LIVE SEMINAR | ECBA ERIE COUNTY BAR ASSOCIATION

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Recent Developments In Chapter 13

Including Additional

Third Circuit and WDPA Cases

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(retired)

Selected Case Notes from:

LundinOnChapter13.com

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CHAPTER 13 RECENT DEVELOPMENTS

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C. "READ FIRST!"

§ 4.1 WARNING! You Are a Debt Relief Agency

{1} ***In re Valle Carrasquillo*, No. 15-05847 (ESL), 2020 WL 4728121 (Bankr. D.P.R. May 26, 2020) (Lamoutte)** (Fee contract that misleadingly described "no look fee" as a minimum amount preapproved by court fails to satisfy requirement in § 528(a)(1)(A) that fee contract must specify services to be performed and specific fees for each service; defect in contract cannot be cured by "amended" contract after the petition. Contract is void and unenforceable.).

{2} ***In re Negron*, 616 B.R. 583, 593-96 (Bankr. D.P.R. Apr. 28, 2020) (Lamoutte)** (Contract between Debt Relief Agency and Chapter 13 debtors is null and void under § 526(b) and (c) because contract failed to specify in writing the exact legal services included in the flat fee and then contract treated the flat fee as a minimum fee with possibility of additional hourly charges that rendered the actual cost of the case impossible to determine in violation of § 528(a)(1)(A) and (a)(1)(B). Waiver of unenforceability clause in the contract under § 526(c)(1) was itself unenforceable under § 526(b). "[T]he contracts make no reference to the specific services that will be performed by the debt relief agency, as required by [§] 528(a)(1)(A). This is critical in a case intended to be charged by hourly rates, as the assisted person is unable to understand how much will he or she end up paying . . . . [T]he court cannot agree with Legal Partners proposition that it cannot delimit any of the services without due diligence or that some diligence cannot be performed during the initial meetings with the assisted persons. . . . The logical outcome of not clearly and conspicuously explaining the services to be provided is the debt relief agency's inability to clearly and conspicuously explain how much such services may cost. . . . Legal Partners argues that the Debtors have the right under 11 U.S.C. § 526(c)(1) to enforce the contract . . . even if the contract is void. This argument misconstrues the scope of § 526(c)(1) and ignores the protections afforded to assisted persons in § 526(b). . . . This type of waiver is unenforceable under § 526(b).").

{3} ***In re Pearson*, No. 20-30077, 2020 WL 1845048 (Bankr. N.D. Tex. Apr. 9, 2020) (Jernigan)** (Internet-based law firm doing business as Wajda & Associates, also known as Recovery Law Group, is in much trouble in the Northern District of Texas after filing a Chapter 13 case for a serial bankruptcy abuser named Jakim Edward Pearson, Sr. Attorney took $1,500 postpetition retainer without disclosure or court approval. Petition did not reveal that debtor had filed 15 bankruptcy cases in various jurisdictions, some in the name of other individuals, some with borrowed Social Security numbers. The plan filed by counsel was nonsensical and when creditors showed up with motions revealing the truth counsel voluntarily dismissed the Chapter 13 case. Court then show-caused counsel to answer for a long list of statutory and rule transgressions. Counsel sent an "appearance attorney" who knew nothing about anything. Court has now set a second show-cause hearing with an order for counsel to appear personally. Stay tuned.).

{4} ***In re Taulbee,* No. 15-52073, 2020 WL 1671551 (Bankr. E.D. Ky. Apr. 2, 2020) (Wise), *rev'd and remanded,* No. 5: 20-162-DCR, 2020 WL 5521045 (E.D. Ky. Sept. 14, 2020) (Reeves)** (Chapter 13 debtors' counsel violated §§ 526 and 329, Bankruptcy Rules 9011 and 2016 and several rules of professional responsibility by secretly obtaining $500 from debtors during Chapter 13 case to convert to Chapter 7 but then failing to file conversion documents. Counsel misrepresented that debtors intended to stay in Chapter 13 and misrepresented conflicts that disabled counsel to appear in person at hearings with respect to conversion. Sanctions included permanently prohibiting counsel to practice in the Bankruptcy Court for the Eastern District of Kentucky.).

{5} ***In re Santos*, 616 B.R. 332 (Bankr. N.D. Tex. Mar. 17, 2020) (Jernigan)** (Filing an unauthorized Chapter 13 petition to stop foreclosure lands former husband and attorney in deep yogurt. Using lies and fake emails, Gabriel Santos convinced attorney Steve Le to file Chapter 13 petition on behalf of Gabriel's former wife, Cynthia Santos. Attorney never met real debtor, fabricated answers on statements and schedules and never satisfied DRA responsibilities under §§ 526, 527 and 528. Attorney is suspended from practice. Former husband is referred to U.S. Attorney for criminal prosecution.).

{6} ***In re Gonzalez Torres*, No. 14-09581 (ESL), 2020 WL 889347 (Bankr. D.P.R. Feb. 24, 2020) (Lamoutte)** (In a fee dispute between Chapter 13 trustee and attorneys for debtors, because scheduled debts related primarily to a failed business, debtors are not "assisted persons," attorneys are not Debt Relief Agencies and §§ 526, 527 and 528 are not applicable.).

§ 4.2 Bankruptcy Petition Preparers

{7} ***In re Bennett*, No. 18-10346, 2019 WL 4686327 (Bankr. D. Vt. Sept. 25, 2019) (Brown)** (Synergy Law, LLC's bankruptcy filing in August does not stay action by U.S. trustee to enforce § 110 against Synergy's continued violations of the bankruptcy petition preparer rules in Chapter 13 cases in Vermont. The U.S. trustee's action fits the stay exception for police and regulatory action by a government unit in § 362(b)(4). Synergy Law, LLC, did not use attorneys to assist Chapter 13 debtors and is thus a BPP subject to § 110. Synergy failed to make required disclosures and failed to sign required documents. Synergy gave prohibited legal advice, told debtors to hide Synergy's assistance, failed to file fee disclosures and made innumerable misrepresentations to debtors. Disgorgement of fees and imposition of fines and treble fines are appropriate. Synergy violated the nationwide injunction issued by other courts by filing this case. Further injunction is warranted but stayed by Synergy's bankruptcy filing. Dave Maresca, a principal of Synergy, is personally enjoined from assisting any person in filing bankruptcy in Vermont.).

§ 4.3 Section 342: Notice What Didn't Happen
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§ 9.4 Burden of Proof in an Eligibility Dispute
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{8} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (Dismissal of Chapter 13 case based on ineligibility was appropriate because noncontingent liquidated unsecured debts exceeded § 109(e) limitation.).

{9} ***Cody v. Micale*, No. 7:19-cv-00433, 2019 WL 5967962 (W.D. Va. Nov. 13, 2019) (Urbanski)** (Dismissal of fourth Chapter 13 petition since 2016 was appropriate because debtor failed to obtain the prepetition briefing required by § 109(h) and was ineligible.).

{10} ***In re Friedrich*, 618 B.R. 274, 276-77 (Bankr. W.D. Wis. May 5, 2020) (Furay)** ("The courts are split on whether the question of eligibility under section 109(e) is jurisdictional or merely an eligibility requirement . . . . [T]his Court examined the split and sided with the majority view that eligibility under 11 U.S.C. § 109(e) is not jurisdictional.").

{11} ***In re Moore*, No. 19-51257(JAM), 2020 WL 1207911 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Dismissal for cause under § 1307(c) is appropriate because debtor's secured debts exceed eligibility limitation under § 109(e). Dismissal with prejudice to refiling for three years is also appropriate because debtor has filed multiple bankruptcies beginning in 2012 to stop foreclosures and to litigate and relitigate frivolous issues, many of which were decided against the debtor in previous Chapter 13 cases.).

{12} ***In re Bello*, 609 B.R. 695 (Bankr. E.D. Mich. Dec. 13, 2019) (Tucker)** (Based on finding that schedules were not prepared in good faith, if ineligible debtor choses to dismiss Chapter 13 case, dismissal will be with prejudice to refiling for 180 days under § 105(a).).

{13} ***In re Malone*, No. 19-80149-TRC, 2019 WL 4686330 (Bankr. E.D. Okla. Sept. 25, 2019) (Cornish)** (Noting that *In re Pratola*, 578 B.R. 414 (Bankr. N.D. Ill. Dec. 27, 2017) (Baer), was reversed, 589 B.R. 779 (N.D. Ill. Aug. 31, 2018) (Dow), dismissal is mandatory when student loan debt exceeds eligibility limit in § 109(e).).

2. WHO IS ELIGIBLE

§ 10.1 Debtor Must Be an Individual; Spouses Allowed

{14} ***In re Jones*, No. 19-31539-beh, 2019 WL7342455 (Bankr. E.D. Wis. Dec. 30, 2019) (Hanan)** (Chapter 13 petition for an individual debtor cannot be "amended" 11 days after filing to add a spouse as a joint debtor. Spouse must file separate petition and can then move for joint administration under Bankruptcy Rule 1015(b)(1).).

§ 10.2 Sole Proprietorships Are Eligible
§ 10.3 Corporations Are Not Eligible

{15} ***In re Johnson*, No. 19-3620, 2020 WL 1450751, at *1 (E.D. Pa. Mar. 25, 2020) (Robreno)** (Chapter 13 petition filed by "TARANI A. JOHNSON doing business as Silver Apple, LLC" was properly dismissed because debtor was not an eligible individual under § 109(e). "A Chapter 13 petition can only be filed by an individual. . . . [T]he bankruptcy court made no error . . . in dismissing Johnson's Chapter 13 petition without prejudice so she could refile under Chapter 11.").

{16} ***Qarni v. Vahora (In re Qarni)*, No. 19-01090-A, 2019 WL 6817106, at *1–*5 (Bankr. E.D. Cal. Dec. 11, 2019) (Clement)** (Debtors' complaint states a claim that defendants violated stay in § 362(a)(3) when defendants with judgment against debtor and debtor's wholly owned corporation filed complaint for appointment of receiver to take control of corporation. Corporate control was an asset that became property of the Chapter 13 estate and seeking appointment of a receiver was an action to exercise control over that property. "[A] creditor obtained a judgment against the debtor and his corporation. As the sole shareholder, the debtor has plenary control over corporate activities. Thereafter, the debtor filed chapter 13 bankruptcy. . . . The right to control a wholly owned entity is a property right. . . . Naeem had a right to control VDL and California law deems that right to be property. . . . [T]he violation of the stay occurred after the Qarnis filed their chapter 13 petition but before plan confirmation, which would have revested the property in the debtor. . . . Consequently, at the time of the stay violation, Naeem's right to control the affairs and direction of VDL was property of the Qarnis' estate. The act of filing suit, which includes causes of action that seek to exercise control over property of the estate, is itself a violation of § 362(a)(3). . . . Since VDL's liquidation would result in Qarnis' loss of employment, and consequent ability to fund their chapter 13 plan, Vahora's efforts to appoint a receiver over VDL, if successful, would alter Naeem's right to control that entity in a manner inconsistent with § 362(a). . . . [A] creditor who attempts, but fails, to achieve actual control over estate property does not give the creditor a safe harbor against a stay violation action.").

§ 10.4 Partnerships Are Not Eligible
§ 10.5 Partners and Corporate Owners May Be Eligible

{17} ***Qarni v. Vahora (In re Qarni)*, No. 19-01090-A, 2019 WL 6817106, at *1–*5 (Bankr. E.D. Cal. Dec. 11, 2019) (Clement)** (Debtors' complaint states a claim that defendants violated stay in § 362(a)(3) when defendants with judgment against debtor and debtor's wholly owned corporation filed complaint for appointment of receiver to take control of corporation. Corporate control was an asset that became property of the Chapter 13 estate and seeking appointment of a receiver was an action to exercise control over that property. "[A] creditor obtained a judgment against the debtor and his corporation. As the sole shareholder, the debtor has plenary control over corporate activities. Thereafter, the debtor filed chapter 13 bankruptcy. . . . The right to control a wholly owned entity is a property right. . . . Naeem had a right to control VDL and California law deems that right to be property. . . . [T]he violation of the stay occurred after the Qarnis filed their chapter 13 petition but before plan confirmation, which would have revested the property in the debtor. . . . Consequently, at the time of the stay violation, Naeem's right to control the affairs and direction of VDL was property of the Qarnis' estate. The act of filing suit, which includes causes of action that seek to exercise control over property of the estate, is itself a violation of § 362(a)(3). . . . Since VDL's liquidation would result in Qarnis' loss of employment, and consequent ability to fund their chapter 13 plan, Vahora's efforts to appoint a receiver over VDL, if successful, would alter Naeem's right to control that entity in a manner inconsistent with § 362(a). . . . [A] creditor who attempts, but fails, to achieve actual control over estate property does not give the creditor a safe harbor against a stay violation action.").

§ 10.6 Partnership and Corporate Debts and Assets May Impact Eligibility

{18} ***In re Friedrich*, 618 B.R. 274, 278-81 (Bankr. W.D. Wis. May 5, 2020) (Furay)** (Dissolution of LLC and transfer of its assets to debtor on eve of Chapter 13 filing did not change that debtor's guaranty of LLC's debt was an unsecured obligation that exceeded eligibility limit in § 109(e). Dissolution and asset transfer were probably illegal under Wisconsin law and did not convert guaranty into secured debt for eligibility purposes. "Because the Debtor should not have received the LLC's assets in violation of [Wisconsin law], and the LLC's dissolution did not automatically transfer title of its property, the Court could conclude that the Debtor did not own the LLC's assets at the time of his bankruptcy petition. . . . The Debtor sought to keep assets belonging to the LLC to avoid the statutory distribution scheme and to remove assets from the reach of the LLC's secured creditor. While there may be circumstances in which this is appropriate, the facts here belie the Debtor's motives. . . . As the guarantor of the Notes, the Debtor's liability is still an unsecured obligation to the Bank . . . . Debtor's noncontingent, liquidated unsecured claims exceed the statutory amount of $419,275 set forth in 11 U.S.C. § 109(e).").

{19} ***In re Digirolamo*, 612 B.R. 726 (Bankr. M.D. La. Jan. 6, 2020) (Dodd)** (Faulty stucco work was not personal liability of Chapter 13 debtor because contract for work was between general contractor and limited liability corporation. There was no privity of contract between the debtor individually and the injured homeowner and no proof sufficient to pierce corporate veil to find debtor was alter ego of LLC.).

{20} ***Maldonado Perez v. Banco Santander De P.R. (In re Maldonado Perez)*, No. 18-00102, 2019 WL 5799327 (Bankr. D.P.R. Nov. 6, 2019) (Tester)** (Chapter 13 debtor's complaint to determine value and extent of lien on property fails for lack of jurisdiction when property is owned by a corporation and dissolution of the corporation under Puerto Rican law does not vest ownership in the debtor as owner of the corporation.).

§ 10.7 Trust Is Not Eligible, but Trustee May Be Eligible
§ 10.8 Eligibility of a Decedent's Estate

{21} ***Johnston v. Hildebrand (In re Bagsby)*, No. 19-8017, 2020 WL 2025906, at *2–*7 (B.A.P. 6th Cir. Apr. 27, 2020) (Croom, Smith, Wise)** (Bankruptcy court applied correct objective standard when it sua sponte sanctioned debtor's attorney under Bankruptcy Rule 9011 for twice filing Chapter 13 petitions on behalf of debtor who had been dead for more than 10 years. "He advised that a software-related issue prevented him from conforming the signature on the 2016 petition electronically filed with the court to reflect that Ms. Bagsby signed the 'wet' copy in a representative capacity for Decedent. He stated that he filed skeletal petitions because both filings were made on the eve of foreclosure and confirmed that Ms. Bagsby never provided him with the information and documents needed to prepare schedules. . . . [H]e never researched whether a decedent's estate could file a bankruptcy petition. . . . [H]e learned from Trustee that a deceased person cannot file a bankruptcy petition, which led him to move to dismiss the second case. . . . Attorney neither disputes that he failed to engage in a reasonable inquiry to determine Decedent's eligibility to file bankruptcy petitions before he filed them nor argues that his failure to perform the research was reasonable under the circumstances.").

§ 10.9 Petitions on Behalf of Others: Incompetents, Next Friends, Powers of Attorney and the Like

{22} ***Johnston v. Hildebrand (In re Bagsby)*, No. 19-8017, 2020 WL 2025906, at *2–*7 (B.A.P. 6th Cir. Apr. 27, 2020) (Croom, Smith, Wise)** (Bankruptcy court applied correct objective standard when it sua sponte sanctioned debtor's attorney under Bankruptcy Rule 9011 for twice filing Chapter 13 petitions on behalf of debtor who had been dead for more than 10 years. "He advised that a

software-related issue prevented him from conforming the signature on the 2016 petition electronically filed with the court to reflect that Ms. Bagsby signed the 'wet' copy in a representative capacity for Decedent. He stated that he filed skeletal petitions because both filings were made on the eve of foreclosure and confirmed that Ms. Bagsby never provided him with the information and documents needed to prepare schedules. . . . [H]e never researched whether a decedent's estate could file a bankruptcy petition. . . . [H]e learned from Trustee that a deceased person cannot file a bankruptcy petition, which led him to move to dismiss the second case. . . . Attorney neither disputes that he failed to engage in a reasonable inquiry to determine Decedent's eligibility to file bankruptcy petitions before he filed them nor argues that his failure to perform the research was reasonable under the circumstances.").

{23} ***In re Maes*, 616 B.R. 784, 789-802 (Bankr. D. Colo. May 20, 2020) (McNamara)** (Chapter 13 petition filed by daughter as "attorney-in-fact" for incompetent parent was effective to commence case notwithstanding that powers of attorney were not effective or valid; debtor was acting as "next friend" for purposes of Bankruptcy Rule 1004.1. No formal "representative" appearing, bankruptcy court appoints daughter "guardian ad litem" to maintain Chapter 13 case on behalf of incompetent debtor. Debtor suffered from severe dementia and memory loss. Debtor's daughter filed a Chapter 13 petition pursuant to powers of attorney which ultimately turned out not to be effective under state law for various reasons. "[E]ven though the Debtor's daughter had no effective authorization as an 'attorney-in-fact' under a power of attorney, she still was permitted to act as her mother's 'next friend' to protect her mother's best interests. That is what she did. Thus, the bankruptcy petition was valid and the bankruptcy case may continue. However, going forward, Juanita Maes' role must be formalized. The Court appoints the Debtor's daughter as her 'guardian ad litem' and fiduciary solely for purposes of this bankruptcy case. . . . Fed. R. Bankr. P. 1004.1 mirrors Fed. R. Civ. P. 17(c) and was added to the Federal Rules of Bankruptcy Procedure in 2002 to address . . . recurring issues governing bankruptcy filings on behalf of incompetent persons and whether bankruptcy courts are authorized to appoint guardians ad litem. . . . [U]nder Fed. R. Bankr. P. 1004.1 the Court is fully authorized to make a determination of incompetency for bankruptcy purposes in appropriate circumstances. . . . Every shred of admissible evidence confirms that the Debtor was incompetent when her daughter signed and filed the Petition . . . . The Debtor did not have a general guardian, committee, or conservator at the commencement of the bankruptcy case. Furthermore, because neither the First POA nor Second POA was effective, the Debtor did not have an agent under an effective and valid durable power of attorney. . . . Thus, the Debtor did not have a 'representative' within the meaning of Fed. R. Bankr. P. 1004.1 when her daughter signed and filed the Petition. . . . If a debtor is incompetent but does not have a representative, Fed. R. Bankr. P. 1004.1 allows a 'next friend or guardian ad litem' to file for bankruptcy on behalf of such debtor. . . . In the bankruptcy context, the term 'next friend' is 'broad enough to include anyone who has an interest in the welfare of an infant [or incompetent person] who may have a grievance or a cause of action.' . . . [T]he Court rather easily concludes that Juanita Maes qualifies as the Debtor's next friend under Fed. R. Bankr. P. 1004.1. . . . Juanita Maes has acted only in the capacity of a 'next friend.' However, a next friend is not a fiduciary. Under these circumstances, Fed. R. Bankr. P. 1004.1 dictates that the Court now appoint a guardian ad litem or make any other order to protect the Debtor. . . . Fed. R. Bankr. P. 1004.1 does not authorize the bankruptcy court to appoint a next friend. . . . Instead, Fed. R. Bankr. P. 1004.1 explicitly speaks only to the appointment of a guardian ad litem. . . . [T]he Court appoints Juanita Maes as a guardian ad litem for the limited purpose of prosecuting and administering this bankruptcy case on behalf of the Debtor.").

{24} ***In re Santos*, 616 B.R. 332 (Bankr. N.D. Tex. Mar. 17, 2020) (Jernigan)** (Filing an unauthorized Chapter 13 petition to stop foreclosure lands former husband and attorney in deep yogurt. Using lies and fake emails, Gabriel Santos convinced attorney Steve Le to file Chapter 13 petition on behalf of Gabriel's former wife, Cynthia Santos. Attorney never met real debtor, fabricated answers on statements and schedules and never satisfied DRA responsibilities under §§ 526, 527 and 528. Attorney is suspended from practice. Former husband is referred to U.S. Attorney for criminal prosecution.).

{25} ***In re Chapman*, 616 B.R. 523, 526-31 (Bankr. E.D. Wis. Mar. 11, 2020) (Hanan)** (Attorney sanctioned under Bankruptcy Rule 9011 for filing "emergency" Chapter 13 petition based on power of attorney and a fabricated story by the debtor's daughter. Simple investigation would have revealed two prior similar cases within a year. Debtor was not aware that daughter was filing bankruptcy petitions using a power of attorney. Daughter represented that debtor's son would fund the plan, but son was unaware of daughter's misrepresentations. "Neither Attorney Clowers nor [paralegal] spoke with Mrs. Chapman herself prior to filing the Chapter 13 bankruptcy case on her behalf . . . . [Daughter] did not disclose to Attorney Clowers and [paralegal], nor did they discover themselves, that two previous cases had been filed on behalf of Mrs. Chapman in the preceding twelve months. . . . Bankruptcy Rule 9011 includes a 21-day 'safe harbor' provision . . . . But the safe harbor provision does not apply if the challenged paper is a bankruptcy petition . . . . [T]he Clowers firm took [daughter], the power of attorney, at her word . . . . [T]he petition erroneously states 'no previous cases.' . . . [O]ne phone call to the debtor's prior counsel . . . and would have learned that [daughter] had spun the same sham story about a brother whom she claimed would save the day by paying the mortgage arrears, but never actually did so. . . . The fact that counsel filed without adequate investigation, relying on a fairly sympathetic, albeit untrue, story by the debtor's disingenuous and manipulative daughter, suggests a negligent sense of urgency . . . . [A] monetary sanction is warranted . . . . One-third of the fees and costs incurred for the instant, third case seems appropriate.").

{26} ***In re Ivers*, No. 19-20026-E-13, 2019 WL 6033198 (Bankr. E.D. Cal. Nov. 8, 2019) (Sargis)** (After an exhaustive discussion whether the Chapter 13 debtor is competent to manage the estate, bankruptcy court calls on Sacramento County Adult Protective Services to investigate, review and report to the court with respect to whether the debtor suffers from a legal incompetency. In the meantime, stay relief previously granted is modified to maintain real property within the Chapter 13 estate pending evaluation of the debtor's competency.).

{27} ***In re Ivers*, No. 19-20026-E-13, 2019 WL 6038056 (Bankr. E.D. Cal. Nov. 8, 2019) (Sargis)** (Related to other decision, bankruptcy court calls on Sacramento County Adult Protective Services to investigate the Chapter 13 debtor's legal competence in light of erratic and self-destructive behavior with respect to the sale of property.).

3. REGULAR INCOME REQUIREMENT

§ 11.1 What Is Regular Income?

{28} ***Taneja v. Preuss (In re Taneja)*, 789 F. App'x 907 (2d Cir. Dec. 2, 2019) (Walker, Lynch, Sullivan)** (Dismissal of Chapter 13 case for cause was appropriate when pro se debtor failed to prove regular or stable income that would fund any confirmable plan.).

{29} ***In re Feliciano*, No. 19-05016 (EAG), 2019 WL 7041858 (Bankr. D.P.R. Dec. 19, 2019) (Godoy)** (At conversion from Chapter 7 to Chapter 13 debtor is eligible under § 109(g) based on schedules that show regular income as a teacher and some disposable income. The sufficiency of that income to fund a plan that accounts for a potentially preferential security interest in a car is an issue of feasibility properly addressed at confirmation.).

§ 11.2 When Must Debtor Have Regular Income?

a. SOURCES OF REGULAR INCOME

§ 12.1 Self-Employment
§ 12.2 Multiple, Irregular and Seasonal Employment
§ 12.3 Farming, Crop and Land Set-Aside or Payment in Kind
§ 12.4 Retirement Income
§ 12.5 Social Security
§ 12.6 Disability Benefits; Workers' Compensation
§ 12.7 Family Assistance, Welfare and Other Entitlements
§ 12.8 Unemployment Benefits, Strike Benefits and the Like
§ 12.9 Alimony, Maintenance and Child Support
§ 12.10 Contributions from Family, Friends, Nonfiling Spouses and Former Spouses; Grants and Awards
§ 12.11 Income from Leasing, Selling or Liquidating Assets

b. ABLE TO MAKE PAYMENTS

§ 13.1 Debtor Must Be Able to Make Payments under a Plan

4. DEBT LIMITATIONS

a. IN GENERAL

§ 14.1 Dollar Amounts

{30} ***In re Carter*, No. 20-00653-NPO, 2020 WL 4730889, at *1–*4 (Bankr. S.D. Miss. June 26, 2020) (Olack)** (Joint debtors are ineligible under § 109(e) when aggregate unsecured debts exceed statutory limitation notwithstanding that neither individual is personally liable for debts that exceed the statutory limit; the same statutory limit applies to individual debtors and to the aggregate of unsecured debts owed by joint debtors without regard to personal liability. "The general unsecured debt attributable solely to Mr. Carter is $178,609.00, and the general unsecured debt attributable solely to Mrs. Carter is $327,533.70. . . . Trustee asserts that the Bankruptcy Case should be dismissed because the Carters' aggregate unsecured debt exceeds the limit of $419,275 in 11 U.S.C. § 109(e) . . . . [T]he statute is clear and unambiguous: a debtor who files an individual case and debtors who file a joint case are subject to the same unsecured debt limit. . . . Although the Court agrees that § 109(e) enables a spouse without regular income to be eligible for chapter 13 relief in a joint case, there is no language in the statute that supports an interpretation that unsecured debts are aggregated only when one spouse is without regular income. . . . That the same unsecured debt limit in § 109(e) applies to both individuals and joint filers in a chapter 13 case does not lead to an absurd result. . . . Those who exceed the debt limits in § 109(e) may seek bankruptcy relief in other chapters . . . . [A]ssuming that the Carters are eligible to file separately for relief under chapter 13, the Bankruptcy Case may be severed into individual chapter 13 cases so that only one of the Carters is dismissed from the Bankruptcy Case. . . . If, however, the Carters want to remain as joint filers, the Bankruptcy Case may be converted to another applicable chapter.").

§ 14.2 Time for Determining Debt
§ 14.3 Use of Statements and Schedules in Eligibility Calculations

{31} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (Statements and schedules ordinarily control eligibility calculation but when debtor scheduled bank's claim as $1,000 and bank filed proof of claim in excess of $1,000,000, good faith was at issue and bankruptcy court appropriately considered proof of claim and note signed by debtor to conclude that debt in fact exceeded § 109(e) limitation.).

{32} ***In re Ely*, No. 19-20818-drd-13, 2020 WL 2071483 (Bankr. W.D. Mo. Apr. 29, 2020) (Dow)** (Scheduled debts are not determinative of eligibility for Chapter 13 when schedules are not accurate and other evidence demonstrates that unsecured debts exceed limitation in § 109(e).).

{33} ***In re Bello*, 609 B.R. 695 (Bankr. E.D. Mich. Dec. 13, 2019) (Tucker)** (Because schedules were not prepared in good faith, bankruptcy court appropriately ignores debt characterization—"unliquidated"—and amount–"unknown"—to find debtor ineligible based on amounts stated by debtor in a brief filed in district court litigation nine days before the Chapter 13 petition.).

§ 14.4 Are Claims Split under 11 U.S.C. § 506(a)?

b. NONCONTINGENT DEBTS ARE COUNTED

§ 15.1 What Is Noncontingent Debt?

{34} ***In re Koleit*, 613 B.R. 890, 893 (Bankr. E.D. Mich. Mar. 31, 2020) (Tucker)** (That debtor is personally liable on note secured by a mortgage on real property owned solely by the debtor's spouse does not change the fact that the note is a prepetition unsecured debt that is counted as noncontingent for purposes of § 109(e). "There are no facts alleged . . . to suggest other than that pre-petition, all events giving rise to the Debtor's personal liability on the Huntington Mtg Group debt had occurred. The Debtor is personally liable on a mortgage loan that is secured by a mortgage on real estate owned solely by the Debtor's spouse. The fact that the loan is secured by such a mortgage does not mean that the Debtor is not yet personally liable for the debt. If that were the case, then there could never be such a thing as a 'noncontingent' *secured* debt under § 109(e).").

{35} ***In re Adams*, No. 18-04045-NPO, 2019 WL 5061168 (Bankr. S.D. Miss. Jan. 29, 2019) (Olack)** (Debtor is ineligible and case must be dismissed because student loans totaling $424,390 exceed debt limitation for Chapter 13. That student loans may be in deferment does not render the debt contingent for § 109(e) purposes.).

§ 15.2 Is Partnership Debt Contingent?
§ 15.3 Are Guaranties Contingent?

{36} ***In re Medlin*, No. 19-00298-5-DMW, 2020 WL 739262, at *3–*4 (Bankr. E.D.N.C. Feb. 13, 2020) (Warren)** (Debtor does not exceed debt limit in § 109(e) because large debt based on indemnity agreement is contingent upon an extrinsic event that has not occurred—the failure of a corporation controlled by the debtor to pay debt that will trigger the liability that the debtor has agreed to indemnify. "If the Debtor were to pay the SBA in full, then the Indemnification Claim, which is based on the SBA debt and the Debtor's agreement to indemnify Ms. Oglesby from that debt, would not exist. . . . The Indemnification Claim may appear . . . to be noncontingent, because Ms. Oglesby's right to payment has already been established by the Agreement . . . ; however, although liability exists, the Indemnification Claim remains dependent on an extrinsic event. That event is the failure of the Debtor to pay the SBA and requiring Ms. Oglesby to pay that debt instead, resulting in requiring the Debtor to pay her rather than the SBA for the debt. . . . The Indemnification Claim is a contingent claim.").

§ 15.4 Are Contract Debts Contingent?

{37} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743, 749 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (Debt is noncontingent despite fact that debtor disputes enforceability of note when all events giving rise to debtor's liability occurred years before petition. Debtor did not dispute signature on note. Mortgage that secured the note was lost and never recorded. Debtor has litigated with lender for years but debt remains noncontingent. "Debtor's liability for the debt was created when she signed the promissory note in 2006. The fact that she now disputes liability does not render the contractual obligation contingent.").

§ 15.5 Is Tort Liability Contingent?
§ 15.6 Are Claims through and against Debtor's Corporation Contingent?
§ 15.7 Are Prebankruptcy Judgments Contingent?

{38} ***In re Bello*, 609 B.R. 695 (Bankr. E.D. Mich. Dec. 13, 2019) (Tucker)** (Debt from securities litigation in district court is noncontingent because the district court granted summary judgment with respect to liability before the Chapter 13 petition.).

c. LIQUIDATED DEBTS ARE COUNTED

§ 16.1 What Is a Liquidated Debt?

{39} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743, 749 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (Debt based on note is not unliquidated notwithstanding dispute with respect to enforceability. Amount can be readily calculated based on contract terms. Debtor admitted signing the note but mortgage was lost and never recorded. "A dispute about liability does not 'necessarily render a debt unliquidated.' . . . [D]isputed contractual claims are generally liquidated. . . . Regardless of whether a debtor disputes liability, 'if the *amount* of the debt is calculable with certainty, then it is liquidated for the purposes of § 109(e).'").

{40} ***In re Bello*, 609 B.R. 695 (Bankr. E.D. Mich. Dec. 13, 2019) (Tucker)** (Debt is liquidated for eligibility purposes because in a brief filed in district court securities litigation nine days before the Chapter 13 petition the debtor stated that the amount of the debt was $310,750 which, when added to other unsecured debts, renders the debtor ineligible.).

§ 16.2 Effect of Defenses and Counterclaims

d. SPECIAL DEBT-COUNTING PROBLEMS

§ 17.1 Disputed Debts

{41} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (That Chapter 13 debtor disputes bank's claim in excess of $1,000,000 does not render debt contingent or unliquidated for eligibility purposes when debtor admitted to signing note in excess of $1,000,000.).

{42} ***In re Willner*, No. 19-13661-BFK, 2020 WL 864130 (Bankr. E.D. Va. Feb. 20, 2020) (Kenney)** (After eight years of unsuccessful litigation and no payments to mortgagee, debtor is not eligible for Chapter 13 because disputed $4,325,000 mortgage is not contingent or unliquidated. That debtor has unsuccessfully disputed the debt for years does not change the ineligibility calculation.).

§ 17.2 Taxes and Other Priority Claims

§ 17.3 Joint Obligations of Spouses and Codebtors; Collateral That Is Not Property of the Estate

{43} ***In re Carter*, No. 20-00653-NPO, 2020 WL 4730889, at *1–*4 (Bankr. S.D. Miss. June 26, 2020) (Olack)** (Joint debtors are ineligible under § 109(e) when aggregate unsecured debts exceed statutory limitation notwithstanding that neither individual is personally liable for debts that exceed the statutory limit; the same statutory limit applies to individual debtors and to the aggregate of unsecured debts owed by joint debtors without regard to personal liability. "The general unsecured debt attributable solely to Mr. Carter is $178,609.00, and the general unsecured debt attributable solely to Mrs. Carter is $327,533.70. . . . Trustee asserts that the Bankruptcy Case should be dismissed because the Carters' aggregate unsecured debt exceeds the limit of $419,275 in 11 U.S.C. § 109(e) . . . . [T]he statute is clear and unambiguous: a debtor who files an individual case and debtors who file a joint case are subject to the same unsecured debt limit. . . . Although the Court agrees that § 109(e) enables a spouse without regular income to be eligible for chapter 13 relief in a joint case, there is no language in the statute that supports an interpretation that unsecured debts are aggregated only when one spouse is without regular income. . . . That the same unsecured debt limit in § 109(e) applies to both individuals and joint filers in a chapter 13 case does not lead to an absurd result. . . . Those who exceed the debt limits in § 109(e) may seek bankruptcy relief in other chapters . . . . [A]ssuming that the Carters are eligible to file separately for relief under chapter 13, the Bankruptcy Case may be severed into individual chapter 13 cases so that only one of the Carters is dismissed from the Bankruptcy Case. . . . If, however, the Carters want to remain as joint filers, the Bankruptcy Case may be converted to another applicable chapter.").

{44} ***In re Koleit*, 613 B.R. 890, 892 (Bankr. E.D. Mich. Mar. 31, 2020) (Tucker)** (Reconsideration of dismissal based on ineligibility is denied because debtor's unsecured debts exceed limitation in § 109(e) notwithstanding that one large unsecured debt is secured by a mortgage on property that is not property of the estate. "$104,727.04 debt to 'Huntington Mtg Group' listed in Schedule D is a wholly 'unsecured' debt, within the meaning of Bankruptcy Code § 109(e), because it is wholly unsecured *as to the Debtor*. This is so because . . . the real estate that secures this debt is not owned in any part by the Debtor, but rather by his wife. There is no property *of the Debtor* that secures this debt.").

{45} ***In re Engelman*, 614 B.R. 328 (Bankr. E.D. Wis. Mar. 25, 2020) (Halfenger)** (Debtor not eligible for Chapter 13 under § 109(e) because unsecured debt exceeds eligibility limitation. Debtor's signature on note was most likely signed by her spouse, not by the debtor, but spouse had power of attorney that rendered debtor liable on the note. Mortgage, in contrast, is not enforceable under state law because spouse did not indicate agency relationship when signing for the debtor.).

{46} ***In re Cowser*, No. 6:19-bk-21008-WJ, 2020 WL 974973 (Bankr. C.D. Cal. Feb. 28, 2020) (Johnson)** (On motion of Chapter 13 trustee, confirmation of plan is denied and case is dismissed because debtor did not list or schedule separate debts of nonfiling spouse. In community property state like California, the debtor is liable as part of the community for separate debts of nonfiling spouse and those creditors must be given notice and opportunity to participate by filing claims and objecting to confirmation. Dismissal is necessary because creditors of nonfiling spouse have been "irreparably prejudiced" by passage of time without notice of Chapter 13 case.).

5. 11 U.S.C. § 109(h): PREPETITION BRIEFING

§ 18.1 In General

{47} ***Cody v. Micale*, No. 7:19-cv-00433, 2019 WL 5967962 (W.D. Va. Nov. 13, 2019) (Urbanski)** (Dismissal of fourth Chapter 13 petition since 2016 was appropriate because debtor failed to obtain the prepetition briefing required by § 109(h) and was ineligible.).

a. PREPETITION BRIEFING

§ 19.1 What is a Briefing?

{48} ***In re Harrington*, No. 19-00813, 2020 WL 259561, at *1 (Bankr. D.D.C. Jan. 14, 2020) (Teel)** (Receipt of financial analysis from NBCCA did not satisfy prepetition briefing requirement in § 109(h); debtor was required to respond to complete the prepetition briefing. "It is unfortunate that the debtor appears to have misunderstood the e-mails sent to her and mistakenly believed that she had completed credit counseling upon receiving the Financial Analysis.").

§ 19.2 Timing of Briefing

{49} ***In re Harrington*, No. 19-00813, 2020 WL 259561 (Bankr. D.D.C. Jan. 14, 2020) (Teel)** (Credit counseling completed two days after the petition was filed does not satisfy § 109(h), rendering debtor ineligible.).

§ 19.3 Certificate from NBCCA: 11 U.S.C. § 521(b)

{50} ***In re Harrington*, No. 19-00813, 2020 WL 259561 (Bankr. D.D.C. Jan. 14, 2020) (Teel)** (Certificate showed that credit counseling was completed two days after the petition was filed, rendering debtor ineligible under § 109(h).).

b. TEMPORARY EXEMPTION FROM PREPETITION BRIEFING

§ 20.1 In General
§ 20.2 Timing, Procedure and Form for Certification of Exigent Circumstances
§ 20.3 Which Circumstances Are Exigent and Which Exigent Circumstances Merit a Waiver?
§ 20.4 Prepetition Request

{51} ***In re Diaz*, No. 19-00543, 2019 WL 7602243, at *1 (Bankr. D.D.C. Aug. 21, 2019) (Teel)** (Debtor not entitled to temporary waiver of prepetition briefing requirement and case must be dismissed for failure to comply with § 109(h) when debtor was unable to complete briefing before a foreclosure sale that was scheduled in two days but debtor does not describe inability to obtain briefing during the seven-day period before the petition. Even if foreclosure is an exigent circumstance, debtor did not satisfy the seven-day requirement in § 109(h)(3)(A). Counseling must be unavailable for the seven days after the request without regard to when the exigent circumstance occurs. "If the debtor was able to obtain credit counseling within seven days of requesting it, but not in time to stop the foreclosure, the debtor would still not qualify for the exception. The law requires that the counseling be unavailable within 7-days of requesting it, not before the exigent circumstance.").

§ 20.5 Briefing after Temporary Exemption

c. PERMANENT WAIVER OF PREPETITION BRIEFING

§ 21.1 In General
§ 21.2 Timing, Procedure and Form
§ 21.3 11 U.S.C. § 109(h)(2): Inadequate NBCCA Services
§ 21.4 11 U.S.C. § 109(h)(4): Incapacity, Disability or Active Military Duty

6. ELIGIBILITY OF REPEAT FILERS

§ 22.1 Eligibility of a Simultaneous Filer

{52} ***In re Benitez*, 611 B.R. 106, 109 (B.A.P. 8th Cir. Feb. 4, 2020) (Schermer, Nail, Shodeen)** (Chapter 13 petition filed by debtor in a Chapter 7 case violated automatic stay and was void. Debtor filed Chapter 13 petition to stop foreclosure after mortgagee obtained stay relief in pending Chapter 7 case. "By filing his Chapter 13 petition, the Debtor attempted to exercise control over his interest in the Property, which is undisputed to be property of his Chapter 7 bankruptcy estate. . . . Debtor filed his Chapter 13 case as an effort to stop the foreclosure of the Property noticed by the Creditor after it obtained stay relief in the Debtor's Chapter 7 case.").

§ 23.1 Eligibility of a Serial Filer: "Chapter 20" and Beyond
§ 23.2 [RESERVED]
§ 24.1 Court-Imposed Restrictions on Eligibility to Refile

{53} ***In re Clifton*, No. 19-01722-NPO, 2019 WL 5061161 (Bankr. S.D. Miss. June 14, 2019) (Olack)** (Dismissal appropriate when Chapter 13 case was filed in violation of order in prior case that barred debtor from refiling for 180 days. Debtor's attorney violated Bankruptcy Rule 9011 and is sanctioned with payment of $500 for filing Chapter 13 case without investigating dismissal of prior case in which debtor was prohibited to refile for 180 days.).

§ 25.1 180-Day Bar to Eligibility in 11 U.S.C. § 109(g)—In General

§ 25.2 11 U.S.C. § 109(g)(1)—Willful Failure to Abide by Court Order or to Appear in Proper Prosecution

{54} ***Cody v. Micale*, No. 7:19-cv-00433, 2019 WL 5967962, at *1–*3 (W.D. Va. Nov. 13, 2019) (Urbanski)** (Fourth petition since 2016 was filed in violation of 180-day bar imposed at dismissal of third case under § 109(g)(1). In prior case, debtor failed to file required documents and order dismissing third case prohibited debtor to file another petition for 180 days. "Cody violated this order by filing her fourth bankruptcy petition . . . three days before the court's 180-day bar expired . . . . [T]he bankruptcy court did not abuse its discretion in dismissing Cody's fourth petition for violating its earlier Order barring her from filing another petition within 180-days.").

{55} ***In re Ward*, 610 B.R. 804 (Bankr. W.D. Pa. Jan. 15, 2020) (Deller)** (Chapter 13 debtor's seventh motion for additional time to file basic documents to commence case is denied for lack of cause; hearing is set to determine whether dismissal should be with prejudice under § 109(g).).

{56} ***In re Johnson*, No. 19-57871-WLH, 2020 WL 61827, at *2–*4 (Bankr. N.D. Ga. Jan. 6, 2020) (Hagenau)** (Not appropriate to dismiss sixth bankruptcy case with bar to refiling under § 109(g)(1) because default in payments in current case was not alone sufficient to prove willful failure to abide by court order. Conduct in a particular case is at issue under § 109(g), not debtor's history of filings. "The dismissal of the case was not a mistake or a surprise. Debtor's payment was returned for insufficient funds and she knew it. She took no action to remedy the situation despite written notice from the Trustee, so her actions were not inadvertent. . . . Section 109(g)(1) prohibits refiling by a debtor who has 'willfully' failed to abide by order of the court or to appear before the court to prosecute the case. The court must look to the circumstances of the particular case to determine willfulness. A mere failure to make a payment under a chapter 13 plan or failure to appear at the first meeting or a court hearing, will not, in itself, be sufficient to sustain a finding of willful conduct under this subsection. . . . [I]t appears that dismissal was based on the Debtor's failure to pay rather than on her failure to prosecute the chapter 13 case as a whole. Debtor failed to make the required plan payments to the Chapter 13 Trustee, but she did not otherwise willfully fail to abide by the Court's orders. While the Debtor has a long history of bankruptcy filings, the Trustee sought dismissal with prejudice pursuant to [§]109(g), under which the Court must consider the Debtor's conduct in a particular case rather than the debtor's history of filings and dismissals. Therefore, the Court finds grounds exist to modify the Dismissal Order prohibiting the Debtor from refiling the case within 180 days of its dismissal.").

{57} ***Stewart v. Archie's Auto Sales, Inc. (In re Stewart)*, 606 B.R. 706 (Bankr. S.D. Miss. Sept. 13, 2019) (Olack)** (Debtor's failure to attend four rescheduled meetings of creditors in prior case was not a bar to eligibility under § 109(g)(1) because the missed meetings were explained. Explanation included that debtor's employer threatened to fire the debtor if she attended the fourth rescheduled meeting. Evidence eliminated creditor's argument that no stay was in effect in subsequent case because of ineligibility under § 109(g)(1).).

§ 25.3 11 U.S.C. § 109(g)(2)—Voluntary Dismissal after Request for Relief from Stay

{58} ***In re McCarthy*, No. 19-61737, 2019 WL 9899505 (Bankr. N.D. Ohio Dec. 17, 2019) (Kendig)** (Bankruptcy court has no discretion to allow a filing in violation of § 109(g)(2); Chapter 7 case filed within 180 days of dismissal of prior Chapter 13 case in which car lender filed motion for stay relief must be dismissed.).

{59} ***In re Lewis*, No. 19-10999, 2019 WL 4691044, at *1–*2 (Bankr. S.D. Ga. Sept. 24, 2019) (Barrett)** (By any interpretation of § 109(g)(2), debtors are ineligible and current case must be dismissed. Debtors voluntarily dismissed prior Chapter 13 case after consenting to stay relief then refiled three days after dismissal to stop foreclosure sale. "There is a split of authority interpreting § 109(g)(2). One line of cases strictly and broadly applies § 109(g)(2) finding the language clearly and unambiguously requires dismissal whenever a debtor refiles for bankruptcy within 180 days after voluntarily dismissing a prior case where a motion for relief had been filed. . . . Other courts adopt various tests. Some follow the strict approach, but find the court has discretion to consider other factors when the application of the strict approach results in unjust or absurd outcomes. . . . Other courts hinge the outcome upon the definition of the word 'following.' . . . Debtors here previously consented to relief. On the eve of foreclosure, Debtors dismissed and refiled in an effort to forestall the foreclosure . . . . [T]his is the exact conduct § 109(g)(2) prevents.").

E. REPRESENTING DEBTORS AND CREDITORS BEFORE FILING

1. GENERAL CONSIDERATIONS

§ 26.1 Special Problems for Lawyers in Chapter 13 Cases

{60} ***Johnston v. Hildebrand (In re Bagsby)*, No. 19-8017, 2020 WL 2025906, at *2–*7 (B.A.P. 6th Cir. Apr. 27, 2020) (Croom, Smith, Wise)** (Bankruptcy court applied correct objective standard when it sua sponte sanctioned debtor's attorney under Bankruptcy Rule 9011 for twice filing Chapter 13 petitions on behalf of debtor who had been dead for more than 10 years. "He advised that a software-related issue prevented him from conforming the signature on the 2016 petition electronically filed with the court to reflect that Ms. Bagsby signed the 'wet' copy in a representative capacity for Decedent. He stated that he filed skeletal petitions because both filings were made on the eve of foreclosure and confirmed that Ms. Bagsby never provided him with the information and documents needed to prepare schedules. . . . [H]e never researched whether a decedent's estate could file a bankruptcy petition. . . . [H]e learned

from Trustee that a deceased person cannot file a bankruptcy petition, which led him to move to dismiss the second case. . . . Attorney neither disputes that he failed to engage in a reasonable inquiry to determine Decedent's eligibility to file bankruptcy petitions before he filed them nor argues that his failure to perform the research was reasonable under the circumstances.").

{61} ***Johnson v. Burden (In re Taulbee)*, No. 5: 20-162-DCR, 2020 WL 5521045 (E.D. Ky. Sept. 14, 2020) (Reeves)** (Debtors' counsel was appropriately held in contempt for failing to appear on behalf of Chapter 13 debtors and then misrepresenting why; disbarment order was not appropriate because counsel was not on notice of specific claims of misconduct and was not informed that disbarment was possible sanction.), *rev'g and remanding* No. 15-52073, 2020 WL 1671551 (Bankr. E.D. Ky. Apr. 2, 2020) (Wise) (Chapter 13 debtors' counsel violated §§ 526 and 329, Bankruptcy Rules 9011 and 2016 and several rules of professional responsibility by secretly obtaining $500 from debtors during Chapter 13 case to convert to Chapter 7 but then failing to file conversion documents. Counsel misrepresented that debtors intended to stay in Chapter 13 and misrepresented conflicts that disabled counsel to appear in person at hearings with respect to conversion. Sanctions included permanently prohibiting counsel to practice in the Bankruptcy Court for the Eastern District of Kentucky.).

{62} ***Deighan Law, LLC v. Daugherty*, 615 B.R. 564, 566-72 (E.D. Mo. Apr. 14, 2020) (Limbaugh)** (Reversing bankruptcy court, Deighan Law, LLC, d/b/a UpRight Law, is an integrated law firm with general and limited partners that did not violate § 504 when part of the fee paid by a Chapter 13 debtor was retained by UpRight in Illinois and part was paid to Deighan in Missouri to handle specifics of the case. UpRight was not just a "referral service" and the legal relationship between the Illinois and Missouri components was not prohibited by any statute or rule. "[T]he case turns on the narrow question of whether Deighan Law and the local lawyers are members of the same professional association, corporation or partnership—in other words, whether they are members of the same law firm. . . . Deighan Law is an Illinois limited liability company . . . . Deighan Law does business in Missouri under the registered name UpRight Law LLC. . . . [T]hree St. Louis limited partners . . . each operates their own law firm in addition to, and independently of, their association with UpRight Law. . . . Initial fees are collected by Upright Law . . . . [I]n Chapter 13 cases, the limited partner 'receive[s] one hundred percent (100%) of all post-petition fees distributed, provided that [they] perform[ ] all of the post-petition work as is required on the respective case.' . . . [T]his Court is of the opinion that Doyel, Caraker and Magdy are indeed partners in a law firm with UpRight Law so that section 504(b)(1)'s exception to section 504(a)'s fee-sharing prohibition applies. . . . [T]he limited partners identify UpRight Law as their law firm in the bankruptcy petitions . . . . UpRight Law is a firm specializing in bankruptcy law that has three general partners and approximately 300 limited partners, all of whom are lawyers. . . . UpRight law and its limited partners do constitute a law firm. Although the structure and operation of the firm is [*sic*] unconventional, this Court finds no authority that precludes it. . . . [T]he Chicago office continues to monitor the cases, supervises as necessary, and also provides legal assistance from staff lawyers and other partners as necessary. This alone makes UpRight Law more than a lawyer referral agency. . . . There is no citation . . . , nor does this Court find any authority precluding lawyers from representing clients through two separate practices—one in which they hold themselves out as part of the same firm and one in which they represent clients individually or through a separate firm with other attorneys. . . . Deighan Law's limited partners are partners in a professional association, corporation or partnership who may share compensation under Section 504(b)(1)."), *rev'g and remanding sub nom., In re Richard*, No. 16-42080-659, 2018 WL 5733508, at *5–*8 (Bankr. E.D. Mo. Oct. 10, 2018) (Surratt-States) (Upright Law violated § 504 by sharing fees with three attorneys to whom it referred debtors to file Chapter 13 cases. The three attorneys did not form a single firm with Upright Law for purposes of Missouri law and § 504. "This is a case about the status of three attorneys and a company with whom each attorney signed Partnership Agreements for purposes of fee-splitting. . . . This Court finds that each attorney has contracted with separate entity, Upright Law, to share fees in violation of Bankruptcy Code Section 504. This violation of Section 504 requires the disgorgement of fees paid to Upright Law. . . . Upright Law is nothing more than a lawyer referral agency that completes administrative screening work, then refers the case to attorneys to take on the legal work. . . . [T]he Local Attorneys' status as members of separate legal entities and not a single law firm with Upright Law also means the Local Attorneys are not members, partners, or regular associates in a professional association, corporation, or partnership with Upright Law within meaning of Section 504. Violation of Section 504 requires disgorgement of fees.").

{63} ***In re Spencer*, No. 19-41859, 2020 WL 4810064, at *2–*3 (Bankr. N.D. Ohio July 17, 2020) (Kendig)** (With "hesitation" bankruptcy court grants counsel's motion to withdraw from representation of Chapter 13 debtor. Missed payments to trustee and incurring debt without permission are not necessarily cause for withdrawal, but communication has broken down and further representation is not practical. "Standing alone, Mr. Bauer's motion does not establish good cause for withdrawal. Chapter 13 bankruptcy debtors fail to make payments with regularity. It is a hazard of representing a chapter 13 debtor. The fact that Debtor did not make payments for March and April is not cause for withdrawal. Similarly, it is not surprising that a debtor may incur debt or take action that does not comply with the terms of a chapter 13 plan. A plan is often subject to the personality traits of a debtor, be they recalcitrant, ignorant or indifferent. A debtor's attorney should expect to navigate occasional missteps by a debtor. . . . Debtor opposed Mr. Bauer's withdrawal. . . . Debtor does not want to be in a chapter 13 case. . . . [C]ommunications between the two are unfruitful. . . . [F]urther representation by Mr. Bauer would be unreasonably difficult.").

{64} ***In re Fulayter*, No. 19-53196, 2020 WL 3950274 (Bankr. E.D. Mich. July 9, 2020) (Shefferly)** (Chapter 13 debtor's Bankruptcy Rule 9011 motion for sanctions against prior counsel is denied for lack of merit. Debtor did not substantiate claims that counsel made false statements with respect to services to be provided to the debtor's business or that schedules—signed by debtor—were prepared by counsel in violation of Bankruptcy Rule 9011.).

{65} ***In re Hogan*, No. 18-05693-HB, 2020 WL 3685026 (Bankr. D.S.C. May 19, 2020) (Burris)** (In litigation with the U.S. trustee, attorney-client privilege does not protect UpRight Law from disclosure of names of its bankruptcy clients.).

{66} ***In re Negron*, 616 B.R. 583, 593-96 (Bankr. D.P.R. Apr. 28, 2020) (Lamoutte)** (Contract between Debt Relief Agency and Chapter 13 debtors is null and void under § 526(b) and (c) because contract failed to specify in writing the exact legal services included in the flat fee and then contract treated the flat fee as a minimum fee with possibility of additional hourly charges that rendered the actual cost of the case impossible to determine in violation of § 528(a)(1)(A) and (a)(1)(B). Waiver of unenforceability clause in the contract under § 526(c)(1) was itself unenforceable under § 526(b). "[T]he contracts make no reference to the specific services that will be performed by the debt relief agency, as required by [§] 528(a)(1)(A). This is critical in a case intended to be charged by hourly rates, as the assisted person is unable to understand how much will he or she end up paying . . . . [T]he court cannot agree with Legal Partners proposition that it cannot delimit any of the services without due diligence or that some diligence cannot be performed during the initial meetings with the assisted persons. . . . The logical outcome of not clearly and conspicuously explaining the services to be provided is the debt relief agency's inability to clearly and conspicuously explain how much such services may cost. . . . Legal Partners argues that the Debtors have the right under 11 U.S.C. § 526(c)(1) to enforce the contract . . . even if the contract is void. This argument misconstrues the scope of § 526(c)(1) and ignores the protections afforded to assisted persons in § 526(b). . . . This type of waiver is unenforceable under § 526(b).").

{67} ***In re Pearson*, No. 20-30077, 2020 WL 1845048 (Bankr. N.D. Tex. Apr. 9, 2020) (Jernigan)** (Internet-based law firm doing business as Wajda & Associates, also known as Recovery Law Group, is in much trouble in the Northern District of Texas after filing a Chapter 13 case for a serial bankruptcy abuser named Jakim Edward Pearson, Sr. Attorney took $1,500 postpetition retainer without disclosure or court approval. Petition did not reveal that debtor had filed 15 bankruptcy cases in various jurisdictions, some in the name of other individuals, some with borrowed Social Security numbers. The plan filed by counsel was nonsensical and when creditors showed up with motions revealing the truth counsel voluntarily dismissed the Chapter 13 case. Court then show-caused counsel to answer for a long list of statutory and rule transgressions. Counsel sent an "appearance attorney" who knew nothing about anything. Court has now set a second show-cause hearing with an order for counsel to appear personally. Stay tuned.).

{68} ***In re Cervantes*, 617 B.R. 687, 688-89 (Bankr. E.D. Cal. Mar. 31, 2020) (Sargis, Clement, Lastreto)** (Bankruptcy court publishes formula for Chapter 13 trustees to use to determine portion of no-look fees that were earned and/or must be refunded by suspended attorney with 481 pending Chapter 13 cases. "In this District, counsel for a chapter 13 debtor can elect to be compensated by a flat fee . . . . Debtor's counsel in these cases elected that option and received the full fee. Since the State Bar of California has suspended counsel for two years, counsel cannot complete the work necessary to earn the fee. The chapter 13 Trustee objected to the fee in each case. We SUSTAIN the objections, present a formula to determine the proper fee, and after applying the formula, order counsel to refund certain amounts to the Chapter 13 Trustee for the benefit of the respective estates.").

{69} ***In re Santos*, 616 B.R. 332 (Bankr. N.D. Tex. Mar. 17, 2020) (Jernigan)** (Filing an unauthorized Chapter 13 petition to stop foreclosure lands former husband and attorney in deep yogurt. Using lies and fake emails, Gabriel Santos convinced attorney Steve Le to file Chapter 13 petition on behalf of Gabriel's former wife, Cynthia Santos. Attorney never met real debtor, fabricated answers on statements and schedules and never satisfied DRA responsibilities under §§ 526, 527 and 528. Attorney is suspended from practice. Former husband is referred to U.S. Attorney for criminal prosecution.).

{70} ***In re Chapman*, 616 B.R. 523, 526-31 (Bankr. E.D. Wis. Mar. 11, 2020) (Hanan)** (Attorney sanctioned under Bankruptcy Rule 9011 for filing "emergency" Chapter 13 petition based on power of attorney and a fabricated story by the debtor's daughter. Simple investigation would have revealed two prior similar cases within a year. Debtor was not aware that daughter was filing bankruptcy petitions using a power of attorney. Daughter represented that debtor's son would fund the plan, but son was unaware of daughter's misrepresentations. "Neither Attorney Clowers nor [paralegal] spoke with Mrs. Chapman herself prior to filing the Chapter 13 bankruptcy case on her behalf . . . . [Daughter] did not disclose to Attorney Clowers and [paralegal], nor did they discover themselves, that two previous cases had been filed on behalf of Mrs. Chapman in the preceding twelve months. . . . Bankruptcy Rule 9011 includes a 21-day 'safe harbor' provision . . . . But the safe harbor provision does not apply if the challenged paper is a bankruptcy petition . . . . [T]he Clowers firm took [daughter], the power of attorney, at her word . . . . [T]he petition erroneously states 'no previous cases.' . . . [O]ne phone call to the debtor's prior counsel . . . and would have learned that [daughter] had spun the same sham story about a brother whom she claimed would save the day by paying the mortgage arrears, but never actually did so. . . . The fact that counsel filed without adequate investigation, relying on a fairly sympathetic, albeit untrue, story by the debtor's disingenuous and manipulative daughter, suggests a negligent sense of urgency . . . . [A] monetary sanction is warranted . . . . One-third of the fees and costs incurred for the instant, third case seems appropriate.").

{71} ***In re Gillis*, No. 20-101-A/B, 2020 WL 970320 (Bankr. E.D. Cal. Feb. 25, 2020) (Clement)** (On motion of Chapter 13 trustees in 481 Chapter 13 cases pending in the district in which debtor's counsel has been suspended from practice by state bar, standing trustees are ordered to cease distributing "no-look" fees to suspended counsel pending more comprehensive solution to how fees will be paid to complete the pending cases.).

{72} ***Walker v. UpRight Law (In re Walker)*, 615 B.R. 770 (Bankr. D.S.C. Feb. 20, 2020) (Burris)** (Further hearing necessary to determine appropriate sanction under § 105(a) after findings that UpRight Law failed to adequately represent a Chapter 13 debtor, failed to have adequate procedures for conflict checks, failed to properly refund fees on demand and violated various canons of professional responsibility along the way. Attorney's fees not awarded based on settlement agreement between UpRight and debtors with respect to other claims of misconduct.).

{73} ***In re Gillis*, No. 20-101, 2020 WL 768827, at *7 (Bankr. E.D. Cal. Feb. 14, 2020) (not for publication) (Sargis)** (The United States Bankruptcy Court for the Eastern District of California struggles with a suspended attorney's broken efforts to complete 603 pending bankruptcy cases, including many Chapter 13 cases. "[T]here is substantial pre- and post-confirmation work remaining to be done by an attorney . . . . Because of the Suspension, Mr. Gillis cannot do such work, cannot be allowed fees for such work, and cannot assign such fees for future work. Whomever [*sic*] substitutes in as counsel for the debtor in the future will make the fee arrangement with his or her new client, which fee arrangement is subject to approval by the court before such counsel can assert the right to be paid such fees.").

{74} ***In re Blume*, 610 B.R. 829 (Bankr. E.D. Mich. Dec. 23, 2019) (Tucker)** (Chapter 13 debtors' application to incur postpetition debt to hire nonbankruptcy counsel to pursue state court litigation is granted with conditions on amount and method of payment from postpetition income. Application to employ nonbankruptcy counsel was denied as unnecessary—Chapter 13 debtors can hire any nonbankruptcy counsel they wish to pursue state court litigation; only postpetition payment of nonbankruptcy counsel is subject to bankruptcy court review and approval.).

{75} ***In re Hopkins*, No. 18-28111-ABA, 2019 WL 6357249 (Bankr. D.N.J. Nov. 19, 2019) (Altenburg)** (Chapter 13 debtor and attorney are sanctioned for bad-faith abuse of bankruptcy process including sale of property without court authorization, failure to properly conduct Chapter 13 case, failure to file documents and failure to adequately represent the debtor. Sanctions included ordering the Chapter 13 trustee to use funds on hand in unconfirmed case to pay unsecured creditors in full, dismissal with two-year bar to refiling and denial of fees to counsel.).

