APPENDIX J

CASES ALLOWING CLAIM SPLITTING BEFORE *NOBELMAN*, ORGANIZED BY CIRCUIT

A. First Circuit

Massachusetts

Loader v. Charlton Credit Union (*In re Loader*), 128 B.R. 13 (Bankr. D. Mass. 1991) (Chapter 13 plan may bifurcate a home mortgage into its secured and unsecured portions. "Nothing in either § 506 or § 1322(b)(2) suggests that the term 'secured claims' appearing in the latter section is to be given any different meaning in § 1322(b)(2) than in other provisions of the Bankruptcy Code. If Congress wanted to make an exception to the bifurcation principle of § 506, it would have expressly done so, as it did in § 1111(b)(2)." Debtors must make payments of principal and interest in accordance with the terms of the original notes until principal payments total the present value of the home.). *Accord Zablonski v. Sears Mortgage Corp. (In re Zablonski),* 153 B.R. 604 (Bankr. D. Mass. 1993).

New Hampshire

Ford Motor Credit Co. v. Phillips (*In re Phillips*), 142 B.R. 15 (Bankr. D.N.H. 1992) (Section 1322(b)(2) permits a Chapter 13 debtor to modify the rights of an automobile secured claim holder by bifurcating the claim into its secured and unsecured portions. Bifurcation may be crammed down over the objection of the claim holder secured in personal property.).

Puerto Rico

In re Torres Lopez, 138 B.R. 348 (D.P.R. 1992) (Chapter 13 debtor can use § 506(a) to split a home mortgage into its secured and unsecured portions without violating the antimodification provisions of § 1322(b)(2). To hold otherwise "would encourage the industry to design all loans so that they would be secured by real estate that is the principal residence in order to take advantage of (b)(2) protection.").

Rhode Island

In re Cardinale, 142 B.R. 42 (Bankr. D.R.I. 1992) (Reaffirming *In re DiQuinzio,* 110 B.R. 628 (Bankr. D.R.I. 1990), Chapter 13 debtor can treat a second mortgage as an unsecured claim when the value of the property is insufficient to secure any portion of the second mortgage. *Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992) does not change this result. Following *Bellamy v. Federal Home Loan Mortgage Corp. (In re Bellamy),* 962 F.2d 176 (2d Cir. 1992), the "secured claim" addressed in § 1322(b)(2) is defined by § 506(a) and the "claim" that is protected from modification in § 1322(b)(2) must first be a secured claim under § 506(a). Because "strip downs" in Chapter 13 cases are a departure from practice under the former Act, bifurcation and reinstatement of a mortgage secured by a principal residence are consistent with the language of § 1322(b)(2); *Dewsnup* "has created no inconsistency in that analysis."). *Accord In re Saglio,* 153 B.R. 4 (Bankr. D.R.I. 1993).

In re Diquinzio, 110 B.R. 628 (Bankr. D.R.I. 1990).

B. Second Circuit

Bellamy v. Federal Home Loan Mortgage Corp. (*In re Bellamy),* 962 F.2d 176 (2d Cir. 1992) ("[C]onsistent with the other circuits that have addressed this issue . . . § 1322(b)(2) prohibits modification of a residential mortgage lender's rights only insofar as the mortgagee holds a secured claim. . . . whether—and the extent to which—the mortgagee holds a secured claim must first be determined according to § 506(a). . . . [B]ifurcating . . . into unsecured and secured portions does not, for purposes of § 1322(b)(2), modify [the mortgagee's] 'rights,' but rather simply determines how, under the Code, its right to payment must be satisfied. . . . § 1322(b)(2) protects from modification the rights of a holder of a certain type of *secured claim*—one for which the only security is the real property that is the debtor's principal residence. . . . [W]hether, and the extent to which, one holds a secured claim must in the first instance be determined according to § 506(a). . . . [*Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992)] did not hold that `secured claim' in other provisions of the Code was never to be construed as it was in § 506(a). Its analysis was limited to § 506(d) and the facts before it. . . . [T]he Code *expressly* contemplates that a Chapter 13 debtor's plan of reorganization may today, contrary to pre-Code practice, deal with creditors whose claims are secured by real property. . . . As a result, applying § 1322(b)(2) in light of § 506(a) does not alter well-settled bankruptcy principles. To the contrary, it furthers Congress' scheme under Chapter 13 by allowing the adjustment of claims secured by real property. . . . If a debtor seeks to cure a default and reinstate a long-term residential mortgage, two steps must be taken: 1) the arrearages must be paid within a reasonable time, and 2) the parties' original contract must be reinstated. . . . [T]he *terms* of payment must, at a minimum, remain unchanged or the prohibition on modification is meaningless. . . . In light of the goals of Chapter 13, § 1322(b)(2) and (5) must be read as allowing a debtor to reinstate in its stripped down form a residential mortgage that comes due beyond the life of the plan. The debtor must cure arrearages within a reasonable time, *see* § 1322(b)(5), but need make scheduled mortgage payments only until the secured claim is

