APPENDIX K

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

A. First Circuit

New Hampshire

In re Mitchell, 125 B.R. 5 (Bankr. D.N.H. 1991) ("The better reasoned cases are those holding the specific language of § 1322(b)(2) controls over the general language of § 506(a).").

B. Second Circuit

New York, Eastern District

In re Strober, 136 B.R. 614 (Bankr. E.D.N.Y. 1992) (Decided after *Dewsnup v. Timm*, 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992), and while the appeal in *Bellamy v. Federal Home Loan Mortgage Corp. (In re Bellamy)*, 962 F.2d 176 (2d Cir. 1992) was pending before the Second Circuit, "It is almost impossible to reconcile [*Dewsnup*] with any different result in Chapter 13. Following *Dewsnup*, this court holds that these Chapter 13 debtors cannot cram down the mortgages on their principal residence in Chapter 13 and compel the mortgagees to accept the current value of the residences in satisfaction of the mortgages.").

C. Third Circuit

[Reserved for future decisions]

D. Fourth Circuit

Virginia, Eastern District

In re Brown, 91 B.R. 19 (Bankr. E.D. Va. 1988).

E. Fifth Circuit

Nobelman v. American Savings Bank (*In re Nobelman*), 968 F.2d 483 (5th Cir. 1992) (Rejecting *Hougland v. Lomas & Nettleton Co. (In re Hougland)*, 886 F.2d 1182 (9th Cir. 1989), *Eastland*

Mortgage Co. v. Hart (In re Hart), 923 F.2d 1410 (10th Cir.1991), *Wilson v. Commonwealth Mortgage Corp.*, 895 F.2d 123 (3d Cir. 1990), *Bellamy v. Federal Home Loan Mortgage Corp. (In re Bellamy)*, 962 F.2d 176 (2d Cir. 1992), and *Sapos v. Provident Institution of Savings in the Town of Boston (In re Sapos)*, 967 F.2d 918 (3d Cir. 1992), "We hold that . . . the bifurcation of an undersecured home mortgage runs afoul of the specific protection afforded under § 1322(b)(2) to home mortgage creditors whose claims are secured only by a debtor's principal residence. Section 506(a) cannot be used to bifurcate the claim and vitiate the protection of § 1322(b)(2)." The Supreme Court's decision in *Dewsnup v. Timm*, 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992) lends support to this holding. "Section 1322(b) clearly prohibits the modification of rights of holders of secured claims if the claim is secured only by a security interest in the debtor's principal residence. However, this prohibition set forth in § 1322(b)(2) appears to conflict with § 506(a), which would allow the modification. . . . A generally accepted tenant of statutory construction is that the general language of a statute does not 'prevail over matters specifically dealt with in another part of the same enactment.' . . . We accordingly hold that the specific language of § 1322(b)(2) prevails over the general language of § 506(a). . . . Moreover, § 1322(b)(2) describes its subject matter as the modification of 'the rights of holders of' claims, not as the modification of claims as such; thus, the section can properly be read as excepting from its reach modification of 'the rights of holders of . . . a claim secured only by a security interest in real property that is the debtor's principal residence.' Therefore, even if the entirety of such a claim is not a secured claim (as per § 506(a)), the rights of a holder of such a claim may not be modified under § 1322(b)(2). . . . The legislative history also indicates that Congress intended this result . . . the desire to afford some protection to the home mortgage industry."), *aff'd,* 508 U.S. 324, 113 S. Ct. 2106, 124 L. Ed. 2d 228 (1993).

Louisiana, Western District

United Companies Financial Corp. v. Davis, 148 B.R. 16 (W.D. La. 1992).

Texas, Northern District

In re Schum, 112 B.R. 159 (Bankr. N.D. Tex. 1990).

