)) would not lie where attorneys were not injured party; 523(a)(7)not applicable as fine or forfeiture due a governmental entity; 523(a)(17) not applicable because only applies to debtors who are in forma pauperis prisoners, 523(a)(4) not applicable because debtor did not commit defalcation.
Prtys: Debtors, David Solomon, Edward Schieffler
Attys: James Valley, David Solomon, Edward Schieffler

523(a)(18)

In re William Harold Watson, **HE** 04-10488, AP 04-1166 (Dec. 1, 2004) **(2004 WL 2755542)** under section 523(a)(18) and 42 U.S.C. § 456(b) of Social Security Act, Debtor's debt for child support was nondischargeable even though children were later proven through scientific testing not to be children of the debtor.
February 16, 2005: upon further stipulations by the parties, the court reconsidered and ruled the amount of the nondischargeable debt was the amount owed to the

Office of Child Support and did not include the debt owed to the mothers of the children that were not children of the debtor.
Prtys: Debtor, Arkansas Office of Child Support Enforcement
Attys: Danny Glover, Paul Hopper

523(b)

In re William and Harriett Cates, **JO** No., 01-32104M, AP. No. 01-3051 (Feb. 24, 2003)**289 B.R. 389**: Determination of nondischargeability of tax debt in debtor-taxpayer's prior bankruptcy case did not, under principles of res judicata, bar redetermination of issue in subsequent chapter 7.
Prtys: Debtors, Ark. Dept. Of Finance & Administration
Attys: Joe Barrett, James Luker, trustee

523(c)

In re Lewis, **HE** 86-20024, AP 88-413 (September 6, 1990) **Ch. 7.** Objection to discharge and dischargeability dismissed as untimely under Rules 4004(a) and (4007(a).
Prtys: Canal Insurance Company, Debtors.
Attys: Michael Lewis, David Solomon, Jesse Porter, Charles Roscopf

In re Patel, **ED** 89-30; AP 89-1503 (Sept. 11, 1989) Dischargeability complaint under 523(c) timely where clerk's notice erroneously stated deadline was "to be set."
Prtys: Debtors, First Financial Bank
Attys: Ian Vickery, Steve Gershner.

In re Whitfield, **ED** 83-058 (Aug. 10, 1984) **41 Bankr. 734, Ch. 7**: Objections to discharge under 727 and dischargeability under 523(c) must be timely under Rule 4004 or 4007; excusable neglect is not applicable for untimely filing; fraud must be pleaded with particularity under Rule 7009.
Prtys: B.J. Edwards, Debtors, Michael Landers, Trustee
Attys: Danny Rogers, Henry Kinslow, Michael Landers.

523(d)

In re Van Camp, **TX** 96-14011M, AP 96-4505 (August 8, 1997) **Ch. 7:** (Insufficient showing that debtors fraudulently incurred credit card debt; debt was dischargeable; debtors were denied attorneys fees as creditor's position was substantially justified even though creditor lost fraud claim.)
Prtys: Dorothy Van Camp, AT&T Universal Card Services Corp.
Attys: Spencer Robinson, Jimmy Eaton, Richard Cox.

524

In re Trecee Lee Anderson, **ED** 02-72101 (September 6, 2002) **Chapter 7:**

(Debtor could not avoid judicial lien under section 522(f)(1)(A) when she owned no property upon which lien could fix; creditor with prepetition claim could not reduce the claim to judgment with lien attached to debtor's property post-discharge because discharge renders judgment void under section 524).
Prtys: Debtor, Farmers Bank & Trust.
Attys: Jack Gooding, Henry Kinslow.

In re Floyd Evans, 245 B.R. 852, **FA** 97-80694M, AP No. 98-8034 (March 10, 2000) **Ch. 7**. (pending state criminal prosecution of debtor was not action to collect a debt and didn't violate discharge injunction under 524(a)(2)).
Prtys: Debtor, Bank of Eureka Springs, John Cross, Carroll County Circuit Court, 19th Judicial District Prosecuting Attorney and Deputy; Governor Mike Huckabee, Dick Barclay.
Attys: Stanley Bond, Wade Williams, Ainsley Lang, Jill Jacoway-T.

In re Gregory L. Latimer, **LR** 00-43630, AP 02-1114 (Aug. 22, 2002) **Ch. 7**: (Discharge injunction under sections 727 and 524 did not enjoin determination of dischargeability of alimony or support debt under 523(a)(5) by bankruptcy or state court, which has concurrent jurisdiction, even if Debtor listed debt as dischargeable on his petition; seeking dischargeability and entry of judgment after discharge did not violate stay which was no longer in force as to property of the debtor after discharge under section 362(c).
Prtys: Debtor, Dan West, Bill Flannery
Attys: Paul Schmidt, Michael Reif.

In re Michael and Cheryl Parker, 142 B.R. 327, **ED** 91-11139M (June 23, 1992) **Ch. 7.** (Debtors current on mobile home payments could retain collateral and continue payment and were not required to either reaffirm, redeem, or surrender property).
Prtys: GreenTree Acceptance Inc., Debtors
Attys: Martha McAlister, Jimmy Eaton.

In re Chad Whisenant, **ED**, 265 B.R. 164, No. 99-43741M,
(July 5, 2001) **Ch 7.** (court denied debtor's motion to hold former wife in contempt for violation of discharge injunction of 524(a)(2) for filing state court contempt action against the debtor for not paying under a reaffirmation agreement, pursuant to 524; the wife did not know the agreement was invalid because clerk mistakenly failed to file it; agreement was binding because entered into before the discharge was granted)
Prtys: Chad Whisenant-Debtor; Adonna Whisenant.
Attys: Robert Danecki, Michael Knollmeyer.

525

In re David and Mary Hopkins, 66 B.R. 828, **ED** 85-38M (August 5, 1987) **Ch. 13:** (holding that firing of debtor was based solely on bankruptcy filing in violation of statute, but contempt was not the proper remedy).

Prtys: Debtors, Bank of Bearden.
Attys: Jack Dickerson, Joseph A. Strode.

In re David and Mary Hopkins, 81 B.R. 491, **ED** 85-38M (August 7, 1987) **Ch. 13:** (holding section 105 gives court authority to fashion a remedy for a 525 employment discrimination violation; guided by cases under Title 7 and ADEA, court orders back-pay and reinstatement for bank employee fired because she filed bankruptcy).
Prtys: Debtors, Bank of Bearden.
Attys: Jack Dickerson, Joseph A. Strode.

In re James Pruett, 220 B.R. 624, **LR** 97-41491M, AP 97-4072 (December 15, 1997) **Ch. 13.** (Insurance company advancing monies on future commissions may recoup advances from agent as they accrue post-petition; recoupment not subject to automatic stay; no employment discrimination against Debtor by employer based on the evidence).
Prtys: Debtor, American Income Life Insurance Company; Richard Neal, Debbie Gamble.
Attys: Jean Madden, R.F. Brown

541(a)(1)

In re Answerfone, **LR** 83-342 (April 25, 1986) **Ch.11 67 B.R. 167** (motion to amend complaint allowed; cause of action accruing prepetition is property of estate)
Ptys: Charles Davidson (Trustee) and Joe Limerick III
Attys: David Williams, Geoff Treece, Griffin Smith

In re Benefield, **HE** 102 B.R. 157 (July 13, 1989) **Ch. 7** (Where debtor became beneficiary of mother's estate before bankruptcy, debtor had interest in inherited property which became property of estate under control of trustee).
Ptys: Debtor Dwight W. Benefield , Steve Davis and Viola Benefield Burroughs, Daniel K. Schieffler-Trustee.
Attys: James Luker, Baird Kinney.

In re Central Arkansas Broadcasting Company, Inc., **LR** 170 B.R. 143 (March 30, 1994) **Ch. 7** (Broadcasting license could not be owned but could be transferred for consideration, so license had value and was intangible property of the debtor; property of the estate includes intangible property of the debtor, such as licenses and business good will).
Ptys: Central Arkansas Broadcasting Co., First State Bank of Russellville, Trustee.
Attys: David Grace, Dale Finley, Jim Dowden.

In re Cupples Farms, **HE**, 128 B.R. 769, No. 90-55, AP 90-2017
(March 5,1991) **Ch 12** (Motion to reconsider relaxation of stay denied because debtor had no legal or equitable interest in real property being foreclosed upon; if

title to real property is in partnership, conveyance executed by partner individually passes the equitable interest of the partnership under Arkansas law).
Ptys: Cupples Farms, Federal Land Bank of St. Louis.
Attys: Roy C. Lewellen; Keith Billingsley, William A. Waddell.

In re Dollar Time Group, Inc., 223 B.R. 237, **S.D. Florida** 95-22816-BKC, RBR, AP 96-0380-BKC, RBR (July 20, 1998) **Ch. 7**. (Upon corporation's bankruptcy filing, any claim against its directors passed to the bankruptcy estate; trustee stands in shoes of the debtor as to causes of action; trustee may not recover damages previously received by the debtor from business of the defendants.)
Prtys: Kenneth Welt, Trustee; Dollar Time Group, Inc.: Joseph Sasson, Jeffrey Klansky.
Attys: Irwin Fingerit, Ronald Neiwirth, Arthur Rice.

In re Gibson, 218 B.R. 900, **LR** 96-41062M (Dec. 27, 1997) **Ch. 13.** (Insurance proceeds from prepetition insurance policy were property of estate and loss payee had insurable interest in insurance proceeds only to extent of its allowed, secured claim; court order of surrender of insured automobile was not an order of abandonment of all insurance proceeds).
Prtys: Debtor, Newcourt Financial.
Attys: Kent Pray, Richard Kalkbrenner.

In re Henson, **FS** 92-70580M (April 20, 1993) **Ch. 13**: (objection to confirmation of Ch 13; under state statutory foreclosure procedure, right to deed of trust property belonged to purchaser so that property was no longer property of estate and could not be included in the plan; proceeding to determine status of property in bankruptcy was inappropriate to set aside sale based on irregularities under state law).
Prtys: Debtors, Fleet Mortgage Corp.
Attys: Robert McKinney, Michael Hamby.

In re Mammoth Spring Distributing Co., Inc., 139 B.R. 205, **FA** 90-15286F (Jan. 17, 1992) **Ch. 7.** (Creditor's security interest in general intangibles extended to post-petition tax refund because inchoate right to receive accrued as a result of losses occurring pre-petition under Missouri UCC.)
Prtys: Claude R. Jones-Trustee, Debtor, First National Mercantile Bank and Trust Co.
Attys: John Lee, William Clark.

In re Martin and Monica Ray, **LR** 97-44059M, AP 97-4191 (April 9, 1998) **Ch. 13** (Prior to bankruptcy, chancery court decree awarded forfeiture and immediate possession of Debtors' home to creditor under contract for sale when Debtors defaulted such that Debtors had no property interest when petition filed and could not continue to pay under contract and retain ownership).
Prtys: Debtors, South Point Properties, Inc.
Attys: Marc Honey, Randolph Satterfield.

In re Reeves, **HE 87-159**, AP 89-2018 (Feb. 20, 1991)**Ch. 7. (**Motion to dismiss granted as to RICO allegations; trustee did not have standing to assert as to prepetition conduct because debtor did not have prepetition cause of action (no injury); postpetition conduct did not amount to "pattern of racketeering activity.")
Prtys: James Luker-Trustee, Marlin Reeves, Billie Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley.
Attys: Fletcher Long, Alan Cline, Steven Elledge, James Luker

In re Myra Stanley, **182 B.R. 241**, **ED** 93-11190M (September 9, 1994) **Ch. 13. (**In non-judicial foreclosure action, Debtor's equity of redemption lapsed 10 days after foreclosure decree and before bankruptcy petition filed; therefore, Debtor's home was not property of estate even though foreclosure sale had not occurred before bankruptcy filing; Debtor could not cure default and make payments to creditor under the plan).
Prtys: Debtor, Superior Federal Bank.
Attys: Patrick Hollingsworth, John Lightfoot, A.L. Tenney-T.

In re Vee Jay, Inc., **FS** 86-407 (Sept. 25, 1987) **104 Bankr. 101, Ch. 11**: (Debtor's interest in escrow contract for sale of real estate was property of estate because of equitable defense). APPEAL DISMISSED (J. Arnold, 104 Bankr. 105))
Prtys: Ray and Maria Jones, Phoenix Inc., Debtor
Attys: Ben Core, Ben Barry

541(c)(1)(B)

In re Jones Truck Lines, 172 B.R. 602, **FA** (AP # 93-8858) Jones v. IXL Manufacturing Company (October 14, 1994) **Ch 11:** (denying IXL's motion for summary judgment regarding Jones' complaint for turnover of $15,703.34 representing undercharges. IXL's motion was denied because the provisions of the NRA are unenforceable in a bankruptcy case because of the anti-forfeiture provisions of 11 U.S.C. § 541(c)(1)(B)).
Prtys: Jones Truck Lines, IXL Manufacturing Company, Exod Industries Division, Hartwell Brothers Division.
Attys: Charles Coleman, Thomas Staley.

In re Rodriguez, **ED** 86-139 (June 19, 1987) **82 Bankr. 74; Ch. 7.** (Debtor could not exempt interest in employer-sponsored Erisa savings plan since could receive trust corpus at discretion (not spendthrift).
Prtys: Debtors, William Randall Wright-Trustee
Attys: William Randall Wright, Henry Kinslow.

In re Jimmy Lynn Thomas, **TX** 03-73985 (July 7, 2005) **(331 B.R. 798)**: Upon Trustee's motion for turnover of two IRA accounts, court held funds were not Erisa qualified because accounts did not restrict alienation or transfer so IRAs were property of estate under section 541(c)(2); estranged wife had only an inchoate marital property interest in the accounts because she was married to the debtor on the day bankruptcy was filed.

Prtys: Debtor, Renee Williams-Trustee, Linda Thomas
Attys: Rodney McDaniel, Thomas Streetman, Randell Wright

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In re Paula Clingingsmith,**LR,** No. LR 86-466F, AP No. 86-315 (April 21, 1987) **Ch 7 (**Trustee's complaint for turnover for tax refund paid to Debtor and seized by S.B.A. post-petition pursuant to federal statute was denied; S.B.A. had right of set-off because right to refund accrued prepetition; bankruptcy set-off provision did not negate federal statute regarding right of federal agency to refund).
Ptys: Randy Rice, Trustee, U.S. Small Business Administration.
Attys: Randy Rice, Doug Chavis, Mike Price, Paul Herrod.

In re Hoffinger Industries, Inc., **HE** 01-20514M, **Ch. 11** (April 16, 2004) **308 B.R. 362:** Debtor's former president ordered by BR court to turnover funds to the Debtor that he paid himself through unauthorized expense reimbursement and other means**;** President's employment contract had expired under its own terms and it was unnecessary for the Debtor to later reject the contract pursuant to section 365.
Prtys: Brad Rinehart, Debtor
Attys: Frederick Wetzel, Lance Miller, Stan Smith.

In re Hoffman, 51 B.R. 42, **ED** 85-27M, 85-29M, 85, 30M, AP 85-318M, 85-320M (May 30, 1985) **Ch. 7, 11:** (It is not a violation of the automatic stay for a bank to place administrative freeze on debtors' demand accounts upon receipt of knowledge of filing of bankruptcy even though accounts are property of estate; bank would not be granted relief from stay to exercise right of set off if adequate protection for use of cash collateral could be offered by the debtors.)
Prtys: Debtors Charles Hoffman, Craig Shackleford, Craig Shackelford Farms, Portland Bank, National Bank of Commerce of Pine Bluff.
Attys: Isaac Scott, Thomas Streetman, Joseph Strode.

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In re Dipzinski, **JO**, No. 97-10389M (June 16, 1999) **Ch. 7.** (Trustee's objection to debtor's amendment to claim of exemptions sustained; debtor intentionally omitted from schedules the exempt asset, sale proceeds from sale of marital real property due to debtor in divorce; debtor's divorce attorney violated automatic stay by disbursing proceeds to debtor and retaining his attorney's fee from proceeds without authority).
Prtys: Trustee-Warren Dupwe, Debtor-Patricia Dipzinski.
Attys: Warren Dupwe, Louis J. Nisenbaum,Richard D. Hitt.

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In re Baugh, **PB** 84-144M (Feb. 19, 1986) **Ch.11, 60 B.R. 102** (finding transfer of

$86,000 to father prior to state court judgment being entered was fraudulent conveyance; also finding creditor levying on joint account may only seize portion of account belonging to debtor)
Ptys: Jimmy Baugh, Neale Bearden
Attys: Rick Ramsay, Charlie Baker, Katherine McGovern,

In re Bennett **LR** 85-32M (April 10, 1987) **Ch. 7** (Finding incarcerated man was involuntary debtor with two creditors owed restitution for debtor's aggravated robbery; fraudulent conveyance as to fees paid to atty for services not yet rendered; preference as to fees paid from debtor to atty during preference period).
Ptys: Gary Bennett, Robert and Sandra Vowell
Attys: Allen Bird, Mark Riable, Michael Durham, Charles Davidson

In re Bearhouse, 84 B.R. 552, **ED** 87-42M, AP Nos. 87-134M, 87-139M, 87-186M, 87-209M (Jan. 22, 1988) **Ch. 7.** (Farmer complied with state reclamation statute by giving oral demand within ten days of delivery of grain; failure to comply with bankruptcy statute requiring written demand meant farmer's right to reclaim was subject to bankruptcy trustee's avoiding powers; under Arkansas law, reclaiming farmer's right to grain was superior to attaching judgment lien creditor, and thus superior to right of trustee.)
Prtys: Claude Hawkins-Trustee, Ladd Farms, National Bank of Commerce of Pine Bluff, U.S. Dept. Of Agriculture, Farmers Rice Mill Co. Inc., U.F. Coleman, Monticello Gin and Elevator Co., Commodity Credit Corp., Edward L. Oltmann, Gary Shrum, Virgie and Virginia Ray, Aetna Casualty and Surety Co.
Attys: Terry Wynne, Claude Skelton, Thomas Streetman, Bob Lawson, Larry McCord, William K Ball, Overton S. Anderson, Ladd Farms.

In re Bearhouse, 99 B.R. 926, **ED** 87-42M, AP 87-383M (Feb. 13, 1989) **Ch. 7**. (Under Arkansas law, mortgagee's lien was perfected by recording, and thus not avoidable by bankruptcy trustee, though mortgage was defectively acknowledged, in that mortgage was regular on its face and there was no evidence of fraud or forgery.)
Prtys: Claude Hawkins-Trustee, First National Bank of Crossett, James Young Robert Cockrum, Richard Earl Griffin.
Attys: Claude Hawkins, Thomas Streetman.

In re Lance Brown, **JO** 265 B.R. 167, No. 00-30017M, AP 00-3030 (July 20, 2001) **Ch 7.** (court dismissed trustee's claim that Debtor fraudulently conveyed leased property to his corporation such that trustee could not avoid the conveyance under 544; badges of fraud not present to prove actual fraud and transfer was for reasonably equivalent value, precluding claim for constructive fraud).
Prtys: Dobieco, Inc., Jan Thomas-Trustee; Lance Brown-Debtor
Attys: Kim Tucker, Charles Coleman, Warren Dupwe, Ralph Waddell.

In re Farney, **LR** 87-2367M, AP 89-43M (August 14, 1989) **Ch. 7.** (Holding that

trustee has status of judgment lien creditor as to personal property and bona fide purchaser only as to real property; under state law, an unrecorded assignment is valid against all but BFP so assignee of judgment lien has priority over Trustee as to proceeds from the claim.)
Prtys: Trustee-Randy Rice, Lyle Adams
Attys: Randy Rice, Beth Carson, Patrick Hollingsworth.

In re Stephen Griffin, **FS**, Ch. 7: AP No. 04-6052 (September 9, 2004) Trustee v. Stephen Griffin and Barbara Griffin, 03-7039: In bench ruling, Court found transfer of liquor store stock and payment of store's funds to Debtor's wife was not fraudulent conveyance under theory of actual fraud under 11 U.S. C. § 548(a)(1)(A), but transfer of real estate was void as against the interest of the Trustee under 11 U.S.C. § 544 and 549, and post-petition checks to Barbara were subject to Trustee's recovery under 549. **AFFIRMED BAP 319 B.R. 609:** JANUARY 27, 2005: language in pre-nuptial agreement did not transfer a present interest in property of the Debtor. Any interest through prenuptial agreement was not enforceable against the Trustee's strong-arm powers. Wife owned half of liquor store corporation that had no assets.
Prtys: Barbara Griffin, Richard Cox-Trustee
Attys: Barbara Griffin, pro se, Richard Cox

In re Hot Shots Burgers & Fries, Inc., **LR** 91-41298M, AP No. 92-4130M (March 23, 1994) **Ch.** 7:(Claims of trustees of Chapter 7 debtor-individuals' bankruptcy estates had priority over unperfected security interest of seller in proceeds from sale of modular building to individuals.)
Prtys: Trustee-Randy Rice, Union Bank of Benton, Wheelees, Inc., Debtor, Twin City Bank.
Attys: Abe Bogoslavsky, Charles Baker, Floyd Healy, Frank Morledge, Scott Vaughn, Ron Goodman.

In re Roger Clifton and Fannie Lynne Jackson, **ED**, 265 B.R. 176 No 00-11532M, **Ch. 7** (June 26, 2001) (court sustained Trustee's objection to Bank's motion for surrender of collateral; Bank was unperfected under state motor vehicle laws and its security interest could be avoided under 544).
Prtys: William Meeks-Trustee, Regions Bank
Attys: William Meeks, John Lightfoot, Michael Landers.

In re Lifesaver Center, Inc. **LR** 85-1894M (August 5, 1986) **Ch. 11** (DIP's motion to use cash collateral from rents and profits granted; Dip's status as perfected judgment lien creditor under 544 is superior to creditor's unperfected lien in rents and profits under UCC 9-312(5)(a)).
Prtys: Debtor in Possession, Worthen Bank & Trust Co, May Supply Co.
Attys: Charles R. Camp, James J. Glover, William Owen, Richard Crockett, David Jacobs, Gregory Hopkins, Richard Smith, Michael Smith, David Fuqua, Robert Jones, Pam Walker, George Ellis, Ed Moody, W.W. Elrod, Trip Wetzel, etc.

In re Steve Masters, **HE** 00-20359M, AP 01-2008

(Jan. 2002) **Ch. 7**: (Trustee could not avoid Government's liens in debtor's personal property despite the fact that error in clerk's office as to properly filed financing statement resulted in temporary loss of perfection by Government).
Prtys: Trustee-James Luker, Farm Service Agency (U.S.D.A.)
Attys: Fletcher Jackson, James Luker.

In re Roy and Elizabeth Peeler, **145 B.R. 973**, **HE** 88-20142M, AP 91-2005 (April 24, 1992) **Ch. 7.** (lender's security interest in crops did not extend to proceeds from sale of grain three years later; financing statement had insufficient description to perfect security interest and security interest could be avoided by trustee; property acquired by debtor postpetition was not subject to prepetition security agreement).
Prtys: Danny Schieffler-Trustee; First National Bank of Wynne, Debtors; Debtors.
Attys: Danny Schieffler, Tom B. Smith, Brad J. Beavers.

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

In re Roberts, **LR** 02-1345, 2003, **Ch. 7**: Under article 9-302(3), only way for creditor to perfect security interest in automobile not held as inventory by debtor is to file under the state Motor Vehicle Act; Act gives trustee, as perfected judgment lien creditor under section 544, priority over liens not perfected under the act; bank's security interest unperfected under Act may be avoided by Trustee.
Prtys: Randy Rice-Trustee, Twin City Bank
Attys: Michael Knollmeyer, Wade Hodge

In re Tracy's Flowers and Gifts, Inc., 264 B.R. 1, No. 00-11308, AP 001518 (June 12, 2001) **Ch. 7** (court dismissed trustee's complaint to determine validity of Bank's lien in property of debtor; Bank's lien was properly perfected even though no express grant of a security interest was present in the security agreement).
Prtys: William S. Meeks, Trustee; First Bank of South Arkansas
Attys: William S. Meeks, Paul Lindsey.

In re Vincent Gaines Implement Co., Inc., **LR** 86-30, AP 86-59M (Aug. 5, 1986)**71 Bankr. 14, Ch. 11**: (Incorrect continuation financing statement was not seriously misleading and lien not subject to avoidance by Dip under section 544).
Prtys: Debtor, U.S. Small Business Administration
Attys: Stephen Gershner, Katherine McGovern, Michael Price, Doug Chavis.

In re Wallace, **FS** 84-256 (March 13, 1986) **61 Bankr. 54, Ch. 11**: Financing statements filed under trade name of debtors insufficient pursuant to 9-402 so

creditor not perfected and lien subject to avoidance by DIP pursuant to section 544; Ch. 11 plan not confirmed because dissenting creditor not classified.
Prtys: Debtors in Possession, Case Credit Corporation
Attys: Ben Barry; Maurice Rogers.

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In re Hilyard Drillling Co., **ED** 85-10M (July 9, 1987) **Ch. 11.**
(Pursuant to Mississippi law, trustee in bankruptcy took priority over statutory lien creditor because he was without notice of the lien; Thus, creditor has only a general unsecured claim).
Prtys: Trustee, creditors' committee, Burroughs Diesel, Inc.
Attys: Franklin McKenzie, Isaac Scott, Audrey Evans, John Jewell.

546(b)(1)(B)

In re Eaton, **HE** 97-20382M (March 31, 1998) **Ch. 13.** (Debtor not entitled to damages or attorney's fees for violation of stay when vehicle repairman retained possession of debtor's car to perfect artisan's lien pursuant to state statute; Trustee's powers are subject to applicable law providing for perfection of a property interest in this manner so automatic stay doesn't prohibit such perfection; see also 362(b)(3)).
Prtys: Vickie Eaton, River City Body Shop.
Attys: J.F. Valley, David Solomon.

546(c)

In re Bearhouse, 84 B.R. 552, **ED** 87-42M, AP Nos. 87-134M, 87-139M, 87-186M, 87-209M (Jan. 22, 1988) **Ch. 7.** (Farmer complied with state reclamation statute by giving oral demand within ten days of delivery of grain; failure to comply with bankruptcy statute requirement written demand meant farmer's right to reclaim was subject to bankruptcy trustee's avoiding powers; under Arkansas law, reclaiming farmer's right to grain was superior to attaching judgment lien creditor, and thus superior to right of trustee.)
Prtys: Claude Hawkins-Trustee, Ladd Farms, National Bank of Commerce of Pine Bluff, U.S. Dept. Of Agriculture, Farmers Rice Mill Co. Inc., U.F. Coleman, Monticello Gin and Elevator Co., Commodity Credit Corp., Edward L. Oltmann, Gary Shrum, Virgie and Virginia Ray, Aetna Casualty and Surety Co.
Attys: Terry Wynne, Claude Skelton, Thomas Streetman, Bob Lawson, Larry McCord, William K Ball, Overton S. Anderson, Ladd Farms.

In re MPG, Inc., 222 B.R. 862, **FS** 95-40532M, AP 97-8054 (July 28, 1998) **Ch. 7.** (Creditor's pre-petition exercise of right of reclamation by oral demand, while valid under Arkansas law, was subject to Trustee's power to recover preference because Code requires written demand of return of goods).
Prtys: Ben Barry-T; Shrader Holding Company.
Attys: Ben Barry, Burton Stacey.

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In re Bennett **LR** 85-32M (April 10, 1987)**Ch. 7**
(Finding incarcerated man was involuntary debtor with two creditors owed restitution for debtor's aggravated robbery; fraudulent conveyance as to fees paid to atty for services not yet rendered; preference as to fees paid from debtor to atty during preference period).
Ptys: Gary Bennett, Robert and Sandra Vowell
Attys: Allen Bird, Mark Riable, Michael Durham, Charles Davidson

In re Billy G. and Ruth Ann Billingsley,175 B.R. 286, **HE** 93-20096M, AP No. 93-2011M (July 12, 1994) **Ch. 7.** (Mistaken lien release on deed of trust granted by Debtors to Bank was corrected within 90 day preference period but was not a transfer within the statute because the Bank was without authority to release the lien as the deed of trust had been previously assigned to a third party; therefore, reimposition of lien was not a transfer.)
Prtys: Billy and Ruth Ann Billingsley, Helena National Bank, Charles Roscopf, Gene and Wanda Ridge.
Attys: Ashley Higgins, Charles Roscopf, Daniel Schieffler, A. Jan Thomas.

In re Jones Truck Lines, Inc., 166 B.R. 885, **FA** 91-15475M, AP No. 92-8527, (January 12, 1994) **Ch. 11.** (Denying both parties' motion for summary judgment in holding that genuine issue of fact as to debtor's insolvency precluded summary judgment as to debtor's preference action and that defendant's argument was meritless that preference action impermissibly altered parties' collective bargaining agreement; the concerns of sections 1113 and 547 are distinct and 1113 does not give defendant a preference defense).
Prtys: Jones Truck Lines, Central States, Southeast and Southwest Areas Pension Fund; Central States, Southeast and Southwest Areas Health and Welfare Fund; Corestates Bank, N.A.
Attys: Isaac Scott, Charles Coleman, Kimberly Tucker, Thomas Nyhan, James Condon, Thomas Thrash, John Hardin, Stephen Snider, Audrey Evans, Steven Cousins, G.W. Turner, Andrew Turner, Melva Harmon.

In re Jones Truck Lines, Inc. 196 B.R. 483, **FA** 91-15475M, AP No. 92-8527 (Sept. 27, 1995) **Ch. 11.** (Affirmed by District Court and Reversed by 8th Circuit). Debts to Central States were incurred before the transfer of funds in payment such that transfers were for antecedent debt so preference could be avoided; interest payments and liens were also transfers within the statute; no contemporaneous exchange for new value because new value extended by Central States was to employees, not debtor; no liability to debtor was reduced by extension of benefits; value to debtor was forebearance, which is not new value; transfers not in ordinary course of business; no subsequent advances for new value that would replenish the estate.)
Prtys: Jones Truck Lines, Inc.; Central States Pension Fund and Health and Welfare Fund; Corestates Bank as lender and agent for Midlantic, Continental and Wilmington Trust Co. Banks.

Attys: Isaac Scott, Jill Jacoway, James Condon, Thomas Nyhan, Thomas Thrash, J.T. Hardin, Audrey Evans, Steve Cousins, Melva Harmon, Andrew Turner, G.W. Turner

In re Davis Industries, Inc., **PB** 83-56M, AP No. 85-515M (January 9, 1987). (In involuntary bankruptcy proceeding, judgment was for defendants in Trustee's preference action; Bank held perfected lien in debtor's accounts receivable; transfer made to bank pre-petition was account receivable of the debtor and Bank did not receive more than it would have in a Chapter 7 since Bank held valid perfected lien in accounts).
Prtys: James Sanderlin, George Locke, E.A. Tucker d/b/a Davis Industries, Trustee--Thomas Streetman, First State Bank of Dermott.
Attys: Bynum Gibson, David Fuqua, John Shackleford, R.J. Brown, Teresa Wineland, Mary Scott.

In re Mark Francis, 252 B.R. 143, **JO** 97-31344M, AP 99-3050.
(August 23, 2000) **Ch. 7** (Earmarking doctrine [creditor lends money to debtor for purpose of paying selected creditor] precluded Trustee's recovery in preference action).
Prtys: James Luker, Trustee; Lewis Auto Glass Inc. and Midwest Auto Body Panels.
Attys: William Ayres, Michael Goldstein, Harry Hurst, Warren Dupwe.

In re Herman and Marilyn Lee, **HA** 89-13051, CMS 89-2545 (Sept. 12, 1990)**Ch. 7** (Creditor's motion for relief from stay denied because likelihood of successful attack on creditor's lien on vehicle as a preference).
Prtys: Trustee-Terry Lee; Debtors; A.L.S. Inc.
Attys: Bass Trumbo, Claude Jones, Jill Jacoway, John Eldridge

In re McCarther Enterprises, Inc., **LR** 86-539, AP 88-52 (Aug. 24, 1988) **Ch. 7:** (Trustee's complaint dismissed for failure to establish all elements of preference). AFFIRMED (J. Howard, 3/6/89, LR-C-88-697).
Prtys: Trustee-Charles Davidson, I.R.S.
Attys: Michael Wilcove, Mark Colbert, Jack Sims, Bill Adair.

In re McCrary's Farm Supply, **LR** 81-666M, AP 84-149M (November 1, 1985) **Ch 11**. (Motion for Summary judgement denied in preference action in which movant-defendant asserted contemporaneous exchange and new value exceptions).
Prtys: Creditors' Committee, Monsanto Co.
Attys: L. Judson Todhunter, Peter Heister, Scott S. Partridge, Isaac Scott, Jack Sims.

In re MPG, Inc., 222 B.R. 862, **FS** 95-40532M, AP 97-8054 (July 28, 1998) **Ch. 7.** (Creditor's pre-petition exercise of right of reclamation by oral demand, while valid under Arkansas law, was subject to Trustee's power to recover preference because Code requires written demand of return of goods).

Prtys: Ben Barry-T; Shrader Holding Company.
Attys: Ben Barry, Burton Stacey.

In re Mastercraft Graphics, Inc., 157 B.R. 914, **S.D. Fla. (Miami)** 91-23768-BKC-AKC; AP 92-0682 (August 13, 1993) **Ch. 7.** (Finding insider preference could be avoided if it benefitted inside guarantor of debtor's obligation to supplier; irregular or unusual payments not in ordinary course of business; party asserting o.c. exception has burden of proof). **Affirmed** by District Court, S.D. Fla.
Prtys: Debtor, Signal Capital Corp.
Attys: Corali-Lopez-Castro; Susan Lasky

In re Lloyd, **LR** 86-1880, AP 86-792M (Oct. 2, 1987) **ch. 11.** (Prejudgment interest awarded in preference action from date of commencement of suit).
Prtys: Phillip Lynn Lloyd, Hazen First State Bank.
Attys: David Grace, Robert Dittrich.

In re Mid-South Auto Brokers, Inc., **LR** 99-40839 (April 1, 2003) **290 B.R. 658, Ch. 7**: Payments made by Debtor to Bank to satisfy loans guaranteed by shareholders benefitted shareholders who were insiders, but Bank actually received payments and was not insider for preference purposes; Trustee failed to prove Bank received more than in a hypothetical chapter 7 liquidation; Debtor received reasonably equivalent value for payments on loans.
Prtys: Trustee-Jim Dowden, First Security Bank
Attys: Allen Bird, Maurice Rogers, Ben Arnold for Debtor

In re Mid-South Cabinet & Millwork Inc., **LR** 86-1773M, AP 88-511 (Oct. 24, 1990) **125 B.R. 16**, **Invol Ch. 7** (Trustee entitled to judgment against creditor in preference action; creditor failed to establish affirmative defense of ordinary course of business but was entitled to offset subsequent unsecured credit extended to debtor).
Prtys: Trustee-James Allen Brown, Heigel Lumber & Hardware
Attys: Geoffrey Treece, George F. Hartje.

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

In re Riley, **LR** No. 01-42071 (August 22, 2003) **297 B.R. 122,** AP 02-1364: Trustee could avoid Debtor's payments on credit card pursuant to section 547(b); Affirmative defense of contemporaneous exchange for new value under 547(c)(1)not applicable, but 547(c)(4) might have been available if pleaded.
Prtys: Richard Cox-Trustee, Kone Employees Credit Union

Attys: Richard Cox, Wade Hodge

In re U.S.A. Inns, 151 B.R. 486, **HA** 89-13136, AP 89-3509 (Sept. 30, 1992) **Ch. 7:** (Bank failed to prove by preponderance of evidence that acceptance of late loan payments were in ordinary course of business; trustee could avoid payments as preference). **REVERSED** by Waters (Sept. 30, 92); 8th Cir. Affirmed District Court.
Prtys: Claude R. Jones-Trustee, United Savings and Loan Association.
Attys: Gail Inman-Campbell, Dennis Davis, Claude R. Jones, Steven B. Davis.

In re Walters & Ray, Inc., **LR** 84-514 (July 30, 1985) **Ch. 11:** No Preference under 547 when no interest of the debtor was ever transferred.
Prtys: Debtor-in-Possession, Arthur J. Gallagher & Co, Martin and Associates.
Attys: Stephen Cuffman, David Fuqua, Charles Ray

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In re Bennett **LR** 85-32M (April 10, 1987) **Ch. 7** (Finding incarcerated man was involuntary debtor with two creditors owed restitution for debtor's aggravated robbery; fraudulent conveyance as to fees paid to atty for services not yet rendered; preference as to fees paid from debtor to atty during preference period.
Ptys: Gary Bennett, Robert and Sandra Vowell
Attys: Allen Bird, Mark Riable, Michael Durham, Charles Davidson.

In re Stephen Griffin, **FS**, Ch. 7: AP No. 04-6052 (September 9, 2004) Trustee v. Stephen Griffin and Barbara Griffin, 03-7039: In bench ruling, Court found transfer of liquor store stock and payment of store's funds to Debtor's wife was not fraudulent conveyance under theory of actual fraud under 11 U.S. C. § 548(a)(1)(A), but transfer of real estate was void as against the interest of the Trustee under 11 U.S.C. § 544 and 549, and post-petition checks to Barbara were subject to Trustee's recovery under 549. **AFFIRMED BAP 319 B.R. 609:** JANUARY 27, 2005: language in pre-nuptial agreement did not transfer a present interest in property of the Debtor. Any interest through prenuptial agreement was not enforceable against the Trustee's strong-arm powers. Wife owned half of liquor store corporation that had no assets.
Prtys: Barbara Griffin, Richard Cox-Trustee
Attys: Barbara Griffin, pro se, Richard Cox

In re Mid-South Auto Brokers, Inc., **LR** 99-40839 (April 1, 2003) **290 B.R. 658, Ch. 7**: Payments made by Debtor to Bank to satisfy loans guaranteed by shareholders benefitted shareholders who were insiders, but Bank actually received payments and was not insider for preference purposes; Trustee failed to prove Bank received more than in a hypothetical chapter 7 liquidation; Debtor received reasonably equivalent value for payments on loans.
Prtys: Trustee-Jim Dowden, First Security Bank
Attys: Allen Bird, Maurice Rogers, Ben Arnold for Debtor

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

In re Herbert E. Russell, 154 B.R. 723, **ED** 84-058M, AP 87-103M (April 23, 1993) **Ch. 11.** (On remand from 8th Circuit, BR holding that Trustee did not prove fraudulent intent in avoidance action when Debtor elected to carryforward his net operating loss; constructive fraud was beyond mandate of 8th Circuit; election was in ordinary course of business). **Reversed and Remanded by district court (Barnes).**
Prtys: Tom Streetman-Trustee; United States (I.R.S.)
Attys: Charles Baker, John Russell.

In re Herbert Russell, **ED** 84-58M, AP No. 87-103M (Sept. 26, 1994) **Ch. 11.** (Upon remand from District court (189 B.R. 190), court found NOL carry forward election was fraudulent conveyance under section 548 as transfer for less than reasonably equivalent value when debtor insolvent). **Affirmed**, District Court, 187 B.R. 287 (July 31, 1995).
Prtys: Thomas Streetman-Trustee, IRS
Attys: Thomas Streetman, Charles Baker, Susan Gunter, Norreen C. Stehlik for I.R.S.

In re W.E. Tucker Oil Co., Inc. ED 84-11M, AP 84-405M (Sept. 5, 1985) **55 Bankr. 78, Ch. 11.** (Transfers of property by granting liens were constructively fraudulent under 548). AFFIRMED (J. Harris, **64 Bankr. 183**).
Prtys: Debtor, Claude Hawkins, Trustee; First State Bank of Crossett, Portland Bank.
Attys: Richard Griffin, R.J. Brown, Thomas Streetman.

548(a)(2)(A)

In re Oregon Butler, 42 B.R. 777, **PB** 93-101 (June 15, 1984) **Ch. 11** (Confirmation of chap. 11 plan denied, plan failed to state percentage to be paid to unsecureds over $500 when plan impaired their interests and was not accepted by them, plan misclassified corporation and shareholder to which debtors had conveyed assets, plan misclassified secured creditors and did not list debtors' inherited property, in absence of election requirements, plan did not meet statutory election requirements and did not provide for full payment of all claims.)
Prtys: Oregon and Lavelle Butler, John Deere Co, International Harvester Credit Corp., Massey Ferguson Credit Corp, Pioneer Production Credit Association, and the Federal Land Bank of St. Louis.
Attys: Jack Sims

In re John E. Oldner, 224 B.R. 698, **LR** 94-42031M, AP 96-4205 (September 10, 1998) **Ch. 7** (Trustee's fraudulent conveyance action brought under constructive fraud theory alleging transfers from Debtor through his corporation to defendant for payroll services were for less than reasonably equivalent value to the Debtor. Court held first transfer was a loan; second transfer was for reasonably equivalent value; no fraudulent conveyance).
Prtys: Richard Ramsay-Trustee; Sunmark Contract Staffing; Express Human Resources; Express Personnel Services, Inc.; John Oldner, Brenda Oldner.
Attys: Buck Gibson, Basil Hicks, David Jacobs, Gregory Campbell.

549

In re Stephen Griffin, **FS**, Ch. 7: AP No. 04-6052 (September 9, 2004) Trustee v. Stephen Griffin and Barbara Griffin, 03-7039: In bench ruling, Court found transfer of liquor store stock and payment of store's funds to Debtor's wife was not fraudulent conveyance under theory of actual fraud under 11 U.S. C. § 548(a)(1)(A), but transfer of real estate was void as against the interest of the Trustee under 11 U.S.C. § 544 and 549, and post-petition checks to Barbara were subject to Trustee's recovery under 549. **AFFIRMED BAP 319 B.R. 609:** JANUARY 27, 2005: language in pre-nuptial agreement did not transfer a present interest in property of the Debtor. Any interest through prenuptial agreement was not enforceable against the Trustee's strong-arm powers. Wife owned half of liquor store corporation that had no assets.
Prtys: Barbara Griffin, Richard Cox-Trustee
Attys: Barbara Griffin, pro se, Richard Cox

In re Franklin Doty Miller, **FA** 89-15098M, AP 90-5506 (March 8, 1991) **Ch. 11** (FmHA claimed a lien in equipment, which FmHA claims is property of the debtor. Creditors' committee argued that the equipment is property of the partnership; thus, FmHA does not have a valid lien in the equipment. The committee filed this AP against FmHA to recover a payment of $22,023.00 as a postpetition transfer to an unsecured creditor. Court H: the creditors' committee did not establish a prima facie case that the lien was invalid; complaint dismissed). REVERSED (J. Waters, 10-11-91, 91-5051)
Prtys: Debtor, Farmers Home Administration, Creditors Committee
Attys: Michael Fitzhugh, Paul Bowen, Don Taylor, Deborah Groom, Claude Skelton, Marilyn Byington, Jack Butt.

In re Herbert E. Russell, 154 B.R. 723, **ED** 84-058M, AP 87-103M (April 23, 1993) **Ch. 11.** (On remand from 8th Circuit, BR holding that Trustee did not prove fraudulent intent in avoidance action when Debtor elected to carryforward his net operating loss; constructive fraud was beyond mandate of 8th Circuit; election was in ordinary course of business). **Reversed and Remanded by district court (Barnes).**
Prtys: Tom Streetman-Trustee; United States (I.R.S.)
Attys: Charles Baker, John Russell.

549(a)(2)(B)

In re Dipzinski, **JO**, No. 97-10389M (June 16, 1999) **Ch. 7.** (Trustee's objection to debtor's amendment to claim of exemptions sustained; debtor intentionally omitted from schedules the exempt asset, sale proceeds from sale of marital real property due to debtor in divorce; debtor's divorce attorney violated automatic stay by disbursing proceeds to debtor and retaining his attorney's fee from proceeds without authority).
Prtys: Trustee-Warren Dupwe, Debtor-Patricia Dipzinski.
Attys: Warren Dupwe, Louis J. Nisenbaum,Richard D. Hitt.

549(a)(c)

In re Benefield, **HE** 102 B.R. 157 (July 13, 1989) **Ch. 7** (holding that trustee may avoid unauthorized transfer of property where lessee gave no present value for the right to use the land and thus lessee had no claim).
Ptys: Debtor Dwight W. Benefield , Steve Davis and Viola Benefield Burroughs, Daniel K. Schieffler-Trustee.
Attys: James Luker, Baird Kinney.

550

In re John E. Oldner, 224 B.R. 698, **LR** 94-42031M, AP 96-4205 (September 10, 1998) **Ch. 7** (Trustee's fraudulent conveyance action brought under constructive fraud theory alleging transfers from Debtor through his corporation to defendant for payroll services were for less than reasonably equivalent value to the Debtor. Court held first transfer was a loan; second transfer was for reasonably equivalent value; no fraudulent conveyance).
Prtys: Richard Ramsay-Trustee; Sunmark Contract Staffing; Express Human Resources; Express Personnel Services, Inc.; John Oldner, Brenda Oldner.
Attys: Buck Gibson, Basil Hicks, David Jacobs, Gregory Campbell.

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

552

In re Lewis, **HE** 86-2002, AP 88-456M (Oct. 2, 1990) **Ch. 7**: (Creditor's security interest in destroyed truck continued in insurance proceeds to extent of value of destroyed truck; insurer liable to creditor for value of truck but entitled to indemnity from debtors for amounts paid to Bank).

Prtys: First National Bank of Phillips County, Canal Insurance, Debtors.
Attys: Michael Lewis, David Solomon, Jesse Porter, Charles Roscopf

In re MPG Enterprises, Inc. **FA** 96-80848M (December 22, 1997) **Ch. 7.** (Bank properly perfected its security interest in rent proceeds by recording mortgage and assignment of rents; Article 9 does not afford means for perfecting such rents; pre-petition security interest is valid in post-petition rent proceeds).
Prtys: Pulaski Bank and Trust, Ben Barry-T
Attys: C.B. Blackard, III, Ben T. Barry.

In re Roy and Elizabeth Peeler, 145 B.R. 973, **HE** 88-20142M, AP 91-2005 (April 24, 1992) **Ch. 7.** (lender's security interest in crops did not extend to proceeds from sale of grain three years later; financing statement had insufficient description to perfect security interest and security interest could be avoided by trustee; property acquired by debtor postpetition was not subject to prepetition security agreement).
Prtys: Danny Schieffler-Trustee; First National Bank of Wynne, Debtors;
Attys: Danny Schieffler, Tom B. Smith, Brad J. Beavers.

In re Mammoth Spring Distributing Co., Inc., 139 B.R. 205, **FA** 90-15286F (Jan. 17, 1992) **Ch. 7.** (Creditor's security interest in general intangibles extended to post-petition tax refund because inchoate right to receive accrued as a result of losses occurring pre-petition under Missouri UCC.)
Prtys: Claude R. Jones-Trustee, Debtor, First National Mercantile Bank and Trust Co.
Attys: John Lee, William Clark.

In re Jerry and Penny Toombs, 01-30784, AP 01-3053 (September 25, 2002) **Ch. 13:** Bank's motion for summary judgment denied; insufficient evidence to show Bank had perfected security interest in after-acquired property under Ark Code Ann 4-9-303(1); conflict as to whether government payments constitute proceeds under section 552).
Prtys: Peoples Bank of Paragould, Debtors, Trustee, U.S. Dept. of Agriculture.
Attys: David Coop, Jan Thomas, Bryant Marshall, Gwendolyn Hodge.

553(a)

In re Brown, **LR** 92-390M (Dec. 14, 1992) **Ch.13** (granting relief from stay and allowing IRS right to setoff where refund and tax claim mutual and both prepetition)
Ptys: Internal Revenue Service
Attys: A.L. Tenney, Mike Knollmeyer, Raymond Mulera

In re Brittenum & Associates, Inc. **LR** AP 86-50M Dowden v. Cross County Bank, (August 28, 1987) 97 B.R. 503. **Ch. 7**
(Bank could not exercise its right of set off against funds in savings account or certificate of deposit labeled as special reserve accounts for exclusive benefit of

customers in proceeding for liquidation of securities brokerage and investment banking firm which had opened the accounts; bank was on notice of trust nature of the labeled accounts).
Ptys: Halstead Industries, Cross County Bank, Trustee Jim Dowden.
Attys: Ken Cook, Richard Taylor, Jim Dowden.

In re Paula Clingingsmith, **LR,** No. LR 86-466F, AP No. 86-315
(April 21, 1987) **Ch 7 (**Trustee's complaint for turnover for tax refund paid to Debtor and seized by S.B.A. post-petition pursuant to federal statute was denied; S.B.A. had right of set-off because right to refund accrued prepetition; bankruptcy set-off provision did not negate federal statute regarding right of federal agency to refund).
Ptys: Randy Rice, Trustee, U.S. Small Business Administration.
Attys: Randy Rice, Doug Chavis, Mike Price, Paul Herrod.

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn,
Darwin Davidson, Lance Miller.

In re Gore, 124 B.R. 75, **LR** 88-04-2284M, 89-570M (Oct. 1, 1990) **Ch. 12**.
(Holding that government could not set off obligation under soil conservation agreement with debtor's prepetition obligation to SBA for loan because obligation to debtor arose post petition and because mutuality lacking as debtor and debtor-in-possession were different entitites.)
Prtys: Debtors; Small Business Administration.
Attys: Lance Hanshaw, William Adair.

In re Hilyard Drilling Company, **ED** AP No. 86-745M: (November 5, 1987) **Ch. 11** (Allowing administrative claims of debtor company against debtor subsidiary and subsidiary against parent arising post-petition; declining to equitably subordinate parent's claim because no evidence of inequitable conduct; declining to setoff post and prepetition claims).
Prtys: R.J. Brown, Trustee for Hilyard Supplies; Isaac Scott, Trustee for Hilyard Drilling Co.
Attys: Isaac Scott, Audrey Evans, R.J. Brown,John Jewell, Scott Vaughn, Ian Vickery, Charles Baker, William Prewitt.

In re Hoffman, 51 B.R. 42, **ED** 85-27M, 85-29M, 85, 30M, AP 85-318M, 85-320M (May 30, 1985) **Ch. 7, 11:** (It is not a violation of the automatic stay for a bank to place administrative freeze on debtors' demand accounts upon receipt of

knowledge of filing of bankruptcy; bank would not be granted relief from stay to exercise right of set off if adequate protection for use of cash collateral could be offered by the debtors.)
Prtys: Debtors Charles Hoffman, Craig Shackleford, Craig Shackelford Farms, Portland Bank, National Bank of Commerce of Pine Bluff.
Attys: Isaac Scott, Thomas Streetman, Joseph Strode.

In re National Hydro-Vac Industrial Services, **PB**, No. 01-50466M, **Ch 11, later 7** (June 15, 2004): **314 B.R. 753**: Upon motion for turnover of equipment by trustee, court held two pieces legally sold upon debtor's acceptance of buyer's offer but failure to remit proceeds in which defendant was to act as broker was conversion and defendant could not set off proceeds against debt to defendant; punitive damages were warranted under state law on conversion, but not due under section 362(h), willful violation of the stay, because debtor is corp.
Prtys: Trustee, Transamerica Equipment Financial Services, Federal Signal Corp.
Attys: Thomas Streetman, Stephen Gershner.

In re Ozark Acoustical Const.,**LR** 90-42175, AP 91-4049 (April 23, 1992) **Ch. 7** (Plaintiff waived right to setoff for materialmen's lien owed by Debtor and paid by Plaintiff when Plaintiff paid Trustee money Plaintiff owed to Debtor).
Prtys: Robinette-Keyes Construction Co., Inc., Randy Rice
Attys: Cyril Hollingsworth, Charles Baker

In re James Pruett, 220 B.R. 624, **LR** 97-41491M, AP 97-4072 (December 15, 1997) **Ch. 13.** (Insurance company advancing monies on future commissions may recoup advances from agent as they accrue post-petition; recoupment not subject to automatic stay but setoff is subject; no employment discrimination against Debtor by employer based on the evidence).
Prtys: Debtor, American Income Life Insurance Company; Richard Neal, Debbie Gamble.
Attys: Jean Madden, R.F. Brown

553(a)(2)(B)

In re Jones Truck Lines, Jones Truck Lines v. Target Stores, 196 B.R. 123, AP No. 93-8594M, 94-8003M (November 13, 1996) **Ch. 11** (Target's pre-petition contingent liability on its guaranty to Standard arose at time of contract; so when Target paid on the guaranty during the 90 days prior to bankruptcy because Jones did not pay Standard, it was not prohibited from asserting set-off under 553(a)(2)(B)).Affirmed by District Court November 12, 1996 and by 8th Cir. December 19, 1997, 133 F.3d 922.
Prtys: Jones Truck Lines, Target Stores.
Attys: Robert Lambert, James Bingaman, John Eldridge, Stephen Mertz, Charles Webber.

554

In re Benefield, **HE** 102 B.R. 157 (July 13, 1989) **Ch. 7** (holding that property of debtor which was never scheduled remained property of the estate after the case was closed).
Ptys: Debtor Dwight W. Benefield , Steve Davis and Viola Benefield Burroughs, Daniel K. Schieffler-Trustee.
Attys: James Luker, Baird Kinney.

In re Gibson, 218 B.R. 900, **LR** 96-41062M (Dec. 27, 1997) **Ch. 13.** (court order of surrender of damaged, insured automobile was not an order of abandonment of all insurance proceeds; abandonment of estate property constitutes divestiture of all estate's interests unequivocally and irrevocably and must comply with procedural safeguards).
Prtys: Debtor, Newcourt Financial.
Attys: Kent Pray, Richard Kalkbrenner.

701

In re Baldwin, 184 B.R. 558, **JB** 91-30647, AP No. 93-3015M,
Trustee v. Pryor (April 13, 1995) **Ch. 7.** (Motion to dismiss for failure to state a claim granted as to allegation that trustee tortiously interfered with sale when he agreed to sell debtors' property to buyers and then agreed to sell same property for higher price to other party; Trustee is successor in interest to debtors and not a third party.)
Prtys: Danny Schieffler, Mike and Linnette Pryor
Attys: William Ayers, Keith Blackman, Warren Dupwe, Charles Mooney.

704

In re Baldwin, 184 B.R. 558, **JB** 91-30647, AP No. 93-3015M, Trustee v. Pryor (April 13, 1995) **Ch. 7.** (Motion to dismiss for failure to state a claim granted as to allegation that trustee tortiously interfered with sale when he agreed to sell debtors' property to buyers and then agreed to sell same property for higher price to other party; Trustee is successor in interest to debtors and not a third party.)
Prtys: Danny Schieffler, Mike and Linnette Pryor
Attys: William Ayers, Keith Blackman, Warren Dupwe, Charles Mooney.

706(a)

In re Albert Caldwell, 895 F.2d 1123, Nos. 88-6404, 88-6405
(February 9, 1990), **Sixth Circuit** affirming Tennessee District Court, finding debt for willful and malicious injury can be discharged under Chapter 13, which allows debtor to repay his obligation over time from disposable income, although the debt would be nondischargeable under Chapter 7; Court held that chapter 13 debtor proposing to repay 36% of debt that would have been nondischargeable in a Chapter 7 was not acting in good faith; it is not conclusively bad faith for a debtor to seek to discharge a debt incurred through his own criminal or tortious conduct

through a chapter 13, but factor may be considered.

In re Gaylen N. Johnson, **LR**, 262 B.R. 75, No 00-44103M, **Ch.7**. (April 18, 2001) (Court denied debtor's motion to convert to 13 upon Trustee's objection; 706(a) does not provide an absolute right to convert when extreme circumstances exist (minority view); here debtor's misconduct may have warranted denial of discharge under 727 and motion to convert was in bad faith.)
Prtys: Jim Dowden-Trustee, Gaylen Johnson-Debtor
Attys: Jim Dowden, Gregory Harris.

707(a)

In re James and Dorothy Studdard, 159 B.R. 852, **LR** 92-42707M (August 31, 1993) **Ch. 7**. (Dismissing case of debtors on motion of creditor when debtors failed to complete chapter 11 plan and filed chapter 7, spent $50k a year on children's autos and college while failing to pay unsecured creditors; finding debtors' bad faith was sufficient cause under 707(a)).
Prtys: Debtors, Pulaski Bank and Trust.
Attys: C.B. Blackard, Frederick Wetzel.

In re Mathis Ins. Agency, Inc., **LR** 84-1191, 1192
In re Clemothene Mathis, **LR** 84-1192M (May 29, 1985) **50 Bankr. 482, Ch. 7** (Debtors' Motions to dismiss chap. 7 case denied; no showing of cause justifying dismissal, substantial evidence of fraud prompts court to refer case to U.S. Attorney).
Prtys: Debtors
Attys: David Grace

707(b)

In re Leroy and Necie Randolph, **LR** 99-45183M (September 27, 2000) **Ch. 7**. (Denying U.S. Trustee's motion to dismiss Debtors' chapter 7 petition for substantial abuse under 707(b); debtor's second home in Hot Springs was job-related; Trustee did not carry burden of showing that expenses were unreasonable).
Prtys: U.S. Trustee, Debtors.
Attys: Jim Hollis, Kathy Cruz.

722

In re Michael and Cheryl Parker, 142 B.R. 327, **ED** 91-11139M (June 23, 1992) **Ch. 7.** (Debtors current on mobile home payments could retain collateral and continue payment and were not required to either reaffirm, redeem, or surrender property).
Prtys: GreenTree Acceptance Inc., Debtors
Attys: Martha McAlister, Jimmy Eaton.

726

In re Mel-Hart Products, Inc., 136 B.R. 197, **LR** 90-40399M (November 13, 1991) **Ch. 7** (allowing administrative claim for post-petition rent since Trustee had constructive possession of entire premises and for postpetition insurance costs; holding administrative expenses of the chapter 7 case have priority over those in the prior Chapter 11 case under 726(b))**.**
Prtys: Randy Rice-T; Debtor, FabuGlass.
Attys: Charles Baker, Randy Rice, William Adkisson, Rita Brown Wells, Marilyn Byington, Charles Coleman.

727

In re Irene Thelma Doles, **HE** 84-52M, AP 84-480M (June 17, 1985) **Ch. 7**. (Dismissing complaint for objection to discharge for failure to state a cause of action when complaint alleged no grounds set out in 11 U.S.C. 727).
Prtys: Dixie Furniture Co., Irene Thelma Doles.
Attys: Jack Sims, W.G. Dinning, Jr., Loyal Barr.

In re Guy Hamilton Jones, Jr., 175 B.R. 994, **LR** AP No 93-4057M, 93-4058M, No. 92-42755M (August 2, 1994) **Ch. 7**. (Denying debtor's discharge for concealment of assets, 727(a)(2)(A); withholding Records from trustee, 727(a)(4)(D); conversion, 727(a)(2)(B), and false oath, 727(a)(4)A) and (a)(7))
Prtys: Guy Jones Jr., Trustee Richard Ramsay, Mary Jones, Christopher Jones.
Attys: Judy Henry, Charles Baker, Richard Ramsay

In re Gregory L. Latimer, **LR** 00-43630, AP 02-1114 (Aug. 22, 2002) **Ch. 7**: (Discharge injunction under sections 727 and 524 did not enjoin determination of dischargeability of alimony or support debt under 523(a)(5) by bankruptcy or state court, which has concurrent jurisdiction, even if Debtor listed debt as dischargeable on his petition; seeking dischargeability and entry of judgment after discharge did not violate stay which was no longer in force as to property of the debtor after discharge under section 362(c).
Prtys: Debtor, Dan West, Bill Flannery
Attys: Paul Schmidt, Michael Reif.

In re Lewis, **HE** 86-20024, AP 88-413 (September 6, 1990) **Ch. 7.** Objection to discharge and dischargeability dismissed as untimely under Rules 4004(a) and (4007(a).
Prtys: Canal Insurance Company, Debtors.
Attys: Michael Lewis, David Solomon, Jesse Porter, Charles Roscopf

In re Catherine Lindsey, 208 B.R. 169, **BA** 96-10020, AP 96-1007M (April 21, 1997) **Ch. 7.** (Granting Trustee's motion to be substituted for creditor seeking to dismiss its complaint objecting to chapter 7 debtor's discharge, even though bar date had passed for objections to discharge).
Prtys: Debtor, Ballard Furniture Co., Trustee.

Attys: Sharon Glaze, John Purtle.

In re Rose, **HE** 85-138M, AP 85-427M (September 25, 1986) **Ch. 7**: (Debtors not denied discharge under 727 because fully encumbered property which was transferred did not deplete assets available to pay creditors; debt did not arise from willful and malicious injury under 523(a)(6) but was the result of embezzlement and would be nondischargeable under 523(a)(4)).
Prtys: Louis and Joan Rose, Hugh and Tamara Rose, Caruthersville Production Credit Association.
Attys: Warren Dupwe, Robert Branch, Jan Thomas, Donis Hamilton.

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

In re Whitfield, **ED** 83-058 (Aug. 10, 1984) **41 Bankr. 734, Ch. 7**: Objections to discharge under 727 and dischargeability under 523(c) must be timely under Rule 4004 or 4007; excusable neglect is not applicable for untimely filing; fraud must be pleaded with particularity under Rule 7009.
Prtys: B.J. Edwards, Debtors, Michael Landers, Trustee
Attys: Danny Rogers, Henry Kinslow, Michael Landers.

727(a)(2)

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge, creditors proved four necessary elements: conduct occurred within a year of bankruptcy, debtor's actual intent to hinder, defraud or delay creditors, act was committed by debtor, and the act was a transfer of property).
Ptys: Texas Equipment Co. Inc., W.O Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

In re Hoffman, 70 B.R. 155, **ED** 85-27M, AP 85-476M (Sept. 16, 1986) **Ch. 7.** (Holding that debtor would not be denied discharge where property transferred was not property of individual debtor's estate, but was property of corporation)
Prtys: Debtor, National Bank of Commerce
Attys: Isaac Scott, Charles Coleman, Joseph Strode.

In re Carl and Maxine Johnson, **LR** 85-772M (June 5, 1986) **Ch. 7.** (motion to dismiss for failure to allege fraud with particularity overruled; objection to discharge sustained upon evidence of plan to sell mortgaged property and illegally convert the proceeds).

Prtys: First State Bank of Morrilton, Bank of Western Indiana, Debtors.
Attys: Gregory Hopkins, Stephen Rowell, Charles Clawson, Howard Yates, Richard Smith.

In re Gaylen N. Johnson, **LR**, 262 B.R. 75, No 00-44103M, **Ch. 7**. (April 18, 2001) (Court denied debtor's motion to convert to 13 upon Trustee's objection; 706(a) does not provide an absolute right to convert when extreme circumstances exist (minority view); here debtor's misconduct may have warranted denial of discharge under 727 and motion to convert was in bad faith.)
Prtys: Jim Dowden-Trustee, Gaylen Johnson-Debtor
Attys: Jim Dowden, Gregory Harris.

In re Locke, **LR** 83-204, AP 83-643M (April 1, 1985) 50 Bankr. 443, **Invol. Ch. 7** (discharge denied under 727(a)(2) for intent to hinder creditors.) May 7, 1985: (Trustee's settlement of denial of discharge claim is approved but that of Bank is denied because of no benefit to estate).
Prtys: Debtor, First Commercial Bank
Attys: Charles Davidson, Isaac Scott, Rick Taylor, Ralph Sloan

727(a)(3)

In re Cockrum, **ED**, 90-11193M, AP No. 91-1501 (July 2, 1993) **Ch. 7.** (Insufficient evidence to show that separate corporate entity was alter ego of the debtor such that individual debtor's discharge should be denied because the corporate entity's records are inadequate; statute refers to "Debtor's financial condition.")
Prtys: First National Bank of Crossett, Robert Cockrum, debtor.
Attys: Thomas Streetman, Richard Crockett, William Wright.

In re Jimmy D. Keller, **LR** 03-16095 (Feb. 18, 2005) **2005 WL 435212**: Cattle farmer's discharge denied for failure to keep records sufficient to show debtor's financial condition under section 727(a)(3).
Prtys: Debtor, Grisham Farm Products, Inc.
Attys: Jesse W. Thompson, Steve Gershner.

In re W.R. Lile, **LR** 97-45878M, AP 99-4008 (August 8, 2000) **Ch. 7.** (Denying Debtor's discharge upon Trustee's complaint for false oath regarding household furnishings, failing to explain deficiency of assets; failing to keep and preserve records of financial condition; failing to turn over records to Trustee without justification).
Prtys: Randy Rice-T; Debtor
Attys: Jim Dowden, Debtor Pro Se

727(a)(4)(5)

In re Ault, **LR** 01-40813M (Dec. 20, 2001) **Ch. 13** (Objection to confirmation overruled; not per se bad faith for debtor to discharge debts from previous chapter

7 in which his discharge was denied for reasons not stated in the record).
Prtys: Debtor; Elsie Williams.
Attys: Tom Byarly; John Ogles

In re Claudene Cato, **LR**, No. 86-567M, AP No. 86-477M (February 5, 1987) **Ch. 7** (Creditor's objection to discharge based on faulty financial statement including jewelry later missing or omitted from schedules was sustained and discharge denied; Court did not believe Debtor's explanation as to missing assets.)
Ptys: Madison Guaranty Savings & Loan Association, Claudene Cato
Attys: Raymond Harrill, Greg Hopkins, R.J. Brown, Randy Rice-T.

In re Hooten, **HS** 04-73821, AP 04-7218) **Ch. 7** (November 29, 2005) (Denying Discharge under 727(a)(4) for giving false oaths with fraudulent intent when debtor quitclaimed his future interest in real property, later disclaimed future interest in favor of his heirs, and then listed real property on schedules in bankruptcy).
Prtys: Debtor, Phyllis Nash Dunning
Attys: John Howard, Basil Hicks

In re Marco Levy, 221 B.R. 559,**S.D. Fla. (Ft. Lauderdale)** 95-22861-BKC-PGH, AP 95-1597-BKC-PGH-A (March 27, 1998)**Ch. 7.** (court sustained objections to discharge and claim of homestead exemption; Canadian debtor had failed to explain loss of assets to meet liabilities so discharge denied; claim of exemption in homestead denied because debtor lacked domicile in 180 days preceding bankruptcy).
Prtys: Debtor, Attorney General of Quebec, Lucy C. DeBraccio-T.
Attys: Robert Fracasso, Ronald G. Neiwirth, Robert Meyer.

In re W.R. Lile, **LR** 97-45878M, AP 99-4008 (August 8, 2000) **Ch. 7.** (Denying Debtor's discharge upon Trustee's complaint for false oath regarding household furnishings, failing to explain deficiency of assets; failing to keep and preserve records of financial condition; failing to turn over records to Trustee without justification).
Prtys: Randy Rice-T; Debtor
Attys: Jim Dowden, Debtor Pro Se

In re Phillip Lynn Lloyd, 142 B.R. 866, **LR** 86-41880M, AP 88-332M (Feb. 12, 1992) **Ch. 7.** (debtor's criminal conviction collaterally estopped his defense in bankruptcy proceeding regarding false statement under oath and withholding info regarding his property; discharge denied).
Prtys: Rick Ramsay-Trustee, Debtor.
Attys: David Grace, Stuart Hankins.

In re Zepecki, **JO** 96-30125M, AP 98-3039 (April 5, 2000) **Ch. 7.** (Debtor's discharge denied for giving false oaths in failing to schedule pre-petition transfer of sale proceeds from himself to Alabama attorney for suspect real property transaction).

Prtys: Debtor, Bonnie Kania (ex-wife).
Attys: David Lewis, Mary Lile Broadaway.

727(a)(8)(9)

In re Richter, **LR** 90-193 (Mar. 7, 1991: Objection to confirmation of **Ch. 13** denied even though filed on heels of chap 7; no evidence of bad faith, no evidence debt could not have been discharged in the chapter 7).
Prtys: Debtor, Chrysler Credit Corp.
Attys: Faber Jenkins, Paul Schmidt, A.L. Tenney-Trustee.

727(b)

In re Crull, **HA,** 101 B.R. 60 (June 7, 1989) **Ch. 7.** (Where debtor moved to reopen case to include debt inadvertently omitted, Court held that dischargeability would be determined not by amendment of schedules but by adversary proceeding; scope of discharge is determined as of the date of discharge).
Prtys: Gary and Karen Crull, H.J. Scheirich Co.
Attys: Roger Morgan, James Stanley, William Robinson.

In re Charles Delano and Linda Carol Miller,159 B.R. 849, **JO** 90-30378M, AP 92-3035 (August 17, 1993) **Ch. 7.** (In action to determine dischargeability of omitted debt after discharge, pursuant to 727(b); in no asset case, creditors don't file proofs of claim unless notified to do so. So an unscheduled creditor in a no asset case is not deprived of right to file proof of claim; therefore, claim is dischargeable despite the wording of 523(a)(3)(A)).
Prtys: Debtors, Robert E. and Carl Schuchardt.
Attys: Warren Dupwe-T; Scott Emerson, Scott Davidson.

727(d)(1)

In re Linda Harper, **FS** 84-198M, AP 86-141M (April 15, 1987) **Ch. 7:** (Revoking Debtor's discharge where debtor's fraud destroyed Bank's secured claim and Bank would have obtained an objection to discharge if Debtor had not concealed her actions until time for filing an objection had passed.)
Prtys: First National Bank, Linda Harper.
Attys: Ben Barry, Stanley Lelasure, Jan Neilsen, Jim Arnold.

727(d)(2)

In re Donald Couch, **LR,** 54 B.R. 682 (Sept. 11, 1985), **Ch. 7**. (Finding debtor's discharge would be revoked on request of creditor where debtor in possession under chapter 11 transferred stock that was property of the estate and failed to inform trustee of stock acquisition; creditor was not guilty of laches even though revocation of discharge action was commenced after last date to file objections to discharge, where creditor had no prior knowledge of concealment of stock.)
Prtys: Donald Couch, Trustee, McIlroy Bank

Attys: Richard Crockett, Middleton Ray-Trustee, Russell Gibson

741

In re Swink & Co., Inc., 142 B.R. 874, **LR** 90-4106M, AP 90-4089 (June 29, 1992) **ch. 7.** (Claimant was "customer" entitled to priority status under 741(2), 752, court using S.I.P.A. case law although S.I.P.A. not involved in this proceeding).
Prtys: City of Elkins, Charles Davidson-Trustee.
Attys: Richard Downing, Gary Barket, Stephen Gershner.

In re Swink & Co., Inc., **LR** 90-4106M, AP 90-4081 (July 2, 1992) **Ch. 7.** (Claimant was "customer" entitled to priority status under 741(2), 752, court using S.I.P.A. case law although S.I.P.A. not involved in this proceeding).
Prtys: American Midwest Capitol Corp., Charles Davidson-Trustee; Mabon Nugent and Co.
Attys: Richard Downing, Gary Barket, Stephen Gershner.

752

In re Swink & Co., Inc., 142 B.R. 874, **LR** 90-4106M, AP 90-4089 (June 29, 1992) **ch. 7.** (Claimant was "customer" entitled to priority status under 741(2), 752, court using S.I.P.A. case law although S.I.P.A. not involved in this proceeding).
Prtys: City of Elkins, Charles Davidson-Trustee.
Attys: Richard Downing, Gary Barket, Stephen Gershner.

In re Swink & Co., Inc., **LR** 90-4106M, AP 90-4081 (July 2, 1992) **Ch. 7.** (Claimant was "customer" entitled to priority status under 741(2), 752, court using S.I.P.A. case law although S.I.P.A. not involved in this proceeding).
Prtys: American Midwest Capitol Corp., Charles Davidson-Trustee; Mabon Nugent and Co.
Attys: Richard Downing, Gary Barket, Stephen Gershner.

1103

In re Curtis, **LR** LR 84-1187, 70 B.R. 712 (January 13, 1987) **Ch. 11** (Applying Johnson factors, court found itemization insufficient in attorney fee application; uncompensable work included tasks grouped together under a single billing, work preparing fee applications, two hours reviewing notice of trial; performance bonus denied because surplus in estate resulted from death of debtor and subsequent insurance proceeds, not from counsel's skill).
Ptys: Carla Curtis, R.J. Brown, Trustee.
Attys: John Jewell, Donald Henry, R.J. Brown, Basil V. Hicks.

In re Bonds Lucky foods, Inc., No. 1, 76 B.R. 664, **HE** 85-10M (May 13, 1986) **Ch. 11.** (Finding attorneys would not be compensated for unnecessary time spent by law clerks and paralegals, unnecessary prep work for case conference, overhead

expenses including secretarial work, messenger service, clerical tasks.)
Prtys: Bonds Lucky Foods, Inc.
Attys: Jim Smith, Susan Gunter.

1104

In re Westfall, **FS** 84-316 (June 14, 1985): Under 1104, court appointed trustee for cause, including fraud, incompetence and gross mismanagement of the affairs of the debtor.
Prtys: Debtor-in-Possession
Attys: R.J. Brown, attorney for the estate.

1106

In re Herbert Russell, 60 B.R. 42, **ED** 84-58M (March 19, 1985) **Ch. 11.** (Removing debtor-in-possession and appointing trustee when Dip, a fiduciary for creditors, committed fraud before BR by selling major corp. asset in exchange for personal services contract not subject to debtor's creditors' claims and probably would not bring turnover and fraudulent conveyance actions against himself).
Prtys: Unsecured Creditors' committee, Herbert Russell, Allied Bank.
Attys: James Smith, Charles Baker, Isaac Scott.

1107

In re Arkansas Communities, Inc., **HS** 80-22M (June 19, 1985) **Ch.11** (denying R.J. Brown's fee request based on conflicts of interest in case; discussion of fiduciary duties of DIP)
Ptys: Mitchell Law Firm, R.J. Brown
Attys: R.J. Brown, Maurice Mitchell, Herb Rule,Gary Garrett

In re Hoffman, 51 B.R. 42, **ED** 85-27M, 85-29M, 85, 30M, AP 85-318M, 85-320M (May 30, 1985) **Ch. 7, 11:** (It is not a violation of the automatic stay for a bank to place administrative freeze on debtors' demand accounts upon receipt of knowledge of filing of bankruptcy; bank would not be granted relief from stay to exercise right of set off if adequate protection for use of cash collateral could be offered by the debtors.)
Prtys: Debtors Charles Hoffman, Craig Shackleford, Craig Shackelford Farms, Portland Bank, National Bank of Commerce of Pine Bluff.
SAttys: Isaac Scott, Thomas Streetman, Joseph Strode.

1111(a)

In re Circle J Dairy, Inc., **FA,** 92 B.R. 832**,** No. 85-139 (Oct. 18, 1988) (Claim must be filed if the Debtor lists the claim as disputed, contingent or unliquidated or the creditor disagrees with the amount of the claim listed in Debtor's schedules, or the court orders that claims be filed). REVERSED, 112 B.R. 297 (J. Waters).
Ptys: Debtor-in-possession, Dairy Farm Leasing Co., First National Bank of Fayetteville, Agristor Leasing.

Attys: William R. Gibson, Thomas Carroll, Mark Lindsay, James M. Dunn.

1111(b)

In re Oregon Butler, 42 B.R. 777, **PB** 93-101 (June 15, 1984) **Ch. 11** (Confirmation of chap. 11 plan denied, plan failed to state percentage to be paid to unsecureds over $500 when plan impaired their interests and was not accepted by them, plan misclassified corporation and shareholder to which debtors had conveyed assets, plan misclassified secured creditors and did not list debtors' inherited property, in absence of election requirements, plan did not meet statutory election requirements and did not provide for full payment of all claims.)
Prtys: Oregon and Lavelle Butler, John Deere Co, International Harvester Credit Corp., Massey Ferguson Credit Corp, Pioneer Production Credit Association, and the Federal Land Bank of St. Louis.
Attys: Jack Sims

1113

In re Jones Truck Lines, Inc., 166 B.R. 885, **FA** 91-15475M, AP No. 92-8527,(January 12, 1994) **Ch. 11.** (Denying both parties' motion for summary judgment in holding that genuine issue of fact as to debtor's insolvency precluded summary judgment as to debtor's preference action and that defendant's argument was meritless that preference action impermissibly altered parties' collective bargaining agreement; the concerns of sections 1113 and 547 are distinct and 1113 does not give defendant a preference defense).
Prtys: Jones Truck Lines, Central States, Southeast and Southwest Areas Pension Fund; Central States, Southeast and Southwest Areas Health and Welfare Fund; Corestates Bank, N.A.
Attys: Isaac Scott, Charles Coleman, Kimberly Tucker, Thomas Nyhan, James Condon, Thomas Thrash, John Hardin, Stephen Snider, Audrey Evans, Steven Cousins, G.W. Turner, Andrew Turner, Melva Harmon.

1114

In re Prime Motors, Inc., **Fla.** No. 90-16604 (June 29, 1993) **Ch. 11:** Administrative expense claimant not entitled to priority status under 1114(a) because neither retiree nor dependent.
Prtys: Debtor, Juliana Krisch
Attys: Jefferson Knight, Cynthia Jackson, Willkie Farr & Gallagher, Lynn H. Gelman.

1122(a)

In re Oregon Butler, 42 B.R. 777, **PB** 93-101 (June 15, 1984) **Ch. 11** (Confirmation of chap. 11 plan denied, plan failed to state percentage to be paid to unsecureds over $500 when plan impaired their interests and was not accepted by them, plan misclassified corporation and shareholder to which debtors had conveyed assets,

plan misclassified secured creditors and did not list debtors' inherited property, in absence of election requirements, plan did not meet statutory election requirements and did not provide for full payment of all claims.)
Prtys: Oregon and Lavelle butler, John Deere Co, International Harvester Credit Corp., Massey Ferguson Credit Corp, Pioneer Production Credit Association, and the Federal Land Bank of St. Louis.
Attys: Jack Sims

In re E.I. Parks No. 1 Limited Partnership, 122 B.R. 549, **FA** 88-261M (Oct. 19, 1990) **Ch. 11**. (Finding that unsecured portion of objecting creditor's claim could not be placed in same class as secured portion because not substantially similar)
Prtys: E.I. Parks Ltd. Partnership, Shady Grove Associates, Western Hills Park.
Attys: Michael Reif, Katherine Gay.

In re Holthoff, 58 B.R. 216, **PB** 84-223M (Dec. 12, 1985) **Ch. 11.** (secured creditors with liens in different property or liens in same property but with different priorities were improperly classified together because claims not substantially similar.)
Prtys: Metropolitan Life, Debtors.
Attys: Patrick Hollingsworth, Rick Ramsay.

1123

In re Oregon Butler, 42 B.R. 777, **PB** 93-101 (June 15, 1984) **Ch. 11** (Confirmation of chap. 11 plan denied, plan failed to state percentage to be paid to unsecureds over $500 when plan impaired their interests and was not accepted by them, plan misclassified corporation and shareholder to which debtors had conveyed assets, plan misclassified secured creditors and did not list debtors' inherited property, in absence of election requirements, plan did not meet statutory election requirements and did not provide for full payment of all claims.)
Prtys: Oregon and Lavelle Butler, John Deere Co, International Harvester Credit Corp., Massey Ferguson Credit Corp, Pioneer Production Credit Association, and the Federal Land Bank of St. Louis.
Attys: Jack Sims

In re Holthoff, 58 B.R. 216, **PB** 84-223M (Dec. 12, 1985) **Ch. 11.** (Owners of shares of stock in debtor would constitute class of interest holders for purposes of Chapter 11 reorganization.)
Prtys: Debtors, Metropolitan Life Ins. Co.
Attys: Rick Ramsay, Patrick Hollingsworth.

In re Huntsman Farms, Inc. **LR** 82-935-940 (Dec. 7, 1984) **Ch. 11**: (Numerous requirements for confirmation of chapter 11 plan not met, including not meeting fair and equitable test and best interests of creditors test; not providing for class of interest holders; attempting to substantively consolidate several cases without explanation or disclosure or following the requirements of rule 1015).
Prtys: Huntsman Farms, Huntsman Farm Store, Huntsman Enterprises, Ralph and

Olivia huntsman, Wayne Huntsman, Harold and Maudie Huntsman, John Hancock Life Insurance Co., Northwestern National Life Insurance Co.
Attys: Susan Gunter, Jim Smith, Allen Bird, Thomas Thrash, Stanley Price, Edward Bisno.

In re N.S. Garrott, JO 83-215M; In re Eastern Arkansas Planting Co. JO 83-216M (Dec. 7, 1984) **48 Bankr. 13**: Confirmation denied of **chap. 11** plan calling for substantive consolidation of estates; plan faulty because incorrect classification of debtor partnerships, improper cramdown where present value of secured claim not paid at market rate; disclosure statement did not propose consolidation; attorneys for the two DIPs had conflicts of interest because they also represented interest holders of each estate).
Prtys: Debtors in Possession
Attys: Richard Frockt, James E. Smith

1124

In re Bernard, **JO** 85-151M (November 5, 1986) **Ch 11** 70 B.R. 181 (ruling that plan to sell portion of creditor's real estate collateral and use proceeds to cure arrearage or deed portion of collateral to creditor in return for credit against the debt, altered prepetition legal rights of creditor and thus claim of objecting creditor was impaired and plan would have to satisfy cramdown provisions in order to be confirmed).
Ptys: Charles and Betty Bernard, Federal Land Bank of Jonesboro.
Attys: Ben F. Arnold, James Dowden, Ralph Waddell, Stephen M. Reasoner.

In re Holthoff, 58 B.R. 216, **PB** 84-223M (Dec. 12, 1985) **Ch. 11.** (Plan of reorganization did not state date when payments to creditors would be made except that it was sometime after confirmation date and thus did not leave various classes unimpaired as required by code.)
Prtys: Debtor, Metropolitan Life Ins. Co. Attys: Rick Ramsay, Patrick Hollingsworth.

In re Huntsman Farms, Inc. **LR** 82-935-940 (Dec. 7, 1984) **Ch. 11**: (Numerous requirements for confirmation of chapter 11 plan not met, including not meeting fair and equitable test and best interests of creditors test; not providing for class of interest holders; attempting to substantively consolidate several cases without explanation or disclosure or following the requirements of rule 1015).
Prtys: Huntsman Farms, Huntsman Farm Store, Huntsman Enterprises, Ralph and Olivia huntsman, Wayne Huntsman, Harold and Maudie Huntsman, John Hancock Life Insurance Co., Northwestern National Life Insurance Co.
Attys: Susan Gunter, Jim Smith, Allen Bird, Thomas Thrash, Stanley Price, Edward Bisno.

1129(a)

In re Answerfone, Inc., **LR** 83-842M (June 24, 1986) **Ch.11** (cramdown hearing; held equity security holder receiving not less than Ch.7; plan confirmed)

Ptys: Joe Limerick III
Attys: Charles Davidson, Geoff Treece, Griffin Smith,
Patricia Nobles, Peter Heister, Briscoe Swan

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **Ch. 11** (1129(a)(3) requires good faith in proposing plan; Unauthorized repayment of unauthorized guaranty is insufficient evidence of bad faith to deny confirmation).
Ptys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **Ch. 11** (All 1129(a) requirements must be met in order to confirm a plan except 1129(a)(8) requiring all classes accept the plan or be unimpaired; if that provision not met, plan can be confirmed if cramdown standards of 1129(b) are met).
Ptys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Oregon Butler, 42 B.R. 777, **PB** 93-101 (June 15, 1984) **Ch. 11** (Confirmation of chap. 11 plan denied, plan failed to state percentage to be paid to unsecureds over $500 when plan impaired their interests and was not accepted by them, plan misclassified corporation and shareholder to which debtors had conveyed assets, plan misclassified secured creditors and did not list debtors' inherited property, in absence of election requirements, plan did not meet statutory election requirements and did not provide for full payment of all claims.)
Prtys: Oregon and Lavelle butler, John Deere Co, International Harvester Credit Corp., Massey Ferguson Credit Corp, Pioneer Production Credit Association, and the Federal Land Bank of St. Louis.
Attys: Jack Sims

In re Bernard, **JO** 85-151M (November 5, 1986) **Ch 11** 70 B.R. 181 (ruling that plan to sell portion of creditor's real estate collateral and use proceeds to cure arrearage or deed portion of collateral to creditor in return for credit against the debt, altered prepetition legal rights of creditor and thus claim of objecting creditor was impaired and plan would have to satisfy cramdown provisions in order to be confirmed).
Ptys: Charles and Betty Bernard, Federal Land Bank of Jonesboro.
Attys: Ben F. Arnold, James Dowden, Ralph Waddell, Stephen M. Reasoner.

In re N.S. Garrott, JO 83-215M; In re Eastern Arkansas Planting Co. JO 83-216M (Dec. 7, 1984) **48 Bankr. 13**: Confirmation denied of **Ch. 11** plan calling for substantive consolidation of estates; plan faulty because incorrect classification of debtor partnerships, improper cramdown where present value of secured claim not paid at market rate; disclosure statement did not propose consolidation; attorneys for the two DIPs had conflicts of interest because they also represented interest holders of each estate).
Prtys: Debtors in Possession

Attys: Richard Frockt, James E. Smith

In re Huntsman Farms, Inc. **LR** 82-935-940 (Dec. 7, 1984) **Ch. 11**: (Numerous requirements for confirmation of chapter 11 plan not met, including not meeting fair and equitable test and best interests of creditors test; not providing for class of interest holders; attempting to substantively consolidate several cases without explanation or disclosure or following the requirements of rule 1015).
Prtys: Huntsman Farms, Huntsman Farm Store, Huntsman Enterprises, Ralph and Olivia huntsman, Wayne Huntsman, Harold and Maudie Huntsman, John Hancock Life Insurance Co., Northwestern National Life Insurance Co.
Attys: Susan Gunter, Jim Smith, Allen Bird, Thomas Thrash, Stanley Price, Edward Bisno.

1129(a)

In re Danny Thomas Properties III Limited Partnership, 231 B.R. 298, **LR** 96-42482M (March 18, 1999) **Ch. 11.** (secured creditor's objection to chapter 11 plan sustained; plan should have reasonable prospect of success; BOP of feasibility on debtor; plan not feasible because it would generate a deficit over five year period, could not fund deferred maintenance, and capital contribution was not forthcoming).
Prtys: Danny Thomas Properties III Ltd. Partnership, Beal Bank.
Attys: Gregory M. Hopkins, Joyce Bradley Babin.

In re E.I. Parks No. 1 Limited Partnership, 122 B.R. 549, **FA** 88-261M (Oct. 19, 1990) **Ch. 11**. (Finding that plan was feasible based on earnings projections, recapitalization plan, management restructure; to be feasible plan must offer reasonable prospect of success and be workable, not guarantee of success).
Prtys: E.I. Parks Ltd. Partnership, Shady Grove Associates, Western Hills Park.
Attys: Michael Reif, Katherine Gay.

In re Holthoff, 58 B.R. 216, **PB** 84-223M (Dec. 12, 1985) **Ch. 11.** (Reorganization plan of Debtors, who had debt far beyond ability to pay even under favorable conditions, did not meet feasibility requirements of code)
Prtys: Metropolitan Life Ins. Co., Debtors.
Attys: Rick Ramsay, Patrick Hollingsworth.

In re Landscape Associates, Inc., **LR** 85-663(July 1, 1987) 81 BR 485, **Ch. 11:** (Confirmation of chap. 11 plan denied because proposed interest rate was not market rate. See related District Court and Court of Appeals Opinions about collusive sale of property of the estate brought by Rick Ramsay, Trustee).
Prtys: Debtor, First Pyramid
Attys: Richard Crockett, Richard Taylor

1129(b)

In re Answerfone, Inc., **LR** 83-842M (June 24, 1986) **Ch.11** (cramdown hearing; held equity security holder receiving not less than Ch.7; plan confirmed)
Ptys: Joe Limerick III
Attys: Charles Davidson, Geoff Treece, Griffin Smith, Patricia Nobles, Peter Heister, Briscoe Swan

In re Bernard, **JO** 85-151M (November 5, 1986) **Ch 11** 70 B.R. 181 (ruling that plan to sell portion of creditor's real estate collateral and use proceeds to cure arrearage or deed portion of collateral to creditor in return for credit against the debt, altered prepetition legal rights of creditor and thus claim of objecting creditor was impaired and plan would have to satisfy cramdown provisions in order to be confirmed; to satisfy indubitable equivalent requirement, plan had to distribute property valued as of effective date of plan, exact legal description of property had to be set forth in plan and conveyed by warranty deed, and plan had to secure creditor's claim on remaining property by first lien containing substantially same terms and conditions as original promissory note).
Ptys: Charles and Betty Bernard, Federal Land Bank of Jonesboro.
Attys: Ben F. Arnold, James Dowden, Ralph Waddell, Stephen M. Reasoner.

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **Ch. 11** (All 1129(a) requirements must be met in order to confirm a plan except 1129(a)(8) requiring all classes accept the plan or be unimpaired; if that provision not met, plan can be confirmed if cramdown standards of 1129(b) are met).
Ptys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **Ch. 11** (Plan can be confirmed over objecting creditors under 1129(b)(1) if the plan does not unfairly discriminate; here plan discriminated against judgment creditor; claim could not be equitably subordinated because creditor not guilty of inequitable conduct that injured other creditors or conferred unfair advantage on judgment creditor).
Ptys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Danny Thomas Properties III Limited Partnership, 231 B.R. 298, **LR** 96-42482M (March 18, 1999) **Ch. 11.** (In determining discount rate of interest for cramdown of creditor's secured claim, court starts with market rate of risk-free government securities calculated on plan length, adds points based on risk factors such as payout period, quality of security, and risk of subsequent default, and then weighs plan assets such as property location, plan provision allowing immediate foreclosure in event of default.).
Prtys: Danny Thomas Properties III Ltd. Partnership, Beal Bank.
Attys: Gregory M. Hopkins, Joyce Bradley Babin.

In re Oregon Butler, 42 B.R. 777, **PB** 93-101 (June 15, 1984) **Ch. 11** (Confirmation of chap. 11 plan denied, if plan can be confirmed only by cramdown, consideration of requirement that holders of secured claims retain their liens and unsecureds

receive property of value equal to allowed amount of such claim must be given, and present value of both allowed amount of secured and unsecured claims, if jr. Classes are receiving property, must be paid; if claims are paid in future, interest must be paid; if debtors are solvent, allowed unsecured claim should include postpetition interest, unless creditor consents otherwise, and plan must pay at least as much as creditor would receive in Chapter 7.)
Prtys: Oregon and Lavelle Butler, John Deere Co, International Harvester Credit Corp., Massey Ferguson Credit Corp, Pioneer Production Credit Association, and the Federal Land Bank of St. Louis.
Attys: Jack Sims

In re David Hodges Farms, Inc., **JO** 85-73M, AP No. 85-314M. (January 9, 1986) **Ch. 11**. (Indubitable equivalent of creditor's claim was conveyance of entire farm of debtor as the fair market value of the farm was equal to allowed secured claim of creditor.)
Prtys: John Hancock Mutual Life Insurance Co, David Hodges Farms, Inc.
Attys: David Hodges, Michael P. Coury, Tom B. Smith, Mark Lester, Marvin Thaxton, Fred Pickens, G.D. Walker, Darrell Dover, Donald Raney, James D. Sprott, Charles Coleman, Fletcher Jackson, Tim Grooms, Lance Miller, James O'Mara, Lindsey Fairly.