fully paid. . . . Such treatment of a residential mortgage lender's secured claim is neither a modification prohibited by § 1322(b)(2) nor does it implicate §§ 1325(a)(5)(B) or 1322(c).").

C. Third Circuit

Sapos v. Provident Institution of Savings in the Town of Boston (*In re Sapos*), 967 F.2d 918 (3d Cir. 1992) (A Chapter 13 debtor with an undersecured home mortgage can use bifurcation under § 506(a) to strip down a home mortgage to the value of the collateral and can use the curing default provisions of § 1322(b)(5) to then deal with the secured portion of the mortgage holder's claim. The Supreme Court's *Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992) opinion does not change this result for the reasons stated by the Second Circuit in *Bellamy v. Federal Home Loan Mortgage Corp. (In re Bellamy),* 962 F.2d 176 (2d Cir. 1992). However, if the Chapter 13 debtor bifurcates a home mortgage and proposes to deal with the remaining secured claim under § 1322(b)(5), the debtor must pay the arrearages in full within a reasonable time and continue to make the monthly payments in accordance with the original terms of the note "until the principal has been paid in an amount equal to the value of the property established under § 506(a)." Debtor's plan fails this test because debtor does not propose to pay the arrearage separately and in addition to payment of the full amount of the mortgage holder's allowed secured claim. Debtor must pay arrearage claim of $11,188.12 and also pay $17,000 in unpaid principal to satisfy § 1322(b)(5).).

Wilson v. Commonwealth Mortgage Corp., 895 F.2d 123 (3d Cir. 1990) ("[W]e hold today that § 1322(b)(2) does not preclude the modification of any 'unsecured' portion of an undersecured claim. . . . [W]e agree with the Ninth Circuit's view that because the 'other than' phrase is best read to refer to secured claims, the 'other than' phrase should be read to limit modification only of that portion of the claim that is secured.").

New Jersey

In re Harris, 94 B.R. 832 (D.N.J. 1989) (The protection of § 1322(b)(2) does not apply to unsecured or undersecured mortgage loans—claim splitting under § 506 is not an impermissible modification. Case reverses *In re Hynson,* 66 B.R. 246 (Bankr. D.N.J. 1986) and *In re Smith,* 63 B.R. 15 (Bankr. D.N.J. 1986).).

Pennsylvania, Eastern District

Taras v. Commonwealth Mortgage Corp. of America (*In re Taras*), 136 B.R. 941 (Bankr. E.D. Pa. 1992) (*Wilson v. Commonwealth Mortgage Corp.,* 895 F.2d 123 (3d Cir. 1990) survived the Supreme Court's decision in *Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992) and the subsequent decision by the Third Circuit in *First National Fidelity Corp. v. Perry,* 945 F.2d 61 (3d Cir. 1991). "The narrow holding of *Dewsnup* is that it prevented the use of 11 U.S.C. §§ 506(a), (d), to reduce the amount of a lender's secured claim in a Chapter 7 case. . . . The court was concerned solely with lien avoidance which extends beyond a bankruptcy case, arising by effect of the 'lien avoidance' language of § 506(d). . . . The court does not anywhere

suggest that bifurcation of liens in the context of a reorganization, either under Chapter 13 or Chapter 11 of the Code, is disapproved, or could possibly be read out of § 506(a).” In dicta, *Perry* does not preclude these Pennsylvania debtors from paying the secured portion of their home mortgage in full during the life of the plan because Pennsylvania affords mortgagor’s substantial rights to pay off their mortgages notwithstanding a pending sheriff’s sale that were not available to the New Jersey debtors in *Perry.*).