{76} ***In re Schemelia*, 607 B.R. 455 (Bankr. D.N.J. Sept. 25, 2019) (Poslusny)** (Citing Bankruptcy Rule 9011 and inherent authority under § 105(a), bankruptcy court sanctions debtor's attorney for filing Chapter 13 petition without reasonable investigation of debtor's claim of ownership of real property. Foreclosure had transferred title before the petition and redemption was not available under state law. Writ of possession had issued and petition appeared to have been filed to stop eviction. Recovery of ownership of the property was beyond the debtor's power under the Bankruptcy Code and beyond the debtor's financial ability. Attorney's fees were assessed as a sanction.).

{77} ***In re Frillman*, No. 3:18-bk-04334-JAF, 2019 WL 4412272 (Bankr. M.D. Fla. Sept. 13, 2019) (Funk)** (Court approves settlement of U.S. trustee's motion for sanctions against debtor's attorney including suspension of practice for 180 days, 15 hours of CLE and refund of attorney's fees in multiple cases. Attorney failed to get wet signature from Chapter 13 debtors, allowed multiple cases to be dismissed for filing deficiencies and made multiple motions to set aside dismissals without correcting deficiencies. Attorney failed to file fee disclosures and rarely completed Chapter 13 cases.).

§ 26.2 Use of Paralegals and Representatives
§ 26.3 Prefiling Role of Chapter 13 Trustee

2. DEBTORS' COUNSEL

§ 27.1 Explaining Chapter 13 to a Debtor
§ 27.2 Explaining Chapter 13 to an Employer
§ 27.3 Exemption Planning
§ 27.4 Getting Paid: Attorneys' Fees for Representing Debtors

{78} ***In re Roberts*, 618 B.R. 213, 217-18 (Bankr. S.D. Ohio July 15, 2020) (Preston)** (Section § 327 requires Chapter 13 debtor to obtain court order hiring special counsel to prosecute postpetition car accident action; applying *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, ___ U.S. ___, 140 S. Ct. 696, 206 L. Ed. 2d 1 (Feb. 24, 2020), bankruptcy court will no longer enter *nunc pro tunc* orders approving counsel but counsel can still seek compensation. Hiring application is denied without prejudice because terms of fee agreement were not revealed. "This Court's decision to belay [*sic*] entry of *nunc pro tunc* orders (unless valid under *Feliciano*) does not mean that services rendered prior to entry of an order authorizing the employment will be uncompensated. . . . [W]hile authority to employ a professional must be granted in order for the professional to be awarded compensation, neither the Sixth Circuit Court of Appeals nor the applicable statutes and rules require that the Court approve employment before compensable services are rendered.").

{79} ***In re Valle Carrasquillo*, No. 15-05847 (ESL), 2020 WL 4728121 (Bankr. D.P.R. May 26, 2020) (Lamoutte)** (Fee contract that misleadingly described "no look fee" as a minimum amount preapproved by court fails to satisfy requirement in § 528(a)(1)(A) that fee contract must specify services to be performed and specify fees for each service; defect in contract cannot be cured by "amended" contract after the petition. Contract is void and unenforceable.).

3. CREDITORS' COUNSEL
§ 28.1 Prefiling Considerations for Creditors' Counsel
§ 28.2 Getting Paid: Attorneys' Fees for Representing Creditors
4. COLLECTING INFORMATION FROM THE DEBTOR
§ 29.1 Use of Preinterview Forms
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§ 30.1 Names, Social Security Numbers, Prior Cases
§ 30.2 Addresses, Friends and Relatives
§ 30.3 Health and Health Insurance
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§ 31.8 Guaranties and Other Secondary Liabilities
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§ 32.1 Assets—In General
§ 32.2 Contracts, Mortgages and Bank Accounts
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§ 32.4 Business Involvements
§ 32.5 Foreclosures, Repossessions and Surrenders
§ 32.6 Theft or Casualty Losses
§ 32.7 Insurance Policies
§ 32.8 Other Property
d. DEBTOR ENGAGED IN BUSINESS
§ 33.1 Special Information Needs In Business Cases

PART 3: COMMENCEMENT OF A CHAPTER 13 CASE
§ 34.1 Summary of Part 3
§ 34.2 In General—Effects of BAPCPA
A. STATUTES AND RULES DISCUSSED IN PART 3
§ 35.1 11 U.S.C. § 109(a): Who May Be a Debtor?
§ 35.2 11 U.S.C. § 521(a): Duty to File Schedules and Statements
§ 35.3 28 U.S.C. § 1408: Venue
§ 35.4 28 U.S.C. § 1412: Change of Venue
§ 35.5 28 U.S.C. § 1930: Filing Fees
§ 35.6 Bankruptcy Rule 1002: Commencement of Case
§ 35.7 Bankruptcy Rule 1005: Caption of Petition
§ 35.8 Bankruptcy Rule 1006: Filing Fee and Installments
§ 35.9 Bankruptcy Rule 1007: Lists, Statements and Schedules
§ 35.10 Bankruptcy Rule 1008: Verification
§ 35.11 Bankruptcy Rule 1014: Dismissal and Change of Venue
§ 35.12 Bankruptcy Rule 2016: Disclosure of Compensation
§ 35.13 Bankruptcy Rule 4003: Exemptions
§ 35.14 Bankruptcy Rule 9009: Official Forms
B. DOCUMENT CHECKLIST AND EXPLANATION OF FORMS
§ 36.1 Commercial Forms
§ 36.2 Petition, Signed by Debtor—"Wet" Signature Issues

{80} ***In re Maes*, 616 B.R. 784, 795 (Bankr. D. Colo. May 20, 2020) (McNamara)** (Although there is no requirement in the Code or Rules that the debtor sign the bankruptcy petition, the Official Forms require a signature by the debtor, not necessarily a "wet" one. "[T]he Code does not require that every debtor actually come to Court to 'file' a petition. Instead, in most cases the filing exercise is

performed, as it was in this case, by counsel through electronic means. 'Neither statute [Section 301 or 302] requires or states that the petition must be signed by the debtor . . . .' . . . Fed. R. Bankr. P. 1007 also requires that a debtor 'shall file' various documents . . . . But, again, that mandate does not require that those documents be executed by a debtor. . . . [S]omeone must sign; but Fed. R. Bankr. P. 1008 does not indicate that it must be a debtor. . . . There is a debtor signature requirement, but it takes some digging and cross-referencing to find. Fed. R. Bankr. P. 9009 deals with bankruptcy forms . . . . Those documents do require a 'Signature of Debtor' (or someone otherwise properly authorized to sign for a debtor).").

§ 36.3 Caption for Petition
§ 36.4 List of Creditors and Addresses

{81} ***In re Cowser*, No. 6:19-bk-21008-WJ, 2020 WL 974973 (Bankr. C.D. Cal. Feb. 28, 2020) (Johnson)** (On motion of Chapter 13 trustee, confirmation of plan is denied and case is dismissed because debtor did not list or schedule separate debts of nonfiling spouse. In community property state like California, the debtor is liable as part of the community for separate debts of nonfiling spouse and those creditors must be given notice and opportunity to participate by filing claims and objecting to confirmation. Dismissal is necessary because creditors of nonfiling spouse have been "irreparably prejudiced" by passage of time without notice of Chapter 13 case.).

§ 36.5 [RESERVED]
§ 36.6 Statement of Social Security Number
§ 36.7 Schedules—In General
§ 36.8 Schedule A—Real Property
§ 36.9 Schedule B—Personal Property
§ 36.10 Schedule C—Exemptions
§ 36.11 Schedule D—Secured Claims
§ 36.12 Schedule E—Priority Claims
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§ 36.19 Form 122C-1: Statement of Current Monthly Income
§ 36.20 Form 122C-1: Commitment Period Calculation
§ 36.21 Form 122C-2: Disposable Income Calculation
§ 36.22 Statement of Financial Affairs
§ 36.23 Statement of Financial Affairs after BAPCPA
§ 36.24 Plan
§ 36.25 Briefing Requirement and Certificate
§ 36.26 Attorney's Disclosure of Compensation
§ 36.27 Matrix of Creditors
§ 36.28 Cover Sheet
§ 36.29 Application to Pay Filing Fee in Installments
§ 36.30 Order to Pay Trustee
§ 36.31 Statement of Financial Affairs for Debtor Engaged in Business
§ 36.32 Section 342(b) Certificate
§ 36.33 Certificate of § 342(b) Notice after BAPCPA
§ 36.34 Record of Education Individual Retirement Account
§ 36.35 Certification About Eviction Judgment and Rent Deposit

{82} ***In re Arrieta*, 612 B.R. 342, 346–49 (Bankr. D.S.C. Jan. 23, 2020) (Waites)** (Upon objection by landlord, Chapter 13 debtor's certification under § 362(*l*)(1) is not true and the stay exception in § 362(b)(22) applies because no provision of lease contract or of South Carolina law permits debtor to cure lease defaults after state court issued writ of ejectment. Debtor's tender of one month's rent is not enough. "In an effort to stay the eviction proceedings, Debtor filed the Certification which indicated that she had deposited with the Clerk of Court the rent to be due during the first 30 days after the petition and that under South Carolina law, she has the right to stay in Residence after the entry of the Writ of Ejectment upon the payment of the entire amount of unpaid prepetition rent owed to Landlord. . . . [S]ection 362(b)(22) provides an exception to the automatic stay . . . . [T]he Bankruptcy Code provides an 'exception to the exception' of the automatic stay by allowing debtors who are tenants in a residential lease to obtain, in essence, a temporary 30-day stay (with the possibility of obtaining an extended stay) through the certification process of § 362(*l*). . . . Under § 362(*l*)(2), the exception to the automatic stay under § 362(b)(22) shall not apply for the entirety of the case . . . . [T]he landlord may file an objection to the debtor's initial certification, and the Court must hold a hearing to determine if the certification filed by the debtor is true. . . . Debtor has not alleged any circumstances that would permit her at this stage in the eviction process and over the objection of the Landlord to cure the unpaid rent on the Lease. . . . Debtor is not permitted to cure the missed rent payments to Landlord after the issuance of the Writ of

Ejectment. As the Court finds that the Certification filed by Debtor with her petition is not true, the objection is sustained and the exception to the automatic stay under § 362(b)(22) is immediately applicable so that Landlord may be permitted to complete the process of obtaining full possession of the Residence.").

§ 36.36 Notice by Bankruptcy Petition Preparer
§ 36.37 Local Documents

C. TIME AND PLACE FOR FILING

§ 37.1 Jurisdiction, Venue and Change of Venue

{83} ***Nichols v. Marana Stockyard & Livestock Mkt. Inc. (In re Nichols)*, 615 B.R. 588 (D. Ariz. Mar. 16, 2020) (Brnovich)** (Applying balancing considerations from *Federal Savings & Loan Insurance Corp. v. Molinaro*, 889 F.2d 899 (9th Cir. Nov. 16, 1989) (Schroeder, Boochever, Beezer), bankruptcy court did not abuse its discretion by refusing to stay, suspend or abstain in a Chapter 13 case involving debtors with pending parallel criminal proceedings and Fifth Amendment considerations.).

{84} ***In re Dees*, No. 19-40286-KKS, 2019 WL 9406122 (Bankr. N.D. Fla. Oct. 4, 2019) (Specie)** (In 14th bankruptcy by debtor and/or spouse all filed to contest payments made on a mortgage, venue is transferred from Northern District of Florida to Northern District of Georgia because debtor has no contacts with Florida and all property and other interests are in Georgia.).

§ 37.2 When to File Petition
§ 37.3 Timing Considerations after BAPCPA
§ 37.4 Time for Filing Schedules, Statement of Financial Affairs, Plan and Other Documents
§ 37.5 Filing Fee and Option to Pay in Installments
§ 37.6 Filing Fees, Installments and Waiver after BAPCPA

PART 4: PRECONFIRMATION PRACTICE

§ 38.1 Summary of Part 4

A. STATUTES AND RULES DISCUSSED IN PART 4

§ 39.1 11 U.S.C. § 343: Appearance and Examination at Meeting of Creditors
§ 39.2 11 U.S.C. § 521(1): Debtor's Duties
§ 39.3 11 U.S.C. § 1301: Codebtor Stay
§ 39.4 11 U.S.C. § 1302: Powers and Duties of Trustee
§ 39.5 11 U.S.C. § 1303: Rights and Powers of Debtor
§ 39.6 11 U.S.C. § 1304: Debtor Engaged in Business
§ 39.7 11 U.S.C. § 1321: Filing of Plan
§ 39.8 11 U.S.C. § 1323: Modification of Plan before Confirmation
§ 39.9 11 U.S.C. § 1326: Payments into Plan
§ 39.10 Bankruptcy Rule 1007(h): Mandatory Amendments
§ 39.11 Bankruptcy Rule 1009: Amendments to Petition, Lists, Statements and Schedules
§ 39.12 Bankruptcy Rule 2003: Meeting of Creditors
§ 39.13 Bankruptcy Rule 2004: Examinations
§ 39.14 Bankruptcy Rule 2015: Record-Keeping and Reporting Requirements
§ 39.15 Bankruptcy Rule 3004: Filing of Claims by Debtor
§ 39.16 Bankruptcy Rule 3010: Small Dividends
§ 39.17 Bankruptcy Rule 3012: Valuation of Security
§ 39.18 Bankruptcy Rule 3013: Classification of Claims
§ 39.19 Bankruptcy Rule 3015: Filing of Plan
§ 39.20 Bankruptcy Rule 4001: Stay Relief Practice and Procedure
§ 39.21 Bankruptcy Rule 4002: Duties of Debtor
§ 39.22 Bankruptcy Rule 6004: Use, Sale or Lease of Property
§ 39.23 Bankruptcy Rule 6006: Assumption and Rejection of Executory Contracts

B. POWERS AND DUTIES OF DEBTOR

§ 40.1 Duty to Cooperate

1. STATEMENTS AND SCHEDULES

§ 41.1 Duty to File Statements and Schedules
§ 41.2 Preconfirmation Amendment of Petition, Statements, Schedules and Lists

2. FILING AND PROVIDING DUTIES ADDED BY BAPCPA

§ 42.1 Filing Requirements and Other Duties: A List

§ 42.2 Consequences of Failure to File Required Information, Including "Automatic Dismissal"

{85} ***In re Rosebar*, No. 20-00006, 2020 WL 2299940 (Bankr. D.D.C. May 7, 2020) (Teel)** (Under local rule, "automatic" dismissal under § 521(i) based on debtor's failure to timely file payment advices is triggered by motion that must be filed within 21 days of expiration of 45 days in § 521(i); creditor's untimely automatic dismissal motion—filed 61 days after expiration of 45-day period—is denied. U.S. trustee could have but did not file motion to dismiss under § 1307(c)(9) when debtor failed to timely file payment advices. Creditors can assert automatic dismissal by timely motion under § 521(i) but creditors are not entitled to invoke § 1307(c)(9)—only the U.S. trustee can.).

{86} ***In re Brief*, No. 19-00838, 2020 WL 598213 (Bankr. D.D.C. Feb. 6, 2020) (Teel)** (Motion to vacate dismissal order that resulted when Chapter 13 debtor failed to resolve filing fee and document-filing issues raised in show-cause order is denied because debtor has continued to fail to file documents required by § 521(a)(1)(B) and continuing delay is prejudicial to creditors. In any case, under § 521(i), on request of any party, the court would declare the Chapter 13 case automatically dismissed based on debtor's failure to file schedules and other documents within 45 days of the petition. Although § 1307(c)(9) reserves to the U.S. trustee pursuit of motions to dismiss for failure to timely file documents required by § 521(a)(1), bankruptcy court has sua sponte dismissal authority under § 105(a) for the same reasons.).

{87} ***In re Davis*, No. 19-36077-KLP, 2020 WL 581505 (Bankr. E.D. Va. Feb. 5, 2020) (Phillips)** (In fourth bankruptcy case in 10 years, motion to reconsider order denying further extension of time to file necessary documents and dismissing Chapter 13 case is denied because debtor offered no ground for reconsideration and court committed no error.).

{88} ***In re Ward*, 610 B.R. 804 (Bankr. W.D. Pa. Jan. 15, 2020) (Deller)** (Chapter 13 debtor's seventh motion for additional time to file basic documents to commence case is denied for lack of cause; hearing is set to determine whether dismissal should be with prejudice under § 109(g).).

§ 42.3 Payment Advices

{89} ***In re Rosebar*, No. 20-00006, 2020 WL 2299940 (Bankr. D.D.C. May 7, 2020) (Teel)** (Under local rule, "automatic" dismissal under § 521(i) based on debtor's failure to timely file payment advices requires motion that must be filed within 21 days of expiration of 45 days in § 521(i); creditor's untimely automatic dismissal motion—filed 61 days after expiration of 45-day period—is denied. U.S. trustee could have but did not file motion to dismiss under § 1307(c)(9) when debtor failed to timely file payment advices. Creditors can assert automatic dismissal by timely motion under § 521(i) but creditors are not entitled to invoke § 1307(c)(9)—only the U.S. trustee can.).

§ 42.4 Tax Return Duties—In General
§ 42.5 Tax Return Duties Seven Days before First Scheduled Meeting of Creditors
§ 42.6 Tax Return Duties One Day before First Scheduled Meeting of Creditors
§ 42.7 Tax Return Duties—On Request

{90} ***Crow v. Maney (In re Crow)*, No. AZ-18-1323-SFB, 2020 WL 710351, at *5–*6 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Spraker, Faris, Brand)** (Distinguishing *Anderson v. Satterlee (In re Anderson)*, 21 F.3d 355 (9th Cir. Apr. 12, 1994) (Browning, Norris, O'Scannlain), challenge to local plan form requirement that debtors provide tax returns to trustee every year was not properly before bankruptcy appellate panel; but if it were, § 521(f)(1) and § 521(f)(4)(B) fully support the requirement to aid the trustee in determining whether there is a need for modification of the plan. "*Anderson* did not absolve chapter 13 debtors from providing additional financial information to trustees during their plan terms. . . . [U]pon request debtors are required to file with the court copies of each federal tax return for each tax year ending while the case is pending. [11 U.S.C.] § 521(f)(1). And chapter 13 debtors, also upon request, are required after confirmation to file annually 'a statement . . . of the income and expenditures of the debtor during the tax year . . . most recently concluded . . . .' [11 U.S.C.] § 521(f)(4)(B). . . . These requirements are designed to facilitate a chapter 13 trustee's ability to monitor a debtor's postconfirmation financial condition for purposes of . . . evaluating the need for potential plan modifications under § 1329(a)—for either increases or decreases in plan payments.").

{91} ***In re Sherwood*, No. 19-10509, 2020 WL 609603, at *1 (Bankr. D. Me. Jan. 7, 2020) (Fagone)** (Chapter 13 trustee's motion to require debtors to file tax returns, pay taxes and provide copies of future tax returns is denied because the Code and Rules comprehensively manage the filing and provision of tax returns and orders supplemental to those Code and Rule provisions are not appropriate. "There is no question that the trustee is entitled to the tax information he seeks. Similarly, there is no doubt that chapter 13 debtors must pay their postpetition tax obligations as and when they come due. That said, the Court will not impose additional requirements for the filing and provision of tax returns and other information where Congress has already created a detailed scheme governing the subject while a bankruptcy case is pending, particularly where that scheme contemplates serious consequences for failure to comply.").

{92} ***In re Styerwalt*, 610 B.R. 356 (Bankr. D. Colo. Dec. 16, 2019) (McNamara)** (Trustee is entitled to postconfirmation tax returns every year under § 521(f) in light of possibility that debtor will receive future bonus income; in addition, under § 521(f)(4) and (g), debtor must report whether he received a bonus and, if so, how much.).

§ 42.8 Consequences of Failure to File or Provide Tax Returns

{93} ***Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 618 B.R. 1, 8–13 (B.A.P. 9th Cir. Aug. 12, 2020) (Taylor, Lafferty, Brand)** (Neither *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), nor *Law v. Siegel*, 571 U.S. 415, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (Mar. 4, 2014), overruled *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. Sept. 24, 2008) (Fletcher, Paez, Schwarzer): the bankruptcy court appropriately granted conversion motion rather than debtors' competing motion to dismiss to prevent debtors from continuing to delay and abuse the bankruptcy process while they dealt with criminal misconduct. Alternatively, debtors' failure to file tax returns required by § 1308 was ground for conversion under § 1307(e) and bankruptcy court appropriately determined that interests of creditors favored conversion over competing motion to dismiss. "*Law* characterized *Marrama*'s conclusion that a bankruptcy court could deny dismissal pursuant to § 105(a) as 'dictum.' . . . But *Law* reinforced that § 105(a) could be used to avoid [ ] 'futile procedural niceties . . . ' . . . . Section 1307(c) proffers a statutory basis to refuse to honor a § 1307(b) dismissal request, just as §§ 706(d) and 1307(c), read together, proffer a statutory basis to refuse to honor a § 706(a) conversion request. . . . [W]e hold that *Rosson* remains good law; a debtor's § 1307(b) right to dismissal is not absolute. . . . [T]here is no indication in the legislative history that Congress intended to grant debtors who have abused the bankruptcy process an unqualified right to choose the means by which they exit chapter 13. . . . [A]llowing the bankruptcy court to convert a chapter 13 case to chapter 7 for bad faith conduct, abuse of process, or a failure to file tax returns despite a debtor's § 1307(b) dismissal motion honors Congress' intention of keeping chapter 13 proceedings voluntary while preserving the integrity of the bankruptcy system by allowing the bankruptcy court to address abusive behavior. . . . Section 1307(e) unambiguously provides that a bankruptcy court 'shall' dismiss the case or convert the case to chapter 7 . . . if the debtor fails to comply with § 1308 and a party in interest requests dismissal or conversion. . . . Given the mandatory language of § 1307(e), the bankruptcy court was required to consider the interests of creditors. It thoughtfully did so and determined that conversion, and not dismissal, would best serve their interests.").

{94} ***In re Souter*, No. 19-21582-gmh, 2019 WL 5887174, at *1–*2 (Bankr. E.D. Wis. Sept. 17, 2019) (Halfenger)** (The requirement in § 1325(a)(9) is mandatory—the court cannot confirm a Chapter 13 unless the debtor affirmatively proves that all required tax returns have been filed consistent with § 1308. "The debtors contend that, unless someone objects, the court can confirm a plan in this case even though they did not (and cannot now) satisfy § 1325(a)(9) because they failed to file all of their applicable tax returns as required by § 1308. . . . The Supreme Court has repeatedly read § 1325(a) to permit confirmation only if all of the subsection's requirements are met.").

§ 42.9 Tax Return Confidentiality Issues
§ 42.10 Annual Income and Expense Statement—On Request

{95} ***Crow v. Maney (In re Crow)*, No. AZ-18-1323-SFB, 2020 WL 710351, at *5–*6 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Spraker, Faris, Brand)** (Distinguishing *Anderson v. Satterlee (In re Anderson)*, 21 F.3d 355 (9th Cir. Apr. 12, 1994) (Browning, Norris, O'Scannlian), challenge to local plan form requirement that debtors provide tax returns to trustee every year was not properly before bankruptcy appellate panel; but if it were, § 521(f)(1) and § 521(f)(4)(B) fully support the requirement to aid the trustee in determining whether there is a need for modification of the plan. "*Anderson* did not absolve chapter 13 debtors from providing additional financial information to trustees during their plan terms. . . . [U]pon request debtors are required to file with the court copies of each federal tax return for each tax year ending while the case is pending. [11 U.S.C.] § 521(f)(1). And chapter 13 debtors, also upon request, are required after confirmation to file annually 'a statement . . . of the income and expenditures of the debtor during the tax year . . . most recently concluded . . . .' [11 U.S.C.] § 521(f)(4)(B). . . . These requirements are designed to facilitate a chapter 13 trustee's ability to monitor a debtor's postconfirmation financial condition for purposes of . . . evaluating the need for potential plan modifications under § 1329(a)—for either increases or decreases in plan payments.").

{96} ***In re Styerwalt*, 610 B.R. 356 (Bankr. D. Colo. Dec. 16, 2019) (McNamara)** (Trustee is entitled to postconfirmation tax returns every year under § 521(f) in light of possibility that debtor will receive future bonus income; in addition, under § 521(f)(4) and (g), debtor must report whether he received a bonus and, if so, how much.).

§ 42.11 Audits by U.S. Trustee

3. MEETING OF CREDITORS

§ 43.1 Timing and Procedure
§ 43.2 Debtor Duties at Meeting of Creditors after BAPCPA
§ 43.3 Personal Appearance by Debtor
§ 43.4 What to Do If Debtor Is Not Able to Attend in Person
§ 43.5 Consequences of Failure to Attend Meeting of Creditors
§ 43.6 Option Not to Convene Meeting of Creditors?
§ 43.7 Holding Open the Meeting of Creditors

§ 43.8 Representing Creditors at the Meeting of Creditors

4. DEBTOR MUST COMMENCE MAKING PAYMENTS

§ 44.1 First Test of Debtor's Good Intentions

{97} ***Bauman v. Skelton (In re Bauman)*, No. SC-18-1190-SLG, 2020 WL 1899557, at *8–*9 (B.A.P. 9th Cir. Apr. 16, 2020) (not for publication) (Spraker, Lafferty, Gan)** (Chapter 13 debtor cannot avoid the requirement to commence payments under § 1326(a)(1) by proposing to make all payments directly to creditors. Debtors can make some payments directly to creditors but typically not to unsecured creditors and certainly not all payments. "Bauman points to no case that has permitted a chapter 13 debtor to excise the trustee and make *all* payments directly to creditors. . . . Bauman may not usurp the chapter 13 trustee's statutory role. . . . Permitting a debtor to make all chapter 13 payments outside of the plan would undermine the trustee's ability to carry out these duties or render them impracticable. . . . Courts have rejected interpretations of § 1326(a)(1) that would permit debtors to avoid or condition the commencement of their payments under § 1326(a)(1). . . . Her proposed plans did not absolve her of the duty to commence plan payments under § 1326(a)(1).").

§ 44.2 Timing and Form of Payment
§ 44.3 Employer Problems
§ 44.4 Consequences of Failure to Commence Payments

{98} ***Bristol v. Branigan*, No. PJM 18-02957, 2019 WL 4600304 (D. Md. Sept. 20, 2019) (Messitte)** (Bankruptcy court appropriately dismissed Chapter 13 case under § 1307(c) when debtor failed to commence payments within 30 days as required by § 1326. That debtor claims her attorney told her not to begin making payments until a motion for stay relief was filed does not change result.).

§ 44.5 Return of Payments to Debtor

{99} ***In re Bair*, No. 15-61403, 2019 WL 6045481, at *3 (Bankr. N.D. Ohio Nov. 14, 2019) (not for publication) (Kendig)** (Applying § 347, Chapter 13 debtor's objection to claim of Citi is not proper procedure for debtor to obtain funds paid by Chapter 13 trustee to Citi pursuant to confirmed plan but returned to trustee when creditor was not found. Instead, funds are properly paid into the court registry and held for Citi to claim. Failing that, money will be paid to Treasury after five years. "[Section] 347(a) would be rendered meaningless[] if a trustee or a debtor could simply ask the court to disallow a claim every time the trustee was unable to locate a creditor during a case. . . . [T]he funds on hand for the Claim belong to Citi—not Debtor. And if the funds remain unpaid 90 days after the Trustee's final distribution under 11 U.S.C. § 1326, they must be paid into the court for disposition as unclaimed funds pursuant to § 347(a).").

§ 44.6 Preconfirmation Payments after BAPCPA
§ 44.7 Disposition of Preconfirmation Payments after BAPCPA

{100} ***In re Rosebar*, No. 20-00006, 2020 WL 4919693 (Bankr. D.D.C. Aug. 20, 2020) (Teel)** (At dismissal before confirmation, creditor's objection to $15,000 fee application of debtor's counsel is overruled. Debtor's bad faith in responding to discovery in other matters is not properly assignable to counsel. Debtor's counsel is entitled to payment of fees to the extent possible from plan payments received by trustee.).

{101} ***In re Evans*, 618 B.R. 493 (Bankr. E.D. Mich. Aug. 19, 2020) (Tucker)** (At conversion from Chapter 13 to Chapter 7 before confirmation, *Harris v. Viegelahn*, 575 U.S. 510, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (May 18, 2015), does not control; § 1326(a)(2) controls and trustee is directed to pay administrative expenses, including attorney's fees, before returning balance to the debtor.).

{102} ***In re Nelums*, 617 B.R. 70, 74–75 (Bankr. D.S.C. July 6, 2020) (Waites)** (Distinguishing *Harris v. Viegelahn*, 575 U.S. 510, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (May 18, 2015), and consistent with local rules and § 1326(a)(2), at dismissal before confirmation Chapter 13 trustee appropriately paid attorney's fees as an administrative expense under §§ 503(b) and 330(a)(4)(B) and then returned the balance on hand to debtor. "The majority of courts have held that § 1326(a)(2) controls the disbursement of funds held by the Chapter 13 Trustee upon the preconfirmation dismissal of a chapter 13 case. . . . *Harris* is distinguishable because it addressed a post confirmation conversion governed by § 348 and not a pre-confirmation dismissal governed by § 349 and § 1326(a)(2) . . . . The majority of cases considering the application of *Harris* to a Chapter 13 case that has been dismissed prior to confirmation have agreed that the holding in *Harris* does not apply in these cases and § 1326(a)(2) instead controls the distribution of payments held by the Chapter 13 trustee. . . . [Section] 1326(a)(2) requires the Trustee to return the undistributed plan payments to Debtor, after deducting any unpaid claim allowed under § 503(b).").

{103} ***In re Arnold*, No. 19-54252, 2020 WL 2462525, at *2 (Bankr. E.D. Mich. May 12, 2020) (Shefferly)** (Distinguishing *Harris v. Viegelahn*, 575 U.S. 510, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (May 18, 2015), at conversion to Chapter 7 before confirmation, third sentence in § 1326(a)(2) controls and trustee must pay administrative expenses—including debtor's attorney's fees—before returning balance on hand to debtor. "[T]he Court does not read the broad language [in] *Harris* as overriding the plain and unambiguous statutory

command in the third sentence of § 1326(a)(2) . . . . *Harris* did not address what a trustee should do about unpaid expenses of administration when a case is converted from Chapter 13 to Chapter 7.").

{104} ***In re Johnson*, No. 19-43854, 2020 WL 1943205 (Bankr. E.D. Mich. Apr. 22, 2020) (Randon)** (After dismissal before confirmation and refiling, funds held by trustee at dismissal of first case become property of estate in second case subject to § 503(b) claim for counsel's fees in first case. Creditor that served Chapter 13 trustee with garnishment at dismissal of first case is subject to automatic stay with respect to its levy when debtor refiles and funds subject to levy became property of the estate in second case.).

{105} ***In re Evans*, 615 B.R. 290, 296-300 (Bankr. D. Idaho Feb. 13, 2020) (Meier)** (Applying § 1326(a)(2), in derogation of 28 U.S.C. § 586(e), in Chapter 13 case dismissed before confirmation, Chapter 13 trustee must regurgitate compensation and reimbursement of expenses collected from payments by debtor. "Section 1326(b) requires the trustee to pay the trustee's percentage fee before or at the time of each payment to creditors under the plan. . . . Section 1326(a)(2) only allows the trustee to pay creditors after a plan is confirmed. . . . If the trustee cannot pay creditors until a plan is confirmed pursuant to § 1326(a)(2), then § 1326(b) is not operative until a plan is in effect. . . . Because § 1226(b)(2) and § 1326(b)(2) contain almost identical language, but § 1226(a)(2) expressly allows a trustee to deduct a percentage fee in unconfirmed cases, and § 1326(b)(2) is inoperative until a plan is in effect, the Court does not find § 1326(b)(2) permits trustee fees to be paid regardless of whether a plan is confirmed. . . . Just as § 586(e) does not contemplate that once a fee is collected, any part of it should be refunded to the debtor, it also does not contemplate that any portion of the fee is irrevocable. . . . [T]his Court concludes it must rely on the text of the statute, and its interpretation thereof, and not decide the matter based on conflicting public policy arguments.").

{106} ***McKinney v. 2nd Chance Auto Sales, Inc.*, 611 B.R. 894, 898–905 (Bankr. N.D. Ala. Jan. 30, 2020) (Sawyer)** (*Barton* doctrine bars state court action against Chapter 13 trustee to collect judgment against Wells Fargo from trust funds held by trustee. In addition, funds held by trustee are *in custodia legis* and cannot be levied upon or attached by state court process. 2nd Chance Auto Sales, Inc., obtained a money judgment against a car buyer. In an effort to collect that judgment, 2nd Chance garnished the buyer's bank account at Wells Fargo. Wells Fargo failed to respond, which resulted in an $8,000 judgment against Wells Fargo. 2nd Chance then brought state court action against Chapter 13 trustee as garnishee to collect money held for payment to Wells Fargo in Chapter 13 cases. "As this proceeding involves a garnishment action brought against the Chapter 13 Trustee, who is appointed to serve this Court, this Court has exclusive jurisdiction to hear this matter. 28 U.S.C. § 1334; *Barton v. Barbour*, [104 U.S. (14 Otto) 126, 26 L. Ed. 672 (Oct. 1, 1881)]. . . . [I]t is undisputed that Second Chance did not first seek leave from this Court to bring a garnishment action against the Trustee . . . . In addition to the Eleventh Circuit, 10 other circuits have likewise held that *Barton* applies to suits brought against a trustee in bankruptcy. . . . ' . . . [T]he *Barton* Doctrine requires a party to obtain leave of the bankruptcy court before initiating an action in any non-bankruptcy courts against a bankruptcy trustee for acts done in the trustee's official capacity.' . . . As garnishment actions against a trustee are civil actions, it follows that *Barton* withdraws subject matter jurisdiction from any court other than the court in which the trustee serves where, as here, someone attempts to garnish funds in the hands of a trustee. . . . While the Trustee enjoys protection from unauthorized lawsuits under the *Barton* doctrine, the property in her charge is protected under the doctrine of *in custodia legis* while it remains in her charge. . . . As such, the funds, independent of the *Barton* doctrine, are beyond the reach of any 'levy or attachment in any form.'").

5. DEBTOR MAY USE, SELL AND LEASE ESTATE PROPERTY

§ 45.1 Debtor Has Exclusive Possession and Control of Estate Property

{107} ***In re Peterson*, No. 3:19-CV-00249 (KAD), 2019 WL 6467351 (D. Conn. Dec. 2, 2019) (Dooley)** (When Chapter 13 debtor obtained a judgment against the owner of a corporation and that corporation obtained $25,000 by way of settlement of other litigation, debtor's indirect interest in the $25,000 did not become property of the Chapter 13 estate because the debtor took no action to collect from the corporation and the Chapter 13 trustee had no obligation to do so. Because the confirmed plan was funded in part by the proceeds of that litigation, the bankruptcy court did not err in closing the case without discharge when the debtor did not liquidate the claim and did not bring any portion of the settlement proceeds into the estate.), *reconsideration denied*, No. 3:19-CV-00249 (KAD), 2020 WL 607153 (D. Conn. Feb. 7, 2020) (Dooley).

{108} ***Cattell v. Deeks (In re Cattell)*, No. 19-03123-dwh, 2020 WL 3053130, at *6 (Bankr. D. Or. June 8, 2020) (Hercher)** (In business litigation against former partner, PricewaterhouseCoopers LLP, and others, Chapter 13 debtor's complaint escapes statute of limitations based on debtor's right to use estate property in § 1303 which incorporates § 363(b) and includes the two-year grace period in § 108(a). "[S]ection 1303 reassigns certain trustee powers to the debtor. Specifically, it assigns to the debtor, exclusive of the trustee, the rights and powers of a trustee . . . , including section 363(b), which permits the trustee to 'use' estate property. Because no plan has yet been confirmed in this case, the claims against PwC are estate property, and Cattell has the exclusive right to use the claims by suing on them. But for section 1303, an action on a prepetition claim that was not time-barred at case commencement could be brought under section 363(b) by the chapter 13 trustee, who would have the benefit of the two-year grace period in section 108(a). The grace period is thus a procedural right inherent in and inseparable from the trustee's section 363(b) substantive right to use estate property. The plain meaning of section 1303 is that its assignment to the debtor of the trustee's rights and powers under section 363(b) includes all of those rights and powers—including the trustee's right to bring an action on an estate-property claim within the grace period. . . . Depriving a

chapter 13 debtor of the grace period because section 1303 doesn't enumerate section 108 would be inconsistent with a chapter 13 debtor's right to bring trustee avoidance actions.").

{109} ***In re Pulliam*, No. 19-03887-5-DMW, 2020 WL 1860113, at *3–*4 (Bankr. E.D.N.C. Apr. 13, 2020) (Warren)** (Because $30,000 homestead exemption removes debtor's interest in property from the estate, but not the property itself under *Schwab v. Reilly*, 560 U.S. 770, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (June 17, 2010), nonstandard provision of plan that would relieve debtor of obligation under local rules to give notice of any sale of property during the Chapter 13 case is not proposed in good faith and precludes confirmation. "When the Debtor claimed an exemption in the Property . . . , he did not exempt the Property in its entirety, and he did not remove the Property from the bankruptcy estate. He exempted his *interest* in the Property. Local Rule . . . governing the sale of 'non-exempt' property remains applicable to any future sale of the Property, despite the Debtor's attempt to circumvent the Rule by including the Nonstandard Provision in Section 8.1 of the Plan. . . . [T]he Plan has not been proposed in good faith, because it seeks impermissibly to deem property fully exempt from the Debtor's bankruptcy estate through the use of the Nonstandard Provision.").

{110} ***In re Revels*, 616 B.R. 675, 680-82 (Bankr. E.D.N.C. Mar. 20, 2020) (Humrickhouse)** (Nonstandard provision of plan that absolves Chapter 13 debtor of any requirement to file a Rule 9019 motion to approve settlement of pending employment action is consistent with §§ 1303 and 363(b) and Bankruptcy Rule 9019 because Chapter 13 debtor owns and controls the litigation and its settlement, exclusive of the trustee, and Rule 9019 applies only to trustees. In contrast, nonstandard provision that would absolve debtor of any obligation to report settlement of employment action is inconsistent with disclosure requirements of Code and Rules and would impede ability of trustee and others to monitor income and assets of the debtor. Nonstandard provision that would require the trustee to inform the parties to the employment action that the trustee has no role in settlement is "unacceptable, demeaning, retributory." "A chapter 13 debtor assumes 'exclusive of the trustee, the rights and powers of a trustee under section[ ] 363(b) . . . . Under section 363(b), the debtor ' . . . may use, sell, or lease . . . property of the estate.' . . . Thus, implicit within the chapter 13 debtor's exclusive authority to use property of the estate is the power of the debtor to maintain a cause of action that is part of the bankruptcy estate. . . . Rule 9019 authorizes a 'trustee' to seek a court order approving a compromise or settlement. . . . Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . [T]he settlement of the cause of action is controlled by the chapter 13 debtor. . . . Although the court can see reasons why a debtor would want court approval of a settlement, on its face, Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . Even though a chapter 13 debtor is not required to file a motion to approve settlement or compromise under Rule 9019, the debtor still has a duty to disclose assets, including the settlement of claims against third parties. . . . An objective check on settlements must exist to ensure that chapter 13 trustees have full disclosure of estate assets. . . . [T]he act of settling a claim . . . equates to a 'substantial change' in the financial circumstances of the debtor that would warrant disclosure to the trustee, even if the amount of the settlement is not substantially different than the amount scheduled.").

{111} ***In re Sexton*, No. 1:16-bk-14785-SDR, 2019 WL 5586581 (Bankr. E.D. Tenn. Oct. 25, 2019) (Rucker)** (Although notice was sloppy and motion not altogether clear, bankruptcy court grants Chapter 13 debtor authority to sell property of the estate with conditions that protect lienholder.).

a. PROPERTY OF THE ESTATE

§ 46.1 What Is Property of the Chapter 13 Estate?
§ 46.2 Property of the Chapter 13 Estate—Changes by BAPCPA
§ 46.3 Postpetition Earnings
§ 46.4 Prepetition Repossession, Levy, Sale or Conveyance

{112} ***Cordova v. City of Chicago*, 618 B.R. 244 (N.D. Ill. June 25, 2020) (Rowland)** (In the continuing saga of *In re Fulton*, 926 F.3d 916 (7th Cir. June 19, 2019) (Flaum, Kanne, Scudder), *cert. granted*, ___ U.S. ___, 140 S. Ct. 680, 205 L. Ed. 2d 449 (Dec. 18, 2019), district court denied motion to withdraw the reference by City of Chicago in Chapter 13 debtor's adversary proceeding alleging City violated stay by refusing to return a car repossessed before the petition.).

{113} ***Marshall v. Abdoun (In re Marshall)*, 613 B.R. 194 (Bankr. E.D. Pa. Feb. 11, 2020) (Chan)** (Purchaser at prepetition tax sale violated Pennsylvania consumer protection statutes by demanding rent to which there was no entitlement, demanding possession when possession belonged to debtor, and intimidating debtor in effort to force debtor to vacate property. Purchaser at prepetition tax sale demanded rent and otherwise acted like owner of property after debtor exercised redemption right by proposing plan that would pay redemption amount over life of plan. Exercise of redemption right through plan before it expired cut off vesting of title in purchaser. Chapter 13 debtor satisfied redemption right by proposing plan that paid redemption amount over life of plan as permitted by Bankruptcy Code. Exercise of redemption right does not require completion of payment of redemption amount to stop title from vesting in purchaser. Debtor recovers nominal actual damages, not including emotional distress damages, and is awarded attorney's fees.).

{114} ***In re Lagares Santana*, No. 18-07127 (ESL), 2020 WL 412185 (Bankr. D.P.R. Jan. 24, 2020) (Lamoutte)** (Applying Puerto Rico law, because judicial transfer deed was executed after foreclosure sale and before the Chapter 13 petition, no interest came into the Chapter 13 estate and foreclosing creditor did not violate the stay by obtaining confirmation of the sale after the petition.).

{115} ***In re Thompson*, No. 19 BK 06176, 2020 WL 728605 (Bankr. N.D. Ill. Jan. 15, 2020) (Schmetterer)** (Applying *In re LaMont*, 740 F.3d 397 (7th Cir. Jan. 7, 2014) (Manion, Kanne, Sykes), Chapter 13 debtor can modify claim of prepetition tax purchaser through plan under § 1322(b)(2) when petition is filed before expiration of redemption period under state law; however, no provision of the Bankruptcy Code tolls redemption period and that period expired during the Chapter 13 case. Plan cannot be confirmed that fails to pay tax purchaser's claim but dismissal is delayed to allow debtor another chance to propose confirmable plan.).

{116} ***In re Thompson*, 609 B.R. 443 (Bankr. M.D. Ala. Oct. 24, 2019) (Creswell), *aff'd*, No. 2:19-CV-00859-RAH, 2020 WL 5079160 (M.D. Ala. Aug. 26, 2020) (Huffaker)** (Applying *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), when redemption period in title pawn contract expired before the petition or the debtor failed to redeem within the redemption period as extended by § 108, no interest in the car came into the Chapter 13 estate or the estate's interest fell out of the estate and Title Max is entitled to stay relief or to a declaration that no stay applies. Title Max sufficiently complied with Alabama law by notation of its lien on the car title and use of electronic signatures for the debtor on the pawn tickets.).

{117} ***Coots v. Ford Motor Credit Co., LLC (In re Coots)*, No. 19-ap-10, 2019 WL 4458375 (Bankr. N.D. W. Va. Sept. 17, 2019) (Flatley)** (Circularly, Ford Motor Credit's refusal to return funds garnished before the petition does not violate automatic stay in § 362(a)(3) because garnished funds were removed from the estate before the petition. That garnished funds are recoverable as a preference under §§ 547 and 522(h) does not change this conclusion.).

{118} ***Stewart v. Archie's Auto Sales, Inc. (In re Stewart)*, 606 B.R. 706 (Bankr. S.D. Miss. Sept. 13, 2019) (Olack)** (Car repossessed before second filing became property of Chapter 13 estate and debtor was entitled to turnover once bankruptcy court determined that § 109(g)(1) did not apply and debtor was eligible in the second case.).

{119} ***In re Haynes*, No. 19-20601-PRW, 2019 WL 7945834 (Bankr. W.D.N.Y. Aug. 1, 2019) (Warren)** (Entry of default judgment and filing of foreclosure tax deed vested property in county before the petition and left no legal or equitable interest in the Chapter 13 debtor. Automatic stay did not apply to the county because prepetition default judgment and filing of foreclosure tax deed divested debtor of all legal and equitable interests in the property.).

{120} ***In re Cass*, No. 18-3703, 2019 WL 7667445, at *2–*3 (Bankr. S.D. Ala. Feb. 4, 2019) (Callaway)** (Because debtors are still in possession of home, right of redemption from tax sale has not expired under Alabama law and debtors can pay redemption amount through Chapter 13 plan; however, tax sale purchasers are entitled to stay relief to pursue possession and debtors' opportunity to redeem from the tax sale may be short lived. "The debtor lives in the house and has been in possession of the property in question at all relevant times, continuing to date. In fact, the tax purchasers are seeking relief from stay from this court in order to eject her from possession of the property. . . . [T]he debtor's right of redemption has not expired and [ ] she can redeem until the tax purchasers have continuously adversely possessed the property for three years. The court notes the debtor's right to redeem may not do her much practical good if she cannot do so very quickly because the court is granting relief from stay on the ejectment claim and she may lose possession of her home shortly.").

§ 46.5 Proceeds, Rents or Profits from Property of the Estate
§ 46.6 Gifts, Loans and Windfalls
§ 46.7 Pension Benefits

{121} ***Martin v. Martin*, 618 B.R. 326 (S.D. Fla. Mar. 30, 2020) (Ruiz)** (Applying § 541(c)(2), Chapter 13 debtor's rights to pension proceeds protected from alienation by New York law did not become property of bankruptcy estate and former spouse is entitled to stay relief to enforce domestic relations court orders with respect to interest in pension.).

{122} ***Trentzsch v. Trentzsch (In re Trentzsch)*, No. 1:19-ap-00069-HWV, 2019 WL 10432058 (Bankr. M.D. Pa. Dec. 5, 2019) (Van Eck)** (Although § 523(a)(15) is not an exception to discharge under § 1328(a), former spouse has pleaded a nondischargeable ownership interest in a portion of the debtor's 401(k) pension plan based on a QDRO and former spouse has an ownership interest in stock; debtor holds former spouse's interests in constructive trust.).

§ 46.8 Entitlements Programs
§ 46.9 Leases and Other Contract Rights
§ 46.10 Insurance Policies and Proceeds

{123} ***Johnson v. Apex Mortg. (In re Johnson)*, 615 B.R. 919 (Bankr. N.D. Ala. Feb. 27, 2020) (Mitchell)** (Mortgagee did not violate automatic stay when it received and kept insurance proceeds paid to it when car crashed into debtor's business property. Mortgage clause in insurance contract was not property of Chapter 13 estate but belonged to mortgagee and proceeds of that insurance policy never became property of the Chapter 13 estate.).

{124} ***Wal-Mart Stores, Inc. v. Parker (In re Parker)*, 789 F. App'x 462 (5th Cir. Jan. 8, 2020) (Owen, Wiener, Dennis)** (Citing *Reed v. City of Arlington*, 650 F.3d 571 (5th Cir. Aug. 11, 2011) (en banc), and *Flugence v. Axis Surplus Insurance Co. (In re Flugence)*, 738 F.3d 126 (5th Cir. Nov. 22, 2013) (Smith, Dennis, Higginson), though "odd" and not the route preferred by the Fifth Circuit, not an abuse of discretion for the bankruptcy court to find that the Chapter 13 debtor's failure to amend schedules to reveal a postpetition slip-and-fall action justified imposing judicial estoppel but equitable principles allowed debtor to maintain the tort action with any recovery payable to the Chapter 13 trustee.).

{125} ***Smith v. Haynes & Haynes P.C.*, 940 F.3d 635 (11th Cir. Oct. 15, 2019) (Tjoflat, Newsom, Antoon)** (Applying *Slater v. United States Steel Corp*., 871 F.3d 1174 (11th Cir. Sept. 18, 2017) (en banc) (*Slater II*), remand necessary to determine whether judicial estoppel precludes FLSA action. District court employed inference that was later overruled by the Eleventh Circuit in *Slater II*. Without that inference, evidence is necessary with respect to intent and motive to make a mockery of the judicial system when a Chapter 13 debtor fails to schedule a cause of action and the defendant later asserts judicial estoppel as a defense.), *aff'g*, No. 2:14-cv-01334-RDP, 2017 WL 3613045 (N.D. Ala. Aug. 22, 2017) (Proctor) (Part of Chapter 13 debtor's Fair Labor Standards Act complaint was dismissed based on judicial estoppel when debtor failed to schedule the cause of action; retaliation claims are dismissed because not supported by facts.).

{126} ***Dorgan v. Ethicon, Inc.*, No. 4:20-00529-CV-RK, 2020 WL 5372142 (W.D. Mo. Sept. 8, 2020) (Ketchmark)** (Judicial estoppel does not bar Chapter 13 debtors' unscheduled pelvic mesh lawsuit based in large part on affidavit of Chapter 13 trustee that lawsuit was a "post-completion" asset that would not have been pursued had it been scheduled and failure to schedule did not produce different outcome in Chapter 13 case. District court also found that defendant was not a creditor and did not realize any litigation detriment from debtors' nondisclosure in separate Chapter 13 case.).

{127} ***Bryant v. Ethicon, Inc*, No. 4:20CV365 HEA, 2020 WL 4049889, at *4 (E.D. Mo. July 20, 2020) (Autrey)** (Judicial estoppel is not appropriate in Chapter 13 debtors' unscheduled pelvic mesh lawsuit because of third factor in *New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (May 29, 2001): nondisclosure has not unfairly disadvantaged the defendants in this lawsuit and has not unfairly advantaged the debtors in this lawsuit. Equitable considerations are trapped in the Chapter 13 case—district court defers to the bankruptcy court to determine what to do with the undisclosed asset. Debtor's surgery was in 2004. Chapter 13 case was filed in 2011 and closed with a discharge in 2017. Pelvic mesh claim was filed during the Chapter 13 case in 2015. "Significantly, the third *New Hampshire* factor weighs against judicial estoppel. . . . Unfair detriment is not at issue; Defendants do not claim Plaintiffs' failure to disclose the claims in bankruptcy imposed an unfair detriment on them. Furthermore, Plaintiffs have not received an unfair advantage in *this* case. Essentially, Defendants are asking for a windfall in this case, *i.e*., dismissal of the claims without a determination of the merits. One injustice cannot justify another. Rather than dismiss Plaintiffs' substantive claims, the Court is of the opinion that it is incumbent on the Court to notify the Bankruptcy Court of the pendency of this case so it can proceed as it determines appropriate. The Court, therefore, declines to invoke judicial estoppel to bar Plaintiff's claims.").

{128} ***Terry v. Ethicon, Inc.*, No. 1:19-CV-00175-GNS, 2020 WL 3003051 (W.D. Ky. June 4, 2020) (Stivers)** (Chapter 13 debtor is judicially estopped to maintain undisclosed medical malpractice action that arose during case notwithstanding that debtor is not eligible for a discharge because of § 1328(f); confirmation of plan and of amended plans was sufficient inconsistent position and reliance for judicial estoppel purposes. Court declines to dismiss the civil action pending determination whether Chapter 13 trustee will pick up the cause of action on behalf of creditors and the estate.).

{129} ***Roan v. Allied Universal*, No. 3:18-cv-01342, 2020 WL 2611541 (M.D. Tenn. May 22, 2020) (Richardson)** (Chapter 13 debtor's failure to disclose discrimination action before "final decree" was entered by bankruptcy court bars action based on judicial estoppel.).

{130} ***Castillo v. E.M. Dimitri, D.O. Prof'l Med. Corp.*, No. 19-10888, 2020 WL 1689871 (E.D. La. Apr. 7, 2020) (Guidry)** (Wrongful discharge action that arose when Chapter 13 debtor was terminated from employment after confirmation and one month before conversion to Chapter 7 is barred by judicial estoppel notwithstanding that action did not become property of Chapter 7 estate. District court does not reveal nature of reliance by bankruptcy court on nondisclosure one month before conversion.).

{131} ***Nowling v. SN Servicing Corp.*, No. 19-CV-1605 (PJS/TNL), 2020 WL 1244809 (D. Minn. Mar. 16, 2020) (Schiltz)** (Although factors under *New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (May 29, 2001), are all present with respect to Chapter 13 debtors' undisclosed RESPA action against mortgage servicer, judicial estoppel is not appropriate because debtors had no motive to conceal the action. The likelihood of any substantial recovery was very low. Even if revealed, debtors could have amended exemptions to cover any likely damage award. And once revealed in Chapter 13 case—albeit after completion of payments and discharge—Chapter 13 trustee showed no interest in pursuing any potential recovery on behalf of unsecured creditors.).

{132} ***Kelly v. Land O'Frost, Inc.*, No. 4:19CV-00103-JHM, 2020 WL 1812220, at *5 (W.D. Ky. Jan. 8, 2020) (McKinley)** (Applying rule in Sixth Circuit that a Chapter 13 debtor "always" has a motive to conceal assets and income, debtor is judicially estopped

to maintain Family and Medical Leave Act action because it was not revealed to bankruptcy court until after motion to dismiss by defendant. District court rejects debtor's claims of inadvertence. "A motive to conceal can be inferred from the sole fact that a plaintiff knew of a claim and did not disclose it . . . . This result does not change despite Kelly's additional statements that she had no knowledge or reason to believe that her termination was a claim that had to be disclosed in the bankruptcy petition or that she had a duty to disclose these claims.").

{133} ***Browne v. P.A.M. Transp., Inc.*, No. 16-CV-5366, 2019 WL 7373362 (W.D. Ark. Dec. 31, 2019) (Brooks)** (Judicial estoppel does not bar postpetition wage and hour claim when Chapter 13 debtor has not received a discharge, schedules were amended—admittedly after defendant moved to dismiss—to disclose cause of action and there is no other evidence of misconduct or abuse by debtor. Plan can yet be amended to account for any recovery. Bankruptcy Code and Rules do not set specific timeline for amending schedules to reveal a postpetition cause of action. Only discharge would constitute judicial acceptance and 18-month delay in amending schedules did not allow the debtor an unfair advantage.).

{134} ***Scott v. American Airlines, Inc.*, No. 4:19-CV-688-A, 2019 WL 7371851 (N.D. Tex. Dec. 31, 2019) (McBryde)** (Judicial estoppel bars Chapter 13 debtor's sexual assault claim that arose four months before the petition and was not disclosed during the Chapter 13 case or at conversion to Chapter 7 case in which debtor received a discharge.).

{135} ***In re Peterson*, No. 3:19-CV-00249 (KAD), 2019 WL 6467351 (D. Conn. Dec. 2, 2019) (Dooley)** (When Chapter 13 debtor obtained a judgment against the owner of a corporation and that corporation obtained $25,000 by way of settlement of other litigation, debtor's indirect interest in the $25,000 did not become property of the Chapter 13 estate because the debtor took no action to collect from the corporation and the Chapter 13 trustee had no obligation to do so. Because the confirmed plan was funded in part by the proceeds of that litigation, the bankruptcy court did not err in closing the case without discharge when the debtor did not liquidate the claim and did not bring any portion of the settlement proceeds into the estate.), *reconsideration denied*, No. 3:19-CV-00249 (KAD), 2020 WL 607153 (D. Conn. Feb. 7, 2020) (Dooley).

{136} ***Lee v. Walgreens Co.*, No. 4:19-CV-1792 CAS, 2019 WL 5550544 (E.D. Mo. Oct. 28, 2019) (Shaw)** (Chapter 13 debtor's race discrimination action is barred by judicial estoppel when lawsuit was added by amendment to schedules after motion to dismiss by defendant.).

{137} ***El-Scari v. Comprehensive Mental Health Servs.*, No. 4:19-00179-CV-RK, 2019 WL 5386489, at *3 (W.D. Mo. Oct. 21, 2019) (Ketchmark)** (Judicial estoppel has no application when race discrimination and retaliation claims arose during Chapter 13 case that was immediately converted to Chapter 7. In absence of bad faith allegation, cause of action is not property of the Chapter 7 estate and judicial estoppel is not implicated. "Assets acquired post-petition are only included in the estate of a case converted from Chapter 13 under § 348 as a penalty for converting in bad faith. § 348(f)(2). . . . [T]he alleged discrimination occurred after Plaintiff filed her original bankruptcy petition. As a result, her potential claims would not have been included in the converted Chapter 7 bankruptcy estate even if she had disclosed them to the bankruptcy court[.]").

{138} ***Novak v. Monarch Recovery Mgmt.*, No. 15 C 2448, 2015 WL 13877947 (N.D. Ill. Oct. 15, 2015) (Bucklo)** (Chapter 13 debtor is not judicially estopped to pursue unscheduled FDCPA claim that arose postpetition; debtor attempted to amend schedules, albeit late, and now pursues claim for benefit of creditors and bankruptcy estate.).

{139} ***Trentlage v. Affiliated Computer Servs., Inc.*, No. 05-cv-01138-LTB-PAC, 2006 WL 8460328 (D. Colo. Jan. 13, 2006) (Babcock)** (Failure to disclose employment discrimination action that arose postconfirmation does not invoke judicial estoppel because all property of the Chapter 13 estate not necessary to plan vested in the debtor at confirmation. Discrimination action vested in the debtor and the debtor did not take a contrary position before the bankruptcy court with respect to the cause of action.).

{140} ***EEOC v. Foodcrafters Distribution Co.*, No. 03-2796 (RBK), 2005 WL 8176024 (D.N.J. Jan. 28, 2005) (Kugler)** (Judicial estoppel does not bar Chapter 13 debtor's employment action because debtor told trustee about the action at the meeting of creditors and confirmed plan included reference to nonexempt proceeds of the action.).

{141} ***In re Boyd*, 618 B.R. 133, 147-75 (Bankr. D.S.C. July 17, 2020) (Waites)** (Judicial estoppel does not bar Chapter 13 debtor's lawsuit for injuries from drunk-driving accident that occurred after confirmation. No provision of Bankruptcy Code, Bankruptcy Rules, plan or order of confirmation required debtor to amend schedules to reveal the postconfirmation cause of action. Any proceeds are most likely exempt and no rights of creditors are affected by lawsuit. Defendants in lawsuit lacked standing to challenge reopening of Chapter 13 case and lacked standing to object to debtor's exemptions. Chapter 13 plan was confirmed in 2013 and debtor was seriously injured in a hit-and-run accident in 2017. Debtor did not amend the bankruptcy schedules to reveal the cause of action. Debtor completed the plan and received a discharge in 2018. In 2019, debtor moved to reopen the Chapter 13 case to reveal the lawsuit and to hire a personal injury attorney. "[A]fter careful examination, it does not appear that the Code, bankruptcy rules, confirmed Plan or any order of this Court placed an ongoing duty on Debtor in this case to amend schedules or otherwise disclose the Lawsuit. . . . Based on § 1306, the Lawsuit in this case is property of the chapter 13 estate. . . . Fed. R. Bankr. P. 1007(h) specifically addresses interests acquired or arising after the petition, but only provides for the filing of supplemental schedules for property or property interests acquired by the

debtor as provided by § 541(a)(5) of the Code . . . . Fed. R. Bankr. P. 4002, which addresses a debtor's duties during a case, indicates no duty for a debtor to schedule assets acquired post-confirmation. Noticeably, neither Rule 1007(h) or any other bankruptcy rule indicates that a chapter 13 debtor must file a supplemental or amended schedule for other types of property acquired post-petition that become part of the estate as a result of § 1306(a). . . . Under § 1327(b), absent a plan provision or confirmation order stating otherwise, the expected statutory disposition of all estate property is for it to be 'vested' in the chapter 13 debtor. . . . Vesting logically supports the premise that debtors and creditors alike rely on the amount of payments specifically provided for in the confirmed plan. Under such a statutory analysis, it makes sense that Congress would not specify a further duty to disclose post-confirmation assets by the continuous filing of amended schedules. . . . Would every new refrigerator, every traded car, every dollar change in income, every new expense be required to be disclosed? . . . [S]ome courts have held, often in a simple sentence, that a bankruptcy debtor always has a 'continuing duty to disclose.' This holding is absolutely true in instances where the property or cause of action arose prepetition or under the specific provisions of § 541 and Fed. R. Bankr. P. 1007 . . . . It would also be true in instances where a court placed that duty on a debtor by order, including an order to update schedules in an order converting the case to another chapter . . . . The Court declines to read into the statute or rules a duty that does not exist, particularly where the duty is being asserted to prejudice a seriously injured debtor and may result in a windfall to the alleged liable parties. . . . Debtor had no duty to disclose the Lawsuit or amend schedules for that purpose in this case. . . . State Court Defendants lack standing to object to the reopening or to seek a reconsideration of the Order Reopening Case. . . . [T]he State Court Defendants lack standing to object to Debtor's claim of an exemption in any recovery in the State Court Lawsuit. . . . Debtor may continue to prosecute the Lawsuit in his name and for his benefit.").