In re Nolen Tool Co., **FS** 84-151 (May 30, 1985) **50 Bankr.**
Ch. 11. (Objection to confirmation sustained; Plan cramdown of creditor's debt did not pay present value at market rate of interest, did not maintain indubitable equivalent of collateral, so was not fair and equitable).
Prtys: Debtor, City National Bank, FDIC
Attys: Isaac Scott, John Tisdale, Robert Y. Cohen

In re Wild Turkey Ranch, Inc., **JO** 84-57 (October 9, 1985) **Ch. 11:** (court determined valuation of ranch, portion of which was to be deeded to satisfy impaired claim of secured creditor as indubitable equivalent; confirmation denied because plan didn't specify which portions of the ranch would be deeded to creditor.)
Prtys: Debtor, Wilheim Nursing Home, Inc.
Attys: David Hodges, Charles Coleman, John Burris, Marvin Thaxton.

1129(b)(2)(A)(i)(II)

In re E.I. Parks No. 1 Limited Partnership, 122 B.R. 549, **FA** 88-261M (Oct. 19, 1990) **Ch. 11**. (Finding that if plan proposes to pay objecting secured creditor in installments, present value of future stream of payments must equal secured claim, requiring interest at discount rate; discount rate was risk free rate determined by government securities rate plus added percentage points for risk; cramdown requirements only applied to secured portion of objecting creditor's claim; unsecured portion of objecting creditor's claim could not be placed in same class as secured portion because not substantially similar; owners of Ch. 11 debtor could retain interests without violating absolute priority rule over objection of

dissenting creditors if they contribute property to debtor equal to or exceeding value of interest retained).
Prtys: E.I. Parks Ltd. Partnership, Shady Grove Associates, Western Hills Park.
Attys: Michael Reif, Katherine Gay.

In re Huntsman Farms, Inc. **LR** 82-935-940 (Dec. 7, 1984) **Ch. 11**: (Numerous requirements for confirmation of chapter 11 plan not met, including not meeting fair and equitable test and best interests of creditors test; not providing for class of interest holders; attempting to substantively consolidate several cases without explanation or disclosure or following the requirements of rule 1015).
Prtys: Huntsman Farms, Huntsman Farm Store, Huntsman Enterprises, Ralph and Olivia Huntsman, Wayne Huntsman, Harold and Maudie Huntsman, John Hancock Life Insurance Co., Northwestern National Life Insurance Co.
Attys: Susan Gunter, Jim Smith, Allen Bird, Thomas Thrash, Stanley Price, Edward Bisno.

1129(b)(2)(B)(i)(ii)

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **73 B.R. 414 Ch. 11** (Under 1129(b)(2)(B)(i)(ii), all classes of unsecureds must be paid before a junior class of creditors; reasonably equivalent value exception allows claimants to receive distribution or retain an interest even without senior classes paid in full if claimants contribute new capital reasonably equivalent in value to the distribution or value retained; whether farmer-debtor, through unpaid work, contributed value reasonably equivalent to ownership interest could not be determined without evidence of value of farmer-debtor's future contributions of labor and expertise and the value of the proposed retained interest.) Ptys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Holthoff, 58 B.R. 216, **PB** 84-223M (Dec. 12, 1985) **Ch. 11.** (Plan of reorganization which lacks a class of interest and proposes to pay just 5% of principal amount of creditor's allowed claim did not comply with absolute priority rule).
Prtys: Debtor, Metropolitan Life Ins. Co.
Attys: Rick Ramsay, Patrick Hollingsworth.

1141(a)

In re Bancroft Cap Company, **LR,** 182 B.R. 538, No. 95-41058M (Feb. 24, 1995) **Ch. 11, Reversed, Wright, J.** (Debtor's plan set time limit for debtor's objections to claims; plan confirmed and debtor failed to object to creditor's claim within time limit; court could not reconsider, under 502(j), allowing debtor to object because no court order had been entered allowing or disallowing the claim; claim was allowed by section 502(a) and confirmation of plan, which was res judicata and was not timely appealed from.)
Prtys: Bancroft Cap Company, Bower and Bonanno Co.

Attys: Kimberly Tucker, Charles W. Baker.

1203

In re Gore, 124 B.R. 75, **LR** 88-04-2284M, 89-570M (Oct. 1, 1990) **Ch. 12**. (Holding that debtors' prepetition contract with government to hold land fallow in exchange for payments was executory contract which became postpetition contract with debtors-in-possession following their assumption thereof.)
Prtys: Debtors; Small Business Administration.
Attys: Lance Hanshaw, William Adair.

1222(a)

In re Thomas Patrick Harper, 157 B.R. 858, **HE** 91-20002M (Aug. 13, 1993) **Ch. 12:** (plan that provided for 25-year payment to one creditor did not unfairly discriminate against another creditor in different class that was subject to 30-year payment period.)
Prtys: Farm Credit Bank of St. Louis, Debtor.
Attys: Gerald Coleman, Arens Law Firm.

In re Minnis, **PB** 89-30235 (Aug. 3, 1990) **Ch. 12.** (Objections to confirmation of chap. 12 plan sustained: unfair discrimination in one class of claims, inappropriate interest rate without evidence of market rate of interest, liquidation analysis, discussion of misc. provisions contra to Code).
Prtys: Debtors, Farm Credit Bank
Attys: Angela Baxter, Gerald Coleman

1222(b)(6)

In re Gore, 124 B.R. 75, **LR** 88-04-2284M, 89-570M (Oct. 1, 1990) **Ch. 12**. (Holding that debtors' prepetition contract with government to hold land fallow in exchange for payments was executory contract which became postpetition contract with debtors-in-possession following their assumption thereof.)
Prtys: Debtors; Small Business Administration.
Attys: Lance Hanshaw, William Adair.

1224

In re Minnis, **PB** 89-30235 (Aug. 3, 1990) **Ch. 12.** (Objections to confirmation of chap. 12 plan sustained: unfair discrimination in one class of claims, inappropriate interest rate without evidence of market rate of interest, liquidation analysis, discussion of misc. provisions contra to Code).
Prtys: Debtors, Farm Credit Bank
Attys: Angela Baxter, Gerald Coleman

1225(a)

In re Armstrong, **HE** 89-162M (April 18, 1991) **Ch.12** (objection to confirmation; present value; feasibility; held plan not feasible)
Ptys: Farm Credit and FmHA
Attys: John Henry, Bill Adair, Kent Rubens

In re Butler, HE 88-4M, (Nov. 4, 1988) Ch.12, 97 B.R. 508 (Chapter 12 confirmation hearing; confirmation denied for various reasons; objection to provision requiring release of lien sustained, creditor must retain lien or surrender collateral pursuant to § 1225(a); current market rate of interest is rate debtor would have to pay to commercial lender for similar loan § 1225)
Ptys: First National Bank of Eastern Arkansas and Farm, Credit Bank of St. Louis
Attys: Charles Baker, John Bridgforth, Gerald Coleman, David Solomon, A.L. Tenney

In re John J. and Betty Plafcan, **HE** 87-30M; In re Plafcan Farms, Inc., **HE** 87-31M (Feb. 3, 1988 (**93 Bankr. 176**) **Ch. 12**: Consolidated chap. 12 plan of individual debtors and corporation not confirmable; individual debtors not eligible under 101(17)(a) and 109(f).
Prtys: Debtors, A.L. Tenney-Trustee
Attys: A.L. Tenney, Charles Baker, William A. Waddell for Federal Land Bank.

In re Reddell, **HE** 87-12M (August 31, 1987) **Ch. 12.** (Confirmation denied based on various plan provisions not in compliance with 1225 because of improper classification, improper subordination of liens, and other issues).
Prtys: Debtors; Farmer's Home Administration
Attys: Clarence Shoffner, William C. Adair, A.L. Tenney

1225(a)(4)

In re Thomas Patrick Harper, **157 B.R. 858**, **HE** 91-20002M (Aug. 13, 1993) **Ch. 12:** (plan failed to provide unsecured creditor with at least as much as creditor would receive in chapter 7 liquidation.)
Prtys: Farm Credit Bank of St. Louis, Debtor.
Attys: Gerald Coleman, Arens Law Firm.

1225(a)(5)

In re Armstrong, **HE** 89-162M (April 18, 1991) **Ch. 12** (objection to confirmation; present value; feasibility; held plan not feasible)
Ptys: Farm Credit and FmHA
Attys: John Henry, Bill Adair, Kent Rubens

In re Batchelor, **HE** 87-134M (August 11, 1988) **Ch. 12** (Objection to confirmation of the plan for failure to provide for retention of lien, improper valuation and interest rate related to present value, unsustainable homestead exemption).
Ptys: Debtors, Federal Land Bank, the Small Business Administration, and Trustee.

Attys: David Carruth, Gerald Coleman, Bill Adair, Charles Tucker,

In re J.W. Gore, **113 B.R. 504**, **LR** 88-2284M, CMS 89-489M, 89-675M and 89-570M (Dec. 20, 1989) **Ch. 12.** (Objections to confirmation sustained: Plan impermissibly provided the following: sell property and pay secured creditor or buy replacement property without adequate protection to secured creditor and notice and opportunity to object; didn't provide creditor retain lien; allowed debtors to eliminate unsecured claim and determine amount of secured claim of creditor without notice to or opportunity to object. Plan could defer payments of secured claim over extended period regardless of prior agreement between the parties; interest rate isn't contract rate but current market rate for loan under similar circumstances).
Prtys: Debtors, Kansas City Life Ins. Co., Farmers and Merchants Bank of Des Arc., Travelers Ins. Co., U.S. Small Business Admin.
Attys: Lance Hanshaw, Phillip Hout, Robert Abney, David Henry, William Adair.

In re Thomas Patrick Harper, **157 B.R. 858**, **HE** 91-20002M (Aug. 13, 1993) **Ch. 12:** (To establish interest rate on secured claim, debtor should have used risk-free rate such as treasury bills to establish base rate and then added risk factor appropriate to the case.)
Prtys: Farm Credit Bank of St. Louis, Debtor.
Attys: Gerald Coleman, Arens Law Firm.

In re Minnis, **PB** 89-30235 (Aug. 3, 1990) **Ch. 12.** (Objections to confirmation of chap. 12 plan sustained: unfair discrimination in one class of claims, inappropriate interest rate without evidence of market rate of interest, liquidation analysis, discussion of misc. provisions contra to Code).
Prtys: Debtors, Farm Credit Bank
Attys: Angela Baxter, Gerald Coleman

In re Edmond Torelli, **LR** 04-23884 (Feb. 2, 2006 **)(2006 WL 490574)**: Court denied confirmation of **Ch. 12** plan because it failed to pay present value of creditor's claim with appropriate market rate of interest under section 1225(a)(5)(B)(ii); was not feasible in that debtor did not have sufficient disposable income to fund plan under section 1225(a)(6); however, debtor did meet eligibility requirements of family farmer under section 101(18).
Prtys: Debtor, Regions Bank
Attys: Michael Knollmeyer, Kimberly Burnett

1225(a)(6)

In re Thomas Patrick Harper, 157 B.R. 858, **HE** 91-20002M (Aug. 13, 1993) **Ch. 12:** (holding that plan providing for excess cash flow was feasible where debtor's projected cash flow for prior year proved to be accurate and projections were based on previous year's performance; to determine feasibility, court looks at

probability of actual performance of plan provision.)
Prtys: Farm Credit Bank of St. Louis, Debtor.
Attys: Gerald Coleman, Arens Law Firm.

In re Plafcan, **HE** 89-20021 (Oct. 24, 1989) **Ch. 12**: Order denying confirmation on basis of feasibility.
Prtys: Debtors, Federal Land Bank, Trustee-David Coop
Attys: Charles Baker, Richard Taylor

In re Edmond Torelli, **LR** 04-23884 (Feb. 2, 2006 **)(2006 WL 490574)**: Court denied confirmation of **Ch. 12** plan because it failed to pay present value of creditor's claim with appropriate market rate of interest under section 1225(a)(5)(B)(ii); was not feasible in that debtor did not have sufficient disposable income to fund plan under section 1225(a)(6); however, debtor did meet eligibility requirements of family farmer under section 101(18).
Prtys: Debtor, Regions Bank
Attys: Michael Knollmeyer, Kimberly Burnett

1228(a)

In re J.W. Gore, 113 B.R. 504, **LR** 88-2284M, CMS 89-489M, 89-675M and 89-570M (Dec. 20, 1989) **Ch. 12.** (Plan impermissibly provided for discharge after substantial performance of plan).
Prtys: Debtors, Kansas City Life Ins. Co., Farmers and Merchants Bank of Des Arc., Travelers Ins. Co., U.S. Small Business Admin.
Attys: Lance Hanshaw, Phillip Hout, Robert Abney, David Henry, William Adair.

1229(a)(2)

In re J.W. Gore, 113 B.R. 504, **LR** 88-2284M, CMS 89-489M, 89-675M and 89-570M (Dec. 20, 1989) **Ch. 12.** (Plan impermissibly provided for unlimited default period without notice to creditors and opportunity to object).
Prtys: Debtors, Kansas City Life Ins. Co., Farmers and Merchants Bank of Des Arc., Travelers Ins. Co., U.S. Small Business Admin.
Attys: Lance Hanshaw, Phillip Hout, Robert Abney, David Henry, William Adair.

1301

In re Albert Caldwell, 895 F.2d 1123, Nos. 88-6404, 88-6405
(February 9, 1990), **Sixth Circuit** affirming Tennessee District Court, finding debt for willful and malicious injury can be discharged under Chapter 13, which allows debtor to repay his obligation over time from disposable income, although the debt would be nondischargeable under Chapter 7; court should not approve Chapter 13 plans that are veiled Chapter 7 plans; Chapter 13 debtor proposing to repay 36% of debt that would have been nondischargeable in a Chapter 7 was not acting in good faith; it is not conclusively bad faith for a debtor to seek to discharge a debt

incurred through his own criminal or tortious conduct through a Chapter 13, but factor may be considered.

In re Green, 70 B.R. 164, **ED** 85-02M (Sept. 26, 1986) **Ch. 13.** (Claim securing lien on real property of debtor's mother was unsecured claim for plan purposes because not secured by property of estate.)
Prtys: Debtors, Peoples Bank, Tucker Truck.
Attys: Jed Molleston, Randy Wright, Ian Vickery.

1301(a)(c)

In re Gaston, **JO** 84-226M, CMS No. 84-870M (August 1, 1985) **Ch. 13.** (Relief from stay granted to creditor as to co-debtor since plan proposed to pay creditor nothing and there was no reason to prohibit creditor to pursue remedy with co-debtor.)
Prtys: CIT Financial Services, H.W. Gaston.
Attys: Jim Lyons, Brent Martin, Elbert Johnson.

1305-1306

In re Woodall, **LR** 81-69 (Jan. 22, 1987) **81 Bankr. 17**: Computation of 60 months in chap. 13 begins with date order for payment entered, which is 30 days after filing of petition under 1326; plan may not exceed 60 months under 1322; property of estate in ch.13 is property and earnings acquired by debtor post-petition under 1306 so not fair to postpetition creditors to stave off their collection efforts longer than 5 years; IRS has standing to file post-petition claim for taxes under 1305.
Prtys: IRS, Debtors
Attys: Jimmy Eaton, Doug Chavis, Charles Coleman, A.L. Tenney, Trustee.

1307(c)

In re Kathleen Inmon, **LR** 96-4302M (November 27, 1996) **Ch. 13**. (On creditor's motion for dismissal, lack of good faith is cause under 1307(c) and may be determined by totality of circumstances; here, debtor's unfair treatment of creditor coupled with pre-filing conduct of fraudulent concealment of her true ownership of the property she later claimed as a homestead warranted cause for dismissal).
Prtys: Mercantile Bank, Debtor.
Attys: Susan Gordon Gunter, Stephen Bennett.

In re Newton Jenkins, **JO** 89-208M (January 12, 1990) **Ch. 13.** (Dismissing case on grounds of bad faith where debtor used chapter 13 to litigate with its only creditor, IRS, rather than reorganize; enjoining re-filing under section 105(a) equitable powers).
Prtys: Debtor, IRS.
Attys: Pat Harris, Bill Adair, Bob Leslie.

1322(a)(2)

In re Melvin and Wendy Bass, **LR** 00-42447M (November 6, 2000) **Ch. 13 (**Order allowing nondischargeable criminal restitution to be paid through plan even though the payments are modified, but restitution claim is not priority claim; plan may not unfairly discriminate as to other unsecureds in paying claim in full).
Prtys: Debtors, Roger Richmond
Attys: Randolph Satterfield, Lawrence Yancey.

In re Clarence and Frances Burnett, **ED** 01-90019 (Oct. 25, 2002) **Ch. 13 (**Objection to Conf. by child support creditor sustained where debtor did not propose to pay child support debt as required under 1322(a)(2); where debtor disputed claim, objection to claim must be lodged pursuant to Rule 3001).
Prtys: Debtors, West Va. Bureau for Child Support Enforcement.
Attys: Billy Hubbell, Paul D. Selby.

In re Kuebler, 156 B.R. 1012, **LR**89-40146, AP 92-4037 (June 24, 1993) **Ch. 13.** (plan listed IRS's secured debt as priority and didn't provide for full payment; plan confirmed without objection by IRS was res judicata on incorrect claim classification because IRS didn't plead lack of notice and opportunity to object; secured debt untreated by plan is discharged as to debtor's personal liability but IRS retains lien which passes through bankruptcy and remains attached to debtor's property, affording IRS an in rem cause of action on the debt)(AFFIRMED - Judge Woods).
Prtys: IRS, Leonard and Laura Kuebler.
Attys: Keith Grayson, David Coop-T., Tamera Fine-Trail, Robert Millstone.

1322(b)(1)

In re Melvin and Wendy Bass, **LR** 00-42447M (November 6, 2000) **Ch. 13 (**Order allowing nondischargeable criminal restitution to be paid through plan even though the payments are modified, but restitution claim is not priority claim; plan may not unfairly discriminate as to other unsecureds in paying claim in full).
Prtys: Debtors, Roger Richmond
Attys: Randolph Satterfield, Lawrence Yancey.

In re Green, 70 B.R. 164, **ED** 85-02M (Sept. 26, 1986) **Ch. 13.** (Plan unfairly discriminated against objecting unsecured creditors because one unsecured creditor was to be paid in full outside the plan while remaining unsecureds would receive 25 percent of their claims and there was no justification for paying one claim in full)
Prtys: Debtors, Peoples Bank, Tucker Truck.
Attys: Jed Molleston, Randy Wright, Ian Vickery.

1322(b)(2)

In re Bookout, 231 B.R. 306, **BA** 98-10272M (March 18, 1999) **Ch. 13.** (In objection to confirmation by bank of chapter 13 plan modifying home mortgage, court held bank's security interest survived foreclosure judgment for

antimodification provisions, even though foreclosure judgment grants a lien, but since claim was also secured by judgment lien in other real property of the debtor by virtue of foreclosure judgment, bank's claim could be modified by plan.)
Prtys: William Dean and Carol Bookout, First National Bank of Sharp County.
Attys: Paul E. Hopper, Michelle C. Huff.

In re Nathan and Lena Matlock, **JO** 92-30527M, AP 92-3034 (April 22, 1993) **Ch. 13.** (Abstaining because of lack of precedent under new statutory foreclosure act when debtors' home sold upon defective notice not specifying which of two county courthouses sale would take place.)
Prtys: Debtors, Lomas Mortgage, A.L. Tenney-T
Attys: Joyn Bradley, Robert McKinney, A.L. Tenney-T.

In re Mae Rolle, 218 B.R. 636, **S.D.Fla. (Miami)** 96-17214-BKC-AJC, AP 97-0280-BKC-AJC-A (February 20, 1998) **Ch. 13.** (Under complaint to determine extent of Mortgagee's lien, Mortgagee did not take security interest in collateral in addition to the Debtor's residence such that Debtor was bound by anti-modification provision of 1322(b)(2)).
Prtys: Debtor, Chase Manhattan Mortgage Corp., Metropolitan Dade County.
Attys: Carolina A. Lombardi, Peter Spindel, Carolyn Weir Broadwater, Nancy N. Herkert.

In re Billy and Carollee Starnes, 208 B.R. 688, **JO** 95-30588M (April 16, 1997) **Ch. 13**: Debtors may not modify plan to surrender burned house to HUD pursuant to 1325(a)(5)(c) and treat deficiency as unsecured because section 1329 requires that plan comply with anti-modification provision of home mortgage in 1322(b)(2)&(5).
Prtys: Debtors, HUD.
Attys: John Bradley, Fletcher Jackson.

In re Myra Stanley, 182 B.R. 241, **ED** 93-11190M (September 9, 1994) **Ch. 13. (**In non-judicial foreclosure action, Debtor's equity of redemption lapsed 10 days after foreclosure decree and before bankruptcy petition filed; therefore, Debtor's home was not property of estate even though foreclosure sale had not occurred before bankruptcy filing; Debtor could not cure default and make payments to creditor under the plan).
Prtys: Debtor, Superior Federal Bank.
Attys: Patrick Hollingsworth, John Lightfoot, A.L. Tenney-T

1322(b)(2)(3)(5)

In re Harold and Kathryn Black, **LR**, 260 B.R. 134, No 00-42539M, AP 00-4103, **Ch. 13** (March 27, 2001) (upon debtors' objection to Conseco's claim under second mortgage lien on home and complaint to determine extent and priority of lien, court determined fair market value of home was less than first lien so that Conseco was wholly undersecured; since Conseco was unsecured under 506(a), it was not entitled to anti-modification treatment of 1322(b)(2) and its claim could be

treated as unsecured).
Prtys: Harold and Kathryn Black-Debtors; Conseco Financing Servicing Corp.
Attys: Steve Bennett, Kimberly Burnette.

In re John H. Brown, **LR** 02-13140M (August 23, 2002). **Ch. 13**: Debtor could maintain payments and cure arrearage on his home pursuant to section 1322(b)(2) even though sold at judicial foreclosure auction where confirmation of sale was not filed such that sale was not final under section 1322(c) and state law.
Prtys: Debtor, Regions Mortgage.
Attys: Laura Grimes, Scot Goldsholl

In re James M. Tomlin, 228 B.R. 916, **LR** 98-41988M (January 22, 1999) **Ch. 13**. (overruling creditor's objection to confirmation and allowing Debtor to cure arrearage and pay homestead mortgage through the plan even though home had been sold at auction in non-judicial foreclosure sale prior to bankruptcy; bankruptcy occurred before the deed was recorded such that Debtor was still in legal possession of property and sale was thus not complete under the code at time of filing).State law has since been changed regarding finality of sale.
Prtys: Debtor, Hibernia National Bank.
Attys: Stephen Bennett, Daniel Parker

1322(b)(5)(B)

In re Dang, 96 B.R. 185, **LR** 88-589 (Nov. 4, 1988) **Ch. 13.** (Objection to confirmation of chap. 13 plan sustained because violated 1322(b)(5) by proposing long-term payout of debt that matured prepetition).
Prtys: Tien Nguyen and Phung Dang, Debtors, Worthen Bank.
Attys: William Owen, Judy Henry.

In re Hayes, 101 B.R. 569, **LR** 88-1997M (June 28, 1989) **Ch. 13:** (Real estate sale contract would be characterized as lien device rather than executory contract and treated as long term debt in plan pursuant to 1322(b)(5)).
Prtys: Southern Investment Co., Debtor.
Attys: Stuart Miller, Willard Proctor Jr.

1322(b)(7)

In re Keith and Karrie Bailey, **HS** 04-73199 (May 10, 2005) **326 B.R. 156**. **Ch. 13** (Construing Missouri law under UCC 1-201(37), transaction between debtor and creditor was a secured sale under § 1325 (a)(4) and (5) and not a lease under § 1322(b)(7) and 365).
Prtys: Debtors, Lafayette Investments, Inc.
Attys: Thomas Byarlay, Charles Davidson

1322(c)

In re James M. Tomlin, 228 B.R. 916, **LR** 98-41988M (January 22, 1999) **Ch. 13**. (overruling creditor's objection to confirmation and allowing Debtor to cure arrearage and pay homestead mortgage through the plan even though home had been sold at auction in non-judicial foreclosure sale prior to bankruptcy; bankruptcy occurred before the deed was recorded such that Debtor was still in legal possession of property and sale was thus not complete under the code at time of filing).
Prtys: Debtor, Hibernia National Bank.
Attys: Stephen Bennett, Daniel Parker

In re John H. Brown, **LR** 02-13140M (August 23, 2002). **Ch. 13**: Debtor could maintain payments and cure arrearage on his home pursuant to section 1322(b)(2) even though sold at judicial foreclosure auction where confirmation of sale was not filed such that sale was not final under section 1322(c) and state law.
Prtys: Debtor, Regions Mortgage.
Attys: Laura Grimes, Scot Goldsholl

1322

In re Woodall, **LR** 81-69 (Jan. 22, 1987) **81 Bankr. 17**: Computation of 60 months in chap. 13 begins with date order for payment entered, which is 30 days after filing of petition under 1326; plan may not exceed 60 months under 1322; property of estate in ch.13 is property and earnings acquired by debtor post-petition under 1306 so not fair to postpetition creditors to stave off their collection efforts longer than 5 years; IRS has standing to file post-petition claim for taxes under 1305.
Prtys: IRS, Debtors
Attys: Jimmy Eaton, Doug Chavis, Charles Coleman, A.L. Tenney, Trustee.

1325

In re Blevins, **FA** 91-614M (Sept. 9, 1992) **Ch.13, 150 B.R.444** (no credible evidence of value of collateral so ruled on objection to confirmation by determining burden of proof; creditor objecting to confirmation has burden of proof)
Ptys: Bank of Ozark and Charles Blevins
Atty: James Mainard, Charles Chadwick, A.L. Tenney, Marshall Evans

In re Albert and Earlene Macklin, 236 B.R. 403, **JO** 99-30014M
(July 26, 1999) **Ch. 13** (court overruled objection to confirmation by secured creditor; court found, under UCC, no agreement between the parties as to Debtor's right to terminate the lease so the transaction was a sale subject to 1325 and not lease subject to 365).
Prtys: Debtors, Mirly Truck Sales.
Attys: Ralph Waddell, Constance Grayson.

In re Mendenhall, **ED** 84-052 (Aug. 13, 1985 (**54 Bankr. 44**) **Ch. 13** (allocation of burden of proof in objection to confirmation of chap. 13 plan; burden of persuasion always on objecting creditor; burden of production shifts; creditor did not prevail on

valuation issue so plan would be confirmed).
Prtys: Debtors, General Electric Credit Corporation
Attys: Henry Kinslow, Mel Sayes.

In re Owens, **LR** 89-42664 (Aug. 3, 1990) **120 Bankr. 487; Ch 13.** (GMAC's objection to confirmation of chap. 13 plan sustained; wholesale value as of date of confirmation hearing is proper standard for valuing collateral; no evidence that contract rate is current market rate so contract rate not approved).
Prtys: Debtors, General Motors Acceptance Corp.
Attys: Richard Kalkbrenner, Aaron Fuller.

In re Vought, **PB** 85-120M (June 26, 1986) **Ch. 13.** (Sustaining objection to confirmation where Debtors failed to disclose assets on original schedules as required by section 1325 and 521).
Prtys: Debtors, Integon Indemnity Corp.
Attys: William Benton, David Grace, A.L. Tenney-T.

1325(a)(3)

In re Ault, **LR** 01-40813M (Dec. 20, 2001) **Ch. 13 (**Objection to confirmation overruled; not per se bad faith for debtor to discharge debts from previous chapter 7 in which his discharge was denied for reasons not stated in the record).
Prtys: Debtor; Elsie Williams.
Attys: Tom Byarly; John Ogles

In re Albert Caldwell, 895 F.2d 1123, Nos. 88-6404, 88-6405 (February 9, 1990), **Sixth Circuit** affirming Tennessee District Court, finding where chapter 13 debtor proposed to repay only a small portion of the debt that could not be discharged under chapter 7 deserves particular scrutiny under good faith standard; party seeking discharge under chapter 13 bears BOP on good faith issue; best efforts in chapter 13 plan to comply with statutory requirements are not sufficient to establish good faith; length of chapter 13 plan is relevant indicator of debtor's good faith; Court held that chapter 13 debtor proposing to repay 36% of debt that would have been nondischargeable in a Chapter 7 was not acting in good faith; it is not conclusively bad faith for a debtor to seek to discharge a debt incurred through his own criminal or tortious conduct through a chapter 13, but factor may be considered.

In re Manes, **PB** 85-330 (June 25, 1986) (**67 Bankr. 13**) **Ch. 13** (Malicious conduct was not bad faith sufficient to warrant denial of confirmation of chap. 13 plan; plan was not feasible).
Prtys: Debtors, Harvey Jones.
Attys: Thurman Ragar, Jr., Fed E. Bosshart

In re Merayo, **LR** 04-17258, Nov. 8, 2005: court denied confirmation and converted case from **ch. 13 to 7** upon showing of bad faith under section 1325(a)(3).

Prtys: Debtor, Tracy and Tammy Heffington
Attys: Thomas Byarlay, Geoffrey Treece

In re Roy and Juanita Wilcox, **251 B.R. 59**, **JO** 099M (July 19, 2000) **Ch. 13.** (Order overruling Bank's objection to confirmation of Chapter 13 plan based on Debtors' pre-petition conduct as used car dealers where conduct would have resulted in nondischargeable debts in a Chapter 7 because arising from willful and malicious conduct; plan was proposed in good faith).
Prtys: Debtors, Union Planters Bank
Attys: Warren Dupwe, Ralph Waddell.

In re Richter, **LR** 90-193 (Mar. 7, 1991: Objection to confirmation of **Ch. 13** denied even though filed on heels of Ch. 7; no evidence of bad faith, no evidence debt could not have been discharged in the Ch. 7).
Prtys: Debtor, Chrysler Credit Corp.
Attys: Faber Jenkins, Paul Schmidt, A.L. Tenney-Trustee.

1325(a)(5)

In re Keith and Karrie Bailey, **HS** 04-73199 (May 10, 2005) **326 B.R. 156**. **Ch. 13** (Construing Missouri law under UCC 1-201(37), transaction between debtor and creditor was a secured sale under § 1325 (a)(4) and (5) and not a lease under § 1322(b)(7) and 365).
Prtys: Debtors, Lafayette Investments, Inc.
Attys: Thomas Byarlay, Charles Davidson

In re Bolin, **ED** 89-041M (Mar. 15, 1991) **Ch.13, 1991 WL 58389** (Objection to confirmation; held IRS could allocate lien to oldest taxes to maximize recovery; held debtor could not avoid judicial tax lien under § 522(f)(2); determined which taxes had priority status; prepetition interest is included in tax priority claim, penalties are not)
Ptys: Kenneth Bolin and Internal Revenue Service)
Atty: William Johnson, Michael Fitzhugh, Karen Osborne, A.L. Tenney

In re Bookout, 231 B.R. 306, **BA** 98-10272M (March 18, 1999) **Ch. 13.** (In objection to confirmation by bank of chapter 13 plan modifying home mortgage, court held bank's security interest survived foreclosure judgment for antimodification provisions, even though foreclosure judgment grants a lien, but since claim was also secured by judgment lien in other real property of the debtor by virtue of foreclosure judgment, bank's claim could be modified by plan; plan must propose to pay claim in full plus interest at market rate.)
Prtys: William Dean and Carol Bookout, First National Bank of Sharp County.
Attys: Paul E. Hopper, Michelle C. Huff.

In re Dang, 96 B.R. 185, **LR** 88-589 (Nov. 4, 1988) **Ch. 13.** (Objection to confirmation of chap. 13 plan sustained because violated 1325(a)(5)(B) and 506(b) in that it misstates the amount of the Bank's claim, which was oversecured; plan

must provide for retention of Bank's lien and that claim be paid in full with interest at market rate and costs).
Prtys: Tien Nguyen and Phung Dang, Debtors; Worthen Bank.
Attys: William Owen, Judy Henry.

In re Evelyn Long, **LR** 81-906M, CMS 86-80M (June 30, 1986). **Ch. 13.** (An allowed, post-confirmation claim requires modification of the plan that meets confirmation requirements; creditor's claim allowed as filed unless debtor timely objects to claim).
Prtys: Debtor, Twin City Motors.
Attys: Jack Sims, Basil Hicks.

In re Green, **ED** 85-02M (July 30, 1985) **Ch. 13**. (Objection to plan sustained; plan failed to propose to pay present value of secured claim.)
Prtys: Red River Motor Co., Debtors
Attys: Thomas Streetman, Jed Molleston.

In re Billy and Carollee Starnes, 208 B.R. 688, **JO** 95-30588M (April 16, 1997) **Ch. 13**: Debtors may not modify plan to surrender burned house to HUD pursuant to 1325(a)(5)(c) and treat deficiency as unsecured because section 1329 requires that plan comply with anti-modification provision of home mortgage in 1322(b)(2)&(5).
Prtys: Debtors, HUD.
Attys: John Bradley, Fletcher Jackson.

In re Johnny L. Vincent, **HE** 98-20387M (May 16, 2003) **293 B.R. 467: Ch. 13** debtor's objection to creditor's claim would have had merit in that creditor failed to object to a plan not providing interest on the claim or conforming to the code on residential mortgages and plan was confirmed, but Debtor's objection to the claim was overruled as a sanction for failing to comply with discovery under Rule 7037. Therefore creditor's objection to Debtor's modified plan was sustained.
December 1, 2003: Appeal to **BAP** dismissed for lack of jurisdiction; order denying modification of plan (like order denying confirmation of plan) is not a final order.
Prtys: Debtor, Fairbanks Capital Corp.
Attys: James F. Valley, Kimberly Burnett

1325(a)(5)(B)(ii)

In re Dunlap, 215 B.R. 867, **HE** 95-20169M (July 16, 1997) **Ch. 13** (secured creditor objected to confirmation of third modified plan proposing to surrender vehicle to creditor and treat balance of debt as unsecured--court ruled this is not authorized by the code; value of property to be distributed under Chapter 13 plan on account of secured claims is fixed as of effective date of the plan).
Prtys: Markham and Lisa Dunlap, Chrysler Financial Corp.
Attys: Gregory Niblock, Faber Jenkins

In re Mothershed, **JO** 85-176 (March 26, 1986) **(62 Bankr. 113) Ch. 13.** (Chap. 13

plan cramdown would not be permitted without payment of market rate of interest at time of confirmation; issue of adequate protection could not be decided until plan modified).
Prtys: Debtors, International Harvester.
Attys: David Goodson, Maurice Rogers, John C. Calhoun Jr.

In re Mary Frances Vance, **JO** 85-266M (September 18, 1986) **Ch. 13:** (Sustaining objection to confirmation of plan because allowed amount of claim was higher than the appraised value of property the debtor proposed to surrender in full satisfaction of the claim).
Prtys: Debtor, Little River Bank.
Attys: Lindsey Fairley, David Coop, A.L. Tenney-T.

1325(b)

In re Gibson, 218 B.R. 900, **LR** 96-41062M (Dec. 27, 1997) **Ch. 13.** (debtor's use of excess insurance proceeds to repair vehicle was reasonable and did not mean debtor was not devoting all disposable income to plan).
Prtys: Debtor, Newcourt Financial.
Attys: Kent Pray, Richard Kalkbrenner.

In re Gary and Nancy Pendleton, 225 B.R. 425, **LR** 95-43358M (September 29, 1998) **Ch. 13.** (Personal injury award claimed as exempt was disposable income and not reasonably necessary for the Debtors' expenses such that the proceeds would be used to fund the plan).
Prtys: David Coop-T; Debtors.
Attys: William Owens; David Coop.

1326

In re William F. Leonard, **150 B.R. 709**, **FS** 90-12796M (August 12, 1992) **Ch. 13.** (Upon debtor's conversion to chapter 7, 13 Trustee did not have to turn over undistributed funds to Ch. 7 Trustee but could distribute in accordance with plan).
Prtys: Debtors, Jan K. Neilsen-Trustee, City National Bank.
Attys: Rex Chronister, Jan Neilsen, Stanley A. Leasure.

In re Woodall, **LR** 81-69 (Jan. 22, 1987) **81 Bankr. 17**: Computation of 60 months in Ch. 13 begins with date order for payment entered, which is 30 days after filing of petition under 1326; plan may not exceed 60 months under 1322; property of estate in Ch. 13 is property and earnings acquired by debtor post-petition under 1306 so not fair to postpetition creditors to stave off their collection efforts longer than 5 years; IRS has standing to file post-petition claim for taxes under 1305.
Prtys: IRS, Debtors
Attys: Jimmy Eaton, Doug Chavis, Charles Coleman, A.L. Tenney,Trustee.

1327 (a)

In re Dunlap, 215 B.R. 867, **HE** 95-20169M (July 16, 1997) **Ch. 13** (secured creditor objected to confirmation of third modified plan proposing to surrender vehicle to creditor and treat balance of debt as unsecured--court ruled this is not authorized by the code; effect of confirmation of Chapter 13 plan is to bind debtor and each creditor, whether the claim is provided for under the plan and whether creditor has objected to, accepted, or rejected the plan).
Prtys: Markham and Lisa Dunlap, Chrysler Financial Corp.
Attys: Gregory Niblock, Faber Jenkins

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in chapter 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

In re Johnny L. Vincent, **HE** 98-20387M (May 16, 2003) **293 B.R. 467: Ch. 13** debtor's objection to creditor's claim would have had merit in that creditor failed to object to a plan not providing interest on the claim or conforming to the code on residential mortgages and plan was confirmed, but Debtor's objection to the claim was overruled as a sanction for failing to comply with discovery under Rule 7037. Therefore creditor's objection to Debtor's modified plan was sustained.
December 1, 2003: Appeal to **BAP** dismissed for lack of jurisdiction; order denying modification of plan (like order denying confirmation of plan) is not a final order.
Prtys: Debtor, Fairbanks Capital Corp.
Attys: James F. Valley, Kimberly Burnett

In re Webb, **PB** 84-38 (March 10, 1987) **Ch. 13 (**If plan confirmed prior to deadline for filing proofs of claim and objections thereto, creditor is collaterally estopped from having claim allowed if it differs from claim's treatment in the plan, under 1327(a)).
Prtys: Debtors, John Deere Company, A.L. Tenney, Trustee
Attys: A.L. Tenney, Maurice Rogers, David Gunti,

1328

In re Ault, **LR** 01-40813M (Dec. 20, 2001) **Ch. 13 (**Objection to confirmation overruled; not per se bad faith for debtor to discharge debts from previous chapter 7 in which his discharge was denied for reasons not stated in the record).
Prtys: Debtor; Elsie Williams.
Attys: Tom Byarly; John Ogles

In re Melvin and Wendy Bass, **LR** 00-42447M (November 6, 2000) **Ch. 13** (Order allowing nondischargeable criminal restitution to be paid through plan even though the payments are modified, but restitution claim is not priority claim; plan may not

unfairly discriminate as to other unsecureds in paying claim in full).
Prtys: Debtors, Roger Richmond
Attys: Randolph Satterfield, Lawrence Yancey.

In re Garth, **LR** 81-587M, AP No. 87-717M (Nov. 4,1988) **Ch. 13.** (Payments made by the Trustee exceeded allowed claims of I.R.S.; even if I.R.S. doesn't file a proof of claim for postpetition tax, it may pursue its claim after discharge, closing, or dismissal of case; court without jurisdiction to decide postpetition tax liability, case dismissed because objection to claim moot after claim allowed and paid.)
Prtys: Buford and Ruby Garth, I.R.S.
Attys: Jack Sims, William Adair, Richard Neubauer, Steven Shapiro, Michael Wilcove.

In re Bobbie Harrell, **HE** 03-16983 **Ch 13** (Jan. 5, 2005) **318 B.R. 692**: State's claim for unassessed but assessable tax debts paid untimely and postpetition was not entitled to priority under section 507(a)(8)(A)(iii) and could be discharged in a chapter 13 under section 1328(a), even though the debts were nondischargeable in a chapter 7 under section 523(a)(1)(B)(ii).
Prtys: Debtor, Arkansas Department of Finance and Administration
Attys: Greg Niblock, Michelle Baker.

In re Grady Smith, 142 B.R. 862, **LR** 85-40055M, AP 91-4046 (February 4, 1992) **Ch. 13.** (IRS' claim was erroneously reduced by Trustee such that confirmation and discharge order were subject to collateral attack since reduction was effected without notice to IRS; confirmation order reducing claim cannot be substituted for objection to claim).
Prtys: Debtor, I.R.S., A.L. Tenney-Trustee.
Attys: Raymond Weber, Bill Adair, A.L. Tenney.

1329

In re Barnes, **PB** 84-359M (Jan. 28, 1987) **Ch.13** (sustaining objection to plan where modification to include postpetition, postconfirmation tax claim was redundant w/ original plan providing for payment of postpetition claims)
Ptys: Internal Revenue Service
Attys: A.L. Tenney, Charles Embry

In re Dunlap, 215 B.R. 867, **HE** 95-20169M (July 16, 1997) **Ch. 13** (secured creditor objected to confirmation of third modified plan proposing to surrender vehicle to creditor and treat balance of debt as unsecured--court ruled this is not authorized by the code; Code permits plan modification after confirmation, but modification must be necessitated by unanticipated substantial change in circumstances to avoid preclusion by res judicata.).
Prtys: Markham and Lisa Dunlap, Chrysler Financial Corp.
Attys: Gregory Niblock, Faber Jenkins

In re Evelyn Long, **LR** 81-906M, CMS 86-80M (June 30, 1986). **Ch. 13.** (An allowed, post-confirmation claim requires modification of the plan that meets confirmation requirements; creditor's claim allowed as filed unless debtor timely objects to claim).
Prtys: Debtor, Twin City Motors.
Attys: Jack Sims, Basil Hicks.

In re Mothershed, **JO** 85-176 (March 26, 1986) **(62 Bankr. 113) Ch. 13.** (Chap. 13 plan cramdown would not be permitted without payment of market rate of interest at time of confirmation; issue of adequate protection could not be decided until plan modified).
Prtys: Debtors, International Harvester.
Attys: David Goodson, Maurice Rogers, John C. Calhoun Jr.

In re Billy and Carollee Starnes, 208 B.R. 688, **JO** 95-30588M (April 16, 1997) **Ch. 13**: Debtors may not modify plan to surrender burned house to HUD pursuant to 1325(a)(5)(c) and treat deficiency as unsecured because section 1329 requires that plan comply with anti-modification provision of home mortgage in 1322(b)(2)&(5)).
Prtys: Debtors, HUD.
Attys: John Bradley, Fletcher Jackson.

TITLE 18

1961 (RICO)

In re Answerfone, **LR** 83-342 (April 25, 1986) **Ch.11 67 B.R. 167** (motion to amend complaint allowed; counterclaim of RICO preference is core proceeding)
Ptys: Charles Davidson (Trustee) and Joe Limerick III
Attys: David Williams, Geoff Treece, Griffin Smith

In re Big River, **HE** 89-20063M, AP 89-2008M (Sept. 13, 1991) **Ch. 11**. (Defendants alleged bankruptcy court lacked jurisdiction in Rico action against debtor and others; court had both subject matter and in personem jurisdiction as related matter affecting distribution to creditors).
Prtys: Big River Inc., Nu-South Industries, Inc., Bill Willis; George Porter; John Beasley; Districhem, Inc.; Waterway Terminals, Inc.; Grand Fertilizer, Inc.; DistriTank, Inc.; Commodities Transport Inc.; International Barges, Inc.; and Delta Materials, Inc., Nitrochem
Attys: Steve Shuts, John Tull, Peter Kumpe, James Dowden, Susan Gunter, Michael Rief, John Jewell.

3057

In re Mathis Ins. Agency, Inc., **LR** 84-1191, 1192
In re Clemothene Mathis, **LR** 84-1192M (May 29, 1985) **50 Bankr. 482, Ch. 7** (Debtors' Motions to dismiss chap. 7 case denied; no showing of cause justifying dismissal, substantial evidence of fraud prompts court to refer case to U.S. Attorney)
Prtys: Debtors
Attys: David Grace

TITLE 28

144

In re Herbert Russell, **ED** 84-058M (April 5, 1085) **Ch. 11.** (Denying motion to recuse by debtor; debtor's affidavit insufficient to constitute grounds for recusal, which is necessary if impartiality might reasonably be questioned but not from perspective of interested litigant).
Prtys: Herbert Russell, Debtor.
Attys: Jim Smith, Susan Gunter, Charles Baker, Rick Taylor, Don Henry, Ike Scott, Charles Davidson, Greg Hopkins, Festus Martin, William Gibson.

151

In re McCrary's Farm Supply, Inc., **LR** 81-666,AP 84-149 (July 25, 1985) **Ch. 11** (**57 Bankr. 423**) (Pretrial order in preference suit granting defendant's demand for jury trial pursuant to 28 U.S.C. 151 and 1411).
Prtys: Creditor's Committee, Monsanto Co.
Attys: Judson Todhunter, Peter Heister, Scott Partidge, Isaac Scott.

157(a)

In re Coleman, **PB** 86-55M (February 4, 1987), AP. No. 86-176M: (recommending district court order referring case to bankruptcy court be set aside as inconsistent with Local Rule 32 and 28 U.S.C. § 157 which automatically grants bankruptcy court original jurisdiction; district court improperly changed venue of the case as well and venue should remain in Ft. Smith until party in interest files a motion to change venue).
Prtys: J.O. Coleman (Debtor), William E. Johnson, Bear
Camping Club.
Attys: Charles Boyd, Bill Walters, Geoffrey Teece, Richard Turbeville, Charles Banks.

157(c)(1)

In re Big River, **HE** 89-20063M, AP 89-2008M (Sept. 13, 1991) **Ch. 11**. (Defendants alleged bankruptcy court lacked jurisdiction in Rico action against debtor and others; court had both subject matter and in personem jurisdiction as related matter affecting distribution to creditors).
Prtys: Big River Inc., Nu-South Industries, Inc., Bill Willis; George Porter; John Beasley; Districhem, Inc.; Waterway Terminals, Inc.; Grand Fertilizer, Inc.; DistriTank, Inc.; Commodities Transport Inc.; International Barges, Inc.; and Delta Materials, Inc., Nitrochem
Attys: Steve Shuts, John Tull, Peter Kumpe, James Dowden, Susan Gunter,

Michael Rief, John Jewell.

157(d) (MANDATORY ABSTENTION)

In re Answerfone, **LR** 83-342 (April 25, 1986) **Ch.11 67 B.R. 167** (motion to amend complaint allowed; counterclaim of RICO preference is core proceeding; abstention under § 157(d) determined by district court)
Ptys: Charles Davidson (Trustee) and Joe Limerick III
Attys: David Williams, Geoff Treece, Griffin Smith

In re Brittenum & Associates, Inc., **LR** AP 86-50M, AP 86-305M (Feb. 26, 1987) **Ch. 7.** (Mandatory withdrawal of reference is only warranted in matters of interstate commerce, whether or not the proceeding is core or related matter; here, no issues of interstate commerce prevailed as to plaintiff and debtor's claim; discretionary withdrawal is warranted for good cause; here, cause of action between debtor and creditor was claims litigation, so withdrawal of reference not warranted; between plaintiff and co-defendants, the reference is withdrawn because issues are related matters, parties do not consent to trial in bankruptcy court, and are entitled to a jury trial.)
Prtys: Brittenum & Associates, Inc., Fred Halstead, Jon Brittenum, Melvyn L. Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware.
Attys: Mark Hampton, Steve Vaughn, Tripper Cronkhite, Steven Harbeck, Gary Corum, Robert Cabe, Richard Steinkamp, Michael Thomson, Richard D. Taylor, Peter Kumpe, John Jewell.

158 In re Stephen Griffin, **FS** 02-70245**, Ch. 7**
August 27, 2003: Court removed Diane Sexton as attorney for Ms. McGehee (creditor) because of conflict of interest and disallowed attorneys fees. APPEAL DISMISSED BY BAP. NO. 03-6069: June 3, 2004: an order disqualifying an attorney is not a final appealable order. 28 U.S.C. § 158(C). BR court affirmed as to ruling that attorneys fees would be disallowed because they did not benefit oversecured creditor and were not related to protecting her claim. 11 U.S.C. § 506(b).
Prtys: Mary McGehee, Richard Cox, Trustee
Attys: Diane Sexton, Richard Cox

In re Lake Hamilton Resort, Inc., **HS** 04-72002, (Sept. 14, 2004) Civil No.04-6063: Christmas Mountain v. Lake Hamilton Resort; DISTRICT COURT (JUDGE HENDREN) **DECLINED TO REVIEW** bankruptcy court's permission for debtor to use cash collateral and denial of adequate protection payments to Christmas Mountain; order was not final and not appropriate for interlocutory review under 28 U.S.C. § 158(a) and 1292.

In re Johnny L. Vincent, **HE** 98-20387M, May 16, 2003, **293 B.R. 467: Ch. 13**

debtor's objection to creditor's claim would have had merit in that creditor failed to object to a plan not providing interest on the claim or conforming to the code on residential mortgages and plan was confirmed, but Debtor's objection to the claim was overruled as a sanction for failing to comply with discovery under Rule 7037 and creditor's objection to Debtor's modified plan was sustained. On appeal to **BAP**, Dec. 1, 2003, 03-6025E, **301 B.R. 734**: Appeal dismissed for lack of jurisdiction because the order denying debtor's motion to modify his plan was not a final order pursuant to 28 U.S.C. § 158.
Prtys: Debtor, Fairbanks Capital Corporation
Attys: James F. Valley, Kimberly D. Burnette

455(a)

In re Ramona Moix-McNutt, **LR** 97-40003M (August 22, 1997) **Ch. 13.** (Debtor's motion to recuse for impropriety pursuant to 28 U.S.C. 455(a) denied; court's inquiry into Debtor's part in the family business were necessary to determine whether to grant relief from stay, not denigrate her role as housewife).
Prtys: Debtor.
Attys: R.J. Brown

In re Herbert Russell, **ED** 84-058M (April 5, 1085) **Ch. 11.** (Denying motion to recuse by debtor; debtor's affidavit insufficient to constitute grounds for recusal, which is necessary if impartiality might reasonably be questioned but not from perspective of interested litigant).
Prtys: Herbert Russell, Debtor.
Attys: Jim Smith, Susan Gunter, Charles Baker, Rick Taylor, Don Henry, Ike Scott, Charles Davidson, Greg Hopkins, Festus Martin, William Gibson.

1292

In re Lake Hamilton Resort, Inc., **HS** 04-72002, (Sept. 14, 2004) Civil No.04-6063: Christmas Mountain v. Lake Hamilton Resort; DISTRICT COURT (JUDGE HENDREN) **DECLINED TO REVIEW** bankruptcy court's permission for debtor to use cash collateral and denial of adequate protection payments to Christmas Mountain; order was not final and not appropriate for interlocutory review under 28 U.S.C. § 158(a) and 1292.

1334

In re David Hodges Farms, **JO** 85-73M, AP 85-124 (August 28, 1985) **Ch. 11.** (Denying motion to transfer trial on amount of Bank's claim against debtor to district court; removal proper if district court has jurisdiction; bankruptcy court had jurisdiction over claims against the estate and can adjudicate jury trial if right to

jury exists in a core proceeding).
Prtys: Twin City Bank, Debtor, Mallard Farms Holding Co, Marian and David Hodges, John Hancock Mutual Life Insurance, Cache River Production Credit Association, Farmers Home Administration, White River Production Credit Association, Heuer Truck Sales Corp, Elmer and Geneva Heuer, Northwestern Mutual Life Ins. Co., Travelers Ins. Co, Fred Pickens, Trustee for Isaac and Bessie Betts.
Attys: Greg Hopkins, Stan Langley, Marvin Thaxton, Charles Coleman, Donald Raney, Tom Smith, Don Henry, Dough Chavis, Darrell Dover, Fred Pickens, G.D. Walker, Joseph Russell, James Sprott, Fletcher Jackson, Edward Wright.

1334(c)(1) (Permissive Abstention)

In re Timothy A. Dennis, 218 B.R. 52, **HE** 96-20351M (September 8, 1997) **Ch. 13.** (Court permissively abstained from considering Chapter 13 debtor's motion to avoid judicial lien on residence which was to have been sold pursuant to prepetition divorce decree, with proceeds to be divided between debtor and estate of ex-spouse; court abstained to allow state court to adjudicate property issues related to domestic relations proceedings.)
Prtys: Timothy Dennis, Patricia Chapman.
Attys: James Luker, Frank Morledge.

In re Nathan and Lena Matlock, **JO** 92-30527M, AP 92-3034 (April 22, 1993) **Ch. 13.** (Abstaining because of lack of precedent under new statutory foreclosure act when debtors' home sold upon defective notice not specifying which of two county courthouses sale would take place.)
Prtys: Debtors, Lomas Mortgage, A.L. Tenney-T
Attys: Joyce Bradley, Robert McKinney, A.L. Tenney-T.

In re Starks, **LR** 05-10728 (Dec. 12, 2005): Upon motion for relief from stay in **Ch. 13** case, court held movant was not bound by confirmed plan as res judicata because no due process where movant not a creditor and received no notice of plan's treatment of movant's interest in property purchased in pre-bankruptcy foreclosure; court would abstain from deciding issue of irregularities of sale under state law in interests of comity and pursuant to 28 U.S.C. § 1334(c)(1).
Prtys: Debtor, Castle Investments
Attys: Michael Knollmyer, Cade Cox

1411

In re McCrary's Farm Supply, Inc., **LR** 81-666,AP 84-149 (July 25, 1985) **Ch. 11** (**57 Bankr. 423**) (Pretrial order in preference suit granting defendant's demand for jury trial pursuant to 28 U.S.C. 151 and 1411).

Prtys: Creditor's Committee, Monsanto Co.
Attys: Judson Todhunter, Peter Heister, Scott Partidge, Isaac Scott.

1452

In re Lake Hamilton Resort, Inc., **HS** 04-72002, AP 04-7108 (March 10, 2005) Civil Nos. 04-6089: Bob Fewell v. Christmas Mountain, LLC, **DISTRICT COURT** (JUDGE HENDREN) **AFFIRMED** bankruptcy court's bench ruling denying motion to remand removed action against Debtor to state court but remanding Fewell AP to state court; AP was related matter requiring only proposed findings of fact and legal conclusions; remand was based on equitable grounds under US Code section 1452.

In re David Hodges Farms, **JO** 85-73M, AP 85-124 (August 28, 1985) **Ch. 11.** (Denying motion to transfer trial on amount of Bank's claim against debtor to district court; removal proper if district court has jurisdiction; bankruptcy court had jurisdiction over claims against the estate and can adjudicate jury trial if right to jury exists in a core proceeding).
Prtys: Twin City Bank, Debtor, Mallard Farms Holding Co, Marian and David Hodges, John Hancock Mutual Life Insurance , Cache River Production Credit Association, Farmers Home Administration, White River Production Credit Association, Heuer Truck Sales Corp, Elmer and Geneva Heuer, Northwestern Mutual Life Ins. Co., Travelers Ins. Co, Fred Pickens, Trustee for Isaac and Bessie Betts.
Attys: Greg Hopkins, Stan Langley, Marvin Thaxton, Charles Coleman, Donald Raney, Tom Smith, Don Henry, Dough Chavis, Darrell Dover, Fred Pickens, G.D. Walker, Joseph Russell, James Sprott, Fletcher Jackson, Edward Wright.

1927 (SANCTIONS FOR MULTIPLYING PROCEEDINGS UNREASONABLY)

In re Arkansas Communities, Inc., **HS** 80-22M (July 10, 1985)
Ch.11 (granting motion for sanctions against R.J. Brown for unreasonably and vexatiously multiplying proceedings)
Ptys: Mitchell Law Firm Trustee, R.J. Brown
Attys: R.J. Brown, Dick Crockett, Bob Shults, Maurice Mitchell, Mike O'Malley

TITLE 26 (INTERNAL REVENUE CODE)

6072(a)

In re Bolin, **ED** 89-041M (Mar. 15, 1991) **Ch.13, 1991 WL 58389** (Objection to confirmation; held IRS could allocate lien to oldest taxes to maximize recovery; taxes due April 15)
Ptys: Kenneth Bolin and Internal Revenue Service)
Atty: William Johnson, Michael Fitzhugh, Karen Osborne, A.L. Tenney

6402(a)

In re Brown, **LR** 92-390M (Dec. 14, 1992) **Ch.13**
(granting relief from stay and allowing IRS right to setoff
where refund and tax claim mutual and both prepetition)
Ptys: Internal Revenue Service
Attys: A.L. Tenney, Mike Knollmeyer, Raymond Mulera

6503

In re Wise, **LR** 90-04-0893 (Jan. 2, 1991) **127 B.R. 20, Ch. 13**: (Three-year period of limitation for determining tax priority under 507(a)(7)(A) suspended during pendency of previous bankruptcy case pursuant to section 108(c) and section 6503(b) and (i)).
Prtys: IRS, Debtor
Attys: Kimberley S. Forseth, Michael Knollmeyer, A.L. Tenney, Trustee, William Adair

TITLE 37

701

In re Roy and Lavonda Price, **313 B.R. 805, LR** No. 03-13601, AP No. 03-1258 (July 22, 2004) court denied motion for summary judgment filed by financial services company; sale of debtor-serviceman's future military pension rights for lump sum payment was prohibited by federal law, 37 U.S.C § 701, and fact that debtor redirected payments to himself contrary to the contract did not constitute larceny or embezzlement under section 523(a)(4).
Prtys: Debtors, Structured Investments Co.
Attys: Laura Grimes, Kimberly Tucker.

TITLE 42

456

In re William Harold Watson, **HE** 04-10488, AP 04-1166 (Dec. 1, 2004) **(2004 WL 2755542)** under section 523(a)(18) and 42 U.S.C. § 456(b) of Social Security Act, Debtor's debt for child support was nondischargeable even though children were later proven through scientific testing not to be children of the debtor.
February 16, 2005: upon further stipulations by the parties, the court reconsidered and ruled the amount of the nondischargeable debt was the amount owed to the Office of Child Support and did not include the debt owed to the mothers of the children that were not children of the debtor.
Prtys: Debtor, Arkansas Office of Child Support Enforcement
Attys: Danny Glover, Paul Hopper

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1003(b)

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(If more than 12 creditors is alleged by involuntary Debtor, he must file a list of creditors with the court).
Ptys: Debtor, Betty Ward, Danny Gibson.
Attys: Dick Jarboe, Warren Dupwe, Charles Tucker.

1005

In re George Markham, **LR** 96-42121 (December 5, 1996) **Ch. 7.** (Debtor refusing to disclose social security number on petition for religious reasons was not sincere, using religion as pretext; no substantial burden on his freedom of religion; no constitutional privacy rights infringed by disclosure).
Prtys: Debtor
Attys: Debtor pro se.

1007(b)

In re Thomas Warren, **LR** 05-40022 (March 20, 2006) **(2006 WL 701144) Ch. 13:** denying Trustee's motion to dismiss for failure to file credit counseling certificate with petition under BR Rule 1007(b)(3) and section 521(b)(1) and failure to complete counseling at least one day prior to petition filing pursuant to 109(h)(1). Debtor had 15-day extension to file certificate and complied with statute by completing counseling prior to time of petition filing.
Prtys: Debtor, Jo-Ann Goldman-Trustee
Attys: Jean Madden, Linda McCormack

1007(c)

In re Gardner, In re Harris, In re Gribble, **139 B.R. 460**, **HE** 88-20027 (December 31, 1991) **Ch 7**: (Ark. Code Ann. § 16-66-217 (1991) allows Arkansas residents a choice of federal or state exemptions; election is not retroactive to those debtors filing for bankruptcy before the effective date of the amendment when only state exemptions were available).
Prtys: Leonard and Conus Gardner, Paul and Elizabeth Harris, James Gribble.
Attys: James C. Luker, Daniel Schieffler, Stephen Bennett, Terry Zelinski.

1009

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Prtys: Debtor, James Dowden, Trustee; Sherri Burks.
Attys: Paul Budd, James Dowden, Scott Vaughn.

1013(b)

In re Burns, **JO** 89-30051M (January 12, 1990) **Invol. Ch. 7**
(Debtor disputing involuntary petition must timely contest petition).
Ptys: Debtor, Betty Ward, Danny Gibson.
Attys: Dick Jarboe, Warren Dupwe, Charles Tucker.

1015

In re Huntsman Farms, Inc. **LR** 82-935-940 (Dec. 7, 1984) **Ch. 11**: (Numerous requirements for confirmation of chapter 11 plan not met, including not meeting fair and equitable test and best interests of creditors test; not providing for class of interest holders; attempting to substantively consolidate several cases without explanation or disclosure or following the requirements of rule 1015).
Prtys: Huntsman Farms, Huntsman Farm Store, Huntsman Enterprises, Ralph and Olivia Huntsman, Wayne Huntsman, Harold and Maudie Huntsman, John Hancock Life Insurance Co., Northwestern National Life Insurance Co.
Attys: Susan Gunter, Jim Smith, Allen Bird, Thomas Thrash, Stanley Price, Edward Bisno.

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In re Virginia Morris **FA** 91-15649 (May 28, 1992) **LR** (granting creditor's motion for joint administration. Debtors had to choose between state or federal exemptions, husband couldn't take state while wife take federal).
Prtys: Debtors, Citizens Bank of Northwest Arkansas, Vance Harp, Claude Jones-Trustee
Attys: Marcia Brinton, Lamar Pettus, Charles Trantham, Stanley Leasure, William Clark, Larry Thompson

2016(a)

In re Bonds Lucky foods, Inc., No. 1, 76 B.R. 664, **HE** 85-10M (May 13, 1986) **Ch. 11.** (Finding attorneys would not be compensated for unnecessary time spent by law clerks and paralegals, unnecessary prep work for case conference, overhead expenses including secretarial work, messenger service, clerical tasks; court has independent duty to investigate reasonableness of compensation request.)
Prtys: Bonds Lucky Foods, Inc.
Attys: Jim Smith, Susan Gunter.

In re Curtis, **LR** LR 84-1187, 70 B.R. 712 (January 13, 1987)**Ch. 11** (In addition

to objections by parties in interest to requested attorney fees, bankruptcy court has independent duty to investigate reasonableness of compensation.)
Ptys: Carla Curtis, R.J. Brown, Trustee.
Attys: John Jewell, Donald Henry, R.J. Brown, Basil V. Hicks.

In re Holtoff, 55 BR 36, **PB** 84-221M, 84-223M, 84-224M (July 12, 1985) **Ch. 11:** (fee application of counsel for debtor-in-possession did not conform to the rule because tasks performed in one day were grouped in single billing, time was billed for conferences regarding fee applications and ministerial tasks, and time was billed for Rico research which did not result in benefit to debtor.)
Prtys: Metropolitan Life Ins. Co., Davidson, Horne, Hollingsworth, Arnold, and Grobmyer.
Attys: Rick Ramsay, Thomas Stone, Patrick Hollingsworth.

In re N.S. Garrott & Sons, **JO** 83-215
In re Eastern Arkansas Planting Co., **JO** 83-216M (July 23, 1985) **54 Bankr. 221**; **Ch. 11** (Attorney Fee application reduced because of conflict of interest, excessive fees and expenses, blended rate).
Prtys: Debtors in Possession, Richard Frockt, James E. Smith
Attys: Richard Frockt, James E. Smith

In re Reed, **PB** 86-450 (Aug. 3, 1988) **95 Bankr. 626**: Fees for chap. 11 debtor's attorney incurred in defending dischargeability complaint not compensable from estate because did not benefit estate. AFFIRMED (J. Woods), AFFIRMED (8th Cir. 890 F.2d 104)
Prtys: Roderick Reed, Debtor; FSLIC
Attys: Joel Taylor, Tim grooms, John Pruniski, Isaac Scott.

3001

In re Clarence and Frances Burnett, **ED** 01-90019 (Oct. 25, 2002) **Ch. 13 (**Objection to Conf. by child support creditor sustained where debtor did not propose to pay child support debt as required under 1322(a)(2); where debtor disputed claim, objection to claim must be lodged pursuant to Rule 3001).
Prtys: Debtors, West Va. Bureau for Child Support Enforcement.
Attys: Billy Hubbell, Paul D. Selby.

In re Phyllis Michele Dove-Nation, **318 B.R. 147, H.S., BAP** (Dec. 17, 2004): affirming the bankruptcy court which overruled objection to claim by debtor; proof of claim was prima facie valid; insufficient documentation is not a basis to disallow a proof of claim where there was no evidence debtor disputed claim. Rule 3001, 3002, 11 U.S.C. § 501, 502, 101(5), 101(10).
Prtys: Phyllis Dove-Nation, eCast Settlement Corporation
Attys: Barbara May, Robert Lowry, Kimberly Wood Tucker, Alane A. Becket.

3001(f)

In re Circle J Dairy, Inc., **FA,** 92 B.R. 832**,** No. 85-139 (Oct. 18, 1988) (Proof of claim is prima facie evidence of validity and amount of claim. Objecting party must produce evidence rebutting the claim. If rebuttal evidence is forthcoming, claimant must produce additional evidence to prove validity of claim by preponderance of the evidence.) REVERSED, 112 B.R. 297 (J. Waters).
Ptys: Debtor-in-possession, Dairy Farm Leasing Co., First National Bank of Fayetteville, Agristor Leasing.
Attys: William R. Gibson, Thomas Carroll, Mark Lindsay, James M. Dunn.

3001(g)

In re Bearhouse, 84 B.R. 552, **ED** 87-42M, AP Nos. 87-134M, 87-139M, 87-186M and 87-209M (Jan. 22, 1988) **Ch. 7.** (Owner of grain was not required to possess negotiable warehouse receipt on day warehouseman filed bankruptcy petition in order to prove ownership.)
Prtys: Claude Hawkins-Trustee, Ladd Farms, National Bank of Commerce of Pine Bluff, U.S. Dept. Of Agriculture, Farmers Rice Mill Co, U.F. Coleman, Monticello Gin and Elevator Co., Commodity Credit Corp., Edward Oltmann, Gary Shrum, Virgie and Virginia Ray, Aetna Casualty and Surety Co.
Attys: Wililam Meeks, Terry Wynne, Claude Skelton, Thomas Streetman, Bob Lawson, Larry McCord, William Ball, Overton Anderson.

3002

In re Phyllis Michele Dove-Nation, **318 B.R. 147, H.S., BAP** (Dec. 17, 2004): affirming the bankruptcy court which overruled objection to claim by debtor; proof of claim was prima facie valid; insufficient documentation is not a basis to disallow a proof of claim where there was no evidence debtor disputed claim. Rule 3001, 3002, 11 U.S.C. § 501, 502, 101(5), 101(10).
Prtys: Phyllis Dove-Nation, eCast Settlement Corporation
Attys: Barbara May, Robert Lowry, Kimberly Wood Tucker, Alane A. Becket.

3003(b)(1)

In re Circle J Dairy, Inc., **FA,** 92 B.R. 832**,** No. 85-139 (Oct. 18, 1988) (claim must be filed if the Debtor lists the claim as disputed, contingent or unliquidated or the creditor disagrees with the amount of the claim listed in Debtor's schedules, or the court orders that claims be filed). REVERSED, 112 B.R. 297 (J. Waters).
Ptys: Debtor-in-possession, Dairy Farm Leasing Co., First National Bank of Fayetteville, Agristor Leasing.
Attys: William R. Gibson, Thomas Carroll, Mark Lindsay, James M. Dunn.

3007

In re Farmer's Co-Op of Arkansas and Oklahoma, Inc., **FS** 84-046M (Oct. 23, 1984) **Ch. 11.** (Properly filed claim is presumptively allowed unless objected to by a party in interest who has burden of going forward with the evidence to rebut

the presumption of validity).
Prtys: Farmer's Co-Op, Citizens Bank and Trust Co. Of Van Buren
Attys: Diane Mackey.

In re Kuebler, 156 B.R. 1012, **LR**89-40146, AP 92-4037 (June 24, 1993) **Ch. 13.** (plan listed IRS's secured debt as priority and didn't provide for full payment; plan confirmed without objection by IRS was res judicata on incorrect claim classification because IRS didn't plead lack of notice and opportunity to object; secured debt untreated by plan is discharged as to debtor's personal liability but IRS retains lien which passes through bankruptcy and remains attached to debtor's property, affording IRS an in rem cause of action on the debt)(AFFIRMED - Judge Woods).
Prtys: IRS, Leonard and Laura Kuebler.
Attys: Keith Grayson, David Coop-T., Tamera Fine-Trail, Robert Millstone.

3012

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in chapter 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

3015

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in chapter 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

4003

In re Gardner, In re Harris, In re Gribble, 139 B.R. 460, **HE** 88-20027 (December 31, 1991) **Ch 7**: (Ark. Code Ann. § 16-66-217 (1991) allows Arkansas residents a choice of federal or state exemptions; election is not retroactive to those debtors filing for bankruptcy before the effective date of the amendment when only state exemptions were available).
Prtys: Leonard and Conus Gardner, Paul and Elizabeth Harris, James Gribble.
Attys: James C. Luker, Daniel Schieffler, Stephen Bennett, Terry Zelinski.

In re Alfred and Sharon Whitson, **LR** 02-20854, **319 B.R. 614** (Jan. 19, 2005) Trustee failed to carry burden of proof under BR Rule 4003 that proceeds from settlement of debtors' personal injury claims were not exemptible; proof did not show proceeds were not compensation for lost earnings or were not reasonably necessary for debtors' support as required by section 522(d)(11)(E).
Prtys: Debtors, Trustee-Richard L. Ramsay.
Attys: James O. Wyre, Richard L. Ramsay.

4004(a)

In re Lewis, **HE** 86-20024, AP 88-413 (September 6, 1990) **Ch. 7.** Objection to discharge and dischargeability dismissed as untimely under Rules 4004(a) and 4007(a).
Prtys: Canal Insurance Company, Debtors.
Attys: Michael Lewis, David Solomon, Jesse Porter, Charles Roscopf

In re Whitfield, **ED** 83-058 (Aug. 10, 1984) **41 Bankr. 734, Ch. 7**: Objections to discharge under 727 and dischargeability under 523(c) must be timely under Rule 4004 or 4007; excusable neglect is not applicable for untimely filing; fraud must be pleaded with particularity under Rule 7009.
Prtys: B.J. Edwards, Debtors, Michael Landers, Trustee
Attys: Danny Rogers, Henry Kinslow, Michael Landers.

4007

In re Crull, **HA,** 101 B.R. 60 (June 7, 1989) **Ch. 7.**
(Where debtor moved to reopen case to include debt inadvertently omitted, Court held that dischargeability would be determined not by amendment of schedules but by adversary proceeding or in nonbankruptcy forum as defense to suit for judgment on debt).
Prtys: Gary and Karen Crull, H.J. Scheirich Co.
Attys: Roger Morgan, James Stanley, William Robinson.

In re Lewis, **HE** 86-20024, AP 88-413 (September 6, 1990) **Ch. 7.** Objection to discharge and dischargeability dismissed as untimely under Rules 4004(a) and (4007(a).
Prtys: Canal Insurance Company, Debtors.
Attys: Michael Lewis, David Solomon, Jesse Porter, Charles Roscopf

In re Patel, **ED** 89-30; AP 89-1503 (Sept. 11, 1989) Dischargeability complaint under 523(c) timely where clerk's notice erroneously stated deadline was "to be set."
Prtys: Debtors, First Financial Bank
Attys: Ian Vickery, Steve Gershner.

In re Whitfield, **ED** 83-058 (Aug. 10, 1984) **41 Bankr. 734, Ch. 7**: Objections to

discharge under 727 and dischargeability under 523(c) must be timely under Rule 4004 or 4007; excusable neglect is not applicable for untimely filing; fraud must be pleaded with particularity under Rule 7009.
Prtys: B.J. Edwards, Debtors, Michael Landers, Trustee
Attys: Danny Rogers, Henry Kinslow, Michael Landers.

5004

In re Herbert Russell, **ED** 84-058M (April 5, 1085) **Ch. 11.** (Denying motion to recuse by debtor; debtor's affidavit insufficient to constitute grounds for recusal, which is necessary if impartiality might reasonably be questioned but not from perspective of interested litigant).
Prtys: Herbert Russell, Debtor.
Attys: Jim Smith, Sunsan Gunter, Charles Baker, Rick Taylor, Don Henry, Ike Scott, Charles Davidson, Greg Hopkins, Festus Martin, William Gibson.

5010

In re Crull, **HA,** 101 B.R. 60 (June 7, 1989) **Ch. 7.**
(Where debtor moved to reopen case to include debt inadvertently omitted, Court held that dischargeability would be determined not by amendment of schedules but by adversary proceeding or in nonbankruptcy forum as defense to suit for judgment on debt).
Prtys: Gary and Karen Crull, H.J. Scheirich Co.
Attys: Roger Morgan, James Stanley, William Robinson.

6001

In re Franklin Doty Miller, **FA** 89-15098M, AP 90-5506 (March 8, 1991) **Ch. 11**
(FmHA claimed a lien in equipment allegedly property of the debtor; Creditors' committee argued equipment is property of the partnership and thus, FmHA does not have a valid lien in the equipment; court held committee did not establish a prima facie case that the lien was invalid; complaint dismissed).
REVERSED (J. Waters, 10-11-91, 91-5051)
Prtys: Debtor, Farmers Home Administration, Creditors Committee
Attys: Michael Fitzhugh, Paul Bowen, Don Taylor, Deborah Groom, Claude Skelton, Marilyn Byington, Jack Butt.

7001

In re Gordon, **PB** 85425M, AP 86-441M (April 16, 1987) **Ch. 13.** (To recover money damages, adversary proceeding complaint must be filed and answer is due in 30 days; if no answer, averments are admitted except as to damages; creditor failed to answer and at default judgment hearing, debtor gave evidence of damages unrebutted by creditor, so default judgment granted.)
Prtys: Joe Gordon, El Dorado Trailers, Doyle Butcher
Attys: George Proctor, Walter Lopez, Jr.

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:**
Secured Claim was treated as unsecured in chapter 13 plan that was confirmed

without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

7003

In re Gordon, **PB** 85425M, AP 86-441M (April 16, 1987) **Ch. 13.** (To recover money damages, adversary proceeding complaint must be filed and answer is due in 30 days; if no answer, averments are admitted except as to damages; creditor failed to answer and at default judgment hearing, debtor gave evidence of damages unrebutted by creditor, so default judgment granted.)
Prtys: Joe Gordon, El Dorado Trailers, Doyle Butcher
Attys: George Proctor, Walter Lopez, Jr.

7007

In re Farmer's Co-Op of Arkansas and Oklahoma, Inc., **FS** 84-046M (Oct. 23, 1984) **Ch. 11.** (Rules of pleadings in adversary proceeding are not applicable to contested matters so pleading an objection to claim, a contested matter, requires only that creditor be afforded notice and opportunity to prove claim).
Prtys: Farmer's Co-Op, Citizens Bank and Trust Co. Of Van Buren
Attys: Diane Mackey.

7008

In re Farmer's Co-Op of Arkansas and Oklahoma, Inc., **FS** 84-046M (Oct. 23, 1984) **Ch. 11.** (Rules of pleadings in adversary proceeding are not applicable to contested matters so pleading an objection to claim, a contested matter, requires only that creditor be afforded notice and opportunity to prove claim).
Prtys: Farmer's Co-Op, Citizens Bank and Trust Co. Of Van Buren
Attys: Diane Mackey.

In re Gordon, **PB** 85425M, AP 86-441M (April 16, 1987) **Ch. 13.** (To recover money damages, adversary proceeding complaint must be filed and answer is due in 30 days; if no answer, averments are admitted except as to damages; creditor failed to answer and at default judgment hearing, debtor gave evidence of damages unrebutted by creditor, so default judgment granted.)
Prtys: Joe Gordon, El Dorado Trailers, Doyle Butcher
Attys: George Proctor, Walter Lopez, Jr.

In re Pat Hardy and Charlotte Cecille McGowan, **FS** 85-166M, AP 85-551M, 552M (August 13, 1986) **Ch. 7.** (Assignment to Bank of limited partnership by debtors was not prohibited by partnership agreement and was valid; no equity was left for the estate so motion to abandon was granted; complaint improperly

drawn).
Prtys: Sam Phillips, Carl Brent Roberson, Cambridge Properties, et al; Debtors, Carriage Investments, First National Bank.
Attys: James Cox, Phillip Taylor, Jan Nielsen, Ben Barry, Paul Gean, James Arnold.

7009

In re Brittenum & Associates, Inc., **LR**, AP 86-0305M (Sept. 28, 1988) **Ch. 7.** (Allegations of fraud as to nondebtor co-defendants were dismissed for failure to plead with particularity.)
Prtys: Fred Halstead, John Brittenum, Melvyn Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware, Brittenum & Associates, Inc.
Attys: Jon Pruniski, Robert Roddey, Willis D. Cronkhite, Gary Corum, Richard Taylor, Michael Thompson, Peter Kumpe, Steve Vaughn, Anna Gibson, Philip Dixon, Mark Hampton, David Hodges, Charles Davidson, Jim Dowden, Ben Arnold, Webster Hubbell, Middleton Ray.

In re Herbst Corp. **LR** 86-182M, AP 88-533 (Sept. 8, 1989, August 24, 1990) **Ch. 7**: Order granting motion to dismiss for failure to state cause of action under BR 7012 (FRCP 12(b)(6)); also discusses FRCP 8 and 9 (pleading fraud with particularity)(BR 7009).
Prtys: Trustee, Herco, Herbst Retail corp, ABI, Inc.; George Sletteland; First Wisconsin National Bank; First Wisconsin Financial Corporation.
Attys: Jim Smith, Rick Taylor, Thomas Shriner, Jr., Isaac Scott, Gilbert Southwest III.

In re Carl and Maxine Johnson, **LR** 85-772M (June 5, 1986) **Ch. 7.** (motion to dismiss for failure to allege fraud with particularity overruled; objection to discharge sustained upon evidence of plan to sell mortgaged property and illegally convert the proceeds).
Prtys: First State Bank of Morrilton, Bank of Western Indiana, Debtors.
Attys: Gregory Hopkins, Stephen Rowell, Charles Clawson, Howard Yates, Richard Smith.

In re Reed, **PB** 86-450 (September 6, 1987) **Ch. 11.** (Court denied motion to dismiss dischargeability complaint for fraud, embezzlement, defalcation under 523(a)(4); facts pleaded with sufficient particularity).
Prtys: Roderick Reed, debtor in possession; FSLIC.
Attys: Isaac Scott, James Cherry, Peter Heister, Matthew Botica.

7012(b)(6)

In re Brittenum & Associates, Inc., **LR** AP 86-206M, (January 23, 1987) **Ch. 7**, (case dismissed for failure to state a cause of action).
Ptys: Trustee James F. Dowden, FirstSouth Capital Corporation
Attys: Ben Arnold, Mark Nichols, James Beachboard, James Smith, Joyce

Bradley, Charles R. Camp, Victor Fleming, William Duke, David Powell, Jack Crabtree, David Hargis, Richard Taylor, John Jewell, Steven Harbeck.

In re James and Carrie Hall, **HS** 02-70062
(July 24, 2003) **295 B.R. 877,** AP 02-7090: court denied motion to dismiss filed under Rule 7012; creditor may proceed with dischargeability complaint under either § 523(a)(4)for embezzlement or § 523(a)(6) for willful and malicious conduct; pursuant to § 509 creditor is equitably subrogated to the rights of another creditor which first creditor is obligated to pay if debtor doesn't pay.
Prtys: Debtors, Reggie Jones
Attys: David Grace, Martha McAlister

In re Marvin and Constance Jarrett, **HE** No. 03-13489 (2003) **Ch. 7**: Granting debtor's motion to dismiss under Rule 7012 dischargeability complaint for attorneys fees assessed debtor in state civil rights suit: attorneys' cause of action for willful and malicious injury (523(a)(6)) would not lie where attorneys were not injured party; 523(a)(7)not applicable as fine or forfeiture due a governmental entity; 523(a)(17) not applicable because only applies to debtors who are in forma pauperis prisoners, 523(a)(4) not applicable because debtor did not commit defalcation.
Prtys: Debtors, David Solomon, Edward Schieffler
Attys: James Valley, David Solomon, Edward Schieffler

In re Reeves, **HE 87-159**, AP 89-2018 (Feb. 20, 1991)**Ch. 7. (**Motion to dismiss granted as to RICO allegations; trustee did not have standing to assert as to prepetition conduct because debtor did not have prepetition cause of action (no injury); postpetition conduct did not amount to "pattern of racketeering activity.")
Prtys: James Luker-Trustee, Marlin Reeves, Billie Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley.
Attys: Fletcher Long, Alan Cline, Steven Elledge, James Luker

7013

In re Virotech, **FA** 87-224, 218, 219, AP 88-74, 75, 76 (Sept. 14, 1988) **Ch. 11** (Res judicata did not bar trial of claims where no final judgment rendered in prior proceeding; compulsory counterclaim rule (5013) did not bar subsequent litigation where the former litigation was dismissed by the plaintiff).
Prtys: Virotech, Edward Fields Jr., William Stanley, Chemland Inc.
Attys: Priscilla Pope, John Eldredge, William Dunlap, Jr., Jill Jacoway.

7015

In re Bearhouse, Inc., **ED** 87-42M, **AP** 87-186M (June 23, 1988) **Ch.7,** (motion to strike interpleader and other pleadings denied construing Rule 7015; amendments should be liberally allowed; unusual procedural history considered)
Ptys: Farmers Rice Milling Co., National Bank of Commerce, Aetna Casualty &

Surety Co.
Atty: Claude Hawkins, Tom Streetman, Robbie Camp, Overton Anderson, et al

In re Burns, **JO** 89-30051M (January 12, 1990) **Invol. Ch. 7**
(Debtor proved he had more than 12 creditors so more than two petitioning creditors were needed to place him in involuntary bankruptcy; however, he did not raise the issue of requisite number of creditors until the hearing and did not move to amend his answer to conform to the evidence, so Debtor was precluded from defeating the bankruptcy on that basis).
Ptys: Debtor, Betty Ward, Danny Gibson.
Attys: Dick Jarboe, Warren Dupwe, Charles Tucker.

7017(a)

In re Herbert Russell, 123 B.R. 48, **ED** 84-11058M, AP 89-1514 (Sept. 7, 1990) **Ch. 11.** (Complaint for turnover brought by trustee dismissed because corporation (wholly owned by Debtor) was real party in interest, not BR estate, even though its charter had been forfeited for nonpayment of franchise taxes.)
Prtys: William Gibson and Thomas Streetman-Trustees, Couch Dennis, Bonnie Dennis, Sandra King, Raymond and Helen Pittman, Virgil Lewis, Jerry Lewis.
Attys: William Arnold; Charles Tucker, U.S. Trustee; Ian Vickery

7037

In re Johnny L. Vincent, **HE** 98-20387M (May 16, 2003) **293 B.R. 467: Ch. 13** debtor's objection tocreditor's claim would have had merit in that creditor failed to object to a plan not providing interest on the claim or conforming to the code on residential mortgages and plan was confirmed, but Debtor's objection to the claim was overruled as a sanction for failing to comply with discovery under Rule 7037. Therefore creditor's objection to Debtor's modified plan was sustained. December 1, 2003: Appeal to **BAP** dismissed for lack of jurisdiction; order denying modification of plan (like order denying confirmation of plan) is not a final order.
Prtys: Debtor, Fairbanks Capital Corp.
Attys: James F. Valley, Kimberly Burnett

7041

In re Catherine Lindsey, 208 B.R. 169, **BA** 96-10020, AP 96-1007M
(April 21, 1997) **Ch. 7.** (Granting Trustee's motion to be substituted for creditor seeking to dismiss its complaint objecting to chapter 7 debtor's discharge, even though bar date had passed for objections to discharge).
Prtys: Debtor, Ballard Furniture Co., Trustee.
Attys: Sharon Glaze, John Purtle.

7052

In re Jacqueline P. L'Heureux, 04-6060 (Feb. 25, 2005): **BAP affirmed** bankruptcy court's bench ruling that creditor's six-day delay in removing notice of foreclosure sale cancelled after debtor filed for bankruptcy was not a willful violation of the automatic stay under section 362(a)(1); even if there was a violation, the debtor failed to prove damages for emotional distress; granting of a motion to dismiss at end of plaintiff's case is authorized by F.R.Civ.P. 52 and F.R.B.P. 7052.
Prtys: Jacqueline L'Heureux, Homecomings Financial Network
Attys: Robert Lowry, Harry Light

7054

In re Floyd Evans, **FA** 97-80694M, AP No. 98-8034.
June 25, 2003 **(294 B.R. 732) Ch. 7:** Denial of motion for sanctions pursuant to Rules 9011 and 7054; no evidence bank committed fraud on the court by testifying falsely at previous hearings.
Prtys: Debtor, Bank of Eureka Springs, John Cross, Gary Kleck.
Attys: Stanley Bond, James Dowden

7055

In re Howell Enterprises, **99 B.R. 413**, **HE** 88-58, AP 88-132
(Feb. 27, 1989) **Ch. 11:** (Denial of motion for default judgment based on defendant's three-week delay in filing answer to debtor's fraudulent conveyance complaint, where delay was good faith mistake and did not prejudice debtor and entry of default would expose defendant to $2 million in damages; entry of default could later be set aside for excusable neglect).
Prtys: Howell Enterprises, First National Bank in Stuttgart.
Attys: David Fuqua, Robert Dittrich.

8001

In re John Samuel Marlar, **ED** 02-1185 (January 23, 2004) Bankruptcy court previously denied Debtor's motion for reconsideration of its order dismissing appeal of order allowing Trustee's attorneys fees because debtor did not timely file designation of record pursuant to Rule 8006. On appeal to District Court, Judge Barnes, Court found B.R. court was without subject matter jurisdiction to dismiss appeal once timely notice of appeal was entered pursuant to Rules 8001 and 8002; only district court or BAP may dismiss appeal after timely notice of appeal is filed. No local rule of the BAP allows bankruptcy court to retain jurisdiction after notice of appeal.
Prtys: Trustee-Renee Williams, Debtor
Attys: Tom Streetman, Robert Depper.

In re Warren and Joann Miller, **140 B.R. 499**, **HE** 90-20025M (April 23, 1992) **Ch. 12.** (Granting new trial to creditor who did not get timely notice of modified

plan and therefore had no opportunity to object before plan confirmed).
Prtys: A.L. Tenney-Trustee, Farmers Home Administration, Debtors.
Attys: William Adair, Robert Hankins, Stephen Bennett.

In re N.S. Garrott & Sons, Inc. **JO** 83-215M
In re Eastern Arkansas Planting Company, **JO** 83-216M, AP 84-310M
(Sept. 11, 1985) **Ch 7** (Wells Fargo failed to file timely notice of appeal in AP 84-310M; time would not be extended for excusable neglect).
Prtys: Small Business Administration, Wells Fargo Ag Credit Corp., John Deere Co.
Attys: Richard Frockt, Lindsey Fairley, Michael Killin, Katherine McGovern, Jim Smith, Diane Mackey, Lanier Fogg

8002

In re John Samuel Marlar, **ED** 02-1185 (January 23, 2004) Bankruptcy court previously denied Debtor's motion for reconsideration of its order dismissing appeal of order allowing Trustee's attorneys fees because debtor did not timely file designation of record pursuant to Rule 8006. On appeal to District Court, Judge Barnes, Court found B.R. court was without subject matter jurisdiction to dismiss appeal once timely notice of appeal was entered pursuant to Rules 8001 and 8002; only district court or BAP may dismiss appeal after timely notice of appeal is filed. No local rule of the BAP allows bankruptcy court to retain jurisdiction after notice of appeal.
Prtys: Trustee-Renee Williams, Debtor
Attys: Tom Streetman, Robert Depper.

8006

In re John Samuel Marlar, **ED** 02-1185 (January 23, 2004) Bankruptcy court previously denied Debtor's motion for reconsideration of its order dismissing appeal of order allowing Trustee's attorneys fees because debtor did not timely file designation of record pursuant to Rule 8006. On appeal to District Court, Judge Barnes, Court found B.R. court was without subject matter jurisdiction to dismiss appeal once timely notice of appeal was entered pursuant to Rules 8001 and 8002; only district court or BAP may dismiss appeal after timely notice of appeal is filed. No local rule of the BAP allows bankruptcy court to retain jurisdiction after notice of appeal.
Prtys: Trustee-Renee Williams, Debtor
Attys: Tom Streetman, Robert Depper.

9006

In re Whitfield, **ED** 83-058 (Aug. 10, 1984) **41 Bankr. 734, Ch. 7**: Objections to discharge under 727 and dischargeability under 523(c) must be timely under Rule 4004 or 4007; excusable neglect is not applicable for untimely filing; fraud

must be pleaded with particularity under Rule 7009.
Prtys: B.J. Edwards, Debtors, Michael Landers, Trustee
Attys: Danny Rogers, Henry Kinslow, Michael Landers.

9007

In re Donald Lynn Pierce, 02-24536, **LR, Ch. 13**
Nov. 15, 2004, 04-0040, **DISTRICT COURT (JUDGE WILSON) AFFIRMED** bankruptcy court's policy of granting objections to claims unless a response and request for hearing is filed within 30 days; creditor filed no response to objection to his claim but appealed on the basis that he had no evidentiary hearing as prescribed under section 502(b). Rule 9007 grants bankruptcy courts discretion to set the particularities of notice procedures. **Affirmed, 8th Circuit,** Jan. 25, 2005: section 102 defines "notice and a hearing" to authorize an act on negative notice without hearing if notice is given properly and hearing not requested by a party in interest.
Prtys: Donald Lynn Pierce, Myron Roberts
Attys: John Ogles

9011

In re Bratton, **HA** 84-47M, **AP** 89-98M (Feb. 26, 1990) **Ch.7,** (motion for sanctions against Art Dodrill granted; also held Dodrill in criminal contempt during hearing and fined $100)
Ptys: Davidson Law Firm, Mitchell Law Firm, Art Dodrill
Attys: Charles Davidson, Art Dodrill, Mike O'Malley

In re Rick D. Cossey, **LR,** 172 B.R. 597**,** No. 92-42161M (July 7, 1994) **Ch. 7**, (Order sanctioning Ron Goodman for violation of Bankruptcy Rule of Procedure 9011 and fining him $500 for preparing and filing a bankruptcy petition containing false statements.)
Ptys: Ron Goodman, Debtor
Attys: Ron Goodman, Keith L. Grayson, Eugene Fitzhugh, Richard Ramsay-T.

In re Floyd Evans, **FA** 97-80694M, AP No. 98-8034.
June 25, 2003 **(294 B.R. 732) Ch. 7:** Denial of motion for sanctions pursuant to Rules 9011 and 7054; no evidence bank committed fraud on the court by testifying falsely at previous hearings.
Prtys: Debtor, Bank of Eureka Springs, John Cross, Gary Kleck.
Attys: Stanley Bond, James Dowden

In re Stephen Griffin, **FS** 02-70245 **302 B.R. 9 (**Nov. 21, 2003) **Ch. 7.** Attorney for secured creditor sanctioned under Rule 9011 for filing frivolous pleadings and fraudulent fee application in connection with representation of secured creditor.

Prtys: Diane Sexton
Attys: Diane Sexton

In re Ramona Moix-McNutt, **LR** 97-40003M, **220 B.R. 631**

April 29, 1998, **Ch. 13.** Sanctioning Debtor's attorneys for preparing false petition, unauthorized transfers under Rule 9011, 105(a); sanctions included fining law firm; reimbursing estate for monies acquired in real estate transaction; removing Brown and firm from case and denying all fees; suspending Brown and firm from representing debtors for four years.