Owens v. Fleet Mortgage (*In re Owens*), 132 B.R. 293 (Bankr. E.D. Pa. 1991) (Chapter 13 debtor can bifurcate mortgage holder’s claim for purposes of distribution. Confirmed plan calling for distribution of present value of $10,000 as the secured portion of undersecured mortgage holder claim is binding on the mortgage holder and precludes postconfirmation relief from the stay. However, in an adversary proceeding filed before confirmation and decided after confirmation, bankruptcy court can determine that allowed amount of secured claim is different from the amount of distribution called for under the plan. When court determines that secured claim is actually $15,000, if debtor goes ahead with plan calling for distribution of only $10,000, residual security interest will survive completion of payments under the plan. Debtor has option to amend confirmed plan to deal with the entire $15,000 allowed secured claim. Sections 502(a) and 1327(a) are harmonized by interpreting § 1327(a) “as dictating that the plan binds the parties to the amount the trustee will distribute under the plan, but is not binding as to the amount of the claim.”).

Cole v. Cenlar Federal Savings Bank (*In re Cole*), 122 B.R. 943 (Bankr. E.D. Pa. 1991) (Applying *Wilson v. Commonwealth Mortgage Corp.,* 895 F.2d 123 (3d Cir. 1990), § 1322(b)(2) does not preclude bifurcation of a home mortgage into its secured and unsecured portions pursuant to § 506(a). However, once a debtor has chosen to cure arrearages, § 1322(b)(5) requires that it be done by curing all defaults in a reasonable time and maintaining current payments through the plan. The debtor cannot modify the loan terms through revision of amortization tables nor can the debtor deduct the unsecured portion of the mortgage from the arrearages in calculating the amount necessary to cure defaults. Section 1322(b)(3)—which allows the debtor to cure or waive any default—is only applicable in situations not within the scope of § 1322(b)(5), thus § 1322(b)(3) applies to claims based upon obligations on which the last payment is due before the final payment is due under the plan. Where the debtor chooses to cure arrearages on a claim that has a last payment after the last payment due under the plan, only § 1322(b)(5) is available, and, after bifurcation, the debtor cannot otherwise alter the repayment terms or avoid full payment of the arrearages during the life of the plan.).

Kessler v. Homestead Savings (*In re Kessler*), 99 B.R. 635 (Bankr. E.D. Pa. 1989).

Kehm v. Citicorp Homeowners Service, Inc. (*In re Kehm*), 90 B.R. 117 (Bankr. E.D. Pa. 1988).

Bender v. Commonwealth Mortgage Co. of America (*In re Bender*), 86 B.R. 809 (Bankr. E.D. Pa. 1988).

Caster v. United States, 77 B.R. 8 (Bankr. E.D. Pa. 1987).

Spadel v. Household Consumer Discount Co., 28 B.R. 537 (Bankr. E.D. Pa. 1983).

D. Fourth Circuit

North Carolina, Eastern District

Homeowners Funding Co. v. Skinner, 129 B.R. 60 (E.D.N.C. 1991) (Neither bifurcation of the debt nor curing of default constitute modification of the secured debt for purposes of § 1322(b)(2). After bifurcation, § 1325(a)(5) does not require that the debtor pay the secured portion of the claim in full during the life of the plan. Section 1325(a)(5) is not applicable in a case in which the debtor bifurcates a secured claim, cures the arrearages, and maintains regular monthly payments until principal and accrued interest on the secured portion have been paid. "Cramdown" under § 1325(a)(5) is irrelevant to the situation described in § 1322(b)(5). When the debtor bifurcates a mortgage, cures arrearages, and maintains regular payments, "that secured claim has not been 'provided for by the plan.'" In an alternative holding, even if § 1325(a)(5) does apply when a debtor bifurcates a mortgage, cures arrearages, and maintains regular payments, the requirements of § 1325(a)(5)(B) are met notwithstanding that payment of the secured portion of the claim will not be completed during the life of the plan. The present-value test in § 1325(a)(5)(B)(ii) is satisfied when the contract rate is preserved, the contract payments continue, and the principal amount of the secured portion of the bifurcated claim will eventually be paid in full with accrued interest. This alternative holding is arguably inconsistent with cases holding that "cramdown" in a Chapter 13 case under § 1325(a)(5) requires that the allowed amount of the secured claim be paid in full during the life of the plan.).