{142} ***In re Revels*, 616 B.R. 675, 680-82 (Bankr. E.D.N.C. Mar. 20, 2020) (Humrickhouse)** (Nonstandard provision of plan that absolves Chapter 13 debtor of any requirement to file a Rule 9019 motion to approve settlement of pending employment action is consistent with §§ 1303 and 363(b) and Bankruptcy Rule 9019 because Chapter 13 debtor owns and controls the litigation and its settlement, exclusive of the trustee, and Rule 9019 applies only to trustees. In contrast, nonstandard provision that would absolve debtor of any obligation to report settlement of employment action is inconsistent with disclosure requirements of Code and Rules and would impede ability of trustee and others to monitor income and assets of the debtor. Nonstandard provision that would require the trustee to inform the parties to the employment action that the trustee has no role in settlement is "unacceptable, demeaning, retributory." "A chapter 13 debtor assumes 'exclusive of the trustee, the rights and powers of a trustee under section[ ] 363(b) . . . . Under section 363(b), the debtor ' . . . may use, sell, or lease . . . property of the estate.' . . . Thus, implicit within the chapter 13 debtor's exclusive authority to use property of the estate is the power of the debtor to maintain a cause of action that is part of the bankruptcy estate. . . . Rule 9019 authorizes a 'trustee' to seek a court order approving a compromise or settlement. . . . Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . [T]he settlement of the cause of action is controlled by the chapter 13 debtor. . . . Although the court can see reasons why a debtor would want court approval of a settlement, on its face, Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . Even though a chapter 13 debtor is not required to file a motion to approve settlement or compromise under Rule 9019, the debtor still has a duty to disclose assets, including the settlement of claims against third parties. . . . An objective check on settlements must exist to ensure that chapter 13 trustees have full disclosure of estate assets. . . . [T]he act of settling a claim . . . equates to a 'substantial change' in the financial circumstances of the debtor that would warrant disclosure to the trustee, even if the amount of the settlement is not substantially different than the amount scheduled.").

{143} ***Carmona v. Osnet Wireless Corp.*, No. 19-00015 (ESL), 2020 WL 1237919 (Bankr. D.P.R. Mar. 13, 2020) (Lamoutte)** (Judicial estoppel does not bar Chapter 13 debtor's employment action when only two months passed between filing of employment action in state court and disclosure of action to the bankruptcy court. Debtor earlier revealed the action in an application to hire counsel in the bankruptcy court, further indicating the absence of motive to conceal. Bankruptcy court abstains and remands in favor of state court resolution of purely state law employment claims.).

{144} ***In re Lana*, No. 12-21357, 2019 WL 9242988 (Bankr. D. Kan. Nov. 7, 2019) (Berger)** (Years after completion of payments and discharge, Chapter 13 case is reopened to address settlement of pelvic mesh injury that arose during Chapter 13 case. Trustee's motion to dismiss is denied because it fails to advance the many unresolved issues regarding entitlement to the settlement proceeds.).

§ 46.12 Miscellaneous Real and Personal Property

{145} ***Budorick v. Budorick*, No. 19 C 3957, 2019 WL 5393819 (N.D. Ill. Oct. 22, 2019) (Leinenweber)** (Bankruptcy court appropriately rejected Chapter 13 debtor's challenges to state court divorce decree with respect to ownership of stock and a money judgment against the debtor. Debtor has no exemption in whatever interest he has in stock owned by former spouse.).

{146} ***Kaushas v. Popple Constr., Inc. (In re Kaushas)*, 616 B.R. 57 (Bankr. M.D. Pa. June 2, 2020) (Opel)** (State court judgment assigned to debtor before petition became property of Chapter 13 estate protected by automatic stay.).

{147} ***Kessler-Maue v. Maue (In re Maue)*, 611 B.R. 367 (Bankr. W.D. Wash. Dec. 23, 2019) (Barreca)** (Property of Chapter 13 estate did not include trust property but did include beneficial interest of debtor in trust and powers that debtor could exercise as trustee of the trust.).

{148} ***In re Carballo*, No. 19-11266-LMI, 2019 WL 6340220 (Bankr. S.D. Fla. Nov. 26, 2019) (Isicoff)** (For purpose of best-interests-of-creditors test, debtor held only bare legal title and no equitable interest in real property owned jointly with mother and grandparent. Debtor's name was on titles to accommodate his mother and grandparent but debtor exercised no responsibility for or control over the properties. In contrast, joint bank account with grandparent that debtor occasionally used to pay personal loan for a boat was property of Chapter 13 estate and had to be accounted for in an amended plan.).

b. ADEQUATE PROTECTION BEFORE CONFIRMATION

§ 47.1 Adequate Protection of Lienholders before Confirmation

§ 47.2 Preconfirmation Adequate Protection after BAPCPA

6. EXEMPTIONS

a. IN GENERAL

§ 48.1 Available and Important in Chapter 13 Cases

{149} ***In re Justice*, No. 2:19-bk-20387, 2020 WL 2036660 (S.D. W. Va. Mar. 31, 2020) (Volk)** (Only homestead exemption available to debtor in bankruptcy under West Virginia law is $25,000 exemption in statute specific to bankruptcy; additional $5,000 exemption in West Virginia Constitution is not available.).

{150} ***Oliveras Rivera v. Oterno Nazario*, 610 B.R. 414 (D.P.R. Jan. 10, 2020) (Gelpí)** (Homestead exemption under Puerto Rico law does not extend to portion of property that is leased and not occupied by the debtor.), *amending and superseding* No. 15-2035CCC, 2019 WL 1502470 (D.P.R. Apr. 2, 2019) (Cerezo) (Under Commonwealth law, Chapter 13 debtor can claim homestead exemption only in portion of structure that is actually used as a principal residence; portion of building leased to a tenant is not available for homestead exemption.), *aff'g in part, rev'g in part*, 533 B.R. 1 (Bankr. D.P.R. July 15, 2015) (Flores) (Lease of lower level of two-story home in which debtor resides did not defeat homestead exemption under the law of Puerto Rico.).

{151} ***Budorick v. Budorick*, No. 19 C 3957, 2019 WL 5393819 (N.D. Ill. Oct. 22, 2019) (Leinenweber)** (Bankruptcy court appropriately rejected Chapter 13 debtor's challenges to state court divorce decree with respect to ownership of stock and a money judgment against the debtor. Debtor has no exemption in whatever interest he has in stock owned by former spouse.).

{152} ***In re Santiago Salicrup*, No. 19-06953 (ESL), 2020 WL 4728415 (Bankr. D.P.R. July 10, 2020) (Lamoutte)** (Chapter 13 debtor's homestead exemption is valid under Puerto Rico Home Protection Act notwithstanding that deed to debtor in 2013 was rejected by registrar; debtor is undisputedly the owner of the property and has filed a homestead declaration consistent with Commonwealth law which validates the homestead claim notwithstanding that record ownership remains in the seller from the transaction in 2013.).

{153} ***Whitcomb v. Paull & Partners-locke Lane (In re Whitcomb)*, 617 B.R. 553 (Bankr. S.D. Tex. June 17, 2020) (Isgur)** (Chapter 13 debtor's conveyance of real property to an LLC was not a "pretend sale" that would violate Texas Constitution and thus transfer was effective to waive debtor's homestead protection. Small portion of later loan was a pretend transaction that did not forfeit homestead claim but debtor remained personally liable for the amount advanced.).

{154} ***In re Wright*, No. 19-51333, 2020 WL 5106553 (Bankr. M.D.N.C. June 15, 2020) (James)** (Homestead exemption in lot adjacent to residence of Chapter 13 debtor is rejected—lot was separately acquired and used irregularly for recreation only.).

{155} ***In re Guevarra*, No. 18-25306-B-7, 2020 WL 2844384 (Bankr. E.D. Cal. June 1, 2020) (Jaime)** (After conversion from Chapter 7 to Chapter 13, bankruptcy court sustains Chapter 7 trustee's objection to debtor's claim of exemption in proceeds from sale of property that the debtor does not own. On convoluted facts, debtor claimed exemption in sale proceeds in effort to insulate proceeds from claims against debtor's nephew, the actual owner of the property that was sold.).

{156} ***In re Holley*, No. 18-13140-t13, 2019 WL 4934856 (Bankr. D.N.M. Oct. 4, 2019) (Thuma)** (Chapter 13 debtor not entitled to various exemption claims in $1.6 million proceeds from personal injury settlement when debtor did not schedule the lawsuit in prior Chapter 7 case, lawsuit was not debtor's to deal with personally because of § 554(c), proceeds did not fit the personal injury exemption and debtor's zero value for exempted assets was not accurate.).

§ 48.2 BAPCPA and Exemptions

{157} ***Bush v. Nathan (In re Bush)*, No. 19-11425, 2019 WL 4416313 (E.D. Mich. Sept. 16, 2019) (Cox)** (At attempted conversion from Chapter 7 to Chapter 13, debtor not entitled to exemption in proceeds of settlement of employment discrimination lawsuit under § 522(d)(11)(E) because debtor did not seek recovery for loss of future earnings.).

{158} ***In re Connell*, No. 19-43726, 2020 WL 863622 (Bankr. W.D. Wash. Feb. 18, 2020) (Heston)** (Trustee's objection to homestead exemption is rejected: debtor does not reside in property but has expressed a not implausible intent to return to property when financially able. Exemption claim without actually residing in property is permitted under Washington state law.).

§ 48.3 Exemptions and Exemption Limitations Added by BAPCPA
§ 48.4 Timing and Procedure

{159} ***In re Pulliam*, No. 19-03887-5-DMW, 2020 WL 1860113, at *3–*4 (Bankr. E.D.N.C. Apr. 13, 2020) (Warren)** (Because $30,000 homestead exemption removes debtor's interest in property from the estate, but not the property itself under *Schwab v. Reilly*, 560 U.S. 770, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (June 17, 2010), nonstandard provision of plan that would relieve debtor of obligation under local rules to give notice of any sale of property during the Chapter 13 case is not proposed in good faith and precludes confirmation. "When the Debtor claimed an exemption in the Property . . . , he did not exempt the Property in its entirety, and he did not remove the Property from the bankruptcy estate. He exempted his *interest* in the Property. Local Rule . . . governing the sale of 'non-exempt' property remains applicable to any future sale of the Property, despite the Debtor's attempt to circumvent the Rule by including the Nonstandard Provision in Section 8.1 of the Plan. . . . [T]he Plan has not been proposed in good faith, because it seeks impermissibly to deem property fully exempt from the Debtor's bankruptcy estate through the use of the Nonstandard Provision.").

§ 48.5 Timing and Procedure Considerations Added by BAPCPA
§ 48.6 Domicile Rules after BAPCPA

{160} ***In re O'Neil*, No. 19-10641, 2020 WL 3634387, at *3 (Bankr. D. Me. June 19, 2020) (Fagone)** (Applying § 522(b)(3)(A), Chapter 13 debtor can claim some Maryland exemptions because federal law says the debtor was domiciled in Maryland notwithstanding that debtor moved to Maine and was not physically in Maryland on the date of the petition. "[S]ection 522(b)(3)(A) creates a legal fiction that the Debtor was domiciled in Maryland on the petition date. To be sure, the text of the statute does not say that the debtor is deemed to be domiciled in the state whose law is applicable under section 522(b)(3)(A). But that is the unmistakable import of the statute. . . . There is no suggestion that Congress intended to put the debtor in a worse position than she would have been in if she had not, in fact, relocated during the 730-day period leading up to the commencement of the case.").

{161} ***In re Taro*, No. 19-10982 (BLS), 2020 WL 2764751, at *7 (Bankr. D. Del. May 26, 2020) (Shannon)** (Although debtor resided at father's house in Maryland several days each week, the house he owned in Delaware was his intended domicile for exemption purposes. Bankruptcy court declines to judicially estop debtor from claiming Delaware domicile notwithstanding state court order finding that debtor was domiciled in Maryland. Applying § 522(b)(3), "Debtor may have had more than one residence over the past few years . . . but . . . Debtor intended that the Delaware Property was his permanent domicile since he purchased it in 2014.").

b. LIEN AVOIDANCE UNDER 11 U.S.C. § 522(f)
§ 49.1 Available in Chapter 13 Cases

{162} ***In re Colon Vidal*, No. 15-02030 (ESL), 2020 WL 1650908 (Bankr. D.P.R. Mar. 23, 2020) (Lamoutte)** (Bank's unrecorded mortgage is secured only by a judicial lien that is entirely avoidable under § 522(f) because it impairs the Chapter 13 debtors' homestead exemption.).

§ 49.2 Procedure for Lien Avoidance
§ 49.3 Limitations on Lien Avoidance

{163} ***In re Barksdale*, No. 20-8008, 2020 WL 5092877 (B.A.P. 6th Cir. Aug. 28, 2020) (not for publication) (Croom, Mashburn, Wise)** (After conversion from Chapter 13 to Chapter 7 and discharge, debtor failed to establish cause to reopen the bankruptcy case to avoid consensual lien on the debtor's car and a statutory lien for property taxes. Discharge did not upset the consensual lien on the debtor's car and the taxing authority's statutory lien cannot be avoided under § 522(f).).

{164} ***In re Berger*, No. 2:19-cv-00417, 2019 WL 5310145, at *3–*4 (W.D. Pa. Oct. 21, 2019) (Conti)** (Stripping a wholly unsecured tax lien under §§ 506(a) and 1322(b)(2) is an *in rem* proceeding with respect to which the state has no sovereign immunity. Citing *Central Virginia Community College v. Katz*, 546 U.S. 356, 126 S. Ct. 990, 163 L. Ed. 2d 945 (Jan. 23, 2006), and *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 124 S. Ct. 1905, 158 L. Ed. 2d 764 (May 17, 2004): "The Supreme Court explained that state sovereign immunity is not implicated by proceedings that are 'ancillary to' the bankruptcy court's *in rem* jurisdiction, even when they arguably could be characterized as a suit against the state . . . . Lien stripping falls within the bankruptcy court's *in rem* jurisdiction. . . . [T]he State had no sovereign immunity to raise under the circumstances of this case.").

{165} ***In re Morrone*, No. 19-30708, 2020 WL 5579740, at *2–*3 (Bankr. W.D.N.C. Aug. 27, 2020) (Beyer)** (Creditor with judicial lien on homestead property not entitled to stay relief to pursue nonfiling spouse's interest in tenancy by the entireties because lienholder is bound by confirmation of plan that avoids lien to extent it impairs debtor's homestead exemption under § 522(f) and plan adequately protects lienholder by proposing to pay value of nonexempt equity with respect to which the lien could not be avoided under § 522(f). That completion of plan will sever joint liability and impact lienholder's collection rights against the entireties property is an issue that should have been raised before confirmation. "The Debtor . . . seeks pursuant to 11 U.S.C. § 522(f) to avoid Brettell's Judicial Lien in property held as tenants by the entireties as to the Debtor's interest only. The Debtor's interest in the Residence as entireties property is property of the estate and, for that reason, clearly subject to the provisions of 11 U.S.C. § 522(f) . . . . Debtor has confirmed a Chapter 13

plan in which he has committed to pay Brettell the full value of the Debtor's non-exempt equity in the entireties property. . . . The implication of the confirmed plan is that at the completion of the plan, the debt owed to Brettell will no longer be a joint debt, and, for that reason, as entireties property, the Residence would be protected from execution by Brettell. Brettell had an opportunity to object to this treatment of his debt. He did not. As a result, he is bound by the terms of the confirmed plan. . . . Brettell is adequately protected by the terms of the confirmed plan. In the confirmed plan, the Debtor has provided for full payment of the value of his share of the non-exempt equity.").

{166} ***In re Ohm*, No. 15-60029, 2020 WL 4810066, at *3–*4 (Bankr. N.D. Ohio July 31, 2020) (Kendig)** (Although motion to avoid judgment lien of former counsel meets all conditions in § 522(f), lien is not avoidable because debtor did not schedule former counsel or deal with the debt or lien in the confirmed plan; due process prohibits avoidance of the unscheduled lien and claim. After unsuccessful Chapter 13 case, former counsel obtained a state court judgment and lien for unpaid fees. Two years later in a second Chapter 13 case, debtor did not schedule the lien or former counsel and confirmed plan provided for neither. Five years later, debtor amended schedules to add former counsel and filed a motion to avoid the lien under § 522(f). "Debtor's failure to provide for the lien in the confirmed plan is fatal. . . . Courts adhere to the notice requirement even if a lienholder would not have received a distribution under the plan. . . . Treatment of Mr. Miller's lien was clearly something that should have been addressed through the plan and was not. To raise it now violates not only due process principles, but also raises *res judicata* concerns. Therefore, the court will deny Debtor's motion to avoid lien under 11 U.S.C. § 522(f). . . . Debtor's failure to notify Mr. Miller of his case or his plan means Mr. Miller's claim is not discharged and the lien passes through the bankruptcy unaffected.").

{167} ***In re Ober*, 613 B.R. 631 (Bankr. E.D. Pa. Apr. 8, 2020) (Chan)** (Judgment creditor failed to overcome presumption under Arizona law that Chapter 13 debtors now residing in Pennsylvania intended to return to Arizona homestead; debtors can avoid judgment creditor's lien under § 522(f) because the exemption claim will support lien avoidance.).

{168} ***In re Adkins*, No. 19-50936-KMS, 2020 WL 1670257 (Bankr. S.D. Miss. Mar. 30, 2020) (Samson)** (After resolving conflicting appraisals, judgment creditor is partially secured by value in home in excess of mortgage and exemptions, and plan cannot be confirmed that treats the judgment lien as avoidable in full.).

{169} ***Potts v. Potts (In re Potts)*, No. 18-01052, 2020 WL 476592 (Bankr. N.D. Miss. Jan. 29, 2020) (Maddox)** (Applying *Farrey v. Sanderfoot*, 500 U.S. 291, 111 S. Ct. 1825, 114 L. Ed. 2d 337 (May 23, 1991), judicial lien securing state court award to former spouse cannot be avoided under § 522(f) because debtor's interest in property to which lien attached was created by the same judgment that created the lien.).

{170} ***In re Coats-Califf*, No. 19-04310-JW, 2020 WL 257315, at *8 (Bankr. D.S.C. Jan. 8, 2020) (Waites)** (Citing independent duty to review Chapter 13 plans under *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), and notwithstanding that lienholder did not appear at confirmation hearing, judicial lien is only partially avoidable under 522(f) after doing math based on values offered by the debtor. "Debtor's proposed chapter 13 plan incorrectly provides for the avoidance of Creditor's entire judicial lien encumbering the Marion Property. Debtor . . . asserts that the value of her interest in the Marion Property is $15,000 with no liens other than Creditor's $48,200 judicial lien. Debtor's schedules assert an exemption in the Marion Property of $3,185. . . . Based on the arithmetic test of § 522(f), Debtor's exemption and the judicial lien equal $51,385, which exceeds the $15,000 value of Marion Property by $36,385. Therefore, . . . Debtor may only partially avoid Creditor's judicial lien up to the impairment in the amount of $36,385, with $11,815 of the judicial lien remaining as a lien on the Marion Property.").

{171} ***In re Wigfall*, 606 B.R. 784, 786–90 (Bankr. N.D. Ill. Oct. 29, 2019) (Doyle)** (Possessory lien that arises after impoundment of car for accumulated parking tickets is a judicial lien, not a statutory lien, that can be avoided under § 522(f) when it impairs an exemption. "[S]tatutory lien must arise 'solely' by virtue of the statutory provision creating it whereas a judicial lien arises after some kind of process—judicial, quasi-judicial, or administrative. . . . The City's lien arises from Chicago Municipal Code provisions that create an administrative process that must be followed before the City can seize the car and create a lien. . . . The administrative process and resulting judgment make the City's lien judicial . . . . The City's lien did not arise solely by operation of the ordinance but only after completion of the mandatory administrative processes required by the ordinances. The lien is judicial, not statutory. . . . The City's lien . . . can be avoided under § 522(f).").

{172} ***In re Gancedo*, 608 B.R. 771 (Bankr. S.D. Fla. Oct. 28, 2019) (Mark)** (Chapter 13 debtor can use § 522(f) to avoid judgment lien on homestead when the property was acquired two years after the judgment lien was recorded.).

{173} ***In re Burge*, No. 19-10795-JDL, 2019 WL 5198911 (Bankr. W.D. Okla. Oct. 14, 2019) (Loyd)** (Federal tax lien is a statutory lien, not a judicial lien; statutory lien cannot be avoided under § 522(f). Section 522(c)(2)(B) confirms this conclusion.).

{174} ***In re Boykins*, No. 17-08957-JMC-13, 2019 WL 4686563 (Bankr. S.D. Ind. Sept. 17, 2019) (Carr)** (Lien avoidance under § 522(f) is not available with respect to homeowners' association lien because lien was created consensually when debtor signed covenants before the petition. Enforcement of HOA lien by recording may be statutory process but does not change nature of lien.).

§ 49.4 Section 522(f) after BAPCPA: Household Goods Corrupted
§ 49.5 Protecting Lienholder after Lien Avoidance
7. AVOIDANCE AND RECOVERY POWERS
§ 50.1 Turnover of Property

{175} ***Kent v. Skoda Minotti & Co. (In re Kent)*, 615 B.R. 171 (Bankr. W.D. Pa. May 5, 2020) (Agresti)** (Chapter 13 debtor is entitled to turnover of accounting records by former accountants notwithstanding that debtor's breach of contract action against same accountants fails.).

{176} ***In re Duff*, No. 19-00500, 2020 WL 119685 (Bankr. D.D.C. Jan. 9, 2020) (Teel)** (Chapter 13 debtor is not entitled to turnover under § 542 of money paid for loan modification services not yet performed when action was brought by motion instead of adversary complaint.).

{177} ***Stewart v. Archie's Auto Sales, Inc. (In re Stewart)*, 606 B.R. 706 (Bankr. S.D. Miss. Sept. 13, 2019) (Olack)** (Car repossessed before second filing became property of Chapter 13 estate and debtor was entitled to turnover once bankruptcy court determined that § 109(g)(1) did not apply and debtor was eligible in the second case.).

§ 50.2 Relief from Garnishments
§ 50.3 Strong-Arm Powers, Statutory Liens, Preferences and Fraudulent Conveyances

{178} ***Asher v. Morgan Stanley Mortg. Capital Holdings, LLC (In re Asher)*, No. 19-2018, 2020 WL 2617031 (Bankr. E.D. Ky. May 22, 2020) (Wise)** (Debtors acting with derivative standing cannot avoid mortgage and note notwithstanding that mortgage does not specify the maximum amount of indebtedness as required by Kentucky law. Original note for $40,000 in 1999 had grown to nearly $165,000 after three bankruptcies, several attempted foreclosures and four loan modifications but increase in amount was due to interest, fees, charges, reamortizations, property taxes and insurance advances, not to any increase in the original borrowing.).

{179} ***Addison v. US Bank Nat'l Ass'n (In re Addison)*, No. 19-01015, 2020 WL 2046543 (Bankr. W.D. Ky. Apr. 28, 2020) (Lloyd)** (Chapter 13 debtor cannot use trustee's avoiding powers under § 544 to defeat mortgagee's lien because inconsistent references to lot numbers in mortgage would not defeat notice of encumbrance. Under Kentucky law, mortgage contained sufficient information to put hypothetical purchaser on constructive or inquiry notice of mortgage notwithstanding inaccurate references to lot numbers.).

{180} ***Carden v. Ditech Fin., LLC (In re Carden)*, No. 19-40012-JJR, 2020 WL 768585, at *3–*9 (Bankr. N.D. Ala. Feb. 14, 2020) (Robinson)** (Applying superseded version of Alabama law, Ditech as successor to Green Tree has a perfected security interest in debtor's mobile home that defeats avoidance action by debtor and Chapter 13 trustee under § 544(a). "[A]lthough the Trustee is the nominal party in interest and asserts she has standing to bring this avoidance action, the benefit of avoiding Ditech's lien would inure not to unsecured creditors—there appear to be none holding allowable claims—but entirely to the Debtor who, if the Plaintiffs are successful in this proceeding, will own the Mobile Home free and clear of Ditech's security interest without any obligation to account for its value through her chapter 13 plan. . . . The court concludes that Ditech's security interest in the Mobile Home continues to be perfected and that a judgment lien creditor on the petition date of the Debtor's bankruptcy case would not take priority over Ditech's security interest.").

{181} ***In re Terrell*, 609 B.R. 719 (Bankr. S.D. Ohio July 26, 2019) (Preston)** (Chapter 13 debtor cannot use strong arm power in § 544(a)(3) to avoid lien of homeowners' association because a BFP would be on notice of the lien created by the deed restrictions. HOA's lien for unpaid assessment created by deed restrictions recorded in 2004 perfected HOA's lien without recording a separate certificate of lien as required by subsequent statutes in Ohio.).

§ 50.4 Avoidance Powers after BAPCPA
§ 50.5 Preferences after BAPCPA

{182} ***Coots v. Ford Motor Credit Co., LLC (In re Coots)*, No. 19-ap-10, 2019 WL 4458375 (Bankr. N.D. W. Va. Sept. 17, 2019) (Flatley)** (Chapter 13 debtor has standing to maintain preference action against Ford Motor Credit with respect to prepetition garnishment because debtor satisfies conditions in § 522(h).).

§ 50.6 Fraudulent Transfers after BAPCPA

{183} ***Bledsoe v. DeVos (In re Ferris)*, No. 19-00080-5-SWH, 2020 WL 3884735 (Bankr. E.D.N.C. July 9, 2020) (Humrickhouse)** (When confirmed Chapter 13 plan pays nothing to unsecured creditors, no legitimate purpose is served by debtors' fraudulent conveyance action against student loan lender that seeks to nullify Parent Federal Direct PLUS Loan. Debtors' fraudulent conveyance action is an indirect attempt to discharge a student loan debt without satisfying § 523(a)(8). In dicta, that Chapter 13 debtor would maintain fraudulent conveyance action that only benefits the debtor with no prospect for recovering anything for the estate is perhaps a good reason to require trustee participation in fraudulent conveyance actions in Chapter 13 cases.).

{184} ***Gunsalus v. Ontario Cnty., N.Y. (In re Gunsalus)*, 613 B.R. 1 (Bankr. W.D.N.Y. Feb. 19, 2020) (Warren)** (Applying §§ 522(h) and 548(a)(1)(B), Chapter 13 debtor can avoid prepetition tax foreclosure sale as a fraudulent conveyance when county sold property worth $28,000 in payment of taxes of $1,290.29.).

{185} ***Hampton v. Ontario Cnty., N.Y. (In re Hampton)*, No. 17-2009-PRW, 2020 WL 833045 (Bankr. W.D.N.Y. Feb. 19, 2020) (Warren)** (Applying §§ 522(h) and 548(a)(1)(B), Chapter 13 debtor can avoid prepetition tax foreclosure sale as a fraudulent conveyance when county sold property worth $27,000 in payment of taxes of $5,157.73.).

{186} ***Marshall v. Abdoun (In re Marshall)*, 613 B.R. 194 (Bankr. E.D. Pa. Feb. 11, 2020) (Chan)** (Although presumption of reasonably equivalent value in *BFP v. Resolution Trust Corp*., 511 U.S. 531, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (May 23, 1994),does not apply to prepetition tax sale that was not conducted in accordance with Pennsylvania law, Chapter 13 debtor failed to prove that a properly conducted sale would have brought a higher price—defeating debtor's action to avoid the tax sale under § 548.).

§ 50.7 Postpetition Transfers

8. MISCELLANEOUS POWERS AND DUTIES

§ 51.1 Can Debtor Sue and Be Sued?

{187} ***Harris v. Cooley (In re Harris)*, 966 F.3d 439 (6th Cir. July 17, 2020) (Cole, Guy, Bush), *vacated*, 812 F. App'x 358 (6th Cir. July 20, 2020) (Cole, Guy, Bush)** (Bankruptcy court appropriately abstained from state law claims that Chapter 13 debtors' fence encroached on neighbor's property. Lawsuit alleged that debtors' fence encroached on neighbor's property. Debtors' responsive lawsuit alleged violation of the automatic stay. No stay violation because neighbors were not creditors and debtors alleged no injury from the lawsuit seeking removal of the fence.).

{188} ***Kolesar v. Allstate Ins. Co.*, No. 19-3758, 2020 WL 2533589 (6th Cir. May 19, 2020) (Boggs, Griffin, Larsen)** (Chapter 13 debtor's failure to respond to insurance company's claim that the debtor lacked standing to sue for coverage because of Chapter 13 filing is fatal to appeal of district court opinion that debtor lacked standing to sue on behalf of the estate.), *aff'g*, No. 1:19 CV 35, 2019 WL 2996047, at *3 (N.D. Ohio July 19, 2019) (Polster) (Citing *Rugiero v. Nationstar Mortgage, LLC*, 580 F. App'x 376 (6th Cir. Sept. 15, 2014) (Boggs, Batchelder, White), Chapter 13 debtor lacks standing in the Sixth Circuit to sue insurance company for wrongful denial of water damage claim that arose during Chapter 13 case. "[T]he Sixth Circuit has concluded that a Chapter 13 debtor does not have standing to bring a claim after having filed for Chapter 13 relief and while the bankruptcy is pending. . . . It is this district court's obligation to apply the law of the Sixth Circuit to this case, and not to follow the decisions of other circuits.").

{189} ***In re Rizzo*, No. 19-01303-JW, 2020 WL 5530073, at *3 (Bankr. D.S.C. Sept. 4, 2020) (Waites)** (Citing *Wilson v. Dollar General Corp*., 717 F.3d 337 (4th Cir. May 17, 2013) (Niemeyer, Agee, Thacker), Chapter 13 debtor did not violate automatic stay by noticing appeal of adverse state court judgment. Bankruptcy court granted stay relief for others to pursue judgment against debtor and debtor did not violate stay by appealing adverse judgment that resulted. Confirmed plan was dependent on outcome of litigation. "The Fourth Circuit has held in *Wilson* . . . that a chapter 13 debtor 'steps into the role of trustee and exercises concurrent authority to sue and be sued on behalf of the estate' under Fed. R. Bankr. P. 6009. . . . Debtor, as a chapter 13 debtor, may without approval of the Court, defend herself in a state court proceeding, including filing an appeal . . . .").

{190} ***Hall v. Hall (In re Hall)*, No. 13-5372, 2020 WL 4778150 (Bankr. E.D. Mich. Aug. 17, 2020) (Tucker)** (After entry of consent judgment against debtor, judgment creditor's request that bankruptcy court order sheriff to execute on Chapter 13 debtor's property is denied because bankruptcy court is without authority to order a state officer to execute on a federal court judgment. The bankruptcy court can order the U.S. Marshal to execute on a federal court judgment or the creditor can domesticate the judgment and then ask state court for a writ of execution.).

{191} ***Furlow v. Macdonald (In re Macdonald)*, No. 20-80027-JW, 2020 WL 4334121 (Bankr. D.S.C. July 27, 2020) (Waites)** (Unjust enrichment lawsuit against Chapter 13 debtor fails because facts alleged by plaintiffs fail to establish unequivocal ouster of possession of property by debtor.).

{192} ***Lewis v. U.S. Bank, N.A. (In re Lewis)*, No. 18-00240 (JKF), 2020 WL 3454240 (Bankr. E.D. Pa. June 24, 2020) (FitzSimon)** (Chapter 13 debtor's action against insurer and professionals in fire insurance claim is barred by statute of limitations and staleness.).

{193} ***Kent v. Skoda Minotti & Co. (In re Kent)*, 615 B.R. 171 (Bankr. W.D. Pa. May 5, 2020) (Agresti)** (Breach of contract by debtor and "voluntary payment" doctrine defeat Chapter 13 debtor's contract action against accountants with respect to unfinished prepetition accounting work.).

{194} ***Miller v. Mercer Cnty. State Bank (In re Miller)*, No. 18-01009-JAD, 2020 WL 1522402 (Bankr. W.D. Pa. Mar. 30, 2020) (Deller)** (For lack of a case or controversy, bankruptcy court is without jurisdiction to take any action with respect to letter from

disgruntled counsel for the defendant in a lawsuit brought by Chapter 13 debtor that was withdrawn to the district court for a jury trial and then dismissed by the debtor.).

{195} ***In re Lugo*, No. 18bk18603, 2020 WL 1817853, at *2 (Bankr. N.D. Ill. Mar. 12, 2020) (Hunt)** (Chapter 13 debtors can maintain tort action based on postconfirmation events but plan is modified on Chapter 13 trustee's motion to require nonexempt proceeds to be paid to increase payments to creditors without regard to whether proceeds are received within 60-month term of plan. "As debtors in a chapter 13 case, the Lugos are allowed to administer an asset on behalf of the estate and collect funds to be distributed to their creditors. But it is, in fact, the trustee who generally serves as the representative of the estate, with the capacity to sue and be sued, and to prosecute an action by or against the debtor for the benefit of creditors. *See* 11 U.S.C. § 323 (capacity to sue and be sued); Fed. R. Bankr. P. 6009 (capacity to prosecute). So, the Lugos are essentially standing in the shoes of the Trustee when they are pursuing their personal injury claim.").

§ 51.2 Debtor Must File a Plan
§ 51.3 Assume, Reject or Assign Leases, Rental Agreements and Executory Contracts
§ 51.4 Preconfirmation Assumption and Rejection of Leases and Executory Contracts after BAPCPA
§ 51.5 Review Claims, Object to Claims and File Proofs of Claim
9. SPECIAL POWERS AND DUTIES OF A DEBTOR ENGAGED IN BUSINESS
§ 52.1 Operating a Chapter 13 Debtor Engaged in Business
§ 52.2 Additional Filing and Reporting Requirements
§ 52.3 Debtors Engaged in Business after BAPCPA
C. POWERS, DUTIES AND COMPENSATION OF CHAPTER 13 TRUSTEE
1. POWERS AND DUTIES
§ 53.1 Know the Trustee's Operating Procedures
§ 53.2 Who Will Be the Trustee?

{196} ***In re Dekom*, No. 19-30082-KKS, 2020 WL 4004116 (Bankr. N.D. Fla. Apr. 6, 2020) (Specie)** (Section 327 does not apply to standing Chapter 13 trustee or to staff attorneys working for the trustee. The standing trustee and staff attorneys are not paid from the Chapter 13 estate and do not need hiring orders from the bankruptcy court. Bankruptcy Rule 9011 sanction including dismissal of Chapter 13 case with prejudice to refiling for one year is appropriate when *pro se* debtor, after warning, filed harassing motion to disqualify Chapter 13 trustee and staff counsel that contained misstatements and fabricated claims of inappropriate *ex parte*contact with the court.).

§ 53.3 Removal and Liability of Trustee

{197} ***Woodroffe v. Waage*, No. 8:18-cv-1437-T-36, 2019 WL 4644425, at *5 (M.D. Fla. Sept. 24, 2019) (Honeywell)** (Debtor inappropriately named the Chapter 13 trustee personally as a party to debtor's appeal of order denying confirmation and dismissing case. Chapter 13 trustee acted in official capacity, not personally, and enjoyed derived judicial immunity when acting within the scope of authority. "Bankruptcy trustees act in their official capacity, and not personally, and trustees are not personally liable for performing their duties. . . . [T]he Trustee enjoys quasi-judicial immunity[.]").

{198} ***In re Dekom*, No. 19-30082-KKS, 2020 WL 4004116 (Bankr. N.D. Fla. Apr. 6, 2020) (Specie)** (Section 327 does not apply to standing Chapter 13 trustee or to staff attorneys working for the trustee. The standing trustee and staff attorneys are not paid from the Chapter 13 estate and do not need hiring orders from the bankruptcy court. Bankruptcy Rule 9011 sanction including dismissal of Chapter 13 case with prejudice to refiling for one year is appropriate when *pro se* debtor, after warning, filed harassing motion to disqualify Chapter 13 trustee and staff counsel that contained misstatements and fabricated claims of inappropriate *ex parte*contact with the court.).

{199} ***McKinney v. 2nd Chance Auto Sales, Inc.*, 611 B.R. 894, 898–905 (Bankr. N.D. Ala. Jan. 30, 2020) (Sawyer)** (*Barton* doctrine bars state court action against Chapter 13 trustee to collect judgment against Wells Fargo from trust funds held by trustee. In addition, funds held by trustee are *in custodia legis* and cannot be levied upon or attached by state court process. 2nd Chance Auto Sales, Inc., obtained a money judgment against a car buyer. In an effort to collect that judgment, 2nd Chance garnished the buyer's bank account at Wells Fargo. Wells Fargo failed to respond, which resulted in an $8,000 judgment against Wells Fargo. 2nd Chance then brought state court action against Chapter 13 trustee as garnishee to collect money held for payment to Wells Fargo in Chapter 13 cases. "As this proceeding involves a garnishment action brought against the Chapter 13 Trustee, who is appointed to serve this Court, this Court has exclusive jurisdiction to hear this matter. 28 U.S.C. § 1334; *Barton v. Barbour*, [104 U.S. (14 Otto) 126, 26 L. Ed. 672 (Oct. 1, 1881)]. . . . [I]t is undisputed that Second Chance did not first seek leave from this Court to bring a garnishment action against the Trustee . . . . In addition to the Eleventh Circuit, 10 other circuits have likewise held that *Barton* applies to suits brought against a trustee in bankruptcy. . . . ' . . . [T]he *Barton* Doctrine requires a party to obtain leave of the bankruptcy court before initiating an action in any non-bankruptcy courts against a bankruptcy trustee for acts done in the trustee's official capacity.' . . . As garnishment actions against a

trustee are civil actions, it follows that *Barton* withdraws subject matter jurisdiction from any court other than the court in which the trustee serves where, as here, someone attempts to garnish funds in the hands of a trustee. . . . While the Trustee enjoys protection from unauthorized lawsuits under the *Barton* doctrine, the property in her charge is protected under the doctrine of *in custodia legis* while it remains in her charge. . . . As such, the funds, independent of the *Barton* doctrine, are beyond the reach of any 'levy or attachment in any form.'").

§ 53.4 Procedure for Removal after BAPCPA
§ 53.5 Advise and Assist Debtor
§ 53.6 Appear and Be Heard with Respect to Confirmation of a Plan

{200} ***Brown v. Viegelahn (In re Brown)*, 960 F.3d 711, 717 (5th Cir. June 8, 2020) (Southwick, Graves, Engelhardt)** (Trustee's duty in §§ 1302(b)(1) and 704(a)(2) to be accountable for all property received during the Chapter 13 case does not obligate debtor to pay trustee all projected disposable income when plan proposes to pay unsecured creditors 100% using less than all monthly disposable income. "[T]he trustee is 'accountable for all property *received*.' § 704(a)(2) (emphasis added). Brown's excess disposable income, though, is not property that the trustee received, so the trustee cannot have a statutory duty to preserve it. . . . Section 1322 requires that a Chapter 13 plan 'provide for the submission of all or such *portion* of future earnings . . . *as is necessary* for the execution of the plan.' § 1322(a)(1) (emphases added). Because Brown's plan proposed to pay creditors in full but also allowed him to maintain some disposable income each month, turning over his excess disposable income was not necessary to execute the plan. Whatever a trustee's duty to preserve the estate, it is not that a trustee must control a Chapter 13 debtor's excess disposable income.").

§ 53.7 Appear and Be Heard with Respect to the Value of Collateral
§ 53.8 Appear and Be Heard with Respect to Modification of Plans after Confirmation
§ 53.9 Ensure Debtor Commences Making Timely Payments
§ 53.10 Make Payments to Creditors Unless Plan or Confirmation Order Provides Otherwise

{201} ***Bauman v. Skelton (In re Bauman)*, No. SC-18-1190-SLG, 2020 WL 1899557, at *8–*9 (B.A.P. 9th Cir. Apr. 16, 2020) (not for publication) (Spraker, Lafferty, Gan)** (Chapter 13 debtor cannot avoid the requirement to commence payments under § 1326(a)(1) by proposing to make all payments directly to creditors. Debtors can make some payments directly to creditors but typically not to unsecured creditors and certainly not all payments. "Bauman points to no case that has permitted a chapter 13 debtor to excise the trustee and make *all* payments directly to creditors. . . . Bauman may not usurp the chapter 13 trustee's statutory role. . . . Permitting a debtor to make all chapter 13 payments outside of the plan would undermine the trustee's ability to carry out these duties or render them impracticable. . . . Courts have rejected interpretations of § 1326(a)(1) that would permit debtors to avoid or condition the commencement of their payments under § 1326(a)(1). . . . Her proposed plans did not absolve her of the duty to commence plan payments under § 1326(a)(1).").

§ 53.11 Payments to Creditors before Confirmation
§ 53.12 Avoidance and Recovery Powers

{202} ***In re Peterson*, No. 3:19-CV-00249 (KAD), 2020 WL 607153 (D. Conn. Feb. 7, 2020) (Dooley)** (On reconsideration, bankruptcy court correctly determined that Chapter 13 trustee had no obligation to attempt to collect funds that may or may not have been fraudulently removed from a separate Chapter 7 estate. That recovery, if possible, was the debtor's responsibility.), *denying reconsideration of* No. 3:19-CV-00249 (KAD), 2019 WL 6467351 (D. Conn. Dec. 2, 2019) (Dooley) (When Chapter 13 debtor obtained a judgment against the owner of a corporation and that corporation obtained $25,000 by way of settlement of other litigation, debtor's indirect interest in the $25,000 did not become property of the Chapter 13 estate because the debtor took no action to collect from the corporation and the Chapter 13 trustee had no obligation to do so. Because the confirmed plan was funded in part by the proceeds of that litigation, the bankruptcy court did not err in closing the case without discharge when the debtor did not liquidate the claim and did not bring any portion of the settlement proceeds into the estate.).

{203} ***In re Massey*, No. 18-33445-tmb13, 2020 WL 5240383, at *3 (Bankr. D. Or. Sept. 1, 2020) (Brown)** (Over debtor's objection, counsel hired by Chapter 13 trustee to litigate estate's interest in a family trust is allowed fees for successfully increasing distribution to unsecured creditors. Counsel was appropriately hired under § 327 to perform legal services outside ordinary competence of the Chapter 13 trustee and services performed were not duplicative of administrative responsibilities of the trustee. "The Bankruptcy Code allows a trustee to hire a professional . . . . 11 U.S.C. § 327(a). . . . While I am unable to articulate an absolute, bright-line rule differentiating the trustee's administrative duties from the professional duties that may be performed by an outside professional, I am confident . . . Mr. Criswell's employment did not consist of performing the trustee's administrative duties. . . . Debtor's proposed *per se* prohibition on chapter 13 trustees hiring outside counsel to work on matters relevant to confirmation would prevent the trustee from effectively representing creditors in unusual and complicated cases such as this one.").

{204} ***Viegelahn v. Ruben's Auto Sales (In re Daniel)*, No. 20-05009-RBK, 2020 WL 4519041, at *6 (Bankr. W.D. Tex. Aug. 5, 2020) (King)** (Confirmation of Chapter 13 plan that treats car lender as secured does not preclude trustee's preference avoidance action because Bankruptcy Code grants trustee authority to pursue § 547 action and local standing order preserves that power notwithstanding confirmation. Lien on car perfected 32 days after Chapter 13 petition is protected from preference avoidance by enabling loan exception in § 547(c)(3) when 30th day fell on a Saturday and Bankruptcy Rule 9006(a) extended the statutory period to the following Monday. Acknowledging contrary authority, 30-day period in § 547(c)(3) is appropriately extended by Rule 9006(a) because the statute does not specify a method for counting time period. "[T]he statute expressly grants the trustee authority to pursue this cause of action, and . . . this Court's Standing Order . . . specifically reserves the Trustee's ability to seek avoidance actions. While the orders on confirmation do state that Defendant has a valid security interest in Debtor's vehicle, nothing in these orders precludes the Trustee from seeking to avoid this lien as a preferential transfer.").

{205} ***Carden v. Ditech Fin., LLC (In re Carden)*, No. 19-40012-JJR, 2020 WL 768585, at *3–*9 (Bankr. N.D. Ala. Feb. 14, 2020) (Robinson)** (Applying superseded version of Alabama law, Ditech as successor to Green Tree has a perfected security interest in debtor's mobile home that defeats avoidance action by debtor and Chapter 13 trustee under § 544(a). "[A]lthough the Trustee is the nominal party in interest and asserts she has standing to bring this avoidance action, the benefit of avoiding Ditech's lien would inure not to unsecured creditors—there appear to be none holding allowable claims—but entirely to the Debtor who, if the Plaintiffs are successful in this proceeding, will own the Mobile Home free and clear of Ditech's security interest without any obligation to account for its value through her chapter 13 plan. . . . The court concludes that Ditech's security interest in the Mobile Home continues to be perfected and that a judgment lien creditor on the petition date of the Debtor's bankruptcy case would not take priority over Ditech's security interest.").

{206} ***Fink v. Wright (In re Wright)*, 611 B.R. 319 (Bankr. W.D. Mo. Dec. 10, 2019) (Fenimore)** (Because debtor's transfers of property to sister in 2016 created a constructive trust in favor of debtor, conveyance was not fraudulent as to creditors and could not be avoided by Chapter 13 trustee. Debtor remained the beneficial owner of the property at all times.).

§ 53.13 Recovery of Overpayments

{207} ***In re Palmer*, No. 15-20886-GLT, 2020 WL 4743011, at *3–*4 (Bankr. W.D. Pa. Aug. 14, 2020) (Taddonio)** (Debtor is entitled to refund of $213.35 paid to unsecured creditors while motion and order to modify plan were being processed. Modified plan changed math of confirmed plan to eliminate distribution to unsecured creditors that resulted when payment of mortgage arrears was completed in 53d month. Trustee could have and perhaps should have objected to modification that had "retroactive" effect of declaring plan completed. Confirmed plan called for 60 monthly payments to cure mortgage arrearages with acknowledgment that pool of funds available to pay unsecured creditors would be determined after an audit at the time of completion of other payments. Mortgage arrearages were fully paid approximately 53 months into the plan term. Trustee filed a notice of intent to pay unsecured creditors pro rata from funds that became available when mortgage arrears were paid. Debtor responded with plan modification that terminated the debtor's obligations "retroactively" to the completion of payment of mortgage arrears. The court approved the modified plan and a week later the trustee's office disbursed funds on hand to unsecured creditors. "[The trustee] did [not] request a delay in the effective date of the confirmation order to account for the processing limitations of her office. . . . [T]he Court is sympathetic to the Trustee's position even though it cannot authorize her actions in this case. The Trustee's office is one of the largest in the country with disbursements rivaling those of a small financial institution. With such volume and complexity, it is completely understandable that unusual plans would present hardships in administration. . . . When appropriate, however, the Trustee may request that the confirmation order include reasonable terms to grant her the leeway to address any administrative difficulties on a case-by-case basis. . . . [T]he Debtor is entitled to a refund of $213.35.").

{208} ***In re Santana Lamboy*, No. 14-9530 (MCF), 2020 WL 4723712, at *6–*8 (Bankr. D.P.R. Aug. 3, 2020) (Caban Flores)** (Neither Ocwen nor US Bank was able to prove possession or ownership of mortgage note, thus neither had standing to file proof of claim or to object to debtor's claim filed on behalf of Ocwen. Debtor's objection to the claim debtor filed on behalf of Ocwen is sustained and trustee is ordered to recover payments made to Ocwen because debtor could not prove that Ocwen was holder of the debt or had any entitlement to enforce the note. Debtor's objections to Ocwen's late-filed proof of claim and to US Bank's even-later-filed claim are sustained—the claims are not allowable and debtor's personal liability will be discharged. Mortgage lien will survive discharge, though it is not clear which entity has the right to enforce that lien. Debtor's motion to modify plan filed in last month of the 60-month plan is denied as unnecessary because debtor has completed payments under confirmed plan, debtor is entitled to discharge and none of the mortgage claims filed by any party—including the Bankruptcy Rule 3004 claim filed by the debtor—is allowable. Chapter 13 case was filed in November 2014. Debtor listed Ocwen as a secured creditor. US Bank filed a notice of appearance and an objection to confirmation. Debtor moved to reserve payments to Ocwen pending proof of Ocwen's secured status given that US Bank was alleging that it was the holder of the mortgage. In the interim, debtor filed a proof of claim on behalf of Ocwen. Neither US Bank nor Ocwen filed a timely proof of claim. Debtor objected to Ocwen's untimely proof of claim. US Bank responded stating that it had inadvertently failed to file a timely proof of claim. The bankruptcy court sustained the debtor's objection to Ocwen's claim. Nineteen months later US Bank filed a motion for reconsideration and for leave to file a late claim. "Ocwen Loan Servicing LLC is not the owner of the mortgage note because its name does not appear as the original mortgagee, on any of the endorsements or in the allonges provided. . . . Ocwen Loan Servicing LLC never owned the mortgage note. . . . US Bank is not Ocwen Loan Servicing LLC. . . . US Bank has not represented that Ocwen Loan Servicing LLC is or was its loan servicer. US Bank has no standing to prosecute Claims . . . in

favor of Ocwen Loan Servicing LLC. US Bank never filed a transfer of claim for Claim . . . . US Bank cannot amend a claim filed by a separate legal entity. . . . US Bank has failed to provide the missing link in the chain of title to the mortgage note. . . . The affidavit addresses the relationship between US Bank and [Bank of America]. The highlighted entry of Schedule A refers to BlackRock Capital. . . . The affidavit does not say that US Bank merged with LaSalle or if LaSalle merged with Bank of America. US Bank fails to establish how Bank of America received the mortgage note. There is no allonge or endorsement from LaSalle to [Bank of America]. . . . The Debtor had filed Claim No. 4 in favor of Ocwen . . . . Ocwen was not the original mortgagee and there is no proof that it is or was the owner of the note in the various allonges and endorsements filed with the court. Thus, Claim No. 4 as filed by the Debtor must be disallowed because the Debtor has failed to establish that Ocwen is the owner of the note. It might be the servicer of the loan since Ocwen bears in its name the term 'servicing,' but the Debtor does not want to pay Ocwen for fear it might pay incorrectly. US Bank cannot defend Ocwen because they are separate legal entities. . . . Once the order of discharge is entered, the Debtor will emerge from bankruptcy with a discharge on his personal liability but maintains a lien on his principal residence. The reserved funds held by the Trustee will be returned to the Debtor because it is unknown who is the true creditor or the owner of the mortgage note pertaining to his principal residence. . . . [T]he Trustee will recover the payments that were made to Ocwen and return them to the Debtor.").

{209} ***Bledsoe v. DeVos (In re Ferris)*, No. 19-00080-5-SWH, 2020 WL 3884735 (Bankr. E.D.N.C. July 9, 2020) (Humrickhouse)** (When confirmed Chapter 13 plan pays nothing to unsecured creditors, no legitimate purpose is served by debtors' fraudulent conveyance action against student loan lender that seeks to nullify Parent Federal Direct PLUS Loan. Debtors' fraudulent conveyance action is an indirect attempt to discharge a student loan debt without satisfying § 523(a)(8). In dicta, that Chapter 13 debtor would maintain fraudulent conveyance action that only benefits the debtor with no prospect for recovering anything for the estate is perhaps a good reason to require trustee participation in fraudulent conveyance actions in Chapter 13 cases.).

{210} ***In re Alston*, 610 B.R. 551 (Bankr. D.S.C. Oct. 25, 2019) (Waites)** (Santander Consumer USA, Inc., ordered to refund double payment of its claim in Chapter 13 case and ordered to pay debtors' attorney's fees for having to file contempt action to get refund. Plan proposed to pay Santander in full. Debtors paid Santander directly without telling anyone. Trustee thereafter paid Santander in full, again. Debtors asked for refund of second payment. Santander failed to respond. Debtors moved for a refund. Santander again failed to respond. Court found Santander willfully violated terms of confirmed plan that called for one payment in full, not two.).

§ 53.14 Seek Conversion or Dismissal
§ 53.15 Review Claims, Object to Claims and File Proofs of Claim
§ 53.16 Noticing Responsibilities
§ 53.17 § 342 Noticing Issues
§ 53.18 Audits by U.S. Trustee
§ 53.19 Trustees' Role in Debtor Education
§ 53.20 Trustees' Final Report

{211} ***Marshall v. McCarty (In re Marshall)*, 613 B.R. 458, 460–61 (B.A.P. 8th Cir. Apr. 16, 2020) (Saladino, Nail, Dow)** (Chapter 13 debtor is not a "person aggrieved" by trustee's final report and has no standing to appeal denial of objection to final report. The "Final Report is not a final order and thus, this Court has no jurisdiction over such an appeal. . . . Debtor questioned the accuracy of some of the information in Trustee's Final Report such as creditor information and the amounts listed as exempt property . . . . Debtor has failed to demonstrate how the bankruptcy court's Order overruling her Objection may have diminished her property, increased her burdens or impaired her rights as to make her an aggrieved party with standing. Nor has she demonstrated that the bankruptcy court's Order directly and adversely affected her pecuniarily.").

2. COMPENSATION AND EXPENSES

§ 54.1 Standard Percentage Fee and Expenses
§ 54.2 Compensation and Expenses of Chapter 13 Trustee after BAPCPA

{212} ***In re Massey*, No. 18-33445-tmb13, 2020 WL 5240383, at *3 (Bankr. D. Or. Sept. 1, 2020) (Brown)** (Over debtor's objection, counsel hired by Chapter 13 trustee to litigate estate's interest in a family trust is allowed fees for successfully increasing distribution to unsecured creditors. Counsel was appropriately hired under § 327 to perform legal services outside ordinary competence of the Chapter 13 trustee and services performed were not duplicative of administrative responsibilities of the trustee. "The Bankruptcy Code allows a trustee to hire a professional . . . . 11 U.S.C. § 327(a). . . . While I am unable to articulate an absolute, bright-line rule differentiating the trustee's administrative duties from the professional duties that may be performed by an outside professional, I am confident . . . Mr. Criswell's employment did not consist of performing the trustee's administrative duties. . . . Debtor's proposed *per se* prohibition on chapter 13 trustees hiring outside counsel to work on matters relevant to confirmation would prevent the trustee from effectively representing creditors in unusual and complicated cases such as this one.").

§ 54.3 Lowered Percentage in a Case
§ 54.4 "No-Costing" Payments on a Claim
§ 54.5 Quantum Meruit

§ 54.6 Compensation on Direct Payments by Debtor
§ 54.7 Compensation on Sale or Transfer of Assets
§ 54.8 Compensation When Trustee Is Not a Standing Trustee
§ 54.9 Compensation When Case Is Dismissed or Converted before Confirmation
D. REPRESENTING CREDITORS PRIOR TO CONFIRMATION
1. STOPPING THE CASE BEFORE CONFIRMATION
§ 55.1 Quick Action Is Essential
§ 55.2 Eligibility Attacks
§ 55.3 Conversion or Dismissal
§ 55.4 Preconfirmation Dismissal or Conversion after BAPCPA
2. GETTING INFORMATION
§ 56.1 How to Determine Proposed Treatment of a Creditor
§ 56.2 Working with the Chapter 13 Trustee
§ 56.3 Attending Meeting of Creditors
§ 56.4 Representation at Meeting of Creditors after BAPCPA
§ 56.5 Preconfirmation Discovery Rights of Creditors
§ 56.6 Rights to Documents and Information after BAPCPA
3. ASSERTING CREDITORS' RIGHTS BEFORE CONFIRMATION
§ 57.1 Proofs of Claim
§ 57.2 Adequate Protection Rights
§ 57.3 Preconfirmation Adequate Protection Rights after BAPCPA
§ 57.4 Preconfirmation Rights of Landlords and Lessors after BAPCPA

{213} ***In re Arrieta*, 612 B.R. 342, 346–49 (Bankr. D.S.C. Jan. 23, 2020) (Waites)** (Upon objection by landlord, Chapter 13 debtor's certification under § 362(*l*)(1) is not true and the stay exception in § 362(b)(22) applies because no provision of lease contract or of South Carolina law permits debtor to cure lease defaults after state court issued writ of ejectment. Debtor's tender of one month's rent is not enough. "In an effort to stay the eviction proceedings, Debtor filed the Certification which indicated that she had deposited with the Clerk of Court the rent to be due during the first 30 days after the petition and that under South Carolina law, she has the right to stay in Residence after the entry of the Writ of Ejectment upon the payment of the entire amount of unpaid prepetition rent owed to Landlord. . . . [S]ection 362(b)(22) provides an exception to the automatic stay . . . . [T]he Bankruptcy Code provides an 'exception to the exception' of the automatic stay by allowing debtors who are tenants in a residential lease to obtain, in essence, a temporary 30-day stay (with the possibility of obtaining an extended stay) through the certification process of § 362(*l*). . . . Under § 362(*l*)(2), the exception to the automatic stay under § 362(b)(22) shall not apply for the entirety of the case . . . . [T]he landlord may file an objection to the debtor's initial certification, and the Court must hold a hearing to determine if the certification filed by the debtor is true. . . . Debtor has not alleged any circumstances that would permit her at this stage in the eviction process and over the objection of the Landlord to cure the unpaid rent on the Lease. . . . Debtor is not permitted to cure the missed rent payments to Landlord after the issuance of the Writ of Ejectment. As the Court finds that the Certification filed by Debtor with her petition is not true, the objection is sustained and the exception to the automatic stay under § 362(b)(22) is immediately applicable so that Landlord may be permitted to complete the process of obtaining full possession of the Residence.").

§ 57.5 Domestic Support Obligations: Preconfirmation Rights after BAPCPA
§ 57.6 Preconfirmation Valuation Disputes
§ 57.7 Preconfirmation Classification Disputes
§ 57.8 Policing Debtor's Compliance with Preconfirmation Duties
§ 57.9 Negotiating for a Secured Claim Holder
§ 57.10 Negotiating for a Home Mortgage Holder
§ 57.11 Representing an Unsecured Claim Holder
E. AUTOMATIC STAY AND PRECONFIRMATION RELIEF FROM STAY
1. EXTENT OF AUTOMATIC STAY
§ 58.1 Usual Protections
§ 58.2 BAPCPA Shrank Stay
§ 58.3 Additional Protection for Postpetition Property and Income
§ 58.4 Postpetition Creditors
§ 58.5 Alimony and Support Exception
§ 58.6 Domestic Support Obligation Exception after BAPCPA

{214} ***In re Sandoval*, No. 2:17-bk-10379-NB, 2020 WL 3634505 (Bankr. C.D. Cal. May 27, 2020) (Bason)** (After grant of stay relief to allow domestic relations court to divide marital property, bankruptcy court rejects proposed property settlement that would divide substantial value between former spouse and others without any distribution to the Chapter 13 estate. Bankruptcy court finds the proposed property settlement to be collusive and denies Bankruptcy Rule 9019 approval.).

{215} ***In re Wagner*, No. 17-11252-TPA, 2020 WL 1844615 (Bankr. W.D. Pa. Apr. 9, 2020) (Agresti)** (With one spouse in Chapter 13 and the other in Chapter 12 and after several failed attempts to inspire the parties to complete a state court divorce with equitable distribution of property, the bankruptcy court carries through its threat to perform the equitable distribution of property in the bankruptcy court applying Pennsylvania domestic relations law principles.).

§ 58.7 Criminal Action or Proceeding Exception

{216} ***In re Deutsch*, No. 20-10135-RAM, 2020 WL 475902, at *1–*2 (Bankr. S.D. Fla. Jan. 29, 2020) (Mark)** (Criminal contempt proceeding in state court civil action based on debtor's willful failure to obey court orders fits the stay exception in § 362(b)(1), with limitations. "Judge Lee may not sentence the Debtor to jail with an Order that purges the sentence if the Debtor pays a fine and payment will necessarily come from property of the estate. Imposing a fine on the Debtor for his past conduct will not violate the stay if the fine is a postpetition debt that may be paid in the Debtor's chapter 13 plan rather than a fine immediately payable as a condition for not being incarcerated. Second, Judge Lee cannot threaten jail unless the Debtor produces documents or appears for deposition because any inquiry into the Debtor's financial condition must now be done in the bankruptcy case.").

§ 58.8 Police and Regulatory Power Exception

{217} ***In re Rice*, 613 B.R. 690 (Bankr. N.D. Ill. Apr. 21, 2020) (Schmetterer)** (City of Chicago's claim that refusing to return impounded car fit police power exception to automatic stay based on record of speeding violations by debtor was not supported by any evidence.).

§ 58.9 Real Estate, Landlord and In Rem Exceptions after BAPCPA

{218} ***Reyes v. Kutnerian (In re Reyes)*, 812 F. App'x 464 (9th Cir. July 8, 2020) (not for publication) (Tashima, Hunsaker, Selna)** (Bankruptcy court appropriately applied *Rooker-Feldman* doctrine to refuse Chapter 13 debtors' request to vacate state court unlawful detainer judgment.).

{219} ***In re Arrieta*, 612 B.R. 342, 346–49 (Bankr. D.S.C. Jan. 23, 2020) (Waites)** (Upon objection by landlord, Chapter 13 debtor's certification under § 362(*l*)(1) is not true and the stay exception in § 362(b)(22) applies because no provision of lease contract or of South Carolina law permits debtor to cure lease defaults after state court issued writ of ejectment. Debtor's tender of one month's rent is not enough. "In an effort to stay the eviction proceedings, Debtor filed the Certification which indicated that she had deposited with the Clerk of Court the rent to be due during the first 30 days after the petition and that under South Carolina law, she has the right to stay in Residence after the entry of the Writ of Ejectment upon the payment of the entire amount of unpaid prepetition rent owed to Landlord. . . . [S]ection 362(b)(22) provides an exception to the automatic stay . . . . [T]he Bankruptcy Code provides an 'exception to the exception' of the automatic stay by allowing debtors who are tenants in a residential lease to obtain, in essence, a temporary 30-day stay (with the possibility of obtaining an extended stay) through the certification process of § 362(*l*). . . . Under § 362(*l*)(2), the exception to the automatic stay under § 362(b)(22) shall not apply for the entirety of the case . . . . [T]he landlord may file an objection to the debtor's initial certification, and the Court must hold a hearing to determine if the certification filed by the debtor is true. . . . Debtor has not alleged any circumstances that would permit her at this stage in the eviction process and over the objection of the Landlord to cure the unpaid rent on the Lease. . . . Debtor is not permitted to cure the missed rent payments to Landlord after the issuance of the Writ of Ejectment. As the Court finds that the Certification filed by Debtor with her petition is not true, the objection is sustained and the exception to the automatic stay under § 362(b)(22) is immediately applicable so that Landlord may be permitted to complete the process of obtaining full possession of the Residence.").

§ 58.10 Pension Loans Exception after BAPCPA
§ 58.11 Miscellaneous New Stays and Exceptions after BAPCPA
§ 58.12 Setoffs and Recoupments

{220} ***In re Beacham*, No. 20-60714-SMS, 2020 WL 1486790 (Bankr. N.D. Ga. Mar. 23, 2020) (Sigler)** (Automatic stay precludes former spouse from exercising recoupment to recover amounts owed under support judgment from payments former spouse owes debtor under equitable division of property in divorce decree. Elements of recoupment are not present because obligations arising from the divorce decree involve a different set of facts than the judgments for nonpayment of support.).