March 15, 1999: District Court (Wright) **reversing** in part April 29, 1998, order: No violation of Rule 9011 because Brown did not sign the petition; former rule did not allow sanctions of law firm; thus no fine can be levied under Rule 9011; no fine can be levied under 105(a) if punitive in nature; 105(a) permits reimbursement, removal, and disallowance of fees but not suspension of attorneys.
Prtys: R.J. Brown, C.Richard Crockett

9014

In re Farmer's Co-Op of Arkansas and Oklahoma, Inc., **FS** 84-046M (Oct. 23, 1984) **Ch. 11.** (Rules of pleadings in adversary proceeding are not applicable to contested matters so pleading an objection to claim, a contested matter, requires only that creditor be afforded notice and opportunity to prove claim).
Prtys: Farmer's Co-Op, Citizens Bank and Trust Co. Of Van Buren
Attys: Diane Mackey.

In re Gordon, **PB** 85425M, AP 86-441M (April 16, 1987) **Ch. 13.** (Motion for contempt for violation of stay is contested matter and does not require an answer, so trial on the merits proper even though no answer filed; motion denied because stay violation not willful.)
Prtys: Joe Gordon, El Dorado Trailers, Doyle Butcher
Attys: George Proctor, Walter Lopez, Jr.

9015

In re Leird Church Furniture, **LR** 84-855M, AP 85-558M (March 19, 1986) **Ch 7** (Plaintiff is entitled to jury trial, Rule 9015 governs, trustee is proper plaintiff, not debtor).
Prtys: Debtor, Union National Bank of Little Rock
Attys: Peter Heister, Griffin Smith, Richard Smith, James Cherry, Isaac Scott.

9020

In re Bratton, **HA** 84-47M, **AP** 89-98M (Feb. 26, 1990) **Ch.7,** (motion for sanctions against Art Dodrill granted; also held Dodrill in criminal contempt during hearing and fined $100)
Ptys: Davidson Law Firm, Mitchell Law Firm, Art Dodrill
Attys: Charles Davidson, Art Dodrill, Mike O'Malley

In re Hubbard, **70 B.R. 122**, **LR** 82-451M, AP 82-1129M (Sept. 26, 1985) **Ch. 13.** (Recommending to district court that mortgagee be held in criminal contempt for violating court's order to repair damages to debtor's property resulting from eviction in violation to automatic stay; that mortgagee be fined sum equal to claim and that other sanctions be imposed).
Prtys: Debtor, Fleet Mortgage Co.
Attys: Andree Roaf, James Stanley.

9021

In re William Horne, **PB** 85-365M, AP 86-157M (August 18, 1986) **Ch. 7**: (Motion for summary judgment granted as to murder victim's estate's dischargeability action against the debtor for debt arising from willful and malicious conduct; debtor's conviction for 2nd degree murder established the elements of willfulness and malice under theory of collateral estoppel; offensive collateral estoppel not available to other plaintiffs because debtor's liability for battery did not establish willfulness and malice.)
Prtys: Bill Michel, John Lock, Matthew Webre, Debtor.
Attys: Henry Means, Randall Morley, W.M. Dickinson.

In re Warren and Joann Miller, 140 B.R. 499, **HE** 90-20025M (April 23, 1992) **Ch. 12.** (Granting new trial to creditor who did not get timely notice of modified plan and therefore had no opportunity to object before plan confirmed).
Prtys: A.L. Tenney-Trustee, Farmers Home Administration, Debtors.
Attys: William Adair, Robert Hankins, Stephen Bennett.

9023

In re Landmark Park & Associates, **LR** 83-258M (May 15, 1986) **Ch. 7** (Motion for reconsideration of court's previous ruling not treated as motion for new trial because no new facts alleged and not valid as motion to amend judgment since Hud reargues its previous position) See, also, U.S. v. Landmark Park (795 F.2d 683) reversing JGM and J. Roy: HUD had perfected prepetition security interest in rents and profits and was entitled to postpetition collections from mobile home park operation. See 87 Bankr. 565 (J. Arnold).
Prtys: HUD, Debtor
Attys: Thomas McLain, Katherine McGovern

9024

In re William and Martha Howard, **JO** 87-260M, AP 88-390M (Sept. 18, 1989) **Ch. 13**: (Absence of statutory three days notice entitled party which had filed answer but failed to appear at trial to relief from default judgment).
Prtys: Debtors; Cars, Inc.; Bob Cantrell.
Attys: Keith Blackman, Troy Henry, Jeannette Robertson.

In re Guy Jones, Jr., **LR** 92-42755M (July 12, 1994) **Ch. 7.** (Granting parties new trial on issue of whether debtor abandoned homestead such that he was not entitled to exemption because debtor had misrepresented in first trial that he was living elsewhere when the bankruptcy petition was filed).
Prtys: Mary and Christopher Jones, Debtor, Trustee
Attys: Judy Henry, Charles Baker, Richard Ramsay.

In re W. E. Tucker Oil Co., Inc., **ED** 84-11, AP 86-45 (Sept. 18, 1989) **42 B.R. 897,** Ch. 11: Order approving settlement set aside because of fraud on the Court and Trustee by Commercial Bank. (Motion for leave to appeal denied 12/4/89, J. Harris because insufficient basis for interlocutory appeal).
Prtys: Debtor, Trustee, Commercial Bank & Trust Co., E.A. Tucker, James L. Sanderlin and George Locke.
Attys: Thomas Streetman, Hani Hashem, Claude Hawkins-T, David Fuqua, Teresa Wineland.

9033(b)

In re Christine A. Ragar, **LR**, **140 B.R. 889**, No. 91-41490 (April 15, 1992) **Ch. 13**. (ct. held debtor's attorney in criminal contempt for continued representation after being removed by the court for conflict of interest in receiving and holding property of the estate for the Debtor to which attorneys had partial claim for attorney's fees). AFFIRMED 3 F3d 1174 (8th Cir. Aug. 30, 1993).
Prtys: Crockett and Brown, P.A.
Attys: Crockett and Brown, P.A.

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Prtys: Debtor Dwight W. Benefield , Steve Davis and Viola Benefield Burroughs, Daniel K. Schieffler-Trustee.

In re Gibson, 218 B.R. 900, **LR** 96-41062M (Dec. 27, 1997) **Ch. 13.** (Insurance proceeds from prepetition insurance policy were property of estate and loss payee had insurable interest in insurance proceeds only to extent of its allowed, secured claim; court order of surrender of insured automobile was not an order of abandonment of all insurance proceeds).
Prtys: Debtor, Newcourt Financial.
Attys: Kent Pray, Richard Kalkbrenner.

In re Pat Hardy and Charlotte Cecille McGowan, **FS** 85-166M, AP 85-551M, 552M (August 13, 1986) **Ch. 7.** (Assignment to Bank of limited partnership by debtors was not prohibited by partnership agreement and was valid; no equity was left for the estate so motion to abandon was granted; complaint improperly drawn).
Prtys: Sam Phillips, Carl Brent Roberson, Cambridge Properties, et al; Debtors, Carriage Investments, First National Bank.
Attys: James Cox, Phillip Taylor, Jan Nielsen, Ben Barry, Paul Gean, James Arnold.

ABSOLUTE PRIORITY RULE

In re Jimmy M. Baugh, **PB** 84-144M (April 28, 1987) **73 B.R. 414 Ch. 11** (Under 1129(b)(2)(B)(i)(ii), all classes of unsecureds must be paid before a junior class of creditors; reasonably equivalent value exception allows claimants to receive distribution or retain an interest even without senior classes paid in full if claimants contribute new capital reasonably equivalent in value to the distribution or value retained; whether farmer-debtor, through unpaid work, contributed value reasonably equivalent to ownership interest could not be determined without evidence of value of farmer-debtor's future contributions of labor and expertise and the value of the proposed retained interest.)
Prtys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re E.I. Parks No. 1 Limited Partnership, 122 B.R. 549, **FA** 88-261M (Oct. 19, 1990) **Ch. 11**. (Finding that owners of Ch. 11 debtor could retain interests without

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violating absolute priority rule over objection of dissenting creditors if they contribute property to debtor equal to or exceeding value of interest retained).
Prtys: E.I. Parks Ltd. Partnership, Shady Grove Associates, Western Hills Park.
Attys: Michael Reif, Katherine Gay.

In re Holthoff, 58 B.R. 216, **PB** 84-223M (Dec. 12, 1985) **Ch. 11.** (Plan of reorganization which lacks a class of interest and proposes to pay just 5% of principal amount of creditor's allowed claim did not comply with absolute priority rule).
Prtys: Debtor, Metropolitan Life Ins. Co.
Attys: Rick Ramsay, Patrick Hollingsworth.

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In re Answerfone, **LR** 83-342 (April 25, 1986) **Ch.11. 67 B.R. 167** (motion to amend complaint allowed; counterclaim of RICO preference is core proceeding; abstention under § 157(d) determined by district court)
Prtys: Charles Davidson (Trustee) and Joe Limerick III
Attys: David Williams, Geoff Treece, Griffin Smith

In re Timothy A. Dennis, 218 B.R. 52, **HE** 96-20351M (September 8, 1997) **Ch. 13.** (Court permissively abstained from considering Chapter 13 debtor's motion to avoid judicial lien on residence which was to have been sold pursuant to prepetition divorce decree, with proceeds to be divided between debtor and estate of ex-spouse; court abstained to allow state court to adjudicate property issues related to domestic relations proceedings.)
Prtys: Timothy Dennis, Patricia Chapman.
Attys: James Luker, Frank Morledge.

In re Nathan and Lena Matlock, **JO** 92-30527M, AP 92-3034 (April 22, 1993) **Ch. 13.** (Abstaining because of lack of precedent under new statutory foreclosure act when debtors' home sold upon defective notice not specifying which of two county courthouses sale would take place.)
Prtys: Debtors, Lomas Mortgage, A.L. Tenney-T
Attys: J. Bradley, Robert McKinney, A.L. Tenney-T.

In re Starks, **LR** 05-10728

Dec. 12, 2005: Upon motion for relief from stay in **Ch. 13** case, court held movant was not bound by confirmed plan as res judicata because no due process where movant not a creditor and received no notice of plan's treatment of movant's interest in property purchased in pre-bankruptcy foreclosure; court would abstain from deciding issue of irregularities of sale under state law in interests of comity and pursuant to 28 U.S.C. § 1334(c)(1).

ACCORD & SATISFACTION

In re Dollar Time Group, Inc., 223 B.R. 237, **S.D. Florida** 95-22816-BKC, RBR,

AP 96-0380-BKC, RBR (July 20, 1998) **Ch. 7**. (Defendants not entitled to use defense of accord and satisfaction under N.Y. law where agreement was between parties other than the individuals asserting the defense.)
Prtys: Kenneth Welt, Trustee; Dollar Time Group, Inc.: Joseph Sasson, Jeffrey Klansky.
Attys: Irwin Fingerit, Ronald Neiwirth, Arthur Rice.

In re Larry Moyer Trucking Inc., **LR** 97-40968M, AP 98-4124 (September 9, 1999) **Ch. 11.** (In related proceeding, judgment for contractor on breach of contract claim against project developer; no accord and satisfaction when developer's agent partially paid contractor for extra work performed; Debtor recovered under theories of express and implied contract, quantum meruit, unjust enrichment).
Prtys: Debtor, White-Dates & Associates, Inc; J.C. and J.G. Thornton.
Attys: Richard Downing, David M. Powell, Allen W. Bird.

In re McMullan, 196 B.R. 818, **ED** 94-11228M, AP 94-1516 (April 18, 1996) **Ch. 11.** (Mortgagee moved to foreclose on notes and mortgages secured by oil and gas leases and equipment in case removed to BR court; court allowed Trustee to sell property to be distributed pursuant to the Code; court held: no accord and satisfaction; no evidence of forgery; other indebtedness clauses valid to secure notes and bind debtors; no evidence of Mortgagee's disposal of collateral without owners' consent; no violation of Equal Credit Opportunity Act when Mortgagee required wife to sign notes since leases and equipment used as collateral were community property; wife acted in bad faith in subsequently filing a Ch. 13 when she had no income and her debt total made her ineligible for consumer reorganization).
Prtys: Debtors, National Bank of Commerce of El Dorado
Attys: Steve Gershner, Charles Camp, Michael Massey, Herman Ivester.

ADEQUATE PROTECTION

In re J.W. Gore, 113 B.R. 504, **LR** 88-2284M, CMS 89-489M, 89-675M and 89-570M (Dec. 20, 1989) **Ch. 12.** (Plan provision to sell property and pay secured creditor or buy replacement property was not permissible because sale permitted without adequate protection to secured creditor and notice and opportunity to object).
Prtys: Debtors, Kansas City Life Ins. Co., Farmers and Merchants Bank of Des Arc., Travelers Ins. Co., U.S. Small Business Admin.
Attys: Lance Hanshaw, Phillip Hout, Robert Abney, David Henry, William Adair.

In re Hoffman, 51 B.R. 42, **ED** 85-27M, 85-29M, 85, 30M, AP 85-318M, 85-320M (May 30, 1985) **Ch. 7, 11:** (It is not a violation of the automatic stay for a bank to place administrative freeze on debtors' demand accounts upon receipt of knowledge of filing of bankruptcy even though accounts are property of estate; bank would not be granted relief from stay to exercise right of set off if adequate protection for use of cash collateral could be offered by the debtors.)
Prtys: Debtors Charles Hoffman, Craig Shackleford, Craig Shackelford Farms, Portland Bank, National Bank of Commerce of Pine Bluff.

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Attys: Isaac Scott, Thomas Streetman, Joseph Strode.

In re Lake Hamilton Resort, Inc., **HS** 04-72002, (Sept. 14, 2004) Civil No.04-6063: Christmas Mountain v. Lake Hamilton Resort; DISTRICT COURT (JUDGE HENDREN) **DECLINED TO REVIEW** bankruptcy court's permission for debtor to use cash collateral and denial of adequate protection payments to Christmas Mountain; order was not final and not appropriate for interlocutory review under 28 U.S.C. § 158(a) and 1292.

In re Franklin Doty Miller, **FA** 89-15098M, AP 90-5506 (March 8, 1991) **Ch. 11** (FmHA claimed a lien in equipment, which FmHA claims is property of the debtor. Creditors' committee argued that the equipment is property of the partnership; thus, FmHA does not have a valid lien in the equipment. The committee filed this AP against FmHA to recover a payment of $22,023.00 as a postpetition transfer to an unsecured creditor. Court held: the creditors' committee did not establish a prima facie case that the lien was invalid; complaint dismissed). REVERSED (J. Waters, 10-11-91, 91-5051)
Prtys: Debtor, Farmers Home Administration, Creditors Committee
Attys: Michael Fitzhugh, Paul Bowen, Don Taylor, Deborah Groom, Claude Skelton, Marilyn Byington, Jack Butt.

In re Mothershed, **JO** 85-176 (March 26, 1986) **(62 Bankr. 113) Ch. 13.** (Ch. 13 plan cramdown would not be permitted without payment of market rate of interest at time of confirmation; issue of adequate protection could not be decided until plan modified).
Prtys: Debtors, International Harvester.
Attys: David Goodson, Maurice Rogers, John C. Calhoun Jr.

ADMINISTRATIVE EXPENSE

In re Bradshaw, **ED** 83-65M (August 1, 1986) **Ch. 7.** (BOP of reasonableness of fee application is upon the applicant; court applies Johnson factors to find fees reasonable; court has an independent duty to investigate fees; attorneys fees and expenses incurred in Ch. 11 case converted to Ch. 7 are entitled to administrative expense status in Ch. 7).
Prtys: Debtor, R.J. Brown, Trustee Claude Hawkins.
Attys: R.J. Brown.

In re William K. Brewer, **JO** 97-31440M, 233 B.R. 825 (May 3, 1999) **Ch. 13** (statute requiring debtor to continue to perform under lease until rejected allowed landlord administrative expense for postpetition, pre-rejection rent without showing of benefit to estate; rent payable under debtor's lease during the postpetition, pre-rejection period must be paid at full contract rate.)
Prtys: William K Brewer, Dr. Glenn Dickson.
Attys: Joe C. Barrett, Chris Gardner.

In re Charles and Margaret Cross, **HE** 86-13M (Feb. 6, 1989) **Ch. 7.** (Denying creditor's request for attorneys' fees for successfully prosecuting

objection to discharge and providing substantial benefit to estate; Such motions may be granted under section 503(b)(3)(4) as an administrative expense, but not without prior court approval.)
Prtys: First National Bank of Eastern Arkansas, Jim Luker-Trustee.
Attys:

In re Diamonds Plus, Inc. 233 B.R. 829, **JO** 98-30906M (May 12, 1999) **Ch. 11.** (unsuccessful bidder on sale of assets of Chapter 11 debtor could not recover breakup fee, in absence of any binding agreement with debtor for payment of such a fee, but bidder could recover as administrative expense costs and attorneys fees in helping to coordinate liquidation sale which was substantial contribution to bankruptcy estate.)
Prtys: Diamonds Plus, Inc., Silverman Jewelers Consultants, Inc.
Attys: Warren Dupwe, Charles Coleman.

In re Farmers Co-op, **FS** 84-46 (Oct. 17, 1985) **Ch.11.** (In attorneys fees application, prepetition services were general unsecured claim, postpetiton attorneys fees were administrative claim; preparation of fee application is not compensable).
Prtys: Ball, Mourton and Adams, Trustee--Thomas Robertson
Attys: Kenneth R. Mourton, Thomas Robertson, Jr.

In re Mel-Hart Products, Inc., 136 B.R. 197, **LR** 90-40399M (November 13, 1991) **Ch. 7** (allowing administrative claim for post-petition rent since Trustee had constructive possession of entire premises and for postpetition insurance costs; holding administrative expenses of the Ch. 7 case have priority over those in the prior Chapter 11 case under 726(b))**.**
Prtys: Randy Rice-T; Debtor, FabuGlass.
Attys: Charles Baker, Randy Rice, William Adkisson, Rita Brown Wells, Marilyn Byington, Charles Coleman.

In re Prime Motors, Inc., **Fla.** No. 90-16604 (June 29, 1993) **Ch. 11:** Administrative expense claimant not entitled to priority status under 1114(a) because neither retiree nor dependent.
Prtys: Debtor, Juliana Krisch
Attys: Jefferson Knight, Cynthia Jackson, Willkie Farr & Gallagher, Lynn H. Gelman.

In re Herbert Russell, **ED** 84-11058M, AP 91-1505 (August 10, 1993) **Ch. 11.** (Invalidating condo tenants' attempt to terminate horizontal property regime because not approved by all record owners of units, dismissing quiet title action, and allowing some administrative claims for insurance proceeds resulting from weather related damage to property).
Prtys: Thomas Streetman-Trustee, Couch Dennis, Bonnie Dennis, Sandra King, Raymond and Helen Pittman, Virgil and Jerry Lewis.
Attys: Thomas Streetman, Ian Vickery.

In re Elmer Smith, **ED** 03-74055, **Ch. 13** (Sept. 20, 2004) **315 B.R. 77**: Damages flowing from breach of lease assumed by debtor in first case but later rejected

were administrative expense under 503(b)(1)(A), 364(g); debtor's second confirmed plan did not address lessor's claim for administrative expense sufficiently to satisfy due process so as to bar claim under res judicata.
Prtys: Debtor, General Electric Capital Corp.
Attys: John Phillips,

In re White Rock, Inc. **LR** 01-44553M (May 17, 2002) **Ch. 11**: (creditor requested administrative expense of legal fees and costs for security to protect creditor's property adjacent to debtor's property pursuant to 503(b)(1)(A) as necessary for preserving estate or actual and necessary costs of estate; court denied request as expenses protected creditor's interests, not debtor's).
Prtys: Debtor, Metropolitan Bank
Attys: Allen Bird, Stephen B. Niswanger.

ADVERSE POSSESSION

AFTER-ACQUIRED PROPERTY

In re Butler, **HE** 99-54M, (Nov. 4, 1988) **Ch.12, 97 B.R. 508** (Chapter 12 confirmation hearing; confirmation denied for various reasons; objection to provision not allowing lien on after acquired property overruled pursuant to § 552(a))
Prtys: First National Bank of Eastern Arkansas and Farm, Credit Bank of St. Louis
Attys: Charles Baker, John Bridgforth, Gerald Coleman, David Solomon, A.L. Tenney

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player; Merchants and Planters' description in financing statement was sufficient under section 402(1); River Valley Bank did not list the proper debtor on financing statement; Union Planter's financing statement was sufficient even though not signed by proper debtor because bank had separate instrument properly signed so signature was scrivener's error; National Bank lost priority with failure to list after-acquired property as collateral).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn,
Darwin Davidson, Lance Miller.

In re MacMillan Petroleum Inc., **ED** 87-149M, AP 88-353M (June 6, 1990) (115 Bankr. 175) **Ch. 7.** (Summary judgment as to governing law denied. Summary judgment in favor of MCorp granted because MCorp, which held floating security interest in debtor's inventory, qualified as good faith purchaser for value and

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defeated equitable rights of reclaiming sellers).
Prtys: Debtors, Mcorp Management Solutions, Phillips Petroleum.
Attys: Derrell Dickens, Charles Coleman, Randal Wright, Trustee, Geoffrey Treece, Bobby Shepherd

In re Franklin Doty Miller, **FA** 89-15098, 89-125 (Jan. 30, 1990) **Ch 11.** (Fescue seed delivered to debtor by farmers was held pursuant to bailment contracts and was not property of estate; therefore, it was not subject to security interests granted by debtor in its after-acquired inventory). REVERSED (J. Waters, 9-14-90, No. 90-5026)
Prtys: Kinley Miller, Debtor, First State Bank of Purdy, Missouri, First National Bank of Rogers, Creditors' Committee
Attys: Craig Campbell, Jim Clark, James Clark, Jill Jacoway, Kent Barta, Field Wasson, Douglas Schrantz, Ron Boyer

AGENCY

In re Acro Corporation, **FA** 86-46M (Aug. 26, 1987) **Ch.11** (egg/chicken contract; finding no oral or implied contract for caring for chickens; also finding no agency relation ship b/t PCA and ACRO; and finding no tortious inference w/ contract; mentions wrongful eviction claim)
Prtys: Central Production Credit Association (PCA)
Attys: Larry Froelich, Steve Tennant, Connie Clark, Richard Miller

In re Sanders, **ED** 84-90 (Jan. 21, 1987) **75 B.R. 746;** AP 85-185M: (Debtor who was accommodation maker or endorser on note by virtue of lien on her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note; Debtor husband not agent for debtor wife).
Prtys: Mary Ellen Sanders, First National Bank of Camden.
Attys: Allen Roberts, Joseph Hickey, Isaac Scott

ALIMONY, MAINTENANCE OR SUPPORT

In re Benefield, **HE** 102 B.R. 157 (July 13, 1989) **Ch. 7** (holding that act to perfect ex-wife's lien in real property of debtor for child support arrearage was violation of automatic stay as to arrearage accruing post petition because real property became property of estate).
Prtys: Debtor Dwight W. Benefield , Steve Davis and Viola Benefield Burroughs, Daniel K. Schieffler-Trustee.
Attys: James C. Luker, Baird Kinney.

In re Clarence and Frances Burnett, **ED** 01-90019 (Oct. 25, 2002) **Ch. 13** **(**Objection to Conf. by child support creditor sustained where debtor did not propose to pay child support debt as required under 1322(a)(2); where debtor disputed claim, objection to claim must be lodged pursuant to Rule 3001).
Prtys: Debtors, West Va. Bureau for Child Support Enforcement.

Attys: Billy Hubbell, Paul D. Selby.

In re Gregory L. Latimer, **LR** 00-43630, AP 02-1114 (Aug. 22, 2002) **Ch. 7**: (Discharge injunction under sections 727 and 524 did not enjoin determination of dischargeability of alimony or support debt under 523(a)(5) by bankruptcy or state court, which has concurrent jurisdiction, even if Debtor listed debt as dischargeable on his petition; seeking dischargeability and entry of judgment after discharge did not violate stay which was no longer in force as to property of the debtor after discharge under section 362(c).
Prtys: Debtor, Dan West, Bill Flannery
Attys: Paul Schmidt, Michael Reif.

In re Jimmy Richard Medlock, **FS** 85-306M, AP 86-166M (August 1, 1986) **Ch. 7.** (In dischargeability suit, debt was in the nature of a property settlement and not alimony, maintenance or support, despite being called alimony in divorce proceeding).
Prtys: Teresa Medlock, Debtor
Attys: Ben Barry, Roy Gean, James Cox

In re Mencer, **LR** 84-865 (May 6, 1985) (**50 Bankr. 80**) **Ch. 7 (**Debtor's obligations under "marital settlement agreement" were nondischargeable alimony, maintenance or support under 523(a)(5)).
Prtys: Mary Elizabeth Mencer, Debtor
Attys: Susan Gunter, Ralph Sloan, William Kirby Mouser.

In re Ramey, **HE** 85-01 (Jan. 6, 1986) **59 Bankr. 527; Ch. 7** (Dischargeability of support obligations to former wife; joint debts to bank and landlord were property settlement, not alimony, maintenance and support and was dischargeable under former law, 523(a)(5)).
Prtys: Debtor, Brenda Ramey, Merchants and Farmers Bank, Charles Allen, Charles Thompson.
Attys: Daniel Schieffler, David Solomon, Ralph Murry, Charles Allen

ALTER EGO

In re Cockrum, **ED**, 90-11193M, AP No. 91-1501 (July 2, 1993) **Ch. 7.** (Insufficient evidence to show that separate corporate entity was alter ego of the debtor such that individual debtor's discharge should be denied because the corporate entity's records are inadequate; statute refers to "Debtor's financial condition.")
Prtys: First National Bank of Crossett, Robert Cockrum, debtor.
Attys: Thomas Streetman, Richard Crockett, William Wright.

In re Gary and Lucille Dean, **ED** 90-11138M, AP 93-1502M (July 29, 1994) **Ch. 7.** Finding that corporate defendants were alter egos of fiduciary to debtor's corporation; Trustee entitled to judgment against all corporations for the same amount as assessed to fiduciary for defrauding corporation).
Prtys: William Randal wright--Trustee, Debtors, Hi-Tech Coatings, Denitia Nichols, Robert Johnson, Ashley Investment Services, Inc., Genesis

Development Corporation, Premier Industrial Coatings, Inc., Global Traffic Service, Inc., Global Industrial Supplies, Inc., Honorable Robert C. Vittitow.
Attys: Thomas Streetman, Billy Hubbell, Randal Wright.

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

APPEAL

In re Stephen Griffin, **FS** 02-70245**, Ch. 7** (January 8, 2004): Secured creditor (McGehee) appealed denial of motion to abandon property from estate (bench ruling) to district court where it was denied; creditor appealed to Eighth Circuit Ct. Of Appeals which dismissed interlocutory appeal for want of jurisdiction.
Prtys: Mary MCGehee, Richard Cox-Trustee
Attys: Diane Sexton, Richard Cox

In re Hoffinger Industries, Inc., **HE** 01-20514M (Feb. 28, 2002) **Ch.11** (Court retroactively annulled the automatic stay to validate a postpetition notice of appeal filed by the Debtor in state court litigation pending in California; cross appeal right probably not lost until 30 days after notice of termination of the stay under section 108(c))
Prtys: Hoffinger Industries, Leesa Bunch.
Attys: Charles Camp, Lance Miller, James F. Dowden, Ben Arnold, Allen Bird, Charles Coleman.

In re John Samuel Marlar, **ED** 98-11358, AP 02-7067 (Feb. 18, 2003) **Ch. 7. 288 B.R. 823:** B.R. Court bound by mandate of 8th Cir. in earlier appeal of fraudulent transfer action that proceeds of trustee's fraudulent transfer claims were not to be used to satisfy claim filed by debtor's ex-wife.
Prtys: Debtor, Trustee-Renee Williams
Attys: John Lightfoot, Robert Depper, Ted Botner, Thomas Streetman.

In re John Samuel Marlar (January 23, 2004) Bankruptcy court previously denied Debtor's motion for reconsideration of its order dismissing appeal of order allowing Trustee's attorneys fees because debtor did not timely file designation of record pursuant to Rule 8006. On appeal to District Court, Judge Barnes, Court found B.R. court was without subject matter jurisdiction to dismiss appeal once timely notice of appeal was entered pursuant to Rules 8001 and 8002; only district court or BAP may dismiss appeal after timely notice of appeal is filed. No local rule of the BAP allows bankruptcy court to retain jurisdiction after notice of appeal. Order vacated.
Prtys: Trustee-Renee Williams, Debtor
Attys: Tom Streetman, Robert Depper.

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In re Annette B. Sabala, **HS** 05-6029 (Dec. 8, 2005, appeal from bench ruling sanctioning creditor for violating discharge injunction by filing second complaint to determine dischargeability after dismissal of first complaint and granting of debtor's discharge. **AFFIRMED, BAP 8TH CIR.**: Appeal of sanctions was timely, but award of sanctions was appropriate.
Prtys: Debtor, Gerald Hanson-Pro se

In re Jerry and Linda Stewart, **LR** 97-43241M (March 31, 1998) **Ch. 13**. (Appeal by a debtor of a judgment adverse to the debtor is subject to automatic stay; however, Debtor's motion to void its efforts at appeal was moot because parties had received relief from stay, nunc pro tunc, before appeal taken).
Prtys: Debtors, Norton Automotive Enterprises, Allen Norton, and Dan Kennedy
Attys: Grisham Phillips, Richard Kalkbrenner.

ARBITRATION

ASSIGNMENT

Barton v. U.S. Farmers Home Admin. (In re Barton, 132 B.R. 23 (Bankr. W.D. Ark. 1991) FA 90-15628M (Sept. 5, 1991) **Ch. 12.** (Assignment not effective where assignors in chicken farming business never obtained title to chickens which they were to raise for another so no sale occurred to which FmHA's lien could attach; "proceeds" in security agreement referred only to proceeds from crops and not account due for services)
Prtys: Tom and Sandra Barton, Farmers Home Administration
Attys: A.L. Tenny, Michael Fitzhugh, Terry Zelinski

In re Billy G. and Ruth Ann Billingsley,175 B.R. 286, **HE** 93-20096M, AP No. 93-2011M (July 12, 1994) **Ch. 7.** (Mistaken lien release on deed of trust granted by Debtors to Bank was corrected within 90 day preference period but was not a transfer within the statute because the Bank was without authority to release the lien as the deed of trust had been previously assigned to a third party; therefore, reimposition of lien was not a transfer.)
Prtys: Billy and Ruth Ann Billingsley, Helena National Bank, Charles Roscopf, Gene and Wanda Ridge.
Attys: Ashley Higgins, Charles Roscopf, Daniel Schieffler, A. Jan Thomas.

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player; Merchants and Planters' description in financing statement was sufficient under section 402(1); River Valley Bank did not list the proper debtor on financing statement; Union Planter's financing statement was sufficient even though not signed by proper debtor because bank had separate instrument

properly signed so signature was scrivener's error; National Bank lost priority with failure to list after-acquired property as collateral; assignment to River Valley and Bonnie Johnson was not valid because there was no value left in the contract to assign).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn,
Darwin Davidson, Lance Miller.

In re Endicott, 239 B.R. 529, **JO** 99-30499M (September 21, 1999) **Ch. 7.** (Bank granted relief from stay to liquidate security interest in proceeds of crop loss program even though proceeds had not been assigned by debtor to Bank; Bank entitled to relief where no equity in proceeds existed for benefit of unsecured creditors).
Prtys: Gary and Judy Endicott, MidSouth Bank.
Attys: Warren Dupwe, Jay Scholtens, James Luker--Trustee.

In re Farney, **LR** 87-2367M, AP 89-43M (August 14, 1989) **Ch. 7.** (Holding that trustee has status of judgment lien creditor as to personal property and bona fide purchaser only as to real property; under state law, an unrecorded assignment is valid against all but BFP so assignee of judgment lien has priority over Trustee as to proceeds from the claim.)
Prtys: Trustee-Randy Rice, Lyle Adams
Attys: Randy Rice, Beth Carson, Patrick Hollingsworth.

In re Lifesaver Center, Inc. **LR** 85-1894M (August 5, 1986) **Ch. 11 (**DIP's motion to use cash collateral from rents and profits granted; Dip's status as perfected judgment lien creditor under 544 is superior to creditor's unperfected lien in rents and profits under UCC 9-312(5)(a)).
Prtys: Debtor in Possession, Worthen Bank & Trust Co, May Supply Co.
Attys: Charles R. Camp, James J. Glover, William Owen, Richard Crockett, David Jacobs, Gregory Hopkins, Richard Smith, Michael Smith, David Fuqua, Robert Jones, Pam Walker, George Ellis, Ed Moody, W.W. Elrod, Trip Wetzel, etc.

In re MPG Enterprises, Inc. **FA** 96-80848M (December 22, 1997) **Ch. 7.** (Bank properly perfected its security interest in rent proceeds by recording mortgage and assignment of rents; Article 9 does not afford means for perfecting such rents; pre-petition security interest is valid in post-petition rent proceeds).
Prtys: Pulaski Bank and Trust, Ben Barry-T
Attys: C.B. Blackard, III, Ben T. Barry.

In re Pat Hardy and Charlotte Cecille McGowan, **FS** 85-166M, AP 85-551M, 552M (August 13, 1986) **Ch. 7.** (Assignment to Bank of limited partnership by debtors was not prohibited by partnership agreement and was valid; no equity was left for the estate so motion to abandon was granted; complaint improperly drawn).
Prtys: Sam Phillips, Carl Brent Roberson, Cambridge Properties, et al; Debtors,

Carriage Investments, First National Bank.
Attys: James Cox, Phillip Taylor, Jan Nielsen, Ben Barry, Paul Gean, James Arnold.

In re Martin, **LR** 90-41066 (Nov. 30, 1990) **Ch. 11** (Priority of liens in sale proceeds of home; validity of assignment of mortgage and note irrelevant because note was properly negotiated to first lien holder when indorsed in blank).
Prtys: Debtors, First Commercial Mortgage, Metropolitan National Bank, H.H. and Betty Ketcher
Attys: Not listed

In re Mid-America Travel, **HE** 90-20060M (April 20, 1992) **Ch. 11.** (Creditor that acquired claim under equitable subrogation, not assignment, pursuant to section 507 was precluded from claiming the priority of the original holder in liquidating plan).
Prtys: First National Bank of Eastern Arkansas, debtor in possession.
Attys: Charles Baker, John D. Bridgforth.

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

In re Sanders, **ED** 84-90, AP 85-184M (Jan. 21, 1987) **Ch. 7:** Debtor's guaranty of assignment of cd to secure note did not apply when loan renewed at higher interest rate without notification to guarantor; lien on Debtor's cd was released.
Prtys: Mary Ellen Sanders, First National Bank of Camden
Attys: Allen Roberts, Joseph Hickey, Issac A. Scott Jr.

ATTORNEY FEES

(Also see Professional Fees)
(Also see Enhancement Fee Requests)

In re Arkansas Communities, Inc., **HS** 80-22M (Sept. 28, 1988) **Ch.11** (granting trustee's attorney's fees; denying request for enhancement of fee)
Prtys: Mitchell Law Firm
Attys: Maurice Mitchell, Mike O'Malley, R.J. Brown

In re Arkansas Communities, Inc., **HS** 80-22M (Oct. 18, 1985) **Ch.11** (denying objection to Mitchell Law Firm's fees on basis of conflict of interest; review of Johnson factors)
Prtys: Mitchell Law Firm, R.J. Brown
Attys: Bob Shults, R.J. Brown, Maurice Mitchell, Dick Crockett

In re Arkansas Communities, Inc., **HS** 80-22M (June 19, 1985) **Ch.11** (denying R.J. Brown's fee request based on conflicts of interest in case; discussion of fiduciary duties of DIP)
Prtys: Mitchell Law Firm, R.J. Brown
Attys: R.J. Brown, Maurice Mitchell, Herb Rule, Gary Garrett

In re Arkansas General Agency and In re Rick Welch, **FS** 96-70128M & 70129M (Feb. 10, 2000) **Ch. 7**. (Court would not authorize payment of attorneys fees from property of estate where attorneys filed complaint on behalf of debtor, netting estates settlement proceeds, but did so without prior court approval).
Prtys: Trustees for AGA and Rick Welch estates, Trip Wetzel and John Lee; James O. Cox and Ron Metcalf.
Attys: James O. Cox, Ron Metcalf, James Dowden, John Lee.

In re Bennett, **LR** 85-32M (April 10, 1987)Ch. 7 (Finding incarcerated man was involuntary debtor with two creditors owed restitution for debtor's aggravated robbery; fraudulent conveyance as to fees paid to atty for services not yet rendered; preference as to fees paid from debtor to atty. during preference period).
Prtys: Gary Bennett, Robert and Sandra Vowell
Attys: Allen Bird, Mark Riable, Michael Durham, Charles Davidson

In re Bonds Lucky foods, Inc., No. 1, 76 B.R. 664, **HE** 85-10M (May 13, 1986) **Ch. 11.** (Finding attorneys would not be compensated for unnecessary time spent by law clerks and paralegals, unnecessary prep work for case conference, overhead expenses including secretarial work, messenger service, clerical tasks.)
Prtys: Bonds Lucky Foods, Inc.
Attys: Jim Smith, Susan Gunter.

In re Bradshaw, **ED** 83-65M (August 1, 1986) **Ch. 7.**
(BOP of reasonableness of fee application is upon the applicant; court applies Johnson factors to find fees reasonable; court has an independent duty to investigate fees; attorneys fees and expenses incurred in Ch. 11 case converted to Ch. 7 are entitled to administrative expense status in Ch. 7).
Prtys: Debtor, R.J. Brown, Trustee Claude Hawkins.
Attys: R.J. Brown.

In re Curtis, **LR** LR 84-1187, 70 B.R. 712 (January 13, 1987)**Ch. 11** (Applying Johnson factors, court found itemization insufficient in attorney fee application; uncompensable work included tasks grouped together under a single billing, work preparing fee applications, two hours reviewing notice of trial; performance bonus denied because surplus in estate resulted from death of debtor and subsequent insurance proceeds, not from counsel's skill).
Prtys: Carla Curtis, R.J. Brown, Trustee.
Attys: John Jewell, Donald Henry, R.J. Brown, Basil V. Hicks.

In re Charles and Margaret Cross, **HE** 86-13M (Feb. 6, 1989) **Ch. 7.** (Denying creditor's request for attorneys' fees for successfully prosecuting objection to

discharge and providing substantial benefit to estate; Such motions may be granted under section 503(b)(3)(4) as an administrative expense, but not without prior court approval.)
Prtys: First National Bank of Eastern Arkansas, Jim Luker-Trustee.
Attys:

In re Danny Ray Crawford, **LR** 98-4341M, AP 98 4179, 236 B.R. 673 (July 26, 1999) **Ch. 7**. (Non-support divorce debt owed to former spouse was nondischargeable, as were attorneys fees nondebtor ex-spouse previously incurred to collect on the debt; nondischargeable nature of ancillary debt such as attorneys fees follows the classification of the primary debt).
Prtys: Danny Ray Crawford, Kathy Salerno.
Attys: Dale Finley, Mary Jane Pruniski.

In re Dipzinski, **JO**, No. 97-10389M (June 16, 1999) **Ch. 7.** (Trustee's objection to debtor's amendment to claim of exemptions sustained; debtor intentionally omitted from schedules the exempt asset, sale proceeds from sale of marital real property due to debtor in divorce; debtor's divorce attorney violated automatic stay by disbursing proceeds to debtor and retaining his attorney's fee from proceeds).
Prtys: Trustee-Warren Dupwe, Debtor-Patricia Dipzinski.
Attys: Warren Dupwe, Louis J. Nisenbaum, Richard D. Hitt.

In re Randy Dodd, TX. No. 96-14040M (September 8, 1997) **Ch 12.** (Overruling debtor's objection to attorney's fees of counsel for fully secured creditor; court found fees allowable under 506(b), reasonable and justified).
Prtys: Randy Dodd, Davenport Land and Cattle Co.
Attys: Terry Zelinski, Kimberly Tucker.

In re Dean and Tina Dardwin, **HA** 86-77M (June 16, 1988) **Ch. 7**. (Finding attorney could not appropriate property of the estate in satisfaction of a claim for an attorney's fee without the bankruptcy court's permission; debtors' attorney required to return unauthorized fee taken from estate as sanction for not following proper channels).
Prtys: Mike Hulen, Debtors.
Attys: Mike Hulen, William R. Gibson, Mark Cooper.

In re Fourth, **LR** 84-235M (June 12, 1985). **Ch. 11.** (On Bank's motion to dismiss and to appoint Trustee, court found cause to appoint trustee for debtor's failure to timely confirm a plan, abide by court's operating requirements and illegal postpetition payments to counsel for debtors).
Prtys: First Commercial Mortgage Co., Charles and Vikki Fourth
Attys: Donald Frazier, Charles Davidson.

In re Farmers Co-op, **FS** 84-46 (Oct. 17, 1985) **Ch.11.** (In attorneys fees application, charges for word processing disallowed as overhead expense; fees allowed otherwise without prejudice to parties who could object after fee application no longer confidential).

Prtys: Reuben & Proctor, Trustee--Thomas Robertson
Attys: Gary M. Elden, Daniel A. Edelman, Richard Crockett, William Clark, Charles Harwell, Mark Moll, Stephen Adams.

In re Farmers Co-op, **FS** 84-46 (Oct. 17, 1985) **Ch.11.** (In attorneys fees application, prepetition services were general unsecured claim, postpetiton attorneys fees were administrative claim; preparation of fee application is not compensable).
Prtys: Ball, Mourton and Adams, Trustee--Thomas Robertson
Attys: Kenneth R. Mourton, Thomas Robertson, Jr.

In re Stephen Griffin, **FS** 02-70245**, Ch. 7 (**September 12, 2003: on objection to claim of Debtor's mother in law, court held mother-in-law's attorney would be removed for conflict of interest in also representing daughter whose interests were adverse to mother; court reduced attorney's legal fees because of unjustified or overstated charges. **AFFIRMED BAP:** June 3, 2004, attorneys fees for oversecured creditor did not benefit the creditor and were unrelated to protecting her interest.
Prtys: Mary McGehee, Trustee-Richard Cox
Attys: Richard Cox, Diane Sexton

In re Hoffinger Industries, Inc., **HE** 01-20514M (Sept. 27, 2004): Because judgment against Debtor's former president was based on tort of conversion and not on breach of employment contract, Debtor was not entitled to attorneys fees under state law.
Prtys: Brad Rinehart; Hoffinger Industries
Attys: Frederick Wetzel, Charles Camp, Lance Miller, Leisa Pulliam, Keith O'Gorman, Robert Wenbourne, Timothy Buckley.

In re Holtoff, 55 BR 36, **PB** 84-221M, 84-223M, 84-224M (July 12, 1985) **Ch. 11:** (fee application of counsel for debtor-in-possession did not conform to the rule because tasks performed in one day were grouped in single billing, time was billed for conferences regarding fee applications and ministerial tasks, and time was billed for Rico research which did not result in benefit to debtor.)
Prtys: Metropolitan Life Ins. Co., Davidson, Horne, Hollingsworth, Arnold & Grobmyer.
Attys: Rick Ramsay, Thomas Stone, Patrick Hollingsworth.

In re Ernest and Mary Jones, **LR** 85-1115 (January 30, 1987) **Ch. 7.** (Denying fees to creditor's attorney who pursued successful discharge-dischargeability action against debtors; attorney not employed by trustee or approved by court pursuant to section 503(b)(3)(B)).
Prtys: Evans Benton, Randy Rice-Trustee.
Attys: Robert Batton, Barbara Bonds.

In re Lavender, **TX** 82-37M (Sept. 18, 1986) **Ch. 11:** 82-037, Attorneys denied

fees under improperly drawn fee application. Dec. 17, 1984 **(48 Bankr. 393)** Attorneys required to reimburse estate for unauthorized payment of fees. AFFIRMED 785 F.2d 247.
Prtys: Debtors, Wood Law Firm
Attys: Raymond Weber, Claude Hawkins, James Pilkinton, James Pedigo, Phillip Cockrell, Richard Smith, Charles Walker, Charles Honey, Steven Cuffman.

In re MacMillan Petroleum, **ED** 87-149M (Sept. 9, 1988) **Ch. 7**. (Fee application for debtor's attorney reduced because services did not benefit estate (should have been liquidated as Ch. 7), hourly rates too high, duplicative services, pleadings filed in violation of court order, preparation of fee application, grouping, ministerial tasks).
Prtys: Smith, Stroud, McClerkin, Dunn & Nutter Law Firm; First National Bank of El Dorado and Mbank Dallas.
Attys: Charles Coleman, Peter Franklin, Hayes C. McClerkin, Charles Camp, John Unger, Geoffrey Treece.

In re John Samuel Marlar, **ED,** Case No. 04-CV-1001 (Sept. 7, 2004) **REMAND BY DISTRICT COURT (JUDGE BARNES)**: on appeal of bankruptcy court's order granting Trustee's attorney fees and sanctioning debtor by awarding Trustee's attorney an additional fee, bankruptcy court must expressly follow or reject lodestar calculation in findings of fact.
Prtys: Debtor, Streetman, Meeks & MicMillan
Attys: Bob Depper, Thomas Streetman.

In re John Samuel Marlar, **ED** 98-1358, **Ch. 7** (Sept. 27, 2004) On remand, bankruptcy court found fees for chapter 7 trustee's attorney were reasonable under lodestar method and section 330; Johnson factors used to determine reasonableness.
Prtys: Debtor, Trustee-Renee Williams
Attys: Bob Depper, Thomas Streetman

In re John Samuel Marlar, **ED** 98-1358, **Ch. 7** (March 21, 2005) 04-CV-1025: On appeal of Sept. 27, 2004 order of bankruptcy court, **DISTRICT COURT (JUDGE BARNES)** affirmed award of attorney's fees pursuant to section 330.
Prtys: Debtor, Trustee
Attys: Bob Depper, Thomas Streetman.

In re N.S. Garrott & Sons, **JO** 83-215
In re Eastern Arkansas Planting Co., **JO** 83-216M (March 26, 1986) **63 Bankr. 189**, **Ch. 11**: On remand from District Court, Court clarified previous order as to why attorneys fees were reduced for conflict of interest in that same attorneys represented the two estates which were indebted to each other, as well as other abuses.
Prtys: Debtors, Attorneys
Attys: Richard Frockt, James E. Smith

In re N.S. Garrott & Sons, **JO** 83-215
In re Eastern Arkansas Planting Co., **JO** 83-216M (July 23, 1985) **54 Bankr. 221**;

Ch. 11 (Attorney Fee application reduced because of conflict of interest, excessive fees and expenses, blended rate).
Prtys: Debtors in Possession, Richard Frockt, James E. Smith
Attys: Richard Frockt, James E. Smith

In re Reed, **PB** 86-450 (Aug. 3, 1988) **95 Bankr. 626**: Fees for Ch. 11 debtor's attorney incurred in defending dischargeability complaint not compensable from estate because did not benefit estate. AFFIRMED (J. Woods), AFFIRMED (8th Cir. 890 F.2d 104)
Prtys: Roderick Reed, Debtor; FSLIC
Attys: Joel Taylor, Tim Grooms, John Pruniski, Isaac Scott.

In re Marilyn Ann Terry, **HE** 95-20191M, AP 96-2003M (April 16, 1997) **Ch. 13.** (Debtor denied damages and attorney's fees under 362(h) when Debtor's complaint for turnover of vehicle did not allege and evidence did not prove willful violation of automatic stay).
Prtys: Debtor, Chrysler Credit Corporation.
Attys: J.F. Valley, Stephen Hale.

In re Thompson, **ED** 86-109 (May 29, 1990) **Ch. 13**: **116 Bankr. 679**: (Debtor's attorney ordered to repay $4,500 as sanctions for Bankruptcy Code and ethical violations (conflict of interest, concealing creditor status in preparing petition, holding secret mortgage and recording in violation of stay, receiving compromise payment in violation of stay)).
Prtys: Debtors, Albert R. Hanna
Attys: Albert Hanna, Henry Kinslow, A.L. Tenney

In re Joseph A. Torcise d/b/a Joe Torcise Farms and TIJODEE, Inc., 1994 WL 162404, **S.D.Fla. (Miami)** 89-16287-BKC-AJC, 89-16286-BKC-AJC (February 23, 1994) **Ch. 11.** (Holding the following: creditor's anticipated expenses of liquidating repossessed collateral may not be charged to estate; under 506(b) attorneys fees not allowed to oversecured creditor to defend avoidance actions, not allowed in general case when inappropriately billed or grouped, but allowed as to appeal of confirmation order even though appeal unsuccessful; reducing debtor's surcharges on collateral as being either unreasonable or of no benefit to creditor under 506(c); ruling interest on indebtedness to accrue as provided in foreclosure judgment).Reversed by District Court and then Affirmed by 11th Cir.
Prtys: Debtor, Community Bank of Homestead
Attys: Robert Hustead, Martin Sandler, Hywel Leonard, Karen Kantner.

In re Rick Welch and In re Arkansas General Agency, 244 B.R. 802, **FS** 96-70128M & 70129M (February 10, 2000) **Ch. 7.** (Court would not authorize payment of attorneys fees from property of estate where attorneys filed complaint on behalf of debtor, netting estates settlement proceeds, but did so without prior court approval).
Prtys: U.S. Trustee; Trip Wetzel and John Lee-T; Debtor.
Attys: Trip Wetzel, John Lee, James O. Cox, Ronald W. Metcalf.

In re W.E. Tucker Oil Co., **ED** 84-11M, AP 86-544M (May 22, 1987) **Ch. 11**

(Attorney's fees paid to Debtor's former attorneys were not fraudulent conveyances or preferential payments because made in the ordinary course of business, but fees paid for post-petition work were ordered disgorged because attorney had a conflict of interest that precluded attorney from representing the estate).
Prtys: Debtor, Claude Hawkins, Trustee; R.J. Brown and R.J. Brown P.A.
Attys: R.J. Brown, Scott Vaughn, Paul H. Long, W.P. Hamilton, David Kirk, Jams Barker, Thomas Streetman, Griffin Smith.

In re W.E. Tucker Oil Co., **ED** 84-11M (August 8, 1986) **Ch. 11**: Attorney for DIP would not be allowed post-petition fees for work for DIP before Trustee appointed because of conflict of interest between the DIP and equity security holders which attorney also represented.
Prtys: W.E. Tucker Oil Company, unsecured creditors' committee.
Attys: R.J. Brown, Claude Hawkins, Hani Hashem, David Kirk, Griffin Smith, Don Eilbott, Basil Hicks, Rick Ramsay, Richard Griffin, Thomas Streetman, don Henry, W.P. Hamilton, Paul Long, James Barker.

In re Westside Creek Limited Partnership, **LR** 87-1987 (Aug. 10, 1988)**93 Bankr. 177, Ch. 11**: Attorney's fee application in Ch. 11; no adverse interest under section 327, but no order entered authorizing attorney to represent estate (discusses nunc pro tunc), grouping problem in billing, unauthorized interim payment under section 330(a).
Prtys: Gill Law Firm, Dwyer & Collora, Paine Webber Qualified Plan Property Fund III, Debtor.
Attys: Glenn E. Kelley, Charles Baker, John Jewell, Mark Polebaum, Andrew Owens, Isaac Scott, Tim Grooms, Michael Collora

In re Zepecki, 244 B.R. 802, **JO** 96-30125M (June 22, 2000) **Ch. 7: (**After Court ordered, pursuant to 105(a), Debtor's tax attorney to appear and account for funds he received from Debtor pre and post-petition, court ruled funds were property of estate and Attorney not entitled to be compensated from estate without court approval)AFFIRMED BY 8th Cir. Bap and 8th Cirmuit.
Prtys: Steven C.R. Brown, Jim Luker-T.
Attys: David Lewis

In re Robert Zepecki, 224 B.R. 907, **JO** 96-30125M (September 24, 1999) **Ch. 7.** (Awarding attorneys fees and travel expenses to trustee and creditor's attorney as sanctions under 105(a) when Debtor's attorney failed to appear at scheduled hearing)**.**
Prtys: Debtor, Fred Hart, Jim Luker-T, Guy Brinkley.
Attys: Fred Hart, Jim Luker, Guy Brinkley.

ATTORNEY LIEN

In re Thompson, **ED** 86-109 (May 29, 1990) **Ch. 13**: **116 Bankr. 679**: Debtor's attorney ordered to repay $4,500 as sanctions for Bankruptcy Code and ethical violations (conflict of interest, concealing creditor status in preparing petition, holding secret mortgage and recording in violation of stay, receiving compromise

payment in violation of stay).
Prtys: Debtors, Albert R. Hanna
Attys: Albert Hanna, Henry Kinslow, A.L. Tenney

AUTOMATIC STAY

In re Bearhouse, 84 B.R. 552, **ED** 87-42M, AP Nos. 87-134M, 87-139M, 87-186M and 87-209M (Jan. 22, 1988) **Ch. 7.** (Farmer with postpetition order of reclamation of grain sold to debtor-warehouseman was not entitled to all proceeds of trustee's sale of grain because reclamation order, entered without first obtaining relief from stay, was void even if creditor lacked notice of bankruptcy.)
Prtys: Claude Hawkins-Trustee, Ladd Farms, National Bank of Commerce of Pine Bluff, U.S. Dept. Of Agriculture, Farmers Rice Mill Co, U.F. Coleman, Monticello Gin and Elevator Co., Commodity Credit Corp., Edward Oltmann, Gary Shrum, Virgie and Virginia Ray, Aetna Casualty and Surety Co.
Attys: Wililam Meeks, Terry Wynne, Claude Skelton, Thomas Streetman, Bob Lawson, Larry McCord, William Ball, Overton Anderson.

In re Bibbs, **LR** 00-40266 (Aug. 20, 2002) **Ch. 13** (pursuant to section 362(b)(1), automatic stay does not stay criminal proceedings including enforcement of orders to pay fines and restitution for hot checks; if proceeding is veiled attempt to collect debt, proper remedy is injunction under section 105).
Prtys: Debtor Pulaski Co., City of Sherwood, Pulaski Co. Prosecuting Attorney's Office, Larry Jegley
Attys: Kathy Cruz, David Fuqua, Karla Burnett, Kimberly Burnett.

In re Brittenum & Associates, Inc., **LR** AP 86-50M, AP 86-305M (Feb. 26, 1987) **Ch. 7.** (Automatic stay applies to pending actions against the debtors but not co-defendants, even if the actions are filed in district court and in the same venue as the bankruptcy court.)
Prtys: Brittenum & Associates, Inc., Fred Halstead, Joh Brittenum, Melvyn L. Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware.
Attys: Mark Hampton, Steve Vaughn, Tripper Cronkhite, Steven Harbeck, Gary Corum, Robert Cabe, Richard Steinkamp, Michael Thomson, Richard D. Taylor, Peter Kumpe, John Jewell.

In re Brown, **LR** 92-390M (Dec. 14, 1992) **Ch.13** (granting relief from stay and allowing IRS right to setoff where refund and tax claim mutual and both prepetition)
Prtys: Internal Revenue Service
Attys: A.L. Tenney, Mike Knollmeyer, Raymond Mulera

In re Benefield, **HE** 102 B.R. 157 (July 13, 1989) **Ch. 7** (holding (1) that act to perfect ex-wife's lien in real property of debtor for child support arrearage was violation of automatic stay as to arrearage accruing post petition because real property became property of estate and (2) that debtor violated automatic stay by leasing property of estate to lessee; only trustee, after notice and hearing may lease property of estate).

Prtys: Debtor Dwight W. Benefield , Steve Davis and Viola Benefield Burroughs, Daniel K. Schieffler-Trustee.
Attys: James Luker, Baird Kinney.

In re Belford T. Brown, Sr, d/b/a Brown's Aero Service, 51 B.R. 51, **PB** 85-90M, AP 85-206M (June 7, 1985) **Ch. 7.** (generally the automatic stay does not stay a criminal proceeding, but Bankruptcy court may halt criminal hot check proceeding if a veiled attempt to collect a prepetition debt; court did not enjoin the proceeding because circumstances not extraordinary enough but did enjoin prosecutor from collecting restitution).
Prtys: Belford Brown, Fred Hampton, Sam Pope (prosecutor)
Attys: Bob Lawson, David S. Mitchell, Danny Thrailkill.

In re Joe T. Brown, **FS** 84-01, AP 84-192 (July 19, 1985) **Ch. 7.** (Ex-spouse filed motion for contempt because debtor failed to pay alimony after discharge denied; court has no jurisdiction once the discharge is denied and stay is automatically lifted as to actions against the debtor; court has no power to enforce another court's order.)
Prtys: Evaleen Brown, Joe T. Brown
Attys: Bob Keeter, Herman Hankins Jr., Ben T. Barry.

In re David Hodges Farms, Inc., **JO** 85-73M, AP No. 85-314M. (January 9, 1986) **Ch. 11**. (Ordering relief from stay to secured creditor to foreclose its lien in Mallard Farm because property had no equity and was not producing income so not needed for reorganization).
Prtys: John Hancock Mutual Life Insurance Co, David Hodges Farms, Inc.
Attys: David Hodges, Michael P. Coury, Tom B. Smith, Mark Lester, Marvin Thaxton, Fred Pickens, G.D. Walker, Darrell Dover, Donald Raney, James D. Sprott, Charles Coleman, Fletcher Jackson, Tim Grooms, Lance Miller, James O'Mara, Lindsey Fairly.

In re Endicott, 239 B.R. 529, **JO** 99-30499M (September 21, 1999) **Ch. 7.** (Bank granted relief from stay to liquidate security interest in proceeds of crop loss program even though proceeds had not been assigned by debtor to Bank; Bank entitled to relief where no equity in proceeds existed for benefit of unsecured creditors).
Prtys: Gary and Judy Endicott, MidSouth Bank.
Attys: Warren Dupwe, Jay Scholtens, James Luker--Trustee.

In re Eaton, **HE** 97-20382M (March 31, 1998) **Ch. 13.** (Debtor not entitled to damages or attorney's fees for violation of stay when vehicle repairman retained possession of debtor's car to perfect artisan's lien pursuant to state statute; Trustee's powers are subject to applicable law providing for perfection of a property interest in this manner so automatic stay doesn't prohibit such perfection; see also 362(b)(3)).
Prtys: Vickie Eaton, River City Body Shop.
Attys: J.F. Valley, David Solomon.

In re Gordon, **PB** 85425M, AP 86-441M (April 16, 1987) **Ch. 13.** (Section 362

does not stay act against the debtor to collect postpetition debt but does stay act against property of the estate when a Chapter 13 is pending.)
Prtys: Joe Gordon, El Dorado Trailers, Doyle Butcher
Attys: George Proctor, Walter Lopez, Jr.

In re Garland Coal & Mining Co., **FS** 84-71M (July 2, 1985) **Invol B.R**:(Denying motion for relief from stay to continue litigation against the Debtor in District Court and before National Labor Relations Board because trial on the merits of whether involuntary petition would be dismissed was pending).
Prtys: United Mine Workers of America, Debtor.
Attys: Isaac Scott, Allen Bird, Gary Ford, William Sullivan, William Hanrahan, Randall Vehar, Richard Noble.

In re Hoffinger Industriees, Inc., **HE** 01-20514M (Feb. 28, 2002) **Ch.11** (Court retroactively annulled the automatic stay to validate a postpetition notice of appeal filed by the Debtor in state court litigation pending in California; cross appeal right probably not lost until 30 days after notice of termination of the stay under section 108(c))
Prtys: Hoffinger Industries, Leesa Bunch.
Attys: Charles Camp, Lance Miller, James F. Dowden, Ben Arnold, Allen Bird, Charles Coleman.

In re Hoffman, 51 B.R. 42, **ED** 85-27M, 85-29M, 85, 30M, AP 85-318M, 85-320M (May 30, 1985) **Ch. 7, 11:** (It is not a violation of the automatic stay for a bank to place administrative freeze on debtors' demand accounts upon receipt of knowledge of filing of bankruptcy; bank would not be granted relief from stay to exercise right of set off if adequate protection for use of cash collateral could be offered by the debtors.)
Prtys: Debtors Charles Hoffman, Craig Shackleford, Craig Shackelford Farms, Portland Bank, National Bank of Commerce of Pine Bluff.
Attys: Isaac Scott, Thomas Streetman, Joseph Strode.

In re Barry Hudspeth, **LR** 85-1439M, AP 85-509M (March 26, 1986) **Ch. 7.** (relief from automatic stay not granted to ex-spouse to pursue pending contempt action against debtor in state court where state court refused to dismiss contempt action because ex-spouse did not fully explain to state court that action was in violation of the automatic stay and ex-spouse had remedy in bankruptcy court).
Prtys: Barry Hudspeth, Jenna Maria Hudspeth.
Attys: Geoff Treece, Dan Harmon, Basil Hicks, Jr.

In re Jacqueline P. L'Heureux, 04-6060 (Feb. 25, 2005): **BAP affirmed** bankruptcy court's bench ruling that creditor's six-day delay in removing notice of foreclosure sale cancelled after debtor filed for bankruptcy was not a willful violation of the automatic stay under section 362(a)(1); even if there was a violation, the debtor failed to prove damages for emotional distress; granting of a motion to dismiss at end of plaintiff's case is authorized by F.R.Civ.P. 52 and F.R.B.P. 7052.
Prtys: Jacqueline L'Heureux, Homecomings Financial Network
Attys: Robert Lowry, Harry Light

In re Gregory L. Latimer, **LR** 00-43630, AP 02-1114 (Aug. 22, 2002) **Ch. 7**: (Discharge injunction under sections 727 and 524 did not enjoin determination of dischargeability of alimony or support debt under 523(a)(5) by bankruptcy or state court, which has concurrent jurisdiction, even if Debtor listed debt as dischargeable on his petition; seeking dischargeability and entry of judgment after discharge did not violate stay which was no longer in force as to property of the debtor after discharge under section 362(c)).
Prtys: Debtor, Dan West, Bill Flannery
Attys: Paul Schmidt, Michael Reif.

In re Darrow Linn, **HE** 82-72M, CMS 85-213M (August 12, 1985) **Ch. 7** (Relief from stay granted for creditors to dispute lien priorities in state court; outcome will not affect unsecured creditors).
Prtys: US Commodity Credit Corporation, Staple Cotton Discount Corp.
Attys: Phil Hicky, Chalk Mitchell, James C. Luker, Doug Chavis, Martha Strother.

In re Minnis, **PB** 89-30235 (Aug. 3, 1990) **Ch. 12. (**Objections to confirmation of Ch. 12 plan sustained: unfair discrimination in one class of claims, inappropriate interest rate without evidence of market rate of interest, liquidation analysis, discussion of misc. provisions contra to Code would result in violation of automatic stay).
Prtys: Debtors, Farm Credit Bank
Attys: Angela Baxter, Gerald Coleman

In re Edward P. Molitor, 183 B.R. 547, **HE** 93-20101M, AP 94-2007 (March 15, 1995) **Ch. 7.** (Denying defendant's motion for summary judgment on grounds of res judicata and collateral estoppel; voiding state court judgment finding Debtor's mother transferred her property to his spendthrift trust and removed it from her estate such that it was out of reach of his creditors; judgment was entered after Debtor was in bankruptcy and in violation of the automatic stay).
Prtys: Daniel Schieffler-T; Pulaski Bank and Trust Co. as Trustee for Edward-Megan Trust; Molly Molitor as trustee of the Molly-Andria Trust.
Attys: Warren Dupwe, James Luker, Raymond Abramson.

In re O'Connor, **JO** 83-225 (June 11, 1984) **42 Bankr. 390; ch. 13**: (Taking of default judgment in garnishment proceeding violated automatic stay, was wilful and would result in damages, costs and attorneys fees from creditor to debtor).
Prtys: Debtors, Methodist Hospital of Jonesboro
Attys: Gary Johnson, James Lyons.

In re James & Sarah Rhodes, **FA 147 B.R. 492** (June 23, 1992) **Ch 7.** (IRS in willful contempt of automatic stay by refusing to discontinue its postpetition tax lien until debtors agreed to convey refund checks in partial payment). AFFIRMED, **155 B.R. 491**, District Court (Feb. 18, 1993).
Prtys: Debtors, I.R.S.
Attys: John D. Russell, John T. Lee-T, Stephen E. Adams.

List of Topics

In re Stafford, **LR** 84-98M (May 20, 1985) (Court refused to enjoin municipal judge and prosecutor from prosecuting debtors in criminal proceedings because not stayed by automatic stay under 362(b)(1)).
Prtys: Debtors, Hon. Edwin Keaton, Ralph Faulkner
Attys: Henry Kinslow, William Randall Wright

In re Jerry and Linda Stewart, **LR** 97-43241M (March 31, 1998) **Ch. 13**. (Appeal by a debtor of a judgment adverse to the debtor is subject to automatic stay; however, Debtor's motion to void its efforts at appeal was moot because parties had received relief from stay, nunc pro tunc, before appeal taken).
Prtys: Debtors, Norton Automotive Enterprises, Allen Norton, and Dan Kennedy
Attys: Grisham Phillips, Richard Kalkbrenner.

In re Thompson, **ED** 86-109 (May 29, 1990) **Ch. 13**: **116 Bankr. 679**: Debtor's attorney ordered to repay $4,500 as sanctions for Bankruptcy Code and ethical violations (conflict of interest, concealing creditor status in preparing petition, holding secret mortgage and recording in violation of stay, receiving compromise payment in violation of stay).
Prtys: Debtors, Albert R. Hanna
Attys: Albert Hanna, Henry Kinslow, A.L. Tenney

In re Marilyn Ann Terry, **HE** 95-20191M, AP 96-2003M (April 16, 1997) **Ch. 13.** (Debtor denied damages and attorney's fees under 362(h) when Debtor's complaint for turnover of vehicle did not allege and evidence did not prove willful violation of automatic stay).
Prtys: Debtor, Chrysler Credit Corporation.
Attys: J.F. Valley, Stephen Hale.

In re W.E. Tucker Oil, Inc., **ED** 84-011M, (Sept. 18, 1984) **Ch. 11** (**42 Bankr. 897**): Relief from automatic stay would not be granted to bank despite that there was no equity in property and property not needed for reorganization where issue existed as to transfer of certain liens from the DIP to the bank.
Prtys: First State Bank of Crossett, Debtor in Possession, Portland Bank-Intervenor
Attys: R.J. Brown, Richard E. Griffin, Thomas Streetman

In re Wayne Williams, **JO** 83-137M, CMS No. 85-514M (July 19, 1985): **Ch. 11**: Order denying relief from stay on condition that debtor get casualty insurance to protect bank's interest in property of estate and file all schedules and disclosure statement and plan within 20 days.
Prtys: Cotton Exchange Bank, Debtor
Attys: Greg Hopkins, Joseph Calvin

AVOIDANCE

In re Roger Clifton and Fannie Lynne Jackson, **ED**, 265 B.R. 176 No 00-11532M, **Ch. 7** (June 26, 2001) (court sustained Trustee's objection to Bank's motion for surrender of collateral; Bank was unperfected under state motor vehicle laws and its security interest could be avoided under 544). Prtys: William Meeks-Trustee,

Regions Bank
Attys: William Meeks, John Lightfoot, Michael Landers.

In re Riley, **LR** No. 01-42071 (August 22, 2003) **297 B.R. 122,** AP 02-1364: Trustee could avoid Debtor's payments on credit card pursuant to section 547(b); Affirmative defense of contemporaneous exchange for new value under 547(c)(1)not applicable, but 547(c)(4) might have been available if pleaded.
Prtys: Richard Cox-Trustee, Kone Employees Credit Union
Attys: Richard Cox, Wade Hodge

In re Roberts, **LR** 02-1345, 2003, **Ch. 7**: Under article 9-302(3), only way for creditor to perfect security interest in automobile not held as inventory by debtor is to file under the state Motor Vehicle Act; Act gives trustee, as perfected judgment lien creditor under section 544, priority over liens not perfected under the act; bank's security interest unperfected under Act may be avoided by Trustee.
Prtys: Randy Rice-Trustee, Twin City Bank
Attys: Michael Knollmeyer, Wade Hodge

In re Vincent Gaines Implement Co., Inc., **LR** 86-30, AP 86-59M (Aug. 5, 1986)**71 Bankr. 14, Ch. 11**: Incorrect continuation financing statement was not seriously misleading and lien not subject to avoidance by Dip under section 544.
Prtys: Debtor, U.S. Small Business Administration
Attys: Stephen Gershner, Katherine McGovern, Michael Price, Doug Chavis.

BAD FAITH

In re B&G Sand & Gravel Co.**, FS** 86-200M (June 3, 1987) **Ch. 7** (dismissing creditors involuntary petition for lack of undisputed claims required to commence involuntary bankruptcy.)
Prtys: K&K Oil Co., Max Denadel, Ark. Valley Electric Cooperative, Welsco Inc., Perkins & Associates, Rushing & Mason Eqpt. Co., Electirc Center Inc., Mitchell Machinery Co.
Attys: Herschel Cleveland, Jan Nielsen, Frank Barker, F.J. Garner, Robert Pummill

In re Garland Coal & Mining Co., 67 B.R. 514, **FS** 84-71M (July 18, 1986) **Invol. Ch. 7:** (Involuntary Petition not filed in bad faith; debtor had fewer than 12 eligible creditors so that one creditor holding unsecured claim of $5000 or more and not subject to bona fide dispute was sufficient to bring petition)
Prtys: Debtor, Trustees of United Mine Workers of America, 1950 Pension Trust, 1974 Pension Trust, 1950 Benefit Plan and Trust, International Union united Mine Workers of America.
Attys: Allen Bird, Thomas Thrash, Richard Noble, Joel Pelofsky, Isaas Scott, Gary Ford, Robert Gallagher.

In re MacMillan Petroleum, **ED** 87-149M, AP 88-392, 88-433, (July 24, 1990) **Ch. 7** (Lessor (Moore & Munger) of debtor's pipeline system liable for reasonable rent even though prepetition lease rejected because trustee did not assume it within

60 days. Lessor was entitled to offset repairs from rentals. Lessor was not required to pay prejudgment interest for time it failed to make lease payments because there was no bad faith. Division order agreement was not executory contract and trustee did not have to assume it. Lessor liable for balance of purchase price of division orders since trustee's breach was not material).
Prtys: Moore & Munger Marketing and Refining, Claude Hawkins-Trustee, MBank Dallas
Attys: Thomas Williams, Peter Franklin, Charles Camp, Derrell Dickens, Bobby Shepherd.

In re Manes, **PB** 85-330 (June 25, 1986) (**67 Bankr. 13**) **Ch. 13** (Malicious conduct was not bad faith sufficient to warrant denial of confirmation of Ch. 13 plan; plan was not feasible).
Prtys: Debtors, Harvey Jones.
Attys: Thurman Ragar, Jr., Fed E. Bosshart

In re John Samuel Marlar, **ED** 98-11358, AP 02-7067
Feb. 2, 2004, 02-1185, Amendment of Judgment of Jan. 23, 2004, under F.R. Civ. Proc. 59, **District Court, Judge Barnes**: District Court erred in finding that no local rule exists to allow Bankruptcy court to dismiss an appeal where transcript has not been lodged. Local rule exists (Local Rule 83.1 (II)(d)(A))but provides that the reconsideration of the dismissal must be referred to the district court; also, there was no evidence of bad faith or prejudice to the appellee.

In re Twila Williams, **LR** 83-626 (Aug. 17, 1984) **42 Bankr. 474**: **Ch. 13** debtor's proposal to pay back 37% of student loans demonstrated bad faith warranting denial of confirmation.
Prtys: Debtor, University of Arkansas
Attys: Ray Trammell, Robert DeGostin, Hubert W. Alexander

In re Zenone, **LR** 99-44146M (June 6, 2002) **Ch. 7**: (Debtor could not amend exemptions to include an IRA account, pursuant to section 522(d)(10) and BR Rule 1009, that was not previously scheduled as exempt because of bad faith and prejudice to creditors and trustee).
Prtys: Debtor, James Dowden, Trustee; Sherri Burks.
Attys: Paul Budd, James Dowden, Scott Vaughn.

BALLOT

BONA FIDE DISPUTE

In re B&G Sand & Gravel Co.**, FS** 86-200M (June 3, 1987) **Ch. 7** (dismissing creditors' involuntary petition for lack of undisputed claims required to commence involuntary bankruptcy.)
Prtys: K&K Oil Co., Max Denadel, Ark. Valley Electric Cooperative, Welsco Inc., Perkins & Associates, Rushing & Mason Eqpt. Co., Electirc Center Inc., Mitchell Machinery Co.
Attys: Herschel Cleveland, Jan Nielsen, Frank Barker, F.J Garner, Robert Pummill

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In re Garland Coal & Mining Co., 67 B.R. 514, **FS** 84-71M (July 18, 1986) **Invol. Ch. 7:** (debtor had fewer than 12 eligible creditors so that one creditor holding unsecured claim of $5000 or more and not subject to bona fide dispute was sufficient to bring petition; pension trusts' claims were subject to bona fide dispute so trusts could not be counted as eligible creditors; burden of proof of bona fide dispute begins with prima facie case of creditors and then shifts to Debtor)
Prtys: Debtor, Trustees of United Mine Workers of America, 1950 Pension Trust, 1974 Pension Trust, 1950 Benefit Plan and Trust, International Union united Mine Workers of America.
Attys: Allen Bird, Thomas Thrash, Richard Noble, Joel Pelofsky, Isaas Scott, Gary Ford, Robert Gallagher.

BREACH OF CONTRACT

In re Acro Corporation, **FA** 86-46M (Aug. 26, 1987) Ch.11 (egg/chicken contract; finding no oral or implied contract for caring for chickens; also finding no agency relationship b/t PCA and ACRO; and finding no tortious inference w/ contract; mentions wrongful eviction claim)
Prtys: Central Production Credit Association (PCA)
Attys: Larry Froelich, Steve Tennant, Connie Clark, Richard Miller

In re Roy and Susan Crews, **LR** No. 04-14692M, **2005 WL 1420842 (**June 16, 2005): **Ch. 13**. (Ruling that Debtor's confirmed plan was not res judicata as to lack of insurance on real property being purchased under contract for sale but creditor's acceptance of payments for years knowing Debtor was unable to insure property pursuant to contract constituted waiver. Alternatively, creditor was equitably estopped from asserting breach of contract).
Prtys: Debtors, Estate of Kenneth Ryan
Attys: David Lester, Steven R. Smith

In re Hilyard Drilling Co. **ED** 85-10M, AP No. 86-715M (October 21, 1987) **Ch. 11** (Denying offeror's breach of contract claim when booster and compressor not sold with truck per agreement between trustee and buyer; no manifestation of assent as to the items; offeror's unilateral mistake as to the terms was not grounds to excuse the contract, absent fraud; trustee entitled to keep offeror's nonrefundable deposit but not entitled to liquidated or actual damages.).
Prtys: Ralph Mongeau, Isaac Scott, trustee
Attys: David Grace, David Powell, Audrey Evans, John Jewell, Isaac Scott, Don Henry.

In re Hoffinger Industries, Inc., **HE** 01-20514M (Sept. 27, 2004): Because judgment against Debtor's former president was based on tort of conversion and not on breach of employment contract, Debtor was not entitled to attorneys fees under state law.
Prtys: Brad Rinehart; Hoffinger Industries
Attys: Frederick Wetzel, Charles Camp, Lance Miller, Leisa Pulliam, Keith O'Gorman, Robert Wenbourne, Timothy Buckley.

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In re Tainter, **JO**. No. 99-31381M, AP No 00-3008, (Feb. 14, 2001) **Ch. 7.** (court held debt arising out of plaintiff's sale of convenience store business to debtor was dischargeable and not based on fraud under 523(a)(2)(A); without intent to deceive at time of making of contract, breach of contact is not fraud).
Prtys: Roy Tainter, Debtor; Ken Short; Short Stop Inc.
Attys: Scott Davidson, Jeannette Robertson.

In re MacMillan Petroleum, **ED** 87-149M, AP 88-392, 88-433, (July 24, 1990) **Ch. 7** (Lessor (Moore & Munger) of debtor's pipeline system liable for reasonable rent even though prepetition lease rejected because trustee did not assume it within 60 days. Lessor was entitled to offset repairs from rentals. Lessor was not required to pay prejudgment interest for time it failed to make lease payments because there was no bad faith. Division order agreement was not executory contract and trustee did not have to assume it. Lessor liable for balance of purchase price of division orders since trustee's breach was not material).
Prtys: Moore & Munger Marketing and Refining, Claude Hawkins-Trustee, MBank Dallas
Attys: Thomas Williams, Peter Franklin, Charles Camp, Derrell Dickens, Bobby Shepherd.

BURDEN OF PROOF

In re Darrwin Anthony Ben, **LR**, 03-17928 (March 18, 2004) **Ch. 13**: Notice of foreclosure met requirements of statute; Debtor did not meet burden of proof to show that description of the property was not attached to deed of trust on file at clerk's office; Debtor failed to meet burden that Bank was not the beneficial owner or that the Debtor was not in default.
Prtys: Debtor, Provident Bank
Attys: Henry Means, Kimberly Burnette

In re Blevins, **FA** 91-614M (Sept. 9, 1992) **Ch.13, 150 B.R.444** (no credible evidence of value of collateral so ruled on objection to confirmation by determining burden of proof; creditor objecting to confirmation has burden of proof).
Prtys: Bank of Ozark and Charles Blevins
Atty: James Mainard, Charles Chadwick, A.L. Tenney, Marshall Evans

In re Bonds Lucky foods, Inc., No. 1, 76 B.R. 664, **HE** 85-10M (May 13, 1986) **Ch. 11.** (Finding attorneys would not be compensated for unnecessary time spent by law clerks and paralegals, unnecessary prep work for case conference, overhead expenses including secretarial work, messenger service, clerical tasks; burden of proof as to reasonableness of requested compensation is on applicant.)
Prtys: Bonds Lucky Foods, Inc.
Attys: Jim Smith, Susan Gunter.

In re Boston, 119 B.R. 162, **ED** 89-11066, AP No. 89-1508 (August 2, 1990) **Ch. 7.** (Debtor failed to carry burden to establish undue hardship because inability to repay loan was self-imposed and therefore could not discharge student loans;

court applied three step analysis including mechanical, good faith and policy tests.)
Prtys: Catherine Boston, Utah Higher Education Assistance Authority.
Attys: Henry Kinslow, Steven McMaster.

In re Burns, **JO** 89-30051M (January 12, 1990) **Invol. Ch. 7** (Burden of Proof of the basis for involuntary relief is on the petitioning creditors; the burden of proof as to the requisite number of petitioning creditors is on the debtor.)
Prtys: Debtor, Betty Ward, Danny Gibson.
Attys: Dick Jarboe, Warren Dupwe, Charles Tucker.

In re Curtis, **LR** LR 84-1187, 70 B.R. 712 (January 13, 1987) **Ch. 11** (Applying Johnson factors, court found attorney representing bankruptcy estate has the burden of proof as to reasonableness of compensation requested).
Prtys: Carla Curtis, R.J. Brown, Trustee.
Attys: John Jewell, Donald Henry, R.J. Brown, Basil V. Hicks.

In re Circle J Dairy, Inc., **FA,** 92 B.R. 832**,** No. 85-139 (Oct. 18, 1988) (Proof of claim is prima facie evidence of validity and amount of claim. Objecting party must produce evidence rebutting the claim. If rebuttal evidence is forthcoming, claimant must produce additional evidence to prove validity of claim by preponderance of the evidence.) REVERSED, 112 B.R. 297 (J. Waters).
Prtys: Debtor-in-possession, Dairy Farm Leasing Co., First National Bank of Fayetteville, Agristor Leasing.
Attys: William R. Gibson, Thomas Carroll, Mark Lindsay, James M. Dunn.

In re Cockrum, **ED**, 90-11193M, AP No. 91-1501 (July 2, 1993) **Ch. 7.** (Insufficient evidence to show that separate corporate entity was alter ego of the debtor such that individual debtor's discharge should be denied because the corporate entity's records are inadequate; statute refers to "Debtor's financial condition;" burden was on objecting creditor to show debtor failed to keep records that would reflect the recent financial condition of the debtor.)
Prtys: First National Bank of Crossett, Robert Cockrum, debtor.
Attys: Thomas Streetman, Richard Crockett, William Wright.

In re Danny Ray Crawford, **LR** 98-4341M, AP 98 4179, 236 B.R. 673 (July 26, 1999) **Ch. 7**. (Non-support divorce debt owed to former spouse was nondischargeable, as were attorneys fees nondebtor ex-spouse owed to her attorney to collect on the debt; nondebtor ex-spouse proved debt was of the kind specifed in section 523(a)(15) and debtor failed to carry burden of proof that he did not have the ability to pay or that the benefit of his discharge outweighed the burden to ex-spouse.)
Prtys: Danny Ray Crawford, Kathy Salerno.
Attys: Dale Finley, Mary Jane Pruniski.

In re Danny Thomas Properties III Limited Partnership, 231 B.R. 298, **LR** 96-42482M (March 18, 1999) **Ch. 11.** (secured creditor's objection to Ch. 11 plan sustained; plan should have reasonable prospect of success; BOP of feasibility on debtor; plan not feasible because it would generate a deficit over five year

period, could not fund deferred maintenance, and capital contribution was not forthcoming).
Prtys: Danny Thomas Properties III Ltd. Partnership, Beal Bank.
Attys: Gregory M. Hopkins, Joyce Bradley Babin.

In re Davis Industries, Inc., **PB** 83-56M, AP No. 85-515M (January 9, 1987). (In involuntary bankruptcy proceeding, Trustee had burden to establish every element of preference and defendants had burden as to affirmative defenses to preference).
Prtys: James Sanderlin, George Locke, E.A. Tucker d/b/a Davis Industries, Trustee--Thomas Streetman, First State Bank of Dermott.
Attys: Bynum Gibson, David Fuqua, John Shackleford, R.J. Brown, Teresa Wineland, Mary Scott.

In re Randy Dodd, TX. No. 96-14040M (September 8, 1997) **Ch 12.** (Overruling debtor's objection to attorney's fees of counsel for fully secured creditor; court found fees allowable under 506(b), reasonable and justified; applicant for attorneys fees has burden of proof as to reasonableness).
Prtys: Randy Dodd, Davenport Land and Cattle Co.
Attys: Terry Zelinski, Kimberly Tucker.

In re John Faucett, **LR** 85-617M (June 17 1988) **Ch. 11.** (Allowing IRS claim for penalties and interest over Debtor's objection when no argument offered by Debtor to contrary; Debtor argued against penalty for negligent failure to file in inconsistent position; bop to escape late file penalty is on debtor to prove no wilful neglect, and reasonable cause for failure to file.)
Prtys: John Faucett, I.R.S.
Attys: Michael Wilcove, Thomas McLain.

In re Farmer's Co-Op of Arkansas and Oklahoma, Inc., **FS** 84-046M (Oct. 23, 1984) **Ch. 11.** (Properly filed claim is presumptively allowed unless objected to by a party in interest who has burden of going forward with the evidence to rebut the presumption of validity).
Prtys: Farmer's Co-Op, Citizens Bank and Trust Co. Of Van Buren
Attys: Diane Mackey.

In re Thomas Freeman, **LR** 03-11514M (Aug. 5, 2003) **Ch. 13**: On objection to claim of contractor for work done on Debtor's home, Debtor carried his burden of going forward to rebut claim, shifting burden to contractor who failed to present evidence proving claim's validity.
Prtys: Debtor, Harold Washington
Attys: Robert Danecki, James W. Stanley

In re Gran, 108 B.R. 668, **L.R.** 87-146M (Nov. 27, 1989) **Ch. 13.(**Upon debtors' objection to I.R.S. claim, where debtor objecting to claim produces evidence rebutting claim, claimant must produce additional evidence to prove validity of claim by preponderance of evidence.)
Prtys: Debtors, I.R.S.
Attys: Michael Wilcove, Raymond Harrill.

In re Garland Coal & Mining Co., 67 B.R. 514, **FS** 84-71M (July 18, 1986) **Invol. Ch. 7:** (burden of proof of bona fide dispute begins with prima facie case of creditors and then shifts to Debtor)
Prtys: Debtor, Trustees of United Mine Workers of America, 1950 Pension Trust, 1974 Pension Trust, 1950 Benefit Plan and Trust, International Union united Mine Workers of America.
Attys: Allen Bird, Thomas Thrash, Richard Noble, Joel Pelofsky, Isaas Scott, Gary Ford, Robert Gallagher.

In re Hermitage Pink Tomato Marketing Association, Inc., **PB** 85-440M (June 5, 1986) **Ch. 7:** (petitioning creditors failed to carry burden of proof as to value of unsecured portion of secured claim such that provisions of 303 were not met and petition would be denied; debtor could petition the court for damages).
Prtys: Warren Bank and Trust; First State Bank of Warren, Debtor.
Attys: Joseph Strode, Charles Baker.

In re Guy Jones, Jr., 193 B.R. 503, **LR** 92-42755M (August 18, 1995) **Ch. 7.** (In new trial on creditors' objection to claim of homestead exemption, court held creditors did not carry burden of proof to show that debtor had present intent to abandon homestead at time of filing petition; although he was in negotiations before and after bankruptcy filing to sell house, this was evidence of intent to abandon homestead in future and not present intent to abandon).
Prtys: Mary and Christopher Jones, Debtor, Trustee
Attys: Judy Henry, Charles Baker, Richard Ramsay.

In re Mastercraft Graphics, Inc., 157 B.R. 914, **S.D. Fla. (Miami)** 91-23768-BKC-AKC; AP 92-0682 (August 13, 1993) **Ch. 7.** (Finding insider preference could be avoided if it benefitted inside guarantor of debtor's obligation to supplier; irregular or unusual payments not in ordinary course of business; party asserting o.c. exception has burden of proof). **Affirmed** by District Court, S.D. Fla.
Prtys: Debtor, Signal Capital Corp.
Attys: Corali-Lopez-Castro; Susan Lasky

In re Mendenhall, **ED** 84-052 (Aug. 13, 1985 (**54 Bankr. 44**) **Ch. 13** (allocation of burden of proof in objection to confirmation of Ch. 13 plan; burden of persuasion always on objecting creditor; burden of production shifts; creditor did not prevail on valuation issue so plan would be confirmed).
Prtys: Debtors, General Electric Credit Corporation
Attys: Henry Kinslow, Mel Sayes.

In re Mid-South Cabinet & Millwork Inc., **LR** 86-1773M, AP 88-511 (Oct. 24, 1990) **125 B.R. 16**, **Invol ch. 7** (Trustee entitled to judgment against creditor in preference action; creditor failed to establish affirmative defense of ordinary course of business but was entitled to offset subsequent unsecured credit extended to debtor).
Prtys: Trustee-James Allen Brown, Heigel Lumber & Hardware
Attys: Geoffrey Treece, George F. Hartje.

In re Franklin Doty Miller, **FA** 89-15098M, AP 90-5506 (March 8, 1991) **Ch. 11**

(FmHA claimed a lien in equipment, which FmHA claims is property of the debtor. Creditors' committee argued that the equipment is property of the partnership; thus, FmHA does not have a valid lien in the equipment. The committee filed this AP against FmHA to recover a payment of $22,023.00 as a postpetition transfer to an unsecured creditor. Court Held: the creditors' committee did not establish a prima facie case that the lien was invalid; complaint dismissed). REVERSED (J. Waters, 10-11-91, 91-5051)
Prtys: Debtor, Farmers Home Administration, Creditors Committee
Attys: Michael Fitzhugh, Paul Bowen, Don Taylor, Deborah Groom, Claude Skelton, Marilyn Byington, Jack Butt.

In re Leroy and Necie Randolph, **LR** 99-45183M (September 27, 2000) **Ch. 7**. (Denying U.S. Trustee's motion to dismiss Debtors' Ch. 7 petition for substantial abuse under 707(b); debtor's second home in Hot Springs was job-related; Trustee did not carry burden of showing that expenses were unreasonable).
Prtys: U.S. Trustee, Debtors.
Attys: Jim Hollis, Kathy Cruz.

In re Reed, **PB** 86-450 (Aug. 3, 1988) **95 Bankr. 626**: Fees for Ch. 11 debtor's attorney incurred in defending dischargeability complaint not compensable from estate because did not benefit estate. AFFIRMED (J. Woods), AFFIRMED (8th Cir. 890 F.2d 104)
Prtys: Roderick Reed, Debtor; FSLIC
Attys: Joel Taylor, Tim grooms, John Pruniski, Isaac Scott.

In re Ben Smith, **TX** 02-74250 (December 4, 2002) **286 B.R. 104, Ch. 13:** Objection to confirmation sustained where Debtor who filed Chapter 13 less than 180 days after former case dismissed had burden of showing eligibility predicated on proving that Debtor's prior case was not dismissed due to willful violation of court order.
Prtys: Debtor, MHC Financial Services, Inc.
Attys: Rodney McDaniel, Chris Frank

In re Thomas Sturdivant, **LR** 02-70130 (Feb. 6, 2003)**289 B.R. 392: Ch 7** debtor's obligation to ex-wife not in the nature of support under section 523(a)(5) but was nondischargeable under section 523(a)(15) because debtor failed to carry burden to show he lacked ability to pay or that the benefit of a discharge of the debt outweighed detriment to ex-wife.
Prtys: Debtor, Dana Michelle Strudivant (Cross)
Attys: David Harrod, Joseph Kolb

In re U.S.A. Inns, 151 B.R. 486, **HA** 89-13136, AP 89-3509 (Sept. 30, 1992) **Ch. 7:** (Bank failed to prove by preponderance of evidence that acceptance of late loan payments were in ordinary course of business; trustee could avoid payments as preference). **REVERSED** by Waters (Sept. 30, 92); 8th Cir. Affirmed District Court.
Prtys: Claude R. Jones-Trustee, United Savings and Loan Association.
Attys: Gail Inman-Campbell, Dennis Davis, Claude R. Jones, Steven B. Davis.

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In re Alfred and Sharon Whitson, **LR** 02-20854, **319 B.R. 614** (Jan. 19, 2005)
Trustee failed to carry burden of proof under BR Rule 4003 that proceeds from settlement of debtors' personal injury claims were not exemptible; proof did not show proceeds were not compensation for lost earnings or were not reasonably necessary for debtors' support as required by section 522(d)(11)(E).
Prtys: Debtors, Trustee-Richard L. Ramsay.
Attys: James O. Wyre, Richard L. Ramsay.

BUSINESS TRUST

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CASH COLLATERAL

In re Lake Hamilton Resort, Inc., **HS** 04-72002, (Sept. 14, 2004) Civil No.04-6063: Christmas Mountain v. Lake Hamilton Resort; DISTRICT COURT (JUDGE HENDREN) **DECLINED TO REVIEW** bankruptcy court's permission for debtor to use cash collateral and denial of adequate protection payments to Christmas Mountain; order was not final and not appropriate for interlocutory review under 28 U.S.C. § 158(a) and 1292.