Virginia, Eastern District

McNair v. Chrysler First Financial Service Corp. of Virginia (*In re McNair*), 115 B.R. 520 (Bankr. E.D. Va. 1990) (Third mortgage to purchase vinyl replacement windows was unsecured because value of the property was fully consumed by first mortgage, thus Chapter 13 debtor can void the third lien and treat the lienholder as an unsecured claimant without violating the prohibition against modification in § 1322(b)(2).).

In re Gadson, 114 B.R. 453 (Bankr. E.D. Va. 1990) (Adopting the "majority view," § 1322(b)(2) does not preclude a Chapter 13 plan from modifying that portion of a home mortgage that is unsecured under § 506.).

In re Moore, 113 B.R. 239 (Bankr. E.D. Va. 1990).

Virginia Western District

Cameron Brown Co. v. Bruce, 40 B.R. 884 (Bankr. W.D. Va. 1984).

E. Fifth Circuit

[Reserved for future decisions]

F. Sixth Circuit

Michigan, Western District

In re Dinsmore, 141 B.R. 499 (Bankr. W.D. Mich. 1992) (Nothing in *Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992) precludes a Chapter 13 debtor from modifying the rights of a secured claim holder to split the claim into its secured and unsecured components, paying the secured component consistent with § 1325(a)(5)(B), and paying the unsecured component along with other unsecured claim holders. "§ 1322(b)(2) and § 1325(a)(5)(B) expressly permit the bifurcation and modification of the creditor's claim in a plan of reorganization."). *Accord In re Jones,* 152 B.R. 155 (Bankr. E.D. Mich. 1993).

Ohio, Southern District

Atlantic Finance Federal v. Frost (*In re Frost*), 123 B.R. 254 (S.D. Ohio 1990) ("[T]he more sound interpretation of § 1322(b)(2) is that it must be read in the manner which complements § 506(a)." In order for a claim secured only by a security interest in real property that is the debtor's principal residence to be protected from modification by § 1322(b)(2), the claim must be allowable as a secured claim under § 506(a). To the extent that a mortgage holder is unsecured under § 506(a), its claim can be modified in a Chapter 13 plan.).

In re Weber, 140 B.R. 707 (Bankr. S.D. Ohio 1992) ("Bifurcation of an undersecured creditor's claim is a basic premise of the Bankruptcy Code. The language of § 1322(b)(2), which prohibits modification of the rights of a holder of a secured claim . . . presupposes allowance of the secured claim pursuant to § 506(a). Had Congress intended to prohibit modification of the rights of holders of *debts* secured either wholly or partially by the debtors' residential real estate, the provision would have been so drafted. That is not the language which appears in the statute. It is the secured claim, not the entire claim, that may not be modified." Nothing in *Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992) requires a different outcome.).

In re Hill, 96 B.R. 809 (Bankr. S.D. Ohio 1989).

In re Frost, 96 B.R. 804 (Bankr. S.D. Ohio 1989).

G. Seventh Circuit

Illinois, Northern District

In re Clark, 133 B.R. 123 (Bankr. N.D. Ill. 1991) (Even if claim splitting of a home mortgage is permitted by § 1322(b)(2), under § 1322(b)(5), debtors must cure any default that existed at the petition. Mortgage company filed a proof of claim for principal due of $39,725.87 and an arrearage claim of $6,725.05 for a total claim of $46,450.92. Value of the debtors' home was $40,000. Debtors proposed to pay $274.13 toward the arrearage (the difference between $40,000 and $39,725.87) as a secured claim and to pay 10% of the remaining $6,450.92 arrearage as an unsecured claim. Debtors would then pay the $39,725.87 mortgage over the original term at its contract amount. Debtors' proposal fails to pay the $6,725.05 arrearage and thus does not constitute a curing of default under § 1322(b)(5). "Even if the debtors could strip down the claim, they must pay the complete arrearage, or else the default would not be cured. If the debtors' plan would not cure the default by paying it in full within a reasonable time, they cannot avail themselves of § 1322(b)(5) to keep their old mortgage.").