{221} ***In re Duca*, No. 19-10661-MKN, 2019 WL 5880434 (Bankr. D. Nev. Apr. 5, 2019) (Nakagawa)** (Credit union is granted stay relief to exercise setoff against $5,192 in Chapter 13 debtor's account. Stay relief is delayed to allow debtor to offer alternative adequate protection given that debtor needs the money in the account to pay living expenses and to fund proposed plan.).

§ 58.13 Termination of Services to Debtor and Discrimination against Debtor

§ 58.14 Expiration of Stay

{222} ***Ross v. Wilmington Sav. Fund Soc'y, FSB*, No. 4:19-CV-23-DMB, 2019 WL 7195319 (N.D. Miss. Dec. 26, 2019) (Brown)** (Appeal of order declaring that no stay was in effect because debtor had no interest in property at issue is moot because stay expired when underlying Chapter 13 case was dismissed based on debtor's failure to make payments.).

2. 11 U.S.C. § 362(c)(3) AND (c)(4): 30-DAY STAY TERMINATION; NO STAY

§ 59.1 In General

a. 11 U.S.C. § 362(c)(3): 30-DAY STAY TERMINATION

§ 60.1 When Does § 362(c)(3) Apply?

§ 60.2 Which Stays Terminate?

{223} ***In re Vega Arroyo*, No. 13-00415 (EAG), 2020 WL 4728098 (Bankr. D.P.R. Aug. 13, 2020) (Godoy)** (Citing *Smith v. Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. Dec. 12, 2018) (Lynch, Stahl, Barron), entire stay expired 30 days after petition in second case within a year under § 362(c)(3), including stay with respect to specific performance of a contract for sale of real property that resulted in a postpetition judgment against the Chapter 13 debtor.).

{224} ***In re Guilford*, No. 20-11394 (JNP), 2020 WL 4346660 (Bankr. D.N.J. July 28, 2020) (Poslusny)** (In second Chapter 13 case within a year, stay expired under § 362(c)(3) after 30 days with respect to the debtor but not with respect to property of the estate; ground lease on which sits the debtor's mobile home remained property of the Chapter 13 estate protected by the automatic stay.).

{225} ***In re Thu Thi Dao*, 616 B.R. 103 (Bankr. E.D. Cal. May 11, 2020) (Klein)** (In a Chapter 7 case, Chapter 13 cases discussing § 362(c)(3) and the extent to which the automatic stay terminates after 30 days in the second case within a year have distracted courts and practitioners from compelling analysis that only the stay with respect to the debtor terminates. Contrary decisions such as *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (B.A.P. 9th Cir. Feb. 4, 2011) (Saltzman, Hollowell, Kirscher), leave the Chapter 7 trustee unprotected from creditor action after 30 days, unnecessarily impairing the trustee's ability to collect and equitably distribute the estate.).

{226} ***In re James*, No. 19-00680, 2019 WL 6833835 (Bankr. D.D.C. Dec. 13, 2019) (Teel)** (No stay arose in second case within one year because of § 362(c)(3) but not necessary to address the extent to which the stay expired after 30 days because the property at issue was not property of the estate in the first instance based on a prepetition foreclosure sale.).

{227} ***In re Youngblood*, No. 19-02780-NPO, 2019 WL 9828474 (Bankr. S.D. Miss. Oct. 15, 2019) (Olack)** (In second Chapter 13 case within a year, stay that expired 30 days after the petition under § 362(c)(3) is stay with respect to the debtor and property of the debtor but not stay with respect to property of the estate.).

§ 60.3 Timing, Procedure and Form for Extension of Stay

{228} ***Bastani v. Wells Fargo Bank, N.A.*, 960 F.3d 976, 978 (7th Cir. June 8, 2020) (Easterbrook, Sykes, St. Eve)** (Except in "extraordinary circumstances that we do not foresee," Chapter 13 debtor cannot proceed *in forma pauperis* on appeal of order denying extension of stay under § 362(c)(3). Debtor appears in "actual bad faith" by claiming in the bankruptcy court that she was eligible for Chapter 13 and then claiming in the appellate court that she was destitute.).

{229} ***Mata v. Arvest Cent. Mortg. Co.*, No. 19-CV-2846 (PKC), 2020 WL 1694314 (E.D.N.Y. Apr. 7, 2020) (Chen)** (Appeal of refusal to extend stay in second case within a year under § 362(c)(3) is moot because property was sold at foreclosure, there is no allegation of bad faith with respect to the sale and Chapter 13 debtor did not seek a stay pending appeal.).

§ 60.4 (Rebuttable) Presumption of Lack of Good Faith

{230} ***In re Baker*, No. 19-41358, 2020 WL 290650 (Bankr. D. Kan. Jan. 14, 2020) (Somers)** (Presumption of bad faith did not arise in second case within a year under § 362(c)(3) because change in circumstances made it likely that a plan could be confirmed and completed. Debtor provided clear and convincing evidence of changed circumstances and of good faith for § 362(c)(3) purposes including new employment, reduction of monthly expenses and improved personal and family circumstances.).

{231} ***Stewart v. Archie's Auto Sales, Inc. (In re Stewart)*, 606 B.R. 706, 711–12 (Bankr. S.D. Miss. Sept. 13, 2019) (Olack)** (Presumption of bad faith for purposes of § 362(c)(3)(B) in second filing within a year did not arise because changed employment and possession of new driver's license would allow debtor to attend meeting of creditors in current case after missing four meetings of creditors in prior, dismissed case. "The presumption of bad faith does not arise . . . because there has been a substantial change in the Debtor's personal affairs since the Prior Bankruptcy Case, and the Court has no reason to find that the Current Bankruptcy Case will not be concluded. . . . [T]he Debtor testified that she is prepared to attend a § 341 meeting with her Social Security Card and current driver's license. . . . Accordingly, the presumption of bad faith does not arise. The Court finds that the Debtor has satisfied the good faith requirement of § 362(c)(3)(B).").

§ 60.5 Proof of Good Faith

{232} ***Morillo v. Wells Fargo Bank, N.A.*, No. 19-CV-08183 (PMH), 2020 WL 2539068 (S.D.N.Y. May 19, 2020) (Halpern)** (In second Chapter 13 case within a year, based on "sketchy" facts with respect to ownership of foreclosed property and possible collusion between debtor and prior owner, bankruptcy court appropriately held that debtor failed to rebut presumption of bad faith for purposes of stay extension under § 362(c)(3).).

{233} ***In re Bartley*, No. 3:19-CV-00400 (KAD), 2019 WL 6467353 (D. Conn. Dec. 2, 2019) (Dooley)** (Tag-team bankruptcies and multiple meritless state court and bankruptcy court lawsuits with respect to foreclosure demonstrate bad-faith abuse by Chapter 13 debtor that justified denial of extension of stay and dismissal with prejudice to refiling for two years.).

{234} ***In re Davis*, No. 19-36077-KLP, 2020 WL 583126 (Bankr. E.D. Va. Feb. 5, 2020) (Phillips)** (In second bankruptcy case within a year, motion to reconsider order denying extension of stay under § 362(c)(3) is denied. Chapter 13 debtor failed to prove good faith with respect to home mortgage that had already been foreclosed. Debtor's remedies lie in state court.).

{235} ***In re Baker*, No. 19-41358, 2020 WL 290650 (Bankr. D. Kan. Jan. 14, 2020) (Somers)** (Presumption of bad faith did not arise in second case within a year under § 362(c)(3) because change in circumstances made it likely that a plan could be confirmed and completed. Debtor provided clear and convincing evidence of changed circumstances and of good faith for § 362(c)(3) purposes including new employment, reduction of monthly expenses and improved personal and family circumstances.).

b. 11 U.S.C. § 362(c)(4): NO STAY

§ 61.1 When Does § 362(c)(4) Apply?

{236} ***Stone v. Viegelahn (In re Stone)*, No. 19-51047, 2020 WL 3273034 (5th Cir. June 17, 2020) (not for publication) (King, Graves, Willett)** (In third Chapter 13 case within a year, bankruptcy court appropriately dismissed case for bad faith by debtor and correctly determined that no stay was in effect with respect to foreclosure a few days after the petition because of § 362(c)(4).).

{237} ***In re Othello*, No. 19-51502, 2020 WL 232836 (Bankr. D. Conn. Jan. 14, 2020) (Manning)** (Evidence of bad faith and abuse of bankruptcy process for purposes of dismissal included that fourth petition did not trigger automatic stay because of § 362(c)(4) but debtor took no action to request a stay.).

{238} ***In re Clinton-Briscoe*, No. 18-24703-K, 2018 WL 10323372 (Bankr. W.D. Tenn. July 3, 2018) (Kennedy)** (In third bankruptcy case within a year, no stay was in effect when mortgagee foreclosed debtor's residence the day after the petition; foreclosure sale did not violate stay and debtor is granted 30 days to vacate the property.).

§ 61.2 Procedure, Timing and Form for Imposing Stay

{239} ***In re Smith-Harris*, No. AZ-20-1096-TLB, 2020 WL 4371150 (B.A.P. 9th Cir. July 30, 2020) (not for publication) (Taylor, Lafferty, Brand)** (In fifth bankruptcy case in four years in which no stay was in effect because of § 362(c)(4), appeal of denial of motion for injunction is moot because underlying Chapter 13 case was dismissed during the appeal.).

{240} ***In re Perkins*, 609 B.R. 576, 577–81 (Bankr. D. Conn. Dec. 16, 2019) (Manning)** (When mortgage creditor moves for declaration that no stay is in effect under § 362(c)(4) and for *in rem* relief under § 362(d)(4) in third case within a year, creditor is entitled to declaration that no stay is in effect but relief under § 362(d)(4) is not available because there is no stay in effect from which *in rem* relief could be granted. "[T]he Bankruptcy Code does not permit subsection 362(d)(4) *in rem* relief to enter in a case such as this one, where the automatic stay is not in effect under subsection 362(c)(4). . . . [T]he plain language of 362(c)(4) applies to individual debtors who file a third case within one year of two prior cases that were pending but dismissed, while the plain language of 362(d)(4) applies to the stay of an act against real property by a creditor whose claim is secured by an interest in such real property. . . . Movant cannot obtain 'relief from the stay' under subsection (d)(4) in this case because the stay was never in effect. The language of subsection 362(d) . . . compels the interpretation that the stay must be in effect as a condition precedent to obtaining *in rem* relief pursuant to (d)(4). . . . [T]o grant both types of relief the Movant seeks would require the Court to conclude both that the stay was not in effect *and* that it was . . . . The Movant was not stayed from proceeding with the State Court Foreclosure Action and therefore does not need *in rem* relief to do so . . . because a stay was never in effect in the Debtor's third Chapter 13 case.").

§ 61.3 (Rebuttable) Presumption of Lack of Good Faith

§ 61.4 Proof of Good Faith

{241} ***In re Mendoza*, No. 6:19-bk-20972-WJ, 2020 WL 211388 (Bankr. C.D. Cal. Jan. 9, 2020) (Johnson)** (In third Chapter 13 case pending within a year debtor failed to prove by clear and convincing evidence that plan in current case was likely to succeed when

plans failed in both prior cases. At a minimum, feasibility must be proven by clear and convincing evidence to overcome presumption of bad faith in § 362(c)(4).).

3. VIOLATION OF STAY AND REMEDIES

§ 62.1 Examples of Stay Violations, and Not

{242} ***Harris v. Cooley (In re Harris)*, 966 F.3d 439 (6th Cir. July 17, 2020) (Cole, Guy, Bush), *vacated*, 812 F. App'x 358 (6th Cir. July 20, 2020) (Cole, Guy, Bush)** (Bankruptcy court appropriately abstained from state law claims that Chapter 13 debtors' fence encroached on neighbor's property. Lawsuit alleged that debtors' fence encroached on neighbor's property. Debtors' responsive lawsuit alleged violation of the automatic stay. No stay violation because neighbors were not creditors and debtors alleged no injury from the lawsuit seeking removal of the fence. <estate name="">*In re Harris*</estate>).

{243} ***Williamson v. Pars (In re Williamson)*, 795 F. App'x 537 (9th Cir. Feb. 26, 2020) (Schroeder, Berzon, R. Nelson)** (Pension fund did not violate automatic stay when it exercised equitable recoupment to recover prepetition overpayments to Chapter 13 debtor by withholding postpetition pension payments.).

{244} ***In re Denby-Peterson*, 941 F.3d 115, 123–26 (3d Cir. Oct. 28, 2019) (McKee, Shwartz, Fuentes)** (Adopting minority position, car lender does not violate automatic stay by retaining possession of car repossessed before the petition so long as lender does not take any affirmative action to enforce its lien. Lender can retain possession notwithstanding demand for turnover until bankruptcy court orders return of car. "Under the majority position, held by the Second, Seventh, Eighth, Ninth, and Eleventh Circuits, a secured creditor, upon learning of the bankruptcy filing, must return the collateral to the debtor and failure to do so violates the automatic stay. . . . However, both the Tenth and D.C. Circuits disagree with the majority's interpretation of the automatic stay provision. . . . Under their view, a secured creditor is not obligated to return the collateral to the debtor until the debtor obtains a court order from the Bankruptcy Court requiring the creditor to do so. . . . While we agree that Section 362(a)(3) is unambiguous, we decline to hold that a plain reading of that Section compels the conclusion that the creditors in this case violated the automatic stay by failing to turn over the Corvette to Denby-Peterson. . . . [W]e agree with the minority position . . . the text of Section 362(a)(3) requires a post-petition affirmative act to exercise control over property of the estate. . . . Although the creditors exercised control over the Corvette by keeping it in their possession after learning of the bankruptcy filing, the requisite post-petition affirmative 'act . . . to exercise control over' the Corvette is not present in this case. . . . " The Supreme Court has granted review of this issue in an unrelated case, *In re Fulton*, 926 F.3d 916 (7th Cir. June 19, 2019), *cert. granted sub nom. Chicago v. Fulton*, No. 19-357, 2019 WL 6880702 (U.S. Dec. 18, 2019), *aff'g* 595 B.R. 184, 189-90 (D.N.J. Nov. 1, 2018) (Hillman) (Adopting minority rule and without discussion of *Whiting Pools*, car lender did not violate stay by refusing to return car repossessed before the petition. "The majority position, which is followed in the Second, Seventh, Eighth, and Ninth Circuit Courts of Appeals advises that a creditor violates the automatic stay when it fails to affirmatively and immediately return qualifying property of the debtor that was seized pre-petition. . . . The minority position . . . has only been followed in the Tenth and District of Columbia Circuit Court of Appeals. This position finds no violation of the automatic stay as long as the creditor merely maintains the status quo in effect at the time of the automatic stay. . . . [T]his Court finds the minority position more persuasive. . . . [T]he *exercise* of control is not stayed, but the act to exercise control is stayed."), *aff'g and dismissing appeal of* 576 B.R. 66, 81-83 (Bankr. D.N.J. Oct. 20, 2017) (Altenburg) (Repossessing creditor did not violate automatic stay by refusing to turn over car when debtor's interest in car was disputed and retaining possession maintained status quo pending hearing on turnover. "[T]he practice in this district has been that a creditor holding a car repossessed prepetition may request proof of insurance naming it as loss payee prior to turnover without violating the stay. But once proof of insurance has been produced, the creditor violates the stay by not returning the car. Yet it could find no case rationalizing this. Section 362(b) does not include an exception for adequate protection. . . . The court sees no reason to abandon the long established practice of maintaining the *status quo* in repossessed vehicle cases until a debtor provides proper proof of adequate protection, i.e., insurance. . . . In this case, this court finds the minority position particularly persuasive. That position criticizes the majority's claim that section 542(a) is self-effectuating, as it does not allow for the possibility of defenses to turnover. . . . It would simply be unfair to declare a stay violation for not turning the Vehicle over when the Debtor's true interest in the Vehicle was unknown. . . . The personal property presents a different result. There is no question that at the time of the bankruptcy filing, the Debtor had a legal right to her possessions and the Creditors had no right to that property. Unlike the Vehicle, there is no question of ownership. . . . The court cannot determine with certainty whether there has been a stay violation under section 362 as to the personal property.").

{245} ***Stuart v. City of Scottsdale (In re Stuart)*, No. AZ-19-1332-LBT, 2020 WL 4334120 (B.A.P. 9th Cir. July 28, 2020) (not for publication) (Lafferty, Brand, Taylor)** (City did not violate stay by filing "Motion to Pause" state court appeal based on Chapter 13 filing; pause in Chapter 13 debtor's appeal of city's judgment against debtor did not violate stay but merely preserved status quo pending further action by the debtor.).

{246} ***In re Benitez*, 611 B.R. 106, 109 (B.A.P. 8th Cir. Feb. 4, 2020) (Schermer, Nail, Shodeen)** (Chapter 13 petition filed by debtor in a Chapter 7 case violated automatic stay and was void. Debtor filed Chapter 13 petition to stop foreclosure after mortgagee obtained stay relief in pending Chapter 7 case. "By filing his Chapter 13 petition, the Debtor attempted to exercise control over his interest in the Property, which is undisputed to be property of his Chapter 7 bankruptcy estate. . . . Debtor filed his Chapter 13 case as an effort to stop the foreclosure of the Property noticed by the Creditor after it obtained stay relief in the Debtor's Chapter 7 case.").

{247} ***Cordova v. City of Chicago*, 618 B.R. 244 (N.D. Ill. June 25, 2020) (Rowland)** (In the continuing saga of *In re Fulton*, 926 F.3d 916 (7th Cir. June 19, 2019) (Flaum, Kanne, Scudder), *cert. granted*, ___ U.S. ___, 140 S. Ct. 680, 205 L. Ed. 2d 449 (Dec. 18, 2019), district court denied motion to withdraw the reference by City of Chicago in Chapter 13 debtor's adversary proceeding alleging City violated stay by refusing to return a car repossessed before the petition.).

{248} ***Clark v. Passa (In re Passa)*, No. 2:18-cv-00006-DBB, 2020 WL 3440321 (D. Utah June 23, 2020) (Barlow)** (Creditor had stay relief to obtain judgments against debtor but violated stay by recording judgments. Bankruptcy court appropriately rejected creditor's argument that it did not violate stay by recording judgments because bankruptcy court did not determine whether judgments were nondischargeable. Creditor represented to the bankruptcy court that there were no dischargeability issues with respect to the state court proceedings when the creditor asked for stay relief to obtain the judgments it later recorded in violation of the stay.), aff'g 578 B.R. 898 (Bankr. D. Utah Dec. 20, 2017) (Thurman) (After stay relief to liquidate claim against debtors, creditor violated stay by recording judgment—an act of collection that exceeded the stay relief granted. Damages included cost of owning property when recording of judgment delayed intended sale, plus attorney fees.).

{249} ***Dirdala v. Wells Fargo Bank*, No. 3:20-CV-5153-DWC, 2020 WL 2063564 (W.D. Wash. Apr. 29, 2020) (Christel)** (Automatic stay did not preclude foreclosure by Wells Fargo during Chapter 13 case because Wells Fargo moved for and was granted stay relief.).

{250} ***BioConvergence LLC v. Attariwala*, No. 1:19-cv-01745-SEB-TAB, 2020 WL 1915269 (S.D. Ind. Apr. 20, 2020) (Barker)** (Automatic stay does not apply to motion to dismiss Chapter 13 debtor's counterclaim in district court litigation between former employer and debtor; stay also does not apply to employer's motion for sanctions under Federal Rule of Civil Procedure 11 filed against former counsel for debtor based on contention that debtor's counterclaim was frivolous.).

{251} ***United States ex rel. Dahlstrom v. Sauk-Suiattle Indian Tribe of Wash.*, No. C16-0052JLR, 2019 WL 6052646 (W.D. Wash. Nov. 15, 2019) (Robart)** (Automatic stay precludes assessment of attorney's fees against Chapter 13 debtor for prepetition litigation misconduct.).

{252} ***In re Rizzo*, No. 19-01303-JW, 2020 WL 5530073, at *3 (Bankr. D.S.C. Sept. 4, 2020) (Waites)** (Citing *Wilson v. Dollar General Corp*., 717 F.3d 337 (4th Cir. May 17, 2013) (Niemeyer, Agee, Thacker), Chapter 13 debtor did not violate automatic stay by noticing appeal of adverse state court judgment. Bankruptcy court granted stay relief for others to pursue judgment against debtor and debtor did not violate stay by appealing adverse judgment that resulted. Confirmed plan was dependent on outcome of litigation. "The Fourth Circuit has held in *Wilson* . . . that a chapter 13 debtor 'steps into the role of trustee and exercises concurrent authority to sue and be sued on behalf of the estate' under Fed. R. Bankr. P. 6009. . . . Debtor, as a chapter 13 debtor, may without approval of the Court, defend herself in a state court proceeding, including filing an appeal . . . .").

{253} ***In re White*, No. 16-00239, 2020 WL 4919691 (Bankr. D.D.C. Aug. 20, 2020) (Teel)** (Chapter 13 debtor's motion to hold Rushmore Loan Management Services, LLC, in contempt for filing a motion for relief from stay is a violation of Bankruptcy Rule 9011; debtor's attorney is, *sua sponte*, sanctioned to pay $250 to clerk of court. Attorney's theory that motion for stay relief was initiation of foreclosure at time when foreclosure was prohibited by D.C. law was "so absurd and frivolous" that it warranted Rule 9011 sanctions.).

{254} ***In re Ohm*, No. 15-60029, 2020 WL 4810066 (Bankr. N.D. Ohio July 31, 2020) (Kendig)** (Renewal of attorney's lien during Chapter 13 case did not violate automatic stay because renewal is not the creation or enforcement of the lien and attorney could have just waited to renew the lien as authorized by § 108(c); renewal was simply premature, not forbidden.).

{255} ***In re Dillon*, No. 16-01682-KMS, 2020 WL 4004886 (Bankr. S.D. Miss. July 14, 2020) (Samson)** (Domestic relations court contempt judgment entered in violation of automatic stay is void but underlying claim for unpaid support is valid and will be nondischargeable at the completion of payments.).

{256} ***Kaushas v. Popple Constr., Inc. (In re Kaushas)*, 616 B.R. 57 (Bankr. M.D. Pa. June 2, 2020) (Opel)** (Petition for relief from default judgment violated automatic stay because judgment was assigned to debtor before the Chapter 13 petition and judgment became property of the Chapter 13 estate protected by the automatic stay. With knowledge of the Chapter 13 petition, seeking relief from the default judgment was an act to possess or control estate property in violation of the stay. That judgment debtor also asked state court for attorney's fees was a further violation of the stay.).

{257} ***In re Svacina*, No. 6:19-bk-18896-WJ, 2020 WL 2769036, at *2 (Bankr. C.D. Cal. May 27, 2020) (Johnson)** (Applying California law and *Bebensee-Wong v. Federal National Mortgage Ass'n (In re Bebensee-Wong)*, 248 B.R. 820 (B.A.P. 9th Cir. Apr. 25, 2000) (Russell, Brandt, Marlar), purchaser at prepetition foreclosure sale did not violate stay when it recorded trustee's deed after the petition but within the 15-day relation-back period under state law. "[S]ections 362(b)(3) and 546(b) of the Bankruptcy Code specifically permit post-petition perfection[.]").

{258} ***Ramos Morales v. Banco Popular de P.R. (In re Ramos Morales)*, No. 19-0446 (ESL), 2020 WL 4728373 (Bankr. D.P.R. May 18, 2020) (Lamoutte)** (Bank violated stay by sending collection letter after confirmation of plan that surrendered property and granted stay relief to foreclose, with deficiency to be paid through the plan. Letter from bank expresses collection intent rather than just information when it told debtor that payments could be made at bank branches and other help with managing debt was available.).

{259} ***Wernes v. Kroesen (In re Kroesen)*, No. 19-04003, 2020 WL 2121273 (Bankr. W.D. Mo. May 1, 2020) (Norton)** (Chapter 13 debtor's complaint for violation of stay by former investor in house rehab project fails for lack of evidence. Facebook postings were embarrassing but did not demand payment of any debt. Confrontation at public event did not amount to violation of stay. Vandalism of debtor's car was not proven to have occurred or to have been the work of the defendant.).

{260} ***In re Rice*, 613 B.R. 690 (Bankr. N.D. Ill. Apr. 21, 2020) (Schmetterer)** (Applying *Thompson v. General Motors Acceptance Corp*., 566 F.3d 699 (7th Cir. May 27, 2009) (Cudahy, Williams, Tinder), and *In re Fulton*, 926 F.3d 916 (7th Cir. June 19, 2019) (Flaum, Kanne, Scudder), *cert. granted sub nom. City of Chicago, Illinois v. Fulton*, ___ U.S. ___, 140 S. Ct. 680, 205 L. Ed. 2d 449 (Dec. 18, 2019), City of Chicago willfully violated automatic stay by refusing to return impounded car for 160 days. *Taggart v. Lorenzen*, ___ U.S. ___ 139 S. Ct. 1795, 1804, 204 L. Ed. 2d 129 (June 3, 2019), does not change willfulness analysis in the context of the automatic stay.).

{261} ***Chavez-Villasenor v. U.S. Dep't of Educ. (In re Chavez-Villasenor)*, No. 19-03046-dwh, 2020 WL 2062274, at *4 (Bankr. D. Or. Apr. 9, 2020) (Hercher)** (Seizure of tax refund as setoff to student loan is willful violation of stay when Department of Education intended to intercept tax refund and Department failed to stop erroneous intercept that resulted from computer or employee error. "Only if the act of collection was itself unintentional is the creditor shielded from liability. . . . That the act of collection was carried out by a computer does not materially change the analysis. . . . [W]hen a creditor designs or installs collection software and the software later performs as expected, the creditor is held to have intended the result. . . . The government has not argued that Treasury's software was operating contrary to expectations when it withheld the refund. . . . The only malfunction was Education's failure to communicate with the Treasury software to stop it from seizing the refund. Whether the failure was caused by a glitch in the communication software or by human error is irrelevant.").

{262} ***Berrios v. Puerto Rico Treasury Dep't (In re Berrios)*, No. 17-0240 (ESL), 2020 WL 1809608 (Bankr. D.P.R. Apr. 8, 2020) (Lamoutte)** (Question whether Puerto Rico Treasury Department violated stay by issuing levy on Chapter 13 debtor's "d/b/a" can't be answered on summary judgment because unincorporated business had separate tax ID number and proper procedure for levy was subject to conflicting inferences.).

{263} ***Steed v. GSRAN-Z, LLC (In re Steed)*, No. 19-5201-JWC, 2020 WL 1562526 (Bankr. N.D. Ga. Apr. 1, 2020) (Cavender)** (Levy by purchaser of tax certificates did not violate automatic stay because Chapter 13 case was dismissed at time of levy and no stay was in effect; once Chapter 13 case was reinstated and servicer had notice, servicer and purchaser of tax certificates violated stay by posting foreclosure notices and not acting affirmatively to stop sheriff from proceeding with foreclosure. Material disputed facts preclude determination of damages. Debtor's claims of negligence by purchaser and servicer are left for trial.).

{264} ***In re Keskey*, No. DL 15-06761, 2020 WL 1547539 (Bankr. W.D. Mich. Mar. 31, 2020) (Dales)** (Garnishments and attempted execution on property of the Chapter 13 estate did not violate stay because settlement agreement allowed creditor to collect its debt without limitation.).

{265} ***Johnson v. Apex Mortg. (In re Johnson)*, 615 B.R. 919 (Bankr. N.D. Ala. Feb. 27, 2020) (Mitchell)** (Mortgagee did not violate automatic stay when it received and kept insurance proceeds paid to it when car crashed into debtor's business property. Mortgage clause in insurance contract was not property of Chapter 13 estate but belonged to mortgagee and proceeds of that insurance policy never became property of the Chapter 13 estate.).

{266} ***In re Moon*, 613 B.R. 317, 344–48 (Bankr. D. Nev. Feb. 25, 2020) (Nakagawa)** (Rushmore violated stay by making hundreds of phone calls and written contacts with Chapter 13 debtors notwithstanding actual knowledge of bankruptcy. Rushmore "reprehensibly" created internal procedures that maintained a cone of ignorance around its actual knowledge. It was undisputed that notice mailed to Rushmore was incorrectly addressed and undisputed that in a phone call debtor told a Rushmore representative that a bankruptcy case had been filed with respect to property mortgaged by debtor's spouse. Rushmore's internal operating procedures did not treat oral notice as actual notice of a bankruptcy filing. Rushmore did not conduct a PACER search to confirm or deny the existence of a bankruptcy. "Rushmore's only witness acknowledged that Willie informed a Rushmore representative . . . that the Debtors were in bankruptcy. Rushmore's witness attested, however, that Willie is not a party authorized to speak to Rushmore about the servicing of the loan because Willie is not a borrower. . . . Rushmore's own Policy Manual expressly acknowledges that notice of a borrower's bankruptcy can be of any nature, written or oral, and by telephone or in person. . . . To suggest that a borrower's spouse would be an unauthorized third party . . . is absurd at best. Moreover, the court is not aware of any authority that would permit creditors to create a shield of ignorance to protect themselves from liability for violating the bankruptcy laws. . . . Rushmore is not ignorant of bankruptcy law, but has adopted procedures to remain ignorant of a borrower's resort to bankruptcy relief.").

{267} ***McGarvey v. USAA Sav. Bank (In re McGarvey)*, 613 B.R. 285 (Bankr. E.D. Cal. Feb. 21, 2020) (Sargis)** (FCRA claims against bank for reporting debts as delinquent instead of reporting that debts were provided for in a confirmed Chapter 13 plan consistent with METRO guidelines are dismissed for the most part because prior to discharge the information reported was not inaccurate and industry standards do not control in FCRA cases; one claim remaining for trial is whether bank violated automatic stay by not correcting its credit reporting to show that debt was involved in a Chapter 13 case.).

{268} ***Christie v. Fort Gibson State Bank (In re Christie)*, 614 B.R. 726, 734-36 (Bankr. E.D. Okla. Feb. 13, 2020) (Cornish)** (Bank violated automatic stay by demanding additional money from debtor after completion of Chapter 13 plan that paid bank's prepetition claim in full and required bank to release its lien. Bank demanded payment of postpetition cash advances as a condition for release of its lien. Some of the postpetition advances were chargeable to nondebtor spouse, not to the debtor. Bank used cross-collateralization clause to increase debt secured by property of the Chapter 13 estate in violation of § 362(a)(4). "[T]he Bank made postpetition advances of credit to the [debtor] without obtaining court authorization. It treated these advances as secured by property of the estate, extending and increasing the amount of its secured claim . . . . By increasing the value of its lien . . . , and later demanding additional funds before it would release its lien the Bank created, perfected and enforced a lien against property of the estate, a clear violation of § 362(a)(4). . . . The Bank's reliance on language in the . . . Note and Security Agreement pledging the Travel Trailer for all present and future debts is misplaced. That language does not give it permission to extend and enforce its lien on the Travel Trailer regardless of the automatic stay . . . . [T]he Bank's willful violation of the automatic stay caused the [debtor] to suffer actual damages in the amount . . . added to her Travel Trailer loan. The Court also finds that she should be awarded attorneys' fees . . . .").

{269} ***Marshall v. Abdoun (In re Marshall)*, 613 B.R. 194, 221 (Bankr. E.D. Pa. Feb. 11, 2020) (Chan)** (Demand by prepetition tax sale purchaser for postpetition rent did not violate automatic stay because postpetition rent was postpetition claim, collection of which is not prohibited by automatic stay. "Abdoun's demand for the Postpetition Rent was taken in connection with a *postpetition* claim. As a result, Abdoun's Postpetition Rent demand did not violate either § 362(a)(1) or § 362(a)(6). . . . [T]he Postpetition Rent demand made by Abdoun does not constitute an act to obtain possession of, or control over, property of the estate because Abdoun did not actually take possession of any property of the estate through the Postpetition Rent demand nor exercise control over it merely by sending a collection letter.").

{270} ***Tate v. Fairfax Vill. I Condo. (In re Tate)*, No. 19-10009, 2020 WL 634293 (Bankr. D.D.C. Feb. 10, 2020) (Teel)** (Condominium association willfully violated the stay by proceeding with foreclosure after notice of Chapter 13 filing by son who claimed interest in condo unit by inheritance from deceased parent; under District of Columbia law, son had equitable, inchoate interests that were not ambiguous and those interests became property of Chapter 13 estate protected by automatic stay.).

{271} ***In re Franklin*, No. 19-80661, 2020 WL 603900 (Bankr. M.D.N.C. Feb. 6, 2020) (Kahn)** (Ambiguous motion for stay pending appeal of order under § 362(k) finding creditor violated stay by using car kill switch and repossessing car after the petition is denied. Chapter 13 case is not suspended pending appellate review of sanctions order.), *denying stay pending appeal of* No. 19-80661, 2020 WL 570092, at *4–*11 (Bankr. M.D.N.C. Jan. 24, 2020) (Kahn) (Car lender blithely, contumaciously and repeatedly violated automatic stay by engaging kill switch, repossessing car while debtor was in hospital, demanding payment and refusing to return car for three weeks after actual knowledge of Chapter 13 petition. Compensatory damages awarded including attorney's fees and punitive damages totaling $15,000. "Debtor filed for bankruptcy on September 4, 2019. . . . When Debtor got into her Vehicle on September 6 and turned the key, the car failed to start because Fields had activated the kill switch. . . . Fields not only refused to release the kill switch, but also repossessed the Vehicle on September 11 while Debtor was in the hospital. . . . More than 22 days after Debtor filed her Petition, Fields still stubbornly refused to return the Vehicle repossessed in violation of the automatic stay. . . . Fields[']s conduct was repetitive and reprehensible by any measure. The blithe and callous phlegm of the repeated notifications and warnings from Debtor, Debtor's counsel, and the Trustee's office, combined with Fields' total disregard for the strictures of the automatic stay in this case is remarkable. Fields has shown no contrition, remorse, or comprehension of the severity of its actions. . . . Debtor is financially vulnerable . . . . Fields preyed on her vulnerability and repossessed her Vehicle while she was in the hospital and in bankruptcy.").

{272} ***Crockett v. Nationstar Mortg., LLC (In re Crockett),* No. 19-10030, 2020 WL 425388, at *3 (Bankr. D.D.C. Jan. 27, 2020) (Teel), *denying motion to consideration,* No. 19-10030, 2020 WL 5083261 (Bankr. D.D.C. Aug. 27, 2020) (Teel)** (Nationstar did not violate automatic stay when state court set status conference to determine whether foreclosure could go forward. Debtor was in an active Chapter 13 case but did not inform state court of status of current case or of a prior dismissed case. "The status hearings have only served informational purposes, and do not entail a resumption of the litigation in the Superior Court. In any event, it was not Nationstar that requested the setting of a status hearing. There has been no act by Nationstar to resume litigating the civil action and thus no violation of the automatic stay. Nor has the debtor pointed to any damage arising from the Superior Court's setting further status hearings.").

{273} ***Williams v. CitiFinancial Servicing LLC (In re Williams)*, 612 B.R. 682, 694–95 (Bankr. M.D.N.C. Jan. 24, 2020) (James)** (Complaint plausibly alleges violation of automatic stay when CitiFinancial and its successor servicer, Carrington, misapplied payments from Chapter 13 case, resulting in inflated loan balances transferred from one servicer to another and inaccurate demand letters to debtor. "While there is a split of authority on the issue, the majority of courts to consider the issue have concluded that misapplication of chapter 13 plan payments is a cause of action for violation of the automatic stay. . . . [A]lleged misapplied payments by CitiFinancial

and Carrington were not simply bookkeeping entries without impact and communicated to no one, but were used to support an inflated loan balance that was transferred from one creditor to another for collection from Plaintiffs.").

{274} ***In re Lagares Santana*, No. 18-07127 (ESL), 2020 WL 412185 (Bankr. D.P.R. Jan. 24, 2020) (Lamoutte)** (Applying Puerto Rico law, because judicial transfer deed was executed after foreclosure sale and before the Chapter 13 petition, no interest came into the Chapter 13 estate and foreclosing creditor did not violate stay by obtaining confirmation of the sale after the petition.).

{275} ***In re Dekom*, No. 19-30082-KKS, 2020 WL 4000847 (Bankr. N.D. Fla. Jan. 21, 2020) (Specie)** (District court order dismissing Chapter 13 debtor's action alleging "public corruption" and "legal weirdness" by various courts and judges did not violate stay because it was not an action against the debtor, it was a frivolous action brought by the debtor.).

{276} ***Banks v. Gralin Hampton Auto Sales (In re Banks)*, 612 B.R. 167 (Bankr. D.S.C. Jan. 15, 2020) (Waites)** (Postpetition repossession of luxury cars used in debtor's limousine service violated stay and entitled debtor to damages under § 362(k) notwithstanding dismissal of Chapter 13 case for nonpayment. Debtor failed to prove loss of business income and was entitled only to attorney's fees of $12,000 and punitive damages of $1,500.).

{277} ***In re Duff*, No. 19-00500, 2020 WL 119685 (Bankr. D.D.C. Jan. 9, 2020) (Teel)** (Failure to perform under a prepetition contract for loan modification services is not a stay violation and is not punishable by contempt.).

{278} ***In re Terry*, No. 18-44642-ELM-13, 2019 WL 7169095, at *10, *12, *12 (Bankr. N.D. Tex. Dec. 23, 2019) (Morris)** (Landlord willfully violated stay—after stay relief was granted—by seizing, storing and refusing to return personal property that remained property of Chapter 13 estate and which had not been abandoned by the debtor. Compensatory damages of $7,400 awarded for lost and damaged personal property and attorney's fees, and $7,500 punitive damages for "the high degree of reprehensibility" of the landlord's conduct. An agreed order provided that if debtor failed to move out of the landlord's property by date certain, the landlord could take "'any and all steps necessary to exercise any and all rights it may have in the rental property . . . .'" Debtor failed to move out and landlord eventually removed the debtor's personal property from the house and put it in storage. "[T]he Debtor neither 'surrendered' nor 'abandoned' the [property] under the terms of the Lease. . . . ").

{279} ***Qarni v. Vahora (In re Qarni)*, No. 19-01090-A, 2019 WL 6817106, at *1–*5 (Bankr. E.D. Cal. Dec. 11, 2019) (Clement)** (Debtors' complaint states a claim for violation of the stay in § 362(a)(3) when defendants with judgment against debtor and debtor's wholly owned corporation filed action for appointment of receiver to take control of corporation. Corporate control was an asset that became property of the Chapter 13 estate and seeking appointment of a receiver was an action to exercise control over that property. "[A] creditor obtained a judgment against the debtor and his corporation. As the sole shareholder, the debtor has plenary control over corporate activities. Thereafter, the debtor filed chapter 13 bankruptcy. . . . The right to control a wholly owned entity is a property right. . . . Naeem had a right to control VDL and California law deems that right to be property. . . . [T]he violation of the stay occurred after the Qarnis filed their chapter 13 petition but before plan confirmation, which would have revested the property in the debtor. . . . Consequently, at the time of the stay violation, Naeem's right to control the affairs and direction of VDL was property of the Qarnis' estate. The act of filing suit, which includes causes of action that seek to exercise control over property of the estate, is itself a violation of § 362(a)(3). . . . Since VDL's liquidation would result in Qarnis' loss of employment, and consequent ability to fund their chapter 13 plan, Vahora's efforts to appoint a receiver over VDL, if successful, would alter Naeem's right to control that entity in a manner inconsistent with § 362(a). . . . [A] creditor who attempts, but fails, to achieve actual control over estate property does not give the creditor a safe harbor against a stay violation action.").

{280} ***Wilson v. Arbors of Cent. Park ICG, LLC (In re Wilson)*, 610 B.R. 255 (Bankr. N.D. Tex. Dec. 2, 2019) (Morris)** (Landlord egregiously and reprehensibly violated automatic stay by engineering fake default under stay relief order then commencing eviction to which it was not entitled. Compensatory damages in excess of $12,000 and punitive damages of $10,000 awarded in addition to various injunctions.).

{281} ***Comer v. Carilion Clinic (In re Comer)*, No. 19-07030, 2019 WL 6273386 (Bankr. W.D. Va. Nov. 22, 2019) (Black)** (Clinic willfully violated automatic stay by repeatedly billing and contacting debtors to collect prepetition debts for services after notice of Chapter 13 case. Compensatory damages included attorney's fees but not emotional distress damages because of lack of evidence of emotional impact of collection efforts.).

{282} ***In re Carr*, No. 18-80386, 2019 WL 7840665 (Bankr. M.D.N.C. Nov. 18, 2019) (James)** (Postpetition state court lawsuit and lien *lis pendens* violated automatic stay in Chapter 13 case and are void.).

{283} ***In re Caldwell*, No. 18-32346-jda, 2019 WL 5616908 (Bankr. E.D. Mich. Oct. 30, 2019) (Applebaum)** (Citing *Taggert v. Lorenzen*, ___ U.S. ___, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (June 3, 2019), Chapter 13 debtor failed to prove that judgment creditor violated stay when tractor-trailer was repossessed prepetition and towing lot owner refused to release it without payment of towing fees. Debtor failed to prove any action by the judgment creditor that violated stay or that violated turnover order. Debtor sought damages

only from the judgment creditor. Decision does not address whether tow lot owner was acting as agent for judgment creditor or what effect agency might have on *Taggert* analysis.).

{284} ***Somers v. Bell Helicopter Textron, Inc. (In re Somers)*, 608 B.R. 262 (Bankr. M.D. Ala. Oct. 24, 2019) (Sawyer)** (Employer did not violate stay by doing nothing except holding wages that were subject to garnishment order from state court.).

{285} ***Johnson v. North Mill Credit (In re Johnson)*, 608 B.R. 784 (Bankr. S.D. Ga. Sept. 27, 2019) (Barrett)** (Postpetition repossession of truck did not violate stay because truck was owned by corporation and Chapter 13 debtor's ownership of that corporation did not bring truck into bankruptcy estate. Confirmed plan that provided for payment of guaranty of truck debt did not have effect of making the truck property of the Chapter 13 estate for purposes of the automatic stay when the truck was owned by the corporation. Personal property removed or lost from the truck was property of the Chapter 13 debtor and material disputed facts prevent summary judgment with respect to whether repossession of personal property violated the automatic stay.).

{286} ***Edwards v. B & E Transp., LLC (In re Edwards)*, No. 19-06026, 2019 WL 4686633, at *4 (Bankr. W.D. Va. Sept. 25, 2019) (Connelly), *corrected and superseded,* 607 B.R. 530 (Bankr. W.D. Va. Oct. 25, 2019) (Connelly)** (Lender willfully violated stay by repossessing motorcycle after actual notice of Chapter 13 filing and then refusing to return it notwithstanding that debtor was current on payments at the petition and lender had no contractual right to repossess. Damages for egregious stay violation included $14,000 for value of motorcycle not returned, attorney's fees of $3,125 and punitive damages of $25,000. Lender "admitted it intended to disregard the Bankruptcy Code.").

{287} ***Coots v. Ford Motor Credit Co., LLC (In re Coots)*, No. 19-ap-10, 2019 WL 4458375 (Bankr. N.D. W. Va. Sept. 17, 2019) (Flatley)** (Circularly, Ford Motor Credit's refusal to return funds garnished before the petition does not violate automatic stay in § 362(a)(3) because garnished funds were removed from the estate before the petition. That garnished funds are recoverable as a preference under §§ 547 and 522(h) does not change this conclusion.).

{288} ***Turner v. Fidelity Bank (In re Turner)*, No. 18-0036, 2019 WL 7667632 (Bankr. S.D. Ala. Sept. 17, 2019) (Callaway)** (Bank willfully violated stay by sending five past-due notices to debtor after failing to correctly code that payments would be coming from the Chapter 13 trustee rather than by automatic draft. $750 emotional distress damages awarded. Only one hour of attorney's fees allowed because counsel could have avoided the trial and much of the injury to debtor by simply making a phone call to the bank.).

{289} ***In re Bohannon*, No. 19-02123-NPO, 2019 WL 5057945 (Bankr. S.D. Miss. Aug. 16, 2019) (Olack)** (Chapter 13 debtor failed to prove that former spouse violated stay by appearing at state court contempt proceeding. Former spouse overcame presumption of regularity of the mails with corroborating testimony that no notice of bankruptcy was received coupled with unexplained failure by debtor to mention bankruptcy at hearing in state court.).

{290} ***In re Haynes*, No. 19-20601-PRW, 2019 WL 7945834 (Bankr. W.D.N.Y. Aug. 1, 2019) (Warren)** (Entry of default judgment and filing of foreclosure tax deed vested property in county before the petition and left no legal or equitable interest in the Chapter 13 debtor. Automatic stay did not apply to the county because prepetition default judgment and filing of foreclosure tax deed divested debtor of all legal and equitable interests in the property.).

{291} ***In re Jones*, No. 18-02837-NPO, 2019 WL 5061166 (Bankr. S.D. Miss. July 22, 2019) (Olack)** (City violated stay by coercing Chapter 13 debtor to make deposit and sign installment payment agreement with respect to prepetition utility arrears notwithstanding actual notice of Chapter 13 case in which debtor scheduled and proposed to pay the utility claim in full. Remedy for violating stay by coercing debtor to sign agreement and make payment included attorney's fees and refund of payments.).

{292} ***Quintao v. Deutsche Bank Nat'l Tr. Co. (In re Quintao)*, No. 15-1063, 2018 WL 9990318 (Bankr. D. Mass. July 16, 2018) (Bailey)** (Mortgage servicer did not violate automatic stay or confirmed plan by paying taxes and utility arrearages after confirmation when plan did not prohibit mortgagee or servicer from doing so. That plan provided for payment of delinquent taxes and utilities did not preclude the mortgagee from exercising its contract right to pay those amounts, especially after the mortgagee obtained stay relief to foreclose. Neither the mortgagee nor the servicer violated stay or confirmed plan by making internal records of amounts owed by Chapter 13 debtor, notwithstanding confirmed plan that would cure default and maintain installment payments during the case. Sending account statements after the grant of stay relief could not violate the stay. Mortgagee did not violate stay by accurately reporting to credit agency amounts owed by debtor after mortgagee paid taxes and utilities on behalf of the debtor.).

§ 62.2 What Court?

{293} ***Harris v. Cooley (In re Harris)*, 812 F. App'x 358, 359 (6th Cir. July 20, 2020) (Cole, Guy, Bush)** (Court of Appeals lack jurisdiction to review bankruptcy court decision to abstain from adversary proceeding concerning the removal of a privacy fence and violation of the automatic stay when a neighbor sued the debtors during the Chapter 13 case to force removal of the fence. "Courts of Appeals lack jurisdiction to review a decision to abstain from a proceeding under 28 U.S.C. § 1334(c)(1).").

{294} ***Potter v. Newkirk*, 802 F. App'x 696, 700 (3d Cir. Feb. 4, 2020) (Shwartz, Restrepo, Rendell)** (Action under § 362(k) to remedy stay violation is a civil action with respect to which the United States district court has jurisdiction independent of the bankruptcy court in which the bankruptcy case arose. "We have recently held that an action under § 362(k) for violation of an automatic stay is an independent private cause of action which need not be litigated as part of the bankruptcy proceeding. . . . As such, a district court has jurisdiction to entertain it.").

{295} ***Cordova v. City of Chicago*, 618 B.R. 244 (N.D. Ill. June 25, 2020) (Rowland)** (In the continuing saga of *In re Fulton*, 926 F.3d 916 (7th Cir. June 19, 2019) (Flaum, Kanne, Scudder), *cert. granted*, ___ U.S. ___, 140 S. Ct. 680, 205 L. Ed. 2d 449 (Dec. 18, 2019), district court denied motion to withdraw the reference by City of Chicago in Chapter 13 debtor's adversary proceeding alleging City violated stay by refusing to return a car repossessed before the petition.).

{296} ***Steed v. GSRAN-Z, LLC (In re Steed)*, No. 19-05304-JWC, 2020 WL 1596411 (Bankr. N.D. Ga. Apr. 1, 2020) (Cavender)** (Filing writ of *fieri facias* by tax commissioner with respect to prepetition property taxes did not violate automatic stay because taxing authority had a statutory lien and filing writ did not create, perfect or extend that lien; bona fide purchaser under Georgia law would always be on notice of property tax lien without regard to filing of *fieri facias*.).

§ 62.3 Sanctions or Contempt?

{297} ***In re Reed*, No. 16-12995-JDW, 2020 WL 1456515 (Bankr. N.D. Miss. Mar. 20, 2020) (Woodard)** (For second willful violation of stay and violation of prior order prohibiting further stay violations, Department of Education is in contempt and compensatory damages including attorney's fees are awarded totaling $4,231.67. Punitive damages would be appropriate but § 106(3) precludes that award.).

§ 62.4 Motion Practice or Adversary Proceeding?
§ 62.5 Remedies for Violation of Stay

{298} ***Leak v. Turner (In re Leak)*, No. 19-1033, 2020 WL 3950111 (Bankr. D. Mass. July 10, 2020) (Bailey)** (Dismissal of stay violation adversary proceeding for failure to prosecute in prior bankruptcy case is a final judgment that is preclusive in subsequent Chapter 13 case in which debtor seeks to remedy same stay violation.).

{299} ***In re Moon*, No. 13-12466-MKN, 2020 WL 3348351 (Bankr. D. Nev. May 29, 2020) (Nakagawa)** (After finding Rushmore in willful violation of automatic stay and discharge injunction and awarding debtors damages exceeding $300,000, attorney's fees and expert witness fees are also awarded in excess of $66,000.).

{300} ***Glenn v. Army & Air Force Exch. Servs. (In re Glenn)*, No. 18-66-JCO, 2020 WL 2934862, at *3–*4 (Bankr. S.D. Ala. May 6, 2020) (Oldshue)** (Debtor's counsel's failure to contact creditor to resolve stay violation before filing complaint was unreasonable; fee request for 28.6 hours under § 362(k) is reduced to $1,575. "In accordance with the statutory language, fee awards are mandatory upon a willful violation of the stay. . . . Courts determining appropriate attorney fee awards under § 362(k)(1) have applied the standards prescribed in 11 U.S.C. § 330(a)(1)(A) . . . . Application of the reasonable and necessary standard of Section 330 . . . warrants a downward adjustment . . . . 28.6 hours was simply not 'necessary' to remedy the stay violation . . . . [I]f counsel had expended a modicum of effort to communicate with the appropriate [creditor] contact . . . the violation would have promptly ceased, benefitting the Debtor and substantially reducing the time expended by counsel. . . . Courts in this jurisdiction have limited attorney's fees when the debtor's attorney fails to make any effort to resolve automatic stay violations before instituting litigation. . . . [L]ack of some effort to mitigate damages is inherently unreasonable justifying a reduced fee award[.]").

{301} ***Chavez-Villasenor v. U.S. Dep't of Educ. (In re Chavez-Villasenor)*, No. 19-03046-dwh, 2020 WL 2062274 (Bankr. D. Or. Apr. 9, 2020) (Hercher)** (Damages for intercept of tax refund by Department of Education in violation of automatic stay included emotional distress injury of $10,000, damages for broken lease of $2,900 and attorney's fees to be determined.).

{302} ***In re Reed*, No. 16-12995-JDW, 2020 WL 1456515 (Bankr. N.D. Miss. Mar. 20, 2020) (Woodard)** (For second willful violation of stay and violation of prior order prohibiting further stay violations, Department of Education is in contempt and compensatory damages including attorney's fees are awarded totaling $4,231.67. Punitive damages would be appropriate but § 106(3) precludes that award.).

{303} ***In re Moon*, 613 B.R. 317 (Bankr. D. Nev. Feb. 25, 2020) (Nakagawa)** (Compensatory damages including emotional distress damages of $100,000, attorney's fees and punitive damages of $200,000 awarded based on findings that Rushmore acted "reprehensibly" by maintaining internal procedures to keep itself ignorant of bankruptcy filing information.).

{304} ***Waters v. McCleod Loris Seacoast Hosp. (In re Waters)*, No. 19-80090-JW, 2020 WL 1884191 (Bankr. D.S.C. Feb. 13, 2020) (Waites)** (Negligence and state law consumer protection claims are preempted by Bankruptcy Code when only alleged facts are that

creditor violated automatic stay by sending notice of collection after Chapter 13 petition. Punitive damages request survived motion to dismiss because facts may ultimately show a right to punitive damages under § 362(k).).

{305} ***Garza v. CMM Enters., LLC (In re Garza)*, No. 17-7001, 2020 WL 718444, at *7 (Bankr. S.D. Tex. Feb. 12, 2020) (Rodriguez)** (Applying lodestar method and *Johnson* factors, attorney's fees allowed for stay violation under § 362(k) to two law firms for $3,973 and $69,787. Car lender that violated stay failed to prove that debtor's attorneys did not mitigate damages. "[A]ssertion of a duty to mitigate does not allow one who willfully violated the automatic stay to deflect blame for damages it caused. . . . [N]o evidence was presented that [debtor's] counsel sat on their hands with the intention of racking up attorney's fees. On the contrary, [debtor's] counsel was diligent in their representation. Repeated calls and requests were made to Defendants to return [debtor's] vehicle. . . . [C]alculating attorney's fees under the lodestar method gets the Court to the reasonable amount.").

{306} ***Tate v. Fairfax Vill. I Condo. (In re Tate)*, No. 19-10009, 2020 WL 634293 (Bankr. D.D.C. Feb. 10, 2020) (Teel)** (On summary judgment, condominium association's argument that debtor failed to mitigate damages after association foreclosed in violation of automatic stay is not ready for decision because trial is necessary to determine mitigation issue and to fix amount of fees allowable under § 362(k).).

{307} ***In re Bragg*, No. 18-20577-dob, 2020 WL 729132 (Bankr. E.D. Mich. Jan. 24, 2020) (Opperman)** (On reconsideration, order assessing sanctions against credit union and its counsel is set aside and trustee's motion for sanctions under Rule 9011 and 28 U.S.C. § 1927 is denied.), *setting aside judgment on reconsideration of* No. 18-20577-dob, 2019 WL 7580292 (Bankr. E.D. Mich. Dec. 9, 2019) (Opperman) (Postconfirmation payments totaling $198.74 that may have been extracted from Chapter 13 debtor in violation of automatic stay and of settlement agreements between U.S. trustee and credit union should have been resolved between counsel but were not; reduced attorney's fees awarded to trustee after unnecessarily rancorous litigation.).

{308} ***In re Terry*, No. 18-44642-ELM-13, 2019 WL 7169095, at *10, *12, *12 (Bankr. N.D. Tex. Dec. 23, 2019) (Morris)** (Landlord willfully violated stay—after stay relief was granted—by seizing, storing and refusing to return personal property that remained property of Chapter 13 estate and which had not been abandoned by the debtor. Compensatory damages of $7,400 awarded for lost and damaged personal property and attorney's fees, and $7,500 punitive damages for "the high degree of reprehensibility" of the landlord's conduct. An agreed order provided that if debtor failed to move out of the landlord's property by date certain, the landlord could take "'any and all steps necessary to exercise any and all rights it may have in the rental property . . . .'" Debtor failed to move out and landlord eventually removed the debtor's personal property from the house and put it in storage. "[T]he Debtor neither 'surrendered' nor 'abandoned' the [property] under the terms of the Lease. . . . ").

{309} ***Wilson v. Arbors of Cent. Park ICG, LLC (In re Wilson)*, 610 B.R. 255 (Bankr. N.D. Tex. Dec. 2, 2019) (Morris)** (Landlord egregiously and reprehensibly violated automatic stay by engineering fake default under stay relief order then commencing eviction to which it was not entitled. Compensatory damages in excess of $12,000 and punitive damages of $10,000 awarded in addition to various injunctions.).

{310} ***Comer v. Carilion Clinic (In re Comer)*, No. 19-07030, 2019 WL 6273386 (Bankr. W.D. Va. Nov. 22, 2019) (Black)** (Clinic willfully violated automatic stay by repeatedly billing and contacting debtors to collect prepetition debts for services after notice of Chapter 13 case. Compensatory damages included attorney's fees but not emotional distress damages because of lack of evidence of emotional impact of collection efforts.).

{311} ***McGregor v. McGregor (In re McGregor)*, 606 B.R. 460 (Bankr. M.D. Fla. Sept. 30, 2019) (Williamson)** (On motion to reconsider, Chapter 13 debtor was obligated to mitigate damages caused by violation of stay by former spouse; failure to mitigate damages reduces debtor's recovery. Former spouse violated stay by seeking state court help to set off support obligation against recovery of dischargeable property settlement owed by the debtor.).

{312} ***Edwards v. B & E Transp., LLC (In re Edwards)*, No. 19-06026, 2019 WL 4686633, at *4 (Bankr. W.D. Va. Sept. 25, 2019) (Connelly), *corrected and superseded,* 607 B.R. 530 (Bankr. W.D. Va. Oct. 25, 2019) (Connelly)** (Lender willfully violated stay by repossessing motorcycle after actual notice of Chapter 13 filing and then refusing to return it notwithstanding that debtor was current on payments at the petition and lender had no contractual right to repossess. Damages for egregious stay violation included $14,000 for value of motorcycle not returned, attorney's fees of $3,125 and punitive damages of $25,000. Lender "admitted it intended to disregard the Bankruptcy Code.").

{313} ***Turner v. Fidelity Bank (In re Turner)*, No. 18-0036, 2019 WL 7667632 (Bankr. S.D. Ala. Sept. 17, 2019) (Callaway)** (Bank willfully violated stay by sending five past-due notices to debtor after failing to correctly code that payments would be coming from the Chapter 13 trustee rather than by automatic draft. $750 emotional distress damages awarded. Only one hour of attorney's fees allowed because counsel could have avoided the trial and much of the injury to debtor by simply making a phone call to the bank.).

{314} ***In re Rice*, 613 B.R. 690, 696 (Bankr. N.D. Ill. Apr. 21, 2020) (Schmetterer)** (Hourly rate for counsel's fees in action to remedy willful violation of the automatic stay by City of Chicago is limited to $125 per hour by § 106. "[T]he City has raised an objection arguing, under Section 106(a), that a judgment imposed against a governmental unit like itself for a violation of stay must be consistent with the limitation within 28 U.S.C. § 2412(d)(2)(A). *See* 11 U.S.C. § 106(a)(3). Under Section 2412(d)(2)(A), attorney fees are generally limited to a maximum of $125 per hour.").

4. PRECONFIRMATION RELIEF FROM STAY

a. PROCEDURE

§ 63.1 Strategic Considerations
§ 63.2 Timing, Procedure and Form

{315} ***In re Hinchliffe*, 792 F. App'x 154 (3d Cir. Feb. 5, 2020) (McKee, Shwartz, Phipps)** (Third Circuit summarily affirms grant of stay relief to mortgagee. Chapter 13 debtor raised no issue warranting review.).

{316} ***Zalloum v. Bank of N.Y. Mellon Corp. (In re Zalloum)*, 790 F. App'x 205 (11th Cir. Jan. 16, 2020) (Martin, Newsom, Branch)** (Appeal of grant of stay relief was moot because underlying Chapter 13 case was dismissed.).

{317} ***Jimenez v. ARCPE 1, LLP (In re Jimenez)*, 613 B.R. 537 (B.A.P. 9th Cir. Mar. 3, 2020) (Taylor, Lafferty, Gan)** (Appeal of grant of stay relief was moot because underlying Chapter 13 case was dismissed, terminating the stay.).

{318} ***Stokes v. LSF8 Participation Tr. (In re Stokes)*, No. MT-18-1293-BHF, 2019 WL 7372666 (B.A.P. 9th Cir. Dec. 16, 2019) (not for publication) (Brand, Hercher, Faris)** (Appeal of stay relief order is moot because bankruptcy court dismissed Chapter 13 case terminating stay and leaving debtor with no remedy on appeal.).

{319} ***Ray v. Deutsche Bank Nat'l Tr. Co.*, No. 2:17-cv-02384-JAD, 2020 WL 5230721 (D. Nev. Sept. 1, 2020) (Dorsey)** (Chapter 13 debtor's claim that Deutsche Bank lacked standing to seek stay relief because the trust it represented had terminated is unsupported by facts and was properly rejected by bankruptcy court in favor of relief from stay; debtor's lien *lis pendens* was dissolved.).

{320} ***Davis v. Fortune Inv. Enters.*, No. 3:20cv78, 2020 WL 3052862 (E.D. Va. June 8, 2020) (Lauck)** (*Pro se* Chapter 13 debtor states no ground for reconsideration of denial of appeal of order granting stay relief with respect to the purchaser at a prepetition foreclosure sale.), *denying reconsideration of* No. 3:20cv78, 2020 WL 2025374 (E.D. Va. Apr. 27, 2020) (Lauck) (Chapter 13 debtor is allowed to proceed in forma pauperis on appeal of stay relief order, but appeal is frivolous and moot because debtor did not obtain stay pending appeal, property was sold at foreclosure and any challenge to foreclosure can be raised in state court.).

{321} ***Buczek v. KeyBank Nat'l Ass'n*, No. 20-CV-80, 2020 WL 1435101 (W.D.N.Y. Mar. 24, 2020) (Sinatra)** (Pro se motion for injunction—treated as motion for stay pending appeal of order granting *in rem* stay relief—is rejected for lack of jurisdiction. Debtor did not first ask the bankruptcy court for a stay pending appeal of order granting stay relief.).

{322} ***Ross v. Wilmington Sav. Fund Soc'y, FSB*, No. 4:19-CV-23-DMB, 2019 WL 7195319 (N.D. Miss. Dec. 26, 2019) (Brown)** (Appeal of order declaring that no stay was in effect because debtor had no interest in property at issue is moot because stay expired when underlying Chapter 13 case was dismissed based on debtor's failure to make payments.), *dismissing appeal of* No. 18-11356, 2019 WL 480269 (Bankr. N.D. Miss. Feb. 6, 2019) (Maddox) ("Comfort order" is granted Wilmington acknowledging that debtor has no legal interest in property occupied pursuant to oral lease with relatives who have surrendered their interests to Wilmington in other cases. Wilmington did not ask for and is not granted any relief with respect to debtor's possessory right in the lease of the property.).