In re Lifesaver Center, Inc. **LR** 85-1894M (August 5, 1986) **Ch. 11 (**DIP's motion to use cash collateral from rents and profits granted; Dip's status as perfected judgment lien creditor under 544 is superior to creditor's unperfected lien in rents and profits under UCC 9-312(5)(a)).
Prtys: Debtor in Possession, Worthen Bank & Trust Co, May Supply Co.
Attys: Charles R. Camp, James J. Glover, William Owen, Richard Crockett, David Jacobs, Gregory Hopkins, Richard Smith, Michael Smith, David Fuqua, Robert Jones, Pam Walker, George Ellis, Ed Moody, W.W. Elrod, Trip Wetzel, etc.

In re Mel-Hart Products, Inc.,**LR** 90-40399M (November 14, 1991) **Ch. 7** (court denied value of creditor's secured claim; no evidence that creditor advanced money after cash collateral order entered)**.**
Prtys: Randy Rice-T; Debtor, American Heavy Industries.
Attys: Charles Baker, Randy Rice, William Adkisson, Rita Brown Wells, Marilyn Byington, Charles Coleman.

CASH RENT

CAUSE

In re Mathis Ins. Agency, Inc., **LR** 84-1191, 1192
In re Clemothene Mathis, **LR** 84-1192M (May 29, 1985) **50 Bankr. 482, Ch. 7** (Debtors' Motions to dismiss Ch. 7 case denied; no showing of cause justifying dismissal, substantial evidence of fraud prompts court to refer case to U.S. Attorney)
Prtys: Debtors
Attys: David Grace

In re James and Dorothy Studdard, **159 B.R. 852**, **LR** 92-42707M (August 31, 1993) **Ch. 7**. (Dismissing case of debtors on motion of creditor when debtors failed to complete Ch. 11 plan and filed Ch. 7, spent $50k a year on children's autos and college while failing to pay unsecured creditors; finding debtors' bad faith was sufficient cause under 707(a)).
Prtys: Debtors, Pulaski Bank and Trust.
Attys: C.B. Blackard, Frederick Wetzel.

In re Westfall, **FS** 84-316 (June 14, 1985): Under 1104, court appointed trustee for cause, including fraud, incompetence and gross mismanagement of the

affairs of the debtor.
Prtys: Debtor-in-Possession
Attys: R.J. Brown, attorney for the estate.

Ch. 7

In re Avant, **ED** 86-67M (August 30, 1988) **Ch.7** (§ 523(a)(2)(A) complaint, fraud and false representation, plfs failed to prove by clear & convincing evidence, speculative oil venture, statements made not fraud)
Prtys: Jack Molnaird, Billy Sandifer, et al
Attys: Henry Kinslow, Ian Vickery, Eugene Bramblett, Claude Hawkins, David Duke

In re B&G Sand & Gravel Co.**, FS** 86-200M (June 3, 1987) **Ch. 7** (dismissing creditors involuntary petition for lack of undisputed claims required to commence involuntary bankruptcy.)
Prtys: K&K Oil Co., Max Denadel, Ark. Valley Electric Cooperative, Welsco Inc., Perkins & Associates, Rushing & Mason Ept. Co., Electric Center Inc., Mitchell Machinery Co.
Attys: Herschel Cleveland, Jan Nielsen, Frank Barker, F.J. Garner, Robert Pummill

In re Benefield, **HE** 102 B.R. 157 (July 13, 1989) **Ch. 7** (holding (1) that act to perfect ex-wife's lien in real property of debtor for child support arrearage was violation of automatic stay as to arrearage accruing post petition because real property became property of estate and (2) that debtor violated automatic stay by leasing property of estate to lessee; only trustee, after notice and hearing may lease property of estate).
Prtys: Debtor Dwight W. Benefield , Steve Davis and Viola Benefield Burroughs, Daniel K. Schieffler-Trustee.
Attys: James C. Luker, Baird Kinney.

In re Bennett **LR** 85-32M (April 10, 1987) **Ch. 7** (Finding incarcerated man was involuntary debtor with two creditors owed restitution for debtor's aggravated robbery; fraudulent conveyance as to fees paid to atty for services not yet rendered; preference as to fees paid from debtor to atty during preference period.
Prtys: Gary Bennett, Robert and Sandra Vowell
Attys: Allen Bird, Mark Riable, Michael Durham, Charles Davidson

In re Bradshaw, **ED** 83-65M (August 1, 1986) **Ch. 7.** (BOP of reasonableness of fee application is upon the applicant; court applies Johnson factors to find fees reasonable; court has an independent duty to investigate fees; attorneys fees and expenses incurred in Ch. 11 case converted to Ch. 7 are entitled to administrative expense status in Ch. 7).
Prtys: Debtor, R.J. Brown, Trustee Claude Hawkins.
Attys: R.J. Brown.

In re Boykin, **LR** 89-41214 (May 24, 1990) **Ch.7** Personal property acquired by

parties during marriage was held in tenancy by the entirety under Arkansas law and could be sold by the trustee under 363(h) in a proper adversary proceeding.
Prtys: Loran Boykin, Trustee
Attys: Charles Davidson, Randy Rice, James Smith, Garland Binns, Charles Camp, Robert Gross, Fred Bosshart.

(Other Ch. 7 cases not listed because list is too lengthy)

Ch. 9

Ch. 11

In re Answerfone, Inc., **LR** 83-842M (June 24, 1986) **Ch.11** (cramdown hearing; held equity security holder receiving not less than Ch.7; plan confirmed)
Prtys: Joe Limerick III
Attys: Charles Davidson, Geoff Treece, Griffin Smith, Patricia Nobles, Peter Heister, Briscoe Swan

(List too lengthy to list all Ch. 11s)

Ch. 12

In re Armstrong, **HE** 89-162M (April 18, 1991) **Ch.12** (objection to confirmation; present value; feasibility;market rate of interest; held plan not feasible)
Prtys: Farm Credit and FmHA
Attys: John Henry, Bill Adair, Kent Rubens

In re Batchelor, **HE** 87-134M (August 11, 1988) **Ch. 12** (Objection to confirmation of the plan for failure to provide for retention of lien, improper valuation and interest rate related to present value, unsustainable homestead exemption).
Prtys: Debtors, Federal Land Bank, the Small Business Administration, and Trustee.
Attys: David Carruth, Gerald Coleman, Bill Adair, Charles Tucker

In re Butler, **HE** 99-54M, (Nov. 4, 1988) **Ch.12, 97 B.R. 508** (Ch. 12 confirmation hearing; confirmation denied --objection to provision requiring release of lien sustained, creditor must retain lien or surrender collateral pursuant to § 1225(a); objection to provision not allowing lien on after acquired property overruled pursuant to § 552(a); objections to installments over 20 years, one overruled pursuant to § 1222 allowing deferred payments, one sustained because creditor will become unsecured; current market rate of interest is rate debtor would have to pay to commercial lender for similar loan § 1225; other plan provisions not confirmable because inconsistent with the Bankruptcy Code)
Prtys: First National Bank of Eastern Arkansas and Farm Credit Bank of St. Louis
Attys: Charles Baker, John Bridgforth, Gerald Coleman, David Solomon, A.L. Tenney

In re Tim Wargo & Sons, Inc., **PB** 86-474 (June 5, 1987) **74 Bankr. 469**, **Ch. 12**:

List of Topics

Receipt of rents from debtor's tenant farmer does not meet Ch. 12 eligibility requirements for family farmer. AFFIRMED (J. Reasoner 86 Bankr. 150) AFFIRMED (8th Cir. 869 F.2d 1128).
Prtys: Debtor, Equitable Life Assurance Society of the U.S.
Attys: Richard Alexander, William C. Adair, A.L. Tenney, Billy Hubbell.

In re Edmond Torelli, **LR** 04-23884 (Feb. 2, 2006 **)(2006 WL 490574)**: Court denied confirmation of **Ch. 12** plan because it failed to pay present value of creditor's claim with appropriate market rate of interest under section 1225(a)(5)(B)(ii); was not feasible in that debtor did not have sufficient disposable income to fund plan under section 1225(a)(6); however, debtor did meet eligibility requirements of family farmer under section 101(18).
Prtys: Debtor, Regions Bank
Attys: Michael Knollmeyer, Kimberly Burnett

(Other Ch. 12s not listed because list is too lengthy)

Ch. 13

In re Barnes, **PB** 84-359M (Jan. 28, 1987) **Ch.13** (sustaining objection to plan where modification to include postpetition, postconfirmation tax claim was redundant w/ original plan providing for payment of postpetition claims)
Prtys: Internal Revenue Service
Attys: A.L. Tenney, Charles Embry

In re Blevins, **FA** 91-614M (Sept. 9, 1992) **Ch.13, 150 B.R.444** (no credible evidence of value of collateral so ruled on objection to confirmation by determining burden of proof; creditor objecting to confirmation has burden of proof)
Prtys: Bank of Ozark and Charles Blevins
Atty: James Mainard, Charles Chadwick, A.L. Tenney, Marshall Evans

In re Bolin, **ED** 89-041M (Mar. 15, 1991) **Ch.13, 1991 WL 58389** (Objection to confirmation; held IRS could allocate lien to oldest taxes to maximize recovery; held debtor could not avoid judicial tax lien under § 522(f)(2); determined which taxes had priority status; prepetition interest is included in tax priority claim, penalties are not)
Prtys: Kenneth Bolin and Internal Revenue Service)
Atty: William Johnson, Michael Fitzhugh, Karen Osborne, A.L. Tenney

In re Dunlap, 215 B.R. 867, **HE** 95-20169M (July 16, 1997) **Ch. 13** (secured creditor objected to confirmation of third modified plan proposing to surrender vehicle to creditor and treat balance of debt as unsecured--court ruled this is not authorized by the code; Code permits plan modification after confirmation, but modification must be necessitated by unanticipated substantial change in circumstances to avoid preclusion by res judicata.)
Prtys: Markham and Lisa Dunlap, Chrysler Financial Corp.
Attys: Gregory Niblock, Faber Jenkins

List of Topics

In re McMullan, 196 B.R. 818, **ED** 94-11228M, AP 94-1516 (April 18, 1996) **Ch. 11.** (Mortgagee moved to foreclose on notes and mortgages secured by oil and gas leases and equipment in case removed to BR court; court allowed Trustee to sell property to be distributed pursuant to the Code; court held: no accord and satisfaction; no evidence of forgery; other indebtedness clauses valid to secure notes and bind debtors; no evidence of Mortgagee's disposal of collateral without owners' consent; no violation of Equal Credit Opportunity Act when Mortgagee required wife to sign notes since leases and equipment used as collateral were community property; wife acted in bad faith in subsequently filing a Ch. 13 when she had no income and her debt total made her ineligible for consumer reorganization).
Prtys: Debtors, National Bank of Commerce of El Dorado
Attys: Steve Gershner, Charles Camp, Michael Massey, Herman Ivester.

(Only selected Ch. 13's listed)

CHARLIE BAKER PROVISIONS

In re Butler, **HE** 99-54M, (Nov. 4, 1988) **Ch.12, 97 B.R. 508** (Ch. 12 confirmation hearing; confirmation denied --other plan provisions not confirmable because inconsistent with the Bankruptcy Code)
Prtys: First National Bank of Eastern Arkansas and Farm Credit Bank of St. Louis
Attys: Charles Baker, John Bridgforth, Gerald Coleman, David Solomon, A.L. Tenney

CHILD SUPPORT

In re Clarence and Frances Burnett, **ED** 01-90019 (Oct. 25, 2002) **Ch. 13 (**Objection to Conf. by child support creditor sustained where debtor did not propose to pay child support debt as required under 1322(a)(2); where debtor disputed claim, objection to claim must be lodged pursuant to Rule 3001).
Prtys: Debtors, West Va. Bureau for Child Support Enforcement.
Attys: Billy Hubbell, Paul D. Selby.

In re William Harold Watson, **HE** 04-10488, AP 04-1166 (Dec. 1, 2004) **(2004 WL 2755542)** under section 523(a)(18) and 42 U.S.C. § 456(b) of Social Security Act, Debtor's debt for child support was nondischargeable even though children were later proven through scientific testing not to be children of the debtor.
February 16, 2005: upon further stipulations by the parties, the court reconsidered and ruled the amount of the nondischargeable debt was the amount owed to the Office of Child Support and did not include the debt owed to the mothers of the children that were not children of the debtor.
Prtys: Debtor, Arkansas Office of Child Support Enforcement
Attys: Danny Glover, Paul Hopper

In re Joe and Dorothy White, 253 B.R. 253, **ED** 99-11777M, AP 11-1502 (September 13, 2000) **Ch. 7.** (arrearage on court-ordered child support payments are dischargeable because DNA tests proved children were not a child of the debtor).
Prtys: Debtors, Ouachita County Office of Child Support Enforcement.
Attys: William Meeks-T; Henry Kinslow, Andrew Best.

CHOICE OF LAW

In re Dollar Time Group, Inc., 223 B.R. 237, **S.D. Florida** 95-22816-BKC, RBR, AP 96-0380-BKC, RBR (July 20, 1998) **Ch. 7**. (Proceeding for breach of fiduciary duty was controlled by New York law because agreements specified that N.Y. law applied, N.Y. law had substantial relationship to parties and transactions, and N.Y. law was consistent with Florida law.)
Prtys: Kenneth Welt, Trustee; Dollar Time Group, Inc.: Joseph Sasson, Jeffrey Klansky.
Attys: Irwin Fingerit, Ronald Neiwirth, Arthur Rice.

In re MacMillan Petroleum Inc., **ED** 87-149M, AP 88-353M (June 6, 1990) (115 Bankr. 175) **Ch. 7.** (Summary judgment as to governing law denied. Summary judgment in favor of MCorp granted because MCorp, which held floating security interest in debtor's inventory, qualified as good faith purchaser for value and defeated equitable rights of reclaiming sellers).
Prtys: Debtors, Mcorp Management Solutions, Phillips Petroleum.
Attys: Derrell Dickens, Charles Coleman, Randal Wright, Trustee, Geoffrey Treece, Bobby Shepherd

CLAIMS LITIGATION

In re Acro Corporation, **FA** 86-46M (Aug. 26, 1987) **Ch.11** (allowing claim for rent involving egg/chicken contract; finding no oral or implied contract for caring for chickens; also finding no agency relationship b/t PCA and ACRO; and finding no tortious inference w/ contract)
Prtys: Central Production Credit Association (PCA)
Attys: Larry Froelich, Steve Tennant, Connie Clark, Richard Miller

In re Bancroft Cap Company, **LR,** 182 B.R. 538, No. 95-41058M (Feb. 24, 1995) **Ch. 11, Reversed, Wright, J.** (Debtor's plan set time limit for debtor's objections to claims; plan confirmed and debtor failed to object to creditor's claim within time limit; court could not reconsider, under 502(j), allowing debtor to object because no court order had been entered allowing or disallowing the claim; claim was allowed by section 502(a) and confirmation of plan, which was res judicata and was not timely appealed from.)
Prtys: Bancroft Cap Company, Bower and Bonanno Co.
Attys: Kimberly Tucker, Charles W. Baker.

In re Brittenum & Associates, Inc., **LR** AP 86-50M, AP 86-305M (Feb. 26, 1987) **Ch. 7.** (Plaintiff in the case had no right to jury trial; only right to jury trial in bankruptcy in claims litigation is in matters related to personal injury or wrongful

death.)
Prtys: Brittenum & Associates, Inc., Fred Halstead, Joh Brittenum, Melvyn L. Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware.
Attys: Mark Hampton, Steve Vaughn, Tripper Cronkhite, Steven Harbeck, Gary Corum, Robert Cabe, Richard Steinkamp, Michael Thomson, Richard D. Taylor, Peter Kumpe, John Jewell.

In re Brittenum & Assoicates, Inc., **LR**, AP 86-0305M (Sept. 28, 1988) **Ch. 7.** (Issues between Halstead and the debtor are claims litigation and therefore involve core proceeding over which bankruptcy court has jurisdiction.)
Prtys: Fred Halstead, John Brittenum, Melvyn Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware, Brittenum & Associates, Inc.
Attys: Jon Pruniski, Robert Roddey, Willis D. Cronkhite, Gary Corum, Richard Taylor, Michael Thompson, Peter Kumpe, Steve Vaughn, Anna Gibson, Philip Dixon, Mark Hampton, David Hodges, Charles Davidson, Jim Dowden, Ben Arnold, Webster Hubbell, Middleton Ray.

In re Circle J Dairy, Inc., **FA,** 92 B.R. 832**,** No. 85-139 (Oct. 18, 1988) (Proof of claim is prima facie evidence of validity and amount of claim; objecting party may not use proof of claim as evidence of invalidity since proof of claim is in the nature of a complaint) REVERSED, 112 B.R. 297 (J. Waters) (Proof of claim may be prima facie evidence of validity when used by claimant, and mere objection, without more, will not defeat claim. But facially defective proof of claim may also be evidence to support objecting parties' contention that claim is invalid).
Prtys: Debtor-in-possession, Dairy Farm Leasing Co., First National Bank of Fayetteville, Agristor Leasing.
Attys: William R. Gibson, Thomas Carroll, Mark Lindsay, James M. Dunn.

In re Phyllis Michele Dove-Nation, **318 B.R. 147, H.S., BAP** (Dec. 17, 2004): affirming the bankruptcy court which overruled objection to claim by debtor; proof of claim was prima facie valid; insufficient documentation is not a basis to disallow a proof of claim where there was no evidence debtor disputed claim. Rule 3001, 3002, 11 U.S.C. § 501, 502, 101(5), 101(10).
Prtys: Phyllis Dove-Nation, eCast Settlement Corporation
Attys: Barbara May, Robert Lowry, Kimberly Wood Tucker, Alane A. Becket.

In re Farmer's Co-Op of Arkansas and Oklahoma, Inc., **FS** 84-046M (Oct. 23, 1984) **Ch. 11.** (Properly filed claim is presumptively allowed unless objected to by a party in interest who has burden of going forward with the evidence to rebut the presumption of validity).
Prtys: Farmer's Co-Op, Citizens Bank and Trust Co. Of Van Buren
Attys: Diane Mackey.

In re Thomas Freeman, **LR** 03-11514M (Aug. 5, 2003) **Ch. 13**: On objection to claim of contractor for work done on Debtor's home, Debtor carried his burden of going forward to rebut claim, shifting burden to contractor who failed to present evidence proving claim's validity.
Prtys: Debtor, Harold Washington

Attys: Robert Danecki, James W. Stanley

In re Michael and Peggy Grimes, **JO** 98-31455M, AP No. 99-3044 (April 6, 2000) **Ch. 7.** (judgment for defendant in Debtors' objection to secured claim of Bank in not giving notice of right to rescind their loan agreement; Truth in Lending Act statute not applicable if debtor refinancing or consolidating loans.)
Prtys: Debtors, the Planters Bank.
Attys: Charles Gardner, Richard Rhodes.

In re Duane Long, **PB** 86-41 (Oct. 21, 1987) 83 Bankr. 579. **Ch. 7** (upon objection to claim, debtor/accommodation maker was debtor under UCC and entitled to notice of sale of collateral pursuant to section 9-504; creditor not giving notice of sale not entitled to deficiency judgment).
Prtys: Debtor; First National Bank of Dewitt.
Attys: Stephen Gershner, Russell Berry.

In re Mel-Hart Products, Inc., 136 B.R. 197, **LR** 90-40399M (November 13, 1991) **Ch. 7** (allowing administrative claim for post-petition rent since Trustee had constructive possession of entire premises and for postpetition insurance costs; holding administrative expenses of the Ch. 7 case have priority over those in the prior Ch. 11 case under 726(b))**.**
Prtys: Randy Rice-T; Debtor, FabuGlass.
Attys: Charles Baker, Randy Rice, William Adkisson, Rita Brown Wells, Marilyn Byington, Charles Coleman.

In re Mid-America Travel, **HE** 90-20060M (April 20, 1992) **Ch. 11.** (Creditor that acquired claim under equitable subrogation pursuant to section 507 was precluded from claiming the priority of the original holder in liquidating plan).
Prtys: First National Bank of Eastern Arkansas, debtor in possession.
Attys: Charles Baker, John D. Bridgforth.

In re National Transport Services, Inc., 156 B.R. 615, **FS** 90-12044M, AP 92-7673 (July 2, 1993) **Ch. 7.** (Denying jury trial to law firm as defendants in fraudulent transfer suit because firm had filed and withdrawn proof of claim; claims allowance is equitable in nature so firm submitted to equitable jurisdiction of the court which could not be revoked when claim withdrawn.)
Prtys: James Dowden-Trustee, Harper, Young, Smith, and Maurras, Don Smith, Tom Harper Jr., Walton Maurras, Robert Cohen.
Attys: James Dowden, Robert Ross, Robert Cohen II.

In re Donald Lynn Pierce, 02-24536, **LR, Ch. 13**
Nov. 15, 2004, 04-0040, **DISTRICT COURT (JUDGE WILSON) AFFIRMED** bankruptcy court's policy of granting objections to claims unless a response and request for hearing is filed within 30 days; creditor filed no response to objection to his claim but appealed on the basis that he had no evidentiary hearing as prescribed under section 502(b). Rule 9007 grants bankruptcy courts discretion to set the particularities of notice procedures. **Affirmed, 8th Circuit,** Jan. 25, 2005: section 102 defines "notice and a hearing" to authorize an act on negative notice

without hearing if notice is given properly and hearing not requested by a party in interest.
Prtys: Donald Lynn Pierce, Myron Roberts
Attys: John Ogles

Prtys: Donald Lynn Pierce, Myron Roberts
Attys: John Ogles

In re Herbert E. Russell, **ED** 84-58M (June 14, 1989) **Ch. 11.** (Creditors who sold stock to debtor and then made payments on delinquent loan secured by bank stock were subrogated to bank's claim against the debtor, except where creditor received bank stock in exchange for some payments; creditors had perfected security interest in bank stock where possession of instrument is perfection and creditors' bailee held stock for creditors). Affirmed by District Court.
Prtys: William Gibson-Trustee; Edward Snider, Richard Gibson.
Attys: Jill Jacoway, Charles Baker, Susan Gunter

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in Ch. 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

In re Herbert Russell, 109 B.R. 359, **ED** 84-58M (October 19, 1989) **Ch. 11.** (Trustee's objection to claim of vendor for deficiency from foreclosure sale sustained because trustee was not party to foreclosure action, so res judicata not applicable; claim was unconscionable because vendors paid only a fraction of value).
Prtys: William Gibson-Trustee, Furrow family.
Attys: William Gibson, Geoffrey Treece, Susan Gunter.

In re M & P Equipment Co., **LR** 84-455M, AP 85-46M (July 23, 1985). **Ch. 7. (**In determination of secured status of Bank's lien, Bank's security interest in Debtor's accounts did not include proceeds from settlement of Debtor's tort claim for negligence; collateral estoppel of state court judgment precluded characterizing judgment proceeds as accounts; security interest can't attach to judgment for tort claim under 9-104(h)(k)).
Prtys: Richard Smith-Trustee, Union National Bank
Attys: Mary Jane Pruniski, David Duke, Katherine McGovern.

In re Webb, **PB** 84-38 (March 10, 1987) **Ch. 13 (**If plan confirmed prior to deadline for filing proofs of claim and objections thereto, creditor is collaterally estopped from having claim allowed if it differs from claim's treatment in the plan, under 1327(a)).
Prtys: Debtors, John Deere Company, A.L. Tenney, Trustee

Attys: A.L. Tenney, Maurice Rogers, David Gunti

CLAIM, AMENDED

In re Wilson, **LR** 86-1422 (Aug. 8, 1989) **Ch. 13**: Amended claim of creditor allowed because debtor's plan created ambiguity regarding amount to be paid.
Prtys: Worthen Bank, Debtor
Attys: Charles Coleman, Ross Smith, A.L. Tenney, Trustee

CLAIM, IMPAIRED

In re Wild Turkey Ranch, Inc., **JO** 84-57 (October 9, 1985) **Ch. 11:** (court determined valuation of ranch, portion of which was to be deeded to satisfy impaired claim of secured creditor as indubitable equivalent; confirmation denied because plan didn't specify which portions of the ranch would be deeded to creditor.)
Prtys: Debtor, Wilheim Nursing Home, Inc.
Attys: David Hodges, Charles Coleman, John Burris, Marvin Thaxton.

CLASSIFICATION

In re Melvin and Wendy Bass, **LR** 00-42447M (November 6, 2000) **Ch. 13 (**Order allowing nondischargeable criminal restitution to be paid through plan even though the payments are modified, but restitution claim is not priority claim; plan may not unfairly discriminate as to other unsecureds in paying claim in full).
Prtys: Debtors, Roger Richmond
Attys: Randolph Satterfield, Lawrence Yancey.

In re Holthoff, 58 B.R. 216, **PB** 84-223M (Dec. 12, 1985) **Ch. 11.** (Reorganization plan contained no class of interest holders, did not provide any treatment of claim of interest which was next junior class to class of unsecured creditors; secured creditors with liens in different property or liens in same property but with different priorities were improperly classified together because claims not substantially similar.)
Prtys: Metropolitan Life, Debtors.
Attys: Patrick Hollingsworth, Rick Ramsay.

In re Huntsman Farms, Inc. **LR** 82-935-940 (Dec. 7, 1984) **Ch. 11**: (Numerous requirements for confirmation of Ch. 11 plan not met, including not meeting fair and equitable test and best interests of creditors test; not providing for class of interest holders; attempting to substantively consolidate several cases without explanation or disclosure or following the requirements of rule 1015).
Prtys: Huntsman Farms, Huntsman Farm Store, Huntsman Enterprises, Ralph and Olivia Huntsman, Wayne Huntsman, Harold and Maudie Huntsman, John Hancock Life Insurance Co., Northwestern National Life Insurance Co.
Attys: Susan Gunter, Jim Smith, Allen Bird, Thomas Thrash, Stanley Price, Edward Bisno.

In re N.S. Garrott, JO 83-215M; In re Eastern Arkansas Planting Co. JO 83-216M

(Dec. 7, 1984) **48 Bankr. 13**: Confirmation denied of **Ch. 11** plan calling for substantive consolidation of estates; plan faulty because incorrect classification of debtor partnerships, improper cramdown where present value of secured claim not paid at market rate; disclosure statement did not propose consolidation; attorneys for the two DIPs had conflicts of interest because they also represented interest holders of each estate).
Prtys: Debtors in Possession
Attys: Richard Frockt, James E. Smith

In re Reddell, **HE** 87-12M (August 31, 1987) **Ch. 12.** (Confirmation denied based on various plan provisions not in compliance with 1225 because of improper classification, improper subordination of liens, and other issues).
Prtys: Debtors; Farmer's Home Administration
Attys: Clarence Shoffner, William C. Adair, A.L. Tenney

In re Wallace, **FS** 84-256 (March 13, 1986) **61 Bankr. 54, Ch. 11**: Financing statements filed under trade name of debtors insufficient pursuant to 9-402 so creditor not perfected and lien subject to avoidance by DIP pursuant to section 544; Ch. 11 plan not confirmed because dissenting creditor not classified.
Prtys: Debtors in Possession, Case Credit Corporation
Attys: Ben Barry; Maurice Rogers.

COLLATERAL ESTOPPEL

In re Annie Marie Davis, **PB** 82-165M, AP 85-580M (September 17, 1986) **Ch.7**. (State court judgment against defendant-debtor did not make specific finding of fraud; judgment had collateral estoppel effect in subsequent dischargeability action for fraud as this was the only possible basis for the judgment and debtor did not prove otherwise).
Prtys: Pearl Suell, Annie Marie Davis
Attys: Angela Baxter, Andree Roaf, W.M. Dickinson, Margaret Turner Marshall.

In re William Horne, **PB** 85-365M, AP 86-157M (August 18, 1986) **Ch. 7**: (Motion for summary judgment granted as to murder victim's estate's dischargeability action against the debtor for debt arising from willful and malicious conduct; debtor's conviction for 2nd degree murder established the elements of willfulness and malice under theory of collateral estoppel; offensive collateral estoppel not available to other plaintiffs because debtor's liability for battery did not establish willfulness and malice.)
Prtys: Bill Michel, John Lock, Matthew Webre, Debtor.
Attys: Henry Means, Randall Morley, W.M. Dickinson.

In re Harr, **ED** 86-142M, AP 87-180M (June 29, 1988) **Ch. 11**:(Collateral estoppel did not apply to establish nondischargeability of debt arising from fraud where state court judgment standards differed and determination of fraud was not essential to the former judgment).
Prtys: Don Goodwin, David Brown, Alexander Kermendy, Debtors.
Attys: John Pou, Ian Vickery, Don Gillaspie, Don Goodwin.

In re M & P Equipment Co., **LR** 84-455M, AP 85-46M (July 23, 1985). **Ch. 7. (**In determination of secured status of Bank's lien, Bank's security interest in Debtor's accounts did not include proceeds from settlement of Debtor's tort claim for negligence; collateral estoppel of state court judgment precluded characterizing judgment proceeds as accounts; security interest can't attach to judgment for tort claim under 9-104(h)(k)).
Prtys: Richard Smith-Trustee, Union National Bank
Attys: Mary Jane Pruniski, David Duke, Katherine McGovern.

In re Franklin Doty Miller, **FA** 89-15098M, AP 90-5506 (March 8, 1991) **Ch. 11** (FmHA claimed a lien in equipment, which FmHA claims is property of the debtor. Creditors' committee argued that the equipment is property of the partnership; thus, FmHA does not have a valid lien in the equipment. The committee filed this AP against FmHA to recover a payment of $22,023.00 as a postpetition transfer to an unsecured creditor. Court H: the creditors' committee did not establish a prima facie case that the lien was invalid; complaint dismissed). REVERSED (J. Waters, 10-11-91, 91-5051)
Prtys: Debtor, Farmers Home Administration, Creditors Committee
Attys: Michael Fitzhugh, Paul Bowen, Don Taylor, Deborah Groom, Claude Skelton, Marilyn Byington, Jack Butt.

In re Joe and Dorothy White, 253 B.R. 253, **ED** 99-11777M, AP 11-1502 (September 13, 2000) **Ch. 7.** (arrearage on court-ordered child support payments are dischargeable because DNA tests proved children were not a child of the debtor; finding of non-paternity was necessary to state court's abatement of child support such that collateral estoppel would apply).
Prtys: Debtors, Ouachita County Office of Child Support Enforcement.
Attys: William Meeks-T; Henry Kinslow, Andrew Best.

In re Phillip Lynn Lloyd, 142 B.R. 866, **LR** 86-41880M, AP 88-332M (Feb. 12, 1992) **Ch. 7.** (debtor's criminal conviction collaterally estopped his defense in bankruptcy proceeding regarding false statement under oath and withholding info regarding his property; discharge denied).
Prtys: Rick Ramsay-Trustee, Debtor.
Attys: David Grace, Stuart Hankins.

In re Speight, 147 B.R. 489, **FA** 91-15648F, AP 91-5557 (June 23, 1992) **Ch. 7.** (debt to former partner-creditor was dischargeable because collateral estoppel not applied; state court judgment for creditor left unclear whether issues in the two cases were identical). Reversed, Judge Hendren.
Prtys: Debtor, Joe Laughter, Claude Jones-Trustee.
Attys: Jackson Butt, Jimmy Eaton.

In re Webb, **PB** 84-38 (March 10, 1987) **Ch. 13 (**If plan confirmed prior to deadline for filing proofs of claim and objections thereto, creditor is collaterally estopped from having claim allowed if it differs from claim's treatment in the plan, under 1327(a)).

Prtys: Debtors, John Deere Company, A.L. Tenney, Trustee
Attys: A.L. Tenney, Maurice Rogers, David Gunti,

CONFIRMATION

Ch. 11

In re Answerfone, Inc., **LR** 83-842M (June 24, 1986) **Ch.11** (cramdown hearing; held equity security holder receiving not less than Ch.7; plan confirmed)
Prtys: Joe Limerick III
Attys: Charles Davidson, Geoff Treece, Griffin Smith, Patricia Nobles, Peter Heister, Briscoe Swan

In re Bernard, **JO** 85-151M (November 5, 1986) **Ch 11** 70 B.R. 181 (ruling that plan to sell portion of creditor's real estate collateral and use proceeds to cure arrearage or deed portion of collateral to creditor in return for credit against the debt, altered prepetition legal rights of creditor and thus claim of objecting creditor was impaired and plan would have to satisfy cramdown provisions in order to be confirmed).
Prtys: Charles and Betty Bernard, Federal Land Bank of Jonesboro.
Attys: Ben F. Arnold, James Dowden, Ralph Waddell, Stephen M. Reasoner.

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **Ch. 11** (All 1129(a) requirements must be met in order to confirm a plan except 1129(a)(8) requiring all classes accept the plan or be unimpaired; if that provision not met, plan can be confirmed if cramdown standards of 1129(b) are met).
Prtys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Oregon Butler, 42 B.R. 777, **PB** 93-101 (June 15, 1984) **Ch. 11** (Confirmation of Ch. 11 plan denied, if plan can be confirmed only by cramdown, consideration of requirement that holders of secured claims retain their liens and unsecureds receive property of value equal to allowed amount of such claim must be given, and present value of both allowed amount of secured and unsecured claims, if jr. Classes are receiving property, must be paid; if claims are paid in future, interest must be paid; if debtors are solvent, allowed unsecured claim should include postpetition interest, unless creditor consents otherwise, and plan must pay at least as much as creditor would receive in Ch. 7.)
Prtys: Oregon and Lavelle Butler, John Deere Co, International Harvester Credit Corp., Massey Ferguson Credit Corp, Pioneer Production Credit Association, and the Federal Land Bank of St. Louis.
Attys: Jack Sims

In re Danny Thomas Properties III Limited Partnership, 231 B.R. 298, **LR** 96-42482M (March 18, 1999) **Ch. 11.** (secured creditor's objection to Ch. 11 plan sustained; plan should have reasonable prospect of success; BOP of feasibility

on debtor; plan not feasible because it would generate a deficit over five year period, could not fund deferred maintenance, and capital contribution was not forthcoming).
Prtys: Danny Thomas Properties III Ltd. Partnership, Beal Bank.
Attys: Gregory M. Hopkins, Joyce Bradley Babin.

In re El Ark Industries, Inc., 122 B.R. 87, **ED** No. 89-11-119M (September 20, 1990) **Ch. 11.** (Sustaining objection to confirmation of Ch. 11 plan proposing transfer of debtor's possibly polluted land to EPA; creditor could not be required to accept worthless real property in satisfaction of potential postpetition unsecured claim.)
Prtys: EPA, El Ark Industries.
Attys: Charles Baker, Peter Mounsey, Claude Hawkins, Henry Morris--Trustee.

In re E.I. Parks No. 1 Limited Partnership, 122 B.R. 549, **FA** 88-261M (Oct. 19, 1990) **Ch. 11**. (Finding that if plan proposes to pay objecting secured creditor in installments, present value of future steam of payments must equal secured claim, requiring interest at discount rate; discount rate was risk free rate determined by government securities rate plus added percentage points for risk; cramdown requirements only applied to secured portion of objecting creditor's claim; unsecured portion of objecting creditor's claim could not be placed in same class as secured portion because not substantially similar; owners of Ch. 11 debtor could retain interests without violating absolute priority rule over objection of dissenting creditors if they contribute property to debtor equal to or exceeding value of interest retained).
Prtys: E.I. Parks Ltd. Partnership, Shady Grove Associates, Western Hills Park.
Attys: Michael Reif, Katherine Gay.

In re Huntsman Farms, Inc. **LR** 82-935-940 (Dec. 7, 1984) **Ch. 11**: (Numerous requirements for confirmation of Ch. 11 plan not met, including not meeting fair and equitable test and best interests of creditors test; not providing for class of interest holders; attempting to substantively consolidate several cases without explanation or disclosure or following the requirements of rule 1015).
Prtys: Huntsman Farms, Huntsman Farm Store, Huntsman Enterprises, Ralph and Olivia Huntsman, Wayne Huntsman, Harold and Maudie Huntsman, John Hancock Life Insurance Co., Northwestern National Life Insurance Co.
Attys: Susan Gunter, Jim Smith, Allen Bird, Thomas Thrash, Stanley Price, Edward Bisno.

In re Landscape Associates, Inc., **LR** No. 85-663, 81 B.R. 485
(July 1, 1987) (Confirmation of **Ch. 11** plan denied because proposed interest rate was not market rate. See related District Court and Court of Appeals Opinions about collusive sale of property of the estate brought by Rick Ramsay) Trustee.
Prtys: Debtor, First Pyramid Life
Attys: Richard Crockett, Richard Taylor, Eugene Fitzhugh, William Owen, Robert L. Brown

In re N.S. Garrott, JO 83-215M; In re Eastern Arkansas Planting Co. JO 83-216M (Dec. 7, 1984) **48 Bankr. 13**: Confirmation denied of **Ch. 11** plan calling for substantive consolidation of estates; plan faulty because incorrect classification of debtor partnerships, improper cramdown where present value of secured claim not paid at market rate; disclosure statement did not propose consolidation; attorneys for the two DIPs had conflicts of interest because they also represented interest holders of each estate).
Prtys: Debtors in Possession
Attys: Richard Frockt, James E. Smith

In re Wallace, **FS** 84-256 (March 13, 1986) **61 Bankr. 54, Ch. 11**: Financing statements filed under trade name of debtors insufficient pursuant to 9-402 so creditor not perfected and lien subject to avoidance by DIP pursuant to section 544; Ch. 11 plan not confirmed because dissenting creditor not classified.
Prtys: Debtors in Possession, Case Credit Corporation
Attys: Ben Barry; Maurice Rogers.

Ch. 12

In re Armstrong, **HE** 89-162M (April 18, 1991) **Ch.12** (objection to confirmation; present value; feasibility; market rate of interest; held plan not feasible)
Prtys: Farm Credit and FmHA
Attys: John Henry, Bill Adair, Kent Rubens

In re Batchelor, **HE** 87-134M (August 11, 1988) **Ch. 12** (Objection to confirmation of the plan for failure to provide for retention of lien, improper valuation and interest rate related to present value, unsustainable homestead exemption).
Prtys: Debtors, Federal Land Bank, the Small Business Administration, and Trustee.
Attys: David Carruth, Gerald Coleman, Bill Adair, Charles Tucker,

In re Butler, **HE** 88-54M (June 8, 1989) C**h. 12** (Objection to confirmation, feasibility, whether debtor capable of effectuating a plan, plan not feasible).
Prtys: Farm Credit Bank of St. Louis and First National Bank of Eastern Arkansas
Attys:

In re Cupples Farms, **HE**, 128 B.R. 769, No. 90-55, AP 90-2017 (March 5,1991) **Ch 12** (Motion to reconsider relaxation of stay denied because debtor had no legal or equitable interest in real property being foreclosed upon; if title to real property is in partnership, conveyance executed by partner individually passes the equitable interest of the partnership under Arkansas law).
Prtys: Cupples Farms, Federal Land Bank of St. Louis.
Attys: Roy C. Lewellen; Keith Billingsley, William A. Waddell.

In re J.W. Gore, 113 B.R. 504, **LR** 88-2284M, CMS 89-489M, 89-675M and 89-570M (Dec. 20, 1989) **Ch. 12.** (Objections to confirmation sustained: Plan impermissibly provided the following: sell property and pay secured creditor or

buy replacement property without adequate protection to secured creditor and notice and opportunity to object; didn't provide creditor retain lien; permitted debtors to eliminate undersecured creditor's unsecured claim and determine amount of secured claim without notice or opportunity to object; allowed discharge after substantial performance of plan; allowed unlimited default period without notice to creditors and opportunity to object; allowed foreclosure without application to bankruptcy court; denied recourse to debtor individually).
Prtys: Debtors, Kansas City Life Ins. Co., Farmers and Merchants Bank of Des Arc., Travelers Ins. Co., U.S. Small Business Admin.
Attys: Lance Hanshaw, Phillip Hout, Robert Abney, David Henry, William Adair.

In re Harold and Cibul Johnson, **PB** 87-473M (September 28, 1988) **Ch. 12**. (Ruling Ch. 12 plan could not be confirmed because secured creditor's real estate collateral was undervalued).
Prtys: Debtors-in-possession, Merchants and Farmers Bank of Dumas.
Attys: Malcolm Bobo, Brooks Gill, Joseph Strode, Pat Harris.

In re John J. and Betty Plafcan, **HE** 87-30M; In re Plafcan Farms, Inc., **HE** 87-31M (Feb. 3, 1988 (**93 Bankr. 176**) **Ch. 12**: Consolidated Ch. 12 plan of individual debtors and corporation not confirmable; individual debtors not eligible under 101(17)(a) and 109(f).
Prtys: Debtors, A.L. Tenney-Trustee
Attys: A.L. Tenney, Charles Baker, William A. Waddell for Federal Land Bank.

Ch. 13

In re Barnes, **PB** 84-359M (Jan. 28, 1987) **Ch.13** (sustaining objection to plan where modification to include postpetition, postconfirmation tax claim was redundant w/ original plan providing for payment of postpetition claims)
Prtys: Internal Revenue Service
Attys: A.L. Tenney, Charles Embry

In re Blevins, **FA** 91-614M (Sept. 9, 1992) **Ch.13, 150 B.R.444** (no credible evidence of value of collateral so ruled on objection to confirmation by determining burden of proof; creditor objecting to confirmation has burden of proof)
Prtys: Bank of Ozark and Charles Blevins
Atty: James Mainard, Charles Chadwick, A.L. Tenney, Marshall Evans

In re Bolin, **ED** 89-041M (Mar. 15, 1991) **Ch.13, 1991 WL 58389** (Objection to confirmation; held IRS could allocate lien to oldest taxes to maximize recovery; held debtor could not avoid judicial tax lien under § 522(f)(2); determined which taxes had priority status; prepetition interest is included in tax priority claim, penalties are not)
Prtys: Kenneth Bolin and Internal Revenue Service)
Atty: William Johnson, Michael Fitzhugh, Karen Osborne, A.L. Tenney

In re Evelyn Long, **LR** 81-906M, CMS 86-80M (June 30, 1986). **Ch. 13.** (An

allowed, post-confirmation claim requires modification of the plan that meets confirmation requirements; creditor's claim allowed as filed unless debtor timely objects to claim).
Prtys: Debtor, Twin City Motors.
Attys: Jack Sims, Basil Hicks.

In re Mendenhall, **ED** 84-052 (Aug. 13, 1985 (**54 Bankr. 44**) **Ch. 13** (allocation of burden of proof in objection to confirmation of Ch. 13 plan; burden of persuasion always on objecting creditor; burden of production shifts; creditor did not prevail on valuation issue so plan would be confirmed).
Prtys: Debtors, General Electric Credit Corporation
Attys: Henry Kinslow, Mel Sayes.

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in Ch. 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

In re Ben Smith, **TX** 02-74250 (December 4, 2002) **286 B.R. 104, Ch. 13:** Objection to confirmation sustained where Debtor who filed Ch. 13 less than 180 days after former case dismissed had burden of showing eligibility predicated on proving that Debtor's prior case was not dismissed due to willful violation of court order.
Prtys: Debtor, MHC Financial Services, Inc.
Attys: Rodney McDaniel, Chris Frank

In re Elmer Smith, **ED** 03-74055, **Ch. 13** (Sept. 20, 2004) **315 B.R. 77**: Damages flowing from breach of lease assumed by debtor in first case but later rejected were administrative expense under 503(b)(1)(A), 364(g); debtor's second confirmed plan did not address lessor's claim for administrative expense sufficiently to satisfy due process so as to bar claim under res judicata.
Prtys: Debtor, General Electric Capital Corp.
Attys: John Phillips,

In re Grady Smith, 142 B.R. 862, **LR** 85-40055M, AP 91-4046 (February 4, 1992) **Ch. 13.** (IRS' claim was erroneously reduced by Trustee such that confirmation and discharge order were subject to collateral attack since reduction was effected without notice to IRS; confirmation order reducing claim cannot be substituted for objection to claim).
Prtys: Debtor, I.R.S., A.L. Tenney-Trustee.
Attys: Raymond Weber, Bill Adair, A.L. Tenney.

In re Johnny L. Vincent, **HE** 98-20387M (May 16, 2003) **293 B.R. 467: Ch. 13** debtor's objection tocreditor's claim would have had merit in that creditor failed to

object to a plan not providing interest on the claim or conforming to the code on residential mortgages and plan was confirmed, but Debtor's objection to the claim was overruled as a sanction for failing to comply with discovery under Rule 7037. Therefore creditor's objection to Debtor's modified plan was sustained.
December 1, 2003: Appeal to **BAP** dismissed for lack of jurisdiction; order denying modification of plan (like order denying confirmation of plan) is not a final order.
Prtys: Debtor, Fairbanks Capital Corp.
Attys: James F. Valley, Kimberly Burnett

CONFLICT OF INTEREST

In re Arkansas Communities, Inc., **HS** 80-22M (Oct. 18, 1985) **Ch.11** (denying objection to Mitchell Law Firm's fees on basis of conflict of interest; review of Johnson factors)
Prtys: Mitchell Law Firm, R.J. Brown
Attys: Bob Shults, R.J. Brown, Maurice Mitchell, Dick Crockett

In re Arkansas Communities, Inc., **HS** 80-22M (June 19, 1985) **Ch.11** (denying R.J. Brown's fee request based on conflicts of interest in case; discussion of fiduciary duties of DIP)
Prtys: Mitchell Law Firm, R.J. Brown
Attys: R.J. Brown, Maurice Mitchell, Herb Rule, Gary Garrett

In re Farmers Co-Op of Ark. And Okla., Inc., 53 B.R. 600, **FS** 84-46M (Sept. 9, 1985) **Ch. 7.** (Court disqualified Trustee from representing estate in suit against the Bank when Trustee's law partner was formerly on board of directors of bank; law partner was in confidential relationship with Bank such that disqualification had to be imputed to other members of the same law firm and conflict of interest was apparent; Trustee's co-counsel, in different firm was not disqualified).
Prtys: Trustee, Citizens Bank and Trust Co. Of Van Buren.
Attys: Thomas Robertson, Reuben and Proctor, Jerry Canfield.

In re Hoffman, 53 B.R. 564, **ED** 85-27M, 85-29M and 85-30M (Aug. 16, 1985) **Ch. 7.** (Disqualifying conflict of interest existed as result of counsel's simultaneous representation of Ch. 11 corporate debtor in possession and an individual equity security holder who was also a debtor in possession and who was also a creditor of the debtor corp).
Prtys: Debtor, National Bank of Commerce.
Attys: Isaac Scott, Joseph Strode.

In re N.S. Garrott & Sons, **JO** 83-215
In re Eastern Arkansas Planting Co., **JO** 83-216M (March 26, 1986) **63 Bankr. 189**, **Ch. 11**: On remand from District Court, Court clarified previous order as to why attorneys fees were reduced for conflict of interest in that same attorneys represented the two estates which were indebted to each other, as well as other

abuses.
Prtys: Debtors, Attorneys
Attys: Richard Frockt, James E. Smith

In re N.S. Garrott & Sons, **JO** 83-215
In re Eastern Arkansas Planting Co., **JO** 83-216M (July 23, 1985) **54 Bankr. 221**; **Ch. 11** (Attorney Fee application reduced because of conflict of interest, excessive fees and expenses, blended rate).
Prtys: Debtors in Possession, Richard Frockt, James E. Smith
Attys: Richard Frockt, James E. Smith

In re N.S. Garrott, JO 83-215M; In re Eastern Arkansas Planting Co. JO 83-216M (Dec. 7, 1984) **48 Bankr. 13**: Confirmation denied of **Ch. 11** plan calling for substantive consolidation of estates; plan faulty because incorrect classification of debtor partnerships, improper cramdown where present value of secured claim not paid at market rate; disclosure statement did not propose consolidation; attorneys for the two DIPs had conflicts of interest because they also represented interest holders of each estate).
Prtys: Debtors in Possession
Attys: Richard Frockt, James E. Smith

In re Christine A. Ragar, **LR**, 140 B.R. 889, No. 91-41490
(April 15, 1992) **Ch. 13**. (ct. held debtor's attorney in criminal contempt for continued representation after being removed by the court for conflict of interest in receiving and holding property of the estate for the Debtor to which attorneys had partial claim for attorney's fees). AFFIRMED 3 F3d 1174 (8th Cir. Aug. 30, 1993).
Prtys: Crockett and Brown, P.A.
Attys: Crockett and Brown, P.A.

In re Thompson, **ED** 86-109 (May 29, 1990) **Ch. 13**: **116 Bankr. 679**: Debtor's attorney ordered to repay $4,500 as sanctions for Bankruptcy Code and ethical violations (conflict of interest, concealing creditor status in preparing petition, holding secret mortgage and recording in violation of stay, receiving compromise payment in violation of stay).
Prtys: Debtors, Albert R. Hanna
Attys: Albert Hanna, Henry Kinslow, A.L. Tenney

In re W.E. Tucker Oil Co., **ED** 84-11M, AP 86-544M (May 22, 1987) **Ch. 11** (Attorney's fees paid to Debtor's former attorneys were not fraudulent conveyances or preferential payments because made in the ordinary course of business, but fees paid for post-petition work were ordered disgorged because attorney had a conflict of interest that precluded attorney from representing the estate).
Prtys: Debtor, Claude Hawkins, Trustee; R.J. Brown and R.J. Brown P.A.
Attys: R.J. Brown, Scott Vaughn, Paul H. Long, W.P. Hamilton, David Kirk, Jams Barker, Thomas Streetman, Griffin Smith.

List of Topics

In re W.E. Tucker Oil Co., **ED** 84-11M (August 8, 1986) **Ch. 11**: Attorney for DIP would not be allowed post-petition fees for work for DIP before Trustee appointed because of conflict of interest between the DIP and equity security holders which attorney also represented.
Prtys: W.E. Tucker Oil Company, unsecured creditors' committee.
Attys: R.J. Brown, Claude Hawkins, Hani Hashem, David Kirk, Griffin Smith, don Eilbott, Basil Hicks, Rick Ramsay, Richard Griffin, Thomas Streetman, don Henry, W.P. Hamilton, Paul Long, James Barker.

In re Westside Creek Limited Partnership, **LR** 87-1987 (Aug. 10, 1988)**93 Bankr. 177, Ch. 11**: Attorney's fee application in Ch. 11; no adverse interest under section 327, but no order entered authorizing attorney to represent estate (discusses nunc pro tunc), grouping problem in billing, unauthorized interim payment under section 330(a).
Prtys: Gill Law Firm, Dwyer & Collora, Paine Webber Qualified Plan Property fund III, Debtor.
Attys: Glenn E. Kelley, Charles Baker, John Jewell, Mark Polebaum, Andrew Owens, Isaac Scott, Tim Grooms, Michael Collora

CONSOLIDATION

In re Giller, **ED** 91-1647, appeal to **EIGHTH CIRCUIT** (April 23, 1992) **962 F.2d 796**: **Affirming** bankruptcy court and district court allowing substantive consolidation of six corporate debtors which shared common shareholder; post-consolidation, trustee could still avoid transfers by one debtor for benefit of another debtor.
Prtys: First national Bank of El Dorado, Walter J. Giller
Attys: Charles Camp, Thomas Streetman.

CONSTRUCTIVE TRUST

In re Cupples Farms, **HE**, 128 B.R. 769, No. 90-55, AP 90-2017
(March 5,1991) **Ch 12** (Constructive trust is equitable remedy imposed to confer on true owner of property equitable interest superior to legal title owner; equity will not intervene on behalf of party with unclean hands).
Prtys: Cupples Farms, Federal Land Bank of St. Louis.
Attys: Roy C. Lewellen; Keith Billingsley, William A. Waddell.

In re Gary and Lucille Dean, **ED** 90-11138M, AP 93-1502M (July 29, 1994) **Ch. 7.** (Finding assets of corporations and equity and improvements in various real properties were held by constructive trust for benefit of Trustee because funds were fraudulently obtained by the fiduciary from the debtors; corporation and were traced to improvements made by fiduciary to properties or to other corporations).
Prtys: William Randal wright--Trustee, Debtors, Hi-Tech Coatings, Denitia

Nichols, Robert Johnson, Ashley Investment Services, Inc., Genesis Development Corporation, Premier Industrial Coatings, Inc., Global Traffic Service, Inc., Global Industrial Supplies, Inc., Honorable Robert C. Vittitow.
Attys: Thomas Streetman, Billy Hubbell, Randal Wright.

In re Howell Enterprises, Inc., 105 B.R. 494, **HE** No. 88-170M (Sept. 8, 1989) **Ch. 11.** (Although funds were held by debtor subject to constructive trust in favor of plaintiff, defendant defeated trust as bona fide purchaser for value).
Prtys: Tradax America, First National Bank of Stuttgart, Debtor.
Attys: David Fuqua, Don. Henry, Michael Reif, Steven Shults, Baker Kurrus.

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

CONTEMPORANEOUS EXCHANGE EXCEPTION

In re McCrary's Farm Supply, **LR** 81-666M, AP 84-149M (November 1, 1985) **Ch 11**. (Motion for Summary judgement denied in preference action in which movant-defendant asserted contemporaneous exchange and new value exceptions).
Prtys: Creditors' Committee, Monsanto Co.
Attys: L. Judson Todhunter, Peter Heister, Scott S. Partridge, Isaac Scott, Jack Sims.

In re Riley, **LR** No. 01-42071 (August 22, 2003) **297 B.R. 122,** AP 02-1364: Trustee could avoid Debtor's payments on credit card pursuant to section 547(b); Affirmative defense of contemporaneous exchange for new value under 547(c)(1)not applicable, but 547(c)(4) might have been available if pleaded.
Prtys: Richard Cox-Trustee, Kone Employees Credit Union
Attys: Richard Cox, Wade Hodge

CONTEMPT

(Also see Criminal Contempt)

In re Boyd, **JO** 82-158M (July 2, 1985)(finding creditors in contempt because they coerced the Debtor to sign a note after his discharge in violation of the discharge injunction; defendants had actual notice of BR prior to discharge).
Prtys: James L. Cochren Sr. and Jr., Marion and Monica Boyd
Attys: Troy Henry, Joe Holifield

In re Bratton, **HA** 84-47M, **AP** 89-98M (Feb. 26, 1990) **Ch.7,** (motion for sanctions against Art Dodrill granted; also held Dodrill in criminal contempt during hearing and fined $100)
Prtys: Davidson Law Firm, Mitchell Law Firm, Art Dodrill
Attys: Charles Davidson, Art Dodrill, Mike O'Malley

In re Larry Evans, **LR** 85-376M, AP 85-335M (April 15, 1986) **Ch. 13.** (Holding defendant in contempt, fining and sanctioning for proceeding against Ch. 13 Debtor in state court to collect child support, maintenance, payments for insurance and medical bills; Court held violations of automatic stay are never excused because of erroneous advice of counsel).
Prtys: Larry Evans, Reba Evans
Attys: Arnold Goodman, Randy Coleman

In re Garland Coal & Mining Co., **FS** 84-71M (Dec. 16, 1985) **Invol. Petition**: (On motion for reconsideration of order sanctioning debtor and debtor's attorney for failure to comply with discovery order and misrepresenting terms of settlement and order of district court, court granted motion as to attorney and denied as to Debtor; attorney ordered to show cause why he should not be held in contempt; Feb. 20, 1986: Recommended findings to district court that attorney's pro hac vice status be revoked and attorney be fined for failure to comply with discovery order and misrepresenting previous district court order and settlement to bankruptcy court).
Prtys: Debtor, Richard Noble, Trustees of United Mine Workers of America.
Attys: Martin Thomas, Tom Thrash, Isaac Scott, Gary Ford, William Sullivan, William Hanarahan, Thomas McGowan, Richard Noble.

In re David and Mary Hopkins, 66 B.R. 828, **ED** 85-38M (August 5, 1987) **Ch. 13:** (holding that firing of debtor was based solely on bankruptcy filing in violation of statute, but contempt was not the proper remedy).
Prtys: Debtors, Bank of Bearden.
Attys: Jack Dickerson, Joseph A. Strode.

In re Hubbard, 70 B.R. 122, **LR** 82-451M, AP 82-1129M (Sept. 26, 1985) **Ch. 13.** (Recommending to district court that mortgagee be held in criminal contempt for violating court's order to repair damages to debtor's property resulting from eviction in violation to automatic stay; that mortgagee be fined sum equal to claim and that other sanctions be imposed).
Prtys: Debtor, Fleet Mortgage Co.
Attys: Andree Roaf, James Stanley.

In re Christine A. Ragar, **LR**, 140 B.R. 889, No. 91-41490
(April 15, 1992) **Ch. 13**. (ct. held debtor's atorney in criminal contempt for continued representation after being removed by the court for conflict of interest in receiving and holding property of the estate for the Debtor to which attorneys

had partial claim for attorney's fees). AFFIRMED 3 F3d 1174 (8th Cir. Aug. 30, 1993).
Prtys: Crockett and Brown, P.A.
Attys: Crockett and Brown, P.A.

In re James & Sarah Rhodes, **FA** 147 B.R. 492 (June 23, 1992) **Ch 7.** (IRS in willful contempt of automatic stay by refusing to discontinue its postpetition tax lien until debtors agreed to convey refund checks in partial payment. AFFIRMED, 155 B.R. 491, District Court (Feb. 18, 1993).
Prtys: Debtors, I.R.S.
Attys: John D. Russell, John T. Lee-T, Stephen E. Adams.

CONTINUATION STATEMENTS

(Also see Financing Statements)

CONTRACT ACTIONS

In re Acro Corporation, **FA** 86-46M (Aug. 26, 1987) **Ch.11** (egg/chicken contract; finding no oral or implied contract for caring for chickens; also finding no agency relationship b/t PCA and ACRO; and finding no tortious inference w/ contract; mentions wrongful eviction claim)
Prtys: Central Production Credit Association (PCA)
Attys: Larry Froelich, Steve Tennant, Connie Clark, Richard Miller

In re Dillon Construction Co., Inc., **LR** 88-789M, AP No. 88-217M (August 10, 1989), **Ch. 11.** (Finding evidence established Bank had breached agreement: Debtor and Bank had entered into a valid written line of credit agreement not superseded by later loan agreement; Bank not excused because agreement violated lending limits because Debtor didn't know of violation).
Prtys: Dillon Construction Co. Home Federal Savings and Loan, Schrader Construction, Pine Lake Country Club, Phyllis and Gerald Dillon.
Attys: R.J. Brown, Michael G. Smith, Walter Murray, Robert L. Brown, William L. Owen, Joe Bell, Steve Quattlebaum, Watt Gregory.

In re Larry Moyer Trucking Inc., **LR** 97-40968M, AP 98-4124
(September 9, 1999) **Ch. 11.** (In related proceeding, judgment for contractor on breach of contract claim against project developer; no accord and satisfaction when developer's agent partially paid contractor for extra work performed; Debtor recovered under theories of express and implied contract, quantum meruit, unjust enrichment).
Prtys: Debtor, White-Dates & Associates, Inc; J.C. and J.G. Thornton.
Attys: Richard Downing, David M. Powell, Allen W. Bird.

In re Rosalee Clara Moody, **FS** 90-12069, AP 2527M (July 14, 1992) **Ch. 7**
(Widow-ch. 7 debtor endorsed checks from Ch. 13 Trustee to deceased husband without authority; Ch. 13 Trustee's complaint against bank dismissed because no

direct cause of action for breach of warranty is created by virtue of 4-4-207; funds received by Ch. 7 trustee must be turned over to decedent's estate for proper administration).
Prtys: Royce Wallace, ch. 13 Trustee, Superior Federal Bank and Savings, Ben T. Barry-Ch. 7 Trustee.
Attys: James O'Hern, Rodney Mills, Rex Terry

In re National Hydro-Vac Industrial Services, **PB**, No. 01-50466M, **Ch 11, later 7** (June 15, 2004): **314 B.R. 753**: Upon motion for turnover of equipment by trustee, court held two pieces legally sold upon debtor's acceptance of buyer's offer but failure to remit proceeds in which defendant was to act as broker was conversion and defendant could not set off proceeds against debt to defendant; punitive damages were warranted under state law on conversion, but not due under section 362(h), willful violation of the stay, because debtor is corp.
Prtys: Trustee, Transamerica Equipment Financial Services, Federal Signal Corp.
Attys: Thomas Streetman, Stephen Gershner.

CONTRACT FOR DEED

In re Roy and Susan Crews, **LR** No. 04-14692M, **2005 WL 1420842 (**June 16, 2005): **Ch. 13**. (Ruling that Debtor's confirmed plan was not res judicata as to lack of insurance on real property being purchased under contract for sale but creditor's acceptance of payments for years knowing Debtor was unable to insure property pursuant to contract constituted waiver. Alternatively, creditor was equitably estopped from asserting breach of contract).
Prtys: Debtors, Estate of Kenneth Ryan
Attys: David Lester, Steven R. Smith

In re Irene Jones, 54 B.R. 697, **LR** 85-385M, CMS No. 85-438M (October 16, 1985) **Ch. 13.** (Ruling that land sales contract or contract for deed on the debtors' residence is not an executory contract to be treated under section 365(b)(1)(A),(B)(C), but is a security device warranting treatment as a long-term debt secured by a lien in the debtor's residence).
Prtys: Dan and Betty Thorpe, Debtor
Attys: M.W. Villines, Stephen Bennett.

In re Dipakkumar and Kokilaben Patel, **HS** 05-73715 Jan. 10, 2006: Court sustained creditor's objection to confirmation of **Ch. 13** plan but found contract for deed (contract for sale of real property) was unconscionable and would not be enforced.
Prtys: Debtor, Dale E. Kloss
Attys: Byron Rhodes, William P. Allison

List of Topics

In re Vee Jay, Inc., **FS** 86-407 (Sept. 25, 1987) **104 Bankr. 101, Ch. 11**: (Debtor's interest in escrow contract for sale of real estate was property of estate because of equitable defense. APPEAL DISMISSED (J. Arnold, 104 Bankr. 105))
Prtys: Ray and Maria Jones, Phoenix Inc., Debtor
Attys: Ben Core, Ben Barry

CONTRIBUTION

CONVERSION

In re Hoffinger Industries, Inc., **HE** 01-20514M (Sept. 27, 2004): Because judgment against Debtor's former president was based on tort of conversion and not on breach of employment contract, Debtor was not entitled to attorneys fees under state law.
Prtys: Brad Rinehart; Hoffinger Industries

Attys: Frederick Wetzel, Charles Camp, Lance Miller, Leisa Pulliam, Keith O'Gorman, Robert Wenbourne, Timothy Buckley.

In re National Hydro-Vac Industrial Services, **PB**, No. 01-50466M, **Ch 11, later 7** (June 15, 2004): **314 B.R. 753**: Upon motion for turnover of equipment by trustee, court held two pieces legally sold upon debtor's acceptance of buyer's offer but failure to remit proceeds in which defendant was to act as broker was conversion and defendant could not set off proceeds against debt to defendant; punitive damages were warranted under state law on conversion, but not due under section 362(h), willful violation of the stay, because debtor is corp.
Prtys: Trustee, Transamerica Equipment Financial Services, Federal Signal Corp.
Attys: Thomas Streetman, Stephen Gershner.

CONVERSION TO ANOTHER CHAPTER

In re Gaylen N. Johnson, **LR**, 262 B.R. 75, No 00-44103M, **Ch.7**. (April 18, 2001) (Court denied debtor's motion to convert to 13 upon Trustee's objection; 706(a) does not provide an absolute right to convert when extreme circumstances exist (minority view); here debtor's misconduct may have warranted denial of discharge under 727 and motion to convert was in bad faith.)
Prtys: Jim Dowden-Trustee, Gaylen Johnson-Debtor
Attys: Jim Dowden, Gregory Harris.

In re Guy Hamilton Jones, Jr., 175 B.R. 994, **LR** AP No 93-4057M, 93-4058M, No. 92-42755M (August 2, 1994) **Ch. 7**. (Denying debtor's discharge for concealment of assets, 727(a)(2)(A); withholding Records from trustee, 727(a)(4)(D); conversion, 727(a)(2)(B), and false oath, 727(a)(4)A) and (a)(7))

Prtys: Guy Jones Jr., Trustee Richard Ramsay, Mary Jones, Christopher Jones.
Attys: Judy Henry, Charles Baker, Richard Ramsay

In re William F. Leonard, 150 B.R. 709, **FS** 90-12796M (August 12, 1992) **Ch. 13.** (Upon debtor's conversion to Ch. 7, 13 Trustee did not have to turn over undistributed funds to Ch. 7 Trustee but could distribute in accordance with plan).
Prtys: Debtors, Jan K. Neilsen-Trustee, City National Bank.
Attys: Rex Chronister, Jan Neilsen, Stanley A. Leasure.

In re Craig Shackleford, Jr. ED 85-29M (Aug. 17, 1987) (court sua sponte converted **Ch. 11** case to Ch. 7 for failure to obtain a confirmed plan within a reasonable time, failure to file operating reports, selling stock without authorization in violation of 363(c)).
Prtys: Debtor
Attys: Charles Coleman, Joseph Strode.

In re Paul Edward Speers, 244 B.R. 142, **LR** 99-41105M, AP 99-4126 (February 2, 2000) **Ch. 7.** (Upon dischargeability complaint for willful and malicious injury, debt was nondischargeable when Debtor sold Bank's collateral and used the proceeds for business purposes).
Prtys: Debtor, Mercantile Bank of Arkansas.
Attys: Floyd Healy, Scott Vaughn.

CORE PROCEEDING

In re Brittenum & Associates, Inc., **LR** AP 86-50M, AP 86-305M (Feb. 26, 1987) **Ch. 7.** (Fact that bankruptcy court must look to state law to decide claim doesn't violate Marathon.)
Prtys: Brittenum & Associates, Inc., Fred Halstead, Joh Brittenum, Melvyn L. Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware.
Attys: Mark Hampton, Steve Vaughn, Tripper Cronkhite, Steven Harbeck, Gary Corum, Robert Cabe, Richard Steinkamp, Michael Thomson, Richard D. Taylor, Peter Kumpe, John Jewell.

In re David Hodges Farms, Inc., **JO** 85-73M, AP No. 85-124M (Feb, 4, 1986) **Ch. 11**. (Pre-trial order on complaint for judgment and foreclosure of liens determining which matters core and non-core; David Hodges disqualified from representing debtor in possession since he is equity security holder and debtor of dip).
Prtys: David Hodges Farms, Inc., Mallard Farms Holding Co, David Hodges, Marian Hodges, Otis Reynolds, Mary Reynolds, John Hancock Mutual Life Insurance Company, Cache River Production Credit Association, Three Rivers

Production Credit Association, Farmers Home Administration, White River Production Credit Association, Heuer Truck Sales Corporation, Elmer Heuer, and Geneva Nadine Heuer, Northwestern Mutual Life Insurance Company, Travelers Insurance Co., Fred Pickens.
Attys: David Hodges, Michael Coury, Donald Raney, Lindsey Fairley, George Proctor, Tom B. Smith, V. Markham Lester, Timothy W. Grooms, James W. O'Mara, Stanley R. Langley, Charles T. Coleman, Darrell Dover, Fred Pickens, G.D. Walker, Marvin Thaxton, James Sprott, Lance Miller, Greg Hopkins, Gary Rogers, Don Henry, Joseph Russell, Doug Chavis, Edward Wright, Fletcher Jackson, Ralph Cotham, Ed Penick, John Blodgett, Ralph Waddell, Bob Abbot.

CORPORATE DEBTOR

In re Dollar Time Group, Inc., 223 B.R. 237, **S.D. Florida** 95-22816-BKC, RBR, AP 96-0380-BKC, RBR (July 20, 1998) **Ch. 7**. (Under N.Y. law, prima facie showing of director self-interest in corporate transaction conducted without board or shareholder approval shifts to director the burden of demonstrating that transaction was fair and in best interests of corporation; defendants did not prove transactions were fair and in best interests of corporation where loans to defendants to expand business were made when debtor was in financial trouble.)
Prtys: Kenneth Welt, Trustee; Dollar Time Group, Inc.: Joseph Sasson, Jeffrey Klansky.
Attys: Irwin Fingerit, Ronald Neiwirth, Arthur Rice.

COUNSEL

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge under 727(a)(2), advice of counsel defense protects only if reliance is reasonable and in good faith.)
Prtys: Texas Equipment Co. Inc., W.O Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

CRAMDOWN

In re Answerfone, Inc., **LR** 83-842M (June 24, 1986) **Ch.11** (cramdown hearing; held equity security holder receiving not less than Ch.7; plan confirmed)
Prtys: Joe Limerick III
Attys: Charles Davidson, Geoff Treece, Griffin Smith, Patricia Nobles, Peter Heister, Briscoe Swan

In re Bernard, **JO** 85-151M (November 5, 1986) **Ch 11** 70 B.R. 181 (ruling that plan to sell portion of creditor's real estate collateral and use proceeds to cure arrearage or deed portion of collateral to creditor in return for credit against the debt, altered prepetition legal rights of creditor and thus claim of objecting creditor

was impaired and plan would have to satisfy cramdown provisions in order to be confirmed; to satisfy cramdown provisions, Debtors had to value property to be distributed as of the effective date of the plan; plan had to give exact legal description of property and convey by warranty deed and plan had to secure creditor's claim on remaining property by first lien on remaining property).
Prtys: Charles and Betty Bernard, Federal Land Bank of Jonesboro.
Attys: Ben F. Arnold, James Dowden, Ralph Waddell, Stephen M. Reasoner.

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **Ch. 11** (All 1129(a) requirements must be met in order to confirm a plan except 1129(a)(8) requiring all classes accept the plan or be unimpaired; if that provision not met, plan can be confirmed if cramdown standards of 1129(b) are met).
Prtys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Oregon Butler, 42 B.R. 777, **PB** 93-101 (June 15, 1984) **Ch. 11** (Confirmation of Ch. 11 plan denied, if plan can be confirmed only by cramdown, consideration of requirement that holders of secured claims retain their liens and unsecureds receive property of value equal to allowed amount of such claim must be given, and present value of both allowed amount of secured and unsecured claims, if jr. Classes are receiving property, must be paid; if claims are paid in future, interest must be paid; if debtors are solvent, allowed unsecured claim should include postpetition interest, unless creditor consents otherwise, and plan must pay at least as much as creditor would receive in Ch. 7.)
Prtys: Oregon and Lavelle Butler, John Deere Co, International Harvester Credit Corp., Massey Ferguson Credit Corp, Pioneer Production Credit Association, and the Federal Land Bank of St. Louis.
Attys: Jack Sims

In re Danny Thomas Properties III Limited Partnership, 231 B.R. 298, **LR** 96-42482M (March 18, 1999) **Ch. 11.** (In determining discount rate of interest for cramdown of creditor's secured claim, court starts with market rate of risk-free government securities calculated on plan length, adds points based on risk factors such as payout period, quality of security, and risk of subsequent default, and then weighs plan assets such as property location, plan provision allowing immediate foreclosure in event of default.).
Prtys: Danny Thomas Properties III Ltd. Partnership, Beal Bank.
Attys: Gregory M. Hopkins, Joyce Bradley Babin.

In re E.I. Parks No. 1 Limited Partnership, 122 B.R. 549, **FA** 88-261M (Oct. 19, 1990) **Ch. 11**. (Finding that if plan proposes to pay objecting secured creditor in installments, present value of future steam of payments must equal secured claim, requiring interest at discount rate; discount rate was risk free rate determined by government securities rate plus added percentage points for risk; cramdown requirements only applied to secured portion of objecting creditor's

claim; unsecured portion of objecting creditor's claim could not be placed in same class as secured portion because not substantially similar; owners of Ch. 11 debtor could retain interests without violating absolute priority rule over objection of dissenting creditors if they contribute property to debtor equal to or exceeding value of interest retained).
Prtys: E.I. Parks Ltd. Partnership, Shady Grove Associates, Western Hills Park.
Attys: Michael Reif, Katherine Gay.

In re Landscape Associates, Inc., **LR** 85-663(July 1, 1987) 81 BR 485, **Ch. 11:** (Confirmation of Ch. 11 plan denied because proposed interest rate was not market rate. See related District Court and Court of Appeals Opinions about collusive sale of property of the estate brought by Rick Ramsay, Trustee).
Prtys: Debtor, First Pyramid
Attys: Richard Crockett, Richard Taylor

In re Mothershed, **JO** 85-176 (March 26, 1986) **(62 Bankr. 113) Ch. 13.** (Ch. 13 plan cramdown would not be permitted without payment of market rate of interest at time of confirmation; issue of adequate protection could not be decided until plan modified).
Prtys: Debtors, International Harvester.
Attys: David Goodson, Maurice Rogers, John C. Calhoun Jr.

In re N.S. Garrott, JO 83-215M; In re Eastern Arkansas Planting Co. JO 83-216M (Dec. 7, 1984) **48 Bankr. 13**: Confirmation denied of **Ch. 11** plan calling for substantive consolidation of estates; plan faulty because incorrect classification of debtor partnerships, improper cramdown where present value of secured claim not paid at market rate; disclosure statement did not propose consolidation; attorneys for the two DIPs had conflicts of interest because they also represented interest holders of each estate).
Prtys: Debtors in Possession
Attys: Richard Frockt, James E. Smith

In re Nolen Tool Co., **FS** 84-151 (May 30, 1985) **50 Bankr. Ch. 11**. (Objection to confirmation sustained; Plan cramdown of creditor's debt did not pay present value at market rate of interest, did not maintain indubitable equivalent of collateral, so was not fair and equitable).
Prtys: Debtor, City National Bank, FDIC
Attys: Isaac Scott, John Tisdale, Robert Y. Cohen

In re Owens, **LR** 89-42664 (Aug. 3, 1990) **120 Bankr. 487; Ch 13.** (GMAC's objection to confirmation of Ch. 13 plan sustained; wholesale value as of date of confirmation hearing is proper standard for valuing collateral; no evidence that contract rate is current market rate so contract rate not approved).
Prtys: Debtors, General Motors Acceptance Corp.
Attys: Richard Kalkbrenner, Aaron Fuller.

List of Topics

CREDIT COUNSELING

In re Velma Gayle Wallace, **LR** 05-40004 (March 3, 2006) **2006 WL 581036: Ch. 13.** Court dismissed debtor's case for failure to receive credit counseling prior to bankruptcy and failure to file certificate of exigent circumstance pursuant to sections 109(h)(1) and (h)(3)(A).
Prtys: Debtor, Chapter 13 Trustee-Jo-Ann Goldman
Attys: Henry Means, Linda McCormack

In re Thomas Warren, **LR** 05-40022 (March 20, 2006) **(2006 WL 701144) Ch. 13:** denying Trustee's motion to dismiss for failure to file credit counseling certificate with petition under BR Rule 1007(b)(3) and section 521(b)(1) and failure to complete counseling at least one day prior to petition filing pursuant to 109(h)(1). Debtor had 15-day extension to file certificate and complied with statute by completing counseling prior to time of petition filing.
Prtys: Debtor, Jo-Ann Goldman-Trustee
Attys: Jean Madden, Linda McCormack

CRIMINAL CONTEMPT

(Also see Contempt)

In re Bratton, **HA** 84-47M, **AP** 89-98M (Feb. 26, 1990) **Ch.7,** (motion for sanctions against Art Dodrill granted; also held Dodrill in criminal contempt during hearing and fined $100)
Prtys: Davidson Law Firm, Mitchell Law Firm, Art Dodrill
Attys: Charles Davidson, Art Dodrill, Mike O'Malley

In re Christine A. Ragar, **LR**, 140 B.R. 889, No. 91-41490
(April 15, 1992) **Ch. 13**. (ct. held debtor's attorney in criminal contempt for continued representation after being removed by the court for conflict of interest in receiving and holding property of the estate for the Debtor to which attorneys had partial claim for attorney's fees). AFFIRMED 3 F3d 1174 (8th Cir. Aug. 30, 1993).
Prtys: Crockett and Brown, P.A.
Attys: Crockett and Brown, P.A.

DAMAGES

In re Borek, 260 B.R. 886, Fla. 99-11741-BKC-RAM, AP No. 00-1136 (April 4, 2001) **Ch 7.** (Ct. ruled tomato broker did not charge double commissions in violation of federal PACA law and technical violations by broker did not result in damages to Debtor so that recovery of commissions by trustee would not be allowed).
Prtys: Trustee-Marcia Dunn, Weis-Buy Services
Attys: Michael Keaton, Jay Gamberg, Robert Hustead.

In re Dillon Construction Co., Inc., **LR** 88-789M, AP No. 88-217M (August 10, 1989), **Ch. 11.** (Evidence of damages resulting from the breach of line of credit agreement between Bank and Debtor was too speculative to sustain an award).
Prtys: Dillon Construction Co. Home Federal Savings and Loan, Schrader Construction, Pine Lake Country Club, Phyllis and Gerald Dillon.
Attys: R.J. Brown, Michael G. Smith, Walter Murray, Robert L. Brown, William L. Owen, Joe Bell, Steve Quattlebaum, Watt Gregory.

In re Direct Transit, 226 B.R. 198, **BAP** No. 98-6039NI
(October 26, 1998) **Ch. 11** (provision in employment agreement was true liquidated damages provision; liquidated damages provision was enforceable under South Dakota law and reasonable; therefore, claim of oversecured creditor that included liquidated damages was allowed under 506(b)).
Prtys: Direct Transit, Inc., South Dakota Governor's Office of Economic Development.
Attys: John R. Weiss, Roger Wilgers Damgaard.

In re Garland Coal & Mining Co., 67 B.R. 514, **FS** 84-71M (July 18, 1986) **Invol. Ch. 7:** (dismissing complaint for damages by Debtor where requisite number of eligible creditors had petitioned for involuntary bankruptcy and Debtor was not paying debts as they became due)
Prtys: Debtor, Trustees of United Mine Workers of America, 1950 Pension Trust, 1974 Pension Trust, 1950 Benefit Plan and Trust, International Union united Mine Workers of America.
Attys: Allen Bird, Thomas Thrash, Richard Noble, Joel Pelofsky, Isaac Scott, Gary Ford, Robert Gallagher.

In re Hilyard Drilling Co. **ED** 85-10M, AP No. 86-715M (October 21, 1987) **Ch. 11** (Denying offeror's breach of contract claim when booster and compressor not sold with truck per agreement between trustee and buyer; no manifestation of assent as to the items; offeror's unilateral mistake as to the terms was not grounds to excuse the contract, absent fraud; trustee entitled to keep offeror's nonrefundable deposit but not entitled to liquidated or actual damages.).
Prtys: Ralph Mongeau, Isaac Scott, trustee
Attys: David Grace, David Powell, Audrey Evans, John Jewell, Isaac Scott, Don Henry.

In re Jacqueline P. L'Heureux, 04-6060 (Feb. 25, 2005): **BAP affirmed** bankruptcy court's bench ruling that creditor's six-day delay in removing notice of

foreclosure sale cancelled after debtor filed for bankruptcy was not a willful violation of the automatic stay under section 362(a)(1); even if there was a violation, the debtor failed to prove damages for emotional distress; granting of a motion to dismiss at end of plaintiff's case is authorized by F.R.Civ.P. 52 and F.R.B.P. 7052.
Prtys: Jacqueline L'Heureux, Homecomings Financial Network
Attys: Robert Lowry, Harry Light

In re National Hydro-Vac Industrial Services, **PB**, No. 01-50466M, **Ch 11, later 7** (June 15, 2004): **314 B.R. 753**: Upon motion for turnover of equipment by trustee, court held two pieces legally sold upon debtor's acceptance of buyer's offer but failure to remit proceeds in which defendant was to act as broker was conversion and defendant could not set off proceeds against debt to defendant; punitive damages were warranted under state law on conversion, but not due under section 362(h), willful violation of the stay, because debtor is corp.
Prtys: Trustee, Transamerica Equipment Financial Services, Federal Signal Corp.
Attys: Thomas Streetman, Stephen Gershner.

In re O'Connor, **JO** 83-225 (June 11, 1984) **42 Bankr. 390; Ch. 13**: (Taking of default judgment in garnishment proceeding violated automatic stay, was wilful and would result in damages, costs and attorneys fees from creditor to debtor).
Prtys: Debtors, Methodist Hospital of Jonesboro
Attys: Gary Johnson, James Lyons.

In re Scott, **ED** 87-177 (Jan. 17, 1990) **113 Bankr. 516**: (1) (Individual debtors created corporation and transferred business assets to it; corporation acquired inventory and granted security interest to creditor. Bank's security interest in after-acquired property of individual debtors was defeated by inventory creditor under Ark. Code Ann. 9-402(7). (2) Bank wrongfully attached business assets, but debtors did not prove damages). AFFIRMED (J. Harris 4/19/90 No. 90-1014)
Prtys: Debtors, Bank of Yellville, Borg-Warner Acceptance Corp, ITT Commercial Finance Corp.
Attys:William R. Gibson, Claude Hawkins, Susan Gunter, Frank Bailey, Bob Depper, Paul Lindsey, Phillip Pesek, William Randall Wright.

DEBT

DEBTOR

DEBTOR (UCC)

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player; Merchants and Planters' description in financing statement was sufficient

under section 402(1); River Valley Bank did not list the proper debtor on financing statement; Union Planter's financing statement was sufficient even though not signed by proper debtor because bank had separate instrument properly signed so signature was scrivener's error).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn, Darwin Davidson, Lance Miller.

In re Tracy's Flowers and Gifts, Inc., 264 B.R. 1, No. 00-11308, AP 001518 (June 12, 2001) **Ch. 7** (court dismissed trustee's complaint to determine validity of Bank's lien in property of debtor; Bank's lien was properly perfected even though no express grant of a security interest was present in the security agreement).
Prtys: William S. Meeks, Trustee; First Bank of South Arkansas
Attys: William S. Meeks, Paul Lindsey.

DEBTOR-IN-POSSESSION

In re Arkansas Communities, Inc., **HS** 80-22M (June 19, 1985) **Ch.11** (denying R.J. Brown's fee request based on conflicts of interest in case; discussion of fiduciary duties of DIP)
Prtys: Mitchell Law Firm, R.J. Brown
Attys: R.J. Brown, Maurice Mitchell, Herb Rule,Gary Garrett

In re Bonds Lucky foods, Inc., No. 1, 76 B.R. 664, **HE** 85-10M (May 13, 1986) **Ch. 11.** (Finding attorneys would not be compensated for unnecessary time spent by law clerks and paralegals, unnecessary prep work for case conference, overhead expenses including secretarial work, messenger service, clerical tasks; counsel for debtor in possession has responsibility to keep cost to estate at minimum.)
Prtys: Bonds Lucky Foods, Inc.
Attys: Jim Smith, Susan Gunter.

In re Gore, 124 B.R. 75, **LR** 88-04-2284M, 89-570M (Oct. 1, 1990) **Ch. 12**. (Holding that debtors' prepetition contract with government to hold land fallow in exchange for payments was executory contract which became postpetition contract with debtors-in-possession following their assumption thereof.)
Prtys: Debtors; Small Business Administration.
Attys: Lance Hanshaw, William Adair.

In re Lifesaver Center, Inc. **LR** 85-1894M (August 5, 1986) **Ch. 11 (**DIP's motion to use cash collateral from rents and profits granted; Dip's status as perfected judgment lien creditor under 544 is superior to creditor's unperfected lien in rents and profits under UCC 9-312(5)(a)).
Prtys: Debtor in Possession, Worthen Bank & Trust Co, May Supply Co.
Attys: Charles R. Camp, James J. Glover, William Owen, Richard Crockett, David Jacobs, Gregory Hopkins, Richard Smith, Michael Smith, David Fuqua,

Robert Jones, Pam Walker, George Ellis, Ed Moody, W.W. Elrod, Trip Wetzel, etc.

In re Herbert Russell, 60 B.R. 42, **ED** 84-58M (March 19, 1985) **Ch. 11.** (Removing debtor-in-possession and appointing trustee when Dip, a fiduciary for creditors, committed fraud before BR by selling major corp. asset in exchange for personal services contract not subject to debtor's creditors' claims and probably would not bring turnover and fraudulent conveyance actions against himself).
Prtys: Unsecured Creditors' committee, Herbert Russell, Allied Bank.
Attys: James Smith, Charles Baker, Isaac Scott.

In re Jim and Alisa Smith, **LR** 85-56M (May 29, 1985) **Ch. 11 (**DIP would violate fiduciary duty to other creditors by selling car pursuant to 363 and contributing proceeds to his company to purchase inventory).
Prtys: Debtors in Possession
Attys: Charles Ward, Lance Hanshaw

DEFERENTIAL STANDARD

DIRECTED VERDICT

In re Avant, **ED** 86-67M (August 30, 1988) **Ch.7** (§ 523(a)(2)(A) complaint, fraud and false representation, plfs failed to present evidence, directed verdict granted)
Prtys: Jack Molnaird, Billy Sandifer, et al
Attys: Henry Kinslow, Ian Vickery, Eugene Bramblett, Claude Hawkins, David Duke

DISCHARGEABILITY

In re Avant, **ED** 86-67M (August 30, 1988) **Ch.7** (§ 523(a)(2)(A) complaint, fraud and false representation, plfs failed to prove by clear & convincing evidence, speculative oil venture, statements made not fraud)
Prtys: Jack Molnaird, Billy Sandifer, et al
Attys: Henry Kinslow, Ian Vickery, Eugene Bramblett, Claude Hawkins, David Duke

In re Barnett, **ED** 85-42, AP 85-472M (November 17, 1986) **Ch. 7**. (Lending institution and title company filed dischargeability complaint when wife failed to disclose state of title and other prior liens in granting mortgage to lender; debt to lender nondischargeable.)
Prtys: Willard and Lois Barnett, First South, Southern Title Insurance Co.
Attys: Layne Livingston, Henry Kinslow, Claude Hawkins.

In re Boston, 119 B.R. 162, **ED** 89-11066, AP No. 89-1508 (August 2, 1990) **Ch. 7.** (Debtor failed to carry burden to establish undue hardship because inability to repay loan was self-imposed and therefore student loans were nondischargeable; court applied three step analysis including mechanical, good faith and policy tests.)

Prtys: Catherine Boston, Utah Higher Education Assistance Authority.
Attys: Henry Kinslow, Steven McMaster.

In re William and Harriett Cates, **JO** No., 01-32104M, AP. No. 01-3051 (Feb. 24, 2003)**289 B.R. 389**: Determination of nondischargeability of tax debt in debtor-taxpayer's prior bankruptcy case did not, under principles of res judicata, bar redetermination of issue in subsequent Ch. 7.
Prtys: Debtors, Ark. Dept. Of Finance & Administration
Attys: Joe Barrett, James Luker, trustee

In re Crull, **HA,** 101 B.R. 60 (June 7, 1989) **Ch. 7.** (Where debtor moved to reopen case to include debt inadvertently omitted, Court held that dischargeability would be determined not by amendment of schedules but by adversary proceeding).
Prtys: Gary and Karen Crull, H.J. Scheirich Co.
Attys: Roger Morgan, James Stanley, William Robinson.

In re Danny Ray Crawford, **LR** 98-4341M, AP 98 4179, 236 B.R. 673 (July 26, 1999) **Ch. 7**. (Non-support divorce debt owed to former spouse was nondischargeable, as were attorneys fees nondebtor ex-spouse owed to her attorney to collect on the debt; nondebtor ex-spouse proved debt was of the kind specified in section 523(a)(15) and debtor failed to carry burden of proof that he did not have the ability to pay or that the benefit of his discharge outweighed the burden to ex-spouse; hold harmless agreement in divorce decree imposes liability upon debtor-obligor for all consequences of his failure to pay, including paying ex-spouse for payments she made on debtor's behalf, either to debtor or to third parties).
Prtys: Danny Ray Crawford, Kathy Salerno.
Attys: Dale Finley, Mary Jane Pruniski.

In re Annie Marie Davis, **PB** 82-165M, AP 85-580M (September 17, 1986) **Ch**.**7**. (State court judgment against defendant-debtor did not make specific finding of fraud; judgment had collateral estoppel effect in subsequent dischargeability action for fraud as this was the only possible basis for the judgment and debtor did not prove otherwise).
Prtys: Pearl Suell, Annie Marie Davis
Attys: Angela Baxter, Andree Roaf, W.M. Dickinson, Margaret Turner Marshall.

In re Charles Leo and Rachelle Louise Evans, **LR** 03-15810, **Ch. 7 (**March 9, 2004): AP 03-01336: Under totality of circumstances test, Debtor could repay his student loan without undue hardship; the debt would be excepted from discharge under section 523(a)(8).
Prtys: Charles Evans, Educational Credit Management Corporation
Attys: Larry Hartsfield, Kim Tucker

In re Jerry Henry Grant, **ED** 02-70071, AP 02-7047 (Feb. 18, 2004) (**305 B.R. 484):** Student loans to pay for debtor's medical school costs would not be discharged for undue hardship pursuant to section 523(a)(8).
Prtys: Debtor, Oklahoma State Regents for Higher Education

Attys: Teresa Wineland,

In re James and Carrie Hall, **HS** 02-70062
(July 24, 2003) **295 B.R. 877,** AP 02-7090: court denied motion to dismiss filed under Rule 7012; creditor may proceed with dischargeability complaint under either § 523(a)(4)for embezzlement or § 523(a)(6) for willful and malicious conduct; pursuant to § 509 creditor is equitably subrogated to the rights of another creditor which first creditor is obligated to pay if debtor doesn't pay.
Prtys: Debtors, Reggie Jones
Attys: David Grace, Martha McAlister

In re Billy Edgar Harris, **HE** 86-116M, AP 86-159M (June 30, 1986) **Ch. 7:** (holding that debts to ex spouse for mortgage, utilities, home maintenance, medical bills and attorney fees were nondischargeable support).
Prtys: Lula Bell Harris, Billy Harris.
Attys: Lohnes Tiner, John Henry, Loyal Barr, Tom B. Smith.

In re Jimmy H. Harris, Jr., **JO** 99-31282M, AP 00-3010 (September 18, 2001) **Ch. 7.** (Farmer's debts to creditor were nondischargeable for submitting a false financial statement pursuant to section 523(a)(2)(B)).
Prtys: Debtor, Agro Distribution, LLC.
Attys: Jan Thomas, Joe Strode.

In re David Herndon, **LR** 01-40158, AP 01-4082 (May 16, 2002) (**277 B.R. 765) Ch. 7: (**Debtor contractor's debt nondischargeable when he violated fiduciary duty in express trust stated in indemnity agreement by using money allocated for one project to pay debts for another and, therefore, was liable for defalcation pursuant to section 523(a)(4)).
Prtys: International Fidelity Insurance Company, Debtor
Attys: Jack East, Keith Grayson.

In re William Horne, **PB** 85-365M, AP 86-157M (August 18, 1986) **Ch. 7**: (Motion for summary judgment granted as to murder victim's estate's dischargeability action against the debtor for debt arising from willful and malicious conduct; debtor's conviction for 2nd degree murder established the elements of willfulness and malice under theory of collateral estoppel; offensive collateral estoppel not available to other plaintiffs because debtor's liability for battery did not establish willfulness and malice.)
Prtys: Bill Michel, John Lock, Matthew Webre, Debtor.
Attys: Henry Means, Randall Morley, W.M. Dickinson.

In re Harr, **ED** 86-142M, AP 87-180M (June 29, 1988) **Ch. 11**:(Collateral estoppel did not apply to establish nondischargeability of debt arising from fraud where state court judgment standards differed and determination of fraud was not essential to the former judgment).
Prtys: Don Goodwin, David Brown, Alexander Kermendy, Debtors.
Attys: John Pou, Ian Vickery, Don Gillaspie, Don Goodwin.