Texas, Western District

Boullion v. Sapp (In re Boullion), 123 B.R. 549 (Bankr. W.D. Tex. 1990) (Section 506 may not be used to alter a claim secured by a debtor's principal residence. Congress meant to establish "a special protected class of creditors in a Chapter 13 case under § 1322(b)(2). . . . [A]pplication of 11 U.S.C. § 506 to reduce the dollar amount of claims secured by an interest in real property that is the debtor's principal residence . . . would be a 'modification' specifically prohibited by 11 U.S.C. § 1322(b)(2)."). *Accord Hernandez v. Union National Bank (In re Hernandez),* 149 B.R. 441 (Bankr. E.D. Tex. 1993).

F. Sixth Circuit

[Reserved for future decisions]

G. Seventh Circuit

Wisconsin, Eastern District

In re Lee, 137 B.R. 285 (Bankr. E.D. Wis. 1991).

Wisconsin, Western District

Etchin v. Star Service, Inc. (In re Etchin), 128 B.R. 662 (Bankr. W.D. Wis. 1991) (Bifurcation and partial avoidance of an undersecured home mortgage is prohibited by the antimodification provisions of § 1322(b)(2). "To hold otherwise would be contrary to the language of § 1322(b)(2) and ignore the fact that 'lien stripping' necessarily entails modifying the rights of the creditor holding such a claim. . . . The word 'claim' in the anti-modification clause of § 1322(b)(2) protects the various rights of undersecured mortgage holders in Chapter 13. . . . The most reasonable reading of the syntax demonstrates an intent to maintain the independence of the anti-modification language from the "secured claims" language preceding it. . . . The 'stripping down' of an undersecured home mortgage . . . entails a modification of the mortgage holder's rights. The change in the amount due cannot be made without changing the size, frequency or number of payments. It also changes the right of the creditor on foreclosure or sale.").

H. Eighth Circuit

Minnesota

In re Hussman, 133 B.R. 490 (Bankr. D. Minn. 1991).

In re Sauber, 115 B.R. 197 (Bankr. D. Minn. 1990) ("The Ninth Circuit, in [*Hougland v. Lomas & Nettleton Co. (In re Hougland),* 886 F.2d 1182 (9th Cir. 1989)], takes an overly technocratic approach in both analyzing the language of § 1322(b)(2) and (b)(5), and in relating § 506(a) to it. . . . The protection afforded [by § 1322(b)(2)] preserves the integrity of the mortgage contract, with the limited exception of allowing a debtor a reasonable period in which to cure defaults. . . . By focusing on the terms 'secured claim' and 'unsecured claim,' and by using § 506(a) definitions, *Hougland* judicially removes most of the protection that the statute provides. . . . This court rejects the analysis of *Hougland* and reaffirms its analysis in [*In re Catlin*, 81 B.R. 522 (Bankr. D. Minn. 1987)].").

In re Catlin, 81 B.R. 522 (Bankr. D. Minn. 1987).

Nebraska

In re Kaczmarczyk, 107 B.R. 200 (Bankr. D. Neb. 1989).

North Dakota

In re Russell, 93 B.R. 703 (D.N.D. 1988) (*In re Catlin,* 81 B.R. 522 (Bankr. D. Minn. 1987) and *In re Hynson,* 66 B.R. 246 (Bankr. D.N.J. 1986) correctly determine that the allowed amount of a claim secured only by a security interest in the debtors' principal residence is the balance of the debt "without regard to the value of the collateral." A Chapter 13 plan bifurcating a mortgage holder's claim effects a modification in violation of § 1322(b)(2).).