{323} ***Wilson v. Trustees Under Stan S. Cutler Revocable Trust Agreement*, No. 3:19-cv-88, 2019 WL 6689903 (E.D. Va. Dec. 6, 2019) (Gibney)** (Appeal of bankruptcy court order granting stay relief is moot when Chapter 13 case is dismissed during appeal and stay terminated.).

{324} ***In re Moore*, No. 20-40309-EJC, 2020 WL 5633081 (Bankr. S.D. Ga. Aug. 27, 2020) (Coleman)** (Motion for stay pending appeal of order denying confirmation and granting stay relief to mortgagee is denied. Denial of confirmation is not an appealable order. Stay relief was appropriate because debtor had not and could not adequately protect mortgagee's lien on fractional interest in inherited property. Likelihood of success on appeal was slim and foreclosure was only means to protect mortgagee.).

{325} ***In re Winder*, No. 19-20773-PRW, 2020 WL 1679389 (Bankr. W.D.N.Y. Apr. 6, 2020) (Warren)** (Automatic stay did not expire 60 days after stay relief motion under § 362(e) because case management order implicitly extended stay consistent with § 362(e)(2)(B)(ii). Stay relief denied with respect to 17-year-old land sale contract because of disputed facts material to the amount of debt, payment of property taxes and inaccurate accounting for payments.).

{326} ***In re James*, No. 19-00680, 2019 WL 6833835 (Bankr. D.D.C. Dec. 13, 2019) (Teel)** (Debtor is not entitled to waiver of fees for appeal of order granting stay relief under 28 U.S.C. § 1915(a)(1) or 28 U.S.C. § 1930(f)(3). Debtor did not file the required affidavit with respect to income and expenses, the appeal was frivolous and without any good faith grounds and property at issue had been sold prepetition with eviction of the debtor pending.).

{327} ***In re Quinteros*, No. 19-00195, 2019 WL 6337911 (Bankr. D.D.C. Nov. 22, 2019) (Teel)** (Bankruptcy court gives additional reasons why denial of waiver of transcription fee was appropriate including that debtor has no credible likelihood of success on appeal of stay relief granted mortgagee when large mortgage claim was not provided for by plan.), *supplementing* No. 19-00195, 2019 WL 5880605, at *1 (Bankr. D.D.C. Nov. 8, 2019) (Teel) (Chapter 13 debtor's motion to waive fee for transcription of hearing on stay relief is denied because appeal is frivolous and not in good faith. Debtor fails to identify any issue for appellate review. "The transcript fee is not prescribed under § 1930. . . . However, under 28 U.S.C. § 753 . . . [t]he debtor has not paid the fee for filing the notice of appeal, and has not obtained leave to proceed *in forma pauperis*, and such leave (if it were sought) must be denied . . . . It follows that the court cannot waive the fee for a transcript for the appeal.").

{328} ***In re Quinteros*, No. 19-00195, 2019 WL 5874609 (Bankr. D.D.C. Nov. 8, 2019) (Teel)** (Motion for stay pending appeal of order granting stay relief is denied when there is no equity in the property, the plan does not propose to pay the mortgage, the debtor made no payments on the mortgage in years, the mortgagee established standing to foreclose and no bankruptcy purpose would be served by continuing the stay.).

b. GROUNDS FOR RELIEF FROM STAY

§ 64.1 Lack of Adequate Protection

{329} ***In re Johnson*, No. 19-3620, 2020 WL 1450751 (E.D. Pa. Mar. 25, 2020) (Robreno)** (Stay relief was appropriate because Chapter 13 debtor failed to make postpetition mortgage payments to Wells Fargo.).

{330} ***In re Morrone*, No. 19-30708, 2020 WL 5579740, at *2–*3 (Bankr. W.D.N.C. Aug. 27, 2020) (Beyer)** (Creditor with judicial lien on homestead property not entitled to stay relief to pursue nonfiling spouse's interest in tenancy by the entireties because lienholder is bound by confirmation of plan that avoids lien to extent it impairs debtor's homestead exemption under § 522(f) and plan adequately protects lienholder by proposing to pay value of nonexempt equity with respect to which the lien could not be avoided under § 522(f). That completion of plan will sever joint liability and impact lienholder's collection rights against the entireties property is an issue that should have been raised before confirmation. "The Debtor . . . seeks pursuant to 11 U.S.C. § 522(f) to avoid Brettell's Judicial Lien in property held as tenants by the entireties as to the Debtor's interest only. The Debtor's interest in the Residence as entireties property is property of the estate and, for that reason, clearly subject to the provisions of 11 U.S.C. § 522(f) . . . . Debtor has confirmed a Chapter 13 plan in which he has committed to pay Brettell the full value of the Debtor's non-exempt equity in the entireties property. . . . The implication of the confirmed plan is that at the completion of the plan, the debt owed to Brettell will no longer be a joint debt, and, for that reason, as entireties property, the Residence would be protected from execution by Brettell. Brettell had an opportunity to object to this treatment of his debt. He did not. As a result, he is bound by the terms of the confirmed plan. . . . Brettell is adequately protected by the terms of the confirmed plan. In the confirmed plan, the Debtor has provided for full payment of the value of his share of the non-exempt equity.").

{331} ***Woodward v. U.S. Bank Nat'l Ass'n (In re Woodward)*, No. 18-00219-MDC, 2020 WL 4252638 (Bankr. E.D. Pa. July 21, 2020) (Coleman)** (Debtor's nonpayment of mortgage for six years may be egregious, but property interest worth $120,000 provides adequate protection for mortgagee's $60,000 debt and stay relief is not appropriate under § 362(d)(1).).

{332} ***In re King*, 614 B.R. 851 (Bankr. E.D. Ark. Apr. 30, 2020) (Taylor)** (Stay relief is granted in third bankruptcy case in 13 months because debtor has not provided or proposed any form of adequate protection to purchaser at foreclosure sale.).

{333} ***In re Weyer*, 612 B.R. 192, 195–97 (Bankr. W.D. Wis. Jan. 3, 2020) (Ludwig)** (Car lender that failed to timely file proof of claim is entitled to stay relief after confirmation based on lack of adequate protection; debtors had obligation to file Bankruptcy Rule 3004 claim on behalf of lender or to make adequate protection payments directly to the lender—notwithstanding that confirmed plan required lender to file timely claim to get paid. Estoppel is not available because of Rule 3004 option and equities favor lender because debtors are driving car but not paying for loss of value. Schedules identified Valley Communities Credit Union (VCCU) with liens on cars and confirmed plan provided monthly payment to pay the claims. Form plan in district alerted VCCU that creditors must file a timely proof of claim in order to be paid. VCCU missed the deadline for filing a proof of claim and neither the trustee nor the debtors filed a claim on behalf of VCCU. Nine months after confirmation VCCU filed a motion for stay relief. "[I]t is undisputed that VCCU's property interests in the Weyers' vehicles are not being adequately protected. . . . The failure to make payments on claims secured by depreciating collateral is the quintessential basis for finding a lack of adequate protection and granting relief from stay. . . . Under the plain terms of section 362(d), the court 'shall' grant relief from stay where there is cause, including the lack of adequate protection. . . . The Weyers argue that VCCU cannot obtain relief from stay because the lack of adequate protection is the result of VCCU's own failure to file proofs of claim. . . . *Both* parties failed to act timely under the Rules. Accordingly, the equities do not weigh in the Weyers' favor sufficiently to allow them to continue to use VCCU's collateral without payment. . . . [A] creditor that does not

wish to submit to this court's jurisdiction or to participate in plan payments is not required to file a proof of claim. . . . Debtors who wish to pay a creditor's claim through their plan are not left helpless when a creditor fails to file a proof of claim. Rule 3004 gives them a 30-day window, after the creditor fails to file a proof of claim, to file a proof of claim on the creditor's behalf. . . . The Weyers' estoppel defense focuses solely on VCCU's failure to file a timely proof of claim, while ignoring their own failure to act. If the Weyers wanted to treat and pay VCCU's claims through their chapter 13 plan, Rule 3004 gave them the ability to file proofs of claim for VCCU. . . . [E]ven after the Rule 3004 window closed and VCCU filed its motion, the Weyers were not without options. They could have sought an extension of the already-expired Rule 3004 deadline. If they established 'excusable neglect' for their failure to file a proof of claim on VCCU's behalf timely, the Bankruptcy Rules allow the court to give them additional time to file those proofs of claim. *See* Rule 9006(b)(1) . . . . [I]t would be unfairly punitive to VCCU, and would generate an undeserved windfall for the Weyers, if the court were to deny VCCU's motion.").

{334} ***In re Baker*, No. 5:19-bk-71061, 2019 WL 9828490 (Bankr. W.D. Ark. Dec. 3, 2019) (Barry)** (Car claim is adequately protected by proposed plan payments and creditor is not entitled to stay relief.).

§ 64.2 Other Cause for Relief

{335} ***Rickert v. Specialized Loan Servicing LLC (In re Rickert)*, No. MT-19-1120-LBG, 2020 WL 1170732 (B.A.P. 9th Cir. Mar. 9, 2020) (not for publication) (Lafferty, Brand, Gan)** (Cause for stay relief included that debtor made no payments to mortgagee for six months since Chapter 13 petition and proposed plan continued to deny mortgagee had a claim notwithstanding unrefuted proof to contrary.), *aff'g* No. 18-60937-13, 2019 WL 1959898 (Bankr. D. Mont. Apr. 29, 2019) (Hursh) (Specialized Loan Servicing is entitled to stay relief for cause because debtor has made no mortgage payment for 19 months, debtor refuses to provide for SLS on frivolous theories gathered from the Internet and SLS has shown it is entitled to enforce the note.).

{336} ***Mead v. HSBC Bank USA, Nat'l Ass'n (In re Mead)*, No. CO-19-001, 2019 WL 5257957 (B.A.P. 10th Cir. Oct. 16, 2019) (not for publication) (Cornish, Hall, Loyd)** (Stay relief was appropriate based on lack of equity when debtor valued property in schedules at approximate amount of first mortgage and no cushion or other form of adequate protection was apparent or offered.).

{337} ***In re Donaghy*, No. 19-1720, 2020 WL 2759251 (E.D. Pa. May 28, 2020) (Robreno)** (Bankruptcy court appropriately granted stay relief to bank with consensual prepetition foreclosure judgment; consent judgment was preclusive of debtor's argument that bank lacked standing and any fraud claims had to be raised as defense to foreclosure.).

{338} ***Martin v. Martin*, 618 B.R. 326 (S.D. Fla. Mar. 30, 2020) (Ruiz)** (Applying § 541(c)(2), Chapter 13 debtor's rights to pension proceeds protected from alienation by New York law did not become property of bankruptcy estate and former spouse is entitled to stay relief to enforce domestic relations court orders with respect to interest in pension.).

{339} ***Coppedge v. Specialized Loan Servicing LLC (In re Coppedge)*, No. 19-12-MN, 2020 WL 1332993, at *6 (D. Del. Mar. 23, 2020) (Noreika)** (In decade-long battle between pro se debtor and mortgagee that included "vague, repetitive, and nonsensical" claims that debts payable in currency had been forgiven by Congress in 1933, stay relief was appropriately granted to mortgagee. Multiple bankruptcy cases and endless litigation and relitigation—all barred by res judicata after state court foreclosure judgment—supported stay relief and other sanctions previously imposed by bankruptcy court and other courts.).

{340} ***Craig v. Bendall*, No. 4:19cv00048, 2020 WL 1234947, at *3 (W.D. Va. Mar. 13, 2020) (Kiser)** (Bankruptcy court order granting relief from stay is stayed pending appeal when debtor is owner of property, debtor is not personally liable on mortgage but debtor has good argument that *Johnson v. Home State Bank*, 501 U.S. 78, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (June 10, 1991), claim of mortgagee can be managed through plan under § 1322. Debtor owns real property pursuant to quitclaim deed. Property is subject to mortgage and Chapter 13 plan proposes to modify note under § 1322(b)(2) to make monthly payments until property is sold or refinanced. Bankruptcy court granted stay relief, questioning whether a Chapter 13 debtor could modify note to which the debtor was not a party. "I believe Craig has made an adequate, preliminary showing that the *in rem* action against the property she owns could be a claim subject to the bankruptcy court's authority under 11 U.S.C. § 1322, and which is subject to the automatic stay, even if the bankruptcy court has no authority to adjust the note between [nondebtor] and the [mortgagee].").

{341} ***Beaudouin v. Village Capital & Inv. LLC*, 613 B.R. 514 (E.D. Pa. Mar. 13, 2020) (Smith)** (Bankruptcy court committed no error denying reconsideration of grant of stay relief when debtors had staved off eviction for more than two years without progress toward any bankruptcy goal other than stopping eviction.).

{342} ***Walkama v. Nellams*, No. C19-1207-JCC, 2020 WL 995853, at *2–*4 (W.D. Wash. Mar. 2, 2020) (Coughenour)** (Plaintiff in discrimination lawsuit against Chapter 13 debtor is entitled to stay relief to liquidate claim against debtor based on findings that notice of bankruptcy was insufficient to bind plaintiff to confirmed plan and lack of notice renders plaintiff's claim nondischargeable in the Chapter 13 case. "Discharging a debt in a Chapter 13 bankruptcy proceeding requires that the plan specifically 'provide for' the debt. . . . Even if the Chapter 13 plan refers to the debt, the plan does not sufficiently provide for that debt unless the creditor to whom the debt is owed is timely notified of the bankruptcy proceeding. . . . Accordingly, if the notice to the creditor is deemed inadequate,

then the debt is not dischargeable. . . . Appellee never received formal, statutorily required notice . . . . Appellee was not notified that his claim was subject to discharge under Appellants' proposed Chapter 13 plan. . . . Appellee had no opportunity to be heard or to contest the proposed plan before it was confirmed. . . . Appellee's claim was not subject to discharge in Appellants' proposed plan.").

{343} ***Hall v. Ferrell*, No. 1:18-CV-00328-LEW, 2019 WL 9143482 (D. Me. Feb. 6, 2019) (Walker)** (Stay relief is appropriate to allow mortgagee to dispossess Chapter 13 debtor when property was owned by an LLC, foreclosure was completed and a writ of possession issued to remove the debtor. The debtor's interest in the property is only the right to share in any equity that might be paid to the LLC.).

{344} ***Ahmed v. Ahmed*, No. 1:18-cv-698, 2019 WL 8063351 (E.D. Va. Jan. 18, 2019) (O'Grady)** (District court denies stay pending appeal of order affirming bankruptcy court's grant of stay relief to allow former spouse to return to state domestic relations court to seek modification of divorce decree and to seek sanctions against Chapter 13 debtor. Bankruptcy court retained jurisdiction with respect to any enforcement that might result rendering stay pending appeal unnecessary.).

{345} ***In re Butko*, No. 20-21255-GLT, 2020 WL 3574444, at *3 (Bankr. W.D. Pa. July 1, 2020) (Taddonio)** (Stay relief is appropriate under § 362(d)(1) because debtors as purchasers under a defaulted land sale contract had no legal or equitable interest in the underlying property, only a bare possessory interest that cannot support management through a Chapter 13 plan. In a prior bankruptcy case, the court entered a judgment for possession when the debtors defaulted on a court-approved settlement in years-long litigation about rights in a residential property. The current Chapter 13 case was filed in an effort to cure the default under the settlement agreement from the prior case. "[T]he *Judgment* against the Butkos is a final, unappealable order. Consequently, their equitable interest in the property has long since terminated, leaving them with no right to cure their default under state or federal law. A bare possessory interest on the petition date without a colorable legal or equitable claim 'is not enough to sustain the protections of the automatic stay.'").

{346} ***In re Louis*, No. 20-62841-JWC, 2020 WL 2843013 (Bankr. N.D. Ga. May 29, 2020) (Cavender)** (Stay relief denied because seller under Georgia "Bond for Title" has not completed judicial process necessary to dispossess debtor and debtor/vendee under Bond has equitable rights including right of redemption that can be addressed in Chapter 13 plan.).

{347} ***In re Chapman*, No. 17-32878-jda, 2020 WL 2071476 (Bankr. E.D. Mich. Apr. 29, 2020) (Applebaum)** (Seller—perhaps assignor—under land-sale contract was entitled to stay relief for cause when debtor had not made payments for two years, contract could not be assumed because debtor could not cure defaults and defaults could not be offset by damages when seller fully accounted for all payments from debtor.).

{348} ***In re Conrad*, No. 20-50021 (JAM), 2020 WL 1891218 (Bankr. D. Conn. Apr. 16, 2020) (Manning)** (In fourth bankruptcy case filed on eve of foreclosure, cause for stay relief included that debtor had made no payment to mortgagee since 2008 and could not propose a confirmable Chapter 13 plan that would deal with huge arrearage.).

{349} ***In re Winder*, No. 19-20773-PRW, 2020 WL 1679389 (Bankr. W.D.N.Y. Apr. 6, 2020) (Warren)** (Automatic stay did not expire 60 days after stay relief motion under § 362(e) because case management order implicitly extended stay consistent with § 362(e)(2)(B)(ii). Stay relief denied with respect to 17-year-old land sale contract because of disputed facts material to the amount of debt, payment of property taxes and inaccurate accounting for payments.).

{350} ***In re Dekom*, No. 19-30082-KKS, 2020 WL 4001044 (Bankr. N.D. Fla. Apr. 6, 2020) (Specie)** (After nine years of not paying mortgage, a final judgment of foreclosure, litigation in several courts and years of mortgagee paying taxes and insurance, plan was not proposed in good faith, case was not filed in good faith, plan calling for sale for some time in next two years is not feasible and stay relief is appropriate for cause.).

{351} ***In re Wolsonovich*, No. 19-06136-JW, 2020 WL 5607738 (Bankr. D.S.C. Apr. 1, 2020) (Waites)** (Consideration of many factors favors granting stay relief to allow former business associates to liquidate their claims against Chapter 13 debtor in state court action scheduled for trial with respect to breach of restrictive covenants, misappropriation of trade secrets and the like. All causes of action arise under state law, state court case is ready for trial and stay relief is conditioned that enforcement of any judgment must return to bankruptcy court.).

{352} ***In re Dedo*, No. 18-00657, 2020 WL 961311 (Bankr. D.D.C. Feb. 24, 2020) (Teel)** (Motion by creditor for leave to file complaint to determine dischargeability of debt under § 523(a)(3) is denied without prejudice to creditor's right to file a complaint objecting to dischargeability under § 523(a)(3). Stay relief is allowed to permit creditor to pursue its claims against debtor—including its § 523(a)(3) action—in state court. Leave of court is not required to file a complaint under § 523(a)(3) and a motion is not the proper route to that determination.).

{353} ***In re Pittman*, No. 19-41057, 2020 WL 859435 (Bankr. D. Kan. Feb. 20, 2020) (Somers)** (Cause for relief from stay that former spouse must return to state court to determine entitlement to interest in debtor's retirement account by way of a qualified domestic

relations order (QDRO) request. Retirement fund is not property of Chapter 13 estate and bankruptcy court has no jurisdiction to determine rights in the fund or to issue a QDRO.).

{354} ***In re Bauer*, No. 19-33534, 2020 WL 837366 (Bankr. N.D. Ohio Feb. 19, 2020) (Gustafson)** (Stay relief granted on ground that Chapter 13 filing was a bad-faith effort to frustrate county's foreclosure on nonresidential property to collect criminal fines.).

{355} ***In re Mager*, No. 19-14008 ELF, 2020 WL 717702 (Bankr. E.D. Pa. Feb. 12, 2020) (Frank)** (Creditor involved in bitter business litigation with debtor in state court is granted stay relief to proceed with that litigation. Debtor needs successful outcome in litigation to propose confirmable plan but has done nothing to advance the process either in the bankruptcy court or in the state court.).

{356} ***In re Brammer*, No. 16-00642, 2019 WL 6734560 (Bankr. D.D.C. Dec. 9, 2019) (Teel)** (Debtor admittedly did not comply with payment obligations in consent order that resolved motion for stay relief. Debtor states no ground for relief from that consent order or in support of opposition to mortgagee's notice of default.).

{357} ***In re Mainous*, 610 B.R. 916 (Bankr. S.D. Ala. Nov. 21, 2019) (Oldshue)** (Stay relief is appropriate for cause to allow litigation in Alabama state or federal court between Chapter 13 debtor and franchisor of lawn care business. Other court should determine enforceability of franchise contract and its noncompete provisions and other court should determine amount of claim of franchisor that must be dealt with in Chapter 13 plan.).

{358} ***In re Harmon*, No. DG 18-04298, 2019 WL 6492475 (Bankr. W.D. Mich. Mar. 25, 2019) (Dales)** (Stay relief for cause denied that would have allowed attorneys to litigate charging lien on Chapter 13 debtor's residence in state court. Litigation in state court would proceed by default to determine a lien on homestead property that would be relevant to rights of creditors in the Chapter 13 case.).

{359} ***In re Grayson*, No. 18-00863, 2018 WL 10345323 (Bankr. S.D. Ala. June 18, 2018) (Callaway)** (Stay is conditionally modified to allow victim of prepetition car accident to pursue Chapter 13 debtor and uninsured motorist coverage. Conditions include no collection from debtor personally and no stay relief if insurer refuses to defend debtor.).

{360} ***Beesley v. Beesley (In re Beesley)*, No. 17-00021, 2018 WL 10345325 (Bankr. S.D. Ala. Jan. 8, 2018) (Callaway)** (Bankruptcy court abstains and grants stay relief to allow state domestic relations court to determine what portion of "property settlement" was actually a domestic support obligation for purposes of confirmation of Chapter 13 plan.).

§ 64.3 Prospective, In Rem and Automatic Relief from Stay

{361} ***Jimenez v. ARCPE 1, LLP (In re Jimenez)*, 613 B.R. 537, 545–46 (B.A.P. 9th Cir. Mar. 3, 2020) (Taylor, Lafferty, Gan)** (*In rem* stay relief under § 362(d)(4) was not appropriate when only evidence of scheme was three bankruptcy cases in 10 years. "ARCPE has not shown that it was entitled to § 362(d)(4) relief. A bankruptcy court may grant *in rem* relief from the automatic stay under § 362(d)(4) to prevent schemes using bankruptcy to thwart foreclosures through one or more real property transfers or bankruptcies. . . . The bankruptcy court must affirmatively find the existence of a scheme. . . . In moving for § 362(d)(4) relief, ARCPE simply requested that the bankruptcy court take judicial notice of the Jimenezes' 2009 and 2012 bankruptcies. Otherwise, it submitted no evidence or even argument . . . that the three cases were part of a scheme to delay, hinder, or defraud creditors that originated in 2009 and continued over the decade thereafter. The filing of multiple bankruptcies over a very extended period of time (as in this case) does not invariably justify the findings required for § 362(d)(4) relief.").

{362} ***Stokes v. LSF8 Participation Tr. (In re Stokes)*, No. MT-18-1293-BHF, 2019 WL 7372666 (B.A.P. 9th Cir. Dec. 16, 2019) (not for publication) (Brand, Hercher, Faris)** (*In rem* stay relief under § 362(d)(4) is not available because movant is owner of property by virtue of prepetition foreclosure sale and *in rem* relief is only available to secured creditors.).

{363} ***Porzio v. JPMorgan Chase Bank, NA (In re Porzio)*, No. 3:19-cv-1994 (SRU), 2020 WL 5587360 (D. Conn. Sept. 18, 2020) (Underhill)** (Bankruptcy court appropriately granted *in rem* stay relief under § 362(d)(4) in sixth bankruptcy case filed by debtor or son to stop foreclosure on $3 million mortgage in default since 2008. Debtor was not eligible for Chapter 13 and serial filings timed to interrupt foreclosure sales were a pattern of filings to delay or harass mortgagee.).

{364} ***Ahmed v. NewRez LLC*, No. TDC-19-2534, 2020 WL 1904699 (D. Md. Apr. 17, 2020) (Chuang)** (After 15 bankruptcy petitions by debtor and/or spouse, bankruptcy court appropriately granted "equitable servitude" to foreclosing mortgage holder under § 362(d)(4). Debtor waived statute of limitations argument with respect to prepetition state court foreclosure by contesting foreclosure without raising statute of limitations challenge.).

{365} ***Akzam v. U.S. Bank NA*, No. 2:16-cv-02274-TLN, 2020 WL 1700028 (E.D. Cal. Apr. 8, 2020) (Nunley)** (Appeal of order granting *in rem* stay relief under § 362(d)(4) is moot for two reasons: the underlying Chapter 13 case has been dismissed, terminating the automatic stay; the two years of *in rem* relief granted under § 362(d)(4) expired during the appellate process.).

{366} ***Askri v. U.S. Bank, N.A.*, 612 B.R. 867 (E.D. Va. Feb. 18, 2020) (Ellis)** (Bankruptcy court appropriately granted *in rem* stay relief to mortgagee under § 362(d)(4) based on six bankruptcies in seven years, each filed by debtor and/or spouse to stop foreclosure. Debtors had not paid mortgagee in 84 months.).

{367} ***Smith v. U.S. Bank, N.A.*, No. 4:19CV2682, 2020 WL 607638 (N.D. Ohio Feb. 6, 2020) (Pearson)** (In third bankruptcy case to stop foreclosure, district court denies stay pending appeal of bankruptcy court orders setting aside dismissal and granting *in rem* relief to foreclosing creditor.).

{368} ***Kajla v. U.S. Bank Nat'l Ass'n (In re Kajla)*, No. 19-1043 (MAS), 2019 WL 7288891 (D.N.J. Dec. 30, 2019) (Shipp)** (Four tag-team bankruptcies by debtor and spouse to stop foreclosures amply support bankruptcy court's § 362(d)(4) *in rem* order.).

{369} ***In re Buczek*, 617 B.R. 772 (Bankr. W.D.N.Y. June 26, 2020) (Bucki)** (Stay pending appeal of grant of *in rem* stay relief is denied. Debtor acquired questionable interest in mother's property after bank filed foreclosure and notice of *lis pendens*. Bankruptcy court will not review state court foreclosure judgment and debtor has stated no ground for success on appeal.).

{370} ***In re Pellechia*, No. 19-21972 (JJT), 2020 WL 3455644 (Bankr. D. Conn. June 24, 2020) (Tancredi)** (After 12 years of not paying mortgage, $53,000 of advances by mortgagee for taxes and insurance and four bankruptcies, current Chapter 13 case is dismissed with prejudice to refiling for two years and with *in rem* relief under § 362(d)(1) and (d)(4) based on findings of bad faith and intent to delay mortgagee.).

{371} ***In re Errico*, No. 9:19-bk-06350-FMD, 2020 WL 3454242 (Bankr. M.D. Fla. June 22, 2020) (Delano)** (Ninth bankruptcy case is dismissed for bad faith with one–year bar to refiling and *in rem* relief under § 362(d). Evidence of bad faith included a series of filings to stop foreclosures, suspicious transfers of real property on the eve of bankruptcy filings, lying to creditors about the status and priority of liens and an "abatement motion" based on COVID-19 that would extend plan even further without paying creditors.).

{372} ***In re Kearns*, No. 20-10354-PRW, 2020 WL 2311883 (Bankr. W.D.N.Y. May 8, 2020) (Warren)** (After four skeletal Chapter 13 petitions in 24 months—all filed on eve of foreclosure, all filed by same attorney—and 12 years of no payments to underwater mortgagee, *in rem* stay relief is granted under § 362(d)(4)(B) and case is dismissed with prejudice to refiling anywhere in United States for two years. Court orders U.S. trustee to investigate whether the attorney is running a "cottage industry" stopping foreclosures for undisclosed fees by filing Chapter 13 cases with no intention to proceed beyond imposing a brief stay.).

{373} ***In re Yokoi*, No. 20-50193 (JAM), 2020 WL 2306489 (Bankr. D. Conn. May 7, 2020) (Manning)** (Stay relief for cause under § 362(d)(1) and *in rem* relief under § 362(d)(4) are appropriate in fifth bankruptcy case by debtor and/or spouse all filed on eve of foreclosure sales when all cases were skeletal filings immediately dismissed for failure to file required information.).

{374} ***In re Conrad*, No. 20-50021 (JAM), 2020 WL 1891218 (Bankr. D. Conn. Apr. 16, 2020) (Manning)** (*In rem* relief from stay under § 362(d)(4) was appropriate in fourth bankruptcy case filed by debtor or spouse on the eve of foreclosure. Debtor made no payment on mortgage since 2008, no possible plan was in sight that could deal with huge arrearage and no bankruptcy purpose appeared other than continuing to stall foreclosure sale.).

{375} ***In re Moore*, No. 19-51257 (JAM), 2020 WL 1189367 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Stay relief granted for cause under § 362(d)(1) and based on lack of equity and inability to propose any confirmable plan under § 362(d)(2); *in rem* relief also granted under § 362(d)(4). Debtor filed three bankruptcy cases between 2012 and 2019 to stop foreclosures and debtor attempted same frivolous litigation against mortgagee in each case. Serial filing indicated scheme to hinder and delay mortgagee. Schedules showed debtor could not pay mortgage arrears in any confirmable plan.).

{376} ***In re Smith*, No. 19-40227, 2020 WL 476013 (Bankr. N.D. Ohio Jan. 29, 2020) (not for publication) (Kendig)** (Bankruptcy court denies Chapter 13 debtor's motion to reconsider order denying stay pending appeal of order granting *in rem* stay relief in third Chapter 13 case filed to stop foreclosure. Debtor immediately dismissed bare-bones petition after stopping foreclosure but bankruptcy court reopened case to grant *in rem* relief to foreclosing mortgagee.).

{377} ***In re Meltzer*, No. 19-21110-PRW, 2020 WL 129441 (Bankr. W.D.N.Y. Jan. 10, 2020) (Warren)** (Third *pro se* Chapter 13 petition filed to stop foreclosure is dismissed for cause—including bad faith, prejudicial delay, failure to make payments and lack of adequate protection—with 18-month bar to refiling under § 1307(c)(1), (c)(3) and (c)(4) and §§ 105(a) and 349(a). *In rem* relief is also appropriate under § 362(d)(4)(B). Court declines to dismiss "with prejudice" to discharge of debts in a future bankruptcy case.).

{378} ***In re Perkins*, 609 B.R. 576, 577–81 (Bankr. D. Conn. Dec. 16, 2019) (Manning)** (When mortgage creditor moves for declaration that no stay is in effect under § 362(c)(4) and for *in rem* relief under § 362(d)(4) in third case within a year, creditor is entitled to declaration that no stay is in effect but relief under § 362(d)(4) is not available because there is no stay in effect from which *in rem* relief could be granted. "[T]he Bankruptcy Code does not permit subsection 362(d)(4) *in rem* relief to enter in a case such as this one, where the automatic stay is not in effect under subsection 362(c)(4). . . . [T]he plain language of 362(c)(4) applies to individual

debtors who file a third case within one year of two prior cases that were pending but dismissed, while the plain language of 362(d)(4) applies to the stay of an act against real property by a creditor whose claim is secured by an interest in such real property. . . . Movant cannot obtain 'relief from the stay' under subsection (d)(4) in this case because the stay was never in effect. The language of subsection 362(d) . . . compels the interpretation that the stay must be in effect as a condition precedent to obtaining *in rem* relief pursuant to (d)(4). . . . [T]o grant both types of relief the Movant seeks would require the Court to conclude both that the stay was not in effect *and* that it was . . . . The Movant was not stayed from proceeding with the State Court Foreclosure Action and therefore does not need *in rem* relief to do so . . . because a stay was never in effect in the Debtor's third Chapter 13 case.").

{379} ***In re Smith*, No. 19-40227, 2019 WL 4897030 (Bankr. N.D. Ohio Sept. 30, 2019) (Kendig), *motion to amend denied by* No. 19-40227, 2019 WL 5688183 (Bankr. N.D. Ohio Nov. 1, 2019) (not for publication) (Kendig)** (In third Chapter 13 case in 12 years filed to stop foreclosure, mortgagee is granted relief from stay and from codebtor stay and granted *in rem* relief under § 362(d)(4). Cause includes that debtor cannot pay the partially secured $800,000 debt, debtor acted in bad faith and abusively and history of filings without payment to creditors is a scheme to delay or hinder for § 362(d)(4) purposes.).

{380} ***In re Atkinson*, No. 19-71044-ast, 2019 WL 4438963 (Bankr. E.D.N.Y. Sept. 16, 2019) (Trust)** (In third bankruptcy filed to stop foreclosure, after stay relief was granted in prior cases and after seven years without payments, *in rem* stay relief is granted mortgagee under § 362(d)(4)(B).).

§ 64.4 Annulment of the Stay

{381} ***Merriman v. Fattorini (In re Merriman)*, 616 B.R. 381, 390–93 (B.A.P. 9th Cir. July 13, 2020) (Lafferty, Taylor, Faris)** (Bankruptcy court appropriately applied factors from *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah June 11, 1984) (Allen), to annul automatic stay to validate wrongful death action filed against Chapter 13 debtor by representative of victim who was without notice or knowledge of bankruptcy. *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, ___ U.S. ___, 140 S. Ct. 696, 206 L. Ed. 2d 1 (Feb. 24, 2020) (per curiam), does not impact annulment of the stay because annulment of the stay is a statutory process that does not create or destroy jurisdiction, it simply allocates authority to a forum for dispute resolution. "The deadline for filing a nondischargeability complaint under § 523(a)(2), (4), or (6) expired . . . , but that deadline does not apply to the Fattorinis because they lacked notice of the bankruptcy filing in time to file a timely complaint. *See* 11 U.S.C. § 523(a)(3)(B) . . . . At least one bankruptcy court has interpreted *Acevedo* as prohibiting a grant of retroactive or nunc pro tunc relief from stay. . . . We do not believe that the ruling in *Acevedo* prohibits a bankruptcy court's exercise of the power to grant retroactive relief from stay. . . . [Section] 362(d) does not purport to deprive the bankruptcy court of jurisdiction; rather, it explicitly grants the court the power to modify the stay to permit another court or entity to exercise control over an asset or claim. . . . [T]he conclusion that *Acevedo* prohibits the annulment of the stay based on jurisdiction and property of the estate concerns reads too much into the Supreme Court's opinion.").

{382} ***Oya v. Wells Fargo, N.A. (In re Oya)*, No. SC-19-1095-BKuL, 2019 WL 5390007 (B.A.P. 9th Cir. Oct. 18, 2019) (not for publication) (Brand, Kurtz, Lafferty)** (In sixth tag-team bankruptcy filed to stop foreclosure, bankruptcy court appropriately annulled stay retroactively to eliminate basis for any violation of stay alleged by debtor. On egregious facts, appropriate to annul stay notwithstanding that mortgagee may have had notice of bankruptcy at time of foreclosure sale. Bankruptcy court appropriately granted retroactive annulment of the automatic stay under § 362(d)(1) and *in rem* stay relief under § 362(d)(4).).

{383} ***Lord v. True Funding, LLC*, No. 19-24113-Civ-Scola, 2020 WL 4339638 (S.D. Fla. July 28, 2020) (Scola)** (Bankruptcy court committed no error by granting annulment of stay to validate foreclosure sale without evidentiary hearing. Foreclosure sale had been continued nine times before the Chapter 13 petition, sometimes at the debtor's request, and petition was filed two minutes before the last scheduled sale. Chapter 13 case was dismissed almost immediately after filing based on debtor's failure to file necessary documents.).

{384} ***Toromanova v. Wilmington Sav. Fund Soc'y, FSB*, No. 2:19-cv-01575-APG, 2020 WL 4334105 (D. Nev. July 27, 2020) (Gordon)** (Bankruptcy court did not abuse its discretion by granting retroactive stay relief to validate a foreclosure sale when fourth Chapter 13 petition was filed minutes before foreclosure sale and debtor conceded that the petitions had been filed to stall foreclosure.).

{385} ***Newton v. BNH Five Pack LLC (In re Newton)*, No. 17 Civ. 6379 (PGG), 2020 WL 2731995 (S.D.N.Y. May 26, 2020) (Gardephe)** (In third Chapter 13 case filed in bad faith to stop foreclosure, bankruptcy court appropriately granted *nunc pro tunc* relief, annulling stay to validate foreclosure sale and allowing purchaser to dispossess the debtor. Debtor had no prospect of reorganization and had made no payment to mortgagee or trustee. District court does not address recent Supreme Court authority with respect to *nunc pro tunc* orders.).

{386} ***Clarke v. LNV Corp.*, No. 3:17-cv-148-TCB, 2018 WL 10322004 (N.D. Ga. Feb. 5, 2018) (Batten)** (In fourth bankruptcy case in three years, each filed to stop foreclosure sale, bankruptcy court appropriately granted retroactive stay relief to validate foreclosure sale two days after the petition.).

{387} ***In re Moore*, No. 20-40309-EJC, 2020 WL 5633081 (Bankr. S.D. Ga. Aug. 27, 2020) (Coleman)** (Motion for stay pending appeal of order denying confirmation and granting stay relief to mortgagee is denied. Denial of confirmation is not an appealable order. Stay relief was appropriate because debtor could not adequately protect mortgagee's lien on fractional interest in inherited property. Likelihood of success on appeal was slim and foreclosure was only means to protect mortgagee.).

{388} ***In re Svacina*, No. 6:19-bk-18896-WJ, 2020 WL 2769036, at *6 (Bankr. C.D. Cal. May 27, 2020) (Johnson)** (Annulment of the stay is appropriate in second Chapter 13 case filed to delay foreclosure when purchaser at prepetition foreclosure sale recorded deed after the petition but within 15-day relation-back period under California law. "Annulment is . . . appropriate because the Debtor in this case has engaged in a pattern of filing nonviable chapter 13 cases to stall foreclosure sales.").

{389} ***In re Telles*, No. 8-20-70325-reg, 2020 WL 2121254, at *1–*5 (Bankr. E.D.N.Y. Apr. 30, 2020) (Grossman)** (In light of *Roman Catholic Archdiocese of San Juan v. Acevedo Feliciano*, ___ U.S. ___, 140 S. Ct. 696, 206 L. Ed. 2d 1 (Feb. 24, 2020), statutory power to annul automatic stay cannot be used to validate a foreclosure that was conducted in violation of the stay because the foreclosure court lacked jurisdiction to conduct the sale and *nunc pro tunc* relief cannot confer jurisdiction or validate the sale. "*Acevedo* . . . held that '[f]ederal courts may issue *nunc pro tunc* orders . . . to "reflect [ ] the reality" of what has already occurred . . . . "Such a decree presupposes a decree allowed, or ordered, but not entered, through inadvertence of the court."'. . . The state court was divested of jurisdiction upon the filing of the Debtor's bankruptcy. Because the foreclosure sale whereby Wilmington acquired title to the property was held after the filing of the bankruptcy petition, the state court had already been divested of jurisdiction to conduct the foreclosure sale, rendering all subsequent acts by the state court in the foreclosure proceeding void. Therefore, as a matter of law Wilmington never received valid title to the Property, and the Debtor's interest in the Property remains property of the bankruptcy estate subject to this Court's further orders. . . . The landscape of the law is different post-*Acevedo* . . . . Once a debtor files for bankruptcy, the state court is divested of jurisdiction over property of the estate . . . . The Bankruptcy Court cannot grant the *nunc pro tunc* relief sought by Wilmington because there was never a determination by this Court vacating the stay prior to the foreclosure sale. In other words, *nunc pro tunc* relief cannot be used to change the outcome of a void foreclosure sale. . . . [The court] cannot grant *nunc pro tunc*relief from the automatic stay in order to cure a jurisdictional defect in a state court proceeding.").

{390} ***In re Rice*, 613 B.R. 690 (Bankr. N.D. Ill. Apr. 21, 2020) (Schmetterer)** (Annulment of stay to validate City of Chicago's choice to refuse to return impounded car for 160 days was not appropriate because City acted with actual knowledge of Chapter 13 case and put on no evidence that would support annulment. City was fully aware of the automatic stay based on *Thompson v. General Motors Acceptance Corp*., 566 F.3d 699 (7th Cir. May 27, 2009) (Cudahy, Williams, Tinder), and *In re Fulton*, 926 F.3d 916 (7th Cir. June 19, 2019) (Flaum, Kanne, Scudder), *cert. granted sub nom. City of Chicago, Illinois v. Fulton*, ___ U.S. ___, 140 S. Ct. 680, 205 L. Ed. 2d 449 (Dec. 18, 2019).).

§ 64.5 Application of § 362(d)(2) in Chapter 13 Cases

{391} ***Mead v. HSBC Bank USA, Nat'l Ass'n (In re Mead)*, No. CO-19-001, 2019 WL 5257957 (B.A.P. 10th Cir. Oct. 16, 2019) (not for publication) (Cornish, Hall, Loyd)** (Plan that depended for feasibility on modifying mortgages would not support necessity for effective reorganization for § 362(d)(2) purposes when mortgage was protected from modification by § 1322(b)(2) and could not be modified without consent of the mortgagee. Property had rental units and a principal residence but was protected from modification by § 1322(b)(2).).

{392} ***In re Manning*, No. 20-20482-PRW, 2020 WL 5083325 (Bankr. W.D.N.Y. Aug. 27, 2020) (Warren)** (Stay relief appropriate under § 362(d)(2) with respect to four condominium units because there is no equity in the units and the condos cannot be rented to produce any income that would be usable in a Chapter 13 plan.).

{393} ***In re Conrad*, No. 20-50021 (JAM), 2020 WL 1891218 (Bankr. D. Conn. Apr. 16, 2020) (Manning)** (Stay relief under § 362(d)(2) was appropriate because there was no equity in property and debtor could not confirm a plan that would cure arrearage on mortgage after four bankruptcies and no payments since 2008.).

{394} ***In re Moore*, No. 19-51257 (JAM), 2020 WL 1189367 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Stay relief granted for cause under § 362(d)(1) and based on lack of equity and inability to propose any confirmable plan under § 362(d)(2); *in rem* relief also granted under § 362(d)(4). Debtor filed three bankruptcy cases between 2012 and 2019 to stop foreclosures and debtor attempted same frivolous litigation against mortgagee in each case. Serial filing indicated scheme to hinder and delay mortgagee. Schedules showed debtor could not pay mortgage arrears in any confirmable plan.).

{395} ***In re Baker*, No. 5:19-bk-71061, 2019 WL 9828490 (Bankr. W.D. Ark. Dec. 3, 2019) (Barry)** (Car is necessary to Chapter 13 debtor's performance of the plan for § 362(d)(2) purposes.).

{396} ***In re Lara-Morales*, No. 18-15549-MKN, 2019 WL 5884230 (Bankr. D. Nev. Apr. 5, 2019) (Nakagawa)** (Mortgagee's motion for stay relief is denied because reasonable prospect of confirmable Chapter 13 plan includes that debtor may seek to strip off lien. That debtor is not eligible for a discharge because of a prior Chapter 7 discharge is not a bar to lien stripping.).

F. CODEBTOR STAY

1. EXTENT OF CODEBTOR STAY

§ 65.1 Cosigners and Joint Obligors Are Protected

{397} ***Kennedy Funding, Inc. v. Oracle Bus. Devs., LLC*, No. 2012-0009, 2020 WL 4353558 (D.V.I. July 29, 2020) (Lewis)** (Codebtor stay in § 1301 does not extend to sale of property owned by corporation that secured debtor's guaranty of business loan to the corporation. Guaranty was not a consumer debt and pledge of collateral secured a debt for business purposes that was outside the reach of § 1301. Also, principal obligor was a corporation and not an individual as required by codebtor stay in § 1301.).

{398} ***United States ex rel. Dahlstrom v. Sauk-Suiattle Indian Tribe of Wash.*, No. C16-0052JLR, 2019 WL 6052646 (W.D. Wash. Nov. 15, 2019) (Robart)** (Codebtor stay does not protect Chapter 13 debtor's attorney from assessment of attorney's fees as a sanction for bad-faith litigation misconduct because fees would be assessed not as consumer debts but for the work by the attorney as a lawyer representing the debtor. Any fees assessed against the attorney would not be debts of the Chapter 13 debtor and imposing the fees as a sanction on the attorney would not violate the codebtor stay with respect to the debtor.).

§ 65.2 Consumer Debts Only

{399} ***Conde-Vidal v. Pinto-Lugo (In re Álvarez Vélez)*, 617 B.R. 158, 170–72 (B.A.P. 1st Cir. July 29, 2020) (Bailey, Hoffman, Finkle)** (Attorney's fees imposed on debtor as a sanction for litigation abuse are not consumer debts that would trigger codebtor protection under § 1301 in a Chapter 13 case. Similarly, unadjudicated claim against debtor for damages for keeping noisy animals was not a consumer debt and the claim could be collected from codebtor without transgressing § 1301. "When determining whether a debt is a consumer debt, courts usually examine the purpose for which the debt was incurred. . . . Courts commonly refer to debts which are neither consumer debt nor business debt as 'interstitial.' When determining whether a non-business debt is a consumer debt, courts often consider whether the individual voluntarily intended to incur the debt for a personal, family, or household purpose. . . . [A]ttorney's fees which have been imposed by a court as a sanction do not constitute 'consumer debt' . . . regardless of the nature of the action in which they were imposed. . . . [T]he awards of attorney's fees and costs . . . are properly characterized as punitive sanctions imposed against the Debtor . . . . [A] potential damages award in the Local Court Injunction Action is not a consumer debt as it has not been voluntarily incurred and it is not the type of debt that the Debtor would expect to incur in her daily affairs. . . . Although her use of the Property (and her ownership of numerous animals) may have been undertaken voluntarily and for a personal or family purpose, the record does not support a conclusion that she intended to incur any debt to the Pintos arising from her use of the Property.").

{400} ***Kennedy Funding, Inc. v. Oracle Bus. Devs., LLC*, No. 2012-0009, 2020 WL 4353558 (D.V.I. July 29, 2020) (Lewis)** (Codebtor stay in § 1301 does not extend to sale of property owned by corporation that secured debtor's guaranty of business loan to the corporation. Guaranty was not a consumer debt and pledge of collateral secured a debt for business purposes that was outside the reach of § 1301. Also, principal obligor was a corporation and not an individual as required by codebtor stay in § 1301.).

{401} ***United States ex rel. Dahlstrom v. Sauk-Suiattle Indian Tribe of Wash.*, No. C16-0052JLR, 2019 WL 6052646 (W.D. Wash. Nov. 15, 2019) (Robart)** (Codebtor stay does not protect Chapter 13 debtor's attorney from assessment of attorney's fees as a sanction for bad-faith litigation misconduct because fees would be assessed not as consumer debts but for the work by the attorney as a lawyer representing the debtor. Any fees assessed against the attorney would not be debts of the Chapter 13 debtor and imposing the fees as a sanction on the attorney would not violate the codebtor stay with respect to the debtor.).

{402} ***In re Morrone*, No. 19-30708, 2020 WL 5579740 (Bankr. W.D.N.C. Aug. 27, 2020) (Beyer)** (Because debt underlying judgment creditor's lien is not a consumer debt, lienholder is entitled to relief from codebtor stay in § 1301 to pursue nonfiling spouse's interest to extent permitted under state law.).

{403} ***Johnson v. North Mill Credit (In re Johnson)*, 608 B.R. 784 (Bankr. S.D. Ga. Sept. 27, 2019) (Barrett)** (Codebtor stay in § 1301 does not apply to Chapter 13 debtor's guaranty of business debt for purchase of a truck by a wholly owned corporation.).

{404} ***Labovitz v. IRS (In re Labovitz)*, No. 18-00010, 2018 WL 10323609 (Bankr. W.D. Tenn. May 14, 2018) (Latta)** (Because the Sixth Circuit has declared that tax claims are not consumer debts, codebtor stay in § 1301 does not prohibit IRS from collecting joint taxes from nondebtor spouse. The Anti-Injunction Act prohibits the bankruptcy court from creating a codebtor stay that does not exist by statute.).

§ 65.3 Codebtor Heaven after BAPCPA

§ 65.4 Can Plan Enlarge Codebtor Stay?

{405} ***Labovitz v. IRS (In re Labovitz)*, No. 18-00010, 2018 WL 10323609 (Bankr. W.D. Tenn. May 14, 2018) (Latta)** (Because the Sixth Circuit has declared that tax claims are not consumer debts, codebtor stay in § 1301 does not prohibit IRS from collecting joint

taxes from nondebtor spouse. The Anti-Injunction Act prohibits the bankruptcy court from creating a codebtor stay that does not exist by statute.).

§ 65.5 Expiration of Codebtor Stay

2. RELIEF FROM CODEBTOR STAY

a. PROCEDURE

§ 66.1 Motion Practice

{406} ***Conde-Vidal v. Pinto-Lugo (In re Álvarez Vélez)*, 617 B.R. 158 (B.A.P. 1st Cir. July 29, 2020) (Bailey, Hoffman, Finkle)** (Bankruptcy court permissibly adjudicated that codebtor stay under § 1301 did not apply without conducting a hearing when relevant facts were not contested and codebtor had notice and opportunity to ask for a hearing but did not.).

§ 66.2 Automatic Relief under § 1301(d)
§ 66.3 Timing of Request for Relief
§ 66.4 Burden of Proof

b. GROUNDS FOR RELIEF FROM CODEBTOR STAY

§ 67.1 Codebtor Received the Consideration
§ 67.2 Plan Does Not Pay Debt in Full

{407} ***In re Smith*, No. 19-40227, 2019 WL 4897030 (Bankr. N.D. Ohio Sept. 30, 2019) (Kendig), *motion to amend denied by* No. 19-40227, 2019 WL 5688183 (Bankr. N.D. Ohio Nov. 1, 2019) (not for publication) (Kendig)** (Relief from codebtor stay is appropriate under § 1301(c)(2) because debtor does not have sufficient income to repay $800,000 mortgage.).

§ 67.3 Postpetition Interest, Attorneys' Fees, Costs and Other Charges
§ 67.4 Can Creditor Collect Original Contract Payment from Codebtor?
§ 67.5 Irreparable Harm

{408} ***In re Smith*, No. 19-40227, 2019 WL 4897030 (Bankr. N.D. Ohio Sept. 30, 2019) (Kendig), *motion to amend denied by* No. 19-40227, 2019 WL 5688183 (Bankr. N.D. Ohio Nov. 1, 2019) (not for publication) (Kendig)** (Codebtor stay relief is appropriate under § 1302(c)(3) because mortgagee faces irreparable harm when debtor is making no payments on an $800,000 mortgage, debtor does not have income sufficient to pay the debt and property is not worth enough to protect the mortgagee after 12 years and three Chapter 13 cases.).

§ 67.6 Annulment of Codebtor Stay

G. UTILITY STAY

§ 68.1 Utility Stay and Continuing Service

{409} ***In re Jones*, No. 18-02837-NPO, 2019 WL 5061166 (Bankr. S.D. Miss. July 22, 2019) (Olack)** (City violated stay by coercing Chapter 13 debtor to make deposit and sign installment payment agreement with respect to prepetition utility arrears notwithstanding actual notice of Chapter 13 case in which debtor scheduled and proposed to pay utility claim in full. Remedy for violating stay by coercing debtor to sign agreement and make payment included attorney's fees and refund of payments.).

§ 68.2 Utility Stay Uncertainty after BAPCPA

{410} ***Marmol Torres v. Autoridad De Acueductos y Alcantarillados (In re Marmol Torres)*, No. 18-00027, 2020 WL 2479656 (Bankr. D.P.R. May 13, 2020) (Tester)** (Trial will be necessary to determine whether debtors satisfied the postpetition assurance of payment requirement in § 366(b) with respect to water services by utility.).

H. MISCELLANEOUS PRECONFIRMATION PROBLEMS

§ 69.1 Incurring Debt prior to Confirmation
§ 69.2 Pro Se Debtors

{411} ***Fury v. Waage*, No. 8:20-cv-82-T-36, 2020 WL 2813360 (M.D. Fla. May 29, 2020) (Honeywell)** (Pro se "Motion for Writ of Mandamus to Return Bonds" is denied because Chapter 13 debtor has not filed any papers that could be construed as "bonds" and debtor can go to the bankruptcy court clerk's office and claim whatever papers she wants returned after dismissal of Chapter 13 case.).

§ 69.3 Loss of Job or Income
§ 69.4 Loss of Contact with Debtor
§ 69.5 Incurable Opposition by a Creditor or Trustee

PART 5: DRAFTING AND CONFIRMING PLANS

§ 70.1 Summary of Part 5

A. STATUTES AND RULES DISCUSSED IN PART 5

§ 71.1 11 U.S.C. § 365: Executory Contracts and Unexpired Leases
§ 71.2 11 U.S.C. § 1321: Filing of Plan
§ 71.3 11 U.S.C. § 1322: Contents of Plan
§ 71.4 11 U.S.C. § 1324: Confirmation Hearing
§ 71.5 11 U.S.C. § 1325: Confirmation Standards
§ 71.6 Bankruptcy Rule 2002: Notice of Confirmation Hearing
§ 71.7 Bankruptcy Rule 3012: Valuation of Security
§ 71.8 Bankruptcy Rule 3013: Classification of Claims
§ 71.9 Bankruptcy Rule 3015: Filing of Plan and Objections to Confirmation

B. TIMING, STANDING AND FORM OF PLAN

§ 72.1 Overview: Designing Plans That Work
§ 72.2 Challenges Added by BAPCPA
§ 72.3 Time for Filing Plan
§ 72.4 Who Can File Plan?
§ 72.5 Form of Plan

{412} ***Diaz v. Viegelahn (In re Diaz)*, No. 19-50982, 2020 WL 5035800, at *3–*4 (5th Cir. Aug. 26, 2020) (Stewart, Clement, Costa)** (Local Chapter 13 plan form that required all debtors to pay to the trustee tax refunds in excess of $2,000 was invalid because it abridged the substantive right of an under-median Chapter 13 debtor to use refund for reasonable and necessary expenses within the projected disposable income test; Local Rule was inconsistent with *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010). "The Federal Rules of Bankruptcy Procedure permit courts to create a local form for chapter 13 plans . . . . However, these rules must be procedural only—they may not 'abridge, enlarge, or modify any substantive right.' . . . *Lanning*, plainly allows below-median income debtors to retain any income that is reasonably necessary for their maintenance and support. . . . But [the local plan form] requires that *all* chapter 13 debtors turn over to the Trustee *all* tax refunds received in excess of $2,000 as 'projected disposable income.' . . . [The local plan form's] categorical rule could abridge a below-median income debtor's substantive right to use her 'excess' refund amount for reasonably necessary expenses for her maintenance and support. . . . Because [the local plan form] abridges Debtor's substantive right to use the amount of her tax refund in excess of $2,000 in accordance with Code § 1325(b)(2) and *Lanning's* guidance for below-median income debtors, we hold that it is invalid."), *vacating and remanding* No. 5:18-CV-00796-RCL, 2019 WL 4545613, at *3–*5 (W.D. Tex. Sept. 19, 2019) (Lamberth) (Local form for Chapter 13 plan permissibly requires all Chapter 13 debtors to turn over to the trustee tax refunds in excess of $2,000 if plan does not pay unsecured creditors in full. Chapter 13 debtors are forbidden to use nonstandard plan provision that prorates anticipated tax refunds as income; instead, debtors must use local plan form provision that allows Chapter 13 debtors to keep first $2,000 of any tax refund but requires excess to be paid to Chapter 13 trustee. "[T]he District Plan does not expressly contravene the Bankruptcy Code, Local Rules, or Official Forms. . . . Allowing Debtors to strike through or otherwise negate provisions in the District Plan that they do not like would render the District Plan meaningless. . . . Permitting Debtors to alter or delete provisions of the District Plan also violates Rule 3015.1 and thus cannot be tolerated. . . . The Bankruptcy Code allows a plan to provide for payment of all or part of a claim against a debtor from property of the estate or the property of a debtor. 11 U.S.C. § 1322(b)(8). The statute also directs that all plans must provide for the submission of all or such a portion of future earnings or other income of the debtor to the supervision and control of the trustee as is necessary for execution of the plan. 11 U.S.C. § 1322(a)(1). This includes the tax refunds at issue here. . . . Refund income is inherently speculative in nature at the time a Chapter 13 plan is formulated, so by allowing Debtors to retain $2,000, [the local plan] is giving them the ability to use that money for any unforeseen expenses. . . . In light of Official Form 113, it is clear that Schedule I anticipates alternative ways to account for tax refunds other than merely by listing them on the Schedule I . . . . Debtors will not be forced to doubly account for their refunds if they simply do not list them on their Schedule I forms and instead follow the instructions in [the local form].").

{413} ***Crow v. Maney (In re Crow)*, No. AZ-18-1323-SFB, 2020 WL 710351 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Spraker, Faris, Brand)** (Deletion of nonstandard plan provision that preserved Thirteenth Amendment challenge to any future effort by Chapter 13 trustee to increase payments by way of plan modification is not ripe for appellate review because no modification has been sought by trustee. Plan originally contained a footnote that preserved the debtors' argument that any attempt by the Chapter 13 trustee to increase payments by way of plan modification constituted involuntary servitude in violation of the Thirteenth Amendment to the Constitution. Bankruptcy court struck the footnote but confirmed the plan. BAP dodged debtors' appeal by finding that constitutional challenge was not ripe.).

{414} ***Santander Consumer USA Inc. v. Donnadio (In re Donnadio)*, 608 B.R. 507, 509–14 (B.A.P. 6th Cir. Nov. 25, 2019) (Buchanan, Harrison, Wise)** (Plan cannot be confirmed that fails to explicitly state that liens are retained consistent with § 1325(a)(5)(B)(i)(I) notwithstanding that plan provides for full payment with interest of 910-day car claim consistent with the hanging sentence at the end of § 1325(a)(5). Bankruptcy Rule 9009 does not prohibit a nonstandard addition to Official Form 113 that adds lien retention language consistent with § 1325(a)(5)(B)(i)(I). "Section 3.3 of Official Form 113 does not discuss lien retention for claims treated thereunder. Therefore, Debtors' proposed plan did not have language addressing Creditor's retention of its lien in Section

3.3. . . . [T]he court overruled the objection, holding that, while Creditor held a secured claim that was not subject to bifurcation under § 506 owing to the 'hanging paragraph' in § 1325(a), the court was 'not convinced that this means § 1325(a)(5) applies to a 910-day claim exactly as it would to any other allowed, secured claim.' . . . Debtors' plan must fully satisfy § 1325(a)(5)(B) to achieve confirmation over Creditor's objection. . . . But it does not 'provide that' Creditor retains its lien on the Vehicle as § 1325(a)(5)(B)(i)(I) requires. Accordingly, the plan does not satisfy § 1325(a)(5) because it does not treat the 910 Claim in full compliance with § 1325(a)(5)(B). . . . Rule 9009(a) does not prohibit a chapter 13 plan, crafted from Official Form 113, from containing a nonstandard provision affording a 910 claimant lien retention rights in accordance with § 1325(a)(5)(B)(i)(I).").

{415} ***In re Kinne*, No. 19-49692, 2020 WL 5505912, at *1–*3 (Bankr. E.D. Mich. Sept. 11, 2020) (Randon)** (Without upsetting local model plan provision that counts length of plan from confirmation, nonstandard provision is approved that changes counting of applicable commitment period to begin with first payment under § 1326(a), consistent with statute and majority of courts. "[A]bove-median income debtors, required to make 60 monthly payments under their plan . . . have made 14 monthly pre-confirmation payments to the Trustee . . . . Debtors ask the Court to start the clock on their five-year commitment period on the date of their first payment, as opposed to the date their plan is confirmed–as this district's model plan requires. . . . If allowed, Debtors would be obligated to make only 46 post-confirmation plan payments . . . instead of 60 post-confirmation payments for a total of 74 monthly payments. The Trustee objects . . . . [T]he Court adopts the majority position that the Bankruptcy Code requires the applicable commitment period begin on the date the first payment is due . . . . Debtors' applicable commitment period is five years. . . . The first payment was due 30 days after the petition date. 11 U.S.C. § 1326(a)(1) . . . . [T]he model plan in this district states the applicable commitment period begins on the date the plan is confirmed. . . . The Court cannot vacate the administrative order or the language in the model plan. It will remain unchanged unless a debtor seeks to change the start date of the commitment period. Because Debtors have sought such change, the Court will abide by the plain language of the statute and start the commitment period 30 days after the petition date when the first plan payment was due under section 1326(a)(1).").

{416} ***In re Pulliam*, No. 19-03887-5-DMW, 2020 WL 1860113, at *3–*4 (Bankr. E.D.N.C. Apr. 13, 2020) (Warren)** (Because $30,000 homestead exemption removes debtor's interest in property from the estate, but not the property itself under *Schwab v. Reilly*, 560 U.S. 770, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (June 17, 2010), nonstandard provision of plan that would relieve debtor of obligation under local rules to give notice of any sale of property during the Chapter 13 case is not proposed in good faith and precludes confirmation. "When the Debtor claimed an exemption in the Property . . . , he did not exempt the Property in its entirety, and he did not remove the Property from the bankruptcy estate. He exempted his *interest* in the Property. Local Rule . . . governing the sale of 'non-exempt' property remains applicable to any future sale of the Property, despite the Debtor's attempt to circumvent the Rule by including the Nonstandard Provision in Section 8.1 of the Plan. . . . [T]he Plan has not been proposed in good faith, because it seeks impermissibly to deem property fully exempt from the Debtor's bankruptcy estate through the use of the Nonstandard Provision.").