In re Haimes, 173 B.R. 777, S.D. Florida, No. 90-39632, AP No. 91-0242 (Aug.

12, 1994) **Ch. 7.** (I.R.S. has bop that debtor violated bankruptcy section providing for discharge exception for fraudulent return or willful attempt to evade tax; exception for fraudulent return is broad enough to apply if debtor willfully conceals assets; corporations created by debtor were shams to disguise income and acquire assets in debtor's name that could be seized to pay taxes).
Partys: Debtor, I.R.S.
Attys: Lance Baker, Douglass Wendel.

In re Carl and Linda Johnson,113 B.R. 514, **ED** 88-76, AP No. 88-239M (June 28, 1989) **Ch. 7.** (Debtor could not discharge ex-wife's entitlement to one-half of debtor's military retirement pay because right to payment was property awarded to ex-wife prepetition).
Prtys: Debtors, Sandra Kay Johnson Jackson, W.R. Wright-Trustee.
Attys: Steve Uhrynowycz, Henry Kinslow.

In re Marvin and Constance Jarrett, **HE** No. 03-13489 (2003) **Ch. 7**: Granting debtor's motion to dismiss under Rule 7012 dischargeability complaint for attorneys fees assessed debtor in state civil rights suit: attorneys' cause of action for willful and malicious injury (523(a)(6)) would not lie where attorneys were not injured party; 523(a)(7)not applicable as fine or forfeiture due a governmental entity; 523(a)(17) not applicable because only applies to debtors who are in forma pauperis prisoners, 523(a)(4) not applicable because debtor did not commit defalcation.
Prtys: Debtors, David Solomon, Edward Schieffler
Attys: James Valley, David Solomon, Edward Schieffler

In re Gregory L. Latimer, **LR** 00-43630, AP 02-1114 (Aug. 22, 2002) **Ch. 7**: (Discharge injunction under sections 727 and 524 did not enjoin determination of dischargeability of alimony or support debt under 523(a)(5) by bankruptcy or state court, which has concurrent jurisdiction, even if Debtor listed debt as dischargeable on his petition; seeking dischargeability and entry of judgment after discharge did not violate stay which was no longer in force as to property of the debtor after discharge under section 362(c).
Prtys: Debtor, Dan West, Bill Flannery
Attys: Paul Schmidt, Michael Reif.

In re Gale McVicker, 234 B.R. 732, **LR** 98-42405M, AP 98-4169 (June 14, 1999) **Ch. 7.** (Credit card debt to Sears nondischargeable when Debtor committed actual fraud in incurring the debt because she did not intend to repay when making the charges; court using totality of circumstances analysis).
Prtys: Debtor, Sears Roebuck & Co.
Attys: Patt Pine, Raymond Weber.

In re Jimmy Richard Medlock, **FS** 85-306M, AP 86-166M (August 1, 1986) **Ch. 7.** (In dischargeability suit, debt was in the nature of a property settlement and not alimony, maintenance or support, despite being called alimony in divorce proceeding).
Prtys: Teresa Medlock, Debtor
Attys: Ben Barry, Roy Gean, James Cox

In re Charles Delano and Linda Carol Miller,159 B.R. 849, **JO** 90-30378M, AP 92-3035 (August 17, 1993) **Ch. 7.** (In action to determine dischargeability of omitted debt after discharge, pursuant to 727(b); in no asset case, creditors don't file proofs of claim unless notified to do so. So an unscheduled creditor in a no asset case is not deprived of right to file proof of claim; therefore, claim is dischargeable despite the wording of 523(a)(3)(A)).
Prtys: Debtors, Robert E. and Carl Schuchardt.
Attys: Warren Dupwe-T; Scott Emerson, Scott Davidson.

In re Aubrey and Rebecca Morgan, **JO** 98-31402, AP 99-3004
In re Clarence Cearley, LR 99-40758, AP 99-4078, 247 B.R. 776, (April 25, 2000) **Ch. 7** (In complaints for dischargeability of student loans for undue hardship, Morgans' loans were discharged while Cearley's were not; court used totality of circumstances approach endorsed by BAP and 8th Cir.)
Prtys: Debtors, U.S. Dept of Education, Sallie Mae, Student Loan Guarantee Foundation of Arkansas.
Attys: John Holstine, Gwendolyn Hodge, Connie Meskimen, Warren Dupwe.

In re Terri Lynn Morris, **ED** 00-11167M; AP 00-1517 (November 16, 2001) **Ch. 7.** (granting State's motion to dismiss debtor's dischargeability of student loan complaint as to U of A; state correctly asserted 11th amendment immunity).
Prtys: Debtor; University of Arkansas, et al.
Attys: Mark Drake, Scott Varady

May 20, 2002: Pursuant to section 523(a)(8), largest debt to student loan creditor was dischargeable for undue hardship, but six other student loans were nondischargeable because Debtor was able to pay.
Prtys: Student Loan Guaranty Foundation, Debtor.
Attys: Mark Drake, Connie Meskimen.

In re David and Glinda Owens, **HE** 03-17378, AP No. 04-1171 (March 7, 2005) **2005 WL 610882:** Bank failed to show that it reasonably relied on debtor-farmer's materially false financial statement or that debtor omitted liabilities with intent to deceive pursuant to section 523(a)(2)(B).
Prtys: Debtors, First National Bank of Stuttgart
Attys: Edward Schieffler, Mr. Berry.

In re Janet Lynn Parker, **HE** 04-18019, April 12, 2005 (**322 B.R. 856)** AP 04-1316: Court determined school teacher's student loan debt would be discharge because repayment would impose undue hardship pursuant to 523(a)(8)(2000). **Reversed, 8th Cir. BAP, 328 B.R. 548**, August 8, 2005: Debtor could repay debt through William D. Ford Consolidation Program without undue hardship.
Prtys: Debtor, Student Loan Guarantee Foundation of Arkansas
Attys: Joe Barrett, Connie Meskimen

In re Price, 264 B.R. 8, LR No. 98-44537M, AP No. 99-4190
(June 15, 2001) **Ch. 7.** (debt for injuries from gunshot wound inflicted by debtor on plaintiff was dischargeable because evidence did not show willful and malicious injury by preponderance of evidence under 523(a)(6)).

Prtys: Phillip A. Price, Debtor; Eddie Maxwell
Attys: Brad Cazort, Kathy Cruz.

In re Roy and Lavonda Price, **313 B.R. 805, LR** No. 03-13601, AP No. 03-1258 (July 22, 2004) court denied motion for summary judgment filed by financial services company; sale of debtor-serviceman's future military pension rights for lump sum payment was prohibited by federal law, 37 U.S.C § 701, and fact that debtor redirected payments to himself contrary to the contract did not constitute larceny or embezzlement under section 523(a)(4).
Prtys: Debtors, Structured Investments Co.
Attys: Laura Grimes, Kimberly Tucker.

In re Prieto, 2001 WL 114937, Fla. No. 00-12476 BKC-RAM (Jan. 30, 2001) **Ch. 7.** (credit card debt to American Express was nondischargeable because of fraud under 523(a)(2)(A)).
Prtys: American Express, Debtor-Francisco Prieto
Attys: Gary J. Lublin, Emmanuel Perez.

In re Reed, **PB** 86-450 (September 6, 1987) **Ch. 11.** (Court denied motion to dismiss dischargeability complaint for fraud, embezzlement, defalcation under 523(a)(4); facts pleaded with sufficient particularity).
Prtys: Roderick Reed, debtor in possession; FSLIC.
Attys: Isaac Scott, James Cherry, Peter Heister, Matthew Botica.

In re Willie Joe Stephens, **TX** 95-14064M (June 23, 1997) **Ch. 7**. (State court judgment against debtor-roofer for shoddy roof job was dischargeable since creditor did not prove debtor intended to defraud her by installing roof that developed subsequent problems; negligence and/or breach of contract is not same as fraud).
Prtys: Debtor, Virginia Flaherty
Attys: David Price

In re Thomas Sturdivant, **LR** 02-70130 (Feb. 6, 2003)**289 B.R. 392: Ch 7** debtor's obligation to ex-wife not in the nature of support under section 523(a)(5) but was nondischargeable under section 523(a)(15) because debtor failed to carry burden to show he lacked ability to pay or that the benefit of a discharge of the debt outweighed detriment to ex-wife.
Prtys: Debtor, Dana Michelle Strudivant (Cross)
Attys: David Harrod, Joseph Kolb

In re Tainter, **JO**. No. 99-31381M, AP No 00-3008, (Feb. 14, 2001) **Ch. 7.** (court held debt arising out of plaintiff's sale of convenience store business to debtor was dischargeable and not based on fraud under 523(a)(2)(A); without intent to deceive at time of making of contract, breach of contact is not fraud).
Prtys: Roy Tainter, Debtor; Ken Short; Short Stop Inc.
Attys: Scott Davidson, Jeannette Robertson

In re Tarbox, **234 B.R. 832**, **S.D.Fla.** (Miami) 98-23241-BKC-RBR, AP 98-2330-BKC-RBR-A (April 26, 1999) **Ch. 7.** (In dischargeability dispute, marital debt to

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ex-wife was not in the nature of support under 523(a)(5); and Debtor did not have ability to pay the debt under 523(a)(15) test so debt was dischargeable).
Prtys: Debtor, Marianne Tarbox.
Attys: Frank Brady, Eugene Lewis.

In re Terra Vision, Inc., **LR** 85-1294M
In re George and Rebecca Gibson, **LR** 85-129M(January 25, 1988). No cause of action under 523(a)(2) exists in Ch. 13 or in a Ch. 7 case involving a corporation, complaint dismissed, counter claim of objection to claim overruled.
Prtys: Debtors, Art Davis
Attys: Stephen Bennett, Vic Fleming, James Wallace, Fletcher Lewis, Basil Hicks, James Allen Brown, Middleton Ray.

In re Van Camp, **TX** 96-14011M, AP 96-4505 (August 8, 1997) **Ch. 7:** (Insufficient showing that debtors fraudulently incurred credit card debt; debt was dischargeable; debtors were denied attorneys fees as creditor's position was substantially justified even though creditor lost fraud claim.)
Prtys: Dorothy Van Camp, AT&T Universal Card Services Corp.
Attys: Spencer Robinson, Jimmy Eaton, Richard Cox.

In re William Harold Watson, **HE** 04-10488, AP 04-1166 (Dec. 1, 2004) **(2004 WL 2755542)** under section 523(a)(18) and 42 U.S.C. § 456(b) of Social Security Act, Debtor's debt for child support was nondischargeable even though children were later proven through scientific testing not to be children of the debtor.
February 16, 2005: upon further stipulations by the parties, the court reconsidered and ruled the amount of the nondischargeable debt was the amount owed to the Office of Child Support and did not include the debt owed to the mothers of the children that were not children of the debtor.
Prtys: Debtor, Arkansas Office of Child Support Enforcement
Attys: Danny Glover, Paul Hopper

In re Joe and Dorothy White, 253 B.R. 253, **ED** 99-11777M, AP 11-1502 (September 13, 2000) **Ch. 7.** (arrearage on court-ordered child support payments are dischargeable because DNA tests proved children were not a child of the debtor).
Prtys: Debtors, Ouachita County Office of Child Support Enforcement.
Attys: William Meeks-T; Henry Kinslow, Andrew Best.

In re Worden d/b/a Worden & Associates, **LR** 85-351, AP No. 85-474 (August 13, 1986) **Ch. 7:** Debtor defrauded creditor to whom he sold his business by misrepresenting that the business owned equipment that was really leased; debt nondischargeable under 523(a)(2)(A) & (B).
Prtys: Claude Wallace, Debtor
Attys: Gregory Hopkins, Charles Davidson, Joel Price, Rick Taylor, James Glover

DISCHARGE INJUNCTION

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In re Gregory L. Latimer, **LR** 00-43630, AP 02-1114 (Aug. 22, 2002) **Ch. 7**: (Discharge injunction under sections 727 and 524 did not enjoin determination of dischargeability of alimony or support debt under 523(a)(5) by bankruptcy or state court, which has concurrent jurisdiction, even if Debtor listed debt as dischargeable on his petition; seeking dischargeability and entry of judgment after discharge did not violate stay which was no longer in force as to property of the debtor after discharge under section 362(c).
Prtys: Debtor, Dan West, Bill Flannery
Attys: Paul Schmidt, Michael Reif.

In re Chad Whisenant, **ED**, 265 B.R. 164, No. 99-43741M,
(July 5, 2001) **Ch 7.** (court denied debtor's motion to hold former wife in contempt for violation of discharge injunction of 524(a)(2) for filing state court contempt action against the debtor for not paying under a reaffirmation agreement, pursuant to 524; the wife did not know the agreement was invalid because clerk mistakenly failed to file it; agreement was binding because entered into before the discharge was granted)
Prtys: Chad Whisenant-Debtor; Adonna Whisenant.
Attys: Robert Danecki, Michael Knollmeyer.

DISCLOSURE STATEMENT

In re N.S. Garrott, JO 83-215M; In re Eastern Arkansas Planting Co. JO 83-216M (Dec. 7, 1984) **48 Bankr. 13**: Confirmation denied of **Ch. 11** plan calling for substantive consolidation of estates; plan faulty because incorrect classification of debtor partnerships, improper cramdown where present value of secured claim not paid at market rate; disclosure statement did not propose consolidation; attorneys for the two DIPs had conflicts of interest because they also represented interest holders of each estate).
Prtys: Debtors in Possession
Attys: Richard Frockt, James E. Smith

DISMISSAL

In re Kathleen Inmon, **LR** 96-4302M (November 27, 1996) **Ch. 13**. (On creditor's motion for dismissal, lack of good faith is cause under 1307(c) and may be determined by totality of circumstances; here, debtor's unfair treatment of creditor coupled with pre-filing conduct of fraudulent concealment of her true ownership of the property she later claimed as a homestead warranted cause for dismissal).
Prtys: Mercantile Bank, Debtor.
Attys: Susan Gordon Gunter, Stephen Bennett.

In re Lisa Woodard Jones, 99 B.R. 412, **LR** 88-1495M, CMS 88-1537M (January 9, 1989) **Ch. 13.** (Holding section 109(g)(2) dismissal only applies if there was a previous voluntary dismissal of debtor's previous case when a contested matter was pending).
Prtys: Economy Motors, Inc., debtor.
Attys: Larry Hartsfield, Malcolm Bobo.

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In re Mathis Ins. Agency, Inc., **LR** 84-1191, 1192
In re Clemothene Mathis, **LR** 84-1192M (May 29, 1985) **50 Bankr. 482, Ch. 7** (Debtors' Motions to dismiss Ch. 7 case denied; no showing of cause justifying dismissal, substantial evidence of fraud prompts court to refer case to U.S. Attorney)
Prtys: Debtors
Attys: David Grace

In re Alex Merayo, **LR** 04-17258 (Jan. 27, 2005) **319 BR 883, Ch. 13:** where no proof of egregious conduct was adduced prior to dismissal with prejudice, court interpreted phrase to mean dismissal with bar to refiling for 180 days pursuant to section 109(g).
Prtys: Debtor, Tracy and Tammy Heffington
Attys: Geoffry Treece, Thomas Byarly.

In re Leroy and Necie Randolph, **LR** 99-45183M (September 27, 2000) **Ch. 7**. (Denying U.S. Trustee's motion to dismiss Debtors' Ch. 7 petition for substantial abuse under 707(b); debtor's second home in Hot Springs was job-related; Trustee did not carry burden of showing that expenses were unreasonable).
Prtys: U.S. Trustee, Debtors.
Attys: Jim Hollis, Kathy Cruz.

In re James and Dorothy Studdard, 159 B.R. 852, **LR** 92-42707M (August 31, 1993) **Ch. 7**. (Dismissing case of debtors on motion of creditor when debtors failed to complete Ch. 11 plan and filed Ch. 7, spent $50k a year on children's autos and college while failing to pay unsecured creditors; finding debtors' bad faith was sufficient cause under 707(a)).
Prtys: Debtors, Pulaski Bank and Trust.
Attys: C.B. Blackard, Frederick Wetzel.

DISINTERESTED PERSON

DISPOSABLE INCOME

In re Gibson, 218 B.R. 900, **LR** 96-41062M (Dec. 27, 1997) **Ch. 13.** (Debtor's use of excess insurance proceeds to repair another vehicle did not mean debtor was not devoting all of his disposable income to payments under plan; use was reasonable).
Prtys: Debtor, Newcourt Financial.
Attys: Kent Pray, Richard Kalkbrenner.

In re Manes, **PB** 85-330 (June 25, 1986) (**67 Bankr. 13**) **Ch. 13** (Malicious conduct was not bad faith sufficient to warrant denial of confirmation of Ch. 13 plan; plan was not feasible).
Prtys: Debtors, Harvey Jones.
Attys: Thurman Ragar, Jr., Fed E. Bosshart

In re Gary and Nancy Pendleton, 225 B.R. 425, **LR** 95-43358M (September 29,

1998) **Ch. 13.** (Personal injury award claimed as exempt was disposable income and not reasonably necessary for the Debtors' expenses such that the proceeds would be used to fund the plan).
Prtys: David Coop-T; Debtors.
Attys: William Owens; David Coop.

In re Edmond Torelli, **LR** 04-23884 (Feb. 2, 2006 **)(2006 WL 490574)**: Court denied confirmation of **Ch. 12** plan because it failed to pay present value of creditor's claim with appropriate market rate of interest under section 1225(a)(5)(B)(ii); was not feasible in that debtor did not have sufficient disposable income to fund plan under section 1225(a)(6); however, debtor did meet eligibility requirements of family farmer under section 101(18).
Prtys: Debtor, Regions Bank
Attys: Michael Knollmeyer, Kimberly Burnett

DISPUTED DEBT

In re Clarence and Frances Burnett, **ED** 01-90019 (Oct. 25, 2002) **Ch. 13** (Objection to Conf. by child support creditor sustained where debtor did not propose to pay child support debt as required under 1322(a)(2); where debtor disputed claim, objection to claim must be lodged pursuant to Rule 3001).
Prtys: Debtors, West Va. Bureau for Child Support Enforcement.
Attys: Billy Hubbell, Paul D. Selby.

DUE PROCESS

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in Ch. 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

ELEVENTH AMENDMENT

In re Terri Lynn Morris, **ED** 00-11167M; AP 00-1517 (November 16, 2001) **Ch. 7.** (granting State's motion to dismiss debtor's dischargeability of student loan complaint as to U of A; state correctly asserted 11th amendment immunity).
Prtys: Debtor; University of Arkansas, et al.
Attys: Mark Drake, Scott Varady

ELIGIBILITY

In re John J. and Betty Plafcan, **HE** 87-30M; In re Plafcan Farms, Inc., **HE** 87-

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31M (Feb. 3, 1988 (**93 Bankr. 176**) **Ch. 12**: Consolidated Ch. 12 plan of individual debtors and corporation not confirmable; individual debtors not eligible under 101(17)(a) and 109(f).
Prtys: Debtors, A.L. Tenney-Trustee
Attys: A.L. Tenney, Charles Baker, William A. Waddell for Federal Land Bank.

In re Ben Smith, **TX** 02-74250 (December 4, 2002) **286 B.R. 104, Ch. 13:** Objection to confirmation sustained where Debtor who filed Ch. 13 less than 180 days after former case dismissed had burden of showing eligibility predicated on proving that Debtor's prior case was not dismissed due to willful violation of court order.
Prtys: Debtor, MHC Financial Services, Inc.
Attys: Rodney McDaniel, Chris Frank

In re Tim Wargo & Sons, Inc., **PB** 86-474 (June 5, 1987) **74 Bankr. 469**, **Ch. 12**: Receipt of rents from debtor's tenant farmer does not meet Ch. 12 eligibility requirements for family farmer. AFFIRMED (J. Reasoner 86 Bankr. 150) AFFIRMED (8th Cir. 869 F.2d 1128).
Prtys: Debtor, Equitable Life Assurance Society of the U.S.
Attys: Richard Alexander, William C. Adair, A.L. Tenney, Billy Hubbell.

In re Edmond Torelli, **LR** 04-23884 (Feb. 2, 2006 **)(2006 WL 490574)**: Court denied confirmation of **Ch. 12** plan because it failed to pay present value of creditor's claim with appropriate market rate of interest under section 1225(a)(5)(B)(ii); was not feasible in that debtor did not have sufficient disposable income to fund plan under section 1225(a)(6); however, debtor did meet eligibility requirements of family farmer under section 101(18).
Prtys: Debtor, Regions Bank
Attys: Michael Knollmeyer, Kimberly Burnett

EMBEZZLEMENT

In re James and Carrie Hall, **HS** 02-70062
(July 24, 2003) **295 B.R. 877,** AP 02-7090: court denied motion to dismiss filed under Rule 7012; creditor may proceed with dischargeability complaint under either § 523(a)(4)for embezzlement or § 523(a)(6) for willful and malicious conduct; pursuant to § 509 creditor is equitably subrogated to the rights of another creditor which first creditor is obligated to pay if debtor doesn't pay.
Prtys: Debtors, Reggie Jones
Attys: David Grace, Martha McAlister

In re Hoffman, 70 B.R. 155, **ED** 85-27M, AP 85-476M (Sept. 16, 1986) **Ch. 7.** (Holding that debt to bank was nondischargeable under 523(a)(4) where secured creditor made prima facie case of embezzlement against debtor who was in lawful possession of security of creditor, sold encumbered property without consent of creditor and misapplied proceeds; intent to repay is not defense to embezzlement).
Prtys: Debtor, National Bank of Commerce

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Attys: Isaac Scott, Charles Coleman, Joseph Strode.

In re Roy and Lavonda Price, **313 B.R. 805, LR** No. 03-13601, AP No. 03-1258 (July 22, 2004) court denied motion for summary judgment filed by financial services company; sale of debtor-serviceman's future military pension rights for lump sum payment was prohibited by federal law, 37 U.S.C § 701, and fact that debtor redirected payments to himself contrary to the contract did not constitute larceny or embezzlement under section 523(a)(4).
Prtys: Debtors, Structured Investments Co.
Attys: Laura Grimes, Kimberly Tucker.

In re Reed, **PB** 86-450 (September 6, 1987) **Ch. 11.** (Court denied motion to dismiss dischargeability complaint for fraud, embezzlement, defalcation under 523(a)(4); facts pleaded with sufficient particularity).
Prtys: Roderick Reed, debtor in possession; FSLIC.
Attys: Isaac Scott, James Cherry, Peter Heister, Matthew Botica.

In re Rose, **HE** 85-138M, AP 85-427M (September 25, 1986) **Ch. 7**: (Debtors not denied discharge under 727 because fully encumbered property which was transferred did not deplete assets available to pay creditors; debt did not arise from willful and malicious injury under 523(a)(6) but was the result of embezzlement and would be nondischargeable under 523(a)(4)).
Prtys: Louis and Joan Rose, Hugh and Tamara Rose, Caruthersville Production Credit Association.
Attys: Warren Dupwe, Robert Branch, Jan Thomas, Donis Hamilton.

ENHANCEMENT FEE REQUEST

(Also see Professional Fees)
(Also see Attorney Fees)

In re Arkansas Communities, Inc., **HS** 80-22M (Sept. 28, 1988) **Ch.11** (granting trustee's attorney's fees; denying request for enhancement of fee; discusses Delaware Valley I)
Prtys: Mitchell Law Firm
Attys: Maurice Mitchell, Mike O'Malley, R.J. Brown

EQUITABLE POWER

In re Cupples Farms, **HE**, 128 B.R. 769, No. 90-55, AP 90-2017 (March 5,1991) **Ch 12** (Constructive trust is equitable remedy imposed to confer on true owner of property equitable interest superior to legal title owner; equity will not intervene on behalf of party with unclean hands).
Prtys: Cupples Farms, Federal Land Bank of St. Louis.
Attys: Roy C. Lewellen; Keith Billingsley, William A. Waddell.

In re Frazier, **ED,** 136 B.R. 199, 90-11013M (Oct. 8, 1991)
Ch. 13. (Equitable doctrine of marshaling in which party having the prior lien is compelled in equity to first exhaust asset upon which jr. creditor has no lien did

not apply under state law where debtor's interest in her certificates of deposit were not subject to execution).
Prtys: Margaret Frazier, Ch. 13 Trustee, Sam Antoon, First National Bank of El Dorado.
Attys: Andree L. Roaf, A.L. Tenney, Teresa Wineland

EQUITABLE SUBORDINATION

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987)**73 B.R. 414 Ch. 11** (Plan can be confirmed over objecting creditors under 1129(b)(1) if the plan does not unfairly discriminate; here plan discriminated against judgment creditor; claim could not be equitably subordinated because creditor not guilty of inequitable conduct that injured other creditors or conferred unfair advantage on judgment creditor).
Prtys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Dillon Construction Co., Inc., **LR** 88-789M, AP No. 88-217M (August 10, 1989), **Ch. 11.** (Court did not consider equitable subordination as a remedy where Debtor did not request such relief in the pleadings, present evidence, or argue the rule in briefs).
Prtys: Dillon Construction Co. Home Federal Savings and Loan, Schrader Construction, Pine Lake Country Club, Phyllis and Gerald Dillon.
Attys: R.J. Brown, Michael G. Smith, Walter Murray, Robert L. Brown, William L. Owen, Joe Bell, Steve Quattlebaum, Watt Gregory.

In re Hilyard Drilling Company, **ED** AP No. 86-745M: (November 5, 1987) **Ch. 11** (Allowing administrative claims of debtor company against debtor subsidiary and subsidiary against parent arising post-petition; declining to equitably subordinate parent's claim because no evidence of inequitable conduct; declining to setoff post and prepetition claims).
Prtys: R.J. Brown, Trustee for Hilyard Supplies; Isaac Scott, Trustee for Hilyard Drilling Co.
Attys: Isaac Scott, Audrey Evans, R.J. Brown, John Jewell, Scott Vaughn, Ian Vickery, Charles Baker, William Prewitt

EQUITABLE SUBROGATION

In re James and Carrie Hall, **HS** 02-70062
(July 24, 2003) **295 B.R. 877,** AP 02-7090: court denied motion to dismiss filed under Rule 7012; creditor may proceed with dischargeability complaint under either § 523(a)(4)for embezzlement or § 523(a)(6) for willful and malicious conduct; pursuant to § 509 creditor is equitably subrogated to the rights of another creditor which first creditor is obligated to pay if debtor doesn't pay.
Prtys: Debtors, Reggie Jones
Attys: David Grace, Martha McAlister

In re Mid-America Travel, **HE** 90-20060M (April 20, 1992) **Ch. 11.** (Creditor that

acquired claim under equitable subrogation, not assignment, pursuant to section 507 was precluded from claiming the priority of the original holder in liquidating plan).
Prtys: First National Bank of Eastern Arkansas, debtor in possession.
Attys: Charles Baker, John D. Bridgforth.

ERISA

In re Hartman, 115 B.R. 171, **HA** 89-13019M (June 1, 1990) **Ch. 13:** (Because debtor was entitled to lump-sum distribution of his vested benefits upon voluntary termination of employment, Erisa-qualified retirement plan did not qualify as spendthrift trust under Arkansas law and plan's anti-alienation provision was unenforceable in bankruptcy. Plan confirmation denied because debtor's vested interest in plan was estate property and should be included in liquidation analysis)
Prtys: Debtors, First Federal Savings and Loan, Trustee. Attys: Claude Ro. Jones, Frank Bailey, Gail Inman-Campbell.

In re Guy Hamilton Jones, Jr., Richard L. Ramsay v. Guy Hamilton Jones and Guy Jones Jr. Employees Pension Trust, **LR** AP No. 94-4125 (April 25, 1995) **Ch. 7.** (denying debtor's motion to dismiss trustee's complaint for turnover of retirement funds on grounds of lack of subject matter jurisdiction and Erisa argument but granting dismissal without prejudice for failure to join proper parties; retirement plan not Erisa-qualified, so anti-alienation clause construed under state law; plan was not a spendthrift trust because self-settled; beneficiary could receive corpus at any time so anti-alienation clause was not applicable).
Attys: Richard Ramsay, Richard Hatfield, Charles Baker, Judy Henry.
Prtys: Richard Ramsay-Trustee, Debtor, Debtor's Pension Plan

In re Rodriguez, **ED** 86-139 (June 19, 1987) **82 Bankr. 74; Ch. 7.** (Debtor could not exempt interest in employer-sponsored Erisa savings plan since could receive trust corpus at discretion (not spendthrift).
Prtys: Debtors, William Randall Wright-Trustee
Attys: William Randall Wright, Henry Kinslow.

In re Jimmy Lynn Thomas, **TX** 03-73985 (July 7, 2005) **(331 B.R. 798)**: Upon Trustee's motion for turnover of two IRA accounts, court held funds were not Erisa qualified because accounts did not restrict alienation or transfer so IRAs were property of estate under section 541(c)(2); estranged wife had only an inchoate marital property interest in the accounts because she was married to the debtor on the day bankruptcy was filed.
Prtys: Debtor, Renee Williams-Trustee, Linda Thomas
Attys: Rodney McDaniel, Thomas Streetman, Randell Wright

ESTATE

In re Locke, **LR** 83-204, AP 83-643M (April 1, 1985) 50 Bankr. 443, **Invol. Ch. 7** (discharge denied under 727(a)(2) for intent to hinder creditors.) May 7, 1985: (Trustee's settlement of denial of discharge claim is approved but that of Bank is

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denied because of no benefit to estate).
Prtys: Debtor, First Commercial Bank
Attys: Charles Davidson, Isaac Scott, Rick Taylor, Ralph Sloan

In re Medical Professional, Ltd. **LR** 84-1367M
In re Clinicare Inc. **LR** 84-1369M, AP 84-461M (September 3, 1985) **Ch. 11**. Upon objection to compromise settlement of Debtor's turnover and fraudulent conveyance complaint, court declined to approve because not in the best interests of creditors and no benefit to estate.
Prtys: Debtors, Ouch Inc., River City Inc, OUCMG Inc., R.S. Venable, Jim Justus, Douglas Robinson, Stephen Snyder, W.S. Sung.

ESTIMATION OF CLAIM

ESTOPPEL

In re Batchelor, **HE** 87-134M, **AP** 88-81M (Jan. 9, 1989) **Ch.12,** (held lien on crops valid for five years not one even though Batchelor did not understand extent of lien at time of signing security agreement and fiancing statements; held party asserting estoppel (here debtor) must prove strictly and not proved here)
Prtys: Farm Credit Services of Eastern Arkansas and Elton and Edith Batchelor
Attys: David Carruth, Gerald Coleman, David Coop

In re Roy and Susan Crews, **LR** No. 04-14692M, **2005 WL 1420842 (**June 16, 2005): **Ch. 13**. (Ruling that Debtor's confirmed plan was not res judicata as to lack of insurance on real property being purchased under contract for sale but creditor's acceptance of payments for years knowing Debtor was unable to insure property pursuant to contract constituted waiver. Alternatively, creditor was equitably estopped from asserting breach of contract).
Prtys: Debtors, Estate of Kenneth Ryan
Attys: David Lester, Steven R. Smith

In re Scottie McDonald, **ED** 01-90070, AP 02-7024 (April 1, 2003) **Ch. 7**: Denying motion for summary judgment on judicial estoppel principles that are based on unresolved material facts.
Prtys: Debtor, Kelly Ewing
Attys: Jack Gooding

EXAMINER

EXCUSABLE NEGLECT

In re Howell Enterprises, 99 B.R. 413, **HE** 88-58, AP 88-132
(Feb. 27, 1989) **Ch. 11:** (Denial of motion for default judgment based on defendant's three-week delay in filing answer to debtor's fraudulent conveyance complaint, where delay was good faith mistake and did not prejudice debtor and entry of default would expose defendant to $2 million in damages; entry of default could later be set aside for excusable neglect).

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Prtys: Howell Enterprises, First National Bank in Stuttgart.
Attys: David Fuqua, Robert Dittrich.

In re Jones Truck Lines Inc., 172 B.R. 264, **FA** 91-15475M (May 13, 1994) **Ch. 11.** (Denying defendant's motion for new trial in default judgment on preference suit brought by debtor because defendant failed to show excusable neglect in not timely answering the complaint)(rev'd, 63 F.3d 685).
Prtys: Jones Truck Lines, Foster's Truck and Equipment Sales, Inc.
Attys: Troy Price, K.C. Cohen.

In re N.S. Garrott & Sons, Inc. JO 83-215M
In re Eastern Arkansas Planting Company, JO 83-216M, AP 84-310M
(Sept. 11, 1985) Ch 7 (Wells Fargo failed to file timely notice of appeal in AP 84-310M; time would not be extended for excusable neglect).
Prtys: Small Business Administration, Wells Fargo Ag Credit Corp., John Deere Co.
Attys: Richard Frockt, Lindsey Fairley, Michael Killin, Katherine McGovern, Jim Smith, Diane Mackey, Lanier Fogg

EXECUTORY CONTRACT

In re Gore, 124 B.R. 75, **LR** 88-04-2284M, 89-570M (Oct. 1, 1990) **Ch. 12**. (Holding that debtors' prepetition contract with government to hold land fallow in exchange for payments was executory contract which became postpetition contract with debtors-in-possession following their assumption thereof.)
Prtys: Debtors; Small Business Administration.
Attys: Lance Hanshaw, William Adair.

In re Hayes, 101 B.R. 569, **LR** 88-1997M (June 28, 1989) **Ch. 13:** (Real estate sale contract would be characterized as lien device rather than executory contract and treated as long term debt in plan pursuant to 1322(b)(5)).
Prtys: Southern Investment Co., Debtor.
Attys: Stuart Miller, Willard Proctor Jr.

In re Hoffinger Industries, Inc., **HE** 01-20514M, **Ch. 11** (April 16, 2004) **308 B.R. 362:** Debtor's former president ordered by BR court to turnover funds to the Debtor that he paid himself through unauthorized expense reimbursement and other means**;** President's employment contract had expired under its own terms and it was unnecessary for the Debtor to later reject the contract pursuant to section 365.
Prtys: Brad Rinehart, Debtor
Attys: Frederick Wetzel, Lance Miller, Stan Smith.

In re Irene Jones, 54 B.R. 697, **LR** 85-385M, CMS No. 85-438M (October 16, 1985) **Ch. 13.** (Ruling that land sales contract or contract for deed on the debtors' residence is not an executory contract to be treated under section 365(b)(1)(A),(B)(C), but is a security device warranting treatment as a long-term debt secured by a lien in the debtor's residence).
Prtys: Dan and Betty Thorpe, Debtor

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Attys: M.W. Villines, Stephen Bennett.

In re Michael and Barbara Lyle, **PB** 85-69M (July 18, 1985). **Ch. 13.** (Debtors must cure arrearage under executory contract (lease of vehicle) upon confirmation of plan; cure and provision of payments under plan is adequate assurance).
Prtys: Debtors, Ford Motor Credit Corporation.
Attys: David Duke, Gregory Bryant

In re MacMillan Petroleum, **ED** 87-149M, AP 88-392, 88-433, (July 24, 1990) **Ch. 7** (Lessor (Moore & Munger) of debtor's pipeline system liable for reasonable rent even though prepetition lease rejected because trustee did not assume it within 60 days. Lessor was entitled to offset repairs from rentals. Lessor was not required to pay prejudgment interest for time it failed to make lease payments because there was no bad faith. Division order agreement was not executory contract and trustee did not have to assume it. Lessor liable for balance of purchase price of division orders since trustee's breach was not material).
Prtys: Moore & Munger Marketing and Refining, Claude Hawkins-Trustee, MBank Dallas
Attys: Thomas Williams, Peter Franklin, Charles Camp, Derrell Dickens, Bobby Shepherd.

In re National Hydro-Vac Industrial Services, **PB**, 262 B.R. 781, No. 01-50466M, **Ch 11**, later 7 (May 24, 2001) (court denied Bank's motion for relief from stay to terminate bank card merchant agreement; Agreement was executory contract under 365 but not contract to extend financing so 365(c)(2) n/a; not a personal services contract under 365(e); code invalidates terminable at will clauses in contracts when reason of termination is predicated on condition of bankruptcy filing).
Prtys: National Hydro-Vac, Simmons First National Bank.
Attys: Kevin Keech, Brian Rosenthal, Rosalind M. Mouser.

EXEMPTION

In re Trecee Lee Anderson, **ED** 02-72101 (September 6, 2002) **Ch. 7:** (Debtor could not avoid judicial lien under section 522(f)(1)(A) when she owned no property upon which lien could fix; creditor with prepetition claim could not reduce the claim to judgment with lien attached to debtor's property post-discharge because discharge renders judgment void under section 524).
Prtys: Debtor, Farmers Bank & Trust.
Attys: Jack Gooding, Henry Kinslow.

In re DeWitt Busby, **HE**, No. 00-20283M, **Ch 7**. (March 9, 2001). Debtor could avoid lien impairing his exemption in certain tools of the trade pursuant to 522(d)(5)&(6); extent of exemption is determined under the formula provided in 522(f)(2)A).
Prtys: DeWitt Busby-Debtor; Bob Cole Bail Bonds, Inc.
Attys: Richard Rhodes, Jim Luker.

In re Gosnell, **HS** 04-75975, **336 B.R. 133** (December 19, 2005) **Ch. 7. (**Ruling that portion of debtor's IRA not exempted under the wild card exemption, § 522(d)(5), could not be exempted under § 522(d)(10)(E) because not reasonably necessary for the debtors' support).
Prtys: Debtors, Trustee–Frederick Wetzel
Attys: Brian Trubitt, Frederick Wetzel

In re Bobby and Sherry Chambers, **Tex.** No. 02-72834
April 10, 2003: **Ch. 7** Debtors' homestead on city limits of Nashville, Ar. was urban and would be exempt under section 522(b)(2)(A) according to urban constitutional limits.

In re Marty Cloud, **LR**, 215 B.R. 870, 96-42046M, AP 96-4174
(July 17, 1997) **Ch. 7** (equitable lien in automobile that creditor had purchased for her step-son, the debtor, was not judicial lien impairing an exemption and not subject to avoidance by debtor).
Prtys: Marty Ray Cloud, Betty Cloud.
Attys: Keith B. Faulkner, Jimmy D. Eaton.

In re Keith Criswell, **LR, 152 B.R. 264,** No. 92-40865M (Dec. 14, 1992) **Ch. 7.** (Court held Arkansas statute repealing previous law and providing that bankruptcy debtors have the right to use federal or state exemptions did not violate the Arkansas Constitution which limits personal property exemptions to less than provided by federal exemptions; if statute conflicts with state's constitution, conflicting portion can be severed from the valid portions; state's decision to opt out of federal exemption scheme is not irrevocable).
Prtys: Keith Criswell, Beth Passmore, Rick Ramsay, Trustee.
Attys: Stephen Bennett, Jack Waggoner.

In re William David Dickey, **LR** 85-1406M, AP No. 86-304M (September 18, 1986) **Ch. 7.** (Ruling that no order abandoning debtor's exempt property had been entered so property of estate includes the debtor's exempt property).
Prtys: Trustee, North Pierce Street Partnership II, First Service Corporation, Stuart and Associates, Inc., William David Dickey and Robyn Gannaway Dickey, First Federal of Arkansas, Leonard Mizell, Robert Johnson.
Attys: Ed Moody, Arnold Goodman, Steve Gershner, Lewis Ritchey, Clayton Blackstock, Herbert Rule.

In re Dipzinski, **JO**, No. 97-10389M (June 16, 1999) **Ch. 7.** (Trustee's objection to debtor's amendment to claim of exemptions sustained; debtor intentionally omitted from schedules the exempt asset, sale proceeds from sale of marital real property due to debtor in divorce).
Prtys: Trustee-Warren Dupwe, Debtor-Patricia Dipzinski.
Attys: Warren Dupwe, Louis J. Nisenbaum, Richard D. Hitt.

In re Bob & Debra Daugherty, **FA** 92-80161 (Dec. 14, 1992) **Ch. 7**. (Ruling that Debtors failed to prove Bob's curtsey and homestead rights in Debra's pre-marital real property; Trustee's objection to exemption by Bob sustained.)

Prtys: Bob and Debra Daugherty, Trustee--John T. Lee.
Attys: Marilyn Washburn, John T. Lee, Becket and Watkins.

In re Tonie B. Dixon, **LR** 87-1550M (February 24, 1988) **Ch. 7**. (FSLIC's objection sustained to debtor's claim of exemption of IRA account where debtor closed account in May and opened a different account with another institution in the same amount of money in June; Arkansas law only exempts IRA contributions made more than a year before bankruptcy).
Prtys: Debtor, Federaal Savings and Loan Insurance Corporation.
Attys: Basil Hicks, Barbara Webb, Middleton Ray Jr.

In re Charles and Sylvia Evans, **PB** No. 94-50037M (Aug. 25, 1995) **190 B.R. 1015: Ch. 7**: Sustaining objection to rural homestead exemption when debtor's abandoned portion of property for commercial operation and property was urban rather than rural despite being outside city limits of Pine Bluff.
Prtys: Debtors, Trustee-Walter Dickinson, Worthen National Bank
Attys: Charles Clawson, Frederick Wetzel, Joseph Strode

In re Gardner, In re Harris, In re Gribble, 139 B.R. 460, **HE** 88-20027 (December 31, 1991) **Ch 7**: (Ark. Code Ann. § 16-66-217 (1991) allows Arkansas residents a choice of federal or state exemptions; election is not retroactive to those debtors filing for bankruptcy before the effective date of the amendment when only state exemptions were available).
Prtys: Leonard and Conus Gardner, Paul and Elizabeth Harris, James Gribble.
Attys: James C. Luker, Daniel Schieffler, Stephen Bennett, Terry Zelinski.

In re Giller, 127 B.R. 215, **ED** 89-11-104 (Oct. 24, 1990) **Ch. 11**: (Urban homestead exemption limited to 1/4 acre; personal property exemptions limited to $500, including IRA, car, wedding bands, tools of trade; could not exempt partnership interests because they are personalty and not within the exemption limit; partner's interest in partnership (share of profits and surplus) are property of estate).
Prtys: Debtor, FSLIC
Attys: Robert Depper, Barbara Hollis.

In re Kenneth Hudspeth, **92 B.R. 827**, **HA** 987-02M (Aug. 22, 1988) **Ch. 7**: (Arkansas' unlimited insurance exemption statute violates the Arkansas constitution's personal property exemption limit of $500).
Prtys: Debtors, Trustee.
Attys: Willliam Gibson, Claude Jones.

In re Guy Jones, Jr., **LR** 92-42755M (July 12, 1994) **Ch. 7.** (Granting parties new trial on issue of whether debtor abandoned homestead such that he was not entitled to exemption because debtor had misrepresented in first trial that he was living elsewhere when the bankruptcy petition was filed).
Prtys: Mary and Christopher Jones, Debtor, Trustee
Attys: Judy Henry, Charles Baker, Richard Ramsay.

In re Guy Jones, Jr., **193 B.R. 503**, **LR** 92-42755M (August 18, 1995) **Ch. 7.** (In

new trial on creditors' objection to claim of homestead exemption, court held creditors did not carry burden of proof to show that debtor had present intent to abandon homestead at time of filing petition; although he was in negotiations before and after bankruptcy filing to sell house, this was evidence of intent to abandon homestead in future and not present intent to abandon).
Prtys: Mary and Christopher Jones, Debtor, Trustee
Attys: Judy Henry, Charles Baker, Richard Ramsay.

In re Marco Levy, **221 B.R. 559,S.D. Fla. (Ft. Lauderdale)** 95-22861-BKC-PGH, AP 95-1597-BKC-PGH-A (March 27, 1998)**Ch. 7.** (court sustained objections to discharge and claim of homestead exemption; Canadian debtor had failed to explain loss of assets to meet liabilities so discharge denied; claim of exemption in homestead denied because debtor lacked domicile in Florida during 180 days preceding bankruptcy so Florida exemptions not available to Debtor).
Prtys: Debtor, Attorney General of Quebec, Lucy C. DeBraccio-T.
Attys: Robert Fracasso, Ronald G. Neiwirth, Robert Meyer.

In re McCraw, **FS** 84-331, CMS 85-243M (Aug. 6, 1985) **58 Bankr. 175, Ch. 7** (Homestead exemption available to divorced debtor who was married when property purchased and who lived with husband on property before divorce).
Prtys: Trustee, Debtor, Ellen Meierding.
Attys: Stanley Leasure, Bill Strait, Ben Barry, Jerry Pruitt.

In re Virginia Morris **FA** 91-15649 (May 28, 1992) **LR** (granting creditor's motion for joint administration. Debtors had to choose between state or federal exemptions, husband couldn't take state while wife take federal).
Prtys: Debtors, Citizens Bank of Northwest Arkansas, Vance Harp, Claude Jones-Trustee
Attys: Marcia Brinton, Lamar Pettus, Charles Trantham, Stanley Leasure, William Clark, Larry Thompson

In re John E. Oldner, **LR** 94-42031M, (Aug. 18, 1995) **191 B.R. 146,** AP 94-42031M: Debtor could not exempt homestead outside city limits as rural because character of the property was urban "megalapolitan."
Prtys: Trustee-Richard Ramsay, Debtor
Attys: Richard Ramsay, David Jacobs

In re Gary and Nancy Pendleton, 225 B.R. 425, **LR** 95-43358M (September 29, 1998) **Ch. 13.** (Personal injury award claimed as exempt was disposable income and not reasonably necessary for the Debtors' expenses such that the proceeds would be used to fund the plan).
Prtys: David Coop-T; Debtors.
Attys: William Owens; David Coop.

In re Rodriguez, **ED** 86-139 (June 19, 1987) **82 Bankr. 74; Ch. 7.** (Debtor could not exempt interest in employer-sponsored Erisa savings plan since could receive trust corpus at discretion (not spendthrift).
Prtys: Debtors, William Randall Wright-Trustee

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Attys: William Randall Wright, Henry Kinslow.

In re Bobby & Drucella Sisco, 147 B.R. 495, **HA** 91-13175 (Nov. 16, 1992) **Ch. 7.** (IRA exemption allowed under 522(d)(10)(E) because reasonably necessary for support).
Prtys: Richard Nelson, Trustee; Debtors; First Federal Savings & Loan.
Attys: Richard Nelson, Frank H. Bailey, Claude R. Jones.

In re Cecil Speight, **FA** 91-15648F (June 4, 1992) **Ch. 7.** (Debtor could not exempt half his wife's IRA because not property of estate; no exemption in his IRA because not reasonably necessary for his support).
Prtys: Debtor, Joe Laughter.
Attys: Jimmy Eaton, Jackson Butt.

In re Thomas, **ED** 89-11010 (Mar. 22, 1990) (**1990 WL 300700**) **Ch. 7**: (Debtor could not exempt more than $500 in workers' compensation benefits despite Ark. Statute because state Constitution set the limit).
Prtys: Debtors, Trustee
Attys: Henry Kinslow, William Randal Wright, Chuck Tucker

In re Weaver, 89-12493 (Jan. 17, 1991) **128 B.R. 224, Ch. 7**: Debtor would be allowed to exempt property as homestead where it was rural in nature and all lots owned by debtor were contiguous.
Prtys: Debtor, Tom Robertson, Trustee, Michael Wiseman.
Attys: Fines Batchelor, Phillip Taylor, Robert Blatt, Thomas Robertson

In re Alfred and Sharon Whitson, **LR** 02-20854, **319 B.R. 614** (Jan. 19, 2005) Trustee failed to carry burden of proof under BR Rule 4003 that proceeds from settlement of debtors' personal injury claims were not exemptible; proof did not show proceeds were not compensation for lost earnings or were not reasonably necessary for debtors' support as required by section 522(d)(11)(E).
Prtys: Debtors, Trustee-Richard L. Ramsay.
Attys: James O. Wyre, Richard L. Ramsay.

In re David Williams, **HE** 88-04 (Nov. 1, 1988) **93 Bankr. 181**, **Ch. 7**: Effect of Hudspeth re Arkansas' unconstitutional exemption statute, debtor was limited to constitutional exemption in insurance proceeds.
Prtys: Debtor, Daniel K. Schieffler, Trustee
Attys: Daniel K. Schieffler, James C. Luker

In re Zenone, **LR** 99-44146M (June 6, 2002) **Ch. 7**: (Debtor could not amend exemptions to include an IRA account, pursuant to section 522(d)(10) and BR Rule 1009, that was not previously scheduled as exempt because of bad faith and prejudice to creditors and trustee).
Prtys: Debtor, James Dowden, Trustee; Sherri Burks.
Attys: Paul Budd, James Dowden, Scott Vaughn.

EXIGENT CIRCUMSTANCES

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In re Velma Gayle Wallace, **LR** 05-40004 (March 3, 2006) **2006 WL 581036: Ch. 13.** Court dismissed debtor's case for failure to receive credit counseling prior to bankruptcy and failure to file certificate of exigent circumstance pursuant to sections 109(h)(1) and (h)(3)(A).
Prtys: Debtor, Chapter 13 Trustee-Jo-Ann Goldman
Attys: Henry Means, Linda McCormack

EXPRESS TRUST

In re David Herndon, **LR** 01-40158, AP 01-4082 (May 16, 2002) (**277 B.R. 765) Ch. 7: (**Debtor contractor's debt nondischargeable when he violated fiduciary duty in express trust stated in indemnity agreement by using money allocated for one project to pay debts for another and, therefore, was liable for defalcation pursuant to section 523(a)(4)).
Prtys: International Fidelity Insurance Company, Debtor
Attys: Jack East, Keith Grayson.

FAIR AND EQUITABLE

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **Ch. 11** (Under 1129(b)(2)(B)(i)(ii), the fair and equitable rule dictates that all classes of unsecureds must be paid before a junior class of creditors; plan calling for discharge of 95% of farmer-debtor's unsecured debt after only 5 years is not contemplated by the reasonably equivalent value exception and is not fair and equitable.)
Prtys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Huntsman Farms, Inc. **LR** 82-935-940 (Dec. 7, 1984) **Ch. 11**: (Numerous requirements for confirmation of Ch. 11 plan not met, including not meeting fair and equitable test and best interests of creditors test; not providing for class of interest holders; attempting to substantively consolidate several cases without explanation or disclosure or following the requirements of rule 1015).
Prtys: Huntsman Farms, Huntsman Farm Store, Huntsman Enterprises, Ralph and Olivia Huntsman, Wayne Huntsman, Harold and Maudie Huntsman, John Hancock Life Insurance Co., Northwestern National Life Insurance Co.
Attys: Susan Gunter, Jim Smith, Allen Bird, Thomas Thrash, Stanley Price, Edward Bisno.

In re Landscape Associates, Inc., **LR** No. 85-663, 81 B.R. 485
(July 1, 1987) (Confirmation of **Ch. 11** plan denied because proposed interest rate was not market rate. See related District Court and Court of Appeals Opinions about collusive sale of property of the estate brought by Rick Ramsay, Trustee).
Prtys: Debtor, First Pyramid Life
Attys: Richard Crockett, Richard Taylor, Eugene Fitzhugh, William Owen, Robert

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L. Brown

In re Nolen Tool Co., **FS** 84-151 (May 30, 1985) **50 Bankr. Ch. 11**. (Objection to confirmation sustained; Plan cramdown of creditor's debt did not pay present value at market rate of interest, did not maintain indubitable equivalent of collateral, so was not fair and equitable).
Prtys: Debtor, City National Bank, FDIC
Attys: Isaac Scott, John Tisdale, Robert Y. Cohen

FALSE OATH

In re Hooten, **HS** 04-73821, AP 04-7218) **Ch. 7** (November 29, 2005) (Denying Discharge under 727(a)(4) for giving false oaths with fraudulent intent when debtor quitclaimed his future interest in real property, later disclaimed future interest in favor of his heirs, and then listed real property on schedules in bankruptcy).
Prtys: Debtor, Phyllis Nash Dunning
Attys: John Howard, Basil Hicks

In re Guy Hamilton Jones, Jr., 175 B.R. 994, **LR** AP No 93-4057M, 93-4058M, No. 92-42755M (August 2, 1994) **Ch. 7**. (Denying debtor's discharge for concealment of assets, 727(a)(2)(A); withholding Records from trustee, 727(a)(4)(D); conversion, 727(a)(2)(B), and false oath, 727(a)(4)A) and (a)(7))
Prtys: Guy Jones Jr., Trustee Richard Ramsay, Mary Jones, Christopher Jones.
Attys: Judy Henry, Charles Baker, Richard Ramsay

In re W.R. Lile, **LR** 97-45878M, AP 99-4008 (August 8, 2000) **Ch. 7.** (Denying Debtor's discharge upon Trustee's complaint for false oath regarding household furnishings, failing to explain deficiency of assets; failing to keep and preserve records of financial condition; failing to turn over records to Trustee without justification).
Prtys: Randy Rice-T; Debtor
Attys: Jim Dowden, Debtor Pro Se

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

In re Zepecki, **JO** 96-30125M, AP 98-3039 (April 5, 2000) **Ch. 7.** (Debtor's discharge denied for giving false oaths in failing to schedule pre-petition transfer of sale proceeds from himself to Alabama attorney for suspect real property transaction).
Prtys: Debtor, Bonnie Kania (ex-wife).
Attys: David Lewis, Mary Lile Broadaway.

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FARM INCOME

In re Tim Wargo & Sons, Inc., **PB** 86-474 (June 5, 1987) **74 Bankr. 469**, **Ch. 12**: Receipt of rents from debtor's tenant farmer does not meet Ch. 12 eligibility requirements for family farmer. AFFIRMED (J. Reasoner 86 Bankr. 150) AFFIRMED (8th Cir. 869 F.2d 1128).
Prtys: Debtor, Equitable Life Assurance Society of the U.S.
Attys: Richard Alexander, William C. Adair, A.L. Tenney, Billy Hubbell.

FARMER

In re Jimmy H. Harris, Jr., **JO** 99-31282M, AP 00-3010 (September 18, 2001) **Ch. 7.** (Farmer's debts to creditor were nondischargeable for submitting a false financial statement pursuant to section 523(a)(2)(B)).
Prtys: Debtor, Agro Distribution, LLC.
Attys: Jan Thomas, Joe Strode.

In re John Samuel Marlar, **ED Involuntary chapter 7**
March 8, 2005, 04-CV-1047, **DISTRICT COURT (JUDGE BARNES): Affirming** bankruptcy court's denial of debtor's motion to dismiss case based on purported fact that debtor is a farmer and could not have been placed in involuntary bankruptcy five years previously pursuant to section 303(a); fact that debtor was farmer must be timely raised as an affirmative defense or defense is waived. **Affirmed by 8th Circuit,** Dec. 22, 2005: status as farmer must be timely raised as affirmative definse to involuntary bankruptcy.
Prtys: Debtor
Attys: Pro Se.

In re Edmond Torelli, **LR** 04-23884 (Feb. 2, 2006 **)(2006 WL 490574)**: Court denied confirmation of **Ch. 12** plan because it failed to pay present value of creditor's claim with appropriate market rate of interest under section 1225(a)(5)(B)(ii); was not feasible in that debtor did not have sufficient disposable income to fund plan under section 1225(a)(6); however, debtor did meet eligibility requirements of family farmer under section 101(18).
Prtys: Debtor, Regions Bank
Attys: Michael Knollmeyer, Kimberly Burnett

FEASIBILITY

In re Armstrong, **HE** 89-162M (April 18, 1991) **Ch.12** (objection to confirmation; compared required plan payments with projected income; held plan not feasible)
Prtys: Farm Credit and FmHA
Attys: John Henry, Bill Adair, Kent Rubens

In re Danny Thomas Properties III Limited Partnership, 231 B.R. 298, **LR** 96-42482M (March 18, 1999) **Ch. 11.** (secured creditor's objection to Ch. 11 plan

sustained; plan should have reasonable prospect of success; BOP of feasibility on debtor; plan not feasible because it would generate a deficit over five year period, could not fund deferred maintenance, and capital contribution was not forthcoming).
Prtys: Danny Thomas Properties III Ltd. Partnership, Beal Bank.
Attys: Gregory M. Hopkins, Joyce Bradley Babin.

In re E.I. Parks No. 1 Limited Partnership, 122 B.R. 549, **FA** 88-261M (Oct. 19, 1990) **Ch. 11**. (Finding that plan was feasible based on earnings projections, recapitalization plan, management restructure; to be feasible plan must offer reasonable prospect of success and be workable, not guarantee of success).
Prtys: E.I. Parks Ltd. Partnership, Shady Grove Associates, Western Hills Park.
Attys: Michael Reif, Katherine Gay.

In re Holthoff, 58 B.R. 216, **PB** 84-223M (Dec. 12, 1985) **Ch. 11.** (Reorganization plan of Debtors, who had debt far beyond ability to pay even under favorable conditions, did not meet feasibility requirements of code).
Prtys: Metropolitan Life, Debtors.
Attys: Patrick Hollingsworth, Rick Ramsay.

In re Thomas Patrick Harper, 157 B.R. 858, **HE** 91-20002M (Aug. 13, 1993) **Ch. 12:** (holding that plan providing for excess cash flow was feasible where debtor's projected cash flow for prior year proved to be accurate and projections were based on previous year's performance; to determine feasibility, court looks at probability of actual performance of plan provision.)
Prtys: Farm Credit Bank of St. Louis, Debtor.
Attys: Gerald Coleman, Arens Law Firm.

In re Manes, **PB** 85-330 (June 25, 1986) (**67 Bankr. 13**) **Ch. 13** (Malicious conduct was not bad faith sufficient to warrant denial of confirmation of Ch. 13 plan; plan was not feasible).
Prtys: Debtors, Harvey Jones.
Attys: Thurman Ragar, Jr., Fred E. Bosshart

In re Plafcan, **HE** 89-20021 (Oct. 24, 1989) **Ch. 12**: Order denying confirmation on basis of feasibility.
Prtys: Debtors, Federal Land Bank, Trustee-David Coop
Attys: Charles Baker, Richard Taylor

In re Edmond Torelli, **LR** 04-23884 (Feb. 2, 2006 **)(2006 WL 490574)**: Court denied confirmation of **Ch. 12** plan because it failed to pay present value of creditor's claim with appropriate market rate of interest under section 1225(a)(5)(B)(ii); was not feasible in that debtor did not have sufficient disposable income to fund plan under section 1225(a)(6); however, debtor did meet eligibility requirements of family farmer under section 101(18).
Prtys: Debtor, Regions Bank
Attys: Michael Knollmeyer, Kimberly Burnett

FIDUCIARY DUTIES

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In re Arkansas Communities, Inc., **HS** 80-22M (June 19, 1985) **Ch.11** (denying R.J. Brown's fee request based on conflicts of interest in case; discussion of fiduciary duties of DIP)
Prtys: Mitchell Law Firm, R.J. Brown
Attys: R.J. Brown, Maurice Mitchell, Herb Rule,Gary Garrett

In re Gary and Lucille Dean, **ED** 90-11138M, AP 93-1502M (July 29, 1994) **Ch. 7. (**Corporate officer breached duty of loyalty by defrauding corporation and is not entitled to compensation for services; no legal services w ere performed).
Prtys: William Randal wright--Trustee, Debtors, Hi-Tech Coatings, Denitia Nichols, Robert Johnson, Ashley Investment Services, Inc., Genesis Development Corporation, Premier Industrial Coatings, Inc., Global Traffic Service, Inc., Global Industrial Supplies, Inc., Honorable Robert C. Vittitow.
Attys: Thomas Streetman, Billy Hubbell, Randal Wright.

In re Dollar Time Group, Inc., 223 B.R. 237, **S.D. Florida** 95-22816-BKC, RBR, AP 96-0380-BKC, RBR (July 20, 1998) **Ch. 7**. (Under N.Y. law, prima facie showing of director self-interest in corporate transaction conducted without board or shareholder approval shifts to director the burden of demonstrating that transaction was fair and in best interests of corporation; defendants did not prove transactions were fair and in best interests of corporation where loans to defendants to expand business were made when debtor was in financial trouble.)
Prtys: Kenneth Welt, Trustee; Dollar Time Group, Inc.: Joseph Sasson, Jeffrey Klansky.
Attys: Irwin Fingerit, Ronald Neiwirth, Arthur Rice.

In re David Herndon, **LR** 01-40158, AP 01-4082 (May 16, 2002) (**277 B.R. 765) Ch. 7: (**Debtor contractor's debt nondischargeable when he violated fiduciary duty in express trust stated in indemnity agreement by using money allocated for one project to pay debts for another and, therefore, was liable for defalcation pursuant to section 523(a)(4)).
Prtys: International Fidelity Insurance Company, Debtor
Attys: Jack East, Keith Grayson.

In re Reed, **PB** 86-450 (September 6, 1987) **Ch. 11.** (Court denied motion to dismiss dischargeability complaint for fraud, embezzlement, defalcation under 523(a)(4); facts pleaded with sufficient particularity).
Prtys: Roderick Reed, debtor in possession; FSLIC.
Attys: Isaac Scott, James Cherry, Peter Heister, Matthew Botica.

FINAL ORDER

In re Stephen Griffin, **FS** 02-70245**, Ch. 7**
August 27, 2003: Court removed Diane Sexton as attorney for Ms. McGehee (creditor) because of conflict of interest. APPEAL DISMISSED BY BAP. NO. 03-6069: June 3, 2004: an order disqualifying an attorney is not a final appealable order. BR Code 28 U.S.C. § 158©.

In re Johnny L. Vincent, **HE** 98-20387M, May 16, 2003, **293 B.R. 467: Ch. 13**

debtor's objection to creditor's claim would have had merit in that creditor failed to object to a plan not providing interest on the claim or conforming to the code on residential mortgages and plan was confirmed, but Debtor's objection to the claim was overruled as a sanction for failing to comply with discovery under Rule 7037 and creditor's objection to Debtor's modified plan was sustained. On appeal to **BAP**, Dec. 1, 2003, 03-6025E, **301 B.R. 734**: Appeal dismissed for lack of jurisdiction because the order denying debtor's motion to modify his plan was not a final order pursuant to 28 U.S.C. § 158.
Prtys: Debtor, Fairbanks Capital Corporation
Attys: James F. Valley, Kimberly D. Burnette

FINANCING STATEMENTS

(Also see Continuation Statements)

In re Batchelor, **HE** 87-134M, **AP** 88-81M (Jan. 9, 1989) **Ch.12,** (held lien on crops valid for five years not one even though Batchelor did not understand extent of lien at time of signing security agreement and financing statements; held party asserting estoppel (here debtor) must prove strictly and not proved here)
Prtys: Farm Credit Services of Eastern Arkansas and Elton and Edith Batchelor
Attys: David Carruth, Gerald Coleman, David Coop

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player; Merchants and Planters' description in financing statement was sufficient under section 402(1); River Valley Bank did not list the proper debtor on financing statement; Union Planter's financing statement was sufficient even though not signed by proper debtor because bank had separate instrument properly signed so signature was scrivener's error).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn, Darwin Davidson, Lance Miller.

In re Steve Masters, **HE** 00-20359M, AP 01-2008 (Jan. 2002) **Ch. 7**: (Summary Judgment granted to F.S.A.; Trustee could not avoid Government's liens in debtor's personal property despite the fact that error in clerk's office as to properly filed financing statement resulted in temporary loss of perfection by Government).
Prtys: Trustee-James Luker, Farm Service Agency (U.S.D.A.)
Attys: Fletcher Jackson, James Luker.

In re Roy and Elizabeth Peeler, 145 B.R. 973, **HE** 88-20142M, AP 91-2005 (April 24, 1992) **Ch. 7.** (lender's security interest in crops did not extend to proceeds from sale of grain three years later; financing statement had insufficient description to perfect security interest and security interest could be avoided by trustee; property acquired by debtor postpetition was not subject to prepetition

security agreement).
Prtys: Danny Schieffler-Trustee; First National Bank of Wynne, Debtors.
Attys: Danny Schieffler, Tom B. Smith, Brad J. Beavers.

In re Tracy's Flowers and Gifts, Inc., 264 B.R. 1, No. 00-11308, AP 001518 (June 12, 2001) **Ch. 7** (court dismissed trustee's complaint to determine validity of Bank's lien in property of debtor; Bank's lien was properly perfected even though no express grant of a security interest was present in the security agreement).
Prtys: William S. Meeks, Trustee; First Bank of South Arkansas
Attys: William S. Meeks, Paul Lindsey.

In re Wallace, **FS** 84-256 (March 13, 1986) **61 Bankr. 54, Ch. 11**: Financing statements filed under trade name of debtors insufficient pursuant to 9-402 so creditor not perfected and lien subject to avoidance by DIP pursuant to section 544; Ch. 11 plan not confirmed because dissenting creditor not classified.
Prtys: Debtors in Possession, Case Credit Corporation
Attys: Ben Barry; Maurice Rogers.

FORECLOSURE

In re Darrwin Anthony Ben, **LR**, 03-17928 (March 18, 2004) **Ch. 13**: Notice of foreclosure met requirements of statute; Debtor did not meet burden of proof to show that description of the property was not attached to deed of trust on file at clerk's office; Debtor failed to meet burden that Bank was not the beneficial owner or that the Debtor was not in default.
Prtys: Debtor, Provident Bank
Attys: Henry Means, Kimberly Burnette

In re Bookout, 231 B.R. 306, **BA** 98-10272M (March 18, 1999) **Ch. 13.** (In objection to confirmation by bank of Ch. 13 plan modifying home mortgage, court held bank's security interest survived foreclosure judgment for antimodification purposes, even though foreclosure judgment grants a lien, but since claim was also secured by judgment lien in other real property of the debtor by virtue of foreclosure judgment, bank's claim could be modified by plan.)
Prtys: William Dean and Carol Bookout, First National Bank of Sharp County.
Attys: Paul E. Hopper, Michelle C. Huff.

In re John H. Brown, **LR** 02-13140M (August 23, 2002). **Ch. 13**: Debtor could maintain payments and cure arrearage on his home pursuant to section 1322(b)(2) even though sold at judicial foreclosure auction where confirmation of sale was not filed such that sale was not final under section 1322(c) and state law.
Prtys: Debtor, Regions Mortgage.
Attys: Laura Grimes, Scot Goldsholl

In re Gwendolyn Bush, **HE** 99-20274M (October 20,2000) **Ch. 13**. (Objection to confirmation overruled, counsel for creditor failed to prove property included in Ch. 13 plan had previously been foreclosed upon; Creditor then filed numerous

futile pleadings to undo the ruling on the objection).
Prtys: Debtor, Ameriquest Mortgage Company.
Attys: J.F. Valley, Kim Burnette.

In re Henson, **FS** 92-70580M (April 20, 1993) **Ch. 13**: (objection to confirmation of Ch 13; under state statutory foreclosure procedure, right to deed of trust property belonged to purchaser so that property was no longer property of estate and could not be included in the plan; proceeding to determine status of property in bankruptcy was inappropriate to set aside sale based on irregularities under state law).
Prtys: Debtors, Fleet Mortgage Corp.
Attys: Robert McKinney, Michael Hamby.

In re Jacqueline P. L'Heureux, 04-6060 (Feb. 25, 2005): **BAP affirmed** bankruptcy court's bench ruling that creditor's six-day delay in removing notice of foreclosure sale cancelled after debtor filed for bankruptcy was not a willful violation of the automatic stay under section 362(a)(1); even if there was a violation, the debtor failed to prove damages for emotional distress; granting of a motion to dismiss at end of plaintiff's case is authorized by F.R.Civ.P. 52 and F.R.B.P. 7052.
Prtys: Jacqueline L'Heureux, Homecomings Financial Network
Attys: Robert Lowry, Harry Light

In re Lifesaver Center, Inc. **LR** 85-1894M (August 5, 1986) **Ch. 11 (**DIP's motion to use cash collateral from rents and profits granted; Dip's status as perfected judgment lien creditor under 544 is superior to creditor's unperfected lien in rents and profits under UCC 9-312(5)(a)).
Prtys: Debtor in Possession, Worthen Bank & Trust Co, May Supply Co.
Attys: Charles R. Camp, James J. Glover, William Owen, Richard Crockett, David Jacobs, Gregory Hopkins, Richard Smith, Michael Smith, David Fuqua, Robert Jones, Pam Walker, George Ellis, Ed Moody, W.W. Elrod, Trip Wetzel, etc.

In re Nathan and Lena Matlock, **JO** 92-30527M, AP 92-3034 (April 22, 1993) **Ch. 13.** (Abstaining because of lack of precedent under new statutory foreclosure act when debtors' home sold upon defective notice not specifying which of two county courthouses sale would take place.)
Prtys: Debtors, Lomas Mortgage, A.L. Tenney-T
Attys: Joyn Bradley, Robert McKinney, A.L. Tenney-T.

In re McMullan, 196 B.R. 818, **ED** 94-11228M, AP 94-1516 (April 18, 1996) **Ch. 11.** (Mortgagee moved to foreclose on notes and mortgages secured by oil and gas leases and equipment in case removed to BR court; court allowed Trustee to sell property to be distributed pursuant to the Code; court held: no accord and satisfaction; no evidence of forgery; other indebtedness clauses valid to secure notes and bind debtors; no evidence of Mortgagee's disposal of collateral without owners' consent; no violation of Equal Credit Opportunity Act when Mortgagee required wife to sign notes since leases and equipment used as collateral were community property; wife acted in bad faith in subsequently filing a Ch. 13 when

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she had no income and her debt total made her ineligible for consumer reorganization).
Prtys: Debtors, National Bank of Commerce of El Dorado
Attys: Steve Gershner, Charles Camp, Michael Massey, Herman Ivester.

In re Myra Stanley, 182 B.R. 241, **ED** 93-11190M (September 9, 1994) **Ch. 13.** **(**In non-judicial foreclosure action, Debtor's equity of redemption lapsed 10 days after foreclosure decree and before bankruptcy petition filed; therefore, Debtor's home was not property of estate even though foreclosure sale had not occurred before bankruptcy filing; Debtor could not cure default and make payments to creditor under the plan).
Prtys: Debtor, Superior Federal Bank.
Attys:

In re Herbert Russell, 109 B.R. 359, **ED** 84-58M (October 19, 1989) **Ch. 11.** (Trustee's objection to claim of vendor for deficiency from foreclosure sale sustained because trustee was not party to foreclosure action, so res judicata not applicable; claim was unconscionable because vendors paid only a fraction of value).
Prtys: William Gibson-Trustee, Furrow family.
Attys: William Gibson, Geoffrey Treece, Susan Gunter.

In re Starks, **LR** 05-10728 (Dec. 12, 2005): Upon motion for relief from stay in **Ch. 13** case, court held movant was not bound by confirmed plan as res judicata because no due process where movant not a creditor and received no notice of plan's treatment of movant's interest in property purchased in pre-bankruptcy foreclosure; court would abstain from deciding issue of irregularities of sale under state law in interests of comity and pursuant to 28 U.S.C. § 1334(c)(1).
Prtys: Debtor, Castle Investments
Attys: Michael Knollmyer, Cade Cox

In re James M. Tomlin, 228 B.R. 916, **LR** 98-41988M (January 22, 1999) **Ch. 13**. (overruling creditor's objection to confirmation and allowing Debtor to cure arrearage and pay homestead mortgage through the plan even though home had been sold at auction in non-judicial foreclosure sale prior to bankruptcy; bankruptcy occurred before the deed was recorded such that Debtor was still in legal possession of property and sale was thus not complete under the code at time of filing).
Prtys: Debtor, Hibernia National Bank.
Attys: Stephen Bennett, Daniel Parker

FRAUD

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge, creditors proved four necessary elements: conduct occurred within a year of bankruptcy, debtor's actual intent to hinder, defraud or delay creditors, act was committed by debtor, and the act was a

transfer of property).
Prtys: Texas Equipment Co. Inc., W.O. Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge under 727(a)(2), intent may be proved by circumstantial evidence such as extrinsic evidence of fraud or confluence of several badges of fraud).
Prtys: Texas Equipment Co. Inc., W.O. Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge under 727(a)(2), badges of fraud include transfer anticipating litigation against the debtor, transfer of all the debtor's assets, close association between the transferor and transferee, retention of control or benefit of transferred property, inadequate consideration).
Prtys: Texas Equipment Co. Inc., W.O. Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge under 727(a)(2), transfer of farm equipment was outside the one year sol so it couldn't be a considered as a basis for discharge denial but is relevant as to the issue of intent.)
Prtys: Texas Equipment Co. Inc., W.O. Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge under 727(a)(2), property transferred to relatives raises a rebuttable presumption of fraudulent intent.)
Prtys: Texas Equipment Co. Inc., W.O Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

In re Avant, **ED** 86-67M (August 30, 1988) **Ch.7** (§ 523(a)(2)(A) complaint, fraud and false representation, plfs failed to prove by clear & convincing evidence, speculative oil venture, statements made not fraud)
Prtys: Jack Molnaird, Billy Sandifer, et al
Attys: Henry Kinslow, Ian Vickery, Eugene Bramblett, Claude Hawkins, David Duke

In re Barnett, **ED** 85-42, AP 85-472M (November 17, 1986) **Ch. 7**. (Lending institution and title company filed dischargeability complaint when wife failed to disclose state of title and other prior liens in granting mortgage to lender; debt to lender nondischargeable.)
Prtys: Willard and Lois Barnett, First South, Southern Title Insurance Co.
Attys: Layne Livingston, Henry Kinslow, Claude Hawkins.

In re Brittenum & Assoicates, Inc., **LR**, AP 86-0305M (Sept. 28, 1988) **Ch. 7.**

(Allegations of fraud as to nondebtor co-defendants were dismissed for failure to plead with particularity.)
Prtys: Fred Halstead, John Brittenum, Melvyn Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware, Brittenum & Associates, Inc.
Attys: Jon Pruniski, Robert Roddey, Willis D. Cronkhite, Gary Corum, Richard Taylor, Michael Thompson, Peter Kumpe, Steve Vaughn, Anna Gibson, Philip Dixon, Mark Hampton, David Hodges, Charles Davidson, Jim Dowden, Ben Arnold, Webster Hubbell, Middleton Ray.

In re Donald Couch, **LR,** 54 B.R. 682 (Sept. 11, 1985), **Ch. 7**. (Finding debtor's discharge would be revoked on request of creditor where debtor in possession under Ch. 11 transferred stock that was property of the estate and failed to inform trustee of stock acquisition such that fraudulent intent was established; creditor was not guilty of laches even though revocation of discharge action was commenced after last date to file objections to discharge, where creditor had no prior knowledge of concealment of stock.)
Prtys: Donald Couch, Trustee, McIlroy Bank
Attys: Richard Crockett, Middleton Ray-Trustee, Russell Gibson

In re Gary and Lucille Dean, **ED** 90-11138M, AP 93-1502M (July 29, 1994) **Ch. 7. (**Corporate officer breached duty of loyalty by defrauding corporation and is not entitled to compensation for services; no legal services were performed).
Prtys: William Randal Wright--Trustee, Debtors, Hi-Tech Coatings, Denitia Nichols, Robert Johnson, Ashley Investment Services, Inc., Genesis Development Corporation, Premier Industrial Coatings, Inc., Global Traffic Service, Inc., Global Industrial Supplies, Inc., Honorable Robert C. Vittitow.
Attys: Thomas Streetman, Billy Hubbell, Randal Wright.

In re Hoffman, 70 B.R. 155, **ED** 85-27M, AP 85-476M (Sept. 16, 1986) **Ch. 7.** (Holding that debt to bank was not nondischargeable under 523(a)(2) (A) where debtor sold collateral of secured creditor without consent and without remitting proceeds to secured creditor where fraudulent conversion occurred long after time loan was obtained and debt incurred).
Prtys: Debtor, National Bank of Commerce
Attys: Isaac Scott, Charles Coleman, Joseph Strode.

In re Herbst Corp. **LR** 86-182M, AP 88-533 (Sept. 8, 1989, August 24, 1990) **Ch. 7**: Order granting motion to dismiss for failure to state cause of action under BR 7012 (FRCP 12(b)(6)); also discusses FRCP 8 and 9 (pleading fraud with particularity)(BR 7009).
Prtys: Trustee, Herco, Herbst Retail corp, ABI, Inc.; George Sletteland; First Wisconsin National Bank; First Wisconsin Financial Corporation.

In re Linda Harper, **FS** 84-198M, AP 86-141M (April 15, 1987) **Ch. 7:** (Revoking Debtor's discharge where debtor's fraud destroyed Bank's secured claim and Bank would have obtained an objection to discharge if Debtor had not concealed her actions until time for filing an objection had passed.)
Prtys: First National Bank, Linda Harper.
Attys: Ben Barry, Stanley Leasure, Jan Neilsen, Jim Arnold.

In re Harr, **ED** 86-142M, AP 87-180M (June 29, 1988) **Ch. 11**:(Collateral estoppel did not apply to establish nondischargeability of debt arising from fraud where state court judgment standards differed and determination of fraud was not essential to the former judgment).
Prtys: Don Goodwin, David Brown, Alexander Kermendy, Debtors.
Attys: John Pou, Ian Vickery, Don Gillaspie, Don Goodwin.

In re Jimmy H. Harris, Jr., **JO** 99-31282M, AP 00-3010 (September 18, 2001) **Ch. 7.** (Farmer's debts to creditor were nondischargeable for submitting a false financial statement pursuant to section 523(a)(2)(B)).
Prtys: Debtor, Agro Distribution, LLC.
Attys: Jan Thomas, Joe Strode.

In re Guy Hamilton Jones, Jr., 175 B.R. 994, **LR** AP No 93-4057M, 93-4058M, No. 92-42755M (August 2, 1994) **Ch. 7**. (Denying debtor's discharge for concealment of assets, 727(a)(2)(A); withholding Records from trustee, 727(a)(4)(D); conversion, 727(a)(2)(B), and false oath, 727(a)(4)A) and (a)(7))
Prtys: Guy Jones Jr., Trustee Richard Ramsay, Mary Jones, Christopher Jones.
Attys: Judy Henry, Charles Baker, Richard Ramsay

In re Carl and Maxine Johnson, **LR** 85-772M (June 5, 1986) **Ch. 7.** (motion to dismiss for failure to allege fraud with particularity overruled; objection to discharge sustained upon evidence of plan to sell mortgaged property and illegally convert the proceeds).
Prtys: First State Bank of Morrilton, Bank of Western Indiana, Debtors.
Attys: Gregory Hopkins, Stephen Rowell, Charles Clawson, Howard Yates, Richard Smith.

In re Randy Kerr, 58 B.R. 171, **LR** 84-967M, AP No. 84-492 (August 6, 1985) **Ch. 7.** (Plaintiffs did not carry burden by clear and convincing evidence that debtor had committed fraud by misrepresenting to them the extent of their liability in partnership formed to develop apartment complex).
Prtys: Debtor, Edward Bunch, James Burge, Gilbert Caver, David Gruenewald, Robert McKinney, Larry Motley.
Attys: John Tisdale, Steve Napper, Ralph Sloan.

In re W.R. Lile, **LR** 97-45878M, AP 99-4008 (August 8, 2000) **Ch. 7.** (Denying Debtor's discharge upon Trustee's complaint for false oath regarding household furnishings, failing to explain deficiency of assets; failing to keep and preserve records of financial condition; failing to turn over records to Trustee without justification).
Prtys: Randy Rice-T; Debtor
Attys: Jim Dowden, Debtor Pro Se

In re Locke, **LR** 83-204, AP 83-643M (April 1, 1985) 50 Bankr. 443, **Invol. Ch. 7** (discharge denied under 727(a)(2) for intent to hinder creditors.) May 7, 1985: (Trustee's settlement of denial of discharge claim is approved but that of Bank is denied because of no benefit to estate).
Prtys: Debtor, First Commercial Bank

Attys: Charles Davidson, Isaac Scott, Rick Taylor, Ralph Sloan

In re Gale McVicker, 234 B.R. 732, **LR** 98-42405M, AP 98-4169 (June 14, 1999) **Ch. 7.** (Credit card debt to Sears nondischargeable when Debtor committed actual fraud in incurring the debt because she did not intend to repay when making the charges; court using totality of circumstances analysis).
Prtys: Debtor, Sears Roebuck & Co.
Attys: Patt Pine, Raymond Weber.

In re Prieto, 2001 WL 114937, Fla. No. 00-12476 BKC-RAM (Jan. 30, 2001) **Ch. 7.** (credit card debt to American Express was nondischargeable because of fraud under 523(a)(2)(A)).
Prtys: American Express, Debtor-Francisco Prieto
Attys: Gary J. Lublin, Emmanuel Perez.

In re Willie Joe Stephens, **TX** 95-14064M (June 23, 1997) **Ch. 7**. (State court judgment against debtor-roofer for shoddy roof job was dischargeable since creditor did not prove debtor intended to defraud her by installing roof that developed subsequent problems; negligence and/or breach of contract is not same as fraud).
Prtys: Debtor, Virginia Flaherty
Attys: David Price

In re Speight, 147 B.R. 489, **FA** 91-15648F, AP 91-5557 (June 23, 1992) **Ch. 7.** (debt to former partner-creditor was dischargeable because collateral estoppel not applied; state court judgment for creditor left unclear whether issues in the two cases were identical). Reversed, Judge Hendren.
Prtys: Debtor, Joe Laughter, Claude Jones-Trustee.
Attys: Jackson Butt, Jimmy Eaton.

In re Tainter, **JO**. No. 99-31381M, AP No 00-3008, (Feb. 14, 2001) **Ch. 7.** (court held debt arising out of plaintiff's sale of convenience store business to debtor was dischargeable and not based on fraud under 523(a)(2)(A); without intent to deceive at time of making of contract, breach of contract is not fraud).
Prtys: Roy Tainter, Debtor; Ken Short; Short Stop Inc.
Attys: Scott Davidson, Jeannette Robertson.

In re Van Camp, **TX** 96-14011M, AP 96-4505 (August 8, 1997) **Ch. 7:** (Insufficient showing that debtors fraudulently incurred credit card debt; debt was dischargeable; debtors were denied attorneys fees as creditor's position was substantially justified even though creditor lost fraud claim.)
Prtys: Dorothy Van Camp, AT&T Universal Card Services Corp.
Attys: Spencer Robinson, Jimmy Eaton, Richard Cox.

In re Whitfield, **ED** 83-058 (Aug. 10, 1984) **41 Bankr. 734, Ch. 7**: Objections to discharge under 727 and dischargeability under 523(c) must be timely under Rule 4004 or 4007; excusable neglect is not applicable for untimely filing; fraud must be pleaded with particularity under Rule 7009.
Prtys: B.J. Edwards, Debtors, Michael Landers, Trustee

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Attys: Danny Rogers, Henry Kinslow, Michael Landers.

In re Worden d/b/a Worden & Associates, **LR** 85-351, AP No. 85-474 (August 13, 1986) **Ch. 7:** Debtor defrauded creditor to whom he sold his business by misrepresenting that the business owned equipment that was really leased; debt nondischargeable under 523(a)(2)(A) & (B).
Prtys: Claude Wallace, Debtor
Attys: Gregory Hopkins, Charles Davidson, Joel Price, Rick Taylor, James Glover

In re Zepecki, **JO** 96-30125M, AP 98-3039 (April 5, 2000) **Ch. 7.** (Debtor's discharge denied for giving false oaths in failing to schedule pre-petition transfer of sale proceeds from himself to Alabama attorney for suspect real property transaction).
Prtys: Debtor, Bonnie Kania (ex-wife).
Attys: David Lewis, Mary Lile Broadaway.

FRAUD ON THE COURT

In re Floyd Evans, **FA** 97-80694M, AP No. 98-8034. June 25, 2003 **(294 B.R. 732) Ch. 7:** Denial of motion for sanctions pursuant to Rules 9011 and 7054; no evidence bank committed fraud on the court by testifying falsely at previous hearings.
Prtys: Debtor, Bank of Eureka Springs, John Cross, Gary Kleck.
Attys: Stanley Bond, James Dowden

In re W. E. Tucker Oil Co., Inc., **ED** 84-11, AP 86-45 (Sept. 18, 1989) **42 B.R. 897,** Ch. 11: Order approving settlement set aside because of fraud by Commercial Bank. (Motion for leave to appeal denied 12/4/89, J. Harris because insufficient basis for interlocutory appeal).
Prtys: Debtor, Trustee, Commercial Bank & Trust Co., E.A. Tucker, James L. Sanderlin and George Locke.
Attys: Thomas Streetman, Hani Hashem, Claude Hawkins-T, David Fuqua, Teresa Wineland.

FRAUDULENT CONVEYANCE

(Also see Fraudulent Transfer)

In re Baugh, **PB** 84-144M (Feb. 19, 1986) **Ch.11, 60 B.R. 102** (finding transfer of $86,000 to father prior to state court judgment being entered was fraudulent conveyance; also finding creditor levying on joint account may only seize portion of account belonging to debtor)
Prtys: Jimmy Baugh, Neale Bearden
Attys: Rick Ramsay, Charlie Baker, Katherine McGovern,

In re Bennett **LR** 85-32M (April 10, 1987) **Ch. 7.** (Finding incarcerated man was involuntary debtor with two creditors owed restitution for debtor's aggravated robbery; fraudulent conveyance as to fees paid to atty for services not yet rendered; preference as to fees paid from debtor to atty during preference

period).
Prtys: Gary Bennett, Robert and Sandra Vowell
Attys: Allen Bird, Mark Riable, Michael Durham, Charles Davidson

In re Lance Brown, **JO** 265 B.R. 167, No. 00-30017M, AP 00-3030 (July 20, 2001) **Ch 7.** (court dismissed trustee's claim that Debtor fraudulently conveyed leased property to his corporation such that trustee could not avoid the conveyance under 544; badges of fraud not present to prove actual fraud and transfer was for reasonably equivalent value, precluding claim for constructive fraud).
Prtys: Dobieco, Inc., Jan Thomas-Trustee; Lance Brown-Debtor
Attys: Kim Tucker, Charles Coleman, Warren Dupwe, Ralph Waddell.

In re Annie Marie Davis, **PB** 82-165M, AP 85-580M (September 17, 1986) **Ch**.**7**. (State court judgment against defendant-debtor did not make specific finding of fraud; judgment had collateral estoppel effect in subsequent dischargeability action for fraud as this was the only possible basis for the judgment and debtor did not prove otherwise).
Prtys: Pearl Suell, Annie Marie Davis
Attys: Angela Baxter, Andree Roaf, W.M. Dickinson, Margaret Turner Marshall.

In re Mid-South Auto Brokers, Inc., **LR** 99-40839 (April 1, 2003) **290 B.R. 658, Ch. 7**: Payments made by Debtor to Bank to satisfy loans guaranteed by shareholders benefitted shareholders who were insiders, but Bank actually received payments and was not insider for preference purposes; Trustee failed to prove Bank received more than in a hypothetical Ch. 7 liquidation; Debtor received reasonably equivalent value for payments on loans.
Prtys: Trustee-Jim Dowden, First Security Bank
Attys: Allen Bird, Maurice Rogers, Ben Arnold for Debtor

In re John E. Oldner, 224 B.R. 698, **LR** 94-42031M, AP 96-4205 (September 10, 1998) **Ch. 7** (Trustee's fraudulent conveyance action brought under constructive fraud theory alleging transfers from Debtor through his corporation to defendant for payroll services were for less than reasonably equivalent value to the Debtor. Court held first transfer was a loan; second transfer was for reasonably equivalent value; no fraudulent conveyance).
Prtys: Richard Ramsay-Trustee; Sunmark Contract Staffing; Express Human Resources; Express Personnel Services, Inc.; John Oldner, Brenda Oldner.
Attys: Buck Gibson, Basil Hicks, David Jacobs, Gregory Campbell.

In re Reed, **PB** 86-450 (September 6, 1987) **Ch. 11.** (Court denied motion to dismiss dischargeability complaint for fraud, embezzlement, defalcation under 523(a)(4); facts pleaded with sufficient particularity).
Prtys: Roderick Reed, debtor in possession; FSLIC.
Attys: Isaac Scott, James Cherry, Peter Heister, Matthew Botica.

In re Herbert E. Russell, 154 B.R. 723, **ED** 84-058M, AP 87-103M (April 23, 1993) **Ch. 11.** (On remand from 8th Circuit, BR holding that Trustee did not prove

fraudulent intent in avoidance action when Debtor elected to carryforward his net operating loss; constructive fraud was beyond mandate of 8th Circuit; election was in ordinary course of business). **Reversed and Remanded by district court (Barnes).**
Prtys: Tom Streetman-Trustee; United States (I.R.S.)
Attys: Charles Baker, John Russell.

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

In re Herbert Russell, **ED** 84-58M, AP No. 87-103M (Sept. 26, 1994) **Ch. 11.** (Upon remand from District court (189 B.R. 190), court found NOL carry forward election was fraudulent conveyance under section 548 as transfer for less than reasonably equivalent value when debtor insolvent). **Affirmed**, District Court, 187 B.R. 287 (July 31, 1995).
Prtys: Thomas Streetman-Trustee, IRS
Attys: Thomas Streetman, Charles Baker, Susan Gunter, Norreen C. Stehlik for I.R.S.

In re Willie Joe Stephens, **TX** 95-14064M (June 23, 1997) **Ch. 7**. (State court judgment against debtor-roofer for shoddy roof job was dischargeable since creditor did not prove debtor intended to defraud her by installing roof that developed subsequent problems; negligence and/or breach of contract is not same as fraud).
Prtys: Debtor, Virginia Flaherty
Attys: David Price

FRAUDULENT TRANSFER
(Also see Fraudulent Conveyance)

In re Bennett **LR** 85-32M (April 10, 1987) **Ch. 7** (Finding incarcerated man was involuntary debtor with two creditors owed restitution for debtor's aggravated robbery; fraudulent conveyance as to fees paid to atty for services not yet rendered; preference as to fees paid from debtor to atty during preference period).
Prtys: Gary Bennett, Robert and Sandra Vowell
Attys: Allen Bird, Mark Riable, Michael Durham, Charles Davidson

In re Lance Brown, **JO** 265 B.R. 167, No. 00-30017M, AP 00-3030 (July 20, 2001) **Ch 7.** (court dismissed trustee's claim that Debtor fraudulently conveyed leased property to his corporation such that trustee could not avoid the conveyance under 544; badges of fraud not present to prove actual fraud and transfer was for reasonably equivalent value, precluding claim for constructive

fraud).
Prtys: Dobieco, Inc., Jan Thomas-Trustee; Lance Brown-Debtor
Attys: Kim Tucker, Charles Coleman, Warren Dupwe, Ralph Waddell.

In re John Samuel Marlar, **ED** 98-11358, AP 02-7067 (Feb. 18, 2003) **Ch. 7. 288 B.R. 823:** B.R. Court bound by mandate of 8th Cir. in earlier appeal of fraudulent transfer action that proceeds of trustee's fraudulent transfer claims were not to be used to satisfy claim filed by debtor's ex-wife.
Prtys: Debtor, Trustee-Renee Williams
Attys: John Lightfoot, Robert Depper, Ted Botner, Thomas Streetman.

In re John E. Oldner, 224 B.R. 698, **LR** 94-42031M, AP 96-4205 (September 10, 1998) **Ch. 7** (Trustee's fraudulent conveyance action brought under constructive fraud theory alleging transfers from Debtor through his corporation to defendant for payroll services were for less than reasonably equivalent value to the Debtor. Court held first transfer was a loan; second transfer was for reasonably equivalent value; no fraudulent conveyance).
Prtys: Richard Ramsay-Trustee; Sunmark Contract Staffing; Express Human Resources; Express Personnel Services, Inc.; John Oldner, Brenda Oldner.
Attys: Buck Gibson, Basil Hicks, David Jacobs, Gregory Campbell.