I. Ninth Circuit

[Reserved for future decisions]

J. Tenth Circuit

Oklahoma, Eastern District

In re Doss, 143 B.R. 952 (Bankr. E.D. Okla. 1992) (Acknowledging that *Eastland Mortgage Co. v. Hart (In re Hart),* 923 F.2d 1410 (10th Cir.1991) held that a Chapter 13 debtor can bifurcate a mortgage secured by the debtor's principal residence without violating the antimodification provisions of § 1322(b)(2), and "cognizant that the Tenth Circuit . . . is the controlling Circuit for this District," court is "adamant" that *Hart* is wrongly decided, and a Chapter 13 debtor cannot bifurcate an undersecured mortgage. In the alternative, bifurcation is not permitted when the debtors have claimed a homestead exemption in their real property on this theory: "after expiration of the time for objections to . . . claimed exemptions . . . the property passed out of the estate and is vested solely in the Debtors. . . . Thus, the Debtors' homestead or principal residence is no longer property of this bankruptcy estate and therefore, this estate no longer possesses an interest in said property. As a result, the valuation of the property provided by 11 U.S.C. § 506(a) is no longer available to the Debtors. . . . Therefore, even assuming that the *Hart* decision is a correct reflection of the state of the law, the Debtors still may not bifurcate.").

Oklahoma, Western District

In re Barnes, 146 B.R. 854 (Bankr. W.D. Okla. 1992) ("While the Court of Appeals for this circuit has previously allowed bifurcation in chapter 13 cases, it has not revisited the issue post [*Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992)]. *See* [*Eastland Mortgage Co. v. Hart (In re Hart),* 923 F.2d 1410 (10th Cir.1991)]. . . . It is now my view that the proper conclusion is expressed by the Court of Appeals for the Fifth Circuit in *Nobelman v. American Savings Bank,* 968 F.2d 483 (5th Cir. 1992). . . . Section 1322(b)(2) unequivocally prohibits any modification of the rights of mortgagees whose only collateral is a lien on the principal residence of the debtors. . . . As *Nobelman* properly points out the statute forbids any modification of 'the *rights* of holders of secured claims' . . . who have a lien secured only by the principal residence.").

K. Eleventh Circuit

Alabama, Middle District

Vines v. Mid-State Homes (In re Vines), 153 B.R. 345 (Bankr. M.D. Ala. 1993).

Florida, Middle District

In re Ireland, 137 B.R. 65 (Bankr. M.D. Fla. 1992) (Court distinguishes *Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992), but holds that "§ 506(a) and (d) may not be used in a Chapter 13 case. . . . Bifurcation of an allowed claim secured by a lien on the principal residence of a debtor [is] inappropriate in a Chapter 13 case, and a Chapter 13 debtor may not bifurcate an undersecured claim and invalidate the lien to the extent it secures an unsecured portion of the claim." In dicta, where first mortgage holder did not file a proof of claim, and thus does not hold an allowed claim, "its claim cannot be bifurcated and in turn, the lien relating to the unsecured portion cannot be invalidated pursuant to § 506(d)(2).").

In re Davidoff, 136 B.R. 567 (Bankr. M.D. Fla. 1992) ("This court believes the operative language in § 1322(b)(2) is 'modify the rights of holders of secured claims.' Valuing debtors' principal residence pursuant to § 506, bifurcating the bank's claim into secured and unsecured claims, will not pay the bank pursuant to its note and mortgage and thus is a modification prohibited under § 1322(b)(2). This court disagrees with the Third, Ninth and Tenth Circuits that such valuation is not a modification. . . . This position is bolstered by the recent decision of the Supreme Court in [*Dewsnup v. Timm,* 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992)] . . . . [A]lthough *Dewsnup* is a Chapter 7 case which was limited to its facts, the Supreme Court did determine that a lien could not be avoided under § 506(d) through the valuation mechanism in § 506(a) where such secured claim was allowed pursuant to § 502. In this case, the bank has an allowed secured claim and therefore, the bank's lien cannot be avoided under § 506(d). This is consistent with § 1322(b)(2) where rights of holders of a secured interest cannot be modified in the plan if those rights are related to the principal residence of the debtor.").

Florida, Southern District

In re Chavez, 117 B.R. 733 (Bankr. S.D. Fla. 1990).

L. District of Columbia Circuit

[Reserved for future decisions]