{417} ***In re Revels*, 616 B.R. 675, 680-82 (Bankr. E.D.N.C. Mar. 20, 2020) (Humrickhouse)** (Nonstandard provision of plan that absolves Chapter 13 debtor of any requirement to file a Rule 9019 motion to approve settlement of pending employment action is consistent with §§ 1303 and 363(b) and Bankruptcy Rule 9019 because Chapter 13 debtor owns and controls the litigation and its settlement, exclusive of the trustee, and Rule 9019 applies only to trustees. In contrast, nonstandard provision that would absolve debtor of any obligation to report settlement of employment action is inconsistent with disclosure requirements of Code and Rules and would impede ability of trustee and others to monitor income and assets of the debtor. Nonstandard provision that would require the trustee to inform the parties to the employment action that the trustee has no role in settlement is "unacceptable, demeaning, retributory." "A chapter 13 debtor assumes 'exclusive of the trustee, the rights and powers of a trustee under section[ ] 363(b) . . . . Under section 363(b), the debtor ' . . . may use, sell, or lease . . . property of the estate.' . . . Thus, implicit within the chapter 13 debtor's exclusive authority to use property of the estate is the power of the debtor to maintain a cause of action that is part of the bankruptcy estate. . . . Rule 9019 authorizes a 'trustee' to seek a court order approving a compromise or settlement. . . . Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . [T]he settlement of the cause of action is controlled by the chapter 13 debtor. . . . Although the court can see reasons why a debtor would want court approval of a settlement, on its face, Rule 9019 does not require a chapter 13 debtor to file a motion to approve compromise or settlement. . . . Even though a chapter 13 debtor is not required to file a motion to approve settlement or compromise under Rule 9019, the debtor still has a duty to disclose assets, including the settlement of claims against third parties. . . . An objective check on settlements must exist to ensure that chapter 13 trustees have full disclosure of estate assets. . . . [T]he act of settling a claim . . . equates to a 'substantial change' in the financial circumstances of the debtor that would warrant disclosure to the trustee, even if the amount of the settlement is not substantially different than the amount scheduled.").

{418} ***In re Mank*, No. 19-04199-5-SWH, 2020 WL 1228671, at *2–*4 (Bankr. E.D.N.C. Mar. 3, 2020) (Humrickhouse)** (Nonstandard provision that all property vests in debtor at confirmation and that debtor can dispose of property after confirmation without complying with motion practice requirements in § 363(b) is not appropriate for § 1322(b)(11) purposes. The first part—vesting in the debtor—is redundant of other provisions in the local plan form. The provision about § 363(b) seeks to resolve a legal uncertainty that is not based on actual circumstances in this case. Nonstandard provision that would prohibit the Chapter 13 trustee from seeking approval of a compromise or settlement under Bankruptcy Rule 9019 unless the trustee is the plaintiff is also rejected as "not appropriate" for purposes of § 1322(b)(11). "While nonstandard provisions may be included in a plan under section 1322(b)(11), those provisions must be 'appropriate' and 'not inconsistent' with the Bankruptcy Code. . . . [E]ven if a nonstandard provision is an accurate reflection

of the law, or at least 'not inconsistent' with the Bankruptcy Code, that provision could still be inappropriate. . . . A nonstandard provision is not appropriate if it requires the court to clarify the law on an issue that does not specifically affect the debtor. . . . [I]ncluding unnecessary nonstandard provisions only increases the cost of administration and impedes efficient administration of the plan. . . . [A]llowing debtors' attorneys to create 'standard nonstandard' provisions in chapter 13 plans would enable debtors' attorneys to create a new form plan without complying with the procedure for altering the Local Form. . . . Restating the law in a nonstandard provision is unnecessary . . . .").

{419} ***In re Willis*, No. 19-41567, 2020 WL 697198 (Bankr. N.D. Ohio Feb. 11, 2020) (not for publication) (Kendig)** (Claim objection and motion to value collateral are both denied because Chapter 13 plan is the proper vehicle to accomplish reduction of interest rate on a secured claim and valuation of collateral, not separate motions. Debtors' attorney failed to properly serve two versions of the proposed plan and instead of correcting service consistent with Bankruptcy Rule 7004 counsel filed two motions to accomplish the same ends. Court was not happy with that approach.).

§ 72.6 [RESERVED]

C. PROVIDING FOR PRIORITY CLAIMS

§ 73.1 Plan Must Provide Full Payment

{420} ***Hauk v. Valdivia (In re Valdivia)*, 617 B.R. 278 (Bankr. E.D. Mich. July 16, 2020) (Tucker)** (Chapter 13 plan is not confirmable because debtor does not propose to pay $300,000 domestic support obligation in full as required by § 1322(a)(2).).

§ 73.2 What Claims Are Priority Claims?

{421} ***In re Steenes*, 942 F.3d 834, 836–39 (7th Cir. Nov. 12, 2019) (Easterbrook, Rovner, Hamilton)** (On rehearing, traffic fines incurred by Chapter 13 debtors during confirmed cases are administrative expenses that must be paid in full and promptly. "After bankruptcy judges confirmed their Chapter 13 payment plans, Steenes and Dudley used their cars in ways that led to fines for running red lights, illegal parking, and similar offenses. . . . Allowing debtors in bankruptcy to stiff involuntary creditors, such as cities trying to collect for on-street parking, has nothing to recommend it. . . . [D]ebtors who need cars must pay their involuntary creditors—including cities as well as, say, pedestrians run down by reckless driving—along with the suppliers of gasoline and insurance. . . . [A] debtor making payments under a Chapter 13 plan is not entitled to park for free on city streets, when others must pay in advance or pay fines for parking in forbidden places or at forbidden times. . . . [V]ehicular fines incurred during the course of a Chapter 13 bankruptcy are administrative expenses that must be paid promptly and in full.").

§ 73.3 Priority Claims Added or Changed by BAPCPA

{422} ***In re Quinlan*, No. 19-34000-tmb13, 2020 WL 3120996 (Bankr. D. Or. June 11, 2020) (Brown)** (Money judgment from state domestic relations court compensated former spouse for debtor's failure to make mortgage payments required by property division portion of dissolution decree; money judgment was not domestic support obligation but was a general unsecured claim.).

{423} ***In re Albracht*, No. 19-03672-5-DMW, 2020 WL 1547198 (Bankr. E.D.N.C. Mar. 31, 2020) (Warren)** (Citing *United States v. Chesteen (In re Chesteen)*, No. 19-30195, 2020 WL 859688 (5th Cir. Feb. 20, 2020) (Owen, Barksdale, Duncan), shared responsibility payment is not an excise tax on a transaction for purposes of priority in § 507(a)(8)(E).).

{424} ***In re LaSpina*, 611 B.R. 219 (Bankr. E.D. Pa. Jan. 3, 2020) (Chan)** (After review of state court special master report and considering significant income disparity, one-third of state court award was a priority, nondischargeable support obligation and two-thirds of the award was equitable division of property that could be discharged in a Chapter 13 case.).

{425} ***In re Jones*, 610 B.R. 663, 666–68 (Bankr. D. Mont. Nov. 13, 2019) (Hursh)** (Shared responsibility payment required by 26 U.S.C. § 5000A is an excise tax but it is not entitled to priority under § 507(a)(8)(E) because it is not based on a "transaction" but instead on a failure to engage in a transaction. "[*National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (June 28, 2012),] did not (specifically) address whether the SRP was an excise tax. In fact, the Supreme Court did not even go so far as to label the SRP a true tax. . . . [T]he SRP is an excise tax under 11 U.S.C. § 507(a)(8)(E). . . . [Section] 507(a)(8)(E)(i) and (ii) allow priority status for an excise tax imposed '*on a transaction* . . .' . . . The SRP arises out of a taxpayer's choice to *not* do something (the choice to not maintain minimum health care coverage). . . . Other courts have concluded that the SRP is not an excise tax entitled to priority treatment under § 507(a)(8)(E) because the 'transaction' element is not met merely by failing to do something.").

§ 73.4 Deferred Payments Are Permitted
§ 73.5 Interest Not Required, with Exceptions
§ 73.6 Treatment of Priority Claims Changed by BAPCPA
§ 73.7 Secured Priority Claims?
§ 73.8 Special Provisions for Attorneys' Fees
§ 73.9 Attorney Fees after BAPCPA

§ 73.10 Filing Fees
§ 73.11 Filing Fees after BAPCPA

{426} ***In re Johnson*, 607 B.R. 250, 252–53 (Bankr. W.D. Pa. Oct. 28, 2019) (Taddonio)** (Filing fees unpaid in prior dismissed Chapter 13 case are a general unsecured claim in subsequent case and are not entitled to priority or payment in advance of other unsecured creditors. "The Trustee now requests authority to use funds currently in her possession from the 2017 Case to satisfy the filing fee that accrued in the 2014 Case. . . . [T]he Court finds that the *Motion* is premised on a fundamental legal flaw—that the Court enjoys some sort of priority regarding these unpaid fees that would allow a distribution to the Court before distributions to other creditors. The Trustee has not articulated any legal authority in support of such priority treatment, and the Court is unaware of any that would apply under these circumstances. . . . [A]ny unpaid filing fee assessed against a prior estate is nothing more than a prepetition general unsecured claim in a subsequent bankruptcy filing. . . . As the holder of a general unsecured claim, the Court, *if a proof of claim was filed on its behalf*, would be entitled to a pro rata distribution in pari passu with other similarly-situated creditors. Nothing more, nothing less. . . . The Court recognizes that the Trustee's request was well-intentioned if not legally sustainable. Although it would be tempting for the Court to direct the payment of its filing fees in this manner for hundreds of delinquent cases, it finds that it cannot sacrifice core bankruptcy principles simply to recover lost revenue. The central tenets of the Code mandate that creditor distributions occur in order of priority and that similarly-situated creditors are treated equally. . . . If creditors are expected to abide by these precepts, the Court must do likewise when acting as the holder of a comparable claim. Put simply, the Court cannot contravene the Code simply to move itself to the front of the unsecured-creditors line.").

D. PROVIDING FOR SECURED CLAIMS
1. GENERAL RULES BEFORE AND AFTER BAPCPA
§ 74.1 General Rules before BAPCPA

{427} ***In re Limon*, 616 B.R. 380, 381 (Bankr. E.D. Wis. June 16, 2020) (Halfenger)** (No provision of Chapter 13 requires the plan to provide for the claim of a secured creditor; bankruptcy court overrules objection of car lender to plan that is silent with respect to car lender's claim. "Capital One Auto Finance . . . objected to confirmation of the chapter 13 plan because the plan does not provide for its allowed secured claim. This oft-filed objection is baseless. . . . [N]o provision of the Bankruptcy Code requires that a chapter 13 plan provide for all allowed secured claims.").

§ 74.2 General Rules Changed by BAPCPA
§ 74.3 Acceptance of Plan before BAPCPA
§ 74.4 Acceptance of Plan after BAPCPA

{428} ***In re Myles*, No. 14-21802-dob, 2020 WL 3424590, at *2 (Bankr. E.D. Mich. June 22, 2020) (Opperman)** (In a Chapter 13 case in which the debtor is not eligible for discharge because of § 1328(f), at the completion of payments lien of secured creditor is satisfied and released when confirmed plan proposed to pay lienholder's claim in full with a reduced interest rate, lienholder objected to plan but then consented to confirmation and debtor completed payments under the confirmed plan. Lienholder is bound to accept modified contract terms in confirmed plan in full satisfaction of its debt and release of its lien. "Exeter affirmatively accepted the terms of Debtor's Plan when its counsel signed off on the Order Confirming Plan thereby agreeing not to pursue its objection. Because neither the terms of the Chapter 13 Plan or the terms of the Order Confirming plan provide for Exeter's lien retention after plan completion, Exeter's claim was fully paid, and its lien extinguished upon completion of Debtor's Plan.").

{429} ***In re Cottingham*, No. 19-40825-JJR13, 2020 WL 3410170, at *3–*6 (Bankr. N.D. Ala. May 4, 2020) (Robinson)** (Distinguishing *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), when title pawnbroker's rights matured before the Chapter 13 petition and ownership of car vested in pawnbroker under state law, pawnbroker is nonetheless bound by confirmed plan that treats its interest as a secured claim when pawnbroker failed to object to confirmation, pawnbroker failed to object to or amend claim filed on its behalf by the debtor under Bankruptcy Rule 3004 and pawnbroker cashed checks from trustee. "[I]t is not possible to read *Northington* without concluding that if the pawnbroker in that case had not asserted its state-law rights in its preconfirmation stay-relief motion, the bankruptcy court's confirmation order would not have been disturbed. . . . In the instant case, and in contrast to the preconfirmation motion filed in *Northington*, TitleMax indeed 'slept on its rights.' It took no action to object to confirmation or to object to the claims filed on its behalf prior to confirmation, and after confirmation it accepted payments . . . all before it ever asserted its right to ownership under the Alabama Pawnshop Act. . . . In *Northington*, the vehicle 'dropped out' of the estate postpetition but before confirmation . . . . [I]f that winning argument is not asserted before confirmation, the res judicata effect of the confirmation order under Bankr. Code § 1327(a) will allow the pawnbroker's interest in the pawned vehicle to be treated as a secured claim despite a contrary result under state law. The key to avoiding res judicata is the pawnbroker's *preconfirmation* assertion of its state-law rights in the pawned vehicle. . . . TitleMax waived this argument by its complete failure to act until after all parties in interest, the Trustee, and the court were led to believe that Title Max had accepted its treatment under the confirmed plan.").

{430} ***In re Footes*, No. 1:19-bk-11844-SDR, 2019 WL 4411817 (Bankr. E.D. Tenn. Sept. 13, 2019) (Rucker)** (When Chapter 13 plan proposes to treat creditor as partially secured but creditor files proof of claim stating its claim is unsecured, creditor has waived secured status and is unsecured for plan confirmation purposes.).

§ 74.5 Surrender or Sale of Collateral before BAPCPA
§ 74.6 Surrender, Sale, Vesting in Lienholder and Payment with Property after BAPCPA

{431} ***In re Connell*, No. 19-43726, 2020 WL 4382812 (Bankr. W.D. Wash. July 28, 2020) (Heston)** (Chapter 13 debtor is permitted to surrender interest in property over the objection of Chapter 13 trustee when debtor holds only bare legal title and beneficial ownership interests are held by others. Debtor apparently used her credit to borrow money and buy property, but all payments, maintenance and insurance and possession belonged to others. Surrender would not affect the interests of creditors because debtor's interest in the property was limited to bare legal title.).

{432} ***In re Achinivu*, 612 B.R. 860, 866 (Bankr. D.N.J. Feb. 27, 2020) (Kaplan)** (Surrender of property to city as tax sale purchaser through confirmed plan did not vest title or ownership in city and will not support injunctive relief to stop city from enforcing property code ordinances against Chapter 13 debtor who remains owner of the property. "[T]here has been no consent to vesting title to the Trenton Properties in the City. . . . Debtor's surrender of his interest in the Trenton Properties under his plan serves merely as an offer to cede his property rights to the lienholders, and without acceptance by the City . . . does nothing to alter title and legal obligations relative to the properties. . . . [H]ad the Debtor included 'vesting' language in his plan, the result would have been no different, and the Court would not have entered injunctive relief. . . . '[V]esting' cannot be undertaken in a unilateral fashion by a grantor, but rather requires actual acceptance by the purported grantee in order to constitute a legal transfer of property.").

{433} ***In re Whittaker*, No. 12-20385, 2019 WL 9242990 (Bankr. D. Me. Aug. 23, 2019) (Cary)** (Mortgagee's motion to compel Chapter 13 debtor to execute quitclaim deed to carry out confirmed plan that surrendered property and required debtor to execute deed is granted. A quitclaim deed was apparently executed before this motion but mortgagee does not have possession of the original deed for recording purposes and asked the bankruptcy court to compel execution of a replacement deed.).

§ 74.7 Classification of Secured Claims

{434} ***In re Brown*, No. 19-20011, 2019 WL 6119774 (Bankr. E.D. Ky. Nov. 15, 2019) (Wise)** (Chapter 13 plan cannot treat $33,324 claim secured by car worth $18,000 as fully secured but must instead bifurcate the claim and treat each part separately. Plan can pay interest on the secured portion of the claim and separately classify the unsecured portion for more favorable treatment because the claim is cosigned. But the plan cannot treat the claim as if it were fully secured when it is not.).

§ 74.8 Direct Payment of Secured Claims by Debtor before BAPCPA
§ 74.9 Direct Payment of Secured Debt after BAPCPA

{435} ***McDonald v. Chambers (In re Chambers)*, No. 19-10421, 2020 WL 913815, at *3 (E.D. Mich. Feb. 26, 2020) (Goldsmith)** (District court approves Chapter 13 plan provision that debtor will pay car lender directly with a contract interest rate of 15%. Trustee cannot force debtor to use lower interest rate available under *Till v. SCS Credit Corp.*, 541 U.S. 465, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (May 17, 2004). Without consideration of effect of 15% rate on unsecured creditors, outcome is supported by reasoning that direct payment avoids trustee fees. "To employ the cramdown option, payments must be made through the Trustee, instead of directly to DFCU. . . . The consequence of funneling the payments through the Trustee is that the payments would be subject to the Trustee's statutory fee of 5.5%. . . . Therefore, although the prime-plus rate may be 50% less than the 15% contract rate, in the end, the rate will not result in a 50% savings that can be disbursed to unsecured creditors, as the Trustee appears to suggest. . . . *Till* does not *require* courts to set the risk adjustment rate at 1% to 3%. . . . The bankruptcy court has the discretion to select the appropriate risk adjustment rate, so long as it does not result in an 'eye-popping' interest rate. . . . The 15% contract rate, when compared to the prime-plus rate with the Trustee's statutory fee, is not an eye-popping interest rate in this case.").

{436} ***In re Hickey*, 618 B.R. 314, 318-25 (Bankr. N.D. Ala. June 25, 2020) (Mitchell)** (Considering many factors, Chapter 13 debtor failed to prove any special circumstance to justify direct payment of a car loan. Avoiding trustee's fees is not alone sufficient justification for direct payment. After *Dukes v. Suncoast Credit Union (In re Dukes)*, 909 F.3d 1306 (11th Cir. Dec. 6, 2018) (Pryor, Carnes, Conway), direct payment risks loss of discharge in addition to threatening the integrity and viability of Chapter 13 system. "[A]bsent some special circumstance, payments to secured creditors must be made through the Chapter 13 trustee. . . . [P]ursuant to §§ 1322(a)(1) and 1326(c), the Bankruptcy Code contemplates that debts shall be paid through the Chapter 13 trustee unless an exception from the general rule exists. . . . If the Court allows the Debtor to pick and choose which debts may be paid direct, then the simplicity and effect of Chapter 13 and the resulting debt consolidation for the Debtor may unravel. . . . The Court does not find . . . the remaining reasons, i.e., quicker payment of the debt and avoiding the Chapter 13 Trustee's compensation, to be sufficient in warranting an exception to the general rule that the Trustee is the best disbursing agent and should thus administer the debt. . . . [B]y paying the automobile debt direct the Debtor could be risking his ability to have the automobile debt discharged in this case. . . . [The] theory that other creditors will not

be harmed hinges on the assumption that nothing goes wrong, i.e., that the Debtor will not experience any problems that could affect his ability to pay. . . . If the Debtor develops cash flow issues, then he is placed in the position of deciding what gets paid – the Chapter 13 payment or the automobile debt. . . . [S]hould something go wrong, creditors other than SE Toyota could be harmed no matter which obligation the Debtor chooses to pay. . . . [I]t is common for a Chapter 13 case to take an unexpected turn. Potential harm to the Debtor if he cannot receive a discharge of the automobile debt, and potential harm to other creditors if the Debtor cannot pay as proposed, could be minimized, if not eliminated, if the automobile debt is paid through the Chapter 13 Trustee. . . . In essence, the Debtor's amended plan gives preferential treatment to the automobile lender; the automobile debt is to be paid pursuant to the contract terms while the other obligations will not be paid based on any contractual terms agreed to by the Debtor. . . . Debtor would like to use the services of the Trustee with regard to most of his debt, but not with regard to his automobile payment which, according to his attorney, would allow him to save money. All debtors could save money if they did not pay fees to a Chapter 13 trustee. However, without those fees, Chapter 13 trustees could not operate, and without the trustees, there is no Chapter 13. . . . [T]he Debtor's desire to save money by not paying the Chapter 13 Trustee's fees is not a legitimate reason. . . . Debtor's other creditors will not receive any benefit . . . . In fact, a direct payment would unjustifiably favor the automobile debt, which is not even the largest claim (although it is the only secured claim).").

{437} ***In re Powell*, No. 18-50818 SLJ, 2020 WL 751982, at *3–*12 (Bankr. N.D. Cal. Jan. 23, 2020) (Johnson)** (General Order in Northern District of California that requires Chapter 13 debtors making long-term payments directly to a creditor to file quarterly declarations of the status of postconfirmation payments cannot be eliminated by plan modification under § 1329; the General Order is a valid procedural provision that enables monitoring of Chapter 13 plans that contain direct payments and is consistent with mandates in § 1322(b)(5) and § 1326(c) that direct payments are payments under the plan and that debtors must maintain payments even if made directly. Confirmed plan provided payment of prepetition arrears would be disbursed by the Chapter 13 trustee but postpetition payments of $2,262 per month would be made directly by debtor to Wells Fargo. Plan further provided that debtor would file quarterly declarations with respect to the status of the postconfirmation payments to Wells Fargo. After confirmation the debtor moved to modify the plan to eliminate the reporting requirement. "[T]he four types of modifications provided in § 1329(a) are exclusive of other changes . . . . The court's authority to enact general orders is granted by Bankruptcy Rule 9029(b), and the use of general orders is specifically recognized in the 1995 Advisory Committee Notes . . . . [T]he option to pay a creditor directly is not the same thing as the right to pay sporadically. . . . Both the Supreme Court and the Ninth Circuit reject Debtor's view that § 1322(b)(5) does not require regular full payments. . . . [T]he postpetition maintenance payments are made according to the terms of the underlying obligation, and these are not modified by § 1322(b)(5). . . . In [*Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)], the BAP . . . joined 'the overwhelming majority of courts' holding that a chapter 13 debtor's direct payments to creditors are payments under the plan that must be completed in order to receive a discharge under § 1328(a). . . . [C]omputation of disposable income to pay creditors under § 1325(b) takes into account any payments that have been promised to secured creditors. A debtor who provided for direct payments to secured creditors in a plan and then fails to make them may be treating unsecured creditors unfairly because their claims are reduced by such phantom expenses. . . . The reporting requirement in GO 34 allows the court to efficiently implement and enforce the provisions of § 1322(b)(5) and § 1328(a) by filling a necessary procedural gap. . . . [A] chapter 13 trustee has a duty to monitor performance under the plan. 11 U.S.C. § 1307(c) . . . . Without a mechanism to monitor a debtor's direct payments during the term of the plan, a debtor's postpetition mortgage arrears may be too large to remedy at the conclusion of the plan, thereby jeopardizing his discharge. GO 34 also serves an important purpose of treating all debtors equally, regardless of which method (direct or through trustee) they use to pay their postpetition maintenance payments. In conduit plans, the trustee is immediately aware that a payment to a secured creditor has not been made timely. . . . [N]o distinction should exist between debtors who propose to pay creditors directly and those who pay through the chapter 13 trustee. . . . Debtor could have opted to make his postpetition mortgage payments through Trustee and secured the peace of mind that so long as he remains current on all his payments under the plan, his mortgage payments would have been properly disbursed and he would be eligible for a discharge, all without the necessity to file quarterly proof of payments.").

§ 74.10 Partially Secured Claims
§ 74.11 The Power to Modify

{438} ***In re Thompson*, No. 19 BK 06176, 2020 WL 728605 (Bankr. N.D. Ill. Jan. 15, 2020) (Schmetterer)** (Applying *In re LaMont*, 740 F.3d 397 (7th Cir. Jan. 7, 2014) (Manion, Kanne, Sykes), Chapter 13 debtor can modify claim of prepetition tax purchaser through plan under § 1322(b)(2) when petition is filed before expiration of redemption period under state law; however, no provision of the Bankruptcy Code tolls redemption period and that period expired during the Chapter 13 case. Plan cannot be confirmed that fails to pay tax purchaser's claim but dismissal is delayed to allow debtor another chance to propose confirmable plan.).

§ 74.12 Lien Retention before BAPCPA
§ 74.13 Lien Retention after BAPCPA, Including in No-Discharge Cases

{439} ***Santander Consumer USA Inc. v. Donnadio (In re Donnadio)*, 608 B.R. 507, 509–14 (B.A.P. 6th Cir. Nov. 25, 2019) (Buchanan, Harrison, Wise)** (Plan cannot be confirmed that fails to explicitly state that liens are retained consistent with § 1325(a)(5)(B)(i)(I) notwithstanding that plan provides for full payment with interest of 910-day car claim consistent with the hanging sentence at the end of § 1325(a)(5). Bankruptcy Rule 9009 does not prohibit a nonstandard addition to Official Form 113 that adds lien retention language consistent with § 1325(a)(5)(B)(i)(I). "Section 3.3 of Official Form 113 does not discuss lien retention for claims

treated thereunder. Therefore, Debtors' proposed plan did not have language addressing Creditor's retention of its lien in Section 3.3. . . . [T]he court overruled the objection, holding that, while Creditor held a secured claim that was not subject to bifurcation under § 506 owing to the 'hanging paragraph' in § 1325(a), the court was 'not convinced that this means § 1325(a)(5) applies to a 910-day claim exactly as it would to any other allowed, secured claim.' . . . Debtors' plan must fully satisfy § 1325(a)(5)(B) to achieve confirmation over Creditor's objection. . . . But it does not 'provide that' Creditor retains its lien on the Vehicle as § 1325(a)(5)(B)(i)(I) requires. Accordingly, the plan does not satisfy § 1325(a)(5) because it does not treat the 910 Claim in full compliance with § 1325(a)(5)(B). . . . Rule 9009(a) does not prohibit a chapter 13 plan, crafted from Official Form 113, from containing a nonstandard provision affording a 910 claimant lien retention rights in accordance with § 1325(a)(5)(B)(i)(I).").

{440} ***In re Myles*, No. 14-21802-dob, 2020 WL 3424590, at *2 (Bankr. E.D. Mich. June 22, 2020) (Opperman)** (In a Chapter 13 case in which the debtor is not eligible for discharge because of § 1328(f), at completion of payments lien of secured creditor is satisfied and released when confirmed plan proposed to pay lienholder's claim in full with a reduced interest rate, lienholder objected to plan but then consented to confirmation and debtor completed payments under the confirmed plan. Lienholder is bound to accept modified contract terms in confirmed plan in full satisfaction of its debt and release of its lien. "Exeter affirmatively accepted the terms of Debtor's Plan when its counsel signed off on the Order Confirming Plan thereby agreeing not to pursue its objection. Because neither the terms of the Chapter 13 Plan or the terms of the Order Confirming plan provide for Exeter's lien retention after plan completion, Exeter's claim was fully paid, and its lien extinguished upon completion of Debtor's Plan.").

{441} ***In re Smith*, 616 B.R. 773, 778-81 (Bankr. E.D. Ark. June 4, 2020) (Jones)** (At postconfirmation destruction of car, lienholder is entitled to insurance proceeds limited to balance of its secured claim fixed by confirmation order; car lender retains its lien on balance of insurance proceeds until completion of payments and discharge consistent with § 1325(a)(5)(B)(i). Confirmed plan proposed to pay car lender in full but with interest less than contract rate. Casualty insurer tendered proceeds greater than paid-down balance of secured claim but less than contractual lien amount. "GM Financial is correct that pursuant to Section 1325(a)(5)(B)(i), it retains its lien in the proceeds until the Debtors receive a discharge or its claim under nonbankruptcy law is paid in full. . . . [W]hile GM Financial has a lien on all the insurance proceeds under Section 1325(a)(5)(B)(i), GM Financial remains bound by the terms of the confirmed plan. Under the terms of the confirmed plan, the balance of its allowed secured claim is $282.94, which is GM Financial's present interest in the insurance proceeds. . . . GM Financial is entitled to payment of $282.94 from the insurance proceeds. It will retain its lien in the balance of the insurance proceeds until one of the events of Section 1325(a)(5)(B)(i) occurs.").

§ 74.14 Equal Monthly Installments after BAPCPA

{442} ***In re Cerchia*, No. 19-12655, 2020 WL 1064835, at *5 (Bankr. D.N.J. Mar. 3, 2020) (Kaplan)** (Plan that would require purchaser of tax sale certificate to apply payments from debtor first to principal portion of claim would require recalculation of principal balance each month, which would inevitably lead to non-uniform payments in violation of the equal-installments requirement in § 1325(a)(5)(B)(iii)(I). "[S]hould the Debtors be permitted to apply payments to the interest-bearing principal first, rather than the interest as mandated under state law, the principal would continuously change every month. While the Debtors do not directly suggest making balloon payments to satisfy their debt, their methodology would by necessity require unequal monthly payments.").

§ 74.15 "Adequate Protection" after Confirmation after BAPCPA

{443} ***In re Sharp*, 608 B.R. 546 (Bankr. D. Kan. Oct. 23, 2019) (Somers)** (Proposed monthly payment to car lender of $278 is adequate to protect lender from depreciation during five-year plan for purposes of § 1325(a)(5)(B)(iii)(II). Court rejects lender's contention that 12-year-old car with more than 200,000 miles will depreciate more quickly because of age and because debtor is in Chapter 13.).

2. SPECIAL RULES AFTER BAPCPA: 910-DAY PMSI CAR CLAIMS AND BEYOND

§ 75.1 In General: Modification Without § 506

§ 75.2 Motor Vehicles and Any Other Thing of Value

§ 75.3 Only PMSIs Need Apply

{444} ***In re Madrid-Baskin*, No. 20-10069 TBM, 2020 WL 5047406, at *1 (Bankr. D. Colo. Aug. 25, 2020) (McNamara)** (Adopting "dual status" rule, portion of car financing that purchased GAP insurance is not purchase money and can be crammed down in Chapter 13 case, but rest of financing retains its purchase-money status and is protected from § 506 by hanging paragraph. "Even if a portion of the loan proceeds were used to pay for the GAP Insurance, such use does not transform the entire loan into a non-purchase money obligation under Colorado law. Instead, Colorado law permits dual status: the GAP Insurance part of the loan may be considered a non-purchase money obligation, while the balance of the loan retains its character as a purchase money obligation. Thus, the Debtor cannot invoke cram-down and the Chapter 13 Plan cannot be confirmed.").

§ 75.4 Acquired for Personal Use of Debtor

{445} ***In re Butler*, 609 B.R. 895 (Bankr. M.D. Ala. Dec. 5, 2019) (Sawyer)** (Car acquired for personal use of the debtor's former girlfriend was not acquired for personal use of the debtor for purposes of hanging sentence at the end of § 1325(a)(5); debt secured by car can be bifurcated under § 506(a).).

§ 75.5 Surrender in Full Satisfaction?
§ 75.6 Procedure and Miscellaneous Hanging-Sentence Issues

{446} ***Santander Consumer USA Inc. v. Donnadio (In re Donnadio)*, 608 B.R. 507, 509–14 (B.A.P. 6th Cir. Nov. 25, 2019) (Buchanan, Harrison, Wise)** (Plan cannot be confirmed that fails to explicitly state that liens are retained consistent with § 1325(a)(5)(B)(i)(I) notwithstanding that plan provides for full payment with interest of 910-day car claim consistent with the hanging sentence at the end of § 1325(a)(5). Bankruptcy Rule 9009 does not prohibit a nonstandard addition to Official Form 113 that adds lien retention language consistent with § 1325(a)(5)(B)(i)(I). "Section 3.3 of Official Form 113 does not discuss lien retention for claims treated thereunder. Therefore, Debtors' proposed plan did not have language addressing Creditor's retention of its lien in Section 3.3. . . . [T]he court overruled the objection, holding that, while Creditor held a secured claim that was not subject to bifurcation under § 506 owing to the 'hanging paragraph' in § 1325(a), the court was 'not convinced that this means § 1325(a)(5) applies to a 910-day claim exactly as it would to any other allowed, secured claim.' . . . Debtors' plan must fully satisfy § 1325(a)(5)(B) to achieve confirmation over Creditor's objection. . . . But it does not 'provide that' Creditor retains its lien on the Vehicle as § 1325(a)(5)(B)(i)(I) requires. Accordingly, the plan does not satisfy § 1325(a)(5) because it does not treat the 910 Claim in full compliance with § 1325(a)(5)(B). . . . Rule 9009(a) does not prohibit a chapter 13 plan, crafted from Official Form 113, from containing a nonstandard provision affording a 910 claimant lien retention rights in accordance with § 1325(a)(5)(B)(i)(I).").

{447} ***In re Baker*, No. 5:19-bk-71061, 2019 WL 9828490, at *3 (Bankr. W.D. Ark. Dec. 3, 2019) (Barry)** (910-day car claimholder is not entitled to add postpetition attorney's fees to its claim because no provision of the Bankruptcy Code allows attorney's fees for a 910-day car claim. "[A]n undersecured 910-car claimant is not entitled to include post-petition attorney fees in its secured claim. . . . [T]here is no code provision that expressly allows an undersecured 910-car creditor to recover post-petition attorney fees. Therefore, the Court finds that allowing an undersecured 910-car creditor to recover post-petition attorney fees from the estate would impermissibly expand the express exceptions that Congress has provided for in the code.").

3. VALUATION: BEFORE AND AFTER BAPCPA

§ 76.1 Valuation, Claim Splitting and *Dewsnup*
§ 76.2 Is Claim Secured, and By What?

{448} ***In re Eliseo*, No. 19-41248, 2020 WL 1930137 (Bankr. N.D. Ohio Apr. 20, 2020) (not for publication) (Kendig)** (Although condominium association's lien would ordinarily be limited to amount in its filed certificate of lien, subsequent foreclosure judgment is a lien for the larger amount contained in the judgment.).

{449} ***Thompson v. Roberts (In re Thompson)*, 612 B.R. 396 (Bankr. E.D. Wis. Feb. 7, 2020) (Halfenger)** (Former spouse's lien arose from recording of state court divorce judgment—not from language of the judgment itself—and is junior in priority to mortgage and homestead exemption; former spouse's judgment is partially secured by value in home.).

{450} ***Maldonado Perez v. Banco Santander De P.R. (In re Maldonado Perez)*, No. 18-00102, 2019 WL 5799327 (Bankr. D.P.R. Nov. 6, 2019) (Tester)** (Chapter 13 debtor's complaint to determine value and extent of lien on property fails for lack of jurisdiction when property is owned by a corporation and dissolution of the corporation under Puerto Rican law does not vest ownership in the debtor as owner of the corporation.).

{451} ***In re Boykins*, No. 17-08957-JMC-13, 2019 WL 4686563 (Bankr. S.D. Ind. Sept. 17, 2019) (Carr)** (Under Indiana law, homeowners' association lien is a secured claim perfected by recording but only to the extent of amount in notice of lien at the time of recording. Subsequent assessments and fees are not included in the notice and are not secured by the homeowners' association lien.).

§ 76.3 As of What Date Is Value Determined?

{452} ***In re Gomes*, No. 8:18-bk-07978-RCT, 2020 WL 556279 (Bankr. M.D. Fla. Feb. 3, 2020) (Colton)** (Petition date is valuation date for lien-stripping purposes in Chapter 13 case.).

{453} ***In re Graves*, No. 19-01345-NPO, 2019 WL 6170789 (Bankr. S.D. Miss. Nov. 19, 2019) (Olack)** (Petition date determines value under § 506(a) for purposes of lien stripping a junior mortgage in a Chapter 13 case.).

{454} ***In re Schroeder*, 607 B.R. 329 (Bankr. E.D. Wis. Sept. 30, 2019) (Halfenger)** (Amended claim filed more than a year after confirmation and long after claims bar date that more than doubles the amount of claim that is secured based on improvements to

property after the petition is disallowed. Valuation for bifurcation purposes should be focused on confirmation date, not a year after confirmation.).

§ 76.4 Valuation in Chapter 13 Cases before *Rash*
§ 76.5 *Rash* and Valuation
§ 76.6 Valuation after *Rash*
§ 76.7 Valuation after BAPCPA

{455} ***In re Peek*, 614 B.R. 274 (Bankr. E.D. Mich. May 7, 2020) (Tucker)** (Creditor's motion for reconsideration and/or relief from valuation order was denied as untimely and for failure to state any excusable neglect. Failure to respond to valuation motion was not explained by counsel.).

{456} ***Carden v. Ditech Fin., LLC (In re Carden)*, No. 19-40012-JJR, 2020 WL 768585 (Bankr. N.D. Ala. Feb. 14, 2020) (Robinson)** (Disputed facts precluded summary judgment with respect to value of mobile home in Chapter 13 case in which debtor discharged personal liability in prior Chapter 7 case, Ditech has unavoidable interest in mobile home under superseded Alabama lien perfection law and Ditech has only claim that will be payable through the Chapter 13 plan.).

{457} ***In re Graves*, No. 19-01345-NPO, 2019 WL 6170789 (Bankr. S.D. Miss. Nov. 19, 2019) (Olack)** (After dissecting competing appraisals and eliminating "entrepreneurial profit" from the calculation, property subject to two mortgages is valued at the midpoint of comparable sales for purposes of lien stripping in a Chapter 13 case. Lien stripping is reserved pending further discussion whether two loans secured by one deed of trust are one claim or two for lien-stripping purposes.).

4. PRESENT VALUE: INTEREST, BEFORE AND AFTER BAPCPA

§ 77.1 "Value, As of the Effective Date of the Plan" Means Interest
§ 77.2 Interest Rate Anarchy: Present Value before *Till*
§ 77.3 Present Value after *Till*

{458} ***McDonald v. Chambers (In re Chambers)*, No. 19-10421, 2020 WL 913815, at *3 (E.D. Mich. Feb. 26, 2020) (Goldsmith)** (District court approves Chapter 13 plan provision that debtor will pay car lender directly with a contract interest rate of 15%. Trustee cannot force debtor to use lower interest rate available under *Till v. SCS Credit Corp*., 541 U.S. 465, 124 S. Ct. 1951, 158 L. Ed. 2d d787 (May 17, 2004). Without consideration of effect of 15% rate on unsecured creditors, outcome is supported by reasoning that direct payment avoids trustee fees. "To employ the cramdown option, payments must be made through the Trustee, instead of directly to DFCU. . . . The consequence of funneling the payments through the Trustee is that the payments would be subject to the Trustee's statutory fee of 5.5%. . . . Therefore, although the prime-plus rate may be 50% less than the 15% contract rate, in the end, the rate will not result in a 50% savings that can be disbursed to unsecured creditors, as the Trustee appears to suggest. . . . *Till* does not *require* courts to set the risk adjustment rate at 1% to 3%. . . . The bankruptcy court has the discretion to select the appropriate risk adjustment rate, so long as it does not result in an 'eye-popping' interest rate. . . . The 15% contract rate, when compared to the prime-plus rate with the Trustee's statutory fee, is not an eye-popping interest rate in this case.").

5. MISCELLANEOUS SECURED CLAIMS ISSUES

§ 78.1 Full Payment of Allowed Secured Claim

{459} ***In re Brown*, No. 19-20011, 2019 WL 6119774 (Bankr. E.D. Ky. Nov. 15, 2019) (Wise)** (Chapter 13 plan cannot treat $33,324 claim secured by car worth $18,000 as fully secured but must instead bifurcate the claim and treat each part separately. Plan can pay interest on the secured portion of the claim and separately classify the unsecured portion for more favorable treatment because the claim is cosigned. But the plan cannot treat the claim as if it were fully secured when it is not.).

§ 78.2 Calculating Payments to Secured Claim Holders
§ 78.3 Accounting for Adequate Protection
§ 78.4 Curing Default, Waiving Default, Maintaining Payments and Combinations
§ 78.5 Oversecured Claim Holders
§ 78.6 Oversecured Claims after BAPCPA

{460} ***In re Cerchia*, No. 19-12655, 2020 WL 1064835, at *3–*4 (Bankr. D.N.J. Mar. 3, 2020) (Kaplan)** (Citing § 511 and New Jersey law, plan cannot require purchaser of tax sale certificate to apply payments from Chapter 13 debtor first to principal portion of claim; state law fixes interest rate and applies GAAP principles to pay interest and penalties before principal. "SLS, as a tax certificate holder, is treated as a secured creditor, holding a lien against the Debtors' Property. . . . [T]o the extent SLS is over-secured, upon application of 11 U.S.C. § 506(a), it is entitled to collect interest on its claim at 'the rate determined under applicable nonbankruptcy law.' 11 U.S.C. § 511(a). . . . Pursuant to § 511, state law must be applied when determining interest due to an over-secured claimant. . . . [M]unicipalities are required to follow the Generally Accepted Accounting Principles . . . . Debtor may not deviate by applying payments to principal first and interest thereafter.").

{461} ***In re Smith*, No. 19-30059-dwh13, 2020 WL 129439 (Bankr. D. Or. Jan. 8, 2020) (Hercher)** (Oversecured lender is allowed attorney's fees with 7.5% interest payable through confirmed plan. Lender is not entitled to immediate payment of attorney's fees but instead is entitled by confirmed plan to be paid at sale or refinance.).

§ 78.7 Pawn Transactions
§ 78.8 Pawn Transactions after BAPCPA

{462} ***Daniel v. Titlemax of Ala., Inc.*, No. 2:19-CV-00859-RAH, 2020 WL 5079160 (M.D. Ala. Aug. 26, 2020) (Huffaker)** (Contest with respect to electronic signing of pawn renewals and some missing pawn tickets does not upset bankruptcy court conclusion that Chapter 13 debtor forfeited all right and title to car under Alabama Pawn Title Law before the petition by failing to redeem or renew title pawn. Title pawn creditor is entitled to stay relief and plan cannot treat title pawn as a secured claim.), *aff'g* 609 B.R. 443 (Bankr. M.D. Ala. Oct. 24, 2019) (Creswell) (Applying *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), when redemption period in title pawn contract expired before the petition or the debtor failed to redeem within the redemption period as extended by § 108, no interest in the car came into the Chapter 13 estate or the estate's interest fell out of the estate and Title Max is entitled to stay relief or to a declaration that no stay applies. Title Max sufficiently complied with Alabama law by notation of its lien on the car title and use of electronic signatures for the debtor on the pawn tickets.).

{463} ***In re Deakle*, No. 19-11820, 2020 WL 3446362, at *3–*7 (Bankr. S.D. Ala. June 24, 2020) (Callaway)** (Distinguishing *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), TitleMax waived its right to immediate possession and full title to Chapter 13 debtor's car by failing to take any action to challenge treatment as a secured claimholder before confirmation of plan; TitleMax is bound by confirmed plan and not entitled to stay relief. "TitleMax's conduct in this case established a clear waiver of its statutory right to assert absolute ownership . . . and demonstrated its acceptance of being treated instead as a secured creditor. TitleMax is a bankruptcy-savvy creditor which often accepts treatment as a secured creditor for its title pawns. . . . This is not a situation like *Northington* where a debtor's statutory redemption period expired preconfirmation and TitleMax took action to preserve its state law rights in a pawned vehicle. . . . [T]his court has held (at TitleMax's urging) that Alabama law permits waiver of the automatic forfeiture provision of the Alabama Pawnshop Act, which is exactly what the court finds happened here. . . . This court is simply requiring TitleMax to follow the same rules as every other creditor: if you disagree with your treatment in a proposed chapter 13 plan, you must timely object (*Espinosa*) or otherwise speak up (*Northington*) because you will be bound by the confirmed plan pursuant to 11 U.S.C. § 1327(a).").

{464} ***In re Womack*, 616 B.R. 420, 424-29 (Bankr. M.D. Ala. June 9, 2020) (Sawyer)** (Distinguishing *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), when Chapter 13 case was filed before default under title pawn contract, debtor's ownership and title to car—not just the limited right of redemption—came into the Chapter 13 estate and the security interest of the title pawn creditor was subject to modification under § 1322(b)(2). "A pawn transaction is a nonrecourse loan. . . . [U]nder Alabama law, prior to a debtor's default, a debtor retains legal title to personal property. . . . The redemption period is the 30-day grace period following the stated maturity date. Once the redemption period expires, a debtor is in default . . . and the pawned vehicle is forfeited to the pawnbroker. . . . . Therefore, . . . a pawnbroker does not gain legal title to a pawned vehicle until the redemption period has expired. . . . Debtor retained possession of the vehicle and her ownership rights as of the petition date and those rights entered into the bankruptcy estate and TitleMax was merely a lienholder. . . . TitleMax subsequently perfected its security interest by obtaining a certificate of title containing the name and address of TitleMax as the lienholder. . . . Debtor held legal title to the vehicle and TitleMax held a security interest at the commencement of the case. A security interest formed under the UCC creates a secured claim which may be modified under 11 U.S.C. § 1322(b)(2). . . . TitleMax concedes the vehicle entered the bankruptcy estate, but argues it subsequently 'dropped out' and ceased to be estate property once the extended redemption period expired. . . . In *In re Northington*, the maturity date contained within the pawn contract at issue had lapsed and the redemption period for the pawned vehicle was still running when the bankruptcy petition was filed. . . . Therefore, the debtor's right to redeem became property of the estate. . . . Unlike the pawn contract in *In re Northington*, the pawn contract at issue here had not matured as of the petition date and Debtor held legal title to the pawned vehicle, not mere redemption rights. . . . Section 1322(b)(2) specifically provides for the modification of ownership rights in pawned vehicles. . . . Debtor exercised the option available to her in order to keep her vehicle and provided for the full repayment of the debt owed to TitleMax through her Chapter 13 plan. Accordingly, the Court finds Debtor is entitled to modify TitleMax's secured claim under 11 U.S.C. § 1322(b)(2).").

{465} ***In re Cottingham*, No. 19-40825-JJR13, 2020 WL 3410170, at *3–*6 (Bankr. N.D. Ala. May 4, 2020) (Robinson)** (Distinguishing *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), when title pawnbroker's rights matured before the Chapter 13 petition and ownership of car vested in pawnbroker under state law, pawnbroker is nonetheless bound by confirmed plan that treats its interest as a secured claim when pawnbroker failed to object to confirmation, pawnbroker failed to object to or amend claim filed on its behalf by the debtor under Bankruptcy Rule 3004 and pawnbroker cashed checks from trustee. "[I]t is not possible to read *Northington* without concluding that if the pawnbroker in that case had not asserted its state-law rights in its preconfirmation stay-relief motion, the bankruptcy court's confirmation order would not have been disturbed. . . . In the instant case, and in contrast to the preconfirmation motion filed in *Northington*, TitleMax indeed 'slept on its rights.' It took no action to object to confirmation or to object to the claims filed on its behalf prior to confirmation, and after confirmation

it accepted payments . . . all before it ever asserted its right to ownership under the Alabama Pawnshop Act. . . . In *Northington*, the vehicle 'dropped out' of the estate postpetition but before confirmation . . . . [I]f that winning argument is not asserted before confirmation, the res judicata effect of the confirmation order under Bankr. Code § 1327(a) will allow the pawnbroker's interest in the pawned vehicle to be treated as a secured claim despite a contrary result under state law. The key to avoiding res judicata is the pawnbroker's *preconfirmation* assertion of its state-law rights in the pawned vehicle. . . . TitleMax waived this argument by its complete failure to act until after all parties in interest, the Trustee, and the court were led to believe that Title Max had accepted its treatment under the confirmed plan.").

{466} ***In re Eldridge*, No. 19-12443, 2020 WL 2843027 (Bankr. S.D. Ala. Feb. 20, 2020) (Callaway)** (In litigation with TitleMax, motion to reconsider denial of confirmation is denied when pawn transaction was protected by Alabama law and pawn broker did nothing to forfeit that protection.), *denying reconsideration of* 615 B.R. 657 (Bankr. S.D. Ala. Feb. 13, 2020) (Callaway) (Applying *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), TitleMax did not forfeit rights in Jeep by allowing debtor to renew "title pawn" serially between 2015 and 2019. Original loan of $1,800 became more than $9,000 and title to Jeep passed to TitleMax when debtor did not timely redeem.).

6. HOME MORTGAGES: BEFORE AND AFTER BAPCPA

§ 79.1 Most Home Mortgages Cannot Be Modified: § 1322(b)(2) and *Nobelman*

{467} ***Jones v. U.S. Bank, N.A.*, No. 3:18-cv-01680, 2019 WL 5296993 (M.D. Pa. Oct. 18, 2019) (Mariani)** (Debtor's argument that mortgage can be bifurcated and plan can pay secured portion in full was rejected by the Supreme Court in *Nobelman v. American Savings Bank*, 508 U.S. 324, 113 S. Ct. 2106, 124 L. Ed. 2d 228 (June 1, 1993), as a modification prohibited by § 1322(b)(2). District court rejects Chapter 13 debtor's argument that payment of the secured portion of the motion is "satisfaction" of the secured claim, not "modification" for purposes of the protection in § 1322(b)(2).).

§ 79.2 Principal Residence Redefined by BAPCPA
§ 79.3 "Best Practices" and the Protection from Modification in § 1322(b)(2)

a. HOME MORTGAGES THAT ARE NOT PROTECTED FROM MODIFICATION

§ 80.1 In General: Claims That Are Not Secured Only by Security Interest in Real Property That Is the Debtor's Principal Residence
§ 80.2 Statutory Liens and Judgment Liens, Including Foreclosure Judgments
§ 80.3 Non-Purchase Money, "Short-Term" and Real Estate-Secured Loans for Purposes Other Than Acquiring Residence
§ 80.4 Timing Issues: Lien Waiver, Surrender or Avoidance
§ 80.5 Timing Issues: Prepetition Changes in Collateral or Use
§ 80.6 Rental Property, Farmland and Other Income-Producing Property

{468} ***Mead v. HSBC Bank USA, Nat'l Ass'n (In re Mead)*, No. CO-19-001, 2019 WL 5257957 (B.A.P. 10th Cir. Oct. 16, 2019) (not for publication) (Cornish, Hall, Loyd)** (In context of determining whether property was necessary for an effective reorganization for stay relief purposes under § 362(d)(2), property that contained a principal residence and several rental units was protected from modification by § 1322(b)(2).).

§ 80.7 Mobile Homes
§ 80.8 Claims Secured by Bank Deposits, "Shares" or Escrow Account Balances
§ 80.9 Claims Secured by Insurance Policies, Proceeds or Premiums
§ 80.10 Claims Secured by an Assignment of Rents
§ 80.11 Claims Secured by Fixtures, Furniture, Equipment, Appliances, Machinery, Easements, Appurtenances, Mineral Rights, Water Rights and the Debtor's First Born
§ 80.12 Claims Secured by Miscellaneous Other Real or Personal Property
§ 80.13 Modification of Unsecured Home Mortgage: Before and After BAPCPA

{469} ***Hamilton v. Pennsylvania Hous. Fin. Agency*, No. 18-5417, 2020 WL 1062240 (E.D. Pa. Mar. 5, 2020) (Savage)** (Declining to apply "equitable subordination," modification agreement with first mortgagee increased the first mortgage debt to the point where it exceeded value of property, rendering second mortgage wholly unsecured and subject to being stripped off in Chapter 13 case.).

{470} ***In re Hoggatt*, No. 19-11903, 2020 WL 1042028 (Bankr. E.D. La. Mar. 3, 2020) (Grabill)** (Objection to treatment of mortgage claim as unsecured is overruled when mortgagee failed to prove the extent of its mortgage lien and only evidence of value indicated that mortgagee's lien was junior to other liens that exceeded value of property, rendering objecting creditor's lien wholly unsecured under § 506(a).).

{471} ***In re Gomes*, No. 8:18-bk-07978-RCT, 2020 WL 556279 (Bankr. M.D. Fla. Feb. 3, 2020) (Colton)** (Debtor's attempt to strip off liens on partially built home in excess of $81,000 fails when court resolves competing appraisals and determines that property is worth $300,000.).

{472} ***Bartlett v. Mainstreet Credit Union (In re Bartlett)*, No. 19-07003, 2020 WL 290649 (Bankr. D. Kan. Jan. 14, 2020) (Somers)** (After resolving conflicting appraisals in favor of debtors' appraiser, second mortgage is unsupported by value and can be stripped off.).

{473} ***In re Milauckas*, No. 19-12388-B-13, 2019 WL 6332921 (Bankr. E.D. Cal. Nov. 22, 2019) (Lastreto)** (For lien-stripping purposes, after considering competing appraisals, first mortgage exceeds value of residence and junior mortgage is wholly unsecured and can be stripped off.).

{474} ***In re Graves*, No. 19-01345-NPO, 2019 WL 6170789 (Bankr. S.D. Miss. Nov. 19, 2019) (Olack)** (After dissecting competing appraisals and eliminating "entrepreneurial profit" from the calculation, property subject to two mortgages is valued at the midpoint of comparable sales for purposes of lien stripping in a Chapter 13 case. Lien stripping is reserved pending further discussion whether two loans secured by one deed of trust are one claim or two for lien-stripping purposes.).

{475} ***In re Poole*, No. 4:16-bk-12638-SDR, 2019 WL 4805830 (Bankr. E.D. Tenn. Sept. 30, 2019) (Rucker)** (On remand, bank holds three notes secured by one deed of trust and each note is a separate claim; the absence of value to secure the second and third notes empowers the Chapter 13 debtor to treat the second and third claims as wholly unsecured to be stripped off through the plan.).

§ 80.14 Providing for and Accounting for an Unprotected Mortgage: Modifying, Curing Default, Maintaining Payments and Combinations

b. CURING DEFAULT AND MAINTAINING PAYMENTS ON HOME MORTGAGES

§ 81.1 Overview: General Rules for Saving Debtor's Home

1) WHAT DEFAULTS CAN BE CURED?

§ 82.1 Prepetition Defaults—When Is Property "Sold" at Foreclosure?

{476} ***U.S. Bank Nat'l Ass'n v. Vertullo (In re Vertullo)*, 610 B.R. 399 (B.A.P. 1st Cir. Jan. 10, 2020) (Bailey, Hoffman, Finkle)** (Declining to overrule *TD Bank, N.A. v. LaPointe (In re LaPointe)*, 505 B.R. 589, 595 (B.A.P. 1st Cir. Feb. 24, 2014) (Feeney, Tester, Finkle), and reaffirming gavel rule, prepetition foreclosure sale ended all legal or equitable interest of the debtor for purposes of mortgage rehabilitation under § 1322(c) and plan cannot be confirmed that purports to cure default and maintain payments.), *rev'g and remanding* 593 B.R. 92, 98 (Bankr. D.N.H. Oct. 1, 2018) (Harwood) (Embracing *In re Beeman*, 235 B.R. 519 (Bankr. D.N.H. June 21, 1999) (Deasy), and rejecting *TD Bank, N.A. v. LaPointe (In re LaPointe)*, 505 B.R. 589 (B.A.P. 1st Cir. Feb. 24, 2014) (Feeney, Tester, Finkle), Chapter 13 debtor can cure default under § 1322(c)(1) when foreclosure auction occurred prepetition but purchaser failed to complete foreclosure process by recording trustee's deed. Gavel rule is rejected in favor of "unambiguous" requirement that sale process be completed under state law by recording of trustee's deed. "The plain language of § 1322(c)(1) focuses on the sale of the debtor's residence, and not upon the debtor's rights in the residence. The operative moment when a debtor can no longer cure a default in a mortgage secured by the debtor's residence under § 1322(c)(1) is the sale of the debtor's residence itself—the trigger point being when 'such residence is sold'—not just when the foreclosure sale process is complete only as to the mortgagor.").

{477} ***In re Smith*, No. 20-10507-JDW, 2020 WL 4690458, at *3–*9 (Bankr. N.D. Miss. Aug. 12, 2020) (Woodard)** (Applying Mississippi law, debtor lost the power to redeem property from purchaser at foreclosure sale under § 1322(c) when default occurred before the petition, foreclosure auction was held and a trustee's memorandum of sale was executed minutes before the petition. "Because Mississippi is an intermediate theory state, legal title shifts to the mortgagee or trustee once a borrower defaults on the loan. Here, the debtor admitted that he defaulted on the mortgage prior to the foreclosure sale and the filing of the bankruptcy petition. . . . Under Mississippi law, a valid foreclosure sale cuts off the borrower's rights of redemption and any other rights in and to the property. . . . The memorandum of sale satisfies any writing requirement in this case. . . . [The debtor] lost the equitable right of redemption once the public auction sale concluded when the gavel fell and the memorandum of sale was signed. All of this occurred approximately twenty minutes before the bankruptcy petition was filed. Thus, the debtor had no legal or equitable interest in the property at the time the bankruptcy case commenced.").

{478} ***In re King*, 614 B.R. 851, 863 (Bankr. E.D. Ark. Apr. 30, 2020) (Taylor)** (Considering Arkansas law, property was not "sold" at foreclosure sale for purposes of § 1322(c) when foreclosure sale was conducted and trustee's deed was delivered to successful purchaser but deed was never recorded. "Inexplicably, REI did not record the deed prior to this court's imposition of the automatic stay. This failure to record has consequences under section 1322(c). Stated simply, the foreclosed property is not 'sold' at any interim point of the process, including the auction or delivery of the resulting mortgagee's deed, *until the conclusion of the entire process*.").

{479} ***In re Lagares Santana*, No. 18-07127 (ESL), 2020 WL 412185 (Bankr. D.P.R. Jan. 24, 2020) (Lamoutte)** (Applying Puerto Rico law, because judicial transfer deed was executed after foreclosure sale and before the Chapter 13 petition, no interest came into the Chapter 13 estate and foreclosing creditor did not violate the stay by obtaining confirmation of the sale after the petition.).

{480} ***In re Thompson*, No. 19 BK 06176, 2020 WL 728605 (Bankr. N.D. Ill. Jan. 15, 2020) (Schmetterer)** (Applying *In re LaMont*, 740 F.3d 397 (7th Cir. Jan. 7, 2014) (Manion, Kanne, Sykes), Chapter 13 debtor can modify claim of prepetition tax purchaser through plan under § 1322(b)(2) when petition is filed before expiration of redemption period under state law; however, no provision of the Bankruptcy Code tolls redemption period and that period expired during the Chapter 13 case. Plan cannot be confirmed that fails to pay tax purchaser's claim but dismissal is delayed to allow debtor another chance to propose confirmable plan.).

{481} ***In re Cass*, No. 18-3703, 2019 WL 7667445, at *2–*3 (Bankr. S.D. Ala. Feb. 4, 2019) (Callaway)** (Because debtors are still in possession of home, right of redemption from tax sale has not expired under Alabama law and debtors can pay redemption amount through Chapter 13 plan; however, tax sale purchasers are entitled to stay relief to pursue possession and debtors' opportunity to redeem from the tax sale may be short lived. "The debtor lives in the house and has been in possession of the property in question at all relevant times, continuing to date. In fact, the tax purchasers are seeking relief from stay from this court in order to eject her from possession of the property. . . . [T]he debtor's right of redemption has not expired and [ ] she can redeem until the tax purchasers have continuously adversely possessed the property for three years. The court notes the debtor's right to redeem may not do her much practical good if she cannot do so very quickly because the court is granting relief from stay on the ejectment claim and she may lose possession of her home shortly.").

§ 82.2 Postpetition Defaults
§ 82.3 Nonmonetary Defaults
§ 82.4 Reasonable Time to Cure Defaults

{482} ***In re Short*, No. 19-42701 CN, 2020 WL 1213207, at *1 (Bankr. N.D. Cal. Mar. 10, 2020) (Novack)** (Cure of arrears through step-plan in 60 months satisfies reasonable time requirement in § 1322(b)(5) notwithstanding that debtors will also pay more than $5,000 per month for private high school tuition. "The Bank's secured debt is a thirty year note . . . and its collateral is worth more than the note balance. . . . [C]onduit Plan . . . requires that they stay post-petition current on their secured debt. The Plan also contains feasible step increases which the Shorts will fund by redirecting the tuition payments as their children graduate. Simply, the Bank is in no worse position if this Plan is confirmed. In contrast, the Shorts' lives may be thrown into significant disarray if their four high school age children are forced to change schools.").

2) INTEREST AND OTHER CHARGES TO CURE DEFAULTS
§ 83.1 In General: Rake and Contracts before October 22, 1994
§ 83.2 Section 1322(e): Contracts after October 22, 1994
§ 83.3 Rate of Interest to Cure Default: Contracts before October 22, 1994
§ 83.4 Rate of Interest to Cure Default: Contracts after October 22, 1994
§ 83.5 Undersecured Mortgage and Interest to Cure Default
§ 83.6 Late Charges, Attorneys' Fees, Costs and Other Charges

{483} ***In re Vega*, No. 19-20099-PRW, 2020 WL 211408 (Bankr. W.D.N.Y. Jan. 10, 2020) (Warren)** ($10,000 good-faith refundable deposit required by local law to insure that foreclosing mortgagee inspects and maintains property during foreclosure is disallowed as a component of mortgagee's arrearage claim. Mortgagee can file a 3002.1 notice if it is actually required to expend funds for inspections or maintenance during the case. Mortgagee is denied attorney's fees based on borderline frivolousness of claim that the $10,000 deposit is a recoverable advance.).

{484} ***In re Sheed*, 607 B.R. 470 (Bankr. E.D. Pa. Oct. 3, 2019) (Coleman)** (Chapter 13 debtor's objection to foreclosure fees and costs included in mortgagee's proof of claim is overruled based on *res judicata* effect of state court foreclosure judgment and ambiguous terms of mortgage modification agreement. Court seems to hold that attorney's fees and costs are not part of "mortgage arrearages" that were folded into the note as part of mortgage modification agreement.).

3) CALCULATING PAYMENTS TO CURE DEFAULT
§ 84.1 In General
§ 84.2 Calculating Plan Payments to Cure Default on Mortgages before October 22, 1994
§ 84.3 Calculating Plan Payments to Cure Default on Mortgages after October 22, 1994

c. OTHER HOME MORTGAGE ISSUES
§ 85.1 Demand, Matured and Balloon Loans; "Short-Term" Mortgages before October 22, 1994
§ 85.2 Demand, Matured and Balloon Loans; "Short-Term" Mortgages after October 22, 1994

{485} ***Koola v. Ditech Fin. LLC*, 611 B.R. 251, 256–57 (D.S.C. Dec. 26, 2019) (Gergel), *aff'd*, 816 F. App'x 887 (4th Cir. Aug. 24, 2020) (not for publication) (Gregory, Wynn, Quattlebaum)** (Section 1322(c)(2) does not apply to mortgage that was accelerated

before the Chapter 13 petition but with respect to which "original" payment schedule called for a last payment in 2034. "[T]he loan originally had a last payment date of March 1, 2034 . . . , when [debtor] went into default . . . the loan was accelerated under the terms of the Note such that the new contractual due date for loan was November 1, 2009. . . . On March 20, 2018, [debtor] filed a Chapter 13 . . . . [T]he plain language of the statute . . . looks to the '*original* payment schedule' when determining whether a claim secured by an interest in a principal residence can be modified. . . . [Debtor's] default therefore did not change the last payment date on the *original* payment schedule. . . . [T]he Court affirms the bankruptcy court's holding that § 1322(c)(2) does not apply and the mortgage cannot be modified under § 1322(b)(2). . . . ").