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

In re Van Camp, **TX** 96-14011M, AP 96-4505 (August 8, 1997) **Ch. 7:** (Insufficient showing that debtors fraudulently incurred credit card debt; debt was dischargeable; debtors were denied attorneys fees as creditor's position was substantially justified even though creditor lost fraud claim.)
Prtys: Dorothy Van Camp, AT&T Universal Card Services Corp.
Attys: Spencer Robinson, Jimmy Eaton, Richard Cox.

In re W.E. Tucker Oil Co., Inc. ED 84-11M, AP 84-405M (Sept. 5, 1985) **55 Bankr. 78, Ch. 11.** (Transfers of property by granting liens were constructively fraudulent under 548). AFFIRMED (J. Harris, **64 Bankr. 183**).
Prtys: Debtor, Claude Hawkins, Trustee; First State Bank of Crossett, Portland Bank.
Attys: Richard Griffin, R.J. Brown, Thomas Streetman.

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GARNISHMENT

In re O'Connor, **JO** 83-225 (June 11, 1984) **42 Bankr. 390; Ch. 13**: (Taking of default judgment in garnishment proceeding violated automatic stay, was wilful and would result in damages, costs and attorneys fees from creditor to debtor).
Prtys: Debtors, Methodist Hospital of Jonesboro
Attys: Gary Johnson, James Lyons.

GOOD FAITH

In re Ault, **LR** 01-40813M (Dec. 20, 2001) **Ch. 13 (**Objection to confirmation overruled; not per se bad faith for debtor to discharge debts from previous Ch. 7 in which his discharge was denied for reasons not stated in the record).
Prtys: Debtor; Elsie Williams.
Attys: Tom Byarly; John Ogles

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **Ch. 11** (1129(a)(3) requires good faith in proposing plan; Unauthorized repayment of unauthorized guaranty is insufficient evidence of bad faith to deny confirmation).
Prtys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Albert Caldwell, 895 F.2d 1123, Nos. 88-6404, 88-6405 (February 9, 1990), **Sixth Circuit** affirming Tennessee District Court, finding where Ch. 13 debtor proposed to repay only a small portion of the debt that could not be discharged under Ch. 7 deserves particular scrutiny under good faith standard; party seeking discharge under Ch. 13 bears BOP on good faith issue; best efforts in Ch. 13 plan to comply with statutory requirements are not sufficient to establish good faith; length of Ch. 13 plan is relevant indicator of debtor's good faith; Court held that Ch. 13 debtor proposing to repay 36% of debt that would have been nondischargeable in a Ch. 7 was not acting in good faith; it is not conclusively bad faith for a debtor to seek to discharge a debt incurred through his own criminal or tortious conduct through a Ch. 13, but factor may be considered.

In re Kathleen Inmon, **LR** 96-4302M (November 27, 1996) **Ch. 13**. (On creditor's motion for dismissal, lack of good faith is cause under 1307(c) and may be determined by totality of circumstances; here, debtor's unfair treatment of creditor coupled with pre-filing conduct of fraudulent concealment of her true ownership of the property she later claimed as a homestead warranted cause for dismissal).
Prtys: Mercantile Bank, Debtor.
Attys: Susan Gordon Gunter, Stephen Bennett.

In re Newton Jenkins, **JO** 89-208M (January 12, 1990) **Ch. 13.** (Dismissing case on grounds of bad faith where debtor used Ch. 13 to litigate with its only creditor, IRS, rather than reorganize; enjoining re-filing under section 105(a) equitable powers).
Prtys: Debtor, IRS.

Attys: Pat Harris, Bill Adair, Bob Leslie.

In re Manes, **PB** 85-330 (June 25, 1986) (**67 Bankr. 13**) **Ch. 13** (Malicious conduct was not bad faith sufficient to warrant denial of confirmation of Ch. 13 plan; plan was not feasible).
Prtys: Debtors, Harvey Jones.
Attys: Thurman Ragar, Jr., Fed E. Bosshart

In re Merayo, **LR** 04-17258, Nov. 8, 2005: court denied confirmation and converted case from **ch. 13 to 7** upon showing of bad faith under section 1325(a)(3).
Prtys: Debtor, Tracy and Tammy Heffington
Attys: Thomas Byarlay, Geoffrey Treece

In re Richter, **LR** 90-193 (Mar. 7, 1991: Objection to confirmation of **Ch. 13** denied even though filed on heels of chap 7; no evidence of bad faith, no evidence debt could not have been discharged in the Ch. 7).
Prtys: Debtor, Chrysler Credit Corp.
Attys: Faber Jenkins, Paul Schmidt, A.L. Tenney-Trustee.

In re James and Dorothy Studdard, 159 B.R. 852, **LR** 92-42707M (August 31, 1993) **Ch. 7**. (Dismissing case of debtors on motion of creditor when debtors failed to complete Ch. 11 plan and filed Ch. 7, spent $50k a year on children's autos and college while failing to pay unsecured creditors; finding debtors' bad faith was sufficient cause under 707(a)).
Prtys: Debtors, Pulaski Bank and Trust.
Attys: C.B. Blackard, Frederick Wetzel.

In re Roy and Juanita Wilcox,251 B.R. 59, **JO** 099M (July 19, 2000) **Ch. 13.** (Order overruling Bank's objection to confirmation of Ch. 13 plan based on Debtors' pre-petition conduct as used car dealers where conduct would have resulted in nondischargeable debts in a Ch. 7 because arising from willful and malicious conduct; plan was proposed in good faith).
Prtys: Debtors, Union Planters Bank
Attys: Warren Dupwe, Ralph Waddell.

GUARANTY

In re Farmer's Co-Op of Arkansas and Oklahoma, Inc., **FS** 84-046M (Oct. 23, 1984) **Ch. 11.** (Creditor who, by contract with principal debtor without consent of an uncompensated surety, extended time of payment without reserving its rights against surety discharged the surety).
Prtys: Farmer's Co-Op, Citizens Bank and Trust Co. Of Van Buren
Attys: Diane Mackey.

In re Farmers Co-Op of Ark, **FS** 84-46M, AP 85-19M (July 30, 1985) **Ch 11.** (Guaranty of preexisting debt needs new consideration to be valid; Extension of or forebearance on original agreement is consideration if the parties agree it is

consideration; here, there was an implied agreement that the consideration was forebearance; guaranty was in effect and judgment for debtor-plaintiff).
Prtys: Farmers Co-Op, Circle J Dairy, Ira and Verna Thurman.
Attys: John Elrod, Dennis Sbanotto.

In re Sanders, **ED** 84-90, AP 85-184M (Jan. 21, 1987) **Ch. 7:** Debtor's guaranty of assignment of cd to secure note did not apply when loan renewed at higher interest rate without notification to guarantor; lien on Debtor's cd was released.
Prtys: Mary Ellen Sanders, First National Bank of Camden
Attys: Allen Roberts, Joseph Hickey, Issac A. Scott Jr.

In re Sanders, **ED** 84-90 (Jan. 21, 1987) **75 B.R. 751;** AP 85-186M: (Debtor who was accommodation maker or endorser on note by virtue of mortgage lien on her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note).
Prtys: Mary Ellen Sanders, First National Bank of Camden.
Attys: Allen Roberts, Joseph Hickey, Isaac Scott

In re Sanders, **ED** 84-90 (Jan. 21, 1987) **75 B.R. 746;** AP 85-185M: (Debtor who was accommodation maker or endorser on note by virtue of lien on her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note; Debtor husband not agent for debtor wife).
Prtys: Mary Ellen Sanders, First National Bank of Camden.
Attys: Allen Roberts, Joseph Hickey, Isaac Scott

HOMESTEAD

In re Bobby and Sherry Chambers, **Tex.** No. 02-72834
April 10, 2003: **Ch. 7** Debtors' homestead on city limits of Nashville, Ar. was urban and would be exempt under section 522(b)(2)(A) according to urban constitutional limits.
Prtys: Trustee-Richard Cox, Debtors
Attys: Richard Cox, Billy Moritz

In re Kenneth Collins, **FA,** 152 B.R. 570 (Oct. 21, 1992) **Ch. 7.** (Once homestead exemption right is acquired, debtor cannot be deprived by loss of family; it is not necessary that homestead claimant be husband or parent, but something more than mere aggregation of individuals in same house is required; homestead claimant has BOP of homestead right; whether homestead claimant is head of family depends on obligation to support other residents of household, state of dependence of those being supported, existence of role of authority for head of the family.)

Prtys: Claude Jones, Ch. 7 Trustee, Kenneth L. Collins
Attys: Claude Jones, Barry J. Watkins.

In re Chambers, **LR** No. 85-902M,(Oct. 17, 1985) **Ch. 7**: Creditor's judicial lien as to exempt personal property and homestead avoided; lien in television and satellite dish is not avoided.
Prtys: North Arkansas Industrial Services, Debtors.
Attys: David Clark, Tom Allen, Jack Sims, Larry V. Alpom.

In re Charles and Sylvia Evans, **PB** No. 94-50037M (Aug. 25, 1995) **190 B.R. 1015: Ch. 7**: Sustaining objection to rural homestead exemption when debtor's abandoned portion of property for commercial operation and property was urban rather than rural despite being outside city limits of Pine Bluff.
Prtys: Debtors, Trustee-Walter Dickinson, Worthen National Bank
Attys: Charles Clawson, Frederick Wetzel, Joseph Strode

In re Giller, 127 B.R. 215, **ED** 89-11-104 (Oct. 24, 1990) **Ch. 11**: (Urban homestead exemption limited to 1/4 acre; personal property exemptions limited to $500, including IRA, car, wedding bands, tools of trade; could not exempt partnership interests because they are personalty and not within the exemption limit; partner's interest in partnership (share of profits and surplus) are property of estate).
Prtys: Debtor, FSLIC
Attys: Robert Depper, Barbara Hollis.

In re Kathleen Inmon, **LR** 96-4302M (November 27, 1996) **Ch. 13**. (On creditor's motion for dismissal, lack of good faith is
cause under 1307(c) and may be determined by totality of circumstances; here, debtor's unfair treatment of creditor coupled with pre-filing conduct of fraudulent concealment of her true ownership of the property she later claimed as a homestead warranted cause for dismissal).
Prtys: Mercantile Bank, Debtor.
Attys: Susan Gordon Gunter, Stephen Bennett.

In re Guy Jones, Jr., **LR** 92-42755M (July 12, 1994) **Ch. 7.** (Granting parties new trial on issue of whether debtor abandoned homestead such that he was not entitled to exemption because debtor had misrepresented in first trial that he was living elsewhere when the bankruptcy petition was filed).
Prtys: Mary and Christopher Jones, Debtor, Trustee
Attys: Judy Henry, Charles Baker, Richard Ramsay.

In re Guy Jones, Jr., 193 B.R. 503, **LR** 92-42755M (August 18, 1995) **Ch. 7.** (In new trial on creditors' objection to claim of homestead exemption, court held creditors did not carry burden of proof to show that debtor had present intent to abandon homestead at time of filing petition; although he was in negotiations before and after bankruptcy filing to sell house, this was evidence of intent to abandon homestead in future and not present intent to abandon).
Prtys: Mary and Christopher Jones, Debtor, Trustee

Attys: Judy Henry, Charles Baker, Richard Ramsay.

In re Marco Levy, 221 B.R. 559,**S.D. Fla. (Ft. Lauderdale)** 95-22861-BKC-PGH, AP 95-1597-BKC-PGH-A (March 27, 1998)**Ch. 7.** (court sustained objections to discharge and claim of homestead exemption; Canadian debtor had failed to explain loss of assets to meet liabilities so discharge denied; claim of exemption in homestead denied because debtor lacked domicile in Florida during 180 days preceding bankruptcy so Florida exemptions not available to Debtor).
Prtys: Debtor, Attorney General of Quebec, Lucy C. DeBraccio-T.
Attys: Robert Fracasso, Ronald G. Neiwirth, Robert Meyer.

In re McCraw, **FS** 84-331, CMS 85-243M (Aug. 6, 1985) **58 Bankr. 175, Ch. 7** (Homestead exemption available to divorced debtor who was married when property purchased and who lived with husband on property before divorce).
Prtys: Trustee, Debtor, Ellen Meierding.
Attys: Stanley Leasure, Bill Strait, Ben Barry, Jerry Pruitt.
In re Weaver, 89-12493 (Jan. 17, 1991) **128 B.R. 224, Ch. 7**: Debtor would be allowed to exempt property as homestead where it was rural in nature and all lots owned by debtor were contiguous.
Prtys: Debtor, Tom Robertson, Trustee, Michael Wiseman.
Attys: Fines Batchelor, Phillip Taylor, Robert Blatt, Thomas Robertson

In re John E. Oldner, **LR** 94-42031M, (Aug. 18, 1995) **191 B.R. 146,** AP 94-42031M: Debtor could not exempt homestead outside city limits as rural because character of the property was urban “megalapolitan.”
Prtys: Trustee-Richard Ramsay, Debtor
Attys: Richard Ramsay, David Jacobs

INDUBITABLE EQUIVALENT

In re Bernard, **JO** 85-151M (November 5, 1986) **Ch 11** 70 B.R. 181 (to satisfy cramdown provision of indubitable equivalence, Debtors had to value property to be distributed as of the effective date of the plan; plan had to give exact legal description of property and convey by warranty deed and plan had to secure creditor’s claim on remaining property by first lien on remaining property).
Prtys: Charles and Betty Bernard, Federal Land Bank of Jonesboro.
Attys: Ben F. Arnold, James Dowden, Ralph Waddell, Stephen M. Reasoner.

In re David Hodges Farms, Inc., **JO** 85-73M, AP No. 85-314M. (January 9, 1986) **Ch. 11**. (Indubitable equivalent of creditor’s claim was conveyance of entire farm of debtor as the fair market value of the farm was equal to allowed secured claim of creditor.)
Prtys: John Hancock Mutual Life Insurance Co, David Hodges Farms, Inc.
Attys: David Hodges, Michael P. Coury, Tom B. Smith, Mark Lester, Marvin Thaxton, Fred Pickens, G.D. Walker, Darrell Dover, Donald Raney, James D. Sprott, Charles Coleman, Fletcher Jackson, Tim Grooms, Lance Miller, James O’Mara, Lindsey Fairly.

In re Nolen Tool Co., **FS** 84-151 (May 30, 1985) **50 Bankr. Ch. 11**. (Objection to

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confirmation sustained; Plan cramdown of creditor's debt did not pay present value at market rate of interest, did not maintain indubitable equivalent of collateral, so was not fair and equitable).
Prtys: Debtor, City National Bank, FDIC
Attys: Isaac Scott, John Tisdale, Robert Y. Cohen

In re Wild Turkey Ranch, Inc., **JO** 84-57 (October 9, 1985) **Ch. 11:** (court determined valuation of ranch, portion of which was to be deeded to satisfy impaired claim of secured creditor as indubitable equivalent; confirmation denied because plan didn't specify which portions of the ranch would be deeded to creditor.)
Prtys: Debtor, Wilheim Nursing Home, Inc.
Attys: David Hodges, Charles Coleman, John Burris, Marvin Thaxton.

INFORMAL CLAIM

INJUNCTION

In re Bibbs, **LR** 00-40266 (Aug. 20, 2002) **Ch. 13** (pursuant to section 362(b)(1), automatic stay does not stay criminal proceedings including enforcement of orders to pay fines and restitution for hot checks; if proceeding is veiled attempt to collect debt, proper remedy is injunction under section 105).
Prtys: Debtor Pulaski Co., City of Sherwood, Pulaski Co. Prosecuting Attorney's Office, Larry Jegley
Attys: Kathy Cruz, David Fuqua, Karla Burnett, Kimberly Burnett.

In re Belford T. Brown, Sr, d/b/a Brown's Aero Service, 51 B.R. 51, **PB** 85-90M, AP 85-206M (June 7, 1985) **Ch. 7.** (generally the automatic stay does not stay a criminal proceeding, but Bankruptcy court may halt criminal hot check proceeding if a veiled attempt to collect a prepetition debt; court did not enjoin the proceeding because circumstances not extraordinary enough but did enjoin prosecutor from collecting restitution).
Prtys: Belford Brown, Fred Hampton, Sam Pope (prosecutor)
Attys: Bob Lawson, David S. Mitchell, Danny Thrailkill.

In re Floyd Evans, 245 B.R. 852, **FA** 97-80694M, AP No. 98-8034 (March 10, 2000) **Ch. 7**. (pending state criminal prosecution of debtor was not action to collect a debt and didn't violate discharge injunction under 524(a)(2)).
Prtys: Debtor, Bank of Eureka Springs, John Cross, Carroll County Circuit Court, 19th Judicial District Prosecuting Attorney and Deputy; Governor Mike Huckabee, Dick Barclay.
Attys: Stanley Bond, Wade Williams, Ainsley Lang, Jill Jacoway-T.

In re Stafford, **LR** 84-98M (May 20, 1985) (Court refused to enjoin municipal judge and prosecutor from prosecuting debtors in criminal proceedings because not stayed by automatic stay under 362(b)(1)).
Prtys: Debtors, Hon. Edwin Keaton, Ralph Faulkner
Attys: Henry Kinslow, William Randall Wright

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INTEREST RATE

In re Armstrong, **HE** 89-162M (April 18, 1991) **Ch.12** (objection to confirmation; present value; feasibility; discussed market rate of interest; held plan not feasible)
Prtys: Farm Credit and FmHA
Attys: John Henry, Bill Adair, Kent Rubens

In re Batchelor, **HE** 87-134M (August 11, 1988) **Ch. 12** (Objection to confirmation of the plan for failure to provide for retention of lien, improper valuation and interest rate related to present value, unsustainable homestead exemption).
Prtys: Debtors, Federal Land Bank, the Small Business Administration, and Trustee.
Attys: David Carruth, Gerald Coleman, Bill Adair, Charles Tucker,

In re Butler, **HE** 99-54M, (Nov. 4, 1988) **Ch.12, 97 B.R. 508** (Ch. 12 confirmation hearing; confirmation denied for various reasons; current market rate of interest is rate debtor would have to pay to commercial lender for similar loan § 1225; other plan provisions not confirmable because inconsistent with the Bankruptcy Code)
Prtys: First National Bank of Eastern Arkansas and Farm, Credit Bank of St. Louis
Attys: Charles Baker, John Bridgforth, Gerald Coleman, David Solomon, A.L. Tenney

In re Danny Thomas Properties III Limited Partnership, 231 B.R. 298, **LR** 96-42482M (March 18, 1999) **Ch. 11.** (In determining discount rate of interest for cramdown of creditor's secured claim, court starts with market rate of risk-free government securities calculated on plan length, adds points based on risk factors such as payout period, quality of security, and risk of subsequent default, and then weighs plan assets such as property location, plan provision allowing immediate foreclosure in event of default.).
Prtys: Danny Thomas Properties III Ltd. Partnership, Beal Bank.
Attys: Gregory M. Hopkins, Joyce Bradley Babin.

In re Direct Transit, 226 B.R. 198, **BAP** No. 98-6039NI
(October 26, 1998) **Ch. 11 (**provision in employment agreement was true liquidated damages provision, not default interest (see differences between the two); liquidated damages provision was enforceable under South Dakota law and reasonable; therefore, claim of oversecured creditor that included liquidated damages was allowed).
Prtys: Direct Transit, Inc., South Dakota Governor's Office of Economic Development.
Attys: John R. Weiss, Roger Wilgers Damgaard.

In re Lloyd, **LR** 86-1880, AP 86-792M (Oct. 2, 1987) **Ch. 11.** (Prejudgment interest awarded in preference action from date of commencement of suit).
Prtys: Phillip Lynn Lloyd, Hazen First State Bank.

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Attys: David Grace, Robert Dittrich.

In re Landscape Associates, Inc., **LR** No. 85-663, 81 B.R. 485 (July 1, 1987) (Confirmation of **Ch. 11** plan denied because proposed interest rate was not market rate. See related District Court and Court of Appeals Opinions about collusive sale of property of the estate brought by Rick Ramsay, Trustee).
Prtys: Debtor, First Pyramid Life
Attys: Richard Crockett, Richard Taylor, Eugene Fitzhugh, William Owen, Robert L. Brown

In re Minnis, **PB** 89-30235 (Aug. 3, 1990) **Ch. 12.** (Objections to confirmation of Ch. 12 plan sustained: unfair discrimination in one class of claims, inappropriate interest rate without evidence of market rate of interest, liquidation analysis, discussion of misc. provisions contra to Code).
Prtys: Debtors, Farm Credit Bank
Attys: Angela Baxter, Gerald Coleman

In re Sanders, **ED** 84-90 (Jan. 21, 1987) **75 B.R. 751;** AP 85-186M: (Debtor who was accommodation maker or endorser on note by virtue of mortgage lien on her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note).
Prtys: Mary Ellen Sanders, First National Bank of Camden.
Attys: Allen Roberts, Joseph Hickey, Isaac Scott

In re Joseph A. Torcise d/b/a Joe Torcise Farms and TIJODEE, Inc., 1994 WL 162404, **S.D.Fla. (Miami)** 89-16287-BKC-AJC, 89-16286-BKC-AJC (February 23, 1994) **Ch. 11.** (Holding the following: creditor's anticipated expenses of liquidating repossessed collateral may not be charged to estate; under 506(b) attorneys fees not allowed to oversecured creditor to defend avoidance actions, not allowed in general case when inappropriately billed or grouped, but allowed as to appeal of confirmation order even though appeal unsuccessful; reducing debtor's surcharges on collateral as being either unreasonable or of no benefit to creditor under 506(c); ruling interest on indebtedness to accrue as provided in foreclosure judgment).**Reversed** by District Court and **Affirmed** by 11th Cir.
Prtys: Debtor, Community Bank of Homestead
Attys: Robert Hustead, Martin Sandler, Hywel Leonard, Karen Kantner.

In re Bill Allen Whitfield, **LR** 84-1416, AP 85-231 (Jan. 8, 1986): Law of Missouri applied to contract so interest rate charged to debtor was not usurious.
Prtys: Debtor, Associates Commercial Corportation.
Attys: Jerry Steward, Charles T. Coleman.

INTERLOCUTORY APPEAL

In re Stephen Griffin, **FS** 02-70245**, Ch. 7** (January 8, 2004): Secured creditor

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(McGehee) appealed denial of motion to abandon property from estate (bench ruling) to district court where it was denied; creditor appealed to **Eighth Circuit Ct. Of Appeals** which **dismissed** interlocutory appeal for want of jurisdiction.
Prtys: Mary MCGehee, Richard Cox-Trustee
Attys: Diane Sexton, Richard Cox

In re Lake Hamilton Resort, Inc., **HS** 04-72002, (Sept. 14, 2004) Civil No.04-6063: Christmas Mountain v. Lake Hamilton Resort; DISTRICT COURT (JUDGE HENDREN) **DECLINED TO REVIEW** bankruptcy court's permission for debtor to use cash collateral and denial of adequate protection payments to Christmas Mountain; order was not final and not appropriate for interlocutory review under 28 U.S.C. § 158(a) and 1292.
Prtys: Christmas Mountain, Lake Hamilton Resort

In re W. E. Tucker Oil Co., Inc., **ED** 84-11, AP 86-45 (Sept. 18, 1989) **42 B.R. 897,** Ch. 11: Order approving settlement set aside because of fraud by Commercial Bank. (Motion for leave to appeal denied 12/4/89, J. Harris because insufficient basis for interlocutory appeal).
Prtys: Debtor, Trustee, Commercial Bank & Trust Co., E.A. Tucker, James L. Sanderlin and George Locke.
Attys: Thomas Streetman, Hani Hashem, Claude Hawkins-T, David Fuqua, Teresa Wineland.

INVOLUNTARY PETITION

In re B&G Sand & Gravel Co**., FS** 86-200M (June 3, 1987) **Ch. 7** (dismissing creditors' involuntary petition for lack of undisputed claims required to commence involuntary bankruptcy.)
Prtys: K&K Oil Co., Max Denadel, Ark. Valley Electric Cooperative, Welsco Inc., Perkins & Associates, Rushing & Mason Eqpt. Co., Electric Center Inc., Mitchell Machinery Co.
Attys: Herschel Cleveland, Jan Nielsen, Frank Barker, F.J. Garner, Robert Pummill

In re Bennett **LR** 85-32M (April 10, 1987) **Ch. 7** (Finding incarcerated man was involuntary debtor with two creditors owed restitution for debtor's aggravated robbery; fraudulent conveyance as to fees paid to atty for services not yet rendered; preference as to fees paid from debtor to atty during preference period).
Prtys: Gary Bennett, Robert and Sandra Vowell
Attys: Allen Bird, Mark Riable, Michael Durham, Charles Davidson

In re Burns, **JO** 89-30051M (January 12, 1990) **Invol. Ch. 7** (Debtor proved he had more than 12 creditors so more than two petitioning creditors were needed to place him in involuntary bankruptcy; however, he did not raise the issue of requisite number of creditors until the hearing and did not move to amend his answer to conform to the evidence, so Debtor was precluded from defeating the bankruptcy on that basis).

Prtys: Debtor, Betty Ward, Danny Gibson.
Attys: Dick Jarboe, Warren Dupwe, Charles Tucker.

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn,
Darwin Davidson, Lance Miller.

In re Davis Industries, Inc., **PB** 83-56M, AP No. 85-515M (January 9, 1987). (In involuntary bankruptcy proceeding, Trustee's preference action was denied: Bank held perfected lien in debtor's accounts receivable; transfer made to bank pre-petition was account receivable of the debtor and Bank did not receive more than it would have in a Ch. 7 since Bank held valid perfected lien in accounts).
Prtys: James Sanderlin, George Locke, E.A. Tucker d/b/a Davis Industries, Trustee--Thomas Streetman, First State Bank of Dermott.
Attys: Bynum Gibson, David Fuqua, John Shackleford, R.J. Brown, Teresa Wineland, Mary Scott.

In re Garland Coal & Mining Co., 67 B.R. 514, **FS** 84-71M (July 18, 1986) **Invol. Ch. 7:** (determining number of creditors needed for invol. petition is decided on petition date; creditors paid in full before petition could not be counted to decide if 12 or more creditors existed such that three or more creditors were required to file petition; claims of union would not be counted to determine if 12 or more eligible creditors existed because they were former employees of Debtor; debtor had fewer than 12 eligible creditors so that one creditor holding unsecured claim of $5000 or more and not subject to bona fide dispute was sufficient to file petition; pension trusts' claims were subject to bona fide dispute so trusts could not be counted as eligible creditors; burden of proof of bona fide dispute begins with prima facie case of creditors and then shifts to Debtor; debtor was not paying debts as they became due.)
Prtys: Debtor, Trustees of United Mine Workers of America, 1950 Pension Trust, 1974 Pension Trust, 1950 Benefit Plan and Trust, International Union united Mine Workers of America.
Attys: Allen Bird, Thomas Thrash, Richard Noble, Joel Pelofsky, Isaac Scott, Gary Ford, Robert Gallagher.

In re Hermitage Pink Tomato Marketing Association, Inc., **PB** 85-440M (June 5, 1986) **Ch. 7:** (petitioning creditors failed to prove value of unsecured portion of secured claim such that provisions of 303 were not met and petition would be denied; debtor could petition the court for damages).
Prtys: Warren Bank and Trust; First State Bank of Warren, Debtor.
Attys: Joseph Strode, Charles Baker.

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In re John Samuel Marlar, **ED Involuntary chapter 7**
March 8, 2005, 04-CV-1047, **DISTRICT COURT (JUDGE BARNES): Affirming** bankruptcy court's denial of debtor's motion to dismiss case based on purported fact that debtor is a farmer and could not have been placed in involuntary bankruptcy five years previously pursuant to section 303(a); fact that debtor was farmer must be timely raised as an affirmative defense or defense is waived. **Affirmed by 8th Circuit,** Dec. 22, 2005: status as farmer must be timely raised as affirmative defense to involuntary bankruptcy.
Prtys: Debtor
Attys: Pro Se.

JOHNSON FACTORS

In re Arkansas Communities, Inc., **HS** 80-22M (Oct. 18, 1985) **Ch.11** (denying objection to Mitchell Law Firm's fees on basis of conflict of interest; review of Johnson factors)
Prtys: Mitchell Law Firm, R.J. Brown
Attys: Bob Shults, R.J. Brown, Maurice Mitchell, Dick Crockett

In re Bonds Lucky foods, Inc., No. 1, 76 B.R. 664, **HE** 85-10M (May 13, 1986) **Ch. 11.** (Applying Johnson factors in finding attorneys would not be compensated for unnecessary time spent by law clerks and paralegals, unnecessary prep work for case conference, overhead expenses including secretarial work, messenger service, clerical tasks.)
Prtys: Bonds Lucky Foods, Inc.
Attys: Jim Smith, Susan Gunter.

In re Curtis, **LR** LR 84-1187, 70 B.R. 712 (January 13, 1987)**Ch. 11** (Applying Johnson factors, court found itemization insufficient in attorney fee application; uncompensable work included tasks grouped together under a single billing, work preparing fee applications, two hours reviewing notice of trial; performance bonus denied because surplus in estate resulted from death of debtor and subsequent insurance proceeds, not from counsel's skill).
Prtys: Carla Curtis, R.J. Brown, Trustee.
Attys: John Jewell, Donald Henry, R.J. Brown, Basil V. Hicks.

In re Holtoff, 55 BR 36, **PB** 84-221M, 84-223M, 84-224M (July 12, 1985) **Ch. 11:** (fee application of counsel for debtor-in-possession did not conform to the rule because tasks performed in one day were grouped in single billing, time was billed for conferences regarding fee applications and ministerial tasks, and time was billed for Rico research which did not result in benefit to debtor.)
Prtys: Metropolitan Life Ins. Co., Davidson, Horne, Hollingsworth, Arnold, and Grobmyer. Attys: Rick Ramsay, Thomas Stone, Patrick Hollingsworth.

In re Lavender, **TX** 82-37M (Sept. 18, 1986) **Ch. 11:** 82-037, Attorneys denied fees under improperly drawn fee application. Dec. 17, 1984 (48 Bankr. 393) Attorneys required to reimburse estate for unauthorized payment of fees. AFFIRMED 785 F.2d 247.

Prtys: Debtors, Wood Law Firm
Attys: Raymond Weber, Claude Hawkins, James Pilkinton, James Pedigo, Phillip Cockrell, Richard Smith, Charles Walker, Charles Honey, Steven Cuffman.

In re MacMillan Petroleum, **ED** 87-149M (Sept. 9, 1988) **Ch. 7**. (Fee application for debtor's attorney reduced because services did not benefit estate (should have been liquidated as Ch. 7), hourly rates too high, duplicative services, pleadings filed in violation of court order, preparation of fee application, grouping, ministerial tasks).
Prtys: Smith, Stroud, McClerkin, Dunn & Nutter Law Firm; First National Bank of El Dorado and Mbank Dallas.
Attys: Charles Coleman, Peter Franklin, Hayes C. McClerkin, Charles Camp, John Unger, Geoffrey Treece.

In re John Samuel Marlar, **ED** 98-1358, **Ch. 7** (Sept. 27, 2004) On remand, bankruptcy court found fees for chapter 7 trustee's attorney were reasonable under lodestar method and section 330; Johnson factors used to determine reasonableness.
Prtys: Debtor, Trustee-Renee Williams
Attys: Bob Depper, Thomas Streetman

In re Turner Memorial Hospital, **FS** 85-62M (January 9, 1986) (interim fee petition pursuant to 331 by accountant denied without prejudice to reapply with additional documentation so that court can apply Johnson factors).
Prtys: Frost and Company Accountants
Attys: Richard Ramsay, Barbara Bonds, David Powell

JOINT ACCOUNTS

In re Baugh, **PB** 84-144M (Feb. 19, 1986) **Ch.11, 60 B.R. 102** (finding creditor levying on joint account may only seize portion of account belonging to debtor; also finding transfer of $86,000 to father prior to state court judgment being entered was fraudulent conveyance)
Prtys: Jimmy Baugh, Neale Bearden
Attys: Rick Ramsay, Charlie Baker, Katherine McGovern,

JURISDICTION

In re Answerfone, **LR** 83-342 (April 25, 1986) **Ch.11 67 B.R. 167** (motion to amend complaint allowed; court has jurisdiction to hear RICO counterclaim brought as preference action)
Prtys: Charles Davidson (Trustee) and Joe Limerick III
Attys: David Williams, Geoff Treece, Griffin Smith

In re Big River, **HE** 89-20063M, AP 89-2008M (Sept. 13, 1991) **Ch. 11**. (Defendants alleged bankruptcy court lacked jurisdiction in Rico action against debtor and others; court had both subject matter and in personem jurisdiction as related matter affecting distribution to creditors).
Prtys: Big River Inc., Nu-South Industries, Inc., Bill Willis; George Porter; John

Beasley; Districhem, Inc.; Waterway Terminals, Inc.; Grand Fertilizer, Inc.; DistriTank, Inc.; Commodities Transport Inc.; International Barges, Inc.; and Delta Materials, Inc., Nitrochem
Attys: Steve Shuts, John Tull, Peter Kumpe, James Dowden, Susan Gunter, Michael Rief, John Jewell.

In re Burns, **JO** 89-30051M (January 12, 1990) **Invol. Ch. 7** (lack of the requisite number of petitioning creditors does not deprive the bankruptcy court of jurisdiction to enter a valid order for relief)
Prtys: Debtor, Betty Ward, Danny Gibson.
Attys: Dick Jarboe, Warren Dupwe, Charles Tucker.

In re Brittenum & Associates, Inc., **LR** AP 86-50M, AP 86-305M (Feb. 26, 1987) **Ch. 7.** (Mandatory withdrawal of reference is only warranted in matters of interstate commerce, whether or not the proceeding is core or related matter; here, no issues of interstate commerce prevailed as to plaintiff and debtor's claim; discretionary withdrawal is warranted for good cause; here, cause of action between debtor and creditor was claims litigation, so withdrawal of reference not warranted; between plaintiff and co-defendants, the reference is withdrawn because issues are related matters, parties do not consent to trial in bankruptcy court, and are entitled to a jury trial.)
Prtys: Brittenum & Associates, Inc., Fred Halstead, Jon Brittenum, Melvyn L. Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware.
Attys: Mark Hampton, Steve Vaughn, Tripper Cronkhite, Steven Harbeck, Gary Corum, Robert Cabe, Richard Steinkamp, Michael Thomson, Richard D. Taylor, Peter Kumpe, John Jewell.

In re Brittenum & Assoicates, Inc., **LR**, AP 86-0305M (Sept. 28, 1988) **Ch. 7.** (Court has jurisdiction over issues between Halstead and nondebtor defendants as related matters and between Halstead and debtor as core proceeding.)
Prtys: Fred Halstead, John Brittenum, Melvyn Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware, Brittenum & Associates, Inc.
Attys: Jon Pruniski, Robert Roddey, Willis D. Cronkhite, Gary Corum, Richard Taylor, Michael Thompson, Peter Kumpe, Steve Vaughn, Anna Gibson, Philip Dixon, Mark Hampton, David Hodges, Charles Davidson, Jim Dowden, Ben Arnold, Webster Hubbell, Middleton Ray.

In re Coleman, **PB** 86-55M (February 4, 1987), AP. No. 86-176M: (recommending district court order referring case to bankruptcy court be set aside as inconsistent with Local Rule 32 and 28 U.S.C. § 157 which automatically grants bankruptcy court original jurisdiction; district court improperly changed venue of the case as well and venue should remain in Ft. Smith until party in interest files a motion to change venue).
Prtys: J.O. Coleman (Debtor), William E. Johnson, Bear Camping Club.
Attys: Charles Boyd, Bill Walters, Geoffrey Treece, Richard Turbeville, Charles Banks.

In re Dollar Time Group, Inc., 223 B.R. 237, **S.D. Florida** 95-22816-BKC, RBR,

AP 96-0380-BKC, RBR (July 20, 1998) **Ch. 7**. (Court had jurisdiction over proceeding for breach of fiduciary duty as noncore, related matter because claims affect amount of property of estate or allocation of property among creditors.)
Prtys: Kenneth Welt, Trustee; Dollar Time Group, Inc.: Joseph Sasson, Jeffrey Klansky.
Attys: Irwin Fingerit, Ronald Neiwirth, Arthur Rice.

In re Joe T. Brown, **FS** 84-01, AP 84-192 (July 19, 1985) **Ch. 7.** (Ex-spouse filed motion for contempt because debtor failed to pay debt for alimony after debtor's discharge was denied; court has no jurisdiction once the discharge is denied and stay is automatically lifted as to actions against the debtor; court has no power to enforce another court's order.)
Prtys: Evaleen Brown, Joe T. Brown
Attys: Bob Keter, Herman Hankins Jr., Ben T. Barry.

In re Hot Shots Burgers & Fries, Inc., **LR** 91-41298M, AP No. 92-4130M (March 23, 1994) **Ch. 7:** (court lacked personal jurisdiction to decide conflicting claims of parties asserting interest in proceeds from sale of real property where debtor's officers had not been joined as parties to the proceeding and conflicting claims could be resolved only by determining whether debtor or its officers were owners of personal property at time respective liens were granted.)
Prtys: Twin City Bank, Randy Rice-Trustee, Union Bank of Benton, Wheelees, Inc., Debtor.
Attys: Abe Bogoslavsky, Floyd Healy, Frank Morledge, Charles Baker, Scott Vaughn, Ron Goodman.

In re David Hodges Farms, **JO** 85-73M, AP 85-124 (August 28, 1985) **Ch. 11.** (Denying motion to transfer trial on amount of Bank's claim against debtor to district court; removal proper if district court has jurisdiction; bankruptcy court had jurisdiction over claims against the estate and can adjudicate jury trial if right to jury exists in a core proceeding).
Prtys: Twin City Bank, Debtor, Mallard Farms Holding Co, Marian and David Hodges, John Hancock Mutual Life Insurance , Cache River Production Credit Association, Farmers Home Administration, White River Production Credit Association, Heuer Truck Sales Corp, Elmer and Geneva Heuer, Northwestern Mutual Life Ins. Co., Travelers Ins. Co, Fred Pickens, Trustee for Isaac and Bessie Betts.
Attys: Greg Hopkins, Stan Langley, Marvin Thaxton, Charles Coleman, Donald Raney, Tom Smith, Don Henry, Dough Chavis, Darrell Dover, Fred Pickens, G.D. Walker, Joseph Russell, James Sprott, Fletcher Jackson, Edward Wright.

In re Guy Hamilton Jones, Jr., Richard L. Ramsay v. Guy Hamilton Jones and Guy Jones Jr. Employees Pension Trust, **LR** AP No. 94-4125 (April 25, 1995) **Ch. 7.** (denying debtor's motion to dismiss trustee's complaint for turnover of retirement funds on grounds of lack of subject matter jurisdiction and Erisa argument but granting dismissal without prejudice for failure to join proper parties; Court has jurisdiction because not fixing tax liability but adjudicating turnover).

List of Topics

Attys: Richard Ramsay, Richard Hatfield, Charles Baker, Judy Henry.
Prtys: Richard Ramsay-Trustee, Debtor, Debtor's Pension Plan

In re Gregory L. Latimer, **LR** 00-43630, AP 02-1114 (Aug. 22, 2002) **Ch. 7**: (Discharge injunction under sections 727 and 524 did not enjoin determination of dischargeability of alimony or support debt under 523(a)(5) by bankruptcy or state court, which has concurrent jurisdiction, even if Debtor listed debt as dischargeable on his petition; seeking dischargeability and entry of judgment after discharge did not violate stay which was no longer in force as to property of the debtor after discharge under section 362(c).
Prtys: Debtor, Dan West, Bill Flannery
Attys: Paul Schmidt, Michael Reif.

In re John Samuel Marlar, **ED** 02-1185 (January 23, 2004) Bankruptcy court previously denied Debtor's motion for reconsideration of its order dismissing appeal of order allowing Trustee's attorneys fees because debtor did not timely file designation of record pursuant to Rule 8006. On appeal to District Court, Judge Barnes, Court found B.R. court was without subject matter jurisdiction to dismiss appeal once timely notice of appeal was entered pursuant to Rules 8001 and 8002; only district court or BAP may dismiss appeal after timely notice of appeal is filed. No local rule of the BAP allows bankruptcy court to retain jurisdiction after notice of appeal.
Prtys: Trustee-Renee Williams, Debtor
Attys: Tom Streetman, Robert Depper.

In re Johnny L. Vincent, **HE** 98-20387M, May 16, 2003, **293 B.R. 467: Ch. 13** debtor's objection to creditor's claim would have had merit in that creditor failed to object to a plan not providing interest on the claim or conforming to the code on residential mortgages and plan was confirmed, but Debtor's objection to the claim was overruled as a sanction for failing to comply with discovery under Rule 7037 and creditor's objection to Debtor's modified plan was sustained. On appeal to **BAP**, Dec. 1, 2003, 03-6025E, **301 B.R. 734**: Appeal dismissed for lack of jurisdiction because the order denying debtor's motion to modify his plan was not a final order pursuant to 28 U.S.C. § 158.
Prtys: Debtor, Fairbanks Capital Corporation
Attys: James F. Valley, Kimberly D. Burnette

JURY TRIAL

In re Answerfone, **LR** 83-342 (April 25, 1986) **Ch.11. 67 B.R. 167** (motion to amend complaint allowed; holds bankruptcy court can hold jury trials citing numerous cases and Local Rule 32(e), (since revised))
Prtys: Charles Davidson (Trustee) and Joe Limerick III
Attys: David Williams, Geoff Treece, Griffin Smith

In re Brittenum & Associates, Inc., **LR** AP 86-50M, AP 86-305M (Feb. 26, 1987) **Ch. 7.** (Plaintiff in the case had no right to jury trial; only right to jury trial in bankruptcy in claims litigation is in matters related to personal injury or wrongful

death.)
Prtys: Brittenum & Associates, Inc., Fred Halstead, John Brittenum, Melvyn L. Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware.
Attys: Mark Hampton, Steve Vaughn, Tripper Cronkhite, Steven Harbeck, Gary Corum, Robert Cabe, Richard Steinkamp, Michael Thomson, Richard D. Taylor, Peter Kumpe, John Jewell.

In re David Hodges Farms, **JO** 85-73M, AP 85-124 (August 28, 1985) **Ch. 11.** (Denying motion to transfer trial on amount of Bank's claim against debtor to district court; removal proper if district court has jurisdiction; bankruptcy court had jurisdiction over claims against the estate and can adjudicate jury trial if right to jury exists in a core proceeding).
Prtys: Twin City Bank, Debtor, Mallard Farms Holding Co, Marian and David Hodges, John Hancock Mutual Life Insurance , Cache River Production Credit Association, Farmers Home Administration, White River Production Credit Association, Heuer Truck Sales Corp, Elmer and Geneva Heuer, Northwestern Mutual Life Ins. Co., Travelers Ins. Co, Fred Pickens, Trustee for Isaac and Bessie Betts.
Attys: Greg Hopkins, Stan Langley, Marvin Thaxton, Charles Coleman, Donald Raney, Tom Smith, Don Henry, Doug Chavis, Darrell Dover, Fred Pickens, G.D. Walker, Joseph Russell, James Sprott, Fletcher Jackson, Edward Wright.

In re Leird Church Furniture, LR 84-855M, AP 85-558M (March 19, 1986) **Ch 7** (Plaintiff is entitled to jury trial, Rule 9015 governs, trustee is proper plaintiff, not debtor).
Prtys: Debtor, Union National Bank of Little Rock
Attys: Peter Heister, Griffin Smith, Richard Smith, James Cherry, Isaac Scott.

In re McCrary's Farm Supply, Inc., **LR** 81-666,AP 84-149 (July 25, 1985) **Ch. 11** (**57 Bankr. 423**) (Pretrial order in preference suit granting defendant's demand for jury trial pursuant to 28 U.S.C. 151 and 1411).
Prtys: Creditor's Committee, Monsanto Co.
Attys: Judson Todhunter, Peter Heister, Scott Partidge, Isaac Scott.

In re National Transport Services, Inc., 156 B.R. 615, **FS** 90-12044M, AP 92-7673 (July 2, 1993) **Ch. 7.** (Denying jury trial to law firm as defendants in fraudulent transfer suit because firm had filed and withdrawn proof of claim; claims litigation is equitable in nature so firm submitted to equitable jurisdiction of the court which could not be revoked when claim withdrawn.)
Prtys: James Dowden-Trustee, Harper, Young, Smith, and Maurras, Don Smith, Tom Harper Jr., Walton Maurras, Robert Cohen.
Attys: James Dowden, Robert Ross, Robert Cohen II.

LARCENY

In re Roy and Lavonda Price, **313 B.R. 805, LR** No. 03-13601, AP No. 03-1258 (July 22, 2004) court denied motion for summary judgment filed by financial

services company; sale of debtor-serviceman's future military pension rights for lump sum payment was prohibited by federal law, 37 U.S.C § 701, and fact that debtor redirected payments to himself contrary to the contract did not constitute larceny or embezzlement under section 523(a)(4).
Prtys: Debtors, Structured Investments Co.
Attys: Laura Grimes, Kimberly Tucker.

LEASE

In re Keith and Karrie Bailey, **HS** 04-73199 (May 10, 2005) **326 B.R. 156**. **Ch. 13** (Construing Missouri law under UCC 1-201(37), transaction between debtor and creditor was a secured sale under § 1325 (a)(4) and (5) and not a lease under § 1322(b)(7) and 365).
Prtys: Debtors, Lafayette Investments, Inc.
Attys: Thomas Byarlay, Charles Davidson

In re Baldwin, 184 B.R. 558, **JB** 91-30647, AP No. 93-3015M, Trustee v. Pryor (April 13, 1995) **Ch. 7.** (Allegation that trustee had failed to perform under lease was sufficient claim against the estate such that motion to dismiss would be denied.)
Prtys: Danny Schieffler, Mike and Linnette Pryor
Attys: William Ayers, Keith Blackman, Warren Dupwe, Charles Mooney.

In re William K. Brewer, **JO** 97-31440M, 233 B.R. 825 (May 3, 1999)
Ch. 13 (lease must be broadly construed to include parol or month-to-month rental agreements; debtor was tenant at will of nonresidential real property; statute requiring debtor to continue to perform under lease until rejected allowed landlord administrative expense for postpetition, pre-rejection rent without showing of benefit to estate; rent payable under debtor's lease during the postpetition, pre-rejection period must be paid at full contract rate.)
Prtys: William K Brewer, Dr. Glenn Dickson.
Attys: Joe C. Barrett, Chris Gardner.

In re Farrell and Janet Copeland, **JO** 98-31598M (Sept. 7, 1999) **Ch. 13.** (Court looks to state law to determine if debtors' pre-petition transaction to acquire portable building was a sale and security interest or a true lease; most significant factor in determination is whether there is residual value at the end of the lease term; here, there was little residual value because lessees could purchase building for nominal price, but under Arkansas case law, fact that lessee has right to terminate lease at will is deciding factor so transaction was ostensibly a lease).
Prtys: Farrell and Janet Copeland, Cook Sales, Inc.
Attys: Joe Barrett, Gregory Veach.

In re Albert and Earlene Macklin, 236 B.R. 403, **JO** 99-30014M
(July 26, 1999) **Ch. 13** (court overruled objection to confirmation by secured creditor; court found, under UCC, no agreement between the parties as to

Debtor's right to terminate the lease so the transaction was a sale subject to 1325 and not lease subject to 365).
Prtys: Debtors, Mirly Truck Sales.
Attys: Ralph Waddell, Constance Grayson.

In re MacMillan Petroleum, **ED** 87-149M, AP 88-392, 88-433, (July 24, 1990) **Ch. 7** (Lessor (Moore & Munger) of debtor's pipeline system liable for reasonable rent even though prepetition lease rejected because trustee did not assume it within 60 days. Lessor was entitled to offset repairs from rentals. Lessor was not required to pay prejudgment interest for time it failed to make lease payments because there was no bad faith. Division order agreement was not executory contract and trustee did not have to assume it. Lessor liable for balance of purchase price of division orders since trustee's breach was not material).
Prtys: Moore & Munger Marketing and Refining, Claude Hawkins-Trustee, MBank Dallas
Attys: Thomas Williams, Peter Franklin, Charles Camp, Derrell Dickens, Bobby Shepherd.

In re Elmer Smith, **ED** 03-74055, **Ch. 13** (Sept. 20, 2004) **315 B.R. 77**: Damages flowing from breach of lease assumed by debtor in first case but later rejected were administrative expense under 503(b)(1)(A), 364(g); debtor's second confirmed plan did not address lessor's claim for administrative expense sufficiently to satisfy due process so as to bar claim under res judicata.
Prtys: Debtor, General Electric Capital Corp.
Attys: John Phillips,

In re Taylor, **LR** 90-831 (Mar. 1991)**130 B.R. 849**: Objection to **Ch. 13** confirmation; agreements regarding personal property were leases rather than purchases and debtor would have to assume or reject the unexpired leases under 365.
Prtys: Debtors, Fastway, Inc.
Attys: Phil Shoffner, Frederick Wetzel.

LIEN

In re Billy G. and Ruth Ann Billingsley,175 B.R. 286, **HE** 93-20096M, AP No. 93-2011M (July 12, 1994) **Ch. 7.** (Mistaken lien release on deed of trust granted by Debtors to Bank was corrected within 90 day preference period but was not a transfer within the statute because the Bank was without authority to release the lien as the deed of trust had been previously assigned to a third party; therefore, reimposition of lien was not a transfer.)
Prtys: Billy and Ruth Ann Billingsley, Helena National Bank, Charles Roscopf, Gene and Wanda Ridge.
Attys: Ashley Higgins, Charles Roscopf, Daniel Schieffler, A. Jan Thomas.

In re Marty Cloud, **LR**, 215 B.R. 870, 96-42046M, AP 96-4174
(July 17, 1997) **Ch. 7** (equitable lien in automobile that creditor had purchased

for her step-son, the debtor, was not judicial lien impairing an exemption and not subject to avoidance by debtor).
Prtys: Marty Ray Cloud, Betty Cloud.
Attys: Keith B. Faulkner, Jimmy D. Eaton.

In re Timothy A. Dennis, 218 B.R. 52, **HE** 96-20351M (September 8, 1997) **Ch. 13.** (Court permissively abstained from considering Ch. 13 debtor's motion to avoid judicial lien on residence which was to have been sold pursuant to prepetition divorce decree, with proceeds to be divided between debtor and estate of ex-spouse; court abstained to allow state court to adjudicate property issues related to domestic relations proceedings.)
Prtys: Timothy Dennis, Patricia Chapman.
Attys: James Luker, Frank Morledge.

In re Eaton, **HE** 97-20382M (March 31, 1998) **Ch. 13.** (Debtor not entitled to damages or attorney's fees for violation of stay when vehicle repairman retained possession of debtor's car to perfect artisan's lien pursuant to state statute; Trustee's powers are subject to applicable law providing for perfection of a property interest in this manner so automatic stay doesn't prohibit such perfection; see also 362(b)(3)).
Prtys: Vickie Eaton, River City Body Shop.
Attys: J.F. Valley, David Solomon.

In re Hilyard Drillling Co., **ED** 85-10M (July 9, 1987) **Ch. 11.** (Pursuant to Mississippi law, trustee in bankruptcy took priority over statutory lien creditor because he was without notice of the lien; Thus, creditor has only a general unsecured claim).
Prtys: Trustee, creditors' committee, Burroughs Diesel, Inc.
Attys: Franklin McKenzie, Isaac Scott, Audrey Evans, John Jewell.

In re Hilyard Drilling Co. 60 B.R. 500, **ED** 85-10M, AP 85-346M Jan. 17, 1989) **Ch. 11.** (NBC lost its superior lien status in its security interest in accounts receivable because it filed a new financing statement instead of a continuation statement such that first lien lapsed and Worthen's junior lien became senior.)
Prtys: Debtor, National Bank of Commerce of El Dorado, Worthen Bank.
Attys: William Prewett, Davis Thomas, David Duke, Charles Baker, Ray Hilyard, James Smith, James Cook, Baker Kurrus, Peter Heister, Ian Vickery, Scott Vaughn.

In re Kuebler, 156 B.R. 1012, **LR**89-40146, AP 92-4037 (June 24, 1993) **Ch. 13.** (plan listed IRS's secured debt as priority and didn't provide for full payment; plan confirmed without objection by IRS was res judicata on incorrect claim classification because IRS didn't plead no notice and opportunity to object; secured debt untreated by plan is discharged as to debtor's personal liability but IRS retains lien which passes through bankruptcy and remains attached to debtor's property, affording IRS an in rem cause of action on the debt) (AFFIRMED - Judge Woods).
Prtys: IRS, Leonard and Laura Kuebler.
Attys: Keith Grayson, David Coop-T., Tamera Fine-Trail,Robert Millstone.

List of Topics

In re Frankie and Betty Mancle, **HE** 03-18756 (Sept. 14, 2004) **314 BR 397, Ch. 13**: even if future advances by bank to debtors were payoffs and not renewals of original debt, they were secured by original mortgage that provided lien would secure future advances of every kind and character.
Prtys: First National Bank of Easten Arkansas, Hillsboro Financial Associates
Attys: John D. Bridgforth, Rosalind Mouser.

In re Reeves, **HE 87-159**, (Feb. 24, 1989) **Ch. 7** (Writ of execution expired which was returned unsatisfied prior to bankruptcy so creditor did not have prepetition lien in debtor's stock).
Attys: James Luker-Trustee, Alan Cline, John Martin, Daniel Schieffler
Prtys: Trustee, Central Production Credit Association

In re Sanders, **ED** 84-90, AP 85-184M (Jan. 21, 1987) **Ch. 7:** Debtor's guaranty of assignment of cd to secure note did not apply when loan renewed at higher interest rate without notification to guarantor; lien on Debtor's cd was released.
Prtys: Mary Ellen Sanders, First National Bank of Camden
Attys: Allen Roberts, Joseph Hickey, Issac A. Scott Jr.

LIEN AVOIDANCE

In re Trecee Lee Anderson, **ED** 02-72101 (September 6, 2002) **Ch. 7:** (Debtor could not avoid judicial lien under section 522(f)(1)(A) when she owned no property upon which lien could fix; creditor with prepetition claim could not reduce the claim to judgment with lien attached to debtor's property post-discharge because discharge renders judgment void under section 524).
Prtys: Debtor, Farmers Bank & Trust.
Attys: Jack Gooding, Henry Kinslow.

In re Bearhouse, 99 B.R. 926, **ED** 87-42M, AP 87-383M (Feb. 13, 1989) **Ch. 7**. (Under Arkansas law, mortgagee's lien was perfected by recording, and thus not avoidable by bankruptcy trustee, though mortgage was defectively acknowledged, in that mortgage was regular on its face and there was evidence of fraud or forgery.)
Prtys: Claude Hawkins-Trustee, First National Bank of Crossett, James Young Robert Cockrum, Richard Earl Griffin.
Attys: Claude Hawkins, Thomas Streeman.

In re Chambers, **LR** No. 85-902M,(Oct. 17, 1985) **Ch. 7**: Creditor's judicial lien as to exempt personal property and homestead avoided; lien in television and satellite dish is not avoided.
Prtys: North Arkansas Industrial Services, Debtors.
Attys: David Clark, Tom Allen, Jack Sims, Larry V. Alpom.

In re Marty Cloud, **LR**, 215 B.R. 870, 96-42046M, AP 96-4174
(July 17, 1997) **Ch. 7** (equitable lien in automobile that creditor had purchased for her step-son, the debtor, was not judicial lien impairing an exemption and not subject to avoidance by debtor).

List of Topics

Prtys: Marty Ray Cloud, Betty Cloud.
Attys: Keith B. Faulkner, Jimmy D. Eaton.

In re Horton Vaults, **LR** No. 87-371M, AP 88-446M (August 31, 1989) **Ch.7.** (Description of property was sufficient to comply with Arkansas law regarding establishment of materialman's lien such that trustee could not avoid the lien against property of the estate.)
Prtys: Rick Ramsay, Trustee; Westbrook Construction Co.
Attys: Larry Cook, Richard Ramsay, Kim Tucker.

In re Steve Masters, **HE** 00-20359M, AP 01-2008 (Jan. 2002) **Ch. 7**: (Trustee could not avoid Government's liens in debtor's personal property despite the fact that error in clerk's office as to properly filed financing statement resulted in temporary loss of perfection by Government).
Prtys: Trustee-James Luker, Farm Service Agency (U.S.D.A.)
Attys: Fletcher Jackson, James Luker.

In re Michael and Cindy May, **ED 02-71935 (**April 3, 2006) court held that **Ch. 7** debtors, who exempted real property pursuant to section 522(b)(1), could avoid creditor's judicial lien pursuant to formula set out in 522 (f)(2)(A).
Prtys: Debtors, Equipment Supply and Distribution Co.
Attys: Kenneth Harper, Arnold Goodman

In re Minnis, **PB** 89-30235 (Aug. 3, 1990) **Ch. 12. (**Objections to confirmation of Ch. 12 plan sustained: unfair discrimination in one class of claims, inappropriate interest rate without evidence of market rate of interest, liquidation analysis, discussion of misc. provisions contra to Code).
Prtys: Debtors, Farm Credit Bank
Attys: Angela Baxter, Gerald Coleman

LIEN DETERMINATION

In re Barton, **FA** 90-628M (Sept. 5, 1991) **Ch.12**, **132 B.R. 23** (chicken farming operation; determining extent of lien; FmHA must turn over checks b/c no perfected security interest in services performed in growing chickens)
Prtys: Tyson, Farmers Home Administration, Tom Barton
Attys: Terry Zelinski, Deborah Groom, Paul Bowen, Mike Fitzhugh, Claude Skelton, A.L. Tenney

In re Batchelor, **HE** 87-134M, **AP** 88-81M (Jan. 9, 1989) **Ch.12,** (held lien on crops valid for five years, not one, even though Batchelor did not understand extent of lien at time of signing security agreement and financing statements; held party asserting estoppel (here debtor) must prove strictly and not proved here)
Prtys: Farm Credit Services of Eastern Arkansas and Elton and Edith Batchelor
Attys: David Carruth, Gerald Coleman, David Coop

In re Butler, **HE** 99-54M, (Nov. 4, 1988) **Ch.12, 97 B.R. 508** (Ch. 12 confirmation

hearing; confirmation denied --objection to provision requiring release of lien sustained, creditor must retain lien or surrender collateral pursuant to § 1225(a); objection to provision not allowing lien on after acquired property overruled pursuant to § 552(a))
Prtys: First National Bank of Eastern Arkansas and Farm, Credit Bank of St. Louis
Attys: Charles Baker, John Bridgforth, Gerald Coleman, David Solomon, A.L. Tenney

In re Cupp, **HE** 91-20126, AP 95-2007M (July 25, 1996) **Ch. 7**. (Bank held a perfected lien through deed of trust in part of the sale proceeds of the debtors' property but two subsequent notes given to Bank by debtors were unsecured and no valid lien in debtors' property existed as to these two debts despite a future advances clause in the original deed of trust; parties' intent through language in the notes and subsequent filings revealed parties intended the two notes to be unsecured).
Prtys: Trustee, First National Bank of Eastern Arkansas.
Attys: Daniel Schieffler, John Bridgforth.

In re Benjamin Long, **HE** 87-21, AP 87-303 (June 16, 1988) **Ch. 7**. (Lien in mobile home perfected only per Arkansas statute; lien not fixture perfected pursuant to section 9-402(6)).
Prtys: James C. Luker, Trustee; First National Bank of Phillips Co
Attys: James C. Luker; David Solomon.

In re Mae Rolle, 218 B.R. 636, **S.D.Fla. (Miami)** 96-17214-BKC-AJC, AP 97-0280-BKC-AJC-A (February 20, 1998) **Ch. 13.** (Under complaint to determine extent of Mortgagee's lien, Mortgagee did not take security interest in collateral in addition to the Debtor's residence such that Debtor was bound by anti-modification provision of 1322(b)(2)).
Prtys: Debtor, Chase Manhattan Mortgage Corp., Metropolitan Dade County.
Attys: Carolina A. Lombardi, Peter Spindel, Carolyn Weir Broadwater, Nancy N. Herkert.

In re Roy and Elizabeth Peeler, 145 B.R. 973, **HE** 88-20142M, AP 91-2005 (April 24, 1992) **Ch. 7.** (lender's security interest in crops did not extend to proceeds from sale of grain three years later; financing statement had insufficient description to perfect security interest and security interest could be avoided by trustee; property acquired by debtor postpetition was not subject to prepetition security agreement).
Prtys: Danny Schieffler-Trustee; First National Bank of Wynne, Debtors.
Attys: Danny Schieffler, Tom B. Smith, Brad J. Beavers.

In re Mammoth Spring Distributing Co., Inc., 139 B.R. 205, **FA** 90-15286F (Jan. 17, 1992) **Ch. 7.** (Creditor's security interest in general intangibles extended to post-petition tax refund because inchoate right to receive accrued as a result of losses occurring pre-petition under Missouri UCC.)
Prtys: Claude R. Jones-Trustee, Debtor, First National Mercantile Bank and Trust Co.

Attys: John Lee, William Clark.

LIMITATIONS

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge under 727(a)(2), transfer of farm equipment was outside the one year sol so it couldn't be a considered as a basis for discharge denial but is relevant as to the issue of intent.)
Prtys: Texas Equipment Co. Inc., W.O. Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

LIQUIDATING PLAN

In re Mid-America Travel, **HE** 90-20060M (April 20, 1992) **Ch. 11.** (Creditor that acquired claim under equitable subrogation pursuant to section 507 was precluded from claiming the priority of the original holder in liquidating plan).
Prtys: First National Bank of Eastern Arkansas, debtor in possession.
Attys: Charles Baker, John D. Bridgforth.

LOCAL RULES

In re Coleman, **PB** 86-55M (February 4, 1987), AP. No. 86-176M: (recommending district court order referring case to bankruptcy court be set aside as inconsistent with Local Rule 32 and 28 U.S.C. § 157 which automatically grants bankruptcy court original jurisdiction; district court improperly changed venue of the case as well and venue should remain in Ft. Smith until party in interest files a motion to change venue).
Prtys: J.O. Coleman (Debtor), William E. Johnson, Bear Camping Club.
Attys: Charles Boyd, Bill Walters, Geoffrey Treece, Richard Turbeville, Charles Banks.

In re John Samuel Marlar, **ED** 02-1185 (January 23, 2004) Bankruptcy court previously denied Debtor's motion for reconsideration of its order dismissing appeal of order allowing Trustee's attorneys fees because debtor did not timely file designation of record pursuant to Rule 8006. On appeal to District Court, Judge Barnes, Court found B.R. court was without subject matter jurisdiction to dismiss appeal once timely notice of appeal was entered pursuant to Rules 8001 and 8002; only district court or BAP may dismiss appeal after timely notice of appeal is filed. No local rule of the BAP allows bankruptcy court to retain jurisdiction after notice of appeal.
Prtys: Trustee-Renee Williams, Debtor
Attys: Tom Streetman, Robert Depper.

MARKET RATE OF INTEREST

In re Armstrong, **HE** 89-162M (April 18, 1991) **Ch.12** (objection to confirmation; present value; feasibility; discussed market rate of interest; held plan not feasible)

Prtys: Farm Credit and FmHA
Attys: John Henry, Bill Adair, Kent Rubens

In re Butler, **HE** 99-54M, (Nov. 4, 1988) **Ch.12, 97 B.R. 508** (Ch. 12 confirmation hearing; confirmation denied for various reasons; current market rate of interest is rate debtor would have to pay to commercial lender for similar loan § 1225; other plan provisions not confirmable because inconsistent with the Bankruptcy Code)
Prtys: First National Bank of Eastern Arkansas and Farm Credit Bank of St. Louis
Attys: Charles Baker, John Bridgforth, Gerald Coleman, David Solomon, A.L. Tenney

In re Bookout, 231 B.R. 306, **BA** 98-10272M (March 18, 1999) **Ch. 13.** (In objection to confirmation by bank of Ch. 13 plan modifying home mortgage, court held Ch. 13 plan must propose to pay secured claim in full plus interest at market rate.)
Prtys: William Dean and Carol Bookout, First National Bank of Sharp County.
Attys: Paul E. Hopper, Michelle C. Huff.

In re Danny Thomas Properties III Limited Partnership, 231 B.R. 298, **LR** 96-42482M (March 18, 1999) **Ch. 11.** (In determining discount rate of interest for cramdown of creditor's secured claim, court starts with market rate of risk-free government securities calculated on plan length, adds points based on risk factors such as payout period, quality of security, and risk of subsequent default, and then weighs plan assets such as property location, plan provision allowing immediate foreclosure in event of default.).
Prtys: Danny Thomas Properties III Ltd. Partnership, Beal Bank.
Attys: Gregory M. Hopkins, Joyce Bradley Babin.

In re E.I. Parks No. 1 Limited Partnership, 122 B.R. 549, **FA** 88-261M (Oct. 19, 1990) **Ch. 11**. (Finding that if plan proposes to pay objecting secured creditor in installments, present value of future stream of payments must equal secured claim, requiring interest at discount rate; discount rate was risk free rate determined by government securities rate plus added percentage points for risk).
Prtys: E.I. Parks Ltd. Partnership, Shady Grove Associates, Western Hills Park.
Attys: Michael Reif, Katherine Gay.

In re J.W. Gore, 113 B.R. 504, **LR** 88-2284M, CMS 89-489M, 89-675M and 89-570M (Dec. 20, 1989) **Ch. 12.** (Plan must provide for market rate of interest, not contract rate, on deferred payments of secured claim; secured creditor's objection to interest rate was overruled where no evidence of appropriate market rate was introduced).
Prtys: Debtors, Kansas City Life Ins. Co., Farmers and Merchants Bank of Des Arc., Travelers Ins. Co., U.S. Small Business Admin.
Attys: Lance Hanshaw, Phillip Hout, Robert Abney, David Henry, William Adair.

In re Thomas Patrick Harper, 157 B.R. 858, **HE** 91-20002M (Aug. 13, 1993) **Ch. 12:** (To establish interest rate on secured claim, debtor should have used risk-

free rate such as treasury bills to establish base rate and then added risk factor appropriate to the case.)
Prtys: Farm Credit Bank of St. Louis, Debtor.
Attys: Gerald Coleman, Arens Law Firm.

In re Landscape Associates, Inc., **LR** 85-663(July 1, 1987) 81 BR 485, **Ch. 11:** (Confirmation of Ch. 11 plan denied because proposed interest rate was not market rate. See related District Court and Court of Appeals Opinions about collusive sale of property of the estate brought by Rick Ramsay, Trustee).
Prtys: Debtor, First Pyramid
Attys: Richard Crockett, Richard Taylor

In re Minnis, **PB** 89-30235 (Aug. 3, 1990) **Ch. 12. (**Objections to confirmation of Ch. 12 plan sustained: unfair discrimination in one class of claims, inappropriate interest rate without evidence of market rate of interest, liquidation analysis, discussion of misc. provisions contra to Code).
Prtys: Debtors, Farm Credit Bank
Attys: Angela Baxter, Gerald Coleman

In re Mothershed, **JO** 85-176 (March 26, 1986) **(62 Bankr. 113) Ch. 13.** (Ch. 13 plan cramdown would not be permitted without payment of market rate of interest at time of confirmation; issue of adequate protection could not be decided until plan modified).
Prtys: Debtors, International Harvester.
Attys: David Goodson, Maurice Rogers, John C. Calhoun Jr.

In re N.S. Garrott, JO 83-215M; In re Eastern Arkansas Planting Co. JO 83-216M (Dec. 7, 1984) **48 Bankr. 13**: Confirmation denied of **Ch. 11** plan calling for substantive consolidation of estates; plan faulty because incorrect classification of debtor partnerships, improper cramdown where present value of secured claim not paid at market rate; disclosure statement did not propose consolidation; attorneys for the two DIPs had conflicts of interest because they also represented interest holders of each estate).
Prtys: Debtors in Possession
Attys: Richard Frockt, James E. Smith

In re Nolen Tool Co., **FS** 84-151 (May 30, 1985) **50 Bankr.**
Ch. 11. (Objection to confirmation sustained; Plan cramdown of creditor's debt did not pay present value at market rate of interest, did not maintain indubitable equivalent of collateral, so was not fair and equitable).
Prtys: Debtor, City National Bank, FDIC
Attys: Isaac Scott, John Tisdale, Robert Y. Cohen

In re Owens, **LR** 89-42664 (Aug. 3, 1990) **120 Bankr. 487; Ch 13.** (GMAC's objection to confirmation of Ch. 13 plan sustained; wholesale value as of date of confirmation hearing is proper standard for valuing collateral; no evidence that contract rate is current market rate so contract rate not approved).
Prtys: Debtors, General Motors Acceptance Corp.
Attys: Richard Kalkbrenner, Aaron Fuller.

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In re Edmond Torelli, **LR** 04-23884 (Feb. 2, 2006 **)(2006 WL 490574)**: Court denied confirmation of **Ch. 12** plan because it failed to pay present value of creditor's claim with appropriate market rate of interest under section 1225(a)(5)(B)(ii); was not feasible in that debtor did not have sufficient disposable income to fund plan under section 1225(a)(6); however, debtor did meet eligibility requirements of family farmer under section 101(18).
Prtys: Debtor, Regions Bank
Attys: Michael Knollmeyer, Kimberly Burnett

MODIFICATION

In re Barnes, **PB** 84-359M (Jan. 28, 1987) **Ch.13** (sustaining objection to plan where modification to include postpetition, postconfirmation tax claim was redundant w/ original plan providing for payment of postpetition claims)
Prtys: Internal Revenue Service
Attys: A.L. Tenney, Charles Embry

In re Dunlap, 215 B.R. 867, **HE** 95-20169M (July 16, 1997) **Ch. 13** (secured creditor objected to confirmation of third modified plan proposing to surrender vehicle to creditor and treat balance of debt as unsecured--court ruled this is not authorized by the code; Code permits plan modification after confirmation, but modification must be necessitated by unanticipated substantial change in circumstances to avoid preclusion by res judicata.)
Prtys: Markham and Lisa Dunlap, Chrysler Financial Corp.
Attys: Gregory Niblock, Faber Jenkins

In re Evelyn Long, **LR** 81-906M, CMS 86-80M (June 30, 1986). **Ch. 13.** (An allowed, post-confirmation claim requires modification of the plan that meets confirmation requirements; creditor's claim allowed as filed unless debtor timely objects to claim).
Prtys: Debtor, Twin City Motors.
Attys: Jack Sims, Basil Hicks.

In re Mae Rolle, 218 B.R. 636, **S.D.Fla. (Miami)** 96-17214-BKC-AJC, AP 97-0280-BKC-AJC-A (February 20, 1998) **Ch. 13.** (Under complaint to determine extent of Mortgagee's lien, Mortgagee did not take security interest in collateral in addition to the Debtor's residence such that Debtor was bound by anti-modification provision of 1322(b)(2)).
Prtys: Debtor, Chase Manhattan Mortgage Corp., Metropolitan Dade County.
Attys: Carolina A. Lombardi, Peter Spindel, Carolyn Weir Broadwater, Nancy N. Herkert.

In re Billy and Carollee Starnes, 208 B.R. 688, **JO** 95-30588M (April 16, 1997) **Ch. 13**: Debtors may not modify plan to surrender burned house to HUD pursuant to 1325(a)(5)(c) and treat deficiency as unsecured because section 1329 requires that plan comply with anti-modification provision of home mortgage in 1322(b)(2)&(5).
Prtys: Debtors, HUD.
Attys: John Bradley, Fletcher Jackson.

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In re Johnny L. Vincent, **HE** 98-20387M (May 16, 2003) **293 B.R. 467: Ch. 13** debtor's objection to creditor's claim would have had merit in that creditor failed to object to a plan not providing interest on the claim or conforming to the code on residential mortgages and plan was confirmed, but Debtor's objection to the claim was overruled as a sanction for failing to comply with discovery under Rule 7037. Therefore creditor's objection to Debtor's modified plan was sustained. December 1, 2003: Appeal to **BAP** dismissed for lack of jurisdiction; order denying modification of plan (like order denying confirmation of plan) is not a final order.
Prtys: Debtor, Fairbanks Capital Corp.
Attys: James F. Valley, Kimberly Burnett

MOTION FOR RELIEF FROM STAY

In re Brown, **LR** 92-390M (Dec. 14, 1992) **Ch.13** (granting relief from stay to allow IRS right to setoff where refund and tax claim mutual and both prepetition)
Prtys: Internal Revenue Service
Attys: A.L. Tenney, Mike Knollmeyer, Raymond Mulera

MOTION FOR SANCTIONS

In re Bratton, **HA** 84-47M, **AP** 89-98M (Feb. 26, 1990) **Ch.7,** (motion for sanctions against Art Dodrill granted; also held Dodrill in criminal contempt during hearing and fined $100)
Prtys: Davidson Law Firm, Mitchell Law Firm, Art Dodrill
Attys: Charles Davidson, Art Dodrill, Mike O'Malley

MOTION TO STRIKE

In re Bearhouse, Inc., **ED** 87-42M, **AP** 87-186M (June 23, 1988) **Ch.7,** (motion to strike interpleader and other pleadings denied construing Rule 7015; amendments should be liberally allowed; unusual procedural history considered)
Prtys: Farmers Rice Milling Co., National Bank of Commerce, Aetna Casualty & Surety Co.
Atty: Claude Hawkins, Tom Streetman, Robbie Camp, Overton Anderson, et al

MUTUAL DEBT

In re Brown, **LR** 92-390M (Dec. 14, 1992) **Ch.13** (granting relief from stay and allowing IRS right to setoff where refund and tax claim mutual and both prepetition)
Prtys: Internal Revenue Service
Attys: A.L. Tenney, Mike Knollmeyer, Raymond Mulera

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various

creditors holding security interests in agent contract between Crawford and NBA player).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn, Darwin Davidson, Lance Miller.

NEW VALUE EXCEPTION

In re Jones Truck Lines, Inc. 196 B.R. 483, **FA** 91-15475M, AP No. 92-8527 (Sept. 27, 1995) **Ch. 11.** (Affirmed by District Court and Reversed by 8th Circuit). Debts to Central States were incurred before the transfer of funds in payment such that transfers were for antecedent debt so preference could be avoided; interest payments and liens were also transfers within the statute; no contemporaneous exchange for new value because new value extended by Central States was to employees, not debtor; no liability to debtor was reduced by extension of benefits; value to debtor was forbearance, which is not new value; transfers not in ordinary course of business; no subsequent advances for new value that would replenish the estate.)
Prtys: Jones Truck Lines, Inc.; Central States Pension Fund and Health and Welfare Fund; Corestates Bank as lender and agent for Midlantic, Continental and Wilmington Trust Co. Banks.
Attys: Isaac Scott, Jill Jacoway, James Condon, Thomas Nyhan, Thomas Thrash, J.T. Hardin, Audrey Evans, Steve Cousins, Melva Harmon, Andrew Turner, G.W. Turner

In re McCrary's Farm Supply, **LR** 81-666M, AP 84-149M (November 1, 1985) **Ch 11**. (Motion for Summary judgement denied in preference action in which movant-defendant asserted contemporaneous exchange and new value exceptions).
Prtys: Creditors' Committee, Monsanto Co.
Attys: L. Judson Todhunter, Peter Heister, Scott S. Partridge, Isaac Scott, Jack Sims.

NON-CORE PROCEEDINGS

In re Dollar Time Group, Inc., 223 B.R. 237, **S.D. Florida** 95-22816-BKC, RBR, AP 96-0380-BKC, RBR (July 20, 1998) **Ch. 7**. (Proceeding for breach of fiduciary duty was noncore, related matter because claims were such that corporation could have pursued them even if not in bankruptcy; noncore, related matter involves nonbankruptcy law claims independent of and antecedent to bankruptcy filing and affects amount of property of estate or allocation of property among creditors.)
Prtys: Kenneth Welt, Trustee; Dollar Time Group, Inc.: Joseph Sasson, Jeffrey Klansky.
Attys: Irwin Fingerit, Ronald Neiwirth, Arthur Rice.

In re Larry Moyer Trucking Inc., **LR** 97-40968M, AP 98-4124

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(September 9, 1999) **Ch. 11.** (In related proceeding, judgment for contractor on breach of contract claim against project developer; no accord and satisfaction when developer's agent partially paid contractor for extra work performed; Debtor recovered under theories of express and implied contract, quantum meruit, unjust enrichment).
Prtys: Debtor, White-Dates & Associates, Inc; J.C. and J.G. Thornton.
Attys: Richard Downing, David M. Powell, Allen W. Bird.

In re Lewis, **HE** 86-2002, AP 88-456M (Oct. 2, 1990) **Ch. 7**: (In non-core, related matter, Creditor's security interest in destroyed truck continued in insurance proceeds to extent of value of destroyed truck; insurer liable to creditor for value of truck but entitled to indemnity from debtors for amounts paid to Bank).
Prtys: First National Bank of Phillips County, Canal Insurance, Debtors.
Attys: Michael Lewis, David Solomon, Jesse Porter, Charles Roscopf

NOTICE AND HEARING

In re Boyd, **JO** 82-158M (July 2, 1985)(finding creditors in contempt because they coerced the Debtor to sign a note after his discharge in violation of the discharge injunction; defendants had actual notice of BR prior to discharge).
Prtys: James L. Cochren Sr. and Jr., Marion and Monica Boyd
Attys: Troy Henry, Joe Holifield

In re Kuebler, 156 B.R. 1012, **LR**89-40146, AP 92-4037 (June 24, 1993) **Ch. 13.** (plan listed IRS's secured debt as priority and didn't provide for full payment; plan confirmed without objection by IRS was res judicata on incorrect claim classification because IRS didn't plead no notice and opportunity to object; secured debt untreated by plan is discharged as to debtor's personal liability but IRS retains lien which passes through bankruptcy and remains attached to debtor's property, affording IRS an in rem cause of action on the debt) (AFFIRMED - Judge Woods).
Prtys: IRS, Leonard and Laura Kuebler.
Attys: Keith Grayson, David Coop-T., Tamera Fine-Trail, Robert Millstone.

In re MacMillan Petroleum, **ED** 87-149M, AP 88-392, 88-433, (July 24, 1990) **Ch. 7** (Lessor (Moore & Munger) of debtor's pipeline system liable for reasonable rent even though prepetition lease rejected because trustee did not assume it within 60 days. Lessor was entitled to offset repairs from rentals. Lessor was not required to pay prejudgment interest for time it failed to make lease payments because there was no bad faith. Division order agreement was not executory contract and trustee did not have to assume it. Lessor liable for balance of purchase price of division orders since trustee's breach was not material).
Prtys: Moore & Munger Marketing and Refining, Claude Hawkins-Trustee, MBank Dallas
Attys: Thomas Williams, Peter Franklin, Charles Camp, Derrell Dickens, Bobby Shepherd.

In re Donald Lynn Pierce, 02-24536, **LR, Ch. 13**

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Nov. 15, 2004, 04-0040, **DISTRICT COURT (JUDGE WILSON) AFFIRMED** bankruptcy court's policy of granting objections to claims unless a response and request for hearing is filed within 30 days; creditor filed no response to objection to his claim but appealed on the basis that he had no evidentiary hearing as prescribed under section 502(b). Rule 9007 grants bankruptcy courts discretion to set the particularities of notice procedures. **Affirmed, 8th Circuit,** Jan. 25, 2005: section 102 defines "notice and a hearing" to authorize an act on negative notice without hearing if notice is given properly and hearing not requested by a party in interest.
Prtys: Donald Lynn Pierce, Myron Roberts
Attys: John Ogles

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in Ch. 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

NOVATION

In re Sanders, **ED** 84-90 (Jan. 21, 1987) **75 B.R. 751;** AP 85-186M: (Debtor who was accommodation maker or endorser on note by virtue of mortgage lien on her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note).
Prtys: Mary Ellen Sanders, First National Bank of Camden.
Attys: Allen Roberts, Joseph Hickey, Isaac Scott

In re Sanders, **ED** 84-90 (Jan. 21, 1987) **75 B.R. 746;** AP 85-185M: (Debtor who was accommodation maker or endorser on note by virtue of lien on her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note; Debtor husband not agent for debtor wife).
Prtys: Mary Ellen Sanders, First National Bank of Camden.
Attys: Allen Roberts, Joseph Hickey, Isaac Scott

OBJECTIONS

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge, creditors proved four necessary elements:

conduct occurred within a year of bankruptcy, debtor's actual intent to hinder, defraud or delay creditors, act was committed by debtor, and the act was a transfer of property).
Prtys: Texas Equipment Co. Inc., W.O. Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge under 727(a)(2), intent may be proved by circumstantial evidence such as extrinsic evidence of fraud or confluence of several badges of fraud).
Prtys: Texas Equipment Co. Inc., W.O. Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge under 727(a)(2), badges of fraud include transfer anticipating litigation against the debtor, transfer of all the debtor's assets, close association between the transferor and transferee, retention of control or benefit of transferred property, inadequate consideration).
Prtys: Texas Equipment Co. Inc., W.O. Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge under 727(a)(2), transfer of farm equipment was outside the one year sol so it couldn't be a considered as a basis for discharge denial but is relevant as to the issue of intent.)
Prtys: Texas Equipment Co. Inc., W.O. Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

In re Steve Adams, **JO** No. 94-30494M, AP No. 95-3003M (August 8, 1996) **Ch. 7** (In complaint objecting to discharge under 727(a)(2), property transferred to relatives raises a rebuttable presumption of fraudulent intent.)
Prtys: Texas Equipment Co. Inc., W.O. Qualls, Debtor, U.S. Trustee.
Attys: Mike DeLoache, Troy Henry, Jim Lyons.

In re Bancroft Cap Company, **LR,** 182 B.R. 538, No. 95-41058M (Feb. 24, 1995) **Ch. 11, Reversed, Wright, J.** (Debtor's plan set time limit for debtor's objections to claims; plan confirmed and debtor failed to object to creditor's claim within time limit; court could not reconsider, under 502(j), allowing debtor to object because no court order had been entered allowing or disallowing the claim; claim was allowed by section 502(a) and confirmation of plan, which was res judicata and was not timely appealed from.)
Prtys: Bancroft Cap Company, Bower and Bonanno Co.
Attys: Kimberly Tucker, Charles W. Baker.

In re Bookout, 231 B.R. 306, **BA** 98-10272M (March 18, 1999) **Ch. 13.** (In objection to confirmation by bank of Ch. 13 plan modifying home mortgage, court held bank's security interest survived foreclosure judgment for antimodification purposes, even though foreclosure judgment grants a lien, but since claim was also secured by judgment lien in other real property of the debtor by virtue of

foreclosure judgment, bank's claim could be modified by plan.)
Prtys: William Dean and Carol Bookout, First National Bank of Sharp County.
Attys: Paul E. Hopper, Michelle C. Huff.

In re Gwendolyn Bush, **HE** 99-20274M (October 20,2000) **Ch. 13**. (Objection to confirmation overruled, counsel for creditor failed to prove property included in Ch. 13 plan had previously been foreclosed upon; Creditor then filed numerous futile pleadings to undo the ruling on the objection).
Prtys: Debtor, Ameriquest Mortgage Company.
Attys: J.F. Valley, Kim Burnette.

In re Claudene Cato, **LR**, No. 86-567M, AP No. 86-477M (February 5, 1987) **Ch. 7** (Creditor's objection to discharge based on faulty financial statement including jewelry later missing or omitted from schedules was sustained and discharge denied; Court did not believe Debtor's explanation as to missing assets.)
Prtys: Madison Guaranty Savings & Loan Association, Claudene Cato
Attys: Raymond Harrill, Greg Hopkins, R.J. Brown, Randy Rice-T.

In re Central Arkansas Broadcasting Company, Inc., **LR** 170 B.R. 143 (March 30, 1994) **Ch. 7** (Trustee's objection to Bank's claim of a security interest in debtor's interest in license was sustained; Bank's claim was secured only as to the tangible property of debtor)
Prtys: Central Arkansas Broadcasting Co., First State Bank of Russellville, Trustee.
Attys: David Grace, Dale Finley, Jim Dowden.

In re Circle J Dairy, Inc., **FA,** 92 B.R. 832**,** No. 85-139 (Oct. 18, 1988) (Proof of claim is prima facie evidence of validity and amount of claim. Objecting party must produce evidence rebutting the claim. If rebuttal evidence is forthcoming, claimant must produce additional evidence to prove validity of claim by preponderance of the evidence; here, objecting parties did not carry burden.) REVERSED, 112 B.R. 297 (J. Waters).(Proof of claim may be prima facie evidence of validity when used by claimant, and mere objection, without more, will not defeat claim. But facially defective proof of claim may also be evidence to support objecting parties' contention that claim is invalid).
Prtys: Debtor-in-possession, Dairy Farm Leasing Co., First National Bank of Fayetteville, Agristor Leasing.
Attys: William R. Gibson, Thomas Carroll, Mark Lindsay, James M. Dunn.

In re Cockrum, **ED**, 90-11193M, AP No. 91-1501 (July 2, 1993) **Ch. 7.** (Insufficient evidence to show that separate corporate entity was alter ego of the debtor such that individual debtor's discharge should be denied because the corporate entity's records are inadequate; statute refers to "Debtor's financial condition.")
Prtys: First National Bank of Crossett, Robert Cockrum, debtor.
Attys: Thomas Streetman, Richard Crockett, William Wright.

In re Dunlap, 215 B.R. 867, **HE** 95-20169M (July 16, 1997) **Ch. 13** (secured creditor objected to confirmation of third modified plan proposing to surrender

vehicle to creditor and treat balance of debt as unsecured--court ruled this is not authorized by the code; Code permits plan modification after confirmation, but modification must be necessitated by unanticipated substantial change in circumstances to avoid preclusion by res judicata.).
Prtys: Markham and Lisa Dunlap, Chrysler Financial Corp.
Attys: Gregory Niblock, Faber Jenkins

In re Dang, 96 B.R. 185, **LR** 88-589 (Nov. 4, 1988) **Ch. 13.** (Objection to confirmation of Ch. 13 plan sustained because violated 1325(a)(5)(B) and 506(b) in that it misstates the amount of the Bank's claim, which was oversecured; plan must provide for retention of Bank's lien and that claim be paid in full with interest at market rate and costs; plan also violated 1322(b)(5) in that it proposed a long-term payout of a debt maturing pre-petition).
Prtys: Tien Nguyen and Phung Dang, Debtors; Worthen Bank.
Attys: William Owen, Judy Henry.

In re Danny Thomas Properties III Limited Partnership, 231 B.R. 298, **LR** 96-42482M (March 18, 1999) **Ch. 11.** (secured creditor's objection to Ch. 11 plan sustained; plan should have reasonable prospect of success; BOP of feasibility on debtor; plan not feasible because it would generate a deficit over five year period, could not fund deferred maintenance, and capital contribution was not forthcoming).
Prtys: Danny Thomas Properties III Ltd. Partnership, Beal Bank.
Attys: Gregory M. Hopkins, Joyce Bradley Babin.

In re Irene Thelma Doles, **HE** 84-52M, AP 84-480M (June 17, 1985) **Ch. 7**. (Dismissing complaint for objection to discharge for failure to state a cause of action when complaint alleged no grounds set out in 11 U.S.C. 727).
Prtys: Dixie Furniture Co., Irene Thelma Doles.
Attys: Jack Sims, W.G. Dinning, Jr., Loyal Barr.

In re Farmer's Co-Op of Arkansas and Oklahoma, Inc., **FS** 84-046M (Oct. 23, 1984) **Ch. 11.** (Properly filed claim is presumptively allowed unless objected to by a party in interest who has burden of going forward with the evidence to rebut the presumption of validity).
Prtys: Farmer's Co-Op, Citizens Bank and Trust Co. Of Van Buren
Attys: Diane Mackey.

In re Gardner, In re Harris, In re Gribble, 139 B.R. 460, **HE** 88-20027 (December 31, 1991) **Ch 7**: (Ark. Code Ann. § 16-66-217 (1991) allows Arkansas residents a choice of federal or state exemptions; election is not retroactive to those debtors filing for bankruptcy before the effective date of the amendment when only state exemptions were available).
Prtys: Leonard and Conus Gardner, Paul and Elizabeth Harris, James Gribble.
Attys: James C. Luker, Daniel Schieffler, Stephen Bennett, Terry Zelinski.

In re Gibson, 218 B.R. 900, **LR** 96-41062M (Dec. 27, 1997) **Ch. 13.** (Objection to confirmation: Insurance proceeds from prepetition insurance policy were property of estate and loss payee had insurable interest in insurance proceeds only to

extent of its allowed, secured claim).
Prtys: Debtor, Newcourt Financial.
Attys: Kent Pray, Richard Kalkbrenner.

In re Gran, 108 B.R. 668, **L.R.** 87-146M (Nov. 27, 1989) **Ch. 13.(**Upon debtors' objection to I.R.S. claim, purported sale of cattle to debtors was sham transaction to create fictitious tax deductions and objection would be overruled.)
Prtys: Debtors, I.R.S.
Attys: Michael Wilcove, Raymond Harrill.

In re Hayes, 101 B.R. 569, **LR** 88-1997M (June 28, 1989) **Ch. 13:** (Upon Creditor's objection to plan, court found that creditor waived right to forfeit of debtor's interest for making untimely payments; Real estate sale contract would be characterized as lien device rather than executory contract and treated as long term debt in plan pursuant to 1322(b)(5)).
Prtys: Southern Investment Co., Debtor.
Attys: Stuart Miller, Willard Proctor Jr.

In re Henson, **FS** 92-70580M (April 20, 1993) **Ch. 13**: (objection to confirmation of Ch 13; under state statutory foreclosure procedure, right to deed of trust property belonged to purchaser so that property was no longer property of estate and could not be included in the plan; proceeding to determine status of property in bankruptcy was inappropriate to set aside sale based on irregularities under state law).
Prtys: Debtors, Fleet Mortgage Corp.
Attys: Robert McKinney, Michael Hamby.

In re Kenneth Hudspeth,92 B.R. 827, **HA** 987-02M (Aug. 22, 1988) **Ch. 7**: (Arkansas' unlimited insurance exemption statute violates the Arkansas constitution's personal property exemption limit of $500).
Prtys: Debtors, Trustee.
Attys: Willliam Gibson, Claude Jones.

In re Jimmy D. Keller, **LR** 03-16095 (Feb. 18, 2005) **2005 WL 435212**: Upon objection to discharge, cattle farmer's discharge denied for failure to keep records sufficient to show debtor's financial condition under section 727(a)(3).
Prtys: Debtor, Grisham Farm Products, Inc.
Attys: Jesse W. Thompson, Steve Gershner.

In re Phillip Lynn Lloyd, 142 B.R. 866, **LR** 86-41880M, AP 88-332M (Feb. 12, 1992) **Ch. 7.** (debtor's criminal conviction collaterally estopped his defense in bankruptcy proceeding regarding false statement under oath and withholding info regarding his property; discharge denied).
Prtys: Rick Ramsay-Trustee, Debtor.
Attys: David Grace, Stuart Hankins.