Goins v. Diamond Mortgage Corp. (*In re Goins*), 119 B.R. 156 (Bankr. N.D. Ill. 1990) (With the exception of § 1111(b), the Code consistently permits bifurcation of undersecured claims. The debtor is permitted to pay the secured portion of an undersecured mortgage in full over 60 months with interest while paying 10% of the unsecured portion of the mortgagee's claim.).

In re Harvey, 88 B.R. 863 (Bankr. N.D. Ill. 1988).

Indiana, Northern District

In re Demoff, 109 B.R. 92 (Bankr. N.D. Ind. 1989).

H. Eighth Circuit

[Reserved for future decisions]

I. Ninth Circuit

Lomas Mortgage USA v. Wiese (*In re Wiese*), 980 F.2d 1279 (9th Cir. 1992) ("[*Hougland v. Lomas & Nettleton Co.* (*In re Hougland*), 886 F.2d 1182 (9th Cir. 1989)] was correctly decided and we find no reason to upset its holding. . . . [*Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992)] . . . does not affect our decision in *Hougland*. . . . nowhere does *Dewsnup* suggest that its discussion of 'lien stripping' has any impact on the bifurcation of secured claims from unsecured claims for the purposes of Chapter 13.").

Hougland v. Lomas & Nettleton Co. (*In re Hougland*), 886 F.2d 1182 (9th Cir. 1989) (Mortgage can be bifurcated by § 506 without creating an impermissible modification under § 1322(b)(2).

The mortgage holder's security interest "can only be protected by the no-modification clause of § 1322(b)(2) to the extent that the claim is actually secured.").

Alaska

Lomas Mortgage USA v. Roberts (*In re Roberts*), 137 B.R. 343 (D. Alaska 1992) (Interpreting *Hougland v. Lomas & Nettleton Co.* (*In re Hougland*), 886 F.2d 1182 (9th Cir. 1989) and *Seidel v. Larson (In re Seidel),* 752 F.2d 1382 (9th Cir. 1985), "*Hougland* provides for special protection for only the secured portion of a residential lender's claim. . . . The unprotected unsecured claim should be placed on an equal footing with all other unsecured claims. . . . Payments must continue to be made on the secured portion, and the secured portion may very well be long term debt under § 1322(b)(5), and thus nondischargeable under § 1328(a)(1). However, the unsecured portion must be on an equal footing with other unsecured claims, and is equally vulnerable to discharge pursuant to § 1328(a).").

Arizona

In re Dyer, 142 B.R. 364 (Bankr. D. Ariz. 1992) (Reading *Hougland v. Lomas & Nettleton Co.* (*In re Hougland*), 886 F.2d 1182 (9th Cir. 1989), *Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992), and *Johnson* together, Chapter 13 debtor can bifurcate undersecured mortgage into secured and unsecured claims for purposes of payments during the Chapter 13 case, and the unsecured portion of the mortgage can be paid the same percentage as other unsecured claims; however, the lien of the mortgage holder continues to encumber the debtor's real property to secure both the secured and the unsecured portions of the bifurcated claim. The lien of even a wholly unsecured second mortgage holder remains in effect and cannot be avoided. "[A]t the conclusion of the payments under the Chapter 13 Plan, the debtors shall then receive a discharge. . . . The discharge will eliminate any *personal liability* that the Debtors may owe to their creditors. However, the liens . . . will continue to exist. Any indebtedness then owing to [the mortgage holders] (after due credit for the payments made on the secured and unsecured portions of their claims during the course of the chapter 13 proceedings) will become *in rem* claims or *in rem* liabilities secured by the Debtors' residence. . . . Subsequently, if the Debtors default in a payment on this *in rem* liability, [the creditors] can proceed under state law to foreclose on their particular liens. . . . [T]he discharge provisions of 11 U.S.C. § 1328(a) or § 1328(b) only vitiate the ability of a creditor to pursue an *in personam* judgment against the debtor. An *in rem* claim, which is bifurcated into a secured and unsecured claim . . . is not affected by Section 1328. . . . The lien is only extinguished when the entire indebtedness is paid in full or foreclosure proceedings under applicable state law extinguish the indebtedness." Court disagrees with *Bellamy v. Federal Home Loan Mortgage Corp. (In re Bellamy),* 962 F.2d 176 (2d Cir. 1992) to the extent the Second Circuit suggested that the lien securing the unsecured portion of a bifurcated mortgage can be avoided once a Chapter 13 debtor completes payments under the plan.).