{486} ***In re Holmes*, No. 20-00484-NPO, 2020 WL 4730888 (Bankr. S.D. Miss. July 13, 2020) (Olack)** (Embracing *In re Winstead*, No. 19-50307-KMS, 2019 WL 3491653 (Bankr. S.D. Miss. July 31, 2019) (Samson), debtor who inherited real property subject to reverse mortgage can treat the mortgage as a *Johnson v. Home State Bank*, 501 U.S. 78, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (June 10, 1991), claim and pay mortgage in full when obligor—debtor's mother—died before the Chapter 13 petition, there's equity in the property, debtor now uses the property as his principal residence and plan proposes to pay balance of reverse mortgage in full over 60 months.).

{487} ***In re Collier-Abbott*, 616 B.R. 117, 123 (Bankr. E.D. Cal. May 27, 2020) (Sargis)** (Balloon note that will become due during Chapter 13 case is not protected from modification by § 1322(b)(2) because of exception in § 1322(c)(2); after valuation hearing, debt secured by balloon junior mortgage is reduced to value of collateral net of senior mortgage and balance can be paid through plan consistent with § 1325(a)(5). "The plain language states that the limitations under 11 U.S.C. § 1322(c)(2) does not 'protect' the allowed claim coming due before the end of the plan from plan treatment as provided under 11 U.S.C. § 1325(a)(5). . . . Congress has created an exception from the limitations of 11 U.S.C. § 1322(b)(2) for Creditor's balloon payment note that has come due under the original terms of the note . . . which is before the last payment will be made on a plan in this case . . . . Creditor's claim may be valued as provided in 11 U.S.C. § 506(a) to determine[ ] the allowed secured claim, and then the allowed secured claim amount be paid as provided in 11 U.S.C. § 1325(a)(5).").

{488} ***In re Hordatt*, No. 19-22662-BKC-PGH, 2020 WL 5626119 (Bankr. S.D. Fla. Apr. 17, 2020) (Hyman)** (Because debtor is defined as "borrower" in reverse mortgage document, claim of mortgagee was not accelerated at death of debtor's spouse and reverse mortgagee's claim is limited to delinquent taxes and insurance that may be cured through the Chapter 13 plan.).

{489} ***In re Schroeder*, 607 B.R. 329, 334 (Bankr. E.D. Wis. Sept. 30, 2019) (Halfenger)** (Note payable on demand that includes a payment schedule that extends for decades is nonetheless immediately due in full under state law and falls within the power to modify in § 1322(c)(2); debt can be bifurcated and modified consistent with § 1325(a)(5). "Voss is right that the 'original payment schedule' on his claim ends after 'the date on which the final payment under the plan is due'. § 1322(c)(2). But he ignores that, under Wisconsin law, all of the payments on his claim were due when the loan was made, even if they were scheduled for later dates. . . . [Section] 1322(c)(2) applies. . . . [Section] 1322(b)(2) does not prohibit Schroeder from modifying Voss's rights under her chapter 13 plan.").

{490} ***In re Lewis*, 607 B.R. 539 (Bankr. S.D. Miss. May 31, 2019) (Olack)** (Section 1322(c) does not apply because unrecorded mortgage modification extended maturity date beyond date of Chapter 13 plan. Failure to record mortgage modification may have consequences for mortgagee under Mississippi law but § 1322(c) does not incorporate those consequences into the concept of "short term" lending that the section was intended to address. Mortgage modification was effective between the debtor and mortgagee. Mortgage remains protected from modification by § 1322(b)(2) and cannot be crammed down under § 1322(c).).

§ 85.3 Prepetition Foreclosure Judgment: Curing Default, Payment in Full or Modification under § 1322(c)(2)?

{491} ***Bernadin v. U.S. Bank Nat'l Ass'n (In re Bernadin)*, 609 B.R. 133, 151-53 (Bankr. E.D. Pa. Oct. 24, 2019), *amended and superseded by*, 609 B.R. 26 (Bankr. E.D. Pa. Oct. 28, 2019), *vacated in part on reconsideration*, 610 B.R. 787 (Bankr. E.D. Pa. Dec. 20, 2019) (Frank)** (Mortgage reduced to foreclosure judgment before the petition does not wedge into § 1322(c)(2) and remains protected from modification by § 1322(b)(2); plan cannot bifurcate mortgage. "[T]he question is whether the Foreclosure Judgment effectively transforms a long-term debt into a short-term debt because the judgment rendered the debt immediately payable, bringing it within the scope of § 1322(c)(2). . . . The language 'original payment schedule' is plain and clear. It can only refer to the last payment due *under the original note* rather than to the date the accelerated debt is due. Otherwise, the words 'original payment schedule' would be rendered meaningless. . . . [H]ad Congress intended § 1322(c)(2) to include accelerated loans and foreclosure judgments so that the last payment of those types of debts became 'due before the date on which the final payment under the plan is due,' the phrase 'original payment schedule'—referring to the unaltered remittance timetable—would have been omitted. . . . Debtor cannot wedge U.S. Bank's long-term mortgage debt into § 1322(c)(2) simply because the debt was accelerated and reduced to judgment pre-petition.").

§ 85.4 Accelerating Payment of a Home Mortgage

{492} ***Craig v. Bendall*, No. 4:19cv00048, 2020 WL 1234947, at *3 (W.D. Va. Mar. 13, 2020) (Kiser)** (Bankruptcy court order granting relief from stay is stayed pending appeal when debtor is owner of property, debtor is not personally liable on mortgage but debtor has good argument that *Johnson v. Home State Bank*, 501 U.S. 78, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (June 10, 1991), claim of mortgagee can be managed through plan under § 1322. Debtor owns real property pursuant to quitclaim deed. Property is subject to mortgage and Chapter 13 plan proposes to modify note under § 1322(b)(2) to make monthly payments until property is sold or refinanced. Bankruptcy court granted stay relief, questioning whether a Chapter 13 debtor could modify note to which the debtor was not a party. "I believe Craig has made an adequate, preliminary showing that the *in rem* action against the property she owns could be a claim subject to the bankruptcy court's authority under 11 U.S.C. § 1322, and which is subject to the automatic stay, even if the bankruptcy court has no authority to adjust the note between [nondebtor] and the [mortgagee].").

{493} ***In re Holmes*, No. 20-00484-NPO, 2020 WL 4730888 (Bankr. S.D. Miss. July 13, 2020) (Olack)** (Embracing *In re Winstead*, No. 19-50307-KMS, 2019 WL 3491653 (Bankr. S.D. Miss. July 31, 2019) (Samson), debtor who inherited real property subject to reverse mortgage can treat the mortgage as a *Johnson v. Home State Bank*, 501 U.S. 78, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (June 10, 1991), claim and pay mortgage in full when obligor—debtor's mother—died before the Chapter 13 petition, there's equity in the property, debtor now uses the property as his principal residence and plan proposes to pay balance of reverse mortgage in full over 60 months.).

{494} ***In re Hordatt*, No. 19-22662-BKC-PGH, 2020 WL 5626119 (Bankr. S.D. Fla. Apr. 17, 2020) (Hyman)** (Because debtor is defined as "borrower" in reverse mortgage document, claim of mortgagee was not accelerated at death of debtor's spouse and reverse mortgagee's claim is limited to delinquent taxes and insurance that may be cured through the Chapter 13 plan.).

§ 85.6 Direct Payment of Mortgage or Payment by Trustee

{495} ***In re Powell*, No. 18-50818 SLJ, 2020 WL 751982, at *3–*12 (Bankr. N.D. Cal. Jan. 23, 2020) (Johnson)** (General Order in Northern District of California that requires Chapter 13 debtors making long-term payments directly to a creditor to file quarterly declarations of the status of postconfirmation payments cannot be eliminated by plan modification under § 1329; the General Order is a valid procedural provision that enables monitoring of Chapter 13 plans that contain direct payments and is consistent with mandates in § 1322(b)(5) and § 1326(c) that direct payments are payments under the plan and that debtors must maintain payments even if made directly. Confirmed plan provided payment of prepetition arrears would be disbursed by the Chapter 13 trustee but postpetition payments of $2,262 per month would be made directly by debtor to Wells Fargo. Plan further provided that debtor would file quarterly declarations with respect to the status of the postconfirmation payments to Wells Fargo. After confirmation the debtor moved to modify the plan to eliminate the reporting requirement. "[T]he four types of modifications provided in § 1329(a) are exclusive of other changes . . . . The court's authority to enact general orders is granted by Bankruptcy Rule 9029(b), and the use of general orders is specifically recognized in the 1995 Advisory Committee Notes . . . . [T]he option to pay a creditor directly is not the same thing as the right to pay sporadically. . . . Both the Supreme Court and the Ninth Circuit reject Debtor's view that § 1322(b)(5) does not require regular full payments. . . . [T]he postpetition maintenance payments are made according to the terms of the underlying obligation, and these are not modified by § 1322(b)(5). . . . In [*Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)], the BAP . . . joined 'the overwhelming majority of courts' holding that a chapter 13 debtor's direct payments to creditors are payments under the plan that must be completed in order to receive a discharge under § 1328(a). . . . [C]omputation of disposable income to pay creditors under § 1325(b) takes into account any payments that have been promised to secured creditors. A debtor who provided for direct payments to secured creditors in a plan and then fails to make them may be treating unsecured creditors unfairly because their claims are reduced by such phantom expenses. . . . The reporting requirement in GO 34 allows the court to efficiently implement and enforce the provisions of § 1322(b)(5) and § 1328(a) by filling a necessary procedural gap. . . . [A] chapter 13 trustee has a duty to monitor performance under the plan. 11 U.S.C. § 1307(c) . . . . Without a mechanism to monitor a debtor's direct payments during the term of the plan, a debtor's postpetition mortgage arrears may be too large to remedy at the conclusion of the plan, thereby jeopardizing his discharge. GO 34 also serves an important purpose of treating all debtors equally, regardless of which method (direct or through trustee) they use to pay their postpetition maintenance payments. In conduit plans, the trustee is immediately aware that a payment to a secured creditor has not been made timely. . . . [N]o distinction should exist between debtors who propose to pay creditors directly and those who pay through the chapter 13 trustee. . . . Debtor could have opted to make his postpetition mortgage payments through Trustee and secured the peace of mind that so long as he remains current on all his payments under the plan, his mortgage payments would have been properly disbursed and he would be eligible for a discharge, all without the necessity to file quarterly proof of payments.").

{496} ***In re Hidalgo*, No. 19-13904-RAM, 2019 WL 9270223, at *1 (Bankr. S.D. Fla. Dec. 18, 2019) (Mark)** (Secured creditor being paid directly by the debtor "outside" Chapter 13 plan is not entitled to "comfort order" that its debt will not be discharged because, after *Dukes v. Suncoast Credit Union (In re Dukes)*, 909 F.3d 1306 (11th Cir. Dec. 6, 2018) (Pryor, Carnes, Conway), a comfort order is unnecessary. "The Plan states that Bayview's secured claim will be paid directly outside of the Plan. The *Dukes* holding is clear. Secured claims paid directly outside of a chapter 13 plan are not 'provided for' in the plan and therefore any personal liability of a debtor that pays a secured claim directly will not be subject to a discharge entered under 11 U.S.C. § 1328. There is no need for a comfort order . . . .").

E. PROVIDING FOR UNSECURED CLAIMS

1. GENERAL RULES BEFORE AND AFTER BAPCPA

§ 86.1 In General

{497} ***In re Miller*, No. 19-41236, 2019 WL 6002189, at *1–*2 (Bankr. N.D. Ohio Nov. 12, 2019) (not for publication) (Kendig)** (Unsecured claim holder that states an interest rate on the face of its proof of claim is not entitled to postpetition interest in a Chapter 13 case; it is not necessary for the debtor or trustee to object to every claim that contains an interest rate in order to disallow postpetition interest. "The dilemma for the court, the chapter 13 trustee, and debtors arises because section nine of the official claim form contains a field for interest . . . . Frequently, unsecured creditors complete this section, raising the question of whether inclusion of the interest rate is a request for payment of interest on an unsecured claim or simply a recitation of the contractual terms of the debt at the time the case was filed? Without a clear answer, the chapter 13 trustee cautiously requires an objection to disallow interest on an unsecured claim. . . . Reading the Code to require a claim objection permits a creditor to file a claim for interest to which it is not entitled with the hope that it will benefit from an unwary debtor or trustee. It also burdens the trustee or debtor with filing objections to disallow payment of unauthorized interest. . . . When a creditor files a proof of claim setting forth an unsecured claim, it is not entitled to interest. Exceptions to the rule are inapplicable and do not support forcing a claim objection. From here forward, the court will not require debtors and/or trustees to file claim objections that simply seek to disallow the payment of interest[.]").

§ 86.2 Less Money after BAPCPA
§ 86.3 What Claims Are Unsecured Claims?
§ 86.4 What Claims Are Unsecured: The Hanging-Sentence Enigma after BAPCPA

2. CLASSIFICATION OF UNSECURED CLAIMS BEFORE AND AFTER BAPCPA

§ 87.1 Power to Classify Unsecured Claims: Tests for Unfair Discrimination

{498} ***In re Footes*, No. 1:19-bk-11844-SDR, 2019 WL 4411817 (Bankr. E.D. Tenn. Sept. 13, 2019) (Rucker)** (Plan unfairly discriminates for § 1322(b)(1) purposes when creditor is treated as partially secured but creditor filed wholly unsecured proof of claim. No discrimination is necessary given that creditor has waived secured status.).

§ 87.2 Classification after BAPCPA
§ 87.3 Co-signed Debts

{499} ***In re Brown*, No. 19-20011, 2019 WL 6119774, at *2–*3 (Bankr. E.D. Ky. Nov. 15, 2019) (Wise)** (Unsecured portion of a cosigned car claim can be separately classified for full payment and unfair discrimination test does not apply. Plan that treats undersecured car loan as fully secured cannot be confirmed because plan has to bifurcate the claim under § 506(a). Secured portion of the claim can be paid with interest through the plan and unsecured portion can be classified separately from other unsecured debts for more favorable treatment. "Section 1322(b)(1) creates an unambiguous exception to the prohibition against unfair discrimination in plan claim treatment of individual creditors who are liable with the debtor on a consumer debt . . . . Some courts believe that the unfair discrimination test . . . should be applied to co-signed loans. . . . This Court does not agree with that approach. It renders the addition of the 'however clause' meaningless and 'does not account for the special treatment Congress allowed in the case of co-signed debts.'").

§ 87.4 Priority Claims
§ 87.5 Priority Claims after BAPCPA
§ 87.6 Pension Loan Repayment: § 1322(f) after BAPCPA
§ 87.7 910-Day PMSI Car Claims after BAPCPA: A Reprise

a. NONDISCHARGEABLE CLAIMS

§ 88.1 In General
§ 88.2 Nondischargeable Claims after BAPCPA
§ 88.3 Postpetition Interest on Nondischargeable Claims after BAPCPA: § 1322(b)(10)
§ 88.4 Alimony, Maintenance and Support
§ 88.5 Domestic Support Obligations Assigned or Payable to Government: § 1322(a)(4) after BAPCPA
§ 88.6 Student Loans

{500} ***In re Bennett*, 615 B.R. 384, 395–400 (Bankr. N.D.N.Y. Feb. 4, 2020) (Davis)** (Embracing test from *Bentley v. Boyajian (In re Bentley)*, 266 B.R. 229 (B.A.P. 1st Cir. Sept. 5, 2001) (Kenner, Feeney, Boroff), plans that separately classify student loans for more favorable treatment can only be confirmed if all unsecured creditors share "fairly" in "mandatory" contributions of projected disposable income during the applicable commitment period; after ACP, debtors have discretion to favor student lenders, especially when fresh start is enhanced. "The majority of courts that have grappled with the question of when discrimination is unfair in chapter 13 have applied some form of multi-factor test. . . . A few courts that favor a multi-factor approach have attempted to fix the perceived flaws in the *Leser*/*Wolff* test by incorporating additional factors. . . . [S]everal other tests and hybrids have been developed and applied with

varied results. . . . It seems that uncertainty is the only certainty that has developed in the extensive body of case law on this topic. . . . The *Bentley* court rejected an iteration of the *Leser*/*Wolff* test and any test that focused on the debtor's interest in determining whether the discrimination was fair. . . . Because § 1322(b)(1) asks whether the plan provision is 'fair,' rather than whether it is 'prudent,' the *Bentley* court reasoned that courts must consider the competing interests of all affected parties as opposed to only the interest of the debtor. . . . ' . . . "[F]airness in Chapter 13 requires equality of distribution among nonpriority unsecured creditors . . . ." . . . [N]othing in the [Bankruptcy] Code mandates treating student loans more favorably than general unsecured claims. . . . [U]nsecured creditors would share *pro rata*from distributions funded with the debtor's *mandatory contributions*. . . . Chapter 13 does not contemplate that debtors "will necessarily emerge from Chapter 13 entirely free of student loan obligations."' . . . Courts that have followed *Bentley* have placed particular emphasis on the principle of equality of distribution and the statutory requirement set forth in § 1325(b)(1)(B) . . . . Because student loans are not accorded priority status under § 507(a), 'anything they receive over what they would take in a pro rata distribution without the discrimination, should come from assets not required to be contributed to the plan . . . .' . . . [T]o the extent that debtors have excess or discretionary income beyond their projected disposable income . . . *Bentley* permits them to utilize those funds during the applicable commitment period to make additional voluntary payments to student loan creditors. . . . [T]o the extent that debtors are able and wish to continue payments after the expiration of the applicable commitment period . . . , such discrimination would not offend the concept of fairness under § 1322(b)(1) and is therefore permissible . . . .").

§ 88.7 Restitution, Fines and Other Criminal Problems
§ 88.8 Driving, Boating or Flying while Intoxicated
§ 88.9 Long-Term Debts
§ 88.10 Claims That Are or Might Be Nondischargeable Only in a Chapter 7 (Chapter 12, or Individual Chapter 11) Case

b. OTHER CLASSIFICATIONS

§ 89.1 Direct Payments by Debtor
§ 89.2 Medical Providers

{501} ***In re Merry*, No. 18-32904-WRS, 2019 WL 7041862, at *1 (Bankr. M.D. Ala. Dec. 20, 2019) (Sawyer)** (Postpetition settlement of prepetition auto accident claim is approved with exception of payment of chiropractic bills from proceeds. Chiropractic bills are prepetition debts that would be paid in full under settlement while other unsecured creditors are paid nothing through the Chapter 13 plan. This classification results in unfair discrimination under § 1322(b)(1) and cannot be approved. "As a pre-petition, unsecured debt, the Healthstar Chiropractic debt should receive the same treatment under the plan as any of the Debtor's other unsecured debt it held as of the filing of the petition. In this case, no effort was made to show why the chiropractor should be favored over other unsecured creditors and the Court is aware of none.").

§ 89.3 Landlords and Lessors
§ 89.4 Suppliers or Other Business-Related Creditors
§ 89.5 To Satisfy an Objecting Unsecured Claim Holder
§ 89.6 Contingent and Unliquidated Claims
§ 89.7 Based on the Size of the Claim
§ 89.8 Postpetition Claims
§ 89.9 Miscellaneous Classes of Unsecured Claims
§ 89.10 A Proposal: Simpler Rules for Classification of Unsecured Claims

3. BEST-INTERESTS-OF-CREDITORS TEST: BEFORE AND AFTER BAPCPA

§ 90.1 In General: Plan Payments vs. Hypothetical Liquidation

{502} ***In re Cloninger*, 613 B.R. 461 (Bankr. E.D. Ark. Feb. 24, 2020) (Jones)** (Applying best-interests-of-creditors analysis from *Education Assistance Corp. v. Zellner*, 827 F.2d 1222 (8th Cir. Sept. 3, 1987) (Arnold, Gibson, Wright), plan proposal to distribute $13,826.34 to unsecured creditors satisfies liquidation analysis that shows $11,045 would be available in a hypothetical Chapter 7 case. "Effective date" for § 1325(a)(4) purposes is date of confirmation. Hypothetical liquidation analysis includes deductions for costs of sale, trustee fees and administrative expenses for attorneys and the like and special adjustments for specific assets such as a life estate and fractional ownership.).

{503} ***In re Carballo*, No. 19-11266-LMI, 2019 WL 6340220 (Bankr. S.D. Fla. Nov. 26, 2019) (Isicoff)** (For purpose of best-interests-of-creditors test, debtor held only bare legal title and no equitable interest in real property owned jointly with mother and grandparent. Debtor's name was on titles to accommodate his mother and grandparent but debtor exercised no responsibility for or control over the properties. In contrast, joint bank account with grandparent that debtor occasionally used to pay personal loan for a boat was property of Chapter 13 estate and had to be accounted for in an amended plan.).

§ 90.2 Exemption Issues
§ 90.3 Exclusions and Exemptions after BAPCPA
§ 90.4 Nondischargeable Claims, Guaranteed Claims and Tardy Claims
§ 90.5 Discount Rates and Interest If Liquidation Would Produce Dividend

§ 90.6 Discount Rates and Interest after BAPCPA
4. PROJECTED DISPOSABLE INCOME TEST: BEFORE BAPCPA
§ 91.1 In General
§ 91.2 Projected (Disposable) Income
§ 91.3 Reasonably Necessary for Maintenance or Support
§ 91.4 Debtor or Dependent
§ 91.5 Counting the Three-Year Period
§ 91.6 Debtor Engaged in Business
§ 91.7 Payment-in-Full Option

{504} ***Brown v. Viegelahn (In re Brown)*, 960 F.3d 711, 718-19 (5th Cir. June 8, 2020) (Southwick, Graves, Engelhardt)** (Chapter 13 debtor need not comply with both subsections of § 1325(b)(1). Debtor who proposed to pay unsecured creditors 100% but had disposable income in excess of amount to be paid to trustee cannot be required as a condition for confirmation to agree not to seek to modify plan under § 1329 to pay less than 100% and to forfeit discharge if unsecured creditors are not paid in full. Debtor with disposable monthly income of $2,191 proposed Chapter 13 plan that would pay trustee $1,080 per month. The dividend to unsecured creditors was 100%. Trustee objected and debtor ultimately allowed confirmation of a plan that prohibited the debtor from seeking modification to pay less than 100%. Debtor then appealed. "[T]he trustee argues that . . . BAPCPA . . . , amended the Code so that an above-median debtor's *minimum* payment for a Chapter 13 plan is his monthly disposable income, under subsection (b)(1)(B). . . . We conclude a debtor does not need to comply with both subsection (b)(1)(A) and (b)(1)(B)."), *vacating and remanding* No. 17-52324-CAG, 2018 WL 2425968 (Bankr. W.D. Tex. May 23, 2018) (Gargotta) (Notwithstanding disagreement among courts within the district with respect to whether Chapter 13 debtor with excess disposable income can be prohibited to modify the plan to pay less than 100% of unsecured debt, bankruptcy court denies motion for direct appeal of confirmation after bankruptcy court required debtor to choose either to pay 100% of disposable income to creditors or agree not to modify plan to less than 100%.).

{505} ***In re Harrington*, No. 19-47539, 2019 WL 6881328, at *2 (Bankr. E.D. Mich. Dec. 16, 2019) (Randon)** (Acknowledging split of authority, § 1325(b)(1)(A) requires payment of interest to unsecured creditors when debtor has excess projected disposable income and could pay unsecured creditors in full in less than the 60 months proposed by the plan. "Harrington has a choice: (A) pay his unsecured creditors in full, or (B) provide all of his disposable income to the plan for five years. Harrington rejects option B, because that would mean his unsecured creditors get paid much sooner, and he doesn't benefit from the time value of the extra money in his pocket. Instead, he chooses to stretch out the repayment period, without providing interest. Harrington cannot have it both ways. Interest must be paid under 11 U.S.C. § 1325(b)(1)(A).").

5. PROJECTED DISPOSABLE INCOME TEST: AFTER BAPCPA
§ 92.1 In General

{506} ***In re Harrington*, No. 19-47539, 2019 WL 6881328, at *2 (Bankr. E.D. Mich. Dec. 16, 2019) (Randon)** (Acknowledging split of authority, § 1325(b)(1)(A) requires payment of interest to unsecured creditors when debtor has excess projected disposable income and could pay unsecured creditors in full in less than the 60 months proposed by the plan. "Harrington has a choice: (A) pay his unsecured creditors in full, or (B) provide all of his disposable income to the plan for five years. Harrington rejects option B, because that would mean his unsecured creditors get paid much sooner, and he doesn't benefit from the time value of the extra money in his pocket. Instead, he chooses to stretch out the repayment period, without providing interest. Harrington cannot have it both ways. Interest must be paid under 11 U.S.C. § 1325(b)(1)(A).").

§ 92.2 Projected Disposable Income: All Debtors

{507} ***In re Hefty*, No. 19-31232-beh, 2020 WL 4289367 (Bankr. E.D. Wis. July 27, 2020) (Hanan)** (Applying *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010), Chapter 13 debtor with current monthly income greater than applicable median family income begins the projected disposable income calculation with CMI, increased by a known or virtually certain increase in income shown on Line 46 of Official Form 122C-2, then reduced by the expenses allowed by the means test, not the actual expenses shown on Schedule J. *Lanning* validated that Schedules I and J do not control the projected disposable income calculation for Chapter 13 debtors with above-median CMI. Projected disposable income must be paid to unsecured creditors. A plan that proposes to pay secured claims with some of the projected disposable income paid to the trustee cannot be confirmed.).

{508} ***In re Price*, 609 B.R. 475, 477–81 (Bankr. N.D. Tex. Nov. 21, 2019) (Jones)** (Not bad faith for § 1325(a)(3) purposes that debtors with CMI greater than applicable median family income propose to pay unsecured creditors all projected disposable income as determined on Official Forms 122C-1 and 122C-2 notwithstanding that Schedule J reveals that debtors will also pay $222 per month for whole life insurance policies that are not deducted as expenses on Form 122C-2. "The trustee does not assert that, under § 1325(b), the Prices have improperly determined their disposable income. He instead argues that since the Prices are *not* paying-in the $222.25 per month, their plan fails to dedicate *all* their disposable income for payments to creditors. . . . The trustee suggests that joint debtors must contribute all their 'actual' disposable income—rather than the form-derived amount—to their chapter 13 plan to satisfy the § 1325(b) confirmation requirements. The trustee is asking the Court to return to the pre-BAPCPA evaluation of a debtor's disposable

income. . . . The Court rejects this suggestion. The determination of disposable income under the statute 'supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis.' *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 65, 131 S.Ct. 716, 178 L.Ed.2d 603 ([Jan. 11,] 2011). . . . Although the Prices may have more disposable income than calculated on their Form 122C-2, without any aggravating factors to suggest that they are seeking to manipulate the bankruptcy process, there cannot be a finding of bad faith. The trustee's objection to confirmation is misguided. His objection focuses on the classification of whole life insurance under IRS guidelines and argues that it is not reasonably necessary because it embodies a savings component . . . . But if the Prices obtained term life policies, the amount of the premiums would be made at the expense of those same creditors. Their plan is *not* proposed in bad faith where it pays *more* to unsecured creditors by maintaining the whole life insurance policies.").

§ 92.3 Current Monthly Income: The Baseline

{509} ***Diaz v. Viegelahn (In re Diaz)*, No. 19-50982, 2020 WL 5035800, at *3–*4 (5th Cir. Aug. 26, 2020) (Stewart, Clement, Costa)** (Local Chapter 13 plan form that required all debtors to pay to the trustee tax refunds in excess of $2,000 was invalid because it abridged the substantive right of an under-median Chapter 13 debtor to use refund for reasonable and necessary expenses within the projected disposable income test; Local Rule was inconsistent with *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010). "The Federal Rules of Bankruptcy Procedure permit courts to create a local form for chapter 13 plans . . . . However, these rules must be procedural only—they may not 'abridge, enlarge, or modify any substantive right.' . . . *Lanning*, plainly allows below-median income debtors to retain any income that is reasonably necessary for their maintenance and support. . . . But [the local plan form] requires that *all* chapter 13 debtors turn over to the Trustee *all* tax refunds received in excess of $2,000 as 'projected disposable income.' . . . [The local plan form's] categorical rule could abridge a below-median income debtor's substantive right to use her 'excess' refund amount for reasonably necessary expenses for her maintenance and support. . . . Because [the local plan form] abridges Debtor's substantive right to use the amount of her tax refund in excess of $2,000 in accordance with Code § 1325(b)(2) and *Lanning's* guidance for below-median income debtors, we hold that it is invalid."), *vacating and remanding* No. 5:18-CV-00796-RCL, 2019 WL 4545613, at *3–*5 (W.D. Tex. Sept. 19, 2019) (Lamberth) (Local form for Chapter 13 plan permissibly requires all Chapter 13 debtors to turn over to the trustee tax refunds in excess of $2,000 if plan does not pay unsecured creditors in full. Chapter 13 debtors are forbidden to use nonstandard plan provision that prorates anticipated tax refunds as income; instead, debtors must use local plan form provision that allows Chapter 13 debtors to keep first $2,000 of any tax refund but requires excess to be paid to Chapter 13 trustee. "[T]he District Plan does not expressly contravene the Bankruptcy Code, Local Rules, or Official Forms. . . . Allowing Debtors to strike through or otherwise negate provisions in the District Plan that they do not like would render the District Plan meaningless. . . . Permitting Debtors to alter or delete provisions of the District Plan also violates Rule 3015.1 and thus cannot be tolerated. . . . The Bankruptcy Code allows a plan to provide for payment of all or part of a claim against a debtor from property of the estate or the property of a debtor. 11 U.S.C. § 1322(b)(8). The statute also directs that all plans must provide for the submission of all or such a portion of future earnings or other income of the debtor to the supervision and control of the trustee as is necessary for execution of the plan. 11 U.S.C. § 1322(a)(1). This includes the tax refunds at issue here. . . . Refund income is inherently speculative in nature at the time a Chapter 13 plan is formulated, so by allowing Debtors to retain $2,000, [the local plan] is giving them the ability to use that money for any unforeseen expenses. . . . In light of Official Form 113, it is clear that Schedule I anticipates alternative ways to account for tax refunds other than merely by listing them on the Schedule I . . . . Debtors will not be forced to doubly account for their refunds if they simply do not list them on their Schedule I forms and instead follow the instructions in [the local form]."), *aff'g* No. 17-52553, 2018 WL 2422427 (Bankr. W.D. Tex. May 4, 2018) (Gargotta) (Same holding as *In re Orozco*, No. 17-52818-CAG, 2018 WL 2425971 (Bankr. W.D. Tex. May 10, 2018) (Gargotta).).

{510} ***In re Adamson*, 615 B.R. 303, 309–12 (Bankr. D. Colo. May 12, 2020) (Rosania)** (Confirmation denied because plan does not commit possible recovery in personal injury action to payments to unsecured creditors. Net recovery would be income for disposable income purposes and exemptions would be irrelevant to satisfaction of § 1325(b) because exemptions are ignored in the definition of current monthly income. *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010), supports this outcome notwithstanding that actual amount of recovery is not known. Debtor scheduled a prepetition auto accident and an injury claim with value unknown subject to a 100% exemption. Trustee objected to confirmation because plan did not commit any portion of the potential recovery to payments under the plan. "Pre-BAPCPA, courts were split on the issue of whether exempt property must be included in the disposable income analysis. . . . The Court agrees with the well-reasoned pre-BAPCPA majority view. . . . Additionally, the Court acknowledges that '[w]ith the enactment of BAPCPA in 2005, the split of authority over whether or not exempt assets are to be included in the calculation of disposable income has been statutorily answered by Congress.' . . . '[T]here can be no debate: since current monthly income does not exclude exempt assets and it is the starting point for calculating disposable income, disposable income includes exempt assets.' . . . 11 U.S.C. § 101(10A)(A) defines 'current monthly income' as 'the average monthly income from all sources that the debtor receives . . . .' . . . [T]he net proceeds from the personal injury recovery at issue herein should generally be included in the calculation of the Debtor's projected disposable income. . . . [S]ome portion of the recovery will be reasonably necessary for the support of the Debtor.").

{511} ***In re Johnson*, 614 B.R. 80, 87-93 (Bankr. D. Alaska Jan. 17, 2020) (Spraker)** (Applying *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010), because Alaska Permanent Fund Dividend is virtually certain to be received by Chapter 13 debtor during each year of plan—though amount is not known—plan cannot be confirmed that applies PFD in excess of $1,000 per year already accounted for as current monthly income as a credit against future monthly payments of projected disposable

income. Plan cannot vest excess PFD in debtor at confirmation. Debtor included $166.67 in monthly income derived from PFDs to calculate monthly disposable income on Official Form 122C-2. "In 2002, the Local Rules Committee for the United States Bankruptcy Court, District of Alaska, revised [local rules and forms] to account for the inability to determine in advance the amount of annual PFD payments a debtor would receive during a chapter 13 plan commitment period. . . . The combination of [local rules and forms] commits all PFDs received within the plan term to distribution through the plan, and requires the use of a placeholder estimate of $1,000.00 for the annual PFDs as additional payments to the monthly plan payments. . . . The Rules Committee's stated reason for excluding the PFD from the regular periodic payments and providing for turnover in a lump sum was simple: to prevent debtors from understating their disposable income while ensuring performance. . . . The PFD is akin to a tax refund, as at the time of confirmation it is highly likely that Debtor will continue to receive it during the term of her Plan. But like an inheritance, PFDs are not derived from a debtor's labor and resulting wages. In short, at confirmation Alaskan chapter 13 debtors are 'virtually certain' to receive future PFDs in an unknown amount. Utilizing the analysis set forth in *Hamilton*, the court concludes that Debtor's future PFDs constitute projected disposable income. . . . Because Debtor attempts to limit the amount of the future PFDs payable to her Plan, the proposed chapter 13 Plan fails to comply with § 1325(b)(1)(B). . . . Because the local chapter 13 plan excepts future PFDs from vesting in a debtor upon confirmation, § 1327(b) does not remove them from property of the estate . . . . Instead, it commits the future PFDs as projected disposable income to a debtor's plan recognizing that while they may be uncertain in amount, it is sufficiently certain that a PFD shall be paid to necessitate its inclusion in the chapter 13 plan. Debtor may not circumvent the requirement to pay all projected disposable income by capping the amount of future PFDs available to the chapter 13 estate and having any excess amount revest in her.").

{512} ***In re Orozco*, 613 B.R. 23, 29–32 (Bankr. D. Or. Jan. 15, 2020) (McKittrick)** (Upon objection under § 1325(b), Chapter 13 debtor must commit future tax refunds to the trustee or the budget must accurately account for both overwithholding and future tax credits as either actual expense amounts or prorated additions to income. "For all debtors, the income portion of disposable monthly income is the current monthly income shown on their Official Form 122C-1 . . . . Although there are certain exclusions from the 'all sources' definition, tax refunds are not one of those exclusions. . . . Tax refunds resulting from over-withholding are not additional income; they are a portion of the debtor's gross pay, which has been reported on Form 122C-1. A portion of that gross pay is returned to the debtor who has withheld more in taxes than is actually owed. It does not matter whether the refund is received in the six months before bankruptcy; the gross pay that is reflected on the Form 122C-1 is all that is required in calculating current monthly income. Refunds that are based on tax credits, on the other hand, are not derived from a debtor's work income, and so do not show up as part of the gross pay on the Form 122C-1. Because they are a source of income that is not excluded from the definition of current monthly income in § 101(10A), they must somehow be included in the calculation of current monthly income, if received in the six months before bankruptcy. . . . Tax refunds must be factored into the calculation of projected disposable income, whether a result of tax credits or of over-withholding. . . . The question is how tax refunds should be accounted for . . . . The answer depends on whether the tax refunds are a result of over-withholding or are tax credit refunds. . . . For below-median debtors, the expenses used to reduce their current monthly income to determine disposable income are generally set out in Schedule J. That schedule, however, does not include a line item for tax withholding. Payroll deductions, including tax withholding, are reported on Schedule I. Therefore, in calculating disposable income, below-median debtors must take their current monthly income from Form 122C-1 and reduce it by the tax withholding shown in Schedule I and their other reasonably necessary expenses shown in Schedule J. The practical issue is that withholding reported on Schedule I can be actual withholding or it can be withholding calculated based on actual tax liability, which are not necessarily the same thing. If a debtor uses actual tax withholding as an expense to reduce her gross income, and that withholding has in the past and is likely in the future to result in a tax refund because it is more than is needed to pay actual tax liability, reducing gross income by that figure will artificially inflate the reasonably necessary expense deduction and consequently artificially reduce the reported disposable income. In that case, any tax refund would then be income that has not been included in calculating disposable income, and the debtor would need to provide for payment of tax refunds into the plan. The correct approach is for a debtor to report tax withholding on Schedule I based on actual anticipated tax liability. This results in an accurate expense calculation of the debtor's reasonably necessary expenses and accurately determines disposable income for purposes of calculating the amount of a plan payment. Because the disposable income calculation takes into account actual tax liability, any tax refund based on over-withholding has been accounted for and need not be paid to the trustee during the life of the plan. In summary, . . . [a] plan that accurately reflects anticipated tax liability on Schedule I as an expense need not provide for payment to the trustee of tax refunds based on over-withholding, because no such refunds are expected. If the debtor is over-withholding and instead reports on Schedule I actual tax withholding, which is known or virtually certain to result in a tax refund, and then deducts that actual over-withholding in calculating reasonably necessary expenses, the debtor will need to provide for payment of the tax refund into the plan, because the debtor's income has been artificially reduced by over-withholding. . . . [A]bove-median debtors use . . . Form 122C-2. Form 122C-2 expressly includes a line item for taxes. . . . If a debtor correctly completes this line item, the tax refunds based on over-withholding are accounted for in the plan and need not be paid to the trustee. . . . Tax credit refunds are income in addition to income from wages or salary. Form 122C-1 does not include a line specifically for tax credit refunds. Therefore, a debtor must include tax credit refunds that were received within six months before bankruptcy on Form 122C-1 in Line 10 . . . . If the refund was not received within the six-month look-back period, it is not required to be included in the Form 122C-1 current monthly income calculation. If the debtor did not receive a refund within the six-month look-back period, but it is known or virtually certain that the debtor will receive tax credit refunds during the life of the plan, a reasonable estimate of the amount of anticipated tax credit refunds must be included as income on Schedule I and used to project disposable income over the life of the plan. For debtors who did receive their refund within the six months before bankruptcy, the full amount of the refund was pro-rated over six months to calculate current monthly income. Any known or virtually certain future tax credit refunds will need to be pro-rated over the full calendar year. . . . If a

debtor accurately reports refunds based on tax credits on Schedule I, she need not provide for payment of those refunds in the plan, because they have already been accounted for in determining projected disposable income.").

{513} ***In re Styerwalt*, 610 B.R. 356 (Bankr. D. Colo. Dec. 16, 2019) (McNamara)** (Possibility of bonus income in future years is not known or virtually certain for *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010), purposes and is not included in projected disposable income on trustee's objection under § 1325(b).).

{514} ***In re Lafferty*, No. 1:17-bk-02900-HWV, 2019 WL 10431875, at *4–*5 (Bankr. M.D. Pa. Dec. 16, 2019) (Van Eck)** ("Phantom" capital gains income from subchapter S corporation is not included in current monthly income because it is not a "recurrent benefit" and was not actually received by the debtors for § 101(10A)(A) purposes. "Insider distributions" from the subchapter S corporation were properly excluded from current monthly income because they were loan repayments and expense reimbursements, not a gain or recurrent benefit. "The Capital Gain was properly excluded from the Debtors' calculation of current monthly income because it does not qualify as 'income' that the Debtors received during the Sampling Period under § 101(10A)(A). This is so because the Capital Gain does not represent a gain or recurrent benefit that the debtor came into possession of or acquired during the Sampling Period. . . . [T]he word 'income' as it is used here means 'a gain or recurrent benefit.' . . . There is a well-known disadvantage to subchapter S corporation tax status known as 'phantom income.' . . . By its very definition, 'phantom income' does not represent a gain or recurrent benefit acquired by or coming into the possession of the Debtors. As such, it cannot qualify as income that the Debtors received during the Sampling Period. . . . The Insider Distributions were also properly excluded from the Debtors' calculation of current monthly income because they do not qualify as income under § 101(10A)(A). This is so because they are loan repayments and expense reimbursements that do not represent a gain or recurrent benefit that the Debtors came into possession of or acquired during the Sampling Period.").

{515} ***In re Price*, 609 B.R. 475, 481 (Bankr. N.D. Tex. Nov. 21, 2019) (Jones)** ("Mr. Price receives $964.36 in VA disability payments each month. At the time of this bankruptcy filing . . . , the HAVEN Act had only been introduced in the House. . . . [O]n August 23, 2019, the HAVEN Act was signed into law by the President. The Act was effective immediately upon enactment. There is a strong argument that this law applies to pending chapter 13 cases with unconfirmed plans. . . . Additionally, on October 1, 2019, new forms for bankruptcy became effective that conform with the HAVEN Act changes, including Official Form 122C-1 . . . . Here, Mr. Price receives payments that are excluded from current monthly income calculations under the new law. While the Court need not decide whether the HAVEN Act applies to pending chapter 13 cases with unconfirmed plans, the inclusion of such payments, where modification is possible, weighs in favor of the debtors' good faith.").

§ 92.4 Household Size and Comparison of CMI to Median Family Income: § 1325(b)(3)

a. CMI LESS THAN MEDIAN FAMILY INCOME: "AMOUNTS REASONABLY NECESSARY TO BE EXPENDED—"

§ 93.1 Section 1325(b)(2)(A) and (B): "Amounts Reasonably Necessary to Be Expended—" When CMI Is Less Than Median Family Income

{516} ***Diaz v. Viegelahn (In re Diaz)*, No. 19-50982, 2020 WL 5035800, at *3–*4 (5th Cir. Aug. 26, 2020) (Stewart, Clement, Costa)** (Local Chapter 13 plan form that required all debtors to pay to the trustee tax refunds in excess of $2,000 was invalid because it abridged the substantive right of an under-median Chapter 13 debtor to use refund for reasonable and necessary expenses within the projected disposable income test; Local Rule was inconsistent with *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010). "The Federal Rules of Bankruptcy Procedure permit courts to create a local form for chapter 13 plans . . . . However, these rules must be procedural only—they may not 'abridge, enlarge, or modify any substantive right.' . . . *Lanning*, plainly allows below-median income debtors to retain any income that is reasonably necessary for their maintenance and support. . . . But [the local plan form] requires that *all* chapter 13 debtors turn over to the Trustee *all* tax refunds received in excess of $2,000 as 'projected disposable income.' . . . [The local plan form's] categorical rule could abridge a below-median income debtor's substantive right to use her 'excess' refund amount for reasonably necessary expenses for her maintenance and support. . . . Because [the local plan form] abridges Debtor's substantive right to use the amount of her tax refund in excess of $2,000 in accordance with Code § 1325(b)(2) and *Lanning's* guidance for below-median income debtors, we hold that it is invalid."), *vacating and remanding* No. 5:18-CV-00796-RCL, 2019 WL 4545613, at *3–*5 (W.D. Tex. Sept. 19, 2019) (Lamberth) (Local form for Chapter 13 plan permissibly requires all Chapter 13 debtors to turn over to the trustee tax refunds in excess of $2,000 if plan does not pay unsecured creditors in full. Chapter 13 debtors are forbidden to use nonstandard plan provision that prorates anticipated tax refunds as income; instead, debtors must use local plan form provision that allows Chapter 13 debtors to keep first $2,000 of any tax refund but requires excess to be paid to Chapter 13 trustee. "[T]he District Plan does not expressly contravene the Bankruptcy Code, Local Rules, or Official Forms. . . . Allowing Debtors to strike through or otherwise negate provisions in the District Plan that they do not like would render the District Plan meaningless. . . . Permitting Debtors to alter or delete provisions of the District Plan also violates Rule 3015.1 and thus cannot be tolerated. . . . The Bankruptcy Code allows a plan to provide for payment of all or part of a claim against a debtor from property of the estate or the property of a debtor. 11 U.S.C. § 1322(b)(8). The statute also directs that all plans must provide for the submission of all or such a portion of future earnings or other income of the debtor to the supervision and control of the trustee as is necessary for execution of the plan. 11 U.S.C. § 1322(a)(1). This includes the tax refunds at issue here. . . . Refund income is inherently speculative in nature at

the time a Chapter 13 plan is formulated, so by allowing Debtors to retain $2,000, [the local plan] is giving them the ability to use that money for any unforeseen expenses. . . . In light of Official Form 113, it is clear that Schedule I anticipates alternative ways to account for tax refunds other than merely by listing them on the Schedule I . . . . Debtors will not be forced to doubly account for their refunds if they simply do not list them on their Schedule I forms and instead follow the instructions in [the local form].").

{517} ***In re Fuller*, No. 19-02641-5-DMW, 2020 WL 3862988, at *3–*5 (Bankr. E.D.N.C. July 8, 2020) (Warren)** (Plan that is silent with respect to large home mortgage debt and car loan cannot be confirmed because court cannot determine whether plan is feasible, debtor cannot satisfy projected disposable income test without great specificity and silence with respect to two largest debts is evidence of lack of good faith. Plan was simply silent with respect to home mortgage, arrears on the mortgage and a car note. Trustee objected to confirmation. Debtor had current monthly income less than applicable median family income but Schedules I and J could not be relied upon to determine whether debtor had projected disposable income. "Even if treatment of a secured claim is permissibly excluded from a Chapter 13 plan, that exclusion has consequences . . . . The Nonstandard Provision asserts the Debtor's obligations to U.S. Bank and CarMax are not being paid 'pursuant to the plan,' leaving unanswered the question whether the Debtor intends to remit payments to U.S. Bank or CarMax in some other fashion. If a plan does not propose treatment of a secured claim, either through a trustee or direct payments from the debtor as outlined in the plan, then a debtor should not be permitted to reserve the right to pay that creditor outside of the bankruptcy court's supervision. If debtors were permitted to exclude a secured claim from a plan but continue to pay the creditor post-confirmation on terms unknown to the court, then the court's obligation to ascertain the feasibility of a plan under 11 U.S.C. § 1325(a)(6) would be rendered meaningless. . . . Debtor cannot presently carry her burden to show that she is committing all her projected disposable income to the Plan.").

{518} ***In re Orozco*, 613 B.R. 23, 29–32 (Bankr. D. Or. Jan. 15, 2020) (McKittrick)** (Upon objection under § 1325(b), Chapter 13 debtor must commit future tax refunds to the trustee or the budget must accurately account for both overwithholding and future tax credits as either actual expense amounts or prorated additions to income. "For all debtors, the income portion of disposable monthly income is the current monthly income shown on their Official Form 122C-1 . . . . Although there are certain exclusions from the 'all sources' definition, tax refunds are not one of those exclusions. . . . Tax refunds resulting from over-withholding are not additional income; they are a portion of the debtor's gross pay, which has been reported on Form 122C-1. A portion of that gross pay is returned to the debtor who has withheld more in taxes than is actually owed. It does not matter whether the refund is received in the six months before bankruptcy; the gross pay that is reflected on the Form 122C-1 is all that is required in calculating current monthly income. Refunds that are based on tax credits, on the other hand, are not derived from a debtor's work income, and so do not show up as part of the gross pay on the Form 122C-1. Because they are a source of income that is not excluded from the definition of current monthly income in § 101(10A), they must somehow be included in the calculation of current monthly income, if received in the six months before bankruptcy. . . . Tax refunds must be factored into the calculation of projected disposable income, whether a result of tax credits or of over-withholding. . . . The question is how tax refunds should be accounted for . . . . The answer depends on whether the tax refunds are a result of over-withholding or are tax credit refunds. . . . For below-median debtors, the expenses used to reduce their current monthly income to determine disposable income are generally set out in Schedule J. That schedule, however, does not include a line item for tax withholding. Payroll deductions, including tax withholding, are reported on Schedule I. Therefore, in calculating disposable income, below-median debtors must take their current monthly income from Form 122C-1 and reduce it by the tax withholding shown in Schedule I and their other reasonably necessary expenses shown in Schedule J. The practical issue is that withholding reported on Schedule I can be actual withholding or it can be withholding calculated based on actual tax liability, which are not necessarily the same thing. If a debtor uses actual tax withholding as an expense to reduce her gross income, and that withholding has in the past and is likely in the future to result in a tax refund because it is more than is needed to pay actual tax liability, reducing gross income by that figure will artificially inflate the reasonably necessary expense deduction and consequently artificially reduce the reported disposable income. In that case, any tax refund would then be income that has not been included in calculating disposable income, and the debtor would need to provide for payment of tax refunds into the plan. The correct approach is for a debtor to report tax withholding on Schedule I based on actual anticipated tax liability. This results in an accurate expense calculation of the debtor's reasonably necessary expenses and accurately determines disposable income for purposes of calculating the amount of a plan payment. Because the disposable income calculation takes into account actual tax liability, any tax refund based on over-withholding has been accounted for and need not be paid to the trustee during the life of the plan. In summary, . . . [a] plan that accurately reflects anticipated tax liability on Schedule I as an expense need not provide for payment to the trustee of tax refunds based on over-withholding, because no such refunds are expected. If the debtor is over-withholding and instead reports on Schedule I actual tax withholding, which is known or virtually certain to result in a tax refund, and then deducts that actual over-withholding in calculating reasonably necessary expenses, the debtor will need to provide for payment of the tax refund into the plan, because the debtor's income has been artificially reduced by over-withholding. . . . [A]bove-median debtors use . . . Form 122C-2. Form 122C-2 expressly includes a line item for taxes. . . . If a debtor correctly completes this line item, the tax refunds based on over-withholding are accounted for in the plan and need not be paid to the trustee. . . . Tax credit refunds are income in addition to income from wages or salary. Form 122C-1 does not include a line specifically for tax credit refunds. Therefore, a debtor must include tax credit refunds that were received within six months before bankruptcy on Form 122C-1 in Line 10 . . . . If the refund was not received within the six-month look-back period, it is not required to be included in the Form 122C-1 current monthly income calculation. If the debtor did not receive a refund within the six-month look-back period, but it is known or virtually certain that the debtor will receive tax credit refunds during the life of the plan, a reasonable estimate of the amount of anticipated tax credit refunds must be included as income on Schedule I and used to project disposable income over the life of the plan. For debtors who did receive their refund within the six months before bankruptcy, the full amount of the refund was pro-rated over six months to calculate current

monthly income. Any known or virtually certain future tax credit refunds will need to be pro-rated over the full calendar year. . . . If a debtor accurately reports refunds based on tax credits on Schedule I, she need not provide for payment of those refunds in the plan, because they have already been accounted for in determining projected disposable income.").

b. CMI GREATER THAN MEDIAN FAMILY INCOME: "AMOUNTS REASONABLY NECESSARY TO BE EXPENDED—"

1) GENERAL CONSIDERATIONS

§ 94.1 Big Picture: Too Many Issues
§ 94.2 Netting Issues, Including Exclusion of Payments for Debts

{519} ***In re Henry*, 616 B.R. 885, 891–94 (Bankr. D. Kan. June 5, 2020) (Somers)** (Chapter 13 debtor with CMI greater than applicable median family income cannot be forced to get rid of expensive pickup truck purchased a few months before petition; secured debts are determined by the math in § 707(b)(2)(A)(iii)(I) without regard to what trustee or creditors consider reasonable or necessary. Plan proposed to pay $63,000 for a 2018 Dodge Ram truck. Trustee objected. "Section 707(b)(2)(A)(ii)(I) states . . . that: 'Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts.' As a result, payments for secured debt are not included in the Standards. Payments on secured debts are instead governed by § 707(b)(2)(A)(iii) . . . . The majority of courts addressing the issue have concluded that the restriction placed in subsection (II) . . . is limited to only those payments *curing a default* on a secured debt; the computation required by subsection (I) for ongoing payments of secured debt is strictly mathematical. . . . [T]he amount reasonably necessary to be expended for Debtor's maintenance concerning Debtor's automobile payment is that amount computed by application of the formula in § 707(b)(2)(A)(iii)(I). . . . [T]he 'necessary' language from subsection (II) is only applicable to 'additional' payments to secured creditors, and in above-median Chapter 13 cases, the Code has removed discretionary decisions about reasonableness from ongoing contractual payments on secured debt. . . . A line by line budget analysis is exactly what BAPCPA's amendments to § 1325(b) for above median debtors were designed to avoid. . . . BAPCPA favors the payment of secured debt over payments to unsecured creditors. . . . [T]o determine disposable income for above median debtors under § 1325(b)(2), debtors must look to the means test formula to compute 'reasonably necessary' expenses as directed by § 1325(b)(3), and must use the mathematical computation of § 707(b)(2)(A)(iii) to calculate ongoing secured debt payments. This is an objective exercise, without discretion.").

§ 94.3 Accounting for Spouses

2) MONTHLY EXPENSES: § 707(b)(2)(A)(ii)

§ 95.1 In General
§ 95.2 National Standards
§ 95.3 Local Standards: Housing and Transportation

{520} ***In re Axline*, No. 18-44165-ELM, 2020 WL 3256810, at *11–*14 (Bankr. N.D. Tex. June 15, 2020) (Morris)** (For Chapter 13 debtors with current monthly income greater than applicable median family income, Local Standards amounts are caps with respect to expenses for housing or transportation that are not "debts"—mortgage on house is a debt that is not limited to the Local Standards Ownership amount; car lease is not a debt and the debtor is limited by the Local Standards Transportation Ownership amount and cannot expense the excess lease payments. Chapter 13 debtor's monthly mortgage payment was $5,499 and monthly car lease payments were $934.21 and $1,129.82. Projected monthly disposable income was $0 from monthly income in excess of $18,000. "[E]xpense deductions provided by [§ 707(b)(2)(A)(ii)] are distinct and separate from the expense deductions provided by [§ 707(b)(2)(A)(i) (ii)]. . . . [N]one of the language within Clause (ii) provides or suggests that Clause (ii) governs or serves as a limit on the provisions of Clause (iii) . . . . On the other hand, there are certain actual expense provisions of Clause (ii) that expressly require proof of the reasonable necessity of any actual expenses that exceed the IRS Standards. Had Congress intended the same time [*sic*] of proof for secured debt payments provided for in Clause (iii), then it would have expressly provided for the same. . . . Clause (ii) includes the 'notwithstanding' proviso that monthly expenses allowed under Clause (ii) shall expressly exclude payments for debts. Thus, if Clause (ii) were applicable to secured debt payments allowed under Clause (iii), the debt exclusion proviso of Clause (ii) would render Clause (iii) completely meaningless . . . . [M]ortgage payments secured by a lien in the Axline Home . . . constitute debt payments covered by Clause (iii) of section 707(b)(2)(A) . . . as to which the Local Standards of Clause (ii) of section 707(b)(2)(A) are inapplicable. . . . [P]ayments to Toyota Lease Trust, on the other hand, . . . do not constitute secured debts covered by the provisions of Clause (iii) of section 707(b)(2)(A) . . . , but rather expenses covered by the provisions of Clause (ii) of section 707(b)(2)(A). . . . [T]he Debtors' monthly mortgage payments, as expenditures for secured debt, are not limited by the relevant Housing and Utilities Expense amounts set forth within the IRS Local Standards, the . . . vehicle lease payments, which do not constitute expenditures for any secured debt, are limited by the relevant Transportation Expense allowance amount set forth within the IRS Local Standards given the Debtors' failure to establish any special circumstances warranting the allowance of expenses in excess of the allowance amount.").

{521} ***In re Henry*, 616 B.R. 885, 891–94 (Bankr. D. Kan. June 5, 2020) (Somers)** (Chapter 13 debtor with CMI greater than applicable median family income cannot be forced to get rid of expensive pickup truck purchased a few months before petition; secured debts are determined by the math in § 707(b)(2)(A)(iii)(I) without regard to what trustee or creditors consider reasonable or necessary. Plan proposed to pay $63,000 for a 2018 Dodge Ram truck. Trustee objected. "Section 707(b)(2)(A)(ii)(I) states . . . that: 'Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts.' As a

result, payments for secured debt are not included in the Standards. Payments on secured debts are instead governed by § 707(b)(2)(A)(iii) . . . . The majority of courts addressing the issue have concluded that the restriction placed in subsection (II) . . . is limited to only those payments *curing a default* on a secured debt; the computation required by subsection (I) for ongoing payments of secured debt is strictly mathematical. . . . [T]he amount reasonably necessary to be expended for Debtor's maintenance concerning Debtor's automobile payment is that amount computed by application of the formula in § 707(b)(2)(A)(iii)(I). . . . [T]he 'necessary' language from subsection (II) is only applicable to 'additional' payments to secured creditors, and in above-median Chapter 13 cases, the Code has removed discretionary decisions about reasonableness from ongoing contractual payments on secured debt. . . . A line by line budget analysis is exactly what BAPCPA's amendments to § 1325(b) for above median debtors were designed to avoid. . . . BAPCPA favors the payment of secured debt over payments to unsecured creditors. . . . [T]o determine disposable income for above median debtors under § 1325(b)(2), debtors must look to the means test formula to compute 'reasonably necessary' expenses as directed by § 1325(b)(3), and must use the mathematical computation of § 707(b)(2)(A)(iii) to calculate ongoing secured debt payments. This is an objective exercise, without discretion.").

{522} ***In re Everhart*, 607 B.R. 565 (Bankr. N.D. Tex. Sept. 17, 2019) (Mullin)** (Distinguishing dicta in *Ransom*, when actual mortgage payment exceeds Local Standards ownership amount, debtor enters $0 for Local Standards ownership deduction and enters entire monthly mortgage payment as secured debt. This outcome allows actual mortgage expense in excess of Local Standards amount by reconciling §§ 707(b)(2)(A)(ii)(I) with § 707(b)(2)(A)(iii). Same analysis applies to vehicle ownership expense that exceeds Local Standards transportation ownership amount—debtor gets larger actual monthly expense as a secured debt payment after netting against Local Standards allowance elsewhere on Official Form 122C-2.).

§ 95.4 Other [Necessary] Expenses—In General; All Categories
§ 95.5 Other [Necessary] Expenses—Accounting and Legal Fees
§ 95.6 Other [Necessary] Expenses—Charitable Contributions
§ 95.7 Other [Necessary] Expenses—Child Care
§ 95.8 Other [Necessary] Expenses—Court-Ordered Payments
§ 95.9 Other [Necessary] Expenses—Dependent Care
§ 95.10 Other [Necessary] Expenses—Education
§ 95.11 Other [Necessary] Expenses—Health Care
§ 95.12 Other [Necessary] Expenses—Involuntary Deductions
§ 95.13 Other [Necessary] Expenses—Life Insurance

{523} ***In re Price*, 609 B.R. 475, 477–81 (Bankr. N.D. Tex. Nov. 21, 2019) (Jones)** (Not bad faith for § 1325(a)(3) purposes that debtors with CMI greater than applicable median family income propose to pay unsecured creditors all projected disposable income as determined on Official Forms 122C-1 and 122C-2 notwithstanding that Schedule J reveals that debtors will also pay $222 per month for whole life insurance policies that are not deducted as expenses on Form 122C-2. "The trustee does not assert that, under § 1325(b), the Prices have improperly determined their disposable income. He instead argues that since the Prices are *not* paying-in the $222.25 per month, their plan fails to dedicate *all* their disposable income for payments to creditors. . . . The trustee suggests that joint debtors must contribute all their 'actual' disposable income—rather than the form-derived amount—to their chapter 13 plan to satisfy the § 1325(b) confirmation requirements. The trustee is asking the Court to return to the pre-BAPCPA evaluation of a debtor's disposable income. . . . The Court rejects this suggestion. The determination of disposable income under the statute 'supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis.' *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 65, 131 S.Ct. 716, 178 L.Ed.2d 603 ([Jan. 11,] 2011). . . . Although the Prices may have more disposable income than calculated on their Form 122C-2, without any aggravating factors to suggest that they are seeking to manipulate the bankruptcy process, there cannot be a finding of bad faith. The trustee's objection to confirmation is misguided. His objection focuses on the classification of whole life insurance under IRS guidelines and argues that it is not reasonably necessary because it embodies a savings component . . . . But if the Prices obtained term life policies, the amount of the premiums would be made at the expense of those same creditors. Their plan is *not* proposed in bad faith where it pays *more* to unsecured creditors by maintaining the whole life insurance policies.").