In re Locke, **LR** 83-204, AP 83-643M (April 1, 1985) 50 Bankr. 443, **Invol. Ch. 7** (discharge denied under 727(a)(2) for intent to hinder creditors.) May 7, 1985:

(Trustee's settlement of denial of discharge claim is approved but that of Bank is denied because of no benefit to estate).
Prtys: Debtor, First Commercial Bank
Attys: Charles Davidson, Isaac Scott, Rick Taylor, Ralph Sloan

In re Roy and Juanita Wilcox,251 B.R. 59, **JO** 099M (July 19, 2000) **Ch. 13.** (Order overruling Bank's objection to confirmation of Ch. 13 plan based on Debtors' pre-petition conduct as used car dealers where conduct would have resulted in nondischargeable debts in a Ch. 7 because arising from willful and malicious conduct; plan was proposed in good faith).
Prtys: Debtors, Union Planters Bank
Attys: Warren Dupwe, Ralph Waddell.

In re Mary Frances Vance, **JO** 85-266M (September 18, 1986) **Ch. 13:** (Sustaining objection to confirmation of plan because allowed amount of claim was higher than the appraised value of property the debtor proposed to surrender in full satisfaction of the claim).
Prtys: Debtor, Little River Bank.
Attys: Lindsey Fairley, David Coop, A.L. Tenney-T.

ORDINARY COURSE OF BUSINESS EXCEPTION

In re Jones Truck Lines, Inc. 196 B.R. 483, **FA** 91-15475M, AP No. 92-8527 (Sept. 27, 1995) **Ch. 11.** (Affirmed by District Court and Reversed by 8th Circuit). Debts to Central States were incurred before the transfer of funds in payment such that transfers were for antecedent debt so preference could be avoided; interest payments and liens were also transfers within the statute; no contemporaneous exchange for new value because new value extended by Central States was to employees, not debtor; no liability to debtor was reduced by extension of benefits; value to debtor was forbearance, which is not new value; transfers not in ordinary course of business; no subsequent advances for new value that would replenish the estate.)
Prtys: Jones Truck Lines, Inc.; Central States Pension Fund and Health and Welfare Fund; Corestates Bank as lender and agent for Midlantic, Continental and Wilmington Trust Co. Banks.
Attys: Isaac Scott, Jill Jacoway, James Condon, Thomas Nyhan, Thomas Thrash, J.T. Hardin, Audrey Evans, Steve Cousins, Melva Harmon, Andrew Turner, G.W. Turner

In re Mastercraft Graphics, Inc., 157 B.R. 914, **S.D. Fla. (Miami)** 91-23768-BKC-AKC; AP 92-0682 (August 13, 1993) **Ch. 7.** (Finding insider preference could be avoided if it benefitted inside guarantor of debtor's obligation to supplier; irregular or unusual payments not in ordinary course of business; party asserting o.c. exception has burden of proof). **Affirmed** by District Court, S.D. Fla.
Prtys: Debtor, Signal Capital Corp.
Attys: Corali-Lopez-Castro; Susan Lasky

In re Mid-South Cabinet & Millwork Inc., **LR** 86-1773M, AP 88-511 (Oct. 24, 1990) **125 B.R. 16**, **Invol ch. 7** (Trustee entitled to judgment against creditor in

preference action; creditor failed to establish affirmative defense of ordinary course of business but was entitled to offset subsequent unsecured credit extended to debtor).
Prtys: Trustee-James Allen Brown, Heigel Lumber & Hardware
Attys: Geoffrey Treece, George F. Hartje.

In re Herbert E. Russell, 154 B.R. 723, **ED** 84-058M, AP 87-103M (April 23, 1993) **Ch. 11.** (On remand from 8th Circuit, BR holding that Trustee did not prove fraudulent intent in avoidance action when Debtor elected to carryforward his net operating loss; constructive fraud was beyond mandate of 8th Circuit; election was in ordinary course of business). **Reversed and Remanded by district court (Barnes).**
Prtys: Tom Streetman-Trustee; United States (I.R.S.)
Attys: Charles Baker, John Russell.

In re U.S.A. Inns, 151 B.R. 486, **HA** 89-13136, AP 89-3509 (Sept. 30, 1992) **Ch. 7:** (Bank failed to prove by preponderance of evidence that acceptance of late loan payments were in ordinary course of business; trustee could avoid payments as preference). **REVERSED** by Waters (Sept. 30, 92); 8th Cir. Affirmed District Court.
Prtys: Claude R. Jones-Trustee, United Savings and Loan Association.
Attys: Gail Inman-Campbell, Dennis Davis, Claude R. Jones, Steven B. Davis.

PAROL EVIDENCE

In re Dillon Construction Co., Inc., **LR** 88-789M, AP No. 88-217M (August 10, 1989), **Ch. 11.** (Although prior agreements between Debtor and Bank existed to lend Debtor $2 million and develop project as a joint venture, these agreements merged into formal written loan agreement at the loan closing and parol evidence rule precluded varying terms of the written documents by antecedent agreement).
Prtys: Dillon Construction Co. Home Federal Savings and Loan, Schrader Construction, Pine Lake Country Club, Phyllis and Gerald Dillon.
Attys: R.J. Brown, Michael G. Smith, Walter Murray, Robert L. Brown, William L. Owen, Joe Bell, Steve Quattlebaum, Watt Gregory.

PARTNERSHIP

In re Giller, 127 B.R. 215, **ED** 89-11-104 (Oct. 24, 1990) **Ch. 11**: (Urban homestead exemption limited to 1/4 acre; personal property exemptions limited to $500, including IRA, car, wedding bands, tools of trade; could not exempt partnership interests because they are personalty and not within the exemption limit; partner's interest in partnership (share of profits and surplus) are property of estate).
Prtys: Debtor, FSLIC
Attys: Robert Depper, Barbara Hollis.

In re Pat Hardy and Charlotte Cecille McGowan, **FS** 85-166M, AP 85-551M, 552M (August 13, 1986) **Ch. 7.** (Assignment to Bank of limited partnership by

debtors was not prohibited by partnership agreement and was valid; no equity was left for the estate so motion to abandon was granted; complaint improperly drawn).
Prtys: Sam Phillips, Carl Brent Roberson, Cambridge Properties, et al; Debtors, Carriage Investments, First National Bank.
Attys: James Cox, Phillip Taylor, Jan Nielsen, Ben Barry, Paul Gean, James Arnold.

In re Franklin Doty Miller, **FA** 89-15098M AP 89-5507 (March 14, 1990) **Ch. 11** (Bank claimed lien in cattle. Court found cattle owned by partnership and not individual debtor who was partner in the partnership. Cattle not estate property; court did not have jurisdiction over partnership so complaint dismissed).
Prtys: Debtor, Boatmen's National Bank of Cassville, Mo, First State Bank of Purdy, Mo., Creditors' Committee.
Attys: James C. Clark, Jill Jacoway, Kent Bart, Field Wasson, Douglas Schrantz, Ron Boyer, Kirby Brooks

In re Franklin Doty Miller, **FA** 89-15098M, AP 90-5506 (March 8, 1991) **Ch. 11** (FmHA claimed a lien in equipment, which FmHA claims is property of the debtor. Creditors' committee argued that the equipment is property of the partnership; thus, FmHA does not have a valid lien in the equipment. Court Held: the creditors' committee did not establish a prima facie case that the lien was invalid; complaint dismissed). REVERSED (J. Waters, 10-11-91, 91-5051)
Prtys: Debtor, Farmers Home Administration, Creditors Committee
Attys: Michael Fitzhugh, Paul Bowen, Don Taylor, Deborah Groom, Claude Skelton, Marilyn Byington, Jack Butt.

In re N.S. Garrott, JO 83-215M; In re Eastern Arkansas Planting Co. JO 83-216M (Dec. 7, 1984) **48 Bankr. 13**: Confirmation denied of **Ch. 11** plan calling for substantive consolidation of estates; plan faulty because incorrect classification of debtor partnerships, improper cramdown where present value of secured claim not paid at market rate; disclosure statement did not propose consolidation; attorneys for the two DIPs had conflicts of interest because they also represented interest holders of each estate).
Prtys: Debtors in Possession
Attys: Richard Frockt, James E. Smith

In re Joe and Sandra Swaffar,222 B.R. 326, 222 B.R. 330, **LR** 95-40532M, AP 96-4146 (July 8, 1998) **Ch. 7 (**Plaintiff McCallum not a partner when property conveyed without McCallum's consent from partnership to corporation and then to defendants so plaintiff's consent to conveyance not necessary; Motion for summary judgment granted as to Patels and AMBA who had no knowledge of allegedly invalid transfer from partnership to corporation and then to them; Motion for summary judgment granted as to Steve and Linda Wood-nothing in chain of title gave Woods notice of McCallum's alleged interest in property they subsequently purchased from the Spears).
Prtys: Harrison Properties, Ltd., Gary McCallum, Donald M. Spears, Nell Spears, Richard Cox-T; Motel Managers, Inc., David Henry, Steve Wood, Linda Wood, Shantilal Patel, Pragna Patel, AMBA, LLC.

Attys: Gail Inman-Campbell, James Dowden, Patrick James, Henry Allen, Basil Hicks, Richard Crockett, Richard Cox, David Henry

PARTY-IN-INTEREST

In re Herbert Russell, 123 B.R. 48, **ED** 84-11058M, AP 89-1514 (Sept. 7, 1990) **Ch. 11.** (Complaint for turnover brought by trustee dismissed because corporation (wholly owned by Debtor) was real party in interest, not BR estate, even though its charter had been forfeited for nonpayment of franchise taxes.)
Prtys: William Gibson and Thomas Streetman-Trustees, Couch Dennis, Bonnie Dennis, Sandra King, Raymond and Helen Pittman, Virgil Lewis, Jerry Lewis.
Attys: William Arnold; Charles Tucker, U.S. Trustee; Ian Vickery.

POST-PETITION TRANSFERS

In re Hoffman, 51 B.R. 42, **ED** 85-27M, 85-29M, 85, 30M, AP 85-318M, 85-320M (May 30, 1985) **Ch. 7, 11:** (It is not a violation of the automatic stay for a bank to place administrative freeze on debtors' demand accounts upon receipt of knowledge of filing of bankruptcy; Debtor in possession may operate business without order of court but is not authorized to make postpetiton payments on pre-petition debts; bank would not be granted relief from stay to exercise right of set off if adequate protection for use of cash collateral could be offered by the debtors.)
Prtys: Debtors Charles Hoffman, Craig Shackleford, Craig Shackelford Farms, Portland Bank, National Bank of Commerce of Pine Bluff.
Attys: Isaac Scott, Thomas Streetman, Joseph Strode.

In re Franklin Doty Miller, **FA** 89-15098M, AP 90-5506 (March 8, 1991) **Ch. 11** (FmHA claimed a lien in equipment, which FmHA claims is property of the debtor. Creditors' committee argued that the equipment is property of the partnership; thus, FmHA does not have a valid lien in the equipment. Court Held: the creditors' committee did not establish a prima facie case that the lien was invalid; complaint dismissed). REVERSED (J. Waters, 10-11-91, 91-5051)
Prtys: Debtor, Farmers Home Administration, Creditors Committee
Attys: Michael Fitzhugh, Paul Bowen, Don Taylor, Deborah Groom, Claude Skelton, Marilyn Byington, Jack Butt.

In re Herbert E. Russell, 154 B.R. 723, **ED** 84-058M, AP 87-103M (April 23, 1993) **Ch. 11.** (On remand from 8th Circuit, BR holding that Trustee did not prove fraudulent intent in avoidance action when Debtor elected to carryforward his net operating loss; constructive fraud was beyond mandate of 8th Circuit; election was in ordinary course of business). **Reversed and Remanded by district court (Barnes).**
Prtys: Tom Streetman-Trustee; United States (I.R.S.)
Attys: Charles Baker, John Russell.

PREFERENCE

In re Bennett **LR** 85-32M (April 10, 1987) **Ch. 7** (Finding incarcerated man was

involuntary debtor with two creditors owed restitution for debtor's aggravated robbery; fraudulent conveyance as to fees paid to atty for services not yet rendered; preference as to fees paid from debtor to atty during preference period.
Prtys: Gary Bennett, Robert and Sandra Vowell
Attys: Allen Bird, Mark Riable, Michael Durham, Charles Davidson

In re Billy G. and Ruth Ann Billingsley, 175 B.R. 286, **HE** 93-20096M, AP No. 93-2011M (July 12, 1994) **Ch. 7.** (Mistaken lien release on deed of trust granted by Debtors to Bank was corrected within 90 day preference period but was not a transfer within the statute because the Bank was without authority to release the lien as the deed of trust had been previously assigned to a third party; therefore, reimposition of lien was not a transfer.)
Prtys: Billy and Ruth Ann Billingsley, Helena National Bank, Charles Roscopf, Gene and Wanda Ridge.
Attys: Ashley Higgins, Charles Roscopf, Daniel Schieffler, A. Jan Thomas.

In re Davis Industries, Inc., **PB** 83-56M, AP No. 85-515M (January 9, 1987). (In involuntary bankruptcy proceeding, Trustee's preference action was denied: Bank held perfected lien in debtor's accounts receivable; transfer made to bank pre-petition was account receivable of the debtor and Bank did not receive more than it would have in a Ch. 7 since Bank held valid perfected lien in accounts).
Prtys: James Sanderlin, George Locke, E.A. Tucker d/b/a Davis Industries, Trustee--Thomas Streetman, First State Bank of Dermott.
Attys: Bynum Gibson, David Fuqua, John Shackleford, R.J. Brown, Teresa Wineland, Mary Scott.

In re Mark Francis, 252 B.R. 143, **JO** 97-31344M, AP 99-3050.
(August 23, 2000) **Ch. 7** (Earmarking doctrine [creditor lends money to debtor for purpose of paying selected creditor] precluded Trustee's recovery in preference action).
Prtys: James Luker, Trustee; Lewis Auto Glass Inc. and Midwest Auto Body Panels.
Attys: William Ayres, Michael Goldstein, Harry Hurst, Warren Dupwe.

In re Jones Truck Lines, Inc., 166 B.R. 885, **FA** 91-15475M, AP No. 92-8527,(January 12, 1994) **Ch. 11.** (Denying both parties' motion for summary judgment in holding that genuine issue of fact as to debtor's insolvency precluded summary judgment as to debtor's preference action and that defendant's argument was meritless that preference action impermissibly altered parties' collective bargaining agreement; the concerns of sections 1113 and 547 are distinct and 1113 does not give defendant a preference defense).
Prtys: Jones Truck Lines, Central States, Southeast and Southwest Areas Pension Fund; Central States, Southeast and Southwest Areas Health and Welfare Fund; Corestates Bank, N.A.
Attys: Isaac Scott, Charles Coleman, Kimberly Tucker, Thomas Nyhan, James Condon, Thomas Thrash, John Hardin, Stephen Snider, Audrey Evans, Steven Cousins, G.W. Turner, Andrew Turner, Melva Harmon.

In re Jones Truck Lines, Inc. 196 B.R. 483, **FA** 91-15475M, AP No. 92-8527 (Sept. 27, 1995) **Ch. 11.** (Affirmed by District Court and Reversed by 8th Circuit). Debts to Central States were incurred before the transfer of funds in payment such that transfers were for antecedent debt so preference could be avoided; interest payments and liens were also transfers within the statute; no contemporaneous exchange for new value because new value extended by Central States was to employees, not debtor; no liability to debtor was reduced by extension of benefits; value to debtor was forbearance, which is not new value; transfers not in ordinary course of business; no subsequent advances for new value that would replenish the estate.)
Prtys: Jones Truck Lines, Inc.; Central States Pension Fund and Health and Welfare Fund; Corestates Bank as lender and agent for Midlantic, Continental and Wilmington Trust Co. Banks.
Attys: Isaac Scott, Jill Jacoway, James Condon, Thomas Nyhan, Thomas Thrash, J.T. Hardin, Audrey Evans, Steve Cousins, Melva Harmon, Andrew Turner, G.W. Turner.

In re Herman and Marilyn Lee, **HA** 89-13051, CMS 89-2545 (Sept. 12, 1990)**Ch. 7** (Creditor's motion for relief from stay denied because likelihood of successful attack on creditor's lien as a preference).
Prtys: Debtors, Trustee-Terry Lee, ALS Inc.
Attys: Bass Trumbo, Claude Jones, Jill Jacoway, John Eldridge

In re Lloyd, **LR** 86-1880, AP 86-792M (Oct. 2, 1987) **ch. 11.** (Prejudgment interest awarded in preference action from date of commencement of suit).
Prtys: Phillip Lynn Lloyd, Hazen First State Bank.
Attys: David Grace, Robert Dittrich.

In re Mid-South Auto Brokers, Inc., **LR** 99-40839 (April 1, 2003) **290 B.R. 658, Ch. 7**: Payments made by Debtor to Bank to satisfy loans guaranteed by shareholders benefitted shareholders who were insiders, but Bank actually received payments and was not insider for preference purposes; Trustee failed to prove Bank received more than in a hypothetical Ch. 7 liquidation; Debtor received reasonably equivalent value for payments on loans.
Prtys: Trustee-Jim Dowden, First Security Bank
Attys: Allen Bird, Maurice Rogers, Ben Arnold for Debtor

In re McCarther Enterprises, Inc., **LR** 86-539, AP 88-52 (Aug. 24, 1988) **Ch. 7:** (Trustee's complaint dismissed for failure to establish all elements of preference). AFFIRMED (J. Howard, 3/6/89, LR-C-88-697).
Prtys: Trustee-Charles Davidson, I.R.S.
Attys: Michael Wilcove, Mark Colbert, Jack Sims, Bill Adair.

In re McCrary's Farm Supply, Inc., **LR** 81-666,AP 84-149 (July 25, 1985) **Ch. 11** (**57 Bankr. 423**) (Pretrial order in preference suit granting defendant's demand for jury trial pursuant to 28 U.S.C. 151 and 1411).
Prtys: Creditor's Committee, Monsanto Co.
Attys: Judson Todhunter, Peter Heister, Scott Partridge, Isaac Scott.

In re McCrary's Farm Supply, **LR** 81-666M, AP 84-149M (November 1, 1985) **Ch 11**. (Motion for Summary judgment denied in preference action in which movant-defendant asserted contemporaneous exchange and new value exceptions).
Prtys: Creditors' Committee, Monsanto Co.
Attys: L. Judson Todhunter, Peter Heister, Scott S. Partridge, Isaac Scott, Jack Sims.

In re MPG, Inc., 222 B.R. 862, **FS** 95-40532M, AP 97-8054 (July 28, 1998) **Ch. 7.** (Creditor's pre-petition exercise of right of reclamation by oral demand, while valid under Arkansas law, was subject to Trustee's power to recover preference because Code requires written demand of return of goods).
Prtys: Ben Barry-T; Shrader Holding Company.
Attys: Ben Barry, Burton Stacey.

In re Mastercraft Graphics, Inc., 157 B.R. 914, **S.D. Fla. (Miami)** 91-23768-BKC-AKC; AP 92-0682 (August 13, 1993) **Ch. 7.** (Finding insider preference could be avoided if it benefitted inside guarantor of debtor's obligation to supplier; irregular or unusual payments not in ordinary course of business; party asserting o.c. exception has burden of proof). **Affirmed** by District Court, S.D. Fla.
Prtys: Debtor, Signal Capital Corp.
Attys: Corali-Lopez-Castro; Susan Lasky

In re Mid-South Cabinets & Millwork, Inc., **LR** 86-1773, AP 88-503, (Sept. 5, 1989) **Invol. Ch. 7.** (Bank paid creditor for check transferred by debtor but not paid by Bank's midnight deadline. Motion for summary judgment denied in preference action where affidavits did not establish which party's funds were transferred in satisfaction of the check).
Prtys: Trustee-James Allen Brown, Temple Eastex.
Attys: R.C. Thompson, Geoffrey Treece

In re Mid-South Cabinet & Millwork Inc., **LR** 86-1773M, AP 88-511 (Oct. 24, 1990) **125 B.R. 16**, **Invol ch. 7** (Trustee entitled to judgment against creditor in preference action; creditor failed to establish affirmative defense of ordinary course of business but was entitled to offset subsequent unsecured credit extended to debtor).
Prtys: Trustee-James Allen Brown, Heigel Lumber & Hardware
Attys: Geoffrey Treece, George F. Hartje.

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

In re Riley, **LR** No. 01-42071 (August 22, 2003) **297 B.R. 122,** AP 02-1364: Trustee could avoid Debtor's payments on credit card pursuant to section 547(b);

List of Topics

Affirmative defense of contemporaneous exchange for new value under 547(c)(1)not applicable, but 547(c)(4) might have been available if pleaded.
Prtys: Richard Cox-Trustee, Kone Employees Credit Union
Attys: Richard Cox, Wade Hodge

In re U.S.A. Inns, 151 B.R. 486, **HA** 89-13136, AP 89-3509 (Sept. 30, 1992) **Ch. 7:** (Bank failed to prove by preponderance of evidence that acceptance of late loan payments were in ordinary course of business; trustee could avoid payments as preference). **REVERSED** by Waters (Sept. 30, 92); 8th Cir. Affirmed District Court.
Prtys: Claude R. Jones-Trustee, United Savings and Loan Association.
Attys: Gail Inman-Campbell, Dennis Davis, Claude R. Jones, Steven B. Davis.

In re Walters & Ray, Inc., **LR** 84-514 (July 30, 1985) **Ch. 11:** No Preference under 547 when no interest of the debtor was ever transferred.
Prtys: Debtor-in-Possession, Arthur J. Gallagher & Co., Martin & Associates, Inc.
Attys: Stephen Cuffman, David Fuqua, Charles Ray

PRIORITY

In re Melvin and Wendy Bass, **LR** 00-42447M (November 6, 2000) **Ch. 13 (**Order allowing nondischargeable criminal restitution to be paid through plan even though the payments are modified, but restitution claim is not priority claim; plan may not unfairly discriminate as to other unsecureds in paying claim in full).
Prtys: Debtors, Roger Richmond
Attys: Randolph Satterfield, Lawrence Yancey.

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn,
Darwin Davidson, Lance Miller.

In re Dillon Construction Co., Inc., **LR** 88-789M, AP No. 88-217M (August 10, 1989), **Ch. 11.** (Finding that materialmen's lien had priority over Bank's lien because contractor's work commenced before Bank's construction money mortgage was recorded.)
Prtys: Dillon Construction Co. Home Federal Savings and Loan, Schrader Construction, Pine Lake Country Club, Phyllis and Gerald Dillon.
Attys: R.J. Brown, Michael G. Smith, Walter Murray, Robert L. Brown, William L. Owen, Joe Bell, Steve Quattlebaum, Watt Gregory.

In re Farney, **LR** 87-2367M, AP 89-43M (August 14, 1989) **Ch. 7.** (Holding that trustee has status of judgment lien creditor as to personal property and bona fide purchaser only as to real property; under state law, an unrecorded assignment is valid against all but BFP so assignee of judgment lien has priority over Trustee as to proceeds from the claim.)
Prtys: Trustee-Randy Rice, Lyle Adams
Attys: Randy Rice, Beth Carson, Patrick Hollingsworth.

In re Bobbie Harrell, **HE** 03-16983 **Ch 13** (Jan. 5, 2005) **318 B.R. 692**: State's claim for unassessed but assessable tax debts paid untimely and postpetition was not entitled to priority under section 507(a)(8)(A)(iii) and could be discharged in a chapter 13 under section 1328(a), even though the debts were nondischargeable in a chapter 7 under section 523(a)(1)(B)(ii).
Prtys: Debtor, Arkansas Department of Finance and Administration
Attys: Greg Niblock, Michelle Baker.

In re Bryan Kogut, **HS** 04-72452, June 1, 2005 **(325 B.R. 400)**: Objection to confirmation of **Ch. 13** plan overruled; if tax debt was excise tax governed by 3-year limitation on priority under section 507(a)(8)(E) it was too old to be entitled to priority, and Creditors did not establish debt was trust fund tax entitled to priority under section 507(a)(8)(C).
Prtys: Debtor; Monroe County, Alabama; Monroeville, Alabama
Attys: Sherry Daves, Jeffrey Reynerson

In re Kuebler, 156 B.R. 1012, **LR**89-40146, AP 92-4037 (June 24, 1993) **Ch. 13.** (plan listed IRS's secured debt as priority and didn't provide for full payment; plan confirmed without objection by IRS was res judicata on incorrect claim classification because IRS didn't plead lack of notice and opportunity to object; secured debt untreated by plan is discharged as to debtor's personal liability but IRS retains lien which passes through bankruptcy and remains attached to debtor's property, affording IRS an in rem cause of action on the debt)(AFFIRMED - Judge Woods).
Prtys: IRS, Leonard and Laura Kuebler.
Attys: Keith Grayson, David Coop-T., Tamera Fine-Trail, Robert Millstone.

In re Darrow Linn, **HE** 82-72M, CMS 85-213M (August 12, 1985) **Ch. 7** (Relief from stay granted for creditors to dispute lien priorities in state court; outcome will not affect unsecured creditors).
Prtys: US Commodity Credit Corporation, Staple Cotton Discount Corp.
Attys: Phil Hicky, Chalk Mitchell, James C. Luker, Doug Chavis, Martha Strother.

In re Anthony and Micki Lybrand, **HS** 04-78412, March 9, 2006 **(2006 WL 581038):** On objection to confirmation of **Ch. 13** plan, court found IRS could allocate prepetition tax refund to set off the prepetition tax liability of its choice, in this case against its general unsecured claim instead of the unsecured priority claim under section 507(a)(8).
Prtys: Debtors, IRS
Attys: Henry Means, Larry McCord

List of Topics

In re Mel-Hart Products, Inc., 136 B.R. 197, **LR** 90-40399M (November 13, 1991) **Ch. 7** (allowing administrative claim for post-petition rent since Trustee had constructive possession of entire premises and for postpetition insurance costs; holding administrative expenses of the Ch. 7 case have priority over those in the prior Ch. 11 case under 726(b))**.**
Prtys: Randy Rice-T; Debtor, FabuGlass.
Attys: Charles Baker, Randy Rice, William Adkisson, Rita Brown Wells, Marilyn Byington, Charles Coleman.

In re Mel-Hart Products, Inc., 156 B.R. 606, **LR** 90-40399M (June 23, 1993) **Ch. 7.** (Creditor who paid Debtor's employees under contract was not entitled to third priority under 507(a)(3) as assignee of employees because no consideration for assignment or to fourth priority under 507(a)(4) as remitter of employee benefits).
Prtys: Randy Rice-Trustee, Sunmark Holding Company, Inc.
Attys: Randy Rice, Mark Nichols.

In re Mid-America Travel, **HE** 90-20060M (April 20, 1992) **Ch. 11.** (Creditor that acquired claim under equitable subrogation pursuant to section 507 was precluded from claiming the priority of the original holder in liquidating plan).
Prtys: First National Bank of Eastern Arkansas, debtor in possession.
Attys: Charles Baker, John D. Bridgforth.

In re Prime Motors, Inc., **Fla.** No. 90-16604 (June 29, 1993) **Ch. 11:** Administrative expense claimant not entitled to priority status under 1114(a) because neither retiree nor dependent.
Prtys: Debtor, Juliana Krisch
Attys: Jefferson Knight, Cynthia Jackson, Willkie Farr & Gallagher, Lynn H. Gelman.

In re Swink & Co., Inc., 142 B.R. 874, **LR** 90-4106M, AP 90-4089 (June 29, 1992) **ch. 7.** (Claimant was "customer" entitled to priority status under 741(2), 752, court using S.I.P.A. case law although S.I.P.A. not involved in this proceeding).
Prtys: City of Elkins, Charles Davidson-Trustee.
Attys: Richard Downing, Gary Barket, Stephen Gershner.

In re Swink & Co., Inc., **LR** 90-4106M, AP 90-4081 (July 2, 1992) **Ch. 7.** (Claimant was "customer" entitled to priority status under 741(2), 752, court using S.I.P.A. case law although S.I.P.A. not involved in this proceeding).
Prtys: American Midwest Capitol Corp., Charles Davidson-Trustee; Mabon Nugent and Co.
Attys: Richard Downing, Gary Barket, Stephen Gershner.

PROCEEDS

Barton v. U.S. Farmers Home Admin. (In re Barton, 132 B.R. 23 (Bankr. W.D. Ark. 1991) FA 90-15628M (Sept. 5, 1991) **Ch. 12.** (Assignment not effective

where assignors in chicken farming business never obtained title to chickens which they were to raise for another so no sale occurred to which FmHA's lien could attach; "proceeds" in security agreement referred only to proceeds from crops and not account due for services)
Prtys: Tom and Sandra Barton, Farmers Home Administration
Attys: A.L. Tenny, Michael Fitzhugh, Terry Zelinski

In re J.W. Gore, 113 B.R. 504, **LR** 88-2284M, CMS 89-489M, 89-675M and 89-570M (Dec. 20, 1989) **Ch. 12.** (Debtors could retain crop proceeds even though creditor's claim was secured by crops and proceeds, claim was oversecured by equity cushion and plan could not succeed without debtor's ability to use proceeds to finance continuing farm operation).
Prtys: Debtors, Kansas City Life Ins. Co., Farmers and Merchants Bank of Des Arc., Travelers Ins. Co., U.S. Small Business Admin.
Attys: Lance Hanshaw, Phillip Hout, Robert Abney, David Henry, William Adair.

In re M & P Equipment Co., **LR** 84-455M, AP 85-46M (July 23, 1985). **Ch. 7. (**In determination of secured status of Bank's lien, Bank's security interest in Debtor's accounts did not include proceeds from settlement of Debtor's tort claim for negligence; collateral estoppel of state court judgment precluded characterizing judgment proceeds as accounts; security interest can't attach to judgment for tort claim under 9-104(h)(k)).
Prtys: Richard Smith-Trustee, Union National Bank
Attys: Mary Jane Pruniski, David Duke, Katherine McGovern.

In re MPG Enterprises, Inc. **FA** 96-80848M (December 22, 1997) **Ch. 7.** (Bank properly perfected its security interest in rent proceeds by recording mortgage and assignment of rents; Article 9 does not afford means for perfecting such rents; pre-petition security interest is valid in post-petition rent proceeds).
Prtys: Pulaski Bank and Trust, Ben Barry-T
Attys: C.B. Blackard, III, Ben T. Barry.

In re Roy and Elizabeth Peeler, 145 B.R. 973, **HE** 88-20142M, AP 91-2005 (April 24, 1992) **Ch. 7.** (lender's security interest in crops did not extend to proceeds from sale of grain three years later; financing statement had insufficient description to perfect security interest and security interest could be avoided by trustee; property acquired by debtor postpetition was not subject to prepetition security agreement).
Prtys: Danny Schieffler-Trustee; First National Bank of Wynne, Debtors; Debtors.
Attys: Danny Schieffler, Tom B. Smith, Brad J. Beavers.

In re Jerry and Penny Toombs, 01-30784, AP 01-3053 (September 25, 2002) **Ch. 13:** Bank's motion for summary judgment denied; insufficient evidence to show Bank had perfected security interest in after-acquired property under Ark Code Ann 4-9-303(1); conflict as to whether government payments constitute proceeds under section 552).
Prtys: Peoples Bank of Paragould, Debtors, Trustee, U.S. Dept. of Agriculture.
Attys: David Coop, Jan Thomas, Bryant Marshall, Gwendolyn Hodge.

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PROCEEDING

PROFESSIONAL FEES

(Also see Attorney Fees)
(Also see Enhancement Fee Requests)

In re Diamonds Plus, Inc. 233 B.R. 829, **JO** 98-30906M (May 12, 1999) **Ch. 11.** (unsuccessful bidder on sale of assets of Ch. 11 debtor could not recover breakup fee, in absence of any binding agreement with debtor for payment of such a fee, but bidder could recover as administrative expense costs and attorneys fees in helping to coordinate liquidation sale which was substantial contribution to bankruptcy estate.)
Prtys: Diamonds Plus, Inc., Silverman Jewelers Consultants, Inc.
Attys: Warren Dupwe, Charles Coleman.

In re Dillon Construction Co., Inc., **LR** 88-40789M, AP Nos. 88-143M 88-144M,89-4096M (April 6, 1991) **Ch. 11.** (Ordering receiver to turn over all compensation to Trustee as there was no order authorizing him to pay himself; informal approval of pay by Chancellor without notice to interested parties did not comply with the law.)
Prtys: Dillon Construction Company, Pine Lake Country Club, Ed and Olena Kenzel, Trustee, Tom Drew.
Attys: R.J. Brown, T.M. Davis, Joe Bell, Marilyn Byington.

In re Turner Memorial Hospital, **FS** 85-62M (January 9, 1986) (interim fee petition pursuant to 331 by accountant denied without prejudice to reapply with additional documentation so that court can apply Johnson factors).
Prtys: Frost and Company Accountants
Attys: Richard Ramsay, Barbara Bonds, David Powell

PROPERTY OF THE ESTATE

In re Benefield, **HE** 102 B.R. 157 (July 13, 1989) **Ch. 7** (holding (1) that act to perfect ex-wife's lien in real property of debtor for child support arrearage was violation of automatic stay as to arrearage accruing post petition because real property became property of estate and (2) that debtor violated automatic stay by leasing property of estate to lessee; only trustee, after notice and hearing may lease property of estate).
Prtys: Debtor Dwight W. Benefield , Steve Davis and Viola Benefield Burroughs, Daniel K. Schieffler-Trustee.
Attys: James C. Luker, Baird Kinney.

In re Boykin, **LR** 89-41214 (May 24, 1990) **Ch.7** Personal property acquired by parties during marriage was held in tenancy by the entirety under Arkansas law and could be sold by the trustee under 363(h) in a proper adversary proceeding because property of estate includes all of Debtor's property, even if exempt from execution under state law because of tenancy by the entireties.
Prtys: Loran Boykin, Trustee
Attys: Charles Davidson, Randy Rice, James Smith, Garland Binns, Charles

Camp, Robert Gross, Fred Bosshart.

In re Central Arkansas Broadcasting Company, Inc., **LR** 170 B.R. 143 (March 30, 1994) **Ch. 7** (Broadcasting license could not be owned but could be transferred for consideration, so license had value and was intangible property of the debtor; property of the estate includes intangible property of the debtor, such as licenses and business good will).
Prtys: Central Arkansas Broadcasting Co., First State Bank of Russellville, Trustee.
Attys: David Grace, Dale Finley, Jim Dowden.

In re Paula Clingingsmith, **LR,** No. LR 86-466F, AP No. 86-315 (April 21, 1987) **Ch 7** (entitlement to a tax refund accruing pre-petition is property of the estate).
Prtys: Randy Rice, Trustee, U.S. Small Business Administration.
Attys: Randy Rice, Doug Chavis, Mike Price, Paul Herrod.

In re Cupples Farms, **HE**, 128 B.R. 769, No. 90-55, AP 90-2017 (March 5,1991) **Ch 12** (Motion to reconsider relaxation of stay denied because debtor had no legal or equitable interest in real property being foreclosed upon; if title to real property is in partnership, conveyance executed by partner individually passes the equitable interest of the partnership under Arkansas law).
Prtys: Cupples Farms, Federal Land Bank of St. Louis.
Attys: Roy C. Lewellen; Keith Billingsley, William A. Waddell.

In re William David Dickey, **LR** 85-1406M, AP No. 86-304M (September 18, 1986) **Ch. 7.** (Ruling that no order abandoning debtor's exempt property had been entered so property of estate includes the debtor's exempt property).
Prtys: Trustee, North Pierce Street Partnership II, First Service Corporation, Stuart and Associates, Inc., William David Dickey and Robyn Gannaway Dickey, First Federal of Arkansas, Leonard Mizell, Robert Johnson.
Attys: Ed Moody, Arnold Goodman, Steve Gershner, Lewis Ritchey, Clayton Blackstock, Herbert Rule.

In re Dollar Time Group, Inc., 223 B.R. 237, **S.D. Florida** 95-22816-BKC, RBR, AP 96-0380-BKC, RBR (July 20, 1998) **Ch. 7**. (Upon corporation's bankruptcy filing, any claim against its directors passed to the bankruptcy estate; trustee stands in shoes of the debtor as to causes of action; trustee may not recover damages previously received by the debtor from business of the defendants.)
Prtys: Kenneth Welt, Trustee; Dollar Time Group, Inc.: Joseph Sasson, Jeffrey Klansky.
Attys: Irwin Fingerit, Ronald Neiwirth, Arthur Rice.

In re Dean and Tina Dardwin, **HA** 86-77M (June 16, 1988) **Ch. 7**. (Finding property of estate includes debts owed by third parties to the debtor based on contract, and Trustee succeeds to any claim debtor has against third parties; debtor's attorney could not appropriate this type of property of the estate in satisfaction of a claim for fee without the bankruptcy court's permission; attorney required to return unauthorized fee taken from estate as sanction for not following proper channels).

Prtys: Mike Hulen, Debtors.
Attys: Mike Hulen, William R. Gibson, Mark Cooper.

In re Gibson, 218 B.R. 900, **LR** 96-41062M (Dec. 27, 1997) **Ch. 13.** (Insurance proceeds from prepetition insurance policy were property of estate and loss payee had insurable interest in insurance proceeds only to extent of its allowed, secured claim).
Prtys: Debtor, Newcourt Financial.
Attys: Kent Pray, Richard Kalkbrenner.

In re Hot Shots Burgers & Fries, Inc., 147 B.R. 484, **LR** 91-41298M (Aug. 10, 1992) **Ch. 7:** (holding that under Arkansas law, modular building and its contents were trade fixtures which trustee could sell).
Prtys: Debtor, Trustee-Randy Rice, University Plaza.
Attys: Ron Goodman, Charles Baker, Baker Kurrus.

In re Henson, **FS** 92-70580M (April 20, 1993) **Ch. 13**: (objection to confirmation of Ch 13; under state statutory foreclosure procedure, right to deed of trust property belonged to purchaser so that property was no longer property of estate and could not be included in the plan; proceeding to determine status of property in bankruptcy was inappropriate to set aside sale based on irregularities under state law).
Prtys: Debtors, Fleet Mortgage Corp.
Attys: Robert McKinney, Michael Hamby.

In re Jones Truck Lines, 172 B.R. 602, **FA** (AP # 93-8858) Jones v. IXL Manufacturing Company (October 14, 1994) **Ch 11:** (denying IXL's motion for summary judgment regarding Jones' complaint for turnover of $15,703.34 representing undercharges. IXL's motion was denied because the provisions of the NRA are unenforceable in a bankruptcy case because of the anti-forfeiture provisions of 11 U.S.C. § 541(c)(1)(B)).
Prtys: Jones Truck Lines, IXL Manufacturing Company, Exod Industries Division, Hartwell Brothers Division.
Attys: Charles Coleman, Thomas Staley.

In re Mammoth Spring Distributing Co., Inc., 139 B.R. 205, **FA** 90-15286F (Jan. 17, 1992) **Ch. 7.** (Creditor's security interest in general intangibles extended to post-petition tax refund because inchoate right to receive accrued as a result of losses occurring pre-petition under Missouri UCC.)
Prtys: Claude R. Jones-Trustee, Debtor, First National Mercantile Bank and Trust Co.
Attys: John Lee, William Clark.

In re Franklin Doty Miller, **FA** 89-15098M AP 89-5507 (March 14, 1990) **Ch. 11** (Bank claimed lien in cattle. Court found cattle owned by partnership and not individual debtor who was partner in the partnership. Cattle not estate property; court did not have jurisdiction over partnership so complaint dismissed).
Prtys: Debtor, Boatmen's National Bank of Cassville, Mo, First State Bank of Purdy, Mo., Creditors' Committee.

Attys: James C. Clark, Jill Jacoway, Kent Bart, Field Wasson, Douglas Schrantz, Ron Boyer, Kirby Brooks

In re Franklin Doty Miller, **FA** 89-15098, 89-125 (Jan. 30, 1990) **Ch 11.** (Fescue seed delivered to debtor by farmers was held pursuant to bailment contracts and was not property of estate; therefore, it was not subject to security interests granted by debtor in its after-acquired inventory). REVERSED (J. Waters, 9-14-90, No. 90-5026)
Prtys: Kinley Miller, Debtor, First State Bank of Purdy, Missouri, First National Bank of Rogers, Creditors' Committee Attys: Craig Campbell, Jim Clark, James Clark, Jill Jacoway, Kent Barta, Field Wasson, Douglas Schrantz, Ron Boyer

In re Edward P. Molitor, 183 B.R. 547, **HE** 93-20101M, AP 94-2007 (March 15, 1995) **Ch. 7.** (Denying defendant's motion for summary judgment on grounds of res judicata and collateral estoppel; voiding state court judgment finding Debtor's mother transferred her property to his spendthrift trust and removed it from her estate such that it was out of reach of his creditors; judgment was entered after Debtor was in bankruptcy and in violation of the automatic stay).
Prtys: Daniel Schieffler-T; Pulaski Bank and Trust Co. as Trustee for Edward-Megan Trust; Molly Molitor as trustee of the Molly-Andria Trust.
Attys: Warren Dupwe, James Luker, Raymond Abramson.

In re John R. Moody, LR 86-702M, AP 86-398M (June 9, 1987) **Ch. 13** (Debtor denied motion for turnover and damages in connection with the sale of antique automobile by wife while Debtor was incarcerated; Debtor gave wife permission to sell; car no longer property of estate).
Prtys: Debtor, Trustee, Jim Rusher, E.D. Hughes, Marcelle Hughes, Brenda Jo Moody, James H. Steed, Brenda Cotton, Ronald Surrett
Attys: Randolph Satterfield, Dennis James, Bill McArthur, Bob Scott.

In re Martin and Monica Ray, **LR** 97-44059M, AP 97-4191 (April 9, 1998) **Ch. 13** (Prior to bankruptcy, chancery court decree awarded forfeiture and immediate possession of Debtors' home to creditor under contract for sale when Debtors defaulted such that Debtors had no property interest when petition filed and could not continue to pay under contract and retain ownership).
Prtys: Debtors, South Point Properties, Inc.
Attys: Marc Honey, Randolph Satterfield.

In re Herbert Russell, 121 B.R. 16, **ED** 84-11058M (August 24, 1990) **Ch. 11.** (Assets of corporation whose largest shareholder was debtor were not property of estate just because shareholder filed bankruptcy.)
Prtys: William J. Wynne, Thomas Streetman-Trustee
Attys: James Hamilton, Henry Kinslow, Thomas Streetman.

In re Myra Stanley, 182 B.R. 241, **ED** 93-11190M (September 9, 1994) **Ch. 13.** **(**In non-judicial foreclosure action, Debtor's equity of redemption lapsed 10 days after foreclosure decree and before bankruptcy petition filed; therefore, Debtor's home was not property of estate even though foreclosure sale had not occurred before bankruptcy filing; Debtor could not cure default and make payments to

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creditor under the plan).
Prtys: Debtor, Superior Federal Bank.
Attys: Patrick Hollingsworth, John Lightfoot, A.L. Tenney-T.

In re Jimmy Lynn Thomas, **TX** 03-73985 (July 7, 2005) **(331 B.R. 798)**: Upon Trustee's motion for turnover of two IRA accounts, court held funds were not Erisa qualified because accounts did not restrict alienation or transfer so IRAs were property of estate under section 541(c)(2); estranged wife had only an inchoate marital property interest in the accounts because she was married to the debtor on the day bankruptcy was filed.
Prtys: Debtor, Renee Williams-Trustee, Linda Thomas
Attys: Rodney McDaniel, Thomas Streetman, Randell Wright

In re Vee Jay, Inc., **FS** 86-407 (Sept. 25, 1987) **104 Bankr. 101, Ch. 11**: (Debtor's interest in escrow contract for sale of real estate was property of estate because of equitable defense). APPEAL DISMISSED (J. Arnold, 104 Bankr. 105))
Prtys: Ray and Maria Jones, Phoenix Inc., Debtor
Attys: Ben Core, Ben Barry

In re Woodall, **LR** 81-69 (Jan. 22, 1987) **81 Bankr. 17**: Computation of 60 months in Ch. 13 begins with date order for payment entered, which is 30 days after filing of petition under 1326; plan may not exceed 60 months under 1322; property of estate in ch.13 is property and earnings acquired by debtor post-petition under 1306 so not fair to postpetition creditors to stave off their collection efforts longer than 5 years; IRS has standing to file post-petition claim for taxes under 1305.
Prtys: IRS, Debtors
Attys: Jimmy Eaton, Doug Chavis, Charles Coleman, A.L. Tenney, Trustee.

In re Zepecki, **JO** 96-30125M (June 22, 2000) **Ch. 7: (**After Court ordered, pursuant to 105(a), Debtor's tax attorney to appear and account for funds he received from Debtor pre and post-petition, court ruled funds were property of estate and Attorney not entitled to be compensated from estate without court approval) Affirmed by 8th Circuit Bap and 8th Circuit.
Prtys: Steven C.R. Brown, Jim Luker-T.
Attys: David Lewis

REAFFIRMATION AGREEMENT

In re Chad Whisenant, **ED**, 265 B.R. 164, No. 99-43741M, (July 5, 2001) **Ch 7.** (court denied debtor's motion to hold former wife in contempt for violation of discharge injunction of 524(a)(2) for filing state court contempt action against the debtor for not paying under a reaffirmation agreement, pursuant to 524; the wife did not know the agreement was invalid because clerk mistakenly failed to file it; agreement was binding because entered into before the discharge was granted)
Prtys: Chad Whisenant-Debtor; Adonna Whisenant.
Attys: Robert Danecki, Michael Knollmeyer.

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REASONABLY EQUIVALENT VALUE

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **Ch. 11** (Under 1129(b)(2)(B)(i)(ii), all classes of unsecureds must be paid before a junior class of creditors; reasonably equivalent value exception allows claimants to receive distribution or retain an interest even without senior classes paid in full if claimants contribute new capital reasonably equivalent in value to the distribution or value retained; whether farmer-debtor, through unpaid work, contributed value reasonably equivalent to ownership interest could not be determined without evidence of value of farmer-debtor's future contributions of labor and expertise and the value of the proposed retained interest.)
Prtys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re John E. Oldner, 224 B.R. 698, **LR** 94-42031M, AP 96-4205 (September 10, 1998) **Ch. 7** (Trustee's fraudulent conveyance action brought under constructive fraud theory alleging transfers from Debtor through his corporation to defendant for payroll services were for less than reasonably equivalent value to the Debtor. Court held first transfer was a loan; second transfer was for reasonably equivalent value; no fraudulent conveyance).
Prtys: Richard Ramsay-Trustee; Sunmark Contract Staffing; Express Human Resources; Express Personnel Services, Inc.; John Oldner, Brenda Oldner.
Attys: Buck Gibson, Basil Hicks, David Jacobs, Gregory Campbell.

In re Herbert Russell, **ED** 84-58M, AP No. 87-103M (Sept. 26, 1994) **Ch. 11.** (Upon remand from District court (189 B.R. 190), court found NOL carry forward election was fraudulent conveyance under section 548 as transfer for less than reasonably equivalent value when debtor insolvent). **Affirmed**, District Court, 187 B.R. 287 (July 31, 1995).
Prtys: Thomas Streetman-Trustee, IRS
Attys: Thomas Streetman, Charles Baker, Susan Gunter, Norreen C. Stehlik for I.R.S.

In re Lance Brown, **JO** 265 B.R. 167, No. 00-30017M, AP 00-3030 (July 20, 2001) **Ch 7.** (court dismissed trustee's claim that Debtor fraudulently conveyed leased property to his corporation such that trustee could not avoid the conveyance under 544; badges of fraud not present to prove actual fraud and transfer was for reasonably equivalent value, precluding claim for constructive fraud).
Prtys: Dobieco, Inc., Jan Thomas-Trustee; Lance Brown-Debtor
Attys: Kim Tucker, Charles Coleman, Warren Dupwe, Ralph Waddell.

In re Mid-South Auto Brokers, Inc., **LR** 99-40839 (April 1, 2003) **290 B.R. 658, Ch. 7**: Payments made by Debtor to Bank to satisfy loans guaranteed by shareholders benefitted shareholders who were insiders, but Bank actually received payments and was not insider for preference purposes; Trustee failed to prove Bank received more than in a hypothetical Ch. 7 liquidation; Debtor received reasonably equivalent value for payments on loans.
Prtys: Trustee-Jim Dowden, First Security Bank

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Attys: Allen Bird, Maurice Rogers, Ben Arnold for Debtor

RECLAMATION

In re Bearhouse, 84 B.R. 552, **ED** 87-42M, AP Nos. 87-134M, 87-139M, 87-186M and 87-209M (Jan. 22, 1988) **Ch. 7.** (Farmer with postpetition order of reclamation of grain sold to debtor-warehouseman was not entitled to all proceeds of trustee's sale of grain in that reclamation order, entered without first obtaining relief from stay; order was void even if creditor lacked notice of bankruptcy.)
Prtys: Claude Hawkins-Trustee, Ladd Farms, National Bank of Commerce of Pine Bluff, U.S. Dept. Of Agriculture, Farmers Rice Mill Co, U.F. Coleman, Monticello Gin and Elevator Co., Commodity Credit Corp., Edward Oltmann, Gary Shrum, Virgie and Virginia Ray, Aetna Casualty and Surety Co.
Attys: Wililam Meeks, Terry Wynne, Claude Skelton, Thomas Streetman, Bob Lawson, Larry McCord, William Ball, Overton Anderson.

In re MacMillan Petroleum Inc., **ED** 87-149M, AP 88-353M (June 6, 1990) (115 Bankr. 175) **Ch. 7.** (Summary judgment as to governing law denied. Summary judgment in favor of MCorp granted because MCorp, which held floating security interest in debtor's inventory, qualified as good faith purchaser for value and defeated equitable rights of reclaiming sellers).
Prtys: Debtors, Mcorp Management Solutions, Phillips Petroleum.
Attys: Derrell Dickens, Charles Coleman, Randal Wright, Trustee, Geoffrey Treece, Bobby Shepherd

In re MPG, Inc., 222 B.R. 862, **FS** 95-40532M, AP 97-8054 (July 28, 1998) **Ch. 7.** (Creditor's pre-petition exercise of right of reclamation by oral demand, while valid under Arkansas law, was subject to Trustee's power to recover preference because Code requires written demand of return of goods).
Prtys: Ben Barry-T; Shrader Holding Company.
Attys: Ben Barry, Burton Stacey.

RECOUPMENT

In re James Pruett, 220 B.R. 624, **LR** 97-41491M, AP 97-4072 (December 15, 1997) **Ch. 13.** (Insurance company advancing monies on future commissions may recoup advances from agent as they accrue post-petition; recoupment not subject to automatic stay; no employment discrimination against Debtor by employer based on the evidence).
Prtys: Debtor, American Income Life Insurance Company; Richard Neal, Debbie Gamble.
Attys: Jean Madden, R.F. Brown

RECUSAL

In re Bobby and Leyon Bratton, **HA** 84-47M, AP 89-98 (Nov. 16, 1989). **Ch. 7.** (Motion for recusal denied; facts that court has ruled adversely to debtor in discovery dispute or that debtor is required to be sworn when testifying while

attorneys are not are insufficient basis to warrant recusal.
Prtys: Bobby and Leyon Bratton, Mitchell, Williams, Selig, Jackson & Tucker; and Charles D. Davidson, Davidson Law Firm, Ltd.
Attys: Art Dodrill, Stephen Gershner, William M. Griffin, Charles Davidson.

In re Dillon Construction Co., Inc., **LR** 88-789M (June 28, 1988) **Ch. 11** (Fact that bankruptcy court had informed state court that litigant had petitioned for bankruptcy is not evidence of bias; affidavit of bias was insufficient on its face to constitute grounds for recusal).
Prtys: Dillon Construction Co.
Attys: R.J. Brown, Michael Smith, Robert Brown, Walter Murray, Steve Quattlebaum.

In re Ramona Moix-McNutt, **LR** 97-40003M (August 22, 1997) **Ch. 13.** (Debtor's motion to recuse for impropriety pursuant to 28 U.S.C. 455(a) denied; court's inquiry into Debtor's part in the family business was necessary to determine whether to grant relief from stay, not denigrate her role as housewife).
Prtys: Debtor.
Attys: R.J. Brown

In re Reeves, **HE 87-159**, (June 6, 1990) **Ch. 7.** (Motion for recusal denied; entry of discovery order is not evidence of bias in this case).
Prtys: James Luker-Trustee, Debtor, Billie Fern and Marlin Reeves, Reeves Trucking, Bank of Brinkley, Commodity Credit Corporation-ASCS.
Attys: Fletcher Long, Daniel Schieffler, Steven Elledge, Sharp & Sharp, Alan Cline.

In re Herbert Russell, **ED** 84-058M (April 5, 1985) **Ch. 11.** (Denying motion to recuse by debtor; debtor's affidavit insufficient to constitute grounds for recusal, which is necessary if impartiality might reasonably be questioned but not from perspective of interested litigant).
Prtys: Herbert Russell, Debtor.
Attys: Jim Smith, Sunsan Gunter, Charles Baker, Rick Taylor, Don Henry, Ike Scott, Charles Davidson, Greg Hopkins, Festus Martin, William Gibson.

REDEMPTION

In re Myra Stanley, 182 B.R. 241, **ED** 93-11190M (September 9, 1994) **Ch. 13.** (In non-judicial foreclosure action, Debtor's equity of redemption lapsed 10 days after foreclosure decree and before bankruptcy petition filed; therefore, Debtor's home was not property of estate even though foreclosure sale had not occurred before bankruptcy filing; Debtor could not cure default and make payments to creditor under the plan).
Prtys: Debtor, Superior Federal Bank.
Attys: Patrick Hollingsworth, John Lightfoot, A.L. Tenney-T.

In re Michael and Cheryl Parker, 142 B.R. 327, **ED** 91-11139M (June 23, 1992) **Ch. 7.** (Debtors current on mobile home payments could retain collateral and continue payment and were not required to either reaffirm, redeem, or surrender

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property).
Prtys: GreenTree Acceptance Inc., Debtors
Attys: Martha McAlister, Jimmy Eaton.

RELATED PROCEEDING

In re Dollar Time Group, Inc., 223 B.R. 237, **S.D. Florida** 95-22816-BKC, RBR, AP 96-0380-BKC, RBR (July 20, 1998) **Ch. 7**. (Proceeding for breach of fiduciary duty was noncore, related matter because claims were such that corporation could have pursued them even if not in bankruptcy; noncore, related matter involves nonbankruptcy law claims independent of and antecedent to bankruptcy filing and affects amount of property of estate or allocation of property among creditors.)
Prtys: Kenneth Welt, Trustee; Dollar Time Group, Inc.: Joseph Sasson, Jeffrey Klansky.
Attys: Irwin Fingerit, Ronald Neiwirth, Arthur Rice.

In re Lake Hamilton Resort, Inc., **HS** 04-72002, AP 04-7108
March 10, 2005, Civil Nos. 04-6089: Bob Fewell v. Christmas Mountain, LLC, DISTRICT COURT (JUDGE HENDREN) **AFFIRMED** bankruptcy court's bench ruling denying motion to remand removed action against Debtor to state court but remanding Fewell AP to state court; AP was related matter requiring only proposed findings of fact and legal conclusions; remand was based on equitable grounds under US Code section 1452.

In re Larry Moyer Trucking Inc., **LR** 97-40968M, AP 98-4124
(September 9, 1999) **Ch. 11.** (In related proceeding, judgment for contractor on breach of contract claim against project developer; no accord and satisfaction when developer's agent partially paid contractor for extra work performed; Debtor recovered under theories of express and implied contract, quantum meruit, unjust enrichment).
Prtys: Debtor, White-Dates & Associates, Inc; J.C. and J.G. Thornton.
Attys: Richard Downing, David M. Powell, Allen W. Bird.

REMAND

I In re Lake Hamilton Resort, Inc., **HS** 04-72002, AP 04-7108
March 10, 2005, Civil Nos. 04-6089: Bob Fewell v. Christmas Mountain, LLC, DISTRICT COURT (JUDGE HENDREN) **AFFIRMED** bankruptcy court's bench ruling denying motion to remand removed action against Debtor to state court but remanding Fewell AP to state court; AP was related matter requiring only proposed findings of fact and legal conclusions; remand was based on equitable grounds under US Code section 1452.

In re Herbert E. Russell, 154 B.R. 723, **ED** 84-058M, AP 87-103M (April 23, 1993) **Ch. 11.** (On remand from 8th Circuit, BR holding that Trustee did not prove fraudulent intent in avoidance action when Debtor elected to carryforward his net

operating loss; constructive fraud was beyond mandate of 8th Circuit; election was in ordinary course of business). **Reversed and Remanded by district court (Barnes).**
Prtys: Tom Streetman-Trustee; United States (I.R.S.)
Attys: Charles Baker, John Russell.

RENTS AND PROFITS

In re Lifesaver Center, Inc. **LR** 85-1894M (August 5, 1986) **Ch. 11 (**DIP's motion to use cash collateral from rents and profits granted; Dip's status as perfected judgment lien creditor under 544 is superior to creditor's unperfected lien in rents and profits under UCC 9-312(5)(a)).
Prtys: Debtor in Possession, Worthen Bank & Trust Co, May Supply Co.
Attys: Charles R. Camp, James J. Glover, William Owen, Richard Crockett, David Jacobs, Gregory Hopkins, Richard Smith, Michael Smith, David Fuqua, Robert Jones, Pam Walker, George Ellis, Ed Moody, W.W. Elrod, Trip Wetzel, etc.

In re MPG Enterprises, Inc. **FA** 96-80848M (December 22, 1997) **Ch. 7.** (Bank properly perfected its security interest in rent proceeds by recording mortgage and assignment of rents; Article 9 does not afford means for perfecting such rents; pre-petition security interest is valid in post-petition rent proceeds).
Prtys: Pulaski Bank and Trust, Ben Barry-T
Attys: C.B. Blackard, III, Ben T. Barry.

In re Mae Rolle, 218 B.R. 636, **S.D.Fla. (Miami)** 96-17214-BKC-AJC, AP 97-0280-BKC-AJC-A (February 20, 1998) **Ch. 13.** (Under complaint to determine extent of Mortgagee's lien, Mortgagee did not take security interest in collateral in addition to the Debtor's residence such that Debtor was bound by anti-modification provision of 1322(b)(2)).
Prtys: Debtor, Chase Manhattan Mortgage Corp., Metropolitan Dade County.
Attys: Carolina A. Lombardi, Peter Spindel, Carolyn Weir Broadwater, Nancy N. Herkert.

In re James and Wanda Stogsdill, **JO** 84-148M (March 5, 1986) **Ch. 13: (**SBA's mortgage entitled SBA to rents and profits if mortgagor became in default, but SBA not entitled to rents accruing when mortgagor-debtor not in default; SBA didn't object to confirmation of plan not addressing SBA's secured lien in rents and profits; plan was res judicata on the issue).
Prtys: SBA, Debtors
Attys: David Coop, A.L. Tenney, Katherine McGovern

In re Tim Wargo & Sons, Inc., **PB** 86-474 (June 5, 1987) **74 Bankr. 469**, **Ch. 12**: Receipt of rents from debtor's tenant farmer does not meet Ch. 12 eligibility requirements for family farmer. AFFIRMED (J. Reasoner 86 Bankr. 150) AFFIRMED (8th Cir. 869 F.2d 1128).
Prtys: Debtor, Equitable Life Assurance Society of the U.S.
Attys: Richard Alexander, William C. Adair, A.L. Tenney, Billy Hubbell.

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RES JUDICATA

In re Bancroft Cap Company, **LR,** 182 B.R. 538, No. 95-41058M (Feb. 24, 1995) **Ch. 11,** Reversed, Wright, J. (Debtor's plan set time limit for debtor's objections to claims; plan confirmed and debtor failed to object to creditor's claim within time limit; court could not reconsider, under 502(j), allowing debtor to object because no court order had been entered allowing or disallowing the claim; claim was allowed by section 502(a) and confirmation of plan, which was res judicata and was not timely appealed from.)
Prtys: Bancroft Cap Company, Bower and Bonanno Co.
Attys: Kimberly Tucker, Charles W. Baker.

In re William and Harriett Cates, **JO** No., 01-32104M, AP. No. 01-3051 (Feb. 24, 2003)**289 B.R. 389**: Determination of nondischargeability of tax debt in debtor-taxpayer's prior bankruptcy case did not, under principles of res judicata, bar redetermination of issue in subsequent Ch. 7.
Prtys: Debtors, Ark. Dept. Of Finance & Administration
Attys: Joe Barrett, James Luker, trustee

In re Roy and Susan Crews, **LR** No. 04-14692M, **2005 WL 1420842 (**June 16, 2005): **Ch. 13**. (Ruling that Debtor's confirmed plan was not res judicata as to lack of insurance on real property being purchased under contract for sale but creditor's acceptance of payments for years knowing Debtor was unable to insure property pursuant to contract constituted waiver. Alternatively, creditor was equitably estopped from asserting breach of contract).
Prtys: Debtors, Estate of Kenneth Ryan
Attys: David Lester, Steven R. Smith

In re Dunlap, 215 B.R. 867, **HE** 95-20169M (July 16, 1997) **Ch. 13** (secured creditor objected to confirmation of third modified plan proposing to surrender vehicle to creditor and treat balance of debt as unsecured--court ruled this is not authorized by the code; Code permits plan modification after confirmation, but modification must be necessitated by unanticipated substantial change in circumstances to avoid preclusion by res judicata.)
Prtys: Markham and Lisa Dunlap, Chrysler Financial Corp.
Attys: Gregory Niblock, Faber Jenkins

In re Gibson, 218 B.R. 900, **LR** 96-41062M (Dec. 27, 1997) **Ch. 13.** (Order confirming Ch. 13 plan that fixes value of creditor's secured claim is res judicata on the issue).
Prtys: Debtor, Newcourt Financial.
Attys: Kent Pray, Richard Kalkbrenner.

In re Kuebler, 156 B.R. 1012, **LR**89-40146, AP 92-4037 (June 24, 1993) **Ch. 13.** (plan listed IRS's secured debt as priority and didn't provide for full payment; plan confirmed without objection by IRS was res judicata on incorrect claim classification because IRS didn't plead lack of notice and opportunity to object; secured debt untreated by plan is discharged as to debtor's personal liability but IRS retains lien which passes through bankruptcy and remains attached to

debtor's property, affording IRS an in rem cause of action on the debt)(AFFIRMED - Judge Woods).
Prtys: IRS, Leonard and Laura Kuebler.
Attys: Keith Grayson, David Coop-T., Tamera Fine-Trail, Robert Millstone.

In re Edward P. Molitor, 183 B.R. 547, **HE** 93-20101M, AP 94-2007 (March 15, 1995) **Ch. 7.** (Denying defendant's motion for summary judgment on grounds of res judicata and collateral estoppel; voiding state court judgment finding Debtor's mother transferred her property to his spendthrift trust and removed it from her estate such that it was out of reach of his creditors; judgment was entered after Debtor was in bankruptcy and in violation of the automatic stay).
Prtys: Daniel Schieffler-T; Pulaski Bank and Trust Co. as Trustee for Edward-Megan Trust; Molly Molitor as trustee of the Molly-Andria Trust.
Attys: Warren Dupwe, James Luker, Raymond Abramson.

In re Tommy Ramey, **HE** 02-20705M (Nov. 11, 2003) **301 B.R. 534, Ch. 13:** Secured Claim was treated as unsecured in Ch. 13 plan that was confirmed without objection; creditor's subsequent filing of the claim as secured could not undo the order of confirmation that was res judicata; due process was available to creditor who had notice of the plan treatment and could have objected prior to confirmation.
Prtys: Debtor, First National Bank of Eastern Arkansas
Attys: Greg Niblock, John D. Bridgforth.

In re Herbert Russell, 109 B.R. 359, **ED** 84-58M (October 19, 1989) **Ch. 11.** (Trustee's objection to claim of vendor for deficiency from foreclosure sale sustained because trustee was not party to foreclosure action, so res judicata not applicable; claim was unconscionable because vendors paid only a fraction of worth).
Prtys: William Gibson-Trustee, Furrow family.
Attys: William Gibson, Geoffrey Treece, Susan Gunter.

In re Sanders, **ED** 84-90 (Aug. 26, 1987) **81 Bankr. 496**: Confirmed plan releasing guarantor's liability had res judicata effect in subsequent proceeding.
Prtys: Mary Ellen Sanders, GIAC Leasing, Claude Hawkins, Trustee of Unit Development Partnership.
Attys: Donald Henry, Joseph Hickey, Kelvin Kelley, Richard Lawrence, Bill Owen.

In re Elmer Smith, **ED** 03-74055, **Ch. 13** (Sept. 20, 2004) **315 B.R. 77**: Damages flowing from breach of lease assumed by debtor in first case but later rejected were administrative expense under 503(b)(1)(A), 364(g); debtor's second confirmed plan did not address lessor's claim for administrative expense sufficiently to satisfy due process so as to bar claim under res judicata.
Prtys: Debtor, General Electric Capital Corp.
Attys: John Phillips,

In re Grady Smith, 142 B.R. 862, **LR** 85-40055M, AP 91-4046 (February 4, 1992) **Ch. 13.** (IRS' claim was erroneously reduced by Trustee such that confirmation and discharge order were subject to collateral attack since reduction was

effected without notice to IRS; confirmation order reducing claim cannot be substituted for objection to claim).
Prtys: Debtor, I.R.S., A.L. Tenney-Trustee.
Attys: Raymond Weber, Bill Adair, A.L. Tenney.

In re Starks, **LR** 05-10728 (Dec. 12, 2005): Upon motion for relief from stay in **Ch. 13** case, court held movant was not bound by confirmed plan as res judicata because no due process where movant not a creditor and received no notice of plan's treatment of movant's interest in property purchased in pre-bankruptcy foreclosure; court would abstain from deciding issue of irregularities of sale under state law in interests of comity and pursuant to 28 U.S.C. § 1334(c)(1).
Prtys: Debtor, Castle Investments
Attys: Michael Knollmyer, Cade Cox

In re James and Wanda Stogsdill, **JO** 84-148M (March 5, 1986) **Ch. 13: (**SBA's mortgage entitled SBA to rents and profits if mortgagor became in default, but SBA not entitled to rents accruing when mortgagor-debtor not in default; SBA didn't object to confirmation of plan not addressing SBA's secured lien in rents and profits; plan was res judicata on the issue).
Prtys: SBA, Debtors
Attys: David Coop, A.L. Tenney, Katherine McGovern

In re Virotech, **FA** 87-224, 218, 219, AP 88-74, 75, 76 (Sept. 14, 1988) **Ch. 11** (Res judicata did not bar trial of claims where no final judgment rendered in prior proceeding; compulsory counterclaim rule (5013) did not bar subsequent litigation where the former litigation was dismissed by the plaintiff).
Prtys: Virotech, Edward Fields Jr., William Stanley, Chemland Inc.
Attys: Priscilla Pope, John Eldredge, William Dunlap, Jr., Jill Jacoway.

REVOCATION OF DISCHARGE

In re Donald Couch, **LR,** 54 B.R. 682 (Sept. 11, 1985), **Ch. 7**. (Finding debtor's discharge would be revoked on request of creditor where debtor in possession under Ch. 11 transferred stock that was property of the estate and failed to inform trustee of stock acquisition; creditor was not guilty of laches even though revocation of discharge action was commenced after last date to file objections to discharge, where creditor had no prior knowledge of concealment of stock.)
Prtys: Donald Couch, Trustee, McIlroy Bank
Attys: Richard Crockett, Middleton Ray-Trustee, Russell Gibson

RICO ACTIONS

In re Answerfone, **LR** 83-342 (April 25, 1986) **Ch.11. 67 B.R. 167** (motion to amend complaint allowed; counterclaim of RICO preference is core proceeding)
Prtys: Charles Davidson (Trustee) and Joe Limerick III
Attys: David Williams, Geoff Treece, Griffin Smith

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In re Big River, **HE** 89-20063M, AP 89-2008M (Sept. 13, 1991) **Ch. 11**. (Defendants alleged bankruptcy court lacked jurisdiction in Rico action against debtor and others; court had both subject matter and in personem jurisdiction as related matter affecting distribution to creditors).
Prtys: Big River Inc., Nu-South Industries, Inc., Bill Willis; George Porter; John Beasley; Districhem, Inc.; Waterway Terminals, Inc.; Grand Fertilizer, Inc.; DistriTank, Inc.; Commodities Transport Inc.; International Barges, Inc.; and Delta Materials, Inc., Nitrochem
Attys: Steve Shults, John Tull, Peter Kumpe, James Dowden, Susan Gunter, Michael Rief, John Jewell.

In re Brittenum & Assoicates, Inc., **LR**, AP 86-0305M (Sept. 28, 1988) **Ch. 7.** (Facts alleged by Halstead did not constitute a Rico violation, allegation dismissed)
Prtys: Fred Halstead, John Brittenum, Melvyn Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware, Brittenum & Associates, Inc.
Attys: Jon Pruniski, Robert Roddey, Willis D. Cronkhite, Gary Corum, Richard Taylor, Michael Thompson, Peter Kumpe, Steve Vaughn, Anna Gibson, Philip Dixon, Mark Hampton, David Hodges, Charles Davidson, Jim Dowden, Ben Arnold, Webster Hubbell, Middleton Ray.

In re Reeves, **HE 87-159**, AP 89-2018 (Feb. 20, 1991)**Ch. 7. (**Motion to dismiss granted as to RICO allegations; trustee did not have standing to assert as to prepetition conduct because debtor did not have prepetition cause of action (no injury); postpetition conduct did not amount to "pattern of racketeering activity.")
Prtys: James Luker-Trustee, Marlin Reeves, Billie Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley.
Attys: Fletcher Long, Alan Cline, Steven Elledge, James Luker

SANCTIONS

In re Arkansas Communities, Inc., **HS** 80-22M (July 10, 1985) **Ch.11** (granting motion for sanctions agst R.J. Brown for unreasonably and vexatiously multiplying proceedings)
Prtys: Mitchell Law Firm Trustee, R.J. Brown
Attys: R.J. Brown, Dick Crockett, Bob Shults, Maurice Mitchell, Mike O'Malley

In re Bratton, **HA** 84-47M, **AP** 89-98M (Feb. 26, 1990) **Ch.7,** (motion for sanctions against Art Dodrill granted; also held Dodrill in criminal contempt during hearing and fined $100)
Prtys: Davidson Law Firm, Mitchell Law Firm, Art Dodrill
Attys: Charles Davidson, Art Dodrill, Mike O'Malley

In re Rick D. Cossey, **LR,** 172 B.R. 597**,** No. 92-42161M (July 7, 1994) **Ch. 7**, (Order sanctioning Ron Goodman for violation of Bankruptcy Rule of Procedure 9011 and fining him $500 for preparing and filing a bankruptcy petition containing false statements.)
Prtys: Ron Goodman, Debtor
Attys: Ron Goodman, Keith L. Grayson, Eugene Fitzhugh, Richard Ramsay-T.

In re Floyd Evans, **FA** 97-80694M, AP No. 98-8034. June 25, 2003 **(294 B.R. 732) Ch. 7:** Denial of motion for sanctions pursuant to Rules 9011 and 7054; no evidence bank committed fraud on the court by testifying falsely at previous hearings.
Prtys: Debtor, Bank of Eureka Springs, John Cross, Gary Kleck.
Attys: Stanley Bond, James Dowden

In re Garland Coal & Mining Co., **FS** 84-71M (Dec. 16, 1985) **Invol. Petition**: (On motion for reconsideration of order sanctioning debtor and debtor's attorney for failure to comply with discovery order and misrepresenting terms of settlement and order of district court, court granted motion as to attorney and denied as to Debtor; attorney ordered to show cause why he should not be held in contempt; Feb. 20, 1986: Upon reconsideration, court issued recommended findings to district court that attorney's pro hac vice status be revoked and attorney be fined for failure to comply with discovery order and misrepresenting previous district court order and settlement to bankruptcy court).
Prtys: Debtor, Richard Noble, Trustees of United Mine Workers of America.
Attys: Martin Thomas, Tom Thrash, Isaac Scott, Gary Ford, William Sullivan, William Hanarahan, Thomas McGowan, Richard Noble.

In re Stephen Griffin, **FS** 02-70245 **302 B.R. 9 (**Nov. 21, 2003) **Ch. 7.** Attorney for secured creditor sanctioned under Rule 9011 for filing frivolous pleadings and fraudulent fee application in connection with representation of secured creditor.
Prtys: Diane Sexton
Attys: Diane Sexton

In re Hubbard, 70 B.R. 122, **LR** 82-451M, AP 82-1129M (Sept. 26, 1985) **Ch. 13.** (Recommending to district court that mortgagee be held in criminal contempt for violating court's order to repair damages to debtor's property resulting from eviction in violation to automatic stay; that mortgagee be fined sum equal to claim and that other sanctions be imposed).
Prtys: Debtor, Fleet Mortgage Co.
Attys: Andree Roaf, James Stanley.

In re Ramona Moix-McNutt, **LR** 97-40003M
April 29, 1998 (220 B.R. 631): Sanctioning Debtor's attorneys for preparing false petition, unauthorized transfers under Rule 9011, 105(a); sanctions included fining law firm; reimbursing estate for monies acquired in real estate transaction; removing Brown and firm from case and denying all fees; suspending Brown and firm from representing debtors for four years.
March 15, 1999: District Court (Wright) **reversing** in part April 29, 1998, order: No violation of Rule 9011 because Brown did not sign the petition; former rule did not allow sanctions of law firm; thus no fine can be levied under Rule 9011; no fine can be levied under 105(a) if punitive in nature; 105(a) permits reimbursement, removal, and disallowance of fees but not suspension of attorneys.
Prtys: R.J.Brown, C.Richard Crockett, Crockett and Brown.

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In re Annette B. Sabala, **HS** 05-6029 (Dec. 8, 2005, appeal from bench ruling sanctioning creditor for violating discharge injunction by filing second complaint to determine dischargeability after dismissal of first complaint and granting of debtor's discharge. **AFFIRMED, BAP 8TH CIR.**: Appeal of sanctions was timely, but award of sanctions was appropriate.
Prtys: Debtor, Gerald Hanson-Pro se

In re Thompson, **ED** 86-109 (May 29, 1990) **Ch. 13**: **116 Bankr. 679**: Debtor's attorney ordered to repay $4,500 as sanctions for Bankruptcy Code and ethical violations (conflict of interest, concealing creditor status in preparing petition, holding secret mortgage and recording in violation of stay, receiving compromise payment in violation of stay).
Prtys: Debtors, Albert R. Hanna
Attys: Albert Hanna, Henry Kinslow, A.L. Tenney

In re Johnny L. Vincent, **HE** 98-20387M (May 16, 2003) **293 B.R. 467: Ch. 13** debtor's objection to creditor's claim would have had merit in that creditor failed to object to a plan not providing interest on the claim or conforming to the code on residential mortgages and plan was confirmed, but Debtor's objection to the claim was overruled as a sanction for failing to comply with discovery under Rule 7037. Therefore creditor's objection to Debtor's modified plan was sustained.
December 1, 2003: Appeal to **BAP** dismissed for lack of jurisdiction; order denying modification of plan (like order denying confirmation of plan) is not a final order.
Prtys: Debtor, Fairbanks Capital Corp.
Attys: James F. Valley, Kimberly Burnett

In re Robert Zepecki, 224 B.R. 907, **JO** 96-30125M (September 24, 1999) **Ch. 7.** (Awarding attorneys fees and travel expenses to trustee and creditor's attorney as sanctions under 105(a) when Debtor's attorney failed to appear at scheduled hearing)**.**
Prtys: Debtor, Fred Hart, Jim Luker-T, Guy Brinkley.
Attys: Fred Hart, Jim Luker, Guy Brinkley.

SECURITY INTEREST

In re Barton, **FA** 90-628M (Sept. 5, 1991) **Ch.12, 132 B.R. 23** (chicken farming operation; determining extent of lien; FmHA must turn over checks b/c no perfected security interest in services performed in growing chickens)
Prtys: Tyson, Farmers Home Administration, Tom Barton
Attys: Terry Zelinski, Deborah Groom, Paul Bowen, Mike Fitzhugh, Claude Skelton, A.L. Tenney

In re Batchelor, **HE** 87-134M, **AP** 88-81M (Jan. 9, 1989) **Ch.12,** (held lien on crops valid for five years, not one, even though Batchelor did not understand extent of lien at time of signing security agreement and financing statements; held party asserting estoppel (here debtor) must prove strictly and not proved

here)
Prtys: Farm Credit Services of Eastern Arkansas and Elton and Edith Batchelor
Attys: David Carruth, Gerald Coleman, David Coop

In re Central Arkansas Broadcasting Company, Inc., **LR** 170 B.R. 143 (March 30, 1994) **Ch. 7** (Broadcasting license was intangible property of the estate; Bank's security interest extended only to tangible assets of the debtor such as equipment and realty.)
Prtys: Central Arkansas Broadcasting Co., First State Bank of Russellville, Trustee.
Attys: David Grace, Dale Finley, Jim Dowden.

In re Contractor's Glass Co., Inc. **FS,** 152 B.R. 270, No. 89-12444M, AP No. 91-2503 (Nov. 18, 1992) **Ch. 7.** (Under Arkansas law, Bank's security interest in personal property under future advances clause was superior to that of second creditor with intervening lien; date of perfection of future advances relates back to original filing date).
Prtys: J.J. Faulkner, Contractor's Glass Co., City National Bank.
Attys: Ronald Boyer, John Lee-Trustee, Michael Redd, Ben Barry.

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn,
Darwin Davidson, Lance Miller.

In re Farrell and Janet Copeland, **JO** 98-31598M (Sept. 7, 1999) **Ch. 13.** (Court looks to state law to determine if debtors' pre-petition transaction to acquire portable building was a sale and security interest or a true lease; most significant factor in determination is whether there is residual value at the end of the lease term; here, there was little residual value because lessees could purchase building for nominal price, but under Arkansas case law, fact that lessee has right to terminate lease at will is deciding factor so transaction was ostensibly a lease).
Prtys: Farrell and Janet Copeland, Cook Sales, Inc.
Attys: Joe Barrett, Gregory Veach.

In re Endicott, 239 B.R. 529, **JO** 99-30499M (September 21, 1999) **Ch. 7.** (Bank granted relief from stay to liquidate security interest in proceeds of crop loss program even though proceeds had not been assigned by debtor to Bank; Bank entitled to relief where no equity in proceeds existed for benefit of unsecured creditors).
Prtys: Gary and Judy Endicott, MidSouth Bank.

Attys: Warren Dupwe, Jay Scholtens, James Luker--Trustee.

In re Hilyard Drilling Co. 60 B.R. 500, **ED** 85-10M, AP 85-346M Jan. 17, 1989) **Ch. 11.** (NBC lost its superior lien status in its security interest in accounts receivable because it filed a new financing statement instead of a continuation statement such that first lien lapsed and Worthen's junior lien became senior.)
Prtys: Debtor, National Bank of Commerce of El Dorado, Worthen Bank.
Attys: William Prewett, Davis Thomas, David Duke, Charles Baker, Ray Hilyard, James Smith, James Cook, Baker Kurrus, Peter Heister, Ian Vickery, Scott Vaughn.

In re Hot Shots Burgers & Fries, Inc., **LR** 91-41298M, AP No. 92-4130M (March 23, 1994) **Ch.** 7:(Security interest in equipment was perfected upon filing of financing statement in office of secretary of state, where debtor had place of business in more than one county; so creditor first to file with secretary of state had priority.)
Prtys: Trustee-Randy Rice, Union Bank of Benton, Wheelees, Inc., Debtor, Twin City Bank.
Attys: Abe Bogoslavsky, Charles Baker, Floyd Healy, Frank Morledge, Scott Vaughn, Ron Goodman.

In re Howell Enterprises, Inc., 105 B.R. 494, **HE** No. 88-170M (Sept. 8, 1989) **Ch. 11.** (Although funds were held by debtor subject to constructive trust in favor of plaintiff, defendant defeated trust as bona fide purchaser for value because the defendant had a perfected security interest in the funds as soon as the account was created).
Prtys: Tradax America, First National Bank of Stuttgart, Debtor.
Attys: David Fuqua, Don. Henry, Michael Reif, Steven Shults, Baker Kurrus.

In re Roger Clifton and Fannie Lynne Jackson, **ED**, 265 B.R. 176 No 00-11532M, **Ch. 7** (June 26, 2001) (court sustained Trustee's objection to Bank's motion for surrender of collateral; Bank was unperfected under state motor vehicle laws and its security interest could be avoided under 544). Prtys: William Meeks-Trustee, Regions Bank
Attys: William Meeks, John Lightfoot, Michael Landers.

In re Lee's National Pump and Supply Co, **JO** 86-161M, AP 86-518M (February 1, 1988) **Ch. 7.** Method of perfection of security interest in Mack truck rig was by filing financing statements pursuant to 4-9-302(1) and not by vehicle registration.
Prtys: Stephen Friedrich, Debtor, Security Bank of Paragould.
Attys: Scott Manatt, Robert Branch, Warren Dupwe, Jim Lyons, Charles Coleman.

In re M & P Equipment Co., **LR** 84-455M, AP 85-46M (July 23, 1985). **Ch. 7. (**In determination of secured status of Bank's lien, Bank's security interest in Debtor's accounts did not include proceeds from settlement of Debtor's tort claim for negligence; collateral estoppel of state court judgment precluded characterizing judgment proceeds as accounts; security interest can't attach to

judgment for tort claim under 9-104(h)(k)).
Prtys: Richard Smith-Trustee, Union National Bank
Attys: Mary Jane Pruniski, David Duke, Katherine McGovern.

In re MPG Enterprises, Inc. **FA** 96-80848M (December 22, 1997) **Ch. 7.** (Bank properly perfected its security interest in rent proceeds by recording mortgage and assignment of rents; Article 9 does not afford means for perfecting such rents; pre-petition security interest is valid in post-petition rent proceeds).
Prtys: Pulaski Bank and Trust, Ben Barry-T
Attys: C.B. Blackard, III, Ben T. Barry.

In re Mammoth Spring Distributing Co., Inc., 139 B.R. 205, **FA** 90-15286F (Jan. 17, 1992) **Ch. 7.** (Creditor's security interest in general intangibles extended to post-petition tax refund because inchoate right to receive accrued as a result of losses occurring pre-petition under Missouri UCC.)
Prtys: Claude R. Jones-Trustee, Debtor, First National Mercantile Bank and Trust Co.
Attys: John Lee, William Clark.

In re McMullan, 196 B.R. 818, **ED** 94-11228M, AP 94-1516 (April 18, 1996) **Ch. 11.** (Mortgagee moved to foreclose on notes and mortgages secured by oil and gas leases and equipment in case removed to BR court; court allowed Trustee to sell property to be distributed pursuant to the Code; court held: no accord and satisfaction; no evidence of forgery; other indebtedness clauses valid to secure notes and bind debtors; no evidence of Mortgagee's disposal of collateral without owners' consent; no violation of Equal Credit Opportunity Act when Mortgagee required wife to sign notes since leases and equipment used as collateral were community property; wife acted in bad faith in subsequently filing a Ch. 13 when she had no income and her debt total made her ineligible for consumer reorganization).
Prtys: Debtors, National Bank of Commerce of El Dorado
Attys: Steve Gershner, Charles Camp, Michael Massey, Herman Ivester.

In re Roy and Elizabeth Peeler, 145 B.R. 973, **HE** 88-20142M, AP 91-2005 (April 24, 1992) **Ch. 7.** (lender's security interest in crops did not extend to proceeds from sale of grain three years later; financing statement had insufficient description to perfect security interest and security interest could be avoided by trustee; property acquired by debtor postpetition was not subject to prepetition security agreement).
Prtys: Danny Schieffler-Trustee; First National Bank of Wynne, Debtors; Debtors.
Attys: Danny Schieffler, Tom B. Smith, Brad J. Beavers.

In re Mae Rolle, **218 B.R. 636**, **S.D.Fla. (Miami)** 96-17214-BKC-AJC, AP 97-0280-BKC-AJC-A (February 20, 1998) **Ch. 13.** (Under complaint to determine extent of Mortgagee's lien, Mortgagee did not take security interest in collateral in addition to the Debtor's residence such that Debtor was bound by anti-modification provision of 1322(b)(2)).
Prtys: Debtor, Chase Manhattan Mortgage Corp., Metropolitan Dade County.

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Attys: Carolina A. Lombardi, Peter Spindel, Carolyn Weir Broadwater, Nancy N. Herkert.

In re Herbert E. Russell, **ED** 84-58M (June 14, 1989) **Ch. 11.** (Creditors who sold stock to debtor and then made payments on delinquent loan secured by bank stock were subrogated to bank's claim against the debtor, except where creditor received bank stock in exchange for some payments; creditors had perfected security interest in bank stock where possession of instrument is perfection and creditors' bailee held stock for creditors). Affirmed by District Court.
Prtys: William Gibson-Trustee; Edward Snider, Richard Gibson.
Attys: Jill Jacoway, Charles Baker, Susan Gunter

In re Tracy's Flowers and Gifts, Inc., 264 B.R. 1, No. 00-11308, AP 001518 (June 12, 2001) **Ch. 7** (court dismissed trustee's complaint to determine validity of Bank's lien in property of debtor; Bank's lien was properly perfected even though no express grant of a security interest was present in the security agreement).
Prtys: William S. Meeks, Trustee; First Bank of South Arkansas
Attys: William S. Meeks, Paul Lindsey.

In re Jerry and Penny Toombs, 01-30784, AP 01-3053 (September 25, 2002) **Ch. 13:** Bank's motion for summary judgment denied; insufficient evidence to show Bank had perfected security interest in after-acquired property under Ark Code Ann 4-9-303(1); conflict as to whether government payments constitute proceeds under section 552).
Prtys: Peoples Bank of Paragould, Debtors, Trustee, U.S. Dept. of Agriculture.
Attys: David Coop, Jan Thomas, Bryant Marshall, Gwendolyn Hodge.

SETOFF

In re Brittenum & Associates, Inc. **LR** AP 86-50M Dowden v. Cross County Bank, (August 28, 1987) 97 B.R. 503. **Ch. 7** (Bank could not exercise its right of set off against funds in savings account or certificate of deposit labeled as special reserve accounts for exclusive benefit of customers in proceeding for liquidation of securities brokerage and investment banking firm which had opened the accounts; bank was on notice of trust nature of the labeled accounts).
Prtys: Halstead Industries, Cross County Bank, Trustee Jim Dowden.
Attys: Ken Cook, Richard Taylor, Jim Dowden.

In re Brown, **LR** 92-390M (Dec. 14, 1992) **Ch.13** (granting relief from stay and allowing IRS right to setoff where refund and tax claim mutual and both prepetition)
Prtys: Internal Revenue Service
Attys: A.L. Tenney, Mike Knollmeyer, Raymond Mulera

In re Paula Clingingsmith,**LR,** No. LR 86-466F, AP No. 86-315 (April 21, 1987) **Ch 7 (**required mutuality of debt is not destroyed by fact debtor's tax refund amount was figured post-petition; right to set-off may be asserted even though debt is unliquidated when petition filed; bankruptcy set-off provision did not negate federal statute regarding right of federal agency to refund; Trustee's right to turnover of tax refund was subject to creditor's claim for set-off).
Prtys: Randy Rice, Trustee, U.S. Small Business Administration.
Attys: Randy Rice, Doug Chavis, Mike Price, Paul Herrod.

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn,
Darwin Davidson, Lance Miller.

In re Gore, 124 B.R. 75, **LR** 88-04-2284M, 89-570M (Oct. 1, 1990) **Ch. 12**. (Holding that government could not set off obligation under soil conservation agreement with debtor's prepetition obligation to SBA for loan because obligation to debtor arose post petition and because mutuality lacking as debtor and debtor-in-possession were different entitites.)
Prtys: Debtors; Small Business Administration.
Attys: Lance Hanshaw, William Adair.

In re Hilyard Drilling Company, **ED** AP No. 86-745M: (November 5, 1987) **Ch. 11** (Allowing administrative claims of debtor company against debtor subsidiary and subsidiary against parent arising post-petition; declining to equitably subordinate parent's claim because no evidence of inequitable conduct; declining to setoff post and prepetition claims).
Prtys: R.J. Brown, Trustee for Hilyard Supplies; Isaac Scott, Trustee for Hilyard Drilling Co.
Attys: Isaac Scott, Audrey Evans, R.J. Brown,John Jewell, Scott Vaughn, Ian Vickery, Charles Baker, William Prewitt

In re Hoffman, 51 B.R. 42, **ED** 85-27M, 85-29M, 85, 30M, AP 85-318M, 85-320M (May 30, 1985) **Ch. 7, 11:** (It is not a violation of the automatic stay for a bank to place administrative freeze on debtors' demand accounts upon receipt of knowledge of filing of bankruptcy; bank would not be granted relief from stay to exercise right of set off if adequate protection for use of cash collateral could be offered by the debtors.)
Prtys: Debtors Charles Hoffman, Craig Shackleford, Craig Shackelford Farms, Portland Bank, National Bank of Commerce of Pine Bluff.
Attys: Isaac Scott, Thomas Streetman, Joseph Strode.

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In re Jones Truck Lines, Jones Truck Lines v. Target Stores, 196 B.R. 123, AP No. 93-8594M, 94-8003M (November 13, 1996) **Ch. 11** (Target's pre-petition contingent liability on its guaranty to Standard arose at time of contract; so when Target paid on the guaranty during the 90 days prior to bankruptcy because Jones did not pay Standard, it was not prohibited from asserting set-off under 553(a)(2)(B)).Affirmed by District Court November 12, 1996 and by 8th Cir. December 19, 1997, 133 F.3d 922.
Prtys: Jones Truck Lines, Target Stores.
Attys: Robert Lambert, James Bingaman, John Eldridge, Stephen Mertz, Charles Webber.

In re Anthony and Micki Lybrand, **HS** 04-78412, March 9, 2006 **(2006 WL 581038):** On objection to confirmation of **Ch. 13** plan, court found IRS could allocate prepetition tax refund to set off the prepetition tax liability of its choice, in this case against its general unsecured claim instead of the unsecured priority claim under section 507(a)(8).
Prtys: Debtors, IRS
Attys: Henry Means, Larry McCord

In re National Hydro-Vac Industrial Services, **PB**, No. 01-50466M, **Ch 11, later 7** (June 15, 2004): **314 B.R. 753**: Upon motion for turnover of equipment by trustee, court held two pieces legally sold upon debtor's acceptance of buyer's offer but failure to remit proceeds in which defendant was to act as broker was conversion and defendant could not set off proceeds against debt to defendant; punitive damages were warranted under state law on conversion, but not due under section 362(h), willful violation of the stay, because debtor is corp.
Prtys: Trustee, Transamerica Equipment Financial Services, Federal Signal Corp.
Attys: Thomas Streetman, Stephen Gershner.

In re Ozark Acoustical Const.,**LR** 90-42175, AP 91-4049 (April 23, 1992) **Ch. 7** (Plaintiff waived right to setoff for materialmen's lien owed by Debtor and paid by Plaintiff when Plaintiff paid Trustee money Plaintiff owed to Debtor).
Prtys: Robinette-Keyes Construction Co., Inc., Randy Rice
Attys: Cyril Hollingsworth, Charles Baker

In re Thielemier, **JO** 84-271M (Oct. 1, 1985). United States granted right of setoff in crop diversion payments, subject to other, superior liens in the payments.
Prtys: Debtors, United States
Attys: Warren Dupwe, John Burris, David Coop, Doug Chavis.