Montana

In re Marshall, 111 B.R. 325 (Bankr. D. Mont. 1990) (Applying *Hougland v. Lomas & Nettleton Co.* (*In re Hougland*), 886 F.2d 1182 (9th Cir. 1989), mortgage holder is entitled to the same treatment of the unsecured portion of its claim as the plan proposes for other unsecured claim holders, notwithstanding Montana law that would prohibit collection of a deficiency upon sale under a deed of trust. The mortgage holder's claim is appropriately split into secured and unsecured portions, but the unsecured portion is not eliminated by application of § 506(d).).

Oregon

In re Hayes, 111 B.R. 924 (Bankr. D. Or. 1990) (Applying *Hougland v. Lomas & Nettleton Co.* (*In re Hougland*), 886 F.2d 1182 (9th Cir. 1989), although the debtor is permitted to split the home mortgage into secured and unsecured portions, § 1322(b)(2) prohibits the debtor from altering the interest rate, the monthly payment, or any other term of the mortgage. The debtor cannot allocate postpetition defaults to the unsecured portion of the claim and thus avoid curing the default under § 1322(b)(5). When the mortgage debt is $96,000 and the value of the debtor's home is $72,000, the $72,000 must be treated as principal as of the date of the petition, and "each post-petition payment received by the creditor, whether a payment to cure a default or a regular monthly payment called for by the agreement, would first be applied to accrued interest on the $72,000 starting from the petition date.").

J. Tenth Circuit

Eastland Mortgage Co. v. Hart (*In re Hart*), 923 F.2d 1410 (10th Cir. 1991) ("We join the Third and Ninth Circuits in holding that an undersecured mortgage is, for the purposes of the Bankruptcy Code, two *claims,* and only the secured *claim* is protected by section 1322(b)(2). More importantly, we recognize that while bifurcation, in the literal sense, may be a modification of the *mortgage* represented in the secured and unsecured claims, bifurcation is not, of itself, a `modification' of the secured claim made impermissible by section 1322(b)(2). Indeed, the act of bifurcation recognizes, but does not affect, the secured claim.").

Colorado

Union Planters National Bank v. Sainz-Dean (In re Sainz-Dean), 143 B.R. 784 (D. Colo. 1992) (Adopting the reasoning in *Bellamy v. Federal Home Loan Mortgage Corp. (In re Bellamy),* 962 F.2d 176 (2d Cir. 1992), *Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992) does not overrule *Eastland Mortgage Co. v. Hart (In re Hart),* 923 F.2d 1410 (10th Cir.1991). The Supreme Court's analysis in *Dewsnup* was specifically limited to § 506(d) and to the facts before it. "Secured claim" should have the same meaning in § 506(a) as it does in § 1322(b)(2). Chapter 13 debtor can bifurcate mortgage holder's $88,904 claim into a $50,000 secured claim with the balance paid 8% along with other unsecured claim holders.).

Brouse v. CSB Mortgage Corp. (In re Brouse), 110 B.R. 539 (Bankr. D. Colo. 1990) (Section 506(d) is available to a Chapter 13 debtor to "write down" or "strip" a lien securing a claim if the claim exceeds the value of the collateral. There is no inconsistency between § 506(d) and § 1322(b)(2)—it is not a prohibited modification for a Chapter 13 debtor to bifurcate a mortgage into its secured and unsecured portions so long as the debtor does not modify the secured portion of the claim.).

Kansas

In re Simmons, 78 B.R. 300 (Bankr. D. Kan. 1987).

Oklahoma, Western District

In re Ward, 129 B.R. 664 (Bankr. W.D. Okla. 1991) (Lien stripping is available in Chapter 13 cases even with respect to exempt property.).