SETTLEMENT

In re Herbert Russell, **ED** 84-58M (September 12, 1985) **Ch. 11**. (Compromise settlement approved except as to co-trustees' agreement not to object to debtor's discharge with regard to Emerald Isle transaction).

List of Topics

Prtys: F.H. Martin and Bill Gibson-Trustees, Debtor, Wayne Russell, Allied Bank of Texas, Emerald Isle Condominium Inc, LFI Corp., Lasater Entities, First Commercial bank, Unsecured Creditors committee.
Attys: Bill Gibson, F.H. Martin, Jim Guy Tucker, Charles Baker, Jim Smith, Susan Gunter, Rick Taylor, Don Henry, Ike Scott, Charles Davidson, Greg Hopkins.

In re Alfred and Sharon Whitson, **LR** 02-20854, **319 B.R. 614** (Jan. 19, 2005) Trustee failed to carry burden of proof under BR Rule 4003 that proceeds from settlement of debtors' personal injury claims were not exemptible; proof did not show proceeds were not compensation for lost earnings or were not reasonably necessary for debtors' support as required by section 522(d)(11)(E).
Prtys: Debtors, Trustee-Richard L. Ramsay.
Attys: James O. Wyre, Richard L. Ramsay.

S.I.P.A.

In re Brittenum & Associates, Inc., **LR** AP 86-50M. **Ch. 7** (June 24, 1987) 82 B.R. 64. (Finding parties who transferred securities to broker-dealer in return for notes bearing fixed rate of interest, on condition that securities be stored in dealer's safety deposit box and be used only for purpose of raising additional capital did not qualify as customers of dealer within meaning of Securities Investor Protection Act.
Prtys: Lloyd and Phillip Patterson, Trustee Jim Dowden, Securities Investor Protection Corp.
Attys: John Bingham, Stephen Horbeck, Robert Ross.

In re Hartman, 115 B.R. 171, **HA** 89-13019M (June 1, 1990) **Ch. 13:** (Because debtor was entitled to lump-sum distribution of his vested benefits upon voluntary termination of employment, Erisa-qualified retirement plan did not qualify as spendthrift trust under Arkansas law and plan's anti-alienation provision was unenforceable in bankruptcy. Plan confirmation denied because debtor's vested interest in plan was estate property and should be included in liquidation analysis).
Prtys: Debtors, First Federal Savings and Loan, Trustee. Attys: Claude Jones, Frank Bailey, Gail Inman-Campbell.

In re Swink & Co., Inc., 142 B.R. 874, **LR** 90-4106M, AP 90-4089 (June 29, 1992) **ch. 7.** (Claimant was "customer" entitled to priority status under 741(2), 752, court using S.I.P.A. case law although S.I.P.A. not involved in this proceeding).
Prtys: City of Elkins, Charles Davidson-Trustee.
Attys: Richard Downing, Gary Barket, Stephen Gershner.

In re Swink & Co., Inc., **LR** 90-4106M, AP 90-4081 (July 2, 1992) **Ch. 7.** (Claimant was "customer" entitled to priority status under 741(2), 752, court using S.I.P.A. case law although S.I.P.A. not involved in this proceeding).
Prtys: American Midwest Capitol Corp., Charles Davidson-Trustee; Mabon Nugent and Co.

Attys: Richard Downing, Gary Barket, Stephen Gershner.

SPENDTHRIFT TRUST

In re Edward P. Molitor, 183 B.R. 547, **HE** 93-20101M, AP 94-2007 (March 15, 1995) **Ch. 7.** (Denying defendant's motion for summary judgment on grounds of res judicata and collateral estoppel; voiding state court judgment finding Debtor's mother transferred her property to his spendthrift trust and removed it from her estate such that it was out of reach of his creditors; judgment was entered after Debtor was in bankruptcy and in violation of the automatic stay).
Prtys: Daniel Schieffler-T; Pulaski Bank and Trust Co. as Trustee for Edward-Megan Trust; Molly Molitor as trustee of the Molly-Andria Trust.
Attys: Warren Dupwe, James Luker, Raymond Abramson.

In re Rodriguez, **ED** 86-139 (June 19, 1987) **82 Bankr. 74; Ch. 7.** (Debtor could not exempt interest in employer-sponsored Erisa savings plan since could receive trust corpus at discretion (not spendthrift).
Prtys: Debtors, William Randall Wright-Trustee
Attys: William Randall Wright, Henry Kinslow.

STANDARD OF PROOF

In re Avant, **ED** 86-67M (August 30, 1988) **Ch. 7**. (§ 523(a)(2)(A) complaint, fraud and false representation, plfs failed to prove by clear & convincing evidence, speculative oil venture, statements made not fraud)
Prtys: Jack Molnaird, Billy Sandifer, et al
Attys: Henry Kinslow, Ian Vickery, Eugene Bramblett, Claude Hawkins, David Duke

STANDING

In re Reeves, **HE 87-159**, AP 89-2018 (Feb. 20, 1991)**Ch. 7. (**Motion to dismiss granted as to RICO allegations; trustee did not have standing to assert as to prepetition conduct because debtor did not have prepetition cause of action (no injury); postpetition conduct did not amount to "pattern of racketeering activity.")
Prtys: James Luker-Trustee, Marlin Reeves, Billie Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley.
Attys: Fletcher Long, Alan Cline, Steven Elledge, James Luker

In re Reeves, **HE 87-159**, Ap. Nos. 89-2018; 89-2019; 89-2020 (Feb. 24, 1989) **Ch.7.** (Trustee prevailed in suit for fraudulent conveyance, false oath, failure to explain lack of assets, preference; Trustee's action to pierce corp. veil and dissolve farm corporation denied).
Prtys: James Luker-Trustee; Marlin E. Reeves, Billie Fern Reeves, Marlin Lynn Reeves, Reeves Trucking, Bank of Brinkley, Elmer and Ella Reeves, Reeves Farms, Sherry Smith, A.S.C.S.
Attys: Danny Schieffler, Fletcher Long, Alan Cline, Frank Arey, Steven Elledge.

In re Woodall, **LR** 81-69 (Jan. 22, 1987) **81 Bankr. 17**: Computation of 60

months in Ch. 13 begins with date order for payment entered, which is 30 days after filing of petition under 1326; plan may not exceed 60 months under 1322; property of estate in ch.13 is property and earnings acquired by debtor post-petition under 1306 so not fair to postpetition creditors to stave off their collection efforts longer than 5 years; IRS has standing to file post-petition claim for taxes under 1305.
Prtys: IRS, Debtors
Attys: Jimmy Eaton, Doug Chavis, Charles Coleman, A.L. Tenney, Trustee.

STAY

In re Gaston, **JO** 84-226M, CMS No. 84-870M (August 1, 1985) **Ch. 13.** (Relief from stay granted to creditor as to co-debtor since plan proposed to pay creditor nothing and there was no reason to prohibit creditor to pursue remedy with co-debtor.)
Prtys: CIT Financial Services, H.W. Gaston.
Attys: Jim Lyons, Brent Martin, Elbert Johnson.

STAY PENDING APPEAL

STIPULATION

In re Cupples Farms, **HE**, 128 B.R. 769, No. 90-55, AP 90-2017 (March 5,1991) **Ch 12** (Oral stipulations made in open court are contractual in nature and are valid and binding).
Prtys: Cupples Farms, Federal Land Bank of St. Louis.
Attys: Roy C. Lewellen; Keith Billingsley, William A. Waddell.

In re Paul and Myra Pearson, **PB** 84-327, CML 85-17M (March 25, 1986): Complaint to avoid lien impairing an exemption dismissed with prejudice when parties agreed to submit upon stipulations; only stipulations submitted were photographs without any brief or explanation.
Prtys: Debtors, Farmers Home Administration
Attys: Doug Chavis, Bynum Gibson, George Proctor

STUDENT LOAN

In re Boston, 119 B.R. 162, **ED** 89-11066, AP No. 89-1508 (August 2, 1990) **Ch. 7.** (Debtor failed to carry burden to establish undue hardship because inability to repay loan was self-imposed and therefore could not discharge student loans; court applied three step analysis including mechanical, good faith and policy tests.)
Prtys: Catherine Boston, Utah Higher Education Assistance Authority.
Attys: Henry Kinslow, Steven McMaster.

In re Charles Leo and Rachelle Louise Evans, **LR** 03-15810, **Ch. 7 (**March 9, 2004): AP 03-01336: Under totality of circumstances test, Debtor could repay his student loan without undue hardship; the debt would be excepted from discharge under section 523(a)(8).

Prtys: Charles Evans, Educational Credit Management Corporation
Attys: Larry Hartsfield, Kim Tucker

In re Jerry Henry Grant, **ED** 02-70071, AP 02-7047 (Feb. 18, 2004) (**305 B.R. 484):** Student loans to pay for debtor's medical school costs would not be discharged for undue hardship pursuant to section 523(a)(8).
Prtys: Debtor, Oklahoma State Regents for Higher Education
Attys: Teresa Wineland,

In re Aubrey and Rebecca Morgan, **JO** 98-31402, AP 99-3004
In re Clarence Cearley, LR 99-40758, AP 99-4078, 247 B.R. 776, (April 25, 2000) **Ch. 7** (In complaints for dischargeability of student loans for undue hardship, Morgans' loans were discharged while Cearley's were not; court used totality of circumstances approach endorsed by BAP and 8th Cir.)
Prtys: Debtors, U.S. Dept of Education, Sallie Mae, Student Loan Guarantee Foundation of Arkansas.
Attys: John Holstine, Gwendolyn Hodge, Connie Meskimen, Warren Duprwe.

In re Terri Lynn Morris, **ED** 00-11167M; AP 00-1517 (November 16, 2001) **Ch. 7.** (granting State's motion to dismiss debtor's dischargeability of student loan complaint as to U of A; state correctly asserted 11th amendment immunity).
Prtys: Debtor; University of Arkansas, et al.
Attys: Mark Drake, Scott Varady
May 20, 2002: Pursuant to section 523(a)(8), largest debt to student loan creditor was dischargeable for undue hardship, but six other student loans were nondischargeable because Debtor was able to pay.
Prtys: Student Loan Guaranty Foundation, Debtor.
Attys: Mark Drake, Connie Meskimen.

In re Janet Lynn Parker, **HE** 04-18019, April 12, 2005 (**322 B.R. 856)** AP 04-1316: Court determined school teacher's student loan debt would be discharge because repayment would impose undue hardship pursuant to 523(a)(8)(2000). **Reversed, 8th Cir. BAP, 328 B.R. 548**, August 8, 2005: Debtor could repay debt through William D. Ford Consolidation Program without undue hardship.
Prtys: Debtor, Student Loan Guarantee Foundation of Arkansas
Attys: Joe Barrett, Connie Meskimen

In re Maria Ruiz, **LR** 00-44294M, AP 004157 (December 12, 2001) **Ch. 7. (**Debtor could partially discharge one of two student loans because of undue hardship).
Prtys: Debtor; Sallie Mae Corp.
Attys: James Dunham; Rick Taylor.

In re Twila Williams, **LR** 83-626 (Aug. 17, 1984) **42 Bankr. 474**: **Ch. 13** debtor's proposal to pay back 37% of student loans demonstrated bad faith warranting denial of confirmation.
Prtys: Debtor, University of Arkansas
Attys: Ray Trammell, Robert DeGostin, Hubert W. Alexander

List of Topics

SUBORDINATION

In re: N.S. Garrott & Sons, **JO** 83-215M; In re: Eastern Arkansas Planting Co., **JO** 83-216M; AP 84-310M (June 27, 1985) **Ch. 7,** (SBA had prior lien to Wells Fargo in Debtors' equipment because subordination agreement from SBA to Wells Fargo had expired)
Prtys: Small Business Administration, Wells Fargo Ag Credit Corp., John Deere Co.
Attys: Richard Frockt, Lindsey Fairley, Michael Killin, Katherine McGovern, Jim Smith, Diane Mackey.

In re Reddell, **HE** 87-12M (August 31, 1987) **Ch. 12.** (Confirmation denied based on various plan provisions not in compliance with 1225 because of improper classification, improper subordination of liens, and other issues).
Prtys: Debtors; Farmer's Home Administration
Attys: Clarence Shoffner, William C. Adair, A.L. Tenney

SUBROGATION

In re Herbert E. Russell, **ED** 84-58M (June 14, 1989) **Ch. 11.** (Creditors who sold stock to debtor and then made payments on delinquent loan secured by bank stock were subrogated to bank's claim against the debtor, except where creditor received bank stock in exchange for some payments; creditors had perfected security interest in bank stock where possession of instrument is perfection and creditors' bailee held stock for creditors). Affirmed by District Court.
Prtys: William Gibson-Trustee; Edward Snider, Richard Gibson.
Attys: Jill Jacoway, Charles Baker, Susan Gunter

SUMMARY JUDGMENT

In re Bobby and Leyon Bratton, **HA** 84-47M, AP No. 89-98M (Sept. 11, 1989) **Ch. 7** (Motion for summary judgment granted in favor of Mitchell Law Firm, Charles D. Davidson, Davidson Law Firm; no facts were alleged in support of debtors' malpractice and bankruptcy fraud claims against law firms and trustee.)
Prtys: Bobby and Leyon Bratton, Mitchell Law Firm, Charles Davidson, Davidson Law Firm.
Attys: Art Dodrill, Stephen Gershner, William Griffin, Charles Davidson, James Glover, Bill Wharton, Phillip McGough.

In re William Horne, **PB** 85-365M, AP 86-157M (August 18, 1986) **Ch. 7**: (Motion for summary judgment granted as to murder victim's estate's dischargeability action against the debtor for debt arising from willful and malicious conduct; debtor's conviction for 2nd degree murder established the elements of willfulness and malice under theory of collateral estoppel; offensive collateral estoppel not available to other plaintiffs because debtor's liability for battery did not establish willfulness and malice.)
Prtys: Bill Michel, John Lock, Matthew Webre, Debtor.

Attys: Henry Means, Randall Morley, W.M. Dickinson.

In re Brittenum & Associates, Inc., **LR**, AP 86-0305M (Sept. 28, 1988) **Ch. 7.** (Motion for summary judgment granted as to A. and J. Lewis; no genuine issue of fact was established by the affidavits.)
Prtys: Fred Halstead, John Brittenum, Melvyn Bell, Beverly Sullivan, Asa Lewis, Jack Lewis, Harry Ware, Brittenum & Associates, Inc.
Attys: Jon Pruniski, Robert Roddey, Willis D. Cronkhite, Gary Corum, Richard Taylor, Michael Thompson, Peter Kumpe, Steve Vaughn, Anna Gibson, Philip Dixon, Mark Hampton, David Hodges, Charles Davidson, Jim Dowden, Ben Arnold, Webster Hubbell, Middleton Ray.

In re Jones Truck Lines, Inc., 166 B.R. 885, **FA** 91-15475M, AP No. 92-8527,(January 12, 1994) **Ch. 11.** (Denying both parties' motion for summary judgment in holding that genuine issue of fact as to debtor's insolvency precluded summary judgment as to debtor's preference action and that defendant's argument was meritless that preference action impermissibly altered parties' collective bargaining agreement; the concerns of sections 1113 and 547 are distinct and 1113 does not give defendant a preference defense).
Prtys: Jones Truck Lines, Central States, Southeast and Southwest Areas Pension Fund; Central States, Southeast and Southwest Areas Health and Welfare Fund; Corestates Bank, N.A.
Attys: Isaac Scott, Charles Coleman, Kimberly Tucker, Thomas Nyhan, James Condon, Thomas Thrash, John Hardin, Stephen Snider, Audrey Evans, Steven Cousins, G.W. Turner, Andrew Turner, Melva Harmon.

In re Phillip Lynn Lloyd, 142 B.R. 866, **LR** 86-41880M, AP 88-332M (Feb. 12, 1992) **Ch. 7.** (debtor's criminal conviction collaterally estopped his defense in bankruptcy proceeding regarding false statement under oath and withholding info regarding his property; discharge denied upon motion for summary judgment).
Prtys: Rick Ramsay-Trustee, Debtor.
Attys: David Grace, Stuart Hankins.

In re McCrary's Farm Supply, **LR** 81-666M, AP 84-149M (November 1, 1985) **Ch 11**. (Motion for Summary judgement denied in preference action in which movant-defendant asserted contemporaneous exchange and new value exceptions).
Prtys: Creditors' Committee, Monsanto Co.
Attys: L. Judson Todhunter, Peter Heister, Scott S. Partridge, Isaac Scott, Jack Sims.

In re Scottie McDonald, **ED** 01-90070, AP 02-7024 (April 1, 2003) **Ch. 7**: Denying motion for summary judgment on judicial estoppel principles that are based on unresolved material facts.
Prtys: Debtor, Kelly Ewing
Attys: Jack Gooding

In re MacMillan Petroleum Inc., **ED** 87-149M, AP 88-353M (June 6, 1990) (115

Bankr. 175) **Ch. 7.** (Summary judgment as to governing law denied. Summary judgment in favor of MCorp granted because MCorp, which held floating security interest in debtor's inventory, qualified as good faith purchaser for value and defeated equitable rights of reclaiming sellers).
Prtys: Debtors, Mcorp Management Solutions, Phillips Petroleum.
Attys: Derrell Dickens, Charles Coleman, Randal Wright, Trustee, Geoffrey Treece, Bobby Shepherd

In re Steve Masters, **HE** 00-20359M, AP 01-2008
(Jan. 2002) **Ch. 7**: (Summary Judgment granted to F.S.A.; Trustee could not avoid Government's liens in debtor's personal property despite the fact that error in clerk's office as to properly filed financing statement resulted in temporary loss of perfection by Government).
Prtys: Trustee-James Luker, Farm Service Agency (U.S.D.A.)
Attys: Fletcher Jackson, James Luker.

In re Edward P. Molitor, 183 B.R. 547, **HE** 93-20101M, AP 94-2007 (March 15, 1995) **Ch. 7.** (Denying defendant's motion for summary judgment on grounds of res judicata and collateral estoppel; voiding state court judgment finding Debtor's mother transferred her property to his spendthrift trust and removed it from her estate such that it was out of reach of his creditors; judgment was entered after Debtor was in bankruptcy and in violation of the automatic stay).
Prtys: Daniel Schieffler-T; Pulaski Bank and Trust Co. as Trustee for Edward-Megan Trust; Molly Molitor as trustee of the Molly-Andria Trust.
Attys: Warren Dupwe, James Luker, Raymond Abramson.

In re Mid-South Cabinets & Millwork, Inc., **LR** 86-1773, AP 88-503, (Sept. 5, 1989) **Invol. Ch. 7.** (Bank paid creditor for check transferred by debtor but not paid by Bank's midnight deadline. Motion for summary judgment denied in preference action where affidavits did not establish which party's funds were transferred in satisfaction of the check).
Prtys: Trustee-James Allen Brown, Temple Eastex.
Attys: R.C. Thompson, Geoffrey Treece

In re Roy and Lavonda Price, **313 B.R. 805, LR** No. 03-13601, AP No. 03-1258 (July 22, 2004) court denied motion for summary judgment filed by financial services company; sale of debtor-serviceman's future military pension rights for lump sum payment was prohibited by federal law, 37 U.S.C § 701, and fact that debtor redirected payments to himself contrary to the contract did not constitute larceny or embezzlement under section 523(a)(4).
Prtys: Debtors, Structured Investments Co.
Attys: Laura Grimes, Kimberly Tucker.

In re Herbert Russell, **ED** 84-58M (June 21, 1988) **Ch. 11.** (On Trustee's complaint to recover taxes erroneously paid to IRS, summary judgment to I.R.S., net operating loss election irrevocable). Affirmed, District Court; Reversed, 8th Circuit.
Prtys: Bill Gibson and F.H. Martin–Trustees, United States.
Attys: Steve Shapiro, Michael Fitzhugh, Richard Neubauer, Michael Wilcove,

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Susan Gunter, Charles Baker, Jackson Butt**.**

In re Joe and Sandra Swaffar,222 B.R. 326, 222 B.R. 330, **LR** 95-40532M, AP 96-4146 (July 8, 1998) **Ch. 7 (**Plaintiff McCallum not a partner when property conveyed without McCallum's consent from partnership to corporation and then to defendants so plaintiff's consent to conveyance not necessary; Motion for summary judgment granted as to Patels and AMBA who had no knowledge of allegedly invalid transfer from partnership to corporation and then to them; Motion for summary judgment granted as to Steve and Linda Wood-nothing in chain of title gave Woods notice of McCallum's alleged interest in property they subsequently purchased from the Spears).
Prtys: Harrison Properties, Ltd., Gary McCallum, Donald M. Spears, Nell Spears, Richard Cox-T; Motel Managers, Inc., David Henry, Steve Wood, Linda Wood, Shantilal Patel, Pragna Patel, AMBA, LLC.
Attys: Gail Inman-Campbell, James Dowden, Patrick James, Henry Allen, Basil Hicks, Richard Crockett, Richard Cox, David Henry

In re Jerry and Penny Toombs, 01-30784, AP 01-3053 (September 25, 2002) **Ch. 13:** Bank's motion for summary judgment denied; insufficient evidence to show Bank had perfected security interest in after-acquired property under Ark Code Ann 4-9-303(1); conflict as to whether government payments constitute proceeds under section 552).
Prtys: Peoples Bank of Paragould, Debtors, Trustee, U.S. Dept. of Agriculture.
Attys: David Coop, Jan Thomas, Bryant Marshall, Gwendolyn Hodge.

SURCHARGE

In re Joseph A. Torcise d/b/a Joe Torcise Farms and TIJODEE, Inc., 1994 WL 162404, **S.D.Fla. (Miami)** 89-16287-BKC-AJC, 89-16286-BKC-AJC (February 23, 1994) **Ch. 11.** (Holding the following: creditor's anticipated expenses of liquidating repossessed collateral may not be charged to estate; under 506(b) attorneys fees not allowed to oversecured creditor to defend avoidance actions, not allowed in general case when inappropriately billed or grouped, but allowed as to appeal of confirmation order even though appeal unsuccessful; reducing debtor's surcharges on collateral as being either unreasonable or of no benefit to creditor under 506(c); ruling interest on indebtedness to accrue as provided in foreclosure judgment).Reversed by District Court and Affirmed by 11th Cir.
Prtys: Debtor, Community Bank of Homestead
Attys: Robert Hustead, Martin Sandler, Hywel Leonard, Karen Kantner.

TAX ISSUES

In re Barnes, **PB** 84-359M (Jan. 28, 1987) **Ch.13** (sustaining objection to plan where modification to include postpetition, postconfirmation tax claim was redundant w/ original plan providing for payment of postpetition claims)
Prtys: Internal Revenue Service
Attys: A.L. Tenney, Charles Embry

In re Bolin, **ED** 89-041M (Mar. 15, 1991) **Ch.13, 1991 WL 58389** (Objection to

confirmation; held IRS could allocate lien to oldest taxes to maximize recovery; held debtor could not avoid judicial tax lien under § 522(f)(2); determined which taxes had priority status; prepetition interest is included in tax priority claim, penalties are subordinated to claims of general unsecured creditors)
Prtys: Kenneth Bolin and Internal Revenue Service)
Atty: William Johnson, Michael Fitzhugh, Karen Osborne, A.L. Tenney

In re Brown, **LR** 92-390M (Dec. 14, 1992) **Ch.13** (granting relief from stay and allowing IRS right to setoff where refund and tax claim mutual and both prepetition)
Prtys: Internal Revenue Service
Attys: A.L. Tenney, Mike Knollmeyer, Raymond Mulera

In re William and Harriett Cates, **JO** No., 01-32104M, AP. No. 01-3051 (Feb. 24, 2003)**289 B.R. 389**: Determination of nondischargeability of tax debt in debtor-taxpayer's prior bankruptcy case did not, under principles of res judicata, bar redetermination of issue in subsequent Ch. 7.
Prtys: Debtors, Ark. Dept. Of Finance & Administration
Attys: Joe Barrett, James Luker, trustee

In re Richard and Jane English, **LR** 98-42005 (May 7, 1999) AP 98-4071: **Ch. 7:** income tax debt was nondischargeable priority claim because unsecured as provided by section 507(a)(8); even though tax lien had been filed, there was no property to which it could attach.
Prtys: Debtors, I.R.S.
Attys: Mary J. Pruniski, Laurence Williams.

In re John Faucett, **LR** 85-617M (June 17 1988) **Ch. 11.** (Allowing IRS claim for penalties and interest over Debtor's objection when no argument offered by Debtor to contrary; Debtor argued against penalty for negligent failure to file is inconsistent position; bop to escape late file penalty is on debtor to prove no willful neglect, and reasonable cause for failure to file.)
Prtys: John Faucett, I.R.S.
Attys: Michael Wilcove, Thomas McLain.

In re Garth, **LR** 81-587M, AP No. 87-717M (Nov. 4,1988) **Ch. 13.** (Payments made by the Trustee exceeded allowed claims of I.R.S.; even if I.R.S. doesn't file a proof of claim for postpetition tax, it may pursue its claim after discharge, closing, or dismissal of case; court without jurisdiction to decide postpetition tax liability, case dismissed because objection to claim moot after claim allowed and paid.)
Prtys: Buford and Ruby Garth, I.R.S.
Attys: Jack Sims, William Adair, Richard Neubauer, Steven Shapiro, Michael Wilcove.

In re Gran, 108 B.R. 668, **L.R.** 87-146M (Nov. 27, 1989) **Ch. 13.** (Upon debtors' objection to I.R.S. claim, purported sale of cattle to debtors was sham transaction to create fictitious tax deductions and objection would be overruled.)

Prtys: Debtors, I.R.S.
Attys: Michael Wilcove, Raymond Harrill.

In re Haimes, 173 B.R. 777, S.D. Florida, No. 90-39632, AP No. 91-0242 (Aug. 12, 1994) **Ch. 7.** (I.R.S. has bop that debtor violated bankruptcy section providing for discharge exception for fraudulent return or willful attempt to evade tax; exception for fraudulent return is broad enough to apply if debtor willfully conceals assets; corporations created by debtor were shams to disguise income and acquire assets in debtor's name that could be seized to pay taxes).
Partys: Debtor, I.R.S.
Attys: Lance Baker, Douglass Wendel.

In re Bobbie Harrell, **HE** 03-16983 **Ch 13** (Jan. 5, 2005) **318 B.R. 692**: State's claim for unassessed but assessable tax debts paid untimely and postpetition was not entitled to priority under section 507(a)(8)(A)(iii) and could be discharged in a chapter 13 under section 1328(a), even though the debts were nondischargeable in a chapter 7 under section 523(a)(1)(B)(ii).
Prtys: Debtor, Arkansas Department of Finance and Administration
Attys: Greg Niblock, Michelle Baker.

In re Edward and Shirley Inman, **JO** No. 72-76/77M (March 25, 1986) **Ch. 7** (Bankruptcy court lacks jurisdiction to decide equitable defense to nondischarged tax liability or to adjudicate negligence claim of debtors vs. trustee who failed to pay nondischargeable tax debt from estate proceeds, resulting in penalties and interest accrued to debtors).
Prtys: Debtors, Harrell Simpson, Jr.
Attys: Paul Predmore, Katherine McGovern, Warren Dupwe, Leroy Blankenship.

In re Guy Hamilton Jones, Jr., Richard L. Ramsay v. Guy Hamilton Jones and Guy Jones Jr. Employees Pension Trust, **LR** AP No. 94-4125 (April 25, 1995) **Ch. 7.** (denying debtor's motion to dismiss trustee's complaint for turnover of retirement funds on grounds of lack of subject matter jurisdiction and Erisa argument but granting dismissal without prejudice for failure to join proper parties; Court has jurisdiction because not fixing tax liability but adjudicating turnover).
Attys: Richard Ramsay, Richard Hatfield, Charles Baker, Judy Henry.
Prtys: Richard Ramsay-Trustee, Debtor, Debtor's Pension Plan

In re Bryan Kogut, **HS** 04-72452, June 1, 2005 **(325 B.R. 400)**: Objection to confirmation of **Ch. 13** plan overruled; if tax debt was excise tax governed by 3-year limitation on priority under section 507(a)(8)(E) it was too old to be entitled to priority, and Creditors did not establish debt was trust fund tax entitled to priority under section 507(a)(8)(C).
Prtys: Debtor; Monroe County, Alabama; Monroeville, Alabama
Attys: Sherry Daves, Jeffrey Reynerson

In re Kuebler, 156 B.R. 1012, **LR**89-40146, AP 92-4037 (June 24, 1993) **Ch. 13.** (plan listed IRS's secured debt as priority and didn't provide for full payment; plan confirmed without objection by IRS was res judicata on incorrect claim classification because IRS didn't plead lack of notice and opportunity to object; secured debt untreated by plan is discharged as to debtor's personal liability but IRS retains lien which passes through bankruptcy and remains attached to debtor's property, affording IRS an in rem cause of action on the debt) (AFFIRMED - Judge Woods).
Prtys: IRS, Leonard and Laura Kuebler.
Attys: Keith Grayson, David Coop-T., Tamera Fine-Trail, Robert Millstone.

In re Anthony and Micki Lybrand, **HS** 04-78412, March 9, 2006 **(2006 WL 581038):** On objection to confirmation of **Ch. 13** plan, court found IRS could allocate prepetition tax refund to set off the prepetition tax liability of its choice, in this case against its general unsecured claim instead of the unsecured priority claim under section 507(a)(8).
Prtys: Debtors, IRS
Attys: Henry Means, Larry McCord

In re McCarther Enterprises, Inc., **LR** 86-539, AP 88-52 (Aug. 24, 1988) **Ch. 7:** (Trustee's complaint dismissed for failure to establish all elements of preference). AFFIRMED (J. Howard, 3/6/89, LR-C-88-697).
Prtys: Trustee-Charles Davidson, I.R.S.
Attys: Michael Wilcove, Mark Colbert, Jack Sims, Bill Adair.

In re James & Sarah Rhodes, **FA** 147 B.R. 492 (June 23, 1992) **Ch 7.** (IRS in willful contempt of automatic stay by refusing to discontinue its postpetition tax lien until debtors agreed to convey refund checks in partial payment. AFFIRMED, 155 B.R. 491, District Court (Feb. 18, 1993).
Prtys: Debtors, I.R.S.
Attys: John D. Russell, John T. Lee-T, Stephen E. Adams.

In re Herbert Russell, **ED** 84-58M (June 21, 1988) **Ch. 11.** (On Trustee's complaint to recover taxes erroneously paid to IRS, summary judgment to I.R.S., net operating loss election irrevocable). Affirmed, District Court; Reversed, 8th Circuit.
Prtys: Bill Gibson and F.H. Martin–Trustees, United States.
Attys: Steve Shapiro, Michael Fitzhugh, Richard Neubauer, Michael Wilcove, Susan Gunter, Charles Baker, Jackson Butt**.**

In re Herbert E. Russell, 154 B.R. 723, **ED** 84-058M, AP 87-103M (April 23, 1993) **Ch. 11.** (On remand from 8th Circuit, BR holding that Trustee did not prove fraudulent intent in avoidance action when Debtor elected to carry forward his net operating loss; constructive fraud was beyond mandate of 8th Circuit; election was in ordinary course of business). **Reversed and Remanded by district court (Barnes).**
Prtys: Tom Streetman-Trustee; United States (I.R.S.)
Attys: Charles Baker, John Russell.

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In re John and Mary Snider, **FS** 84-190M, AP No. 85-33M (July 30, 1985) **Ch. 7.** (Pursuant to 523(a)(1)(B)(i), taxes are nondischargeable without regard to time limits if a return was never filed).
Prtys: Debtors, State of California
Attys: Dan McCraw, James O. Cox-Trustee, Dennis Sbanotto,

In re Wise, **LR** 90-04-0893 (Jan. 2, 1991) **127 B.R. 20, Ch. 13**: Three-year period of limitation for determining tax priority under 507(a)(7)(A) suspended during pendency of previous bankruptcy case pursuant to section 108(c) and section 6503(b) and (i).
Prtys: IRS, Debtor
Attys: Kimberley S. Forseth, Michael Knollmeyer, A.L. Tenney, Trustee, William Adair

TENANTS BY ENTIRETY

In re Boykin, **LR** 89-41214 (May 24, 1990) **Ch.7**
Personal property acquired by parties during marriage was held in tenancy by the entirety under Arkansas law and could be sold by the trustee under 363(h) in a proper adversary proceeding because property of estate includes all of Debtor's property, even if exempt from execution under state law because of tenancy by the entireties.
Prtys: Loran Boykin, Trustee
Attys: Charles Davidson, Randy Rice, James Smith, Garland Binns, Charles Camp, Robert Gross, Fred Bosshart.

TIMELY OBJECTION

In re Bancroft Cap Company, **LR,** 182 B.R. 538, No. 95-41058M (Feb. 24, 1995) **Ch. 11, Reversed, Wright, J.** (Debtor's plan set time limit for debtor's objections to claims; plan confirmed and debtor failed to object to creditor's claim within time limit; court could not reconsider, under 502(j), allowing debtor to object because no court order had been entered allowing or disallowing the claim; claim was allowed by section 502(a) and confirmation of plan, which was res judicata and was not timely appealed from.)
Prtys: Bancroft Cap Company, Bower and Bonanno Co.
Attys: Kimberly Tucker, Charles W. Baker.

TOLLING STATUTE

In re Wise, **LR** 90-04-0893 (Jan. 2, 1991) **127 B.R. 20, Ch. 13**: Three-year period of limitation for determining tax priority under 507(a)(7)(A) suspended during pendency of previous bankruptcy case pursuant to section 108(c) and section 6503(b) and (i).
Prtys: IRS, Debtor
Attys: Kimberley S. Forseth, Michael Knollmeyer, A.L. Tenney, Trustee, William Adair

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TORTIOUS INTERFERENCE

In re Acro Corporation, **FA** 86-46M (Aug. 26, 1987) **Ch.11** (egg/chicken contract; finding no oral or implied contract for caring for chickens; also finding no agency relationship b/t PCA and ACRO; and finding no tortious inference w/ contract; mentions wrongful eviction claim)
Prtys: Central Production Credit Association (PCA)
Attys: Larry Froelich, Steve Tennant, Connie Clark, Richard Miller

In re Baldwin, 184 B.R. 558, **JB** 91-30647, AP No. 93-3015M, Trustee v. Pryor (April 13, 1995) **Ch. 7.** (Motion to dismiss for failure to state a claim granted as to allegation that trustee tortiously interfered with sale when he agreed to sell debtors' property to buyers and then agreed to sell same property for higher price to other party; Trustee is successor in interest to debtors and not a third party.)
Prtys: Danny Schieffler, Mike and Linnette Pryor
Attys: William Ayers, Keith Blackman, Warren Dupwe, Charles Mooney.

TRUSTEE

In re Baldwin, 184 B.R. 558, **JB** 91-30647, AP No. 93-3015M, Trustee v. Pryor (April 13, 1995) **Ch. 7.** (Motion to dismiss for failure to state a claim granted as to allegation that trustee tortiously interfered with sale when he agreed to sell debtors' property to buyers and then agreed to sell same property for higher price to other party; Trustee is successor in interest to debtors and not a third party.)
Prtys: Danny Schieffler, Mike and Linnette Pryor
Attys: William Ayers, Keith Blackman, Warren Dupwe, Charles Mooney.

In re Fourth, **LR** 84-235M (June 12, 1985). **Ch. 11.** (On Bank's motion to dismiss and to appoint Trustee, court found cause to appoint trustee for debtor's failure to timely confirm a plan, abide by court's operating requirements and illegal postpetition payments to counsel for debtors).
Prtys: First Commercial Mortgage Co., Charles and Vikki Fourth
Attys: Donald Frazier, Charles Davidson.

In re Farmers Co-Op of Ark. And Okla., Inc., 53 B.R. 600, **FS** 84-46M (Sept. 9, 1985) **Ch. 7.** (Court disqualified Trustee from representing estate in suit against the Bank when Trustee's law partner was formerly on board of directors of bank; law partner was in confidential relationship with Bank such that disqualification had to be imputed to other members of the same law firm and conflict of interest was apparent; Trustee's co-counsel, in different firm, was not disqualified).
Prtys: Trustee, Citizens Bank and Trust Co. Of Van Buren.
Attys: Thomas Robertson, Reuben and Proctor, Jerry Canfield.

In re Edward and Shirley Inman, **JO** No. 72-76/77M (March 25, 1986) **Ch. 7** (Bankruptcy court lacks jurisdiction to decide equitable defense to nondischarged tax liability or to adjudicate negligence claim of debtors vs. trustee who failed to pay nondischargeable tax debt from estate proceeds,

resulting in penalties and interest accrued to debtors).
Prtys: Debtors, Harrell Simpson, Jr.
Attys: Paul Predmore, Katherine McGovern, Warren Dupwe, Leroy Blankenship.

In re Herbert Russell, 60 B.R. 42, **ED** 84-58M (March 19, 1985) **Ch. 11.** (Removing debtor-in-possession and appointing trustee when Dip, a fiduciary for creditors, committed fraud before BR by selling major corp. asset in exchange for personal services contract not subject to debtor's creditors' claims and probably would not bring turnover and fraudulent conveyance actions against himself).
Prtys: Unsecured Creditors' committee, Herbert Russell, Allied Bank.
Attys: James Smith, Charles Baker, Isaac Scott.

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Attys: R.J. Brown, attorney for the estate.

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Prtys: Mitchell Law Firm
Attys: Maurice Mitchell, Mike O'Malley, R.J. Brown

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In re Barton, **FA** 90-628M (Sept. 5, 1991) **Ch.12, 132 B.R. 23** (chicken farming operation; determining extent of lien; FmHA must turnover checks b/c no perfected security interest in services performed in growing chickens)
Prtys: Tyson, Farmers Home Administration, Tom Barton
Attys: Terry Zelinski, Deborah Groom, Paul Bowen, Mike Fitzhugh, Claude Skelton, A.L. Tenney

In re Paula Clingingsmith, **LR,** No. 86-466F, AP No. 86-315
(April 21, 1987) **Ch 7 (**Trustee's complaint for turnover for tax refund paid to Debtor and seized by S.B.A. post-petition pursuant to federal statute was denied; S.B.A. had right of set-off because right to refund accrued prepetition; bankruptcy set-off provision did not negate federal statute regarding right of federal agency to refund).
Prtys: Randy Rice, Trustee, U.S. Small Business Administration.
Attys: Randy Rice, Doug Chavis, Mike Price, Paul Herrod.

In re Hoffinger Industries, Inc., **HE** 01-20514M, **Ch. 11** (April 16, 2004) **308 B.R. 362:** Debtor's former president ordered by BR court to turnover funds to the Debtor that he paid himself through unauthorized expense reimbursement and other means**;** President's employment contract had expired under its own terms and it was unnecessary for the Debtor to later reject the contract pursuant to

section 365.
Prtys: Brad Rinehart, Debtor
Attys: Frederick Wetzel, Lance Miller, Stan Smith.

In re Guy Hamilton Jones, Jr., Richard L. Ramsay v. Guy Hamilton Jones and Guy Jones Jr. Employees Pension Trust, **LR** AP No. 94-4125 (April 25, 1995) **Ch. 7.** (denying debtor's motion to dismiss trustee's complaint for turnover of retirement funds on grounds of lack of subject matter jurisdiction and Erisa argument but granting dismissal without prejudice for failure to join proper parties; Court has jurisdiction because not fixing tax liability but adjudicating turnover).
Attys: Richard Ramsay, Richard Hatfield, Charles Baker, Judy Henry.
Prtys: Richard Ramsay-Trustee, Debtor, Debtor's Pension Plan

In re John R. Moody, LR 86-702M, AP 86-398M (June 9, 1987) **Ch. 13** (Debtor denied motion for turnover and damages in connection with the sale of antique automobile by wife while Debtor was incarcerated; Debtor gave wife permission to sell; car no longer property of estate).
Prtys: Debtor, Trustee, Jim Rusher, E.D. Hughes, Marcelle Hughes, Brenda Jo Moody, James H. Steed, Brenda Cotton, Ronald Surrett
Attys: Randolph Satterfield, Dennis James, Bill McArthur, Bob Scott.

In re National Hydro-Vac Industrial Services, **PB**, No. 01-50466M, **Ch 11, later 7** (June 15, 2004): **314 B.R. 753**: Upon motion for turnover of equipment by trustee, court held two pieces legally sold upon debtor's acceptance of buyer's offer but failure to remit proceeds in which defendant was to act as broker was conversion and defendant could not set off proceeds against debt to defendant; punitive damages were warranted under state law on conversion, but not due under section 362(h), willful violation of the stay, because debtor is corp.
Prtys: Trustee, Transamerica Equipment Financial Services, Federal Signal Corp.
Attys: Thomas Streetman, Stephen Gershner.

In re Jimmy Lynn Thomas, **TX** 03-73985 (July 7, 2005) **(331 B.R. 798)**: Upon Trustee's motion for turnover of two IRA accounts, court held funds were not Erisa qualified because accounts did not restrict alienation or transfer so IRAs were property of estate under section 541(c)(2); estranged wife had only an inchoate marital property interest in the accounts because she was married to the debtor on the day bankruptcy was filed.
Prtys: Debtor, Renee Williams-Trustee, Linda Thomas
Attys: Rodney McDaniel, Thomas Streetman, Randell Wright

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Attys: Randolph Satterfield, Lawrence Yancey.

In re Jimmy M Baugh, **PB** 84-144M (April 28, 1987) **73 B.R. 414 Ch. 11** (Plan can be confirmed over objecting creditors under 1129(b)(1) if the plan does not unfairly discriminate; here plan discriminated against judgment creditor; claim could not be equitably subordinated because creditor not guilty of inequitable conduct that injured other creditors or conferred unfair advantage; plan violated absolute priority rule, pursuant to section 1129(b)(2)(B)(i,ii), where debtor retained all ownership of property even though unsecured claimants might not be paid in full).
Prtys: Debtor, Neale Bearden
Attys: Charles Baker, C.B. Blackard, Richard Ramsay, Doug Chavis

In re Green, 70 B.R. 164, **ED** 85-02M (Sept. 26, 1986) **Ch. 13.** (Plan unfairly discriminated against objecting unsecured creditors because one unsecured creditor was to be paid in full outside the plan while remaining unsecureds would receive 25 percent of their claims and there was no justification for paying one claim in full)
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Attys: Jed Molleston, Randy Wright, Ian Vickery.

In re Thomas Patrick Harper, 157 B.R. 858, **HE** 91-20002M (Aug. 13, 1993) **Ch. 12:** (plan permissibly discounted value of debtor's minority interest in closely held family corporation by 55% based on lack of marketability, minority interest, and restrictions on corporate borrowing and share transfers.) Prtys: Farm Credit Bank of St. Louis, Debtor.
Attys: Gerald Coleman, Arens Law Firm.

In re Minnis, **PB** 89-30235 (Aug. 3, 1990) **Ch. 12. (**Objections to confirmation of Ch. 12 plan sustained: unfair discrimination in one class of claims, inappropriate interest rate without evidence of market rate of interest, liquidation analysis, discussion of misc. provisions contra to Code).
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Attys: Angela Baxter, Gerald Coleman

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Prtys: Dillon Construction Co. Home Federal Savings and Loan, Schrader Construction, Pine Lake Country Club, Phyllis and Gerald Dillon.
Attys: R.J. Brown, Michael G. Smith, Walter Murray, Robert L. Brown, William L. Owen, Joe Bell, Steve Quattlebaum, Watt Gregory.

In re Herbert Russell, **ED** 84-58M (April 21, 1986) **Ch.11.** (Trustees prevailed on defense of usury when Bank attempted to secure repayment of debt by filing complaint for recovery of lease payments that were collateral for note; Bank must forfeit all interest on unpaid principal of note; Trustees receive judgment for twice interest paid).
Prtys: First National Bank of Crossett, F.H. Martin and William Gibson-Trustees, Debtor.
Attys: Thomas Streetman, Charles Baker, Jim Smith, W.A. Eckert, Paul Lindsey, Michael Epley, Don Henry, David Duke, Derrell Dickens, Ike Scott, Paul Hoover, Tom McNeil, Joseph Strode, Paul Hickey, Carol Crafton, Jeffrey Shank, Etc.

In re Bill Allen Whitfield, **LR** 84-1416, AP 85-231 (Jan. 8, 1986): Law of Missouri applied to contract so interest rate charged to debtor was not usurious.
Prtys: Debtor, Associates Commercial Corporation.
Attys: Jerry Steward, Charles T. Coleman.

In re Watts, **PB** 85-36 (August 1, 1985) **Ch. 13:** No evidence that interest rate charged debtor was in violation of federal statute and therefore usurious.
Prtys: General Electric Credit Corporation, Debtors
Attys:

VALIDITY OF LIEN ISSUES

(See Lien Determination)

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In re Armstrong, **HE** 89-162M (April 18, 1991) **Ch.12** (objection to confirmation; present value; appraisals; discussed market rate of interest; held plan not feasible)
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Attys: John Henry, Bill Adair, Kent Rubens

In re Batchelor, **HE** 87-134M (August 11, 1988) **Ch. 12** (Objection to confirmation of the plan for failure to provide for retention of lien, improper valuation and interest rate related to present value, unsustainable homestead exemption).
Prtys: Debtors, Federal Land Bank, the Small Business Administration, and

Trustee.
Attys: David Carruth, Gerald Coleman, Bill Adair, Charles Tucker,

In re Butler, **HE** 99-54M, (Nov. 4, 1988) **Ch.12, 97 B.R. 508** (Ch. 12 confirmation hearing; confirmation denied for various reasons; farmland valuation included in opinion)
Prtys: First National Bank of Eastern Arkansas and Farm Credit Bank of St. Louis
Attys: Charles Baker, John Bridgforth, Gerald Coleman, David Solomon, A.L. Tenney

In re Central Arkansas Broadcasting Company, Inc., **LR** 170 B.R. 143 (March 30, 1994) **Ch. 7** (Experts calculated value of the tangible and intangible assets of the Debtor corporation for purposes of determining to what extent assets sold by Trustee were subject to Bank's security interest in tangibles.)
Prtys: Central Arkansas Broadcasting Co., First State Bank of Russellville, Trustee.
Attys: David Grace, Dale Finley, Jim Dowden.

In re Dunlap, 215 B.R. 867, **HE** 95-20169M (July 16, 1997) **Ch. 13** (secured creditor objected to confirmation of third modified plan proposing to surrender vehicle to creditor and treat balance of debt as unsecured--court ruled this is not authorized by the code; Code permits plan modification after confirmation, but modification must be necessitated by unanticipated substantial change in circumstances; where creditor had claim secured by lien in vehicle, plan must propose to pay value of vehicle calculated at retail, not wholesale, market.)
Prtys: Markham and Lisa Dunlap, Chrysler Financial Corp.
Attys: Gregory Niblock, Faber Jenkins

In re Thomas Patrick Harper, 157 B.R. 858, **HE** 91-20002M (Aug. 13, 1993) **Ch. 12:** (plan that provided for 25-year payment to one creditor did not unfairly discriminate against another creditor in different class that was subject to 30-year payment period.)
Prtys: Farm Credit Bank of St. Louis, Debtor.
Attys: Gerald Coleman, Arens Law Firm.

In re Harold and Cibul Johnson, **PB** 87-473M (September 28, 1988) **Ch. 12**. (Ruling Ch. 12 plan could not be confirmed because secured creditor's real estate collateral was undervalued).
Prtys: Debtors-in-possession, Merchants and Farmers Bank of Dumas.
Attys: Malcolm Bobo, Brooks Gill, Joseph Strode, Pat Harris.

In re Mendenhall, **ED** 84-052 (Aug. 13, 1985 (**54 Bankr. 44**) **Ch. 13** (allocation of burden of proof in objection to confirmation of Ch. 13 plan; burden of persuasion always on objecting creditor; burden of production shifts; creditor did not prevail on valuation issue so plan would be confirmed).
Prtys: Debtors, General Electric Credit Corporation
Attys: Henry Kinslow, Mel Sayes.

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In re Owens, **LR** 89-42664 (Aug. 3, 1990) **120 Bankr. 487; Ch 13.** (GMAC's objection to confirmation of Ch. 13 plan sustained; wholesale value as of date of confirmation hearing is proper standard for valuing collateral; no evidence that contract rate is current market rate so contract rate not approved).
Prtys: Debtors, General Motors Acceptance Corp.
Attys: Richard Kalkbrenner, Aaron Fuller.

In re Donald Trimble
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In re Wild Turkey Ranch, Inc., **JO** 84-57 (October 9, 1985) **Ch. 11:** (court determined valuation of ranch, portion of which was to be deeded to satisfy impaired claim of secured creditor as indubitable equivalent; confirmation denied because plan didn't specify which portions of the ranch would be deeded to creditor.)
Prtys: Debtor, Wilheim Nursing Home, Inc.
Attys: David Hodges, Charles Coleman, John Burris, Marvin Thaxton.

VENUE

In re Coleman, **PB** 86-55M (February 4, 1987), AP. No. 86-176M: (recommending district court order referring case to bankruptcy court be set aside as inconsistent with Local Rule 32 and 28 U.S.C. § 157 which automatically grants bankruptcy court original jurisdiction; district court improperly changed venue of the case as well and venue should remain in Ft. Smith until party in interest files a motion to change venue).
Prtys: J.O. Coleman (Debtor), William E. Johnson, Bear Camping Club.
Attys: Charles Boyd, Bill Walters, Geoffrey Treece, Richard Turbeville, Charles Banks.

WILLFUL AND MALICIOUS

In re James and Carrie Hall, **HS** 02-70062 (July 24, 2003) **295 B.R. 877,** AP 02-7090: court denied motion to dismiss filed under Rule 7012; creditor may proceed with dischargeability complaint under either § 523(a)(4)for embezzlement or § 523(a)(6) for willful and malicious conduct; pursuant to § 509 creditor is equitably subrogated to the rights of another creditor which first creditor is obligated to pay if debtor doesn't pay.
Prtys: Debtors, Reggie Jones
Attys: David Grace, Martha McAlister

In re Hoffman, 70 B.R. 155, **ED** 85-27M, AP 85-476M (Sept. 16, 1986)
Ch. 7. (Holding debt to bank would not be nondischargeable under 523(a)(6) because evidence of malice targeted at secured creditor when Debtor sold secured creditor's collateral was not sufficient)
Prtys: Debtor, National Bank of Commerce

Attys: Isaac Scott, Charles Coleman, Joseph Strode.

In re William Horne, **PB** 85-365M, AP 86-157M (August 18, 1986) **Ch. 7**: (Motion for summary judgment granted as to murder victim's estate's dischargeability action against the debtor for debt arising from willful and malicious conduct; debtor's conviction for 2nd degree murder established the elements of willfulness and malice under theory of collateral estoppel; offensive collateral estoppel not available to other plaintiffs because debtor's liability for battery did not establish willfulness and malice.)
Prtys: Bill Michel, John Lock, Matthew Webre, Debtor.
Attys: Henry Means, Randall Morley, W.M. Dickinson.

In re Marvin and Constance Jarrett, **HE** No. 03-13489 (2003) **Ch. 7**: Granting debtor's motion to dismiss under Rule 7012 dischargeability complaint for attorneys fees assessed debtor in state civil rights suit: attorneys' cause of action for willful and malicious injury (523(a)(6)) would not lie where attorneys were not injured party; 523(a)(7)not applicable as fine or forfeiture due a governmental entity; 523(a)(17) not applicable because only applies to debtors who are in forma pauperis prisoners, 523(a)(4) not applicable because debtor did not commit defalcation.
Prtys: Debtors, David Solomon, Edward Schieffler
Attys: James Valley, David Solomon, Edward Schieffler

In re Price, 264 B.R. 8, LR No. 98-44537M, AP No. 99-4190 (June 15, 2001) **Ch. 7.** (debt for injuries from gunshot wound inflicted by debtor on plaintiff was dischargeable because evidence did not show willful and malicious injury by preponderance of evidence under 523(a)(6)).
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Attys: Brad Cazort, Kathy Cruz.

In re Rose, **HE** 85-138M, AP 85-427M (September 25, 1986) **Ch. 7**: (Debtors not denied discharge under 727 because fully encumbered property which was transferred did not deplete assets available to pay creditors; debt did not arise from willful and malicious injury under 523(a)(6) but was the result of embezzlement and would be nondischargeable under 523(a)(4)).
Prtys: Louis and Joan Rose, Hugh and Tamara Rose, Caruthersville Production Credit Association.
Attys: Warren Dupwe, Robert Branch, Jan Thomas, Donis Hamilton.

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Prtys: Debtor, Mercantile Bank of Arkansas.
Attys: Floyd Healy, Scott Vaughn.

WRONGFUL EVICTION

In re Acro Corporation, **FA** 86-46M (Aug. 26, 1987) **Ch.11** (egg/chicken

contract; finding no oral or implied contract for caring for chickens; also finding no agency relationship b/t PCA and ACRO; and finding no tortious inference w/ contract; mentions wrongful eviction claim)
Prtys: Central Production Credit Association (PCA)
Attys: Larry Froelich, Steve Tennant, Connie Clark, Richard Miller

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In re MacMillan Petroleum Inc., **ED** 87-149M, AP 88-353M (June 6, 1990) (115 Bankr. 175) **Ch. 7.** (Summary judgment as to governing law denied. Summary judgment in favor of MCorp granted because MCorp, which held floating security interest in debtor's inventory, qualified as good faith purchaser for value and defeated equitable rights of reclaiming sellers).
Prtys: Debtors, Mcorp Management Solutions, Phillips Petroleum.
Attys: Derrell Dickens, Charles Coleman, Randal Wright, Trustee, Geoffrey Treece, Bobby Shepherd

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Attys: Thomas Byarlay, Charles Davidson

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Prtys: Farrell and Janet Copeland, Cook Sales, Inc.
Attys: Joe Barrett, Gregory Veach.

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Prtys: Debtors, Mirly Truck Sales.
Attys: Ralph Waddell, Constance Grayson.

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Ptys: Tom and Sandra Barton, Farmers Home Administration
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In re Truck Accessories Distributing Inc., 238 B.R. 444, **JO** 98-3173M (September 1, 1999) **Ch. 7 (**Debtor's agreement with inventory supplier was sale-or-return so goods were subject to liens of Debtor's other creditors and not consignment because creditor did not use statutory procedures to protect its interest in the goods under UCC).
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Attys: Anita Leonard, Chet Dunlap, Jeanette Robertson.

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Attys: Charles Camp, William Meeks, Terry Wynne, Claude Skelton, Thomas Streetman, Bob Lawson, Larry McCord, William K Ball, Overton S. Anderson.

In re MacMillan Petroleum Inc., **ED** 87-149M, AP 88-353M (June 6, 1990) (115 Bankr. 175) **Ch. 7.** (Summary judgment as to governing law denied. Summary judgment in favor of MCorp granted because MCorp, which held floating security interest in debtor's inventory, qualified as good faith purchaser for value and defeated equitable rights of reclaiming sellers).
Prtys: Debtors, Mcorp Management Solutions, Phillips Petroleum.
Attys: Derrell Dickens, Charles Coleman, Randal Wright, Trustee, Geoffrey Treece, Bobby Shepherd

4-2-501

In re Roy and Elizabeth Peeler, 145 B.R. 973, **HE** 88-20142M, AP 91-2005 (April 24, 1992) **Ch. 7.** (lender's security interest in crops did not extend to proceeds from sale of grain three years later; financing statement had insufficient description to perfect security interest and security interest could be avoided by trustee; property acquired by debtor postpetition was not subject to prepetition security agreement).
Prtys: Danny Schieffler-Trustee; First National Bank of Wynne, Debtors; Debtors.
Attys: Danny Schieffler, Tom B. Smith, Brad J. Beavers.

4-2-702

In re Bearhouse, 84 B.R. 552, **ED** 87-42M, AP Nos. 87-134M, 87-139M, 87-186M, 87-209M (Jan. 22, 1988) **Ch. 7.** (Farmer complied with state reclamation statute by giving oral demand within ten days of delivery of grain; failure to comply with bankruptcy statute requiring written demand meant farmer's right to reclaim was subject to bankruptcy trustee's avoiding powers; under Arkansas law, reclaiming farmer's right to grain was superior to attaching judgment lien creditor, and thus superior to right of trustee.)
Prtys: Debtor, Claude Hawkins-Trustee, Ladd Farms, National Bank of Commerce of Pine Bluff, U.S. Dept. Of Agriculture, Farmers Rice Mill Co. Inc., U.F. Coleman, Monticello Gin and Elevator Co., Commodity Credit Corp., Edward L. Oltmann, Gary Shrum, Virgie and Virginia Ray, Aetna Casualty and Surety Co.
Attys: Charles Camp, Terry Wynne, Claude Skelton, Thomas Streetman, Bob Lawson Larry McCord, William K Ball, Overton S. Anderson, William Meeks.

In re MacMillan Petroleum Inc., **ED** 87-149M, AP 88-353M (June 6, 1990) (115 Bankr. 175) **Ch. 7.** (Summary judgment as to governing law denied. Summary judgment in favor of MCorp granted because MCorp, which held floating security interest in debtor's inventory, qualified as good faith purchaser for value and defeated equitable rights of reclaiming sellers).
Prtys: Debtors, Mcorp Management Solutions, Phillips Petroleum.
Attys: Derrell Dickens, Charles Coleman, Randal Wright, Trustee, Geoffrey Treece, Bobby Shepherd

In re MPG, Inc., 222 B.R. 862, **FS** 95-40532M, AP 97-8054 (July 28, 1998) **Ch. 7.** (Creditor's pre-petition exercise of right of reclamation by oral demand, while valid under Arkansas law, was subject to Trustee's power to recover preference because Code requires written demand of return of goods).
Prtys: Ben Barry-T; Shrader Holding Company.
Attys: Ben Barry, Burton Stacey.

4-3-104

In re Martin, **LR** 90-41066 (Nov. 30, 1990) **Ch. 11** (Priority of liens in sale proceeds of home; validity of assignment of mortgage and note irrelevant because note was properly negotiated to first lien holder when indorsed in blank).
Prtys: Debtors, First Commercial Mortgage, Metropolitan National Bank, H.H. and Betty Ketcher
Attys: Not listed

85-3-118

In re Sanders, **ED** 84-90 (Jan. 21, 1987) **75 B.R. 751;** AP 85-186M: (Debtor who was accommodation maker or endorser on note by virtue of mortgage lien on her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note).
Prtys: Mary Ellen Sanders, First National Bank of Camden.
Attys: Allen Roberts, Joseph Hickey, Isaac Scott

In re Sanders, **ED** 84-90 (Jan. 21, 1987) **75 B.R. 746;** AP 85-185M: (Debtor who was accommodation maker or endorser on note by virtue of lien on her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note; Debtor husband not agent for debtor wife).
Prtys: Mary Ellen Sanders, First National Bank of Camden.
Attys: Allen Roberts, Joseph Hickey, Isaac Scott

4-3-202

In re Martin, **LR** 90-41066 (Nov. 30, 1990) **Ch. 11** (Priority of liens in sale proceeds of home; validity of assignment of mortgage and note irrelevant because note was properly negotiated to first lien holder when indorsed in blank).
Prtys: Debtors, First Commercial Mortgage, Metropolitan National Bank, H.H. and Betty Ketcher

Attys: Not listed

4-3-204

In re Martin, **LR** 90-41066 (Nov. 30, 1990) **Ch. 11** (Priority of liens in sale proceeds of home; validity of assignment of mortgage and note irrelevant because note was properly negotiated to first lien holder when indorsed in blank).
Prtys: Debtors, First Commercial Mortgage, Metropolitan National Bank, H.H. and Betty Ketcher
Attys: Not listed

85-3-606

In re Sanders, **ED** 84-90 (Jan. 21, 1987) **75 B.R. 751;** AP 85-186M: (Debtor who was accommodation maker or endorser on note by virtue of mortgage lien on her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note).
Prtys: Mary Ellen Sanders, First National Bank of Camden.
Attys: Allen Roberts, Joseph Hickey, Isaac Scott

In re Sanders, **ED** 84-90 (Jan. 21, 1987) **75 B.R. 746;** AP 85-185M: (Debtor who was accommodation maker or endorser on note by virtue of lien on her separate property was entitled to defenses of 85-3-606; no evidence of novation; under 85-3-118, Debtor's consent to note extension only available one time; increase in interest rate with extensions was material alteration without consent of uncompensated guarantor such that Debtor was discharged from liability on note; Debtor husband not agent for debtor wife).
Prtys: Mary Ellen Sanders, First National Bank of Camden.
Attys: Allen Roberts, Joseph Hickey, Isaac Scott

4-4-207

In re Rosalee Clara Moody, **FS** 90-12069, AP 2527M (July 14, 1992) **Ch. 7** **(**Widow-ch. 7 debtor endorsed checks from Ch. 13 Trustee to deceased husband without authority; Ch. 13 Trustee's complaint against bank dismissed because no direct cause of action for breach of warranty is created by virtue of 4-4-207; funds received by Ch. 7 trustee must be turned over to decedent's estate for proper administration).
Prtys: Royce Wallace, ch. 13 Trustee, Superior Federal Bank and Savings, Ben T. Barry-Ch. 7 Trustee.
Attys: James O'Hern, Rodney Mills, Rex Terry

4-4-302

In re Mid-South Cabinets & Millwork, Inc., **LR** 86-1773, AP 88-503, (Sept. 5, 1989) **Invol. Ch. 7.** (Bank paid creditor for check transferred by debtor but not paid by Bank's midnight deadline. Motion for summary judgment denied in preference action where affidavits did not establish which party's funds were transferred in satisfaction of the check).
Prtys: Trustee-James Allen Brown, Temple Eastex.
Attys: R.C. Thompson, Geoffrey Treece

4-7-207

In re Bearhouse, 84 B.R. 552, **ED** 87-42M, AP Nos. 87-134M, 87-139M, 87-186M, 87-209M (Jan. 22, 1988) **Ch. 7.** (Farmer who produced grain stored by debtor-warehouseman did not have priority over warehouseman's creditor who held warehouse receipts as collateral for preexisting loans, all owners of commingled fungible goods were tenants in common entitled to pro rata share in any distribution upon determination of shortage of grain.)
Prtys: Claude Hawkins-Trustee, Ladd Farms, National Bank of Commerce of Pine Bluff, U.S. Dept. Of Agriculture, Farmers Rice Mill Co. Inc., U.F. Coleman, Monticello Gin and Elevator Co., Commodity Credit Corp., Edward L. Oltmann, Gary Shrum, Virgie and Virginia Ray, Aetna Casualty and Surety Co.
Attys: Charles Camp, Terry Wynne, Claude Skelton, Thomas Streetman, Bob Lawson, Larry McCord, William K Ball, Overton S. Anderson, William Meeks.

4-7-502(1)

In re Bearhouse, 84 B.R. 552, **ED** 87-42M, AP Nos. 87-134M, 87-139M, 87-186M, 87-209M (Jan. 22, 1988) **Ch. 7.** (Title to grain was transferred to creditor when negotiable warehouse receipt was negotiated to creditor as collateral for loan to warehouseman)
Prtys: Debtor, Claude Hawkins-Trustee, Ladd Farms, National Bank of Commerce of Pine Bluff, U.S. Dept. Of Agriculture, Farmers Rice Mill Co. Inc., U.F. Coleman, Monticello Gin and Elevator Co., Commodity Credit Corp., Edward L. Oltmann, Gary Shrum, Virgie and Virginia Ray, Aetna Casualty and Surety Co.
Attys: Charles Camp, Terry Wynne, Claude Skelton, Thomas Streetman, Bob Lawson, Larry McCord, William K Ball, Overton S. Anderson, Ladd Farms.

4-9-103(1)(b)

In re McMullan, 196 B.R. 818, **ED** 94-11228M, AP 94-1516 (April 18, 1996) **Ch. 11.** (Mortgagee moved to foreclose on notes and mortgages secured by oil and gas leases and equipment in case removed to BR court; court allowed Trustee to sell property to be distributed pursuant to the Code; court held: no accord and satisfaction; no evidence of forgery; other indebtedness clauses valid to secure

notes and bind debtors; no evidence of Mortgagee's disposal of collateral without owners' consent; no violation of Equal Credit Opportunity Act when Mortgagee required wife to sign notes since leases and equipment used as collateral were community property; wife acted in bad faith in subsequently filing a chapter 13 when she had no income and her debt total made her ineligible for consumer reorganization).
Prtys: Debtors, National Bank of Commerce of El Dorado
Attys: Steve Gershner, Charles Camp, Michael Massey, Herman Ivester.

4-9-103(10(d)

In re Franklin Doty Miller, **FA** 89-15098, 89-125 (Jan. 30, 1990) **Ch 11.** (Fescue seed delivered to debtor by farmers was held pursuant to bailment contracts and was not property of estate; therefore, it was not subject to security interests granted by debtor in its after-acquired inventory). REVERSED (J. Waters, 9-14-90, No. 90-5026)
Prtys: Kinley Miller, Debtor, First State Bank of Purdy, Missouri, First National Bank of Rogers, Creditors' Committee
Attys: Craig Campbell, Jim Clark, James Clark, Jill Jacoway, Kent Barta, Field Wasson, Douglas Schrantz, Ron Boyer

4-9-104

In re M & P Equipment Co., **LR** 84-455M, AP 85-46M (July 23, 1985). **Ch. 7. (**In determination of secured status of Bank's lien, Bank's security interest in Debtor's accounts did not include proceeds from settlement of Debtor's tort claim for negligence; collateral estoppel of state court judgment precluded characterizing judgment proceeds as accounts; security interest can't attach to judgment for tort claim under 9-104(h)(k)).
Prtys: Richard Smith-Trustee, Union National Bank
Attys: Mary Jane Pruniski, David Duke, Katherine McGovern.

In re MPG Enterprises, Inc. **FA** 96-80848M (December 22, 1997) **Ch. 7.** (Bank properly perfected its security interest in rent proceeds by recording mortgage and assignment of rents; Article 9 does not afford means for perfecting such rents; pre-petition security interest is valid in post-petition rent proceeds).
Prtys: Pulaski Bank and Trust, Ben Barry-T
Attys: C.B. Blackard, III, Ben T. Barry.

4-9-105

In re Tracy's Flowers and Gifts, Inc., 264 B.R. 1, No. 00-11308, AP 00-1518 (June 12, 2001) **Ch. 7** (court dismissed trustee's complaint to determine validity of Bank's lien in property of debtor; Bank's lien was properly perfected even though no express grant of a security interest was present in the security agreement).
Prtys: William S. Meeks, Trustee; First Bank of South Arkansas

Attys: William S. Meeks, Paul Lindsey.

4-9-105(1)(d)

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player; River Valley Bank did not list the proper debtor on financing statement).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn, Darwin Davidson, Lance Miller.

In re Hot Shots Burgers & Fries, Inc., **LR** 91-41298M, AP No. 92-4130M (March 23, 1994) **Ch.** 7:(Debtor-individuals who operated debtor corporation and owned modular building were "debtors" under UCC as no proof existed to show that building was ever listed on corporate debtor's records as assets)
Prtys: Trustee-Randy Rice, Union Bank of Benton, Wheelees, Inc., Debtor, Twin City Bank.
Attys: Abe Bogoslavsky, Charles Baker, Floyd Healy, Frank Morledge, Scott Vaughn, Ron Goodman.

In re Duane Long, **PB** 86-41 (Oct. 21, 1987) 83 Bankr. 579. **Ch. 7** (upon objection to claim, debtor/accommodation maker was debtor under UCC and entitled to notice of sale of collateral pursuant to section 9-504; creditor not giving notice of sale not entitled to deficiency judgment).
Prtys: Debtor; First National Bank of Dewitt.
Attys: Stephen Gershner, Russell Berry.

4-9-106

In re Howell Enterprises, Inc., 105 B.R. 494, **HE** No. 88-170M (Sept. 8, 1989) **Ch. 11.** (Although funds were held by debtor subject to constructive trust in favor of plaintiff, defendant defeated trust as bona fide purchaser for value; by taking security interest by mortgage, Bank was purchaser of security interest in account receivable; debtor's right to secure payment was an account; security agreement gave bank security interest in after-acquired accounts because taken for new value in the ordinary course of business).
Prtys: Tradax America, First National Bank of Stuttgart, Debtor.
Attys: David Fuqua, Don. Henry, Michael Reif, Steven Shults, Baker Kurrus.

4-9-108

In re Howell Enterprises, Inc., 105 B.R. 494, **HE** No. 88-170M (Sept. 8, 1989)

Ch. 11. (Although funds were held by debtor subject to constructive trust in favor of plaintiff, defendant defeated trust as bona fide purchaser for value; by taking security interest by mortgage, Bank was purchaser of security interest in account receivable; debtor's right to secure payment was an account; security agreement gave bank security interest in after-acquired accounts because taken for new value in the ordinary course of business).
Prtys: Tradax America, First National Bank of Stuttgart, Debtor.
Attys: David Fuqua, Don. Henry, Michael Reif, Steven Shults, Baker Kurrus.

4-9-109

In re MacMillan Petroleum Inc., **ED** 87-149M, AP 88-353M (June 6, 1990) (115 Bankr. 175) **Ch. 7.** (Summary judgment as to governing law denied. Summary judgment in favor of MCorp granted because MCorp, which held floating security interest in debtor's inventory, qualified as good faith purchaser for value and defeated equitable rights of reclaiming sellers).
Prtys: Debtors, Mcorp Management Solutions, Phillips Petroleum.
Attys: Derrell Dickens, Charles Coleman, Randal Wright, Trustee, Geoffrey Treece, Bobby Shepherd

4-9-110

In re Roy and Elizabeth Peeler, 145 B.R. 973, **HE** 88-20142M, AP 91-2005 (April 24, 1992) **Ch. 7.** (lender's security interest in crops did not extend to proceeds from sale of grain three years later; financing statement had insufficient description to perfect security interest and security interest could be avoided by trustee; property acquired by debtor postpetition was not subject to prepetition security agreement).
Prtys: Danny Schieffler-Trustee; First National Bank of Wynne, Debtors;
Attys: Danny Schieffler, Tom B. Smith, Brad J. Beavers.

4-9-203

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player; River Valley Bank did not list the proper debtor on financing statement-security agreement so security interest never attached).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn,
Darwin Davidson, Lance Miller.

In re Endicott, 239 B.R. 529, **JO** 99-30499M (September 21, 1999) **Ch. 7.** (Bank

granted relief from stay to liquidate security interest in proceeds of crop loss program even though proceeds had not been assigned by debtor to Bank; Bank entitled to relief where no equity in proceeds existed for benefit of unsecured creditors).
Prtys: Gary and Judy Endicott, MidSouth Bank.
Attys: Warren Dupwe, Jay Scholtens, James Luker-Trustee.

In re MacMillan Petroleum Inc., **ED** 87-149M, AP 88-353M (June 6, 1990) (115 Bankr. 175) **Ch. 7.** (Summary judgment as to governing law denied. Summary judgment in favor of MCorp granted because MCorp, which held floating security interest in debtor's inventory, qualified as good faith purchaser for value and defeated equitable rights of reclaiming sellers).
Prtys: Debtors, Mcorp Management Solutions, Phillips Petroleum.
Attys: Derrell Dickens, Charles Coleman, Randal Wright, Trustee, Geoffrey Treece, Bobby Shepherd

In re Franklin Doty Miller, **FA** 89-15098, 89-125 (Jan. 30, 1990) **Ch 11.** (Fescue seed delivered to debtor by farmers was held pursuant to bailment contracts and was not property of estate; therefore, it was not subject to security interests granted by debtor in its after-acquired inventory). REVERSED (J. Waters, 9-14-90, No. 90-5026)
Prtys: Kinley Miller, Debtor, First State Bank of Purdy, Missouri, First National Bank of Rogers, Creditors' Committee
Attys: Craig Campbell, Jim Clark, James Clark, Jill Jacoway, Kent Barta, Field Wasson, Douglas Schrantz, Ron Boyer

In re Roy and Elizabeth Peeler, 145 B.R. 973, **HE** 88-20142M, AP 91-2005 (April 24, 1992) **Ch. 7.** (lender's security interest in crops did not extend to proceeds from sale of grain three years later; financing statement had insufficient description to perfect security interest and security interest could be avoided by trustee; property acquired by debtor postpetition was not subject to prepetition security agreement).
Prtys: Danny Schieffler-Trustee; First National Bank of Wynne, Debtors.
Attys: Danny Schieffler, Tom B. Smith, Brad J. Beavers.

In re Tracy's Flowers and Gifts, Inc., 264 B.R. 1, No. 00-11308, AP 001518 (June 12, 2001) **Ch. 7** (court dismissed trustee's complaint to determine validity of Bank's lien in property of debtor; Bank's lien was properly perfected even though no express grant of a security interest was present in the security agreement).
Prtys: William S. Meeks, Trustee; First Bank of South Arkansas
Attys: William S. Meeks, Paul Lindsey.

4-9-204

In re Contractor's Glass Co., Inc. **FS,** 152 B.R. 270, No. 89-12444M, AP No. 91-2503 (Nov. 18, 1992) **Ch. 7.**

(Under Arkansas law, Bank's security interest in personal property under future advances clause was superior to that of second creditor with intervening lien; date of perfection of future advances relates back to original security agreement filing date).
Prtys: J.J. Faulkner, Contractor's Glass Co., City National Bank.
Attys: Ronald Boyer, John Lee-Trustee, Michael Redd, Ben Barry.

In re Howell Enterprises, Inc., 105 B.R. 494, **HE** No. 88-170M (Sept. 8, 1989) **Ch. 11.** (Although funds were held by debtor subject to constructive trust in favor of plaintiff, defendant defeated trust as bona fide purchaser for value; by taking security interest by mortgage, Bank was purchaser of security interest in account receivable; debtor's right to secure payment was an account; security agreement gave bank security interest in after-acquired accounts because taken for new value in the ordinary course of business).
Prtys: Tradax America, First National Bank of Stuttgart, Debtor.
Attys: David Fuqua, Don. Henry, Michael Reif, Steven Shults, Baker Kurrus.

4-9-207

In re Tracy's Flowers and Gifts, Inc., 264 B.R. 1, No. 00-11308, AP 001518 (June 12, 2001) **Ch. 7** (court dismissed trustee's complaint to determine validity of Bank's lien in property of debtor; Bank's lien was properly perfected even though no express grant of a security interest was present in the security agreement).
Prtys: William S. Meeks, Trustee; First Bank of South Arkansas
Attys: William S. Meeks, Paul Lindsey.

4-9-302

In re Endicott, 239 B.R. 529, **JO** 99-30499M (September 21, 1999) **Ch. 7.** (Bank granted relief from stay to liquidate security interest in proceeds of crop loss program even though proceeds had not been assigned by debtor to Bank; purpose of federal regulation permitting debtor to execute assignment of proceeds was not to create alternate federal filing scheme for security interests in such payments).
Prtys: Gary and Judy Endicott, MidSouth Bank.
Attys: Warren Dupwe, Jay Scholtens, James Luker--Trustee.

In re Lee's National Pump and Supply Co, **JO** 86-161M, AP 86-518M (February 1, 1988) **Ch. 7.** Method of perfection of security interest in Mack truck rig was by filing financing statements pursuant to 4-9-302(1) and not by vehicle registration.
Prtys: Stephen Friedrich, Debtor, Security Bank of Paragould.
Attys: Scott Manatt, Robert Branch, Warren Dupwe, Jim Lyons, Charles Coleman.

In re Franklin Doty Miller, **FA** 89-15098, 89-125 (Jan. 30, 1990) **Ch 11.** (Fescue seed delivered to debtor by farmers was held pursuant to bailment contracts and

was not property of estate; therefore, it was not subject to security interests granted by debtor in its after-acquired inventory). REVERSED (J. Waters, 9-14-90, No. 90-5026)
Prtys: Kinley Miller, Debtor, First State Bank of Purdy, Missouri, First National Bank of Rogers, Creditors' Committee
Attys: Craig Campbell, Jim Clark, James Clark, Jill Jacoway, Kent Barta, Field Wasson, Douglas Schrantz, Ron Boyer

In re Roberts, **LR** 02-1345, 2003, **Ch. 7**: Under article 9-302(3), only way for creditor to perfect security interest in automobile not held as inventory by debtor is to file under the state Motor Vehicle Act; Act gives trustee, as perfected judgment lien creditor under section 544, priority over liens not perfected under the act; bank's security interest unperfected under Act may be avoided by Trustee.
Prtys: Randy Rice-Trustee, Twin City Bank
Attys: Michael Knollmeyer, Wade Hodge

In re Tracy's Flowers and Gifts, Inc., 264 B.R. 1, No. 00-11308, AP 001518 (June 12, 2001) **Ch. 7** (court dismissed trustee's complaint to determine validity of Bank's lien in property of debtor; Bank's lien was properly perfected even though no express grant of a security interest was present in the security agreement).
Prtys: William S. Meeks, Trustee; First Bank of South Arkansas
Attys: William S. Meeks, Paul Lindsey.

4-9-303(1)

In re MacMillan Petroleum Inc., **ED** 87-149M, AP 88-353M (June 6, 1990) (115 Bankr. 175) **Ch. 7.** (Summary judgment as to governing law denied. Summary judgment in favor of MCorp granted because MCorp, which held floating security interest in debtor's inventory, qualified as good faith purchaser for value and defeated equitable rights of reclaiming sellers).
Prtys: Debtors, Mcorp Management Solutions, Phillips Petroleum.
Attys: Derrell Dickens, Charles Coleman, Randal Wright, Trustee, Geoffrey Treece, Bobby Shepherd

In re Jerry and Penny Toombs, 01-30784, AP 01-3053 (September 25, 2002) **Ch. 13:** Bank's motion for summary judgment denied; insufficient evidence to show Bank had perfected security interest in after-acquired property under Ark Code Ann 4-9-303(1); conflict as to whether government payments constitute proceeds under section 552).
Prtys: Peoples Bank of Paragould, Debtors, Trustee, U.S. Dept. of Agriculture.
Attys: David Coop, Jan Thomas, Bryant Marshall, Gwendolyn Hodge.

4-9-306

In re Lewis, **HE** 86-2002, AP 88-456M (Oct. 2, 1990) **Ch. 7**: (Creditor's security interest in destroyed truck continued in insurance proceeds to extent of value of destroyed truck; insurer liable to creditor for value of truck but entitled to indemnity from debtors for amounts paid to Bank).
Prtys: First National Bank of Phillips County, Canal Insurance, Debtors.
Attys: Michael Lewis, David Solomon, Jesse Porter, Charles Roscopf

4-9-312(5)

In re Contractor's Glass Co., Inc. **FS,** 152 B.R. 270, No. 89-12444M, AP No. 91-2503 (Nov. 18, 1992) **Ch. 7.** (Under Arkansas law, Bank's security interest in personal property under future advances clause was superior to that of second creditor with intervening lien; date of perfection of future advances relates back to original filing date).
Prtys: J.J. Faulkner, Contractor's Glass Co., City National Bank.
Attys: Ronald Boyer, John Lee-Trustee, Michael Redd, Ben Barry.

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn,
Darwin Davidson, Lance Miller.

4-9-401(1)(a)

In re Endicott, 239 B.R. 529, **JO** 99-30499M (September 21, 1999) **Ch. 7.** (Bank granted relief from stay to liquidate security interest in proceeds of crop loss program even though proceeds had not been assigned by debtor to Bank; Bank entitled to relief where no equity in proceeds existed for benefit of unsecured creditors).
Prtys: Gary and Judy Endicott, MidSouth Bank.
Attys: Warren Dupwe, Jay Scholtens, James Luker--Trustee.

In re Franklin Doty Miller, **FA** 89-15098, 89-125 (Jan. 30, 1990) **Ch 11.** (Fescue seed delivered to debtor by farmers was held pursuant to bailment contracts and was not property of estate; therefore, it was not subject to security interests granted by debtor in its after-acquired inventory). REVERSED (J. Waters, 9-14-90, No. 90-5026)
Prtys: Kinley Miller, Debtor, First State Bank of Purdy, Missouri, First National Bank of Rogers, Creditors' Committee
Attys: Craig Campbell, Jim Clark, James Clark, Jill Jacoway, Kent Barta, Field

Wasson, Douglas Schrantz, Ron Boyer

4-9-401(1)(c)

In re Hot Shots Burgers & Fries, Inc., **LR** 91-41298M, AP No. 92-4130M (March 23, 1994) **Ch.** 7:(Security interest in equipment was perfected upon filing of financing statement in office of secretary of state, where debtor had place of business in more than one county; so creditor first to file with secretary of state had priority.)
Prtys: Trustee-Randy Rice, Union Bank of Benton, Wheelees, Inc., Debtor, Twin City Bank.
Attys: Abe Bogoslavsky, Charles Baker, Floyd Healy, Frank Morledge, Scott Vaughn, Ron Goodman.

In re Hot Shots Burgers & Fries, Inc., **LR** 91-41298M, AP No. 92-4130M (March 23, 1994) **Ch.** 7:(Seller's Security interest in equipment was unperfected because not filed in county of individual's residence.)
Prtys: Trustee-Randy Rice, Union Bank of Benton, Wheelees, Inc., Debtor, Twin City Bank.
Attys: Abe Bogoslavsky, Charles Baker, Floyd Healy, Frank Morledge, Scott Vaughn, Ron Goodman.

In re Hilyard Drilling Co. 60 B.R. 500, **ED** 85-10M, AP 85-346M Jan. 17, 1989) **Ch. 11.** (NBC lost its superior lien status in its security interest in accounts receivable because it filed a new financing statement instead of a continuation statement such that first lien lapsed and Worthen's junior lien became senior.)
Prtys: Debtor, National Bank of Commerce of El Dorado, Worthen Bank.
Attys: William Prewett, Davis Thomas, David Duke, Charles Baker, James Smith, James Cook, Baker Kurrus, Peter Heister, Ian Vickery, Scott Vaughn.

4-9-402(1)

In re Contractor's Glass Co., Inc. **FS,** 152 B.R. 270, No. 89-12444M, AP No. 91-2503 (Nov. 18, 1992) **Ch. 7.** (Under Arkansas law, copy of security agreement is sufficient as financing statement if it contains same information as financing statement and is signed by the debtor).
Prtys: J.J. Faulkner, Contractor's Glass Co., City National Bank.
Attys: Ronald Boyer, John Lee-Trustee, Michael Redd, Ben Barry.

In re Contractor's Glass Co., Inc. **FS,** 152 B.R. 270, No. 89-12444M, AP No. 91-2503 (Nov. 18, 1992) **Ch. 7.** (Under Arkansas law, materialmen's lien attaches to real estate it improves and is excluded from UCC dealing with security interests in personal property).
Prtys: J.J. Faulkner, Contractor's Glass Co., City National Bank.
Attys: Ronald Boyer, John Lee-Trustee, Michael Redd, Ben Barry.

In re Elbert Crawford, III, 00-43455M (Involuntary); In re Ace Sports

Management, LLC, **LR** 0043456M Consolidated AP 00-4162M. (November 28, 2001) **Invol. Ch. 7 cases** (Granting setoff to NBA basketball player contracting with Crawford for agent services; establishing lien priorities as to the various creditors holding security interests in agent contract between Crawford and NBA player; Merchants and Planters' description in financing statement was sufficient under section 402(1); River Valley Bank did not list the proper debtor on financing statement; Union Planter's financing statement was sufficient even though not signed by proper debtor because bank had separate instrument properly signed so signature was scrivener's error).
Prtys: Ace Sports Management, Elbert Crawford, Derek Fisher, River Valley Bank, Bonnie Johnson, Union Bank of Bryant, National Bank of Arkansas, Planters Bank of Sparkman.
Attys: Ike Scott, Alex Streett, James Coutts, Scott Vaughn, Darwin Davidson, Lance Miller.

In re Roy and Elizabeth Peeler, 145 B.R. 973, **HE** 88-20142M, AP 91-2005 (April 24, 1992) **Ch. 7.** (lender's security interest in crops did not extend to proceeds from sale of grain three years later; financing statement had insufficient description to perfect security interest and security interest could be avoided by trustee; property acquired by debtor postpetition was not subject to prepetition security agreement).
Prtys: Danny Schieffler-Trustee; First National Bank of Wynne; Debtors.
Attys: Danny Schieffler, Tom B. Smith, Brad J. Beavers.

In re Scott, **ED** 87-177 (Jan. 17, 1990) **113 Bankr. 516**: (1) (Individual debtors created corporation and transferred business assets to it; corporation acquired inventory and granted security interest to creditor. Bank's security interest in after-acquired property of individual debtors was defeated by inventory creditor under Ark. Code Ann. 9-402(7). (2) Bank wrongfully attached business assets, but debtors did not prove damages). AFFIRMED (J. Harris 4/19/90 No. 90-1014)
Prtys: Debtors, Bank of Yellville, Borg-Warner Acceptance Corp, ITT Commercial Finance Corp.
Attys:William R. Gibson, Claude Hawkins, Susan Gunter, Frank Bailey, Bob Depper, Paul Lindsey, Phillip Pesek, William Randall Wright.

In re Wallace, **FS** 84-256 (March 13, 1986) **61 Bankr. 54, Ch. 11**: Financing statements filed under trade name of debtors insufficient pursuant to 9-402 so creditor not perfected and lien subject to avoidance by DIP pursuant to section 544; Ch. 11 plan not confirmed because dissenting creditor not classified.
Prtys: Debtors in Possession, Case Credit Corporation
Attys: Ben Barry; Maurice Rogers.

4-9-402(6)

In re Benjamin Long, **HE** 87-21, AP 87-303 (June 16, 1988) **Ch. 7**. (Lien in mobile home perfected only per Arkansas statute; lien not fixture perfected pursuant to section 9-402(6)).

Prtys: James C. Luker, Trustee; First National Bank of Phillips Co
Attys: James C. Luker; David Solomon.

4-9-403

In re Steve Masters, **HE** 00-20359M, AP 01-2008
(Jan. 2002) **Ch. 7**: (Trustee could not avoid Government's liens in debtor's personal property despite the fact that error in clerk's office as to properly filed financing statement resulted in temporary loss of perfection by Government).
Prtys: Trustee-James Luker, Farm Service Agency (U.S.D.A.)
Attys: Fletcher Jackson, James Luker.

In re Vincent Gaines Implement Co., Inc., **LR** 86-30, AP 86-59M (Aug. 5, 1986)**71 Bankr. 14, Ch. 11**: Incorrect continuation financing statement was not seriously misleading and lien not subject to avoidance by Dip under section 544.
Prtys: Debtor, U.S. Small Business Administration
Attys: Stephen Gershner, Katherine McGovern, Michael Price, Doug Chavis.

4-9-504(1,3)

In re Duane Long, **PB** 86-41 (Oct. 21, 1987) 83 Bankr. 579. **Ch. 7** (upon objection to claim, debtor/accommodation maker was debtor under UCC and entitled to notice of sale of collateral pursuant to section 9-504; creditor not giving notice of sale not entitled to deficiency judgment).
Prtys: Debtor; First National Bank of Dewitt.
Attys: Stephen Gershner, Russell Berry.

In re McMullan, 196 B.R. 818, **ED** 94-11228M, AP 94-1516 (April 18, 1996) **Ch. 11.** (Mortgagee moved to foreclose on notes and mortgages secured by oil and gas leases and equipment in case removed to BR court; court allowed Trustee to sell property to be distributed pursuant to the Code; court held: no accord and satisfaction; no evidence of forgery; other indebtedness clauses valid to secure notes and bind debtors; no evidence of Mortgagee's disposal of collateral without owners' consent; no violation of Equal Credit Opportunity Act when Mortgagee required wife to sign notes since leases and equipment used as collateral were community property; wife acted in bad faith in subsequently filing a chapter 13 when she had no income and her debt total made her ineligible for consumer reorganization).
Prtys: Debtors, National Bank of Commerce of El Dorado
Attys: Steve Gershner, Charles Camp, Michael Massey, Herman Ivester.

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In re Prieto, 2001 WL 114937, Fla. No. 00-12476 BKC-RAM (Jan. 30, 2001) **Ch. 7.** (credit card debt to American Express was nondischargeable because of fraud under 523(a)(2)(A)).
Prtys: American Express, Debtor-Francisco Prieto
Attys: Gary J. Lublin, Emmanuel Perez.

In re Borek, 260 B.R. 886, Fla. 99-11741-BKC-RAM, AP No. 00-1136 (April 4, 2001) **Ch 7.** (Ct. ruled tomato broker did not charge double commissions in violation of federal PACA law and technical violations by broker did not result in damages to Debtor so that recovery of commissions by trustee would not be allowed).
Prtys: Trustee-Marcia Dunn, Weis-Buy Services
Attys: Michael Keaton, Jay Gamberg, Robert Hustead.

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Prtys: Debtor, Marianne Tarbox.
Attys: Frank Brady, Eugene Lewis.

1998

In re Dollar Time Group, Inc., 223 B.R. 237, **S.D. Florida** 95-22816-BKC, RBR, AP 96-0380-BKC, RBR (July 20, 1998) **Ch. 7 (**recommended findings of fact and conclusions of law in noncore, related proceeding; loan from corporate debtor to employees did not violate fiduciary duty of employees, but undisclosed transfers when employees were board members violated duty of loyalty, judgment against employees would be reduced by amount previously paid by employees' business to debtor).
Prtys: Kenneth Welt, Trustee; Dollar Time Group, Inc.: Joseph Sasson, Jeffrey Klansky.
Attys: Irwin Fingerit, Ronald Neiwirth, Arthur Rice.

In re Marco Levy, 221 B.R. 559,**S.D. Fla. (Ft. Lauderdale)** 95-22861-BKC-PGH, AP 95-1597-BKC-PGH-A (March 27, 1998)**Ch. 7.** (court sustained objections to discharge and claim of homestead exemption; Canadian debtor had failed to explain loss of assets to meet liabilities so discharge denied; claim of exemption in homestead denied because debtor lacked domicile in Florida during 180 days preceding bankruptcy so Florida exemptions not available to Debtor).

Prtys: Debtor, Attorney General of Quebec, Lucy C. DeBraccio-T.
Attys: Robert Fracasso, Ronald G. Neiwirth, Robert Meyer.

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Prtys: Debtor, Chase Manhattan Mortgage Corp., Metropolitan Dade County.
Attys: Carolina A. Lombardi, Peter Spindel, Carolyn Weir Broadwater, Nancy N. Herkert.

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Prtys: Debtor, Community Bank of Homestead
Attys: Robert Hustead, Martin Sandler, Hywel Leonard, Karen Kantner.

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In re Mastercraft Graphics, Inc., 157 B.R. 914, **S.D. Fla. (Miami)** 91-23768-BKC-AKC; AP 92-0682 (August 13, 1993) **Ch. 7.** (Finding insider preference could be avoided if it benefitted inside guarantor of debtor's obligation to supplier; irregular or unusual payments not in ordinary course of business; party asserting o.c. exception has burden of proof). **Affirmed** by District Court, S.D. Fla.
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Attys: Corali-Lopez-Castro; Susan Lasky

In re Prime Motors, Inc., **Fla.** No. 90-16604 (June 29, 1993) **Ch. 11:** Administrative expense claimant not entitled to priority status under 1114(a) because neither retiree nor dependent.
Prtys: Debtor, Juliana Krisch
Attys: Jefferson Knight, Cynthia Jackson, Willkie Farr & Gallagher, Lynn H. Gelman.