In re Hyden, 112 B.R. 431 (Bankr. W.D. Okla. 1990) (Section 1322(b)(2) does not prevent the bifurcation of a home mortgage claim under § 506(a), but § 1322(b)(5) protects the creditor at least to the extent that the arrearages must be cured in a reasonable time, the interest rate must remain the same as in the underlying documents, and the payment amount required by the mortgage must be unmodified. Notwithstanding discharge in a prior Chapter 7 case, the arrearage on the debtors' mortgage must be cured within a reasonable time. Payments attributable to the arrearages "would be credited first to accrued interest, at the contract rate, with the balance credited against the principal balance. The principal balance would be the amount of the allowed secured claim of the mortgage holder, and would be determined pursuant to § 506(a). . . . The regular monthly payments would also be credited first to interest and then to principal as required by the underlying documents. The lien would be extinguished when the amounts credited to principal aggregate the amount of the allowed secured claim, whether or not the arrearages have been `cured' in their entirety at that time.").

In re Ross, 107 B.R. 759 (Bankr. W.D. Okla. 1989).

K. Eleventh Circuit

Alabama, Northern District

In re Govan, 139 B.R. 1017 (Bankr. N.D. Ala. 1992) (After discharge of debtor's personal liability in a prior Chapter 7 case and claim splitting under § 506(a), the Chapter 13 debtor can pay the allowed amount of the secured portion of a mortgage holder's lien in full during the life of the plan at the same interest rate called for in the underlying contract and at the same monthly payment without effecting a modification for purposes of § 1322(b)(2). Because the allowed secured claim will be paid in full during the term of the plan and the interest rate and monthly payment are not altered by the plan, § 1322(b)(2) does not prohibit the plan and § 1322(b)(5) does not apply at all.).

Georgia, Northern District

Wright v. C&S Family Credit, Inc. (*In re Wright*), 128 B.R. 838 (Bankr. N.D. Ga. 1991) (Finding *Hougland v. Lomas & Nettleton Co.* (*In re Hougland*), 886 F.2d 1182 (9th Cir. 1989), *Wilson v. Commonwealth Mortgage Corp.,* 895 F.2d 123 (3d Cir. 1990), and *Eastland Mortgage Co. v. Hart (In re Hart),* 923 F.2d 1410 (10th Cir.1991) persuasive, "application of § 506 to bifurcate a claim secured by a debtor's residence does not negate application of the anti-modification provisions of § 1322(b)(2). Bifurcation results in modification of the principal amount of the secured claim. Other rights of the holder of the secured claim remain and are protected by § 1322(b)(2).").

Georgia, Southern District

Union Mortgage Co. v. Avret (In re Avret), 146 B.R. 47 (Bankr. S.D. Ga. 1992) (Only the secured portion of a mortgage holder's claim is protected from modification by § 1322(b)(2). *Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992) does not change this result because the Supreme Court did not address § 1322(b)(2). Congress did not intend a different meaning for "secured claim" in §§ 506(a) and 1322(b)(2). In a Chapter 13 case, § 506(d) is not necessary to relieve property of liens at the completion of payment of allowed secured claims. Instead, undersecured claims are bifurcated by § 506(a). "[O]nce the liability on the allowed secured claim has been paid the liability of the debtor is satisfied . . . and, the lien, to the extent that it secures the payment of the allowed secured claim, is satisfied. . . . As the holder of an allowed unsecured claim the rights of [the mortgage holder] are subject to modification to the extent of any charge against or interest in property which purports to secure payment of the allowed unsecured claim. Therefore, the plan may provide for the satisfaction of the lien upon completion of the plan to the extent that the lien purports to secure payment of the allowed unsecured claim. The provisions of § 506(a) and § 1322(b)(2) permitting the modification of the rights of the holder of an allowed unsecured claim authorize 'lien stripping' in a Chapter 13 case, not § 506(d)." Section 1327(c) is not the source of the lien stripping effect because the plan provided that secured claim holders retained the liens securing their claims. "[A]ny confirmable plan as it pertains to the 'allowed secured claim' of [the mortgage company] must provide for the maintenance of payment in the amount contractually agreed . . . together with future interest at the rate specified in the agreement. . . . The permitted bifurcation merely shortens the term for pay out. . . . As it pertains to the allowed unsecured claim, the plan may modify the rights of [the mortgage company] to provide for the satisfaction of the lien upon completion of the plan to the extent that the lien purports to secure payment of the allowed unsecured claim.").

L. District of Columbia Circuit

[Reserved for future decisions]