§ 95.14 Other [Necessary] Expenses—Secured or Legally Perfected Debts
§ 95.15 Other [Necessary] Expenses—Unsecured Debts
§ 95.16 Other [Necessary] Expenses—Taxes

{524} ***Diaz v. Viegelahn (In re Diaz)*, No. 19-50982, 2020 WL 5035800, at *3–*4 (5th Cir. Aug. 26, 2020) (Stewart, Clement, Costa)** (Local Chapter 13 plan form that required all debtors to pay to the trustee tax refunds in excess of $2,000 was invalid because it abridged the substantive right of an under-median Chapter 13 debtor to use refund for reasonable and necessary expenses within the projected disposable income test; Local Rule was inconsistent with *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010). "The Federal Rules of Bankruptcy Procedure permit courts to create a local form for chapter 13 plans . . . . However, these rules must be procedural only—they may not 'abridge, enlarge, or modify any substantive right.' . . . *Lanning*, plainly allows below-median income debtors to retain any income that is reasonably necessary for their maintenance and support. . . . But [the local plan form] requires that *all* chapter 13 debtors turn over to the Trustee *all* tax refunds received in excess of $2,000 as 'projected disposable income.' . . . [The local plan form's] categorical rule could abridge a below-median income debtor's substantive right to use

her 'excess' refund amount for reasonably necessary expenses for her maintenance and support. . . . Because [the local plan form] abridges Debtor's substantive right to use the amount of her tax refund in excess of $2,000 in accordance with Code § 1325(b)(2) and *Lanning's* guidance for below-median income debtors, we hold that it is invalid."), *vacating and remanding* No. 5:18-CV-00796-RCL, 2019 WL 4545613, at *3–*5 (W.D. Tex. Sept. 19, 2019) (Lamberth) (Local form for Chapter 13 plan permissibly requires all Chapter 13 debtors to turn over to the trustee tax refunds in excess of $2,000 if plan does not pay unsecured creditors in full. Chapter 13 debtors are forbidden to use nonstandard plan provision that prorates anticipated tax refunds as income; instead, debtors must use local plan form provision that allows Chapter 13 debtors to keep first $2,000 of any tax refund but requires excess to be paid to Chapter 13 trustee. "[T]he District Plan does not expressly contravene the Bankruptcy Code, Local Rules, or Official Forms. . . . Allowing Debtors to strike through or otherwise negate provisions in the District Plan that they do not like would render the District Plan meaningless. . . . Permitting Debtors to alter or delete provisions of the District Plan also violates Rule 3015.1 and thus cannot be tolerated. . . . The Bankruptcy Code allows a plan to provide for payment of all or part of a claim against a debtor from property of the estate or the property of a debtor. 11 U.S.C. § 1322(b)(8). The statute also directs that all plans must provide for the submission of all or such a portion of future earnings or other income of the debtor to the supervision and control of the trustee as is necessary for execution of the plan. 11 U.S.C. § 1322(a)(1). This includes the tax refunds at issue here. . . . Refund income is inherently speculative in nature at the time a Chapter 13 plan is formulated, so by allowing Debtors to retain $2,000, [the local plan] is giving them the ability to use that money for any unforeseen expenses. . . . In light of Official Form 113, it is clear that Schedule I anticipates alternative ways to account for tax refunds other than merely by listing them on the Schedule I . . . . Debtors will not be forced to doubly account for their refunds if they simply do not list them on their Schedule I forms and instead follow the instructions in [the local form]."), *aff'g* No. 17-52553, 2018 WL 2422427 (Bankr. W.D. Tex. May 4, 2018) (Gargotta) (Same holding as *In re Orozco*, No. 17-52818-CAG, 2018 WL 2425971 (Bankr. W.D. Tex. May 10, 2018) (Gargotta).).

{525} ***In re Orozco*, 613 B.R. 23, 29–32 (Bankr. D. Or. Jan. 15, 2020) (McKittrick)** (Upon objection under § 1325(b), Chapter 13 debtor must commit future tax refunds to the trustee or the budget must accurately account for both overwithholding and future tax credits as either actual expense amounts or prorated additions to income. "For all debtors, the income portion of disposable monthly income is the current monthly income shown on their Official Form 122C-1 . . . . Although there are certain exclusions from the 'all sources' definition, tax refunds are not one of those exclusions. . . . Tax refunds resulting from over-withholding are not additional income; they are a portion of the debtor's gross pay, which has been reported on Form 122C-1. A portion of that gross pay is returned to the debtor who has withheld more in taxes than is actually owed. It does not matter whether the refund is received in the six months before bankruptcy; the gross pay that is reflected on the Form 122C-1 is all that is required in calculating current monthly income. Refunds that are based on tax credits, on the other hand, are not derived from a debtor's work income, and so do not show up as part of the gross pay on the Form 122C-1. Because they are a source of income that is not excluded from the definition of current monthly income in § 101(10A), they must somehow be included in the calculation of current monthly income, if received in the six months before bankruptcy. . . . Tax refunds must be factored into the calculation of projected disposable income, whether a result of tax credits or of over-withholding. . . . The question is how tax refunds should be accounted for . . . . The answer depends on whether the tax refunds are a result of over-withholding or are tax credit refunds. . . . For below-median debtors, the expenses used to reduce their current monthly income to determine disposable income are generally set out in Schedule J. That schedule, however, does not include a line item for tax withholding. Payroll deductions, including tax withholding, are reported on Schedule I. Therefore, in calculating disposable income, below-median debtors must take their current monthly income from Form 122C-1 and reduce it by the tax withholding shown in Schedule I and their other reasonably necessary expenses shown in Schedule J. The practical issue is that withholding reported on Schedule I can be actual withholding or it can be withholding calculated based on actual tax liability, which are not necessarily the same thing. If a debtor uses actual tax withholding as an expense to reduce her gross income, and that withholding has in the past and is likely in the future to result in a tax refund because it is more than is needed to pay actual tax liability, reducing gross income by that figure will artificially inflate the reasonably necessary expense deduction and consequently artificially reduce the reported disposable income. In that case, any tax refund would then be income that has not been included in calculating disposable income, and the debtor would need to provide for payment of tax refunds into the plan. The correct approach is for a debtor to report tax withholding on Schedule I based on actual anticipated tax liability. This results in an accurate expense calculation of the debtor's reasonably necessary expenses and accurately determines disposable income for purposes of calculating the amount of a plan payment. Because the disposable income calculation takes into account actual tax liability, any tax refund based on over-withholding has been accounted for and need not be paid to the trustee during the life of the plan. In summary, . . . [a] plan that accurately reflects anticipated tax liability on Schedule I as an expense need not provide for payment to the trustee of tax refunds based on over-withholding, because no such refunds are expected. If the debtor is over-withholding and instead reports on Schedule I actual tax withholding, which is known or virtually certain to result in a tax refund, and then deducts that actual over-withholding in calculating reasonably necessary expenses, the debtor will need to provide for payment of the tax refund into the plan, because the debtor's income has been artificially reduced by over-withholding. . . . [A]bove-median debtors use . . . Form 122C-2. Form 122C-2 expressly includes a line item for taxes. . . . If a debtor correctly completes this line item, the tax refunds based on over-withholding are accounted for in the plan and need not be paid to the trustee. . . . Tax credit refunds are income in addition to income from wages or salary. Form 122C-1 does not include a line specifically for tax credit refunds. Therefore, a debtor must include tax credit refunds that were received within six months before bankruptcy on Form 122C-1 in Line 10 . . . . If the refund was not received within the six-month look-back period, it is not required to be included in the Form 122C-1 current monthly income calculation. If the debtor did not receive a refund within the six-month look-back period, but it is known or virtually certain that the debtor will receive tax credit refunds during the life of the plan, a reasonable estimate of the amount of anticipated tax credit refunds must be included as income on Schedule I and used to project disposable income over the life of the plan. For debtors who did receive

their refund within the six months before bankruptcy, the full amount of the refund was pro-rated over six months to calculate current monthly income. Any known or virtually certain future tax credit refunds will need to be pro-rated over the full calendar year. . . . If a debtor accurately reports refunds based on tax credits on Schedule I, she need not provide for payment of those refunds in the plan, because they have already been accounted for in determining projected disposable income.").

{526} ***In re Everhart*, 607 B.R. 565 (Bankr. N.D. Tex. Sept. 17, 2019) (Mullin)** (Trustee's objection that debtor's miscalculated deduction for taxes in calculation of disposable income is overcome by evidence that the debtor's reduced withholding at the trustee's urging to reduce the likelihood of future tax refunds.).

§ 95.17 Other [Necessary] Expenses—Optional Telephones and Services

{527} ***In re Everhart*, 607 B.R. 565 (Bankr. N.D. Tex. Sept. 17, 2019) (Mullin)** (Evidence supported debtor's additional $50-per-month expense for enhanced telephone and internet service—above amount included in Local Standards—when debtor's work required enhanced texting and broadband internet connectivity.).

§ 95.18 Other [Necessary] Expenses—Student Loans
§ 95.19 Other [Necessary] Expenses—Internet Provider/E-mail
§ 95.20 Other [Necessary] Expenses—Repayment of Loans to Pay Federal Taxes
§ 95.21 Health and Disability Insurance
§ 95.22 Family Violence Expenses
§ 95.23 Five Percent More Food and Clothing
§ 95.24 Elderly, Ill or Disabled
§ 95.25 Administrative Expenses, Sorta
§ 95.26 Education Expenses
§ 95.27 Home Energy Costs
§ 95.28 ABLE Program Contributions

3) MONTHLY PAYMENTS OF SECURED DEBTS: § 707(b)(2)(A)(iii)
§ 96.1 Average Monthly Payments on Account of Secured Debts

{528} ***In re Henry*, 616 B.R. 885, 891–94 (Bankr. D. Kan. June 5, 2020) (Somers)** (Chapter 13 debtor with CMI greater than applicable median family income cannot be forced to get rid of expensive pickup truck purchased a few months before petition; secured debts are determined by the math in § 707(b)(2)(A)(iii)(I) without regard to what trustee or creditors consider reasonable or necessary. Plan proposed to pay $63,000 for a 2018 Dodge Ram truck. Trustee objected. "Section 707(b)(2)(A)(ii)(I) states . . . that: 'Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts.' As a result, payments for secured debt are not included in the Standards. Payments on secured debts are instead governed by § 707(b)(2)(A)(iii) . . . . The majority of courts addressing the issue have concluded that the restriction placed in subsection (II) . . . is limited to only those payments *curing a default* on a secured debt; the computation required by subsection (I) for ongoing payments of secured debt is strictly mathematical. . . . [T]he amount reasonably necessary to be expended for Debtor's maintenance concerning Debtor's automobile payment is that amount computed by application of the formula in § 707(b)(2)(A)(iii)(I). . . . [T]he 'necessary' language from subsection (II) is only applicable to 'additional' payments to secured creditors, and in above-median Chapter 13 cases, the Code has removed discretionary decisions about reasonableness from ongoing contractual payments on secured debt. . . . A line by line budget analysis is exactly what BAPCPA's amendments to § 1325(b) for above median debtors were designed to avoid. . . . BAPCPA favors the payment of secured debt over payments to unsecured creditors. . . . [T]o determine disposable income for above median debtors under § 1325(b)(2), debtors must look to the means test formula to compute 'reasonably necessary' expenses as directed by § 1325(b)(3), and must use the mathematical computation of § 707(b)(2)(A)(iii) to calculate ongoing secured debt payments. This is an objective exercise, without discretion.").

4) PAYMENT OF ALL PRIORITY CLAIMS: § 707(b)(2)(A)(iv)
§ 97.1 Total Priority Debts and Divide by 60
5) SPECIAL CIRCUMSTANCES: § 707(b)(2)(B)
§ 98.1 Additional Expenses or Adjustments to CMI

{529} ***In re Everhart*, 607 B.R. 565 (Bankr. N.D. Tex. Sept. 17, 2019) (Mullin)** (Lawn maintenance of $60 per month is not a "special circumstance" for purposes of § 707(b)(2)(A)(ii)(V) when debtors have "reasonable alternative" of acquiring mower and trimmer and maintaining lawn themselves. Overages on utilities and home insurance in excess of Local Standards amounts are a "special circumstance" that is allowed as additional expense deduction in the disposable income calculation. Additional expense deduction of $81 per month for actual vehicle transportation and maintenance is reasonable and necessary and is allowable as a special circumstance deduction in excess of the $504 allowed by Local Standards tables.).

c. DEDUCTIONS FROM CMI FOR ALL DEBTORS
§ 99.1 In General

§ 99.2 Amounts Paid by Others under § 101(10A)(B)
§ 99.3 Child Support, Foster Care and Disability Payments
§ 99.4 Pension Loan Repayments

{530} ***In re Styerwalt*, 610 B.R. 356 (Bankr. D. Colo. Dec. 16, 2019) (McNamara)** (When 401(k) loans are repaid during plan, monthly payment amount becomes known and virtually certain to be available to increase payments to unsecured creditors; failure to kick up payments after 401(k) loans are paid off precludes confirmation. Debtor cannot use the possibility of future increase in expenses to offset known disposable income that will become available when 401(k) loans are paid off. Possible future medical expenses, car repairs and home maintenance do not meet the *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010), standard.).

{531} ***In re Everhart*, 607 B.R. 565 (Bankr. N.D. Tex. Sept. 17, 2019) (Mullin)** (Section 403(b) retirement account loan is a deductible expense to arrive at disposable income if the expense is documented by debtors.).

§ 99.5 Employee Benefit Plan Contributions

{532} ***Davis v. Helbling (In re Davis)*, 960 F.3d 346, 350–58 (6th Cir. June 1, 2020) (Clay, Larsen, Readler)** ("Building on" *Seafort v. Burden (In re Seafort)*, 669 F.3d 662 (6th Cir. Feb. 15, 2012) (Suhrheinrich, Gibbons, McKeague), Chapter 13 debtor can exclude from disposable income continuing contributions to a 401(k) in the amount regularly withheld by an employer before the petition. "Before 2005, the 'overwhelming consensus' among bankruptcy courts was that wages voluntarily withheld as 401(k) contributions formed part of a debtor's disposable income. . . . [11 U.S.C. § 541(b)(7)(A)] is known as the 'hanging paragraph.' Its meaning has led to considerable disagreement . . . . *Seafort* . . . opined, in dictum, . . . that a Chapter 13 debtor may never deduct 'voluntary post-petition retirement contributions in any amount regardless of whether the debtor [made] pre-petition retirement contributions.' . . . But we acknowledged that the 'issue [was] not presently before us.' . . . BAPCPA's insertion of the hanging paragraph into § 541(b)(7) has taken us from an overwhelming consensus among bankruptcy courts . . . to four competing views of whether voluntary retirement contributions constitute disposable income in a Chapter 13 bankruptcy. . . . BAPCPA's insertion of the hanging paragraph into § 541(b)(7) represents a substantial change to the statutory text. We must therefore presume that the hanging paragraph altered existing law. . . . [W]e should be skeptical of interpretations that deprive the hanging paragraph of any meaningful effect. . . . [W]e should favor a construction of the hanging paragraph that leaves both it and § 1325(b)(2) with independent effect. . . . [W]e conclude that the hanging paragraph is best read to exclude from disposable income the monthly 401(k)-contribution amount that Davis's employer withheld from her wages prior to her bankruptcy. . . . Our decision today builds on *Seafort* . . . . Unlike Davis, the debtor in *Seafort* sought to exclude from her disposable income 401(k) contributions that she had not been making prior to bankruptcy. . . . We do not disturb that analysis. . . . We now conclude that the hanging paragraph is best read to exclude from disposable income a debtor's post-petition monthly 401(k) contributions so long as those contributions were regularly withheld from the debtor's wages prior to her bankruptcy. . . . Our holding should not be read to curtail the good-faith analysis required by § 1325(a)(3).").

{533} ***Penfound v. Ruskin*, 609 B.R. 602, 605-08 (E.D. Mich. Sept. 20, 2019) (Cohn)** (Citing dicta in *Seafort v. Burden (In re Seafort)*, 669 F.3d 662 (6th Cir. Feb. 15, 2012) (Suhrheinrich), and acknowledging at least three contrary views, voluntary contributions to 401(k) plan are not a deductible expense in the projected disposable income calculation for a Chapter 13 debtor. "[T]he Sixth Circuit [in *Seafort*] held that income made available once a debtor's 401(k) loan repayments are fully repaid may not be used to make voluntary retirement contributions. Rather, those funds must be committed to the debtor's Chapter 13 plan for distribution to unsecured creditors. . . . Significantly, the Sixth Circuit concluded . . . ' . . . that Congress intended to exclude from disposable income and projected disposable income available for unsecured creditors only voluntary retirement contributions already in existence at the time the petition is filed.' . . . Debtors are correct that [footnote 7 in *Seafort*] is dicta. However, it is very persuasive dicta. . . . Debtors' voluntary post-petition contributions to a 401(k) account are part of disposable income. . . . ' . . . Debtors' voluntary contributions to their 401(k) plan are not an expense which is necessary for the maintenance, support of Debtor or Debtors' dependents.'").

{534} ***In re Whitt*, 616 B.R. 323, 326-31 (Bankr. S.D. Miss. Feb. 19, 2020) (Olack)** (Continued voluntary contributions to 401(k) retirement account are excluded from disposable income in a Chapter 13 case. "Neither § 1325 nor § 707 explicitly authorizes 401(k) contributions as an allowable expense in calculating disposable income. . . . Prior to BAPCPA, 401(k) contributions were considered disposable income and were not a necessary expense. . . . There are three distinct approaches to analyzing the relationship between § 541(b)(7) and § 1325(b)(2). . . . The first view holds that all voluntary retirement contributions, both prepetition and postpetition, are permitted under § 541(b)(7), limited only by the good faith requirement . . . . The second view holds that § 541(b)(7) does not permit postpetition voluntary retirement contributions in any amount regardless of whether the debtor was making prepetition retirement contributions. . . . The third view reads § 541(a) and § 541(b)(7) as limiting voluntary contributions to those amounts being made as of the petition date and holds that § 541(b)(7) does not permit a debtor to commence voluntary contributions postpetition. . . . [T]he Court joins the majority and other courts within the Fifth Circuit that have held that postpetition retirement contributions are not considered disposable income. . . . Congress included the hanging paragraph in BAPCPA to exclude retirement contributions of this sort from a debtor's disposable income. . . . [C]hapter 13 debtors may continue to contribute to a retirement plan and need not instead devote the income used for voluntary contributions to unsecured creditors . . . . [I]t is unnecessary to consider if a voluntary contribution satisfies the 'reasonable or necessary' standard of § 1325(b) since that determination is made by § 541(b)(7).").

§ 99.6 § 1325(b)(2)(A)(ii): Charitable Contributions (Again?)

{535} ***In re Wade*, 612 B.R. 70, 73–75 (Bankr. E.D.N.C. Dec. 30, 2019) (Warren)** (Plan provision to tithe $756 per month is not proposed in good faith and precludes confirmation of 39% plan. "Beginning shortly after they filed the Petition, the Debtors began tithing regularly to the Church. . . . Debtors had not contributed to the Church for two or three years before the Debtors filed the Petition, and they have not contributed ten percent of their income in approximately nine years. He characterized the Debtors' failure to tithe as religious 'disobedience.' . . . Congress added the language excluding charitable contributions from disposable income as part of the Religious Liberty and Charitable Donation Protection Act of 1998, Pub. L. No. 105-183, 112 Stat. 517 (1998). . . . The purpose of the 1998 Act, as stated in the House Report for the bill which became the Act, was to 'protect[ ] the rights of debtors to *continue* to make religious and charitable contributions after they file for bankruptcy relief.' . . . [T]he court does not question the sincerity of the Debtors' belief that they should tithe; however, the Debtors' testimony established a prolonged history of choosing not to contribute to the Church in order to pay for other expenses or endeavors which culminated in the Debtors' Petition. . . . [A] plan that proposes to contribute the amount of $756.00 to the Church each month to the detriment of unsecured creditors, when the Debtors did not contribute regularly before filing the Petition, is not proposed in good faith. The Debtors should not be permitted to pursue their salvation on the backs of their unsecured creditors.").

{536} ***In re Styerwalt*, 610 B.R. 356, 377–79 (Bankr. D. Colo. Dec. 16, 2019) (McNamara)** (Evidence supported charitable and religious donations totaling less than 3 percent of debtor's gross annual income. "Reasonably necessary" standard applies to charitable contributions less than 15 percent. Here test is satisfied by evidence of regular church going with modest contributions in cash and attendance at AA meetings. "The Court is tempted to follow the [*Drummond v. Cavanagh (In re Cavanagh)*, 250 B.R. 107 (B.A.P. 9th June 30, 2000) (Ryan, Klein, Russell),] line which establishes a *per se* rule that Chapter 13 debtors may always make charitable contributions so long as the amount is less than 15% of gross annual income. . . . But, the problem is that such approach simply is contrary to the statutory text . . . . [A] simple and plain reading dictates that qualified charitable contributions are subject to the 'reasonably necessary' requirement even if below the 15% of gross annual income cap. . . . [W]e now know that charitable contributions, including religious donations, can be 'reasonably necessary' and used in the projected disposable income calculation even though they are not economically justified. . . . [C]haritable giving, by definition, does not result in an excessive lifestyle. . . . [T]he Court elects to look toward neutral factors such as: the historical pattern of charitable giving . . . ; the proposed charitable contributions in relation to the proposed Chapter 13 trustee payments; the proposed charitable contributions in relation to proposed distributions to general unsecured creditors; the nature and extent of objections; any evidence suggesting that the proposed charitable contributions are proposed primarily to harm creditors; and the totality of the circumstances.").

d. APPLICABLE COMMITMENT PERIOD—ALL DEBTORS

§ 100.1 Applicable Commitment Period Calculation

{537} ***In re Sisk*, 962 F.3d 1133, 1145–48 (9th Cir. June 22, 2020) (Wardlaw, Smith, Bumatay)** (Distinguishing *Danielson v. Flores (In re Flores)*, 735 F.3d 855 (9th Cir. Aug. 29, 2013) (en banc), and *Fridley v. Forsythe (In re Fridley)*, 380 B.R. 538 (B.A.P. 9th Cir. Dec. 18, 2007) (Klein, Montali, Jury), absent consent by debtor or objection to confirmation, plan can state an estimated duration rather than a specific number of months and no Bankruptcy Code provision requires greater specificity. Applicable commitment period is temporal but it becomes a fixed plan duration only upon objection to confirmation or agreement by the debtor. "[Section] 1322 imposes a maximum duration for all plans. . . . [Section] 1325(b)(4) mandates a fixed minimum duration for confirmation—but only if the plan triggered an objection by the trustee or a creditor. . . . Neither § 1322 nor § 1325 point to an express fixed or minimum duration requirement for Chapter 13 plans absent an objection. . . . Read together, the Code provides for a maximum duration for all plans and a minimum duration for objected-to plans. . . . [F]or plans with no objection, the Code provides no minimum or fixed durations. . . . [W]e believe the Code permits a debtor to add an estimated term provision, so long as the plan does not draw an objection. . . . [Section] 1328(a) does not expressly condition the discharge on any time period elapsing, but solely on 'completion' of 'all payments under the plan.' . . . If Congress intended to set a fixed duration for all Chapter 13 plans, it could have easily done so by predicating discharge not on completion of 'payments,' but on the expiration of the plan's duration. . . . And estimated plan lengths would not interfere with fundamental aspects of the court's bankruptcy administration. . . . [E]stimated term provisions do not allow debtors to unilaterally reduce the 'time' for plan payments. . . . Instead, the estimated term permits a debtor to discharge remaining debts once the payments required to satisfy priority, secured, and unsecured creditors called for 'under the plan' are 'complet[ed]' (regardless of any estimated time set in the plan). . . . In *Fridley*, the debtors *expressly* committed to make plan payments for a specific period of 36 months. . . . *Fridley* . . . held that a bankruptcy court may confirm a plan under § 1325(b)(1)(B) 'only if the plan's duration is at least as long as the applicable commitment period provided by § 1325(b)(4).' . . . In other words, we read a 'temporal requirement' of three or five years into § 1325(b)(1)(B)'s applicable commitment period. . . . [Section] 1325(b)(1)(B) is *only* triggered if a trustee or creditor objects to the original plan. . . . Nothing in *Flores*' text or rationale compels the conclusion that a fixed duration must be included in *all* plans.").

{538} ***In re Kinne*, No. 19-49692, 2020 WL 5505912, at *1–*3 (Bankr. E.D. Mich. Sept. 11, 2020) (Randon)** (Without upsetting local model plan provision that counts length of plan from confirmation, nonstandard provision is approved that changes counting of applicable commitment period to begin with first payment under § 1326(a), consistent with statute and majority of courts. "[A]bove-median income debtors, required to make 60 monthly payments under their plan . . . have made 14 monthly pre-confirmation payments

to the Trustee . . . . Debtors ask the Court to start the clock on their five-year commitment period on the date of their first payment, as opposed to the date their plan is confirmed–as this district's model plan requires. . . . If allowed, Debtors would be obligated to make only 46 post-confirmation plan payments . . . instead of 60 post-confirmation payments for a total of 74 monthly payments. The Trustee objects . . . . [T]he Court adopts the majority position that the Bankruptcy Code requires the applicable commitment period begin on the date the first payment is due . . . . Debtors' applicable commitment period is five years. . . . The first payment was due 30 days after the petition date. 11 U.S.C. § 1326(a)(1) . . . . [T]he model plan in this district states the applicable commitment period begins on the date the plan is confirmed. . . . The Court cannot vacate the administrative order or the language in the model plan. It will remain unchanged unless a debtor seeks to change the start date of the commitment period. Because Debtors have sought such change, the Court will abide by the plain language of the statute and start the commitment period 30 days after the petition date when the first plan payment was due under section 1326(a)(1).").

{539} ***In re Flinn*, 615 B.R. 313, 319–23 (Bankr. D. Kan. Apr. 22, 2020) (Nugent)** (Chapter 13 debtors with CMI less than applicable median family income who propose plans longer than 36 months are not required to specify a fixed number of months for payments; cause to extend plan beyond 36 months is shown when debtors have insufficient disposable income to make required plan payments in less time. "Section 1322(d)'s salutary purpose was to place specific limitations on chapter 13 plans. Debtors could extend those plan periods for up to five years only if the extension was 'completely voluntary, and not imposed on the debtor by creditors or the chapter 13 trustee.' . . . None of the parties to these cases dispute that the debtors have voluntarily sought their extensions for the simple reason that they cannot pay what they must in three years because of their income limitations. . . . [A] below-median debtor's [applicable commitment period] is generally three years under § 1325(b)(4)(A)(i). . . . The trustee argues that courts, including the Tenth Circuit Court of Appeals, have held that the [applicable commitment period] is 'temporal[.]' . . . Nothing in the Code demands it be a whole number. . . . Rather, the period can be 'longer' than three years but not more than five. . . . There is no legal, factual, or practical basis for requiring below-median debtors who extend their plans beyond the [applicable commitment period] of 36 months to establish a finite number of monthly payments thereafter, so long as the plan doesn't run longer than five years.").

6. MISCELLANEOUS UNSECURED CLAIMS ISSUES
§ 101.1 What Do Unsecured Creditors Get?
§ 101.2 Good Faith toward Unsecured Claim Holders?
§ 101.3 Methods of Paying Unsecured Claims
§ 101.4 Curing Default and Maintaining Payments on Unsecured Debt
F. LEASES, RENTAL AGREEMENTS AND OTHER EXECUTORY CONTRACTS
§ 102.1 Debtor Can Assume, Assign or Reject Executory Contracts

{540} ***Microf LLC v. Cumbess (In re Cumbess)*, 960 F.3d 1325, 1333–38 (11th Cir. June 3, 2020) (Martin, Newsom, Carnes)** (Reading 365(d)(2) and 365(p)(1) literally and formalistically, when confirmed Chapter 13 plan assumed lease of HVAC unit but trustee did not separately assume lease, lease was deemed rejected after confirmation and "dropped out" of the estate; postpetition defaults by debtor in direct payments to lessee cannot be administrative expenses under § 503(b). "So under § 1322(b)(7), the debtor can 'provide for the assumption' of a lease in his proposed Chapter 13 plan—. . . 'subject to' § 365. And under § 365(a) and (d)(2), the trustee can 'assume' a lease as well. . . . Enter § 365(p)(1) . . . . Section 365(p)(1)'s plain language answers the question . . . : Where (as here) the trustee does not assume an unexpired lease, it drops out of the estate. . . . [W]hen § 365(p)(1) refers to the 'trustee,' it means the trustee—and, accordingly, that if the *trustee* does not assume an unexpired lease, it drops out of the debtor's bankruptcy estate. . . . Even assuming it once existed, the principle of bankruptcy law that . . . that a Chapter 13 debtor can unilaterally obligate his bankruptcy estate by assuming an unexpired lease in his plan . . . was upended, and is now foreclosed, by § 365(p)(1) . . . . We think it makes good sense to require the trustee . . . to affirmatively assume an unexpired lease . . . especially given that the bankruptcy court is under no obligation to scrutinize the wisdom of a debtor's decision to assume an unexpired lease. . . . It is of course possible . . . that when Congress drafted 11 U.S.C. § 365(p)(1) it just whiffed—it said 'trustee' when what it really meant was 'debtor.' That possibility . . . cannot control our disposition. . . . [B]ecause Microf has not otherwise shown that the lease confers a benefit on the estate, its claim for administrative-expense priority was properly denied.").

{541} ***In re Munoz*, 610 B.R. 907 (Bankr. D.N.M. Dec. 4, 2019) (Thuma)** (Code ambiguously allows trustee and Chapter 13 debtor to assume executory contract to purchase land. Failure to assume undisclosed contract in prior Chapter 7 case may have rejected the contract but did not affect automatic abandonment. Undisclosed contract remains asset of prior Chapter 7 case that cannot be assumed or otherwise managed in current Chapter 13 case. Debtors must reopen Chapter 7 case and seek abandonment of the contract to then be able to assume the contract in current Chapter 13 case.).

{542} ***Aire Serv LLC v. Roberts (In re Roberts)*, 607 B.R. 635 (Bankr. N.D. Ill. Oct. 10, 2019) (Barnes)** (On motion for preliminary injunction, franchisor failed to prove likelihood of success against Chapter 13 debtor because covenant not to compete was a claim under Seventh Circuit law which must be asserted by proof of claim, not by plenary action for injunction.).

§ 102.2 Debtor Must Cure Defaults and Assure Future Performance

{543} ***In re Manz*, No. 19-30090 (JNP), 2020 WL 1180752 (Bankr. D.N.J. Mar. 10, 2020) (Poslusny)** ("Mutual home ownership" contract between debtor and Audubon Mutual Housing Corporation is an executory contract that can be assumed in Chapter 13 case but debtor must propose prompt cure of arrears, including attorney's fees. Forty-four months proposed in Chapter 13 plan is not prompt; only one year to cure arrears is allowable.).

{544} ***In re Haynes*, No. 19-20601-PRW, 2019 WL 7945834 (Bankr. W.D.N.Y. Aug. 1, 2019) (Warren)** (Hardship deferment agreement with respect to payment of delinquent taxes expired by its terms before Chapter 13 petition and is not an executory contract that could be assumed through plan. Even if executory, Chapter 13 debtor's proposal to cure default in part in 22 months and in part in 60 months is not a prompt cure for purposes of § 365(b)(1). Debtor is otherwise incapable of a prompt cure.).

§ 102.3 Leases and Executory Contracts after BAPCPA
§ 102.4 Nonresidential Lease of Real Property
§ 102.5 Rejection Generates Unsecured Claim
§ 102.6 Lessor Can Demand Adequate Protection
§ 102.7 Lessor Can Accelerate Assumption or Rejection
§ 102.8 Fake Leases and Rental Agreements

{545} ***In re Paschal*, No. 19-70879- JTL, 2020 WL 4669067 (Bankr. M.D. Ga. Aug. 11, 2020) (Laney)** (Car lease with Nissan is a true lease under Georgia law, not a disguised security agreement because purchase option is not nominal, risk of loss is on debtor at all times and Nissan, not the debtor, clearly owns the car. Nissan entitled to stay relief because plan does not provide adequate protection.).

§ 102.9 Land Sales Contracts and Contracts to Make a Deed

{546} ***In re Peralta*, No. 18-16661-MDC, 2020 WL 3455087 (Bankr. E.D. Pa. June 24, 2020) (Coleman)** (Acknowledging conflicting authority, Chapter 13 plan can treat defaulted installment sales contract for purchase of real property as a secured claim and pay prepetition judgment on the contract in full under § 1322(c)(1) notwithstanding issuance of prepetition writ of possession when debtor was still in possession of the property at the petition and vendor had not executed on the writ of possession. Debtor can pay the judgment amount through the plan, satisfy the vendor's claim and obtain title to the property.).

{547} ***Dells Land & Cattle Co. II, LLC v. Krus (In re Krus)*, No. 19-48, 2020 WL 3088808 (Bankr. W.D. Wis. June 10, 2020) (Furay)** (After Chapter 13 debtors surrendered property to vendor under land sale contract, vendor found extensive damage and sued insurer under various theories; bankruptcy court dismisses action between vendor and insurer because vendor was not a named insured and intentional acts by debtors were not events covered by the insurance policy.).

{548} ***In re Louis*, No. 20-62841-JWC, 2020 WL 2843013 (Bankr. N.D. Ga. May 29, 2020) (Cavender)** (Stay relief denied because seller under Georgia "Bond for Title" has not completed judicial process necessary to dispossess debtor and debtor/vendee under Bond has equitable rights including right of redemption that can be addressed in Chapter 13 plan.).

{549} ***In re Chapman*, No. 17-32878-jda, 2020 WL 2071476 (Bankr. E.D. Mich. Apr. 29, 2020) (Applebaum)** (Seller—perhaps assignor—under land-sale contract was entitled to stay relief for cause when debtor had not made payments for two years, contract could not be assumed because debtor could not cure defaults and defaults could not be offset by damages when seller fully accounted for all payments from debtor.).

{550} ***In re Manz*, No. 19-30090 (JNP), 2020 WL 1180752 (Bankr. D.N.J. Mar. 10, 2020) (Poslusny)** ("Mutual home ownership" contract between debtor and Audubon Mutual Housing Corporation is an executory contract that can be assumed in Chapter 13 case but debtor must propose prompt cure of arrears, including attorney's fees. Forty-four months proposed in Chapter 13 plan is not prompt; only one year to cure arrears is allowable.).

{551} ***In re Munoz*, 610 B.R. 907 (Bankr. D.N.M. Dec. 4, 2019) (Thuma)** (Code ambiguously allows trustee and Chapter 13 debtor to assume executory contract to purchase land. Failure to assume undisclosed contract in prior Chapter 7 case may have rejected contract but did not affect an automatic abandonment. Undisclosed contract remains asset of prior Chapter 7 case that cannot be assumed or otherwise managed in current Chapter 13 case. Debtors must reopen Chapter 7 case and seek abandonment of the contract to then be able to assume the contract in current Chapter 13 case.).

{552} ***In re Edwards*, 606 B.R. 356 (Bankr. E.D. Ark. July 3, 2019) (Jones)** (Applying Arkansas law, contract to make a deed was a security device that can be treated as a long-term mortgage. That acceleration clause was exercised before the Chapter 13 petition does not remove the property from the estate and does not render the agreement forfeited before the petition.).

{553} ***In re Nolan*, No. 17-03706, 2018 WL 10345331 (Bankr. S.D. Ala. Apr. 2, 2018) (Callaway)** (Stay relief denied based on finding that contract for deed made in 2003 with respect to real property and mobile home was a secured transaction, not a true lease; debtor can cure default and maintain payments consistent with § 1322(b)(5) and need not assume the lease under § 365 and § 1322(b)(7).).

§ 102.10 When Purpose of Plan Is to Deal with an Unfavorable Contract or Lease

G. GOOD FAITH: BEFORE AND AFTER BAPCPA

1. GOOD FAITH BEFORE BAPCPA

§ 103.1 In General

a. FACTORS APPROACH

§ 104.1 In General
§ 104.2 Frequency of Filing Bankruptcy—Chapter 20 and Beyond
§ 104.3 Accuracy of Petition, Schedules, Statement and Testimony
§ 104.4 Burden of Administration

1) MOTIVATION IN FILING

§ 105.1 Prepetition Conduct and Misconduct—In General
§ 105.2 Prepetition Transfers and Transactions
§ 105.3 Filing on the Eve of Whatever

2) NONDISCHARGEABLE DEBTS

§ 106.1 In General
§ 106.2 Criminal Misconduct
§ 106.3 Alimony, Maintenance and Support
§ 106.4 Student Loans
§ 106.5 Separate Classification of Nondischargeable Claims and Good Faith

3) NATURE OF FINANCIAL PROBLEMS

§ 107.1 Greed, Not Need
§ 107.2 Executory Contracts
§ 107.3 Tax Problems
§ 107.4 Payment of Attorney Fees
§ 107.5 Special Circumstances: The Unusually Worthy or Needy Debtor

4) DEGREE OF EFFORT

§ 108.1 Economic Components of Good Faith—In General
§ 108.2 Duration of Plan
§ 108.3 Percentage of Payment
§ 108.4 Income, Expenses, Lifestyle and Luxuries

b. THE GENERIC APPROACHES TO GOOD FAITH

§ 109.1 Smell Tests

2. GOOD FAITH AFTER BAPCPA

§ 110.1 Good-Faith Filing Requirement after BAPCPA

{554} ***In re Dekom*, No. 19-30082-KKS, 2020 WL 4001044 (Bankr. N.D. Fla. Apr. 6, 2020) (Specie)** (After nine years of not paying mortgage, a final judgment of foreclosure, litigation in several courts and years of mortgagee paying taxes and insurance, plan was not proposed in good faith, case was not filed in good faith, plan calling for sale some time in next two years is not feasible and stay relief is appropriate for cause.).

{555} ***In re Walker*, No. 3:19-bk-33182-SHB, 2020 WL 1696097 (Bankr. E.D. Tenn. Apr. 2, 2020) (Bauknight)** (Third Chapter 13 case was filed in bad faith and plan was proposed in bad faith when each case and the current plan were engineered to defeat collection rights of former spouse. Debtor lied to domestic relations court, ignored divorce decree with respect to sale of property and refinancing of property, misappropriated assets and admitted to defrauding the state with respect to food stamps.).

{556} ***In re Pittman*, No. 19-41057, 2020 WL 859435 (Bankr. D. Kan. Feb. 20, 2020) (Somers)** (Chapter 13 filing two days after settlement agreement in state court divorce was not filed in bad faith notwithstanding that settlement agreement recites inaccurately that "even-up" provision will be nondischargeable in bankruptcy and Chapter 13 plan recites inconsistently that even-up provision will be discharged at completion of payments. At time settlement agreement was filed, both debtor and former spouse believed that even-up provision would be nondischargeable. They were both wrong but no bad-faith motive could be ascribed to debtor.).

{557} ***In re Hopkins*, No. 18-28111-ABA, 2019 WL 6357249 (Bankr. D.N.J. Nov. 19, 2019) (Altenburg)** (Chapter 13 debtor and attorney are sanctioned for bad-faith abuse of bankruptcy process that included sale of property without court authorization, failure to properly conduct Chapter 13 case, failure to file documents and failure to adequately represent the debtor. Sanctions included ordering the Chapter 13 trustee to use funds on hand in unconfirmed case to pay unsecured creditors in full, dismissal with two-year bar to refiling and denial of fees to counsel.).

{558} ***In re Pappas*, No. 18-20179, 2019 WL 4554511 (Bankr. D. Me. Sept. 19, 2019) (Fagone)** (In years-long litigation between debtor and creditor with large judgment from a civil rights action against the debtor, disputed material facts preclude summary judgment with respect to claims of bad faith under § 1325(a)(3) and § 1325(a)(5).).

§ 110.2 Good-Faith Plans after BAPCPA

{559} ***In re Sisk*, 962 F.3d 1133 (9th Cir. June 22, 2020) (Wardlaw, Smith, Bumatay)** (Because the Bankruptcy Code does not prohibit estimated plan duration, when no creditor or trustee objects to confirmation not bad faith for debtors to propose estimated plan duration rather than a fixed number of months.).

{560} ***Brown v. Viegelahn (In re Brown)*, 960 F.3d 711, 717–21 (5th Cir. June 8, 2020) (Southwick, Graves, Engelhardt)** (Not "inherently" bad faith for Chapter 13 plan to pay unsecured creditors 100% using less than all projected monthly disposable income. To confirm plan, Chapter 13 debtor with excess monthly disposable income was forced to agree to include provision that debtor would not seek to modify the plan under § 1329 to pay less than 100% to unsecured creditors. "The crux of the trustee's argument is that Brown acted in bad faith because his proposed plan makes 'creditors bear the risk of default should there be a future change in the Debtor's circumstances.' . . . We observe the sensible rule that 'debtors are not in bad faith merely for doing what the Code permits them to do.' . . . We thus reject the trustee's view that maintaining excess disposable income is inherently bad faith and manipulation of the Code. . . . Modifications of Chapter 13 plans must meet the same standards as a plan when first proposed. § 1329(b)(1). If, post-confirmation, a debtor in bad faith requests a modification of the plan, it is within the bankruptcy court's discretion to deny that request. Still, a bankruptcy court should not limit Section 1329's availability based on speculation about an as-of-yet non-existent request to modify a Chapter 13 plan.").

{561} ***In re White*, No. 19-05385-5-SWH, 2020 WL 5187570 (Bankr. E.D.N.C. Aug. 28, 2020) (Humrickhouse)** (Confirmation denied for lack of good faith when debtor failed to schedule interest in 2005 Scion and plan failed to address $2,800 claim secured by car. That Chapter 13 trustee raised good-faith objection for first time at hearing on confirmation and did not comply with seven-day objection requirement in Bankruptcy Rule 3015(f) does not preclude consideration of good faith because factual basis for good-faith objection was raised by the trustee and court has independent duty under *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), to examine good faith at confirmation of every Chapter 13 plan.).

{562} ***In re Fuller*, No. 19-02641-5-DMW, 2020 WL 3862988, at *3–*5 (Bankr. E.D.N.C. July 8, 2020) (Warren)** (Plan that is silent with respect to large home mortgage debt and car loan cannot be confirmed because court cannot determine whether plan is feasible, debtor cannot satisfy projected disposable income test without great specificity and silence with respect to two largest debts is evidence of lack of good faith. Plan was simply silent with respect to home mortgage, arrears on the mortgage and a car note. Trustee objected to confirmation. Debtor had current monthly income less than applicable median family income but Schedules I and J could not be relied upon to determine whether debtor had projected disposable income. "Even if treatment of a secured claim is permissibly excluded from a Chapter 13 plan, that exclusion has consequences . . . . The Nonstandard Provision asserts the Debtor's obligations to U.S. Bank and CarMax are not being paid 'pursuant to the plan,' leaving unanswered the question whether the Debtor intends to remit payments to U.S. Bank or CarMax in some other fashion. If a plan does not propose treatment of a secured claim, either through a trustee or direct payments from the debtor as outlined in the plan, then a debtor should not be permitted to reserve the right to pay that creditor outside of the bankruptcy court's supervision. If debtors were permitted to exclude a secured claim from a plan but continue to pay the creditor post-confirmation on terms unknown to the court, then the court's obligation to ascertain the feasibility of a plan under 11 U.S.C. § 1325(a)(6) would be rendered meaningless. . . . Debtor cannot presently carry her burden to show that she is committing all her projected disposable income to the Plan.").

{563} ***In re Kinsale*, 617 B.R. 58 (Bankr. D.S.C. June 2, 2020) (Waites)** (Plan lacks good faith when purpose is to discharge property settlement award that resulted when debtor contemptuously failed to sell day care business and pay portion of proceeds to former spouse. Former spouse's claim would be nondischargeable in a Chapter 7 case and debtor is using Chapter 13 to avoid consequences of failing to respect domestic relations court orders. Statements and schedules are inconsistent and inaccurate, supporting a finding of lack of good faith.).

{564} ***In re Flinn*, 615 B.R. 313 (Bankr. D. Kan. Apr. 22, 2020) (Nugent)** (Not bad faith that Chapter 13 debtors keep a small bass boat and voluntarily extend plan beyond 36 months to enable under-median debtors to keep home and car.).

{565} ***In re Pulliam*, No. 19-03887-5-DMW, 2020 WL 1860113, at *3–*4 (Bankr. E.D.N.C. Apr. 13, 2020) (Warren)** (Because $30,000 homestead exemption removes debtor's interest in property from the estate, but not the property itself under *Schwab v. Reilly*, 560 U.S. 770, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (June 17, 2010), nonstandard provision of plan that would relieve debtor of obligation under local rules to give notice of any sale of property during the Chapter 13 case is not proposed in good faith and precludes confirmation. "When the Debtor claimed an exemption in the Property . . . , he did not exempt the Property in its entirety, and he did not remove the Property from the bankruptcy estate. He exempted his *interest* in the Property. Local Rule . . . governing the sale of 'non-exempt' property remains applicable to any future sale of the Property, despite the Debtor's attempt to circumvent the Rule by including

the Nonstandard Provision in Section 8.1 of the Plan. . . . [T]he Plan has not been proposed in good faith, because it seeks impermissibly to deem property fully exempt from the Debtor's bankruptcy estate through the use of the Nonstandard Provision.").

{566} ***In re Dekom*, No. 19-30082-KKS, 2020 WL 4001044 (Bankr. N.D. Fla. Apr. 6, 2020) (Specie)** (After nine years of not paying mortgage, a final judgment of foreclosure, litigation in several courts and years of mortgagee paying taxes and insurance, plan was not proposed in good faith, case was not filed in good faith, plan calling for sale some time in next two years is not feasible and stay relief is appropriate for cause.).

{567} ***In re Walker*, No. 3:19-bk-33182-SHB, 2020 WL 1696097 (Bankr. E.D. Tenn. Apr. 2, 2020) (Bauknight)** (Third Chapter 13 case was filed in bad faith and plan was proposed in bad faith when each case and the current plan were engineered to defeat collection rights of former spouse. Debtor lied to domestic relations court, ignored divorce decree with respect to sale of property and refinancing of property, misappropriated assets and admitted to defrauding the state with respect to food stamps.).

{568} ***In re Whitt*, 616 B.R. 323 (Bankr. S.D. Miss. Feb. 19, 2020) (Olack)** (Not bad faith for plan to pay zero percent to unsecured creditors while debtor continues to make permissible voluntary contributions to 401(k) retirement account.).

{569} ***In re Wade*, 612 B.R. 70, 73–75 (Bankr. E.D.N.C. Dec. 30, 2019) (Warren)** (Plan provision to tithe $756 per month is not proposed in good faith and precludes confirmation of 39% plan. "Beginning shortly after they filed the Petition, the Debtors began tithing regularly to the Church. . . . Debtors had not contributed to the Church for two or three years before the Debtors filed the Petition, and they have not contributed ten percent of their income in approximately nine years. He characterized the Debtors' failure to tithe as religious 'disobedience.' . . . Congress added the language excluding charitable contributions from disposable income as part of the Religious Liberty and Charitable Donation Protection Act of 1998, Pub. L. No. 105-183, 112 Stat. 517 (1998). . . . The purpose of the 1998 Act, as stated in the House Report for the bill which became the Act, was to 'protect[ ] the rights of debtors to *continue* to make religious and charitable contributions after they file for bankruptcy relief.' . . . [T]he court does not question the sincerity of the Debtors' belief that they should tithe; however, the Debtors' testimony established a prolonged history of choosing not to contribute to the Church in order to pay for other expenses or endeavors which culminated in the Debtors' Petition. . . . [A] plan that proposes to contribute the amount of $756.00 to the Church each month to the detriment of unsecured creditors, when the Debtors did not contribute regularly before filing the Petition, is not proposed in good faith. The Debtors should not be permitted to pursue their salvation on the backs of their unsecured creditors.").

{570} ***In re Lafferty*, No. 1:17-bk-02900-HWV, 2019 WL 10431875 (Bankr. M.D. Pa. Dec. 16, 2019) (Van Eck)** (Plan satisfies good-faith requirement based on consideration of factors including health issues, tax liens and a business failure.).

{571} ***In re Price*, 609 B.R. 475, 477–81 (Bankr. N.D. Tex. Nov. 21, 2019) (Jones)** (Not bad faith for § 1325(a)(3) purposes that debtors with current monthly income greater than applicable median family income propose to pay unsecured creditors all projected disposable income as determined on Official Forms 122C-1 and 122C-2 notwithstanding that Schedule J reveals that debtors will also pay $222 per month for whole life insurance policies that are not deducted as expenses on Form 122C-2. "The trustee does not assert that, under § 1325(b), the Prices have improperly determined their disposable income. He instead argues that since the Prices are *not* paying-in the $222.25 per month, their plan fails to dedicate *all* their disposable income for payments to creditors. . . . The trustee suggests that joint debtors must contribute all their 'actual' disposable income—rather than the form-derived amount—to their chapter 13 plan to satisfy the § 1325(b) confirmation requirements. The trustee is asking the Court to return to the pre-BAPCPA evaluation of a debtor's disposable income. . . . The Court rejects this suggestion. The determination of disposable income under the statute 'supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis.' *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 65, 131 S.Ct. 716, 178 L.Ed.2d 603 ([Jan. 11,] 2011). . . . Although the Prices may have more disposable income than calculated on their Form 122C-2, without any aggravating factors to suggest that they are seeking to manipulate the bankruptcy process, there cannot be a finding of bad faith. The trustee's objection to confirmation is misguided. His objection focuses on the classification of whole life insurance under IRS guidelines and argues that it is not reasonably necessary because it embodies a savings component . . . . But if the Prices obtained term life policies, the amount of the premiums would be made at the expense of those same creditors. Their plan is *not* proposed in bad faith where it pays *more* to unsecured creditors by maintaining the whole life insurance policies.").

{572} ***In re Sharp*, 608 B.R. 546 (Bankr. D. Kan. Oct. 23, 2019) (Somers)** (Not bad faith for § 1325(a)(3) purposes that debtor filed Chapter 13 petition 21 days after buying a used car with 200,000 miles when proposed plan would pay car lender in full with *Till v. SCS Credit Corp*., 541 U.S. 465, 124 S. Ct. 1951, 158 L. Ed. 2d 787 (May 17, 2004), interest.).

{573} ***In re Pappas*, No. 18-20179, 2019 WL 4554511 (Bankr. D. Me. Sept. 19, 2019) (Fagone)** (In years-long litigation between debtor and creditor with large judgment from a civil rights action against the debtor, disputed material facts preclude summary judgment with respect to claims of bad faith under § 1325(a)(3) and § 1325(a)(5).).

{574} ***Beesley v. Beesley (In re Beesley)*, No. 17-00021, 2018 WL 10345325 (Bankr. S.D. Ala. Jan. 8, 2018) (Callaway)** (Chapter 13 plan that would minimize payments to former spouse while protecting suspicious transfers of property to debtor's mother was not

proposed in good faith and could not be confirmed. A portion of debt to former spouse was nondischargeable DSO and plan proposed to treat the entire debt as dischargeable. Bankruptcy court granted stay relief to allow state domestic relations court to determine what portion of "property settlement" was actually DSO and at that point debtor could try to propose a confirmable plan.).

H. FEASIBILITY

§ 111.1 Able to Make Payments and Comply with Plan

{575} ***Hunter v. Morris (In re Hunter)*, No. 3:20-cv-0159, 2020 WL 3023062 (S.D. W. Va. June 4, 2020) (Chambers)** (Plan was not feasible under § 1325(a)(6) and dismissal for cause was appropriate under § 1307(c) when amount necessary to cure mortgage arrearage exceeded debtor's gross monthly income.).

§ 111.2 Feasibility Turned on Its Head after BAPCPA

{576} ***In re Fuller*, No. 19-02641-5-DMW, 2020 WL 3862988, at *3–*5 (Bankr. E.D.N.C. July 8, 2020) (Warren)** (Plan that is silent with respect to large home mortgage debt and car loan cannot be confirmed because court cannot determine whether plan is feasible, debtor cannot satisfy projected disposable income test without great specificity and silence with respect to two largest debts is evidence of lack of good faith. Plan was simply silent with respect to home mortgage, arrears on the mortgage and a car note. Trustee objected to confirmation. Debtor had current monthly income less than applicable median family income but Schedules I and J could not be relied upon to determine whether debtor had projected disposable income. "Even if treatment of a secured claim is permissibly excluded from a Chapter 13 plan, that exclusion has consequences . . . . The Nonstandard Provision asserts the Debtor's obligations to U.S. Bank and CarMax are not being paid 'pursuant to the plan,' leaving unanswered the question whether the Debtor intends to remit payments to U.S. Bank or CarMax in some other fashion. If a plan does not propose treatment of a secured claim, either through a trustee or direct payments from the debtor as outlined in the plan, then a debtor should not be permitted to reserve the right to pay that creditor outside of the bankruptcy court's supervision. If debtors were permitted to exclude a secured claim from a plan but continue to pay the creditor post-confirmation on terms unknown to the court, then the court's obligation to ascertain the feasibility of a plan under 11 U.S.C. § 1325(a)(6) would be rendered meaningless. . . . Debtor cannot presently carry her burden to show that she is committing all her projected disposable income to the Plan.").

{577} ***In re Kinsale*, 617 B.R. 58 (Bankr. D.S.C. June 2, 2020) (Waites)** (Plan is not feasible because debtor's day care business is losing money and will not produce enough income to fund plan. Gifts from sister to fund plan are too speculative without testimony from sister.).

{578} ***In re Dekom*, No. 19-30082-KKS, 2020 WL 4001044 (Bankr. N.D. Fla. Apr. 6, 2020) (Specie)** (After nine years of not paying mortgage, a final judgment of foreclosure, litigation in several courts and years of mortgagee paying taxes and insurance, plan was not proposed in good faith, case was not filed in good faith, plan calling for sale some time in next two years is not feasible and stay relief is appropriate for cause.).

{579} ***In re Lafferty*, No. 1:17-bk-02900-HWV, 2019 WL 10431875, at *9 (Bankr. M.D. Pa. Dec. 16, 2019) (Van Eck)** (Plan fails feasibility test in § 1325(a)(6) notwithstanding that debtors made all payments during the 24 months between petition and hearing on confirmation. Budget showed $1,229 available to make plan payment of $1,600 per month. Court denies confirmation on feasibility grounds and grants debtors 14 days "to amend their schedules to demonstrate the ability to make the payments proposed by the Plan.").

I. LENGTH OF PLAN

§ 112.1 General Rule: Three Years, More or Less
§ 112.2 Length of Plan after BAPCPA

{580} ***In re Sisk,* No. 18-17445, 2020 WL 5200918 (9th Cir. Sept. 1, 2020) (as amended Sept. 24, 2020) (Wardlaw, Smith, Bumatay)** (Because a Chapter 13 case is not a "civil action brought by or against the United States," the successful debtors in *In re Sisk*, 962 F.3d 1133 (9th Cir. June 22, 2020) (Wardlaw, Smith, Bumatay), are not entitled to recover attorney's fees under the Equal Access to Justice Act.).

{581} ***In re Sisk*, 962 F.3d 1133, 1145–48 (9th Cir. June 22, 2020) (Wardlaw, Smith, Bumatay)** (Distinguishing *Danielson v. Flores (In re Flores)*, 735 F.3d 855 (9th Cir. Aug. 29, 2013) (en banc), and *Fridley v. Forsythe (In re Fridley)*, 380 B.R. 538 (B.A.P. 9th Cir. Dec. 18, 2007) (Klein, Montali, Jury), absent consent by debtor or objection to confirmation, plan can state an estimated duration rather than a specific number of months and no Bankruptcy Code provision requires greater specificity. Applicable commitment period is temporal but it becomes a fixed plan duration only upon objection to confirmation or agreement by the debtor. "[Section] 1322 imposes a maximum duration for all plans. . . . [Section] 1325(b)(4) mandates a fixed minimum duration for confirmation—but only if the plan triggered an objection by the trustee or a creditor. . . . Neither § 1322 nor § 1325 point to an express fixed or minimum duration requirement for Chapter 13 plans absent an objection. . . . Read together, the Code provides for a maximum duration for all plans and a minimum duration for objected-to plans. . . . [F]or plans with no objection, the Code provides no minimum or fixed durations. . . . [W]e believe the Code permits a debtor to add an estimated term provision, so long as the plan does not draw an objection. . . . [Section]

1328(a) does not expressly condition the discharge on any time period elapsing, but solely on 'completion' of 'all payments under the plan.' . . . If Congress intended to set a fixed duration for all Chapter 13 plans, it could have easily done so by predicating discharge not on completion of 'payments,' but on the expiration of the plan's duration. . . . And estimated plan lengths would not interfere with fundamental aspects of the court's bankruptcy administration. . . . [E]stimated term provisions do not allow debtors to unilaterally reduce the 'time' for plan payments. . . . Instead, the estimated term permits a debtor to discharge remaining debts once the payments required to satisfy priority, secured, and unsecured creditors called for 'under the plan' are 'complet[ed]' (regardless of any estimated time set in the plan). . . . In *Fridley*, the debtors *expressly* committed to make plan payments for a specific period of 36 months. . . . *Fridley* . . . held that a bankruptcy court may confirm a plan under § 1325(b)(1)(B) 'only if the plan's duration is at least as long as the applicable commitment period provided by § 1325(b)(4).' . . . In other words, we read a 'temporal requirement' of three or five years into § 1325(b)(1)(B)'s applicable commitment period. . . . [Section] 1325(b)(1)(B) is *only* triggered if a trustee or creditor objects to the original plan. . . . Nothing in *Flores*' text or rationale compels the conclusion that a fixed duration must be included in *all* plans."), *aff'g in part, vacating in part, rev'g in part In re Escarcega*, 573 B.R. 219 (B.A.P. 9th Cir. Sept. 6, 2017) (Jury, Faris, Brand), *aff'g* 557 B.R. 755, 758-75 (Bankr. N.D. Cal. Sept. 26, 2016) (Hammond, Johnson) (en banc) (Addressing and eliminating a practice in the San Jose Division of the Northern District of California, Chapter 13 plans cannot specify length of plan as "estimate" but must provide a specific number of months to prevent Chapter 13 debtors from paying off plans early, and modifications must be noticed under § 1329 when circumstances conspire to permit a Chapter 13 debtor to complete a plan before the length required by the Code. "In February 2016, the judges of the San Jose Division required chapter 13 debtors to adopt the Chapter 13 Model Plan . . . . In certain cases filed in the San Jose Division, counsel have modified the terms of the newly implemented Model Plan. . . . The unvarnished purpose behind the proposed modifications is to perpetuate the apparently long-standing practice in the San Jose Division that permits confirmation of chapter 13 plans without a defined term, . . . that allows no possibility of distribution on allowed claims of general unsecured creditors, . . . and that permits Debtors to obtain a discharge prior to the end of the estimated term without further court order. . . . All in all, these provisions are intended to authorize debtors to pay off their plans and obtain a discharge at any time after confirmation without having to go through the plan modification process and without having to pay allowed unsecured claims in full. . . . Counsel in these cases negotiated the use of additional provisions in advance with the Trustee . . . . She agreed that, if the provisions being advocated by counsel were employed to alter the Model Plan, she would not object to confirmation. . . . [T]he plans were administered in a manner inconsistent with the Bankruptcy Code. Once a debtor had completed payments to the Trustee sufficient to cover administrative expenses, such as counsel's fees, payment on secured debt (including arrears), and priority claims (e.g. taxes), the plans were considered completed, discharges issued, and the case closed. . . . [I]n some cases, plans terminated much earlier than their stated estimated length. . . . The routine early termination of chapter 13 plans does not appear to have been actively concealed from the court, but the practice certainly was not made clear. . . . It is simply not true that a debtor has no obligation to give notice to creditors of his intent to terminate a chapter 13 plan early. . . . *Because of the way the practice has developed in this division*, we determine that each and every plan shall have a stated length and any substantive variation from that length will require a motion to modify. . . . [T]he Ninth Circuit endorsed [the *Fridley v. Forsythe (In re Fridley)*, 380 B.R. 538 (B.A.P. 9th Cir. [Dec. 18, 2007) (Klein, Montali, Jury),] determination that a 'minimum duration for chapter 13 plans is crucial to an important purpose of § 1329's modification process: to ensure that unsecured creditors have a mechanism for seeking increased . . . payments if a debtor's financial circumstances improve unexpectedly.' [*Danielson v. Flores (In re Flores)*], 735 F. 3d 855, 860 (9th Cir. [Aug. 29,]2013) (en banc) . . . . [T]he temporal requirement we find is distinct from the applicable commitment period imposed by § 1325(b) following an objection to confirmation.").

{582} ***In re Flinn*, 615 B.R. 313, 319–23 (Bankr. D. Kan. Apr. 22, 2020) (Nugent)** (Chapter 13 debtors with CMI less than applicable median family income who propose plans longer than 36 months are not required to specify a fixed number of months for payments; cause to extend plan beyond 36 months is shown when debtors have insufficient disposable income to make required plan payments in less time. "Section 1322(d)'s salutary purpose was to place specific limitations on chapter 13 plans. Debtors could extend those plan periods for up to five years only if the extension was 'completely voluntary, and not imposed on the debtor by creditors or the chapter 13 trustee.' . . . None of the parties to these cases dispute that the debtors have voluntarily sought their extensions for the simple reason that they cannot pay what they must in three years because of their income limitations. . . . [A] below-median debtor's [applicable commitment period] is generally three years under § 1325(b)(4)(A)(i). . . . The trustee argues that courts, including the Tenth Circuit Court of Appeals, have held that the [applicable commitment period] is 'temporal[.]' . . . Nothing in the Code demands it be a whole number. . . . Rather, the period can be 'longer' than three years but not more than five. . . . There is no legal, factual, or practical basis for requiring below-median debtors who extend their plans beyond the [applicable commitment period] of 36 months to establish a finite number of monthly payments thereafter, so long as the plan doesn't run longer than five years.").

{583} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this

Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

§ 112.3 How to Calculate the Length of the Plan

{584} ***In re Kinne*, No. 19-49692, 2020 WL 5505912, at *1–*3 (Bankr. E.D. Mich. Sept. 11, 2020) (Randon)** (Without upsetting local model plan provision that counts length of plan from confirmation, nonstandard provision is approved that changes counting of applicable commitment period to begin with first payment under § 1326(a), consistent with statute and majority of courts. "[A]bove-median income debtors, required to make 60 monthly payments under their plan . . . have made 14 monthly pre-confirmation payments to the Trustee . . . . Debtors ask the Court to start the clock on their five-year commitment period on the date of their first payment, as opposed to the date their plan is confirmed–as this district's model plan requires. . . . If allowed, Debtors would be obligated to make only 46 post-confirmation plan payments . . . instead of 60 post-confirmation payments for a total of 74 monthly payments. The Trustee objects . . . . [T]he Court adopts the majority position that the Bankruptcy Code requires the applicable commitment period begin on the date the first payment is due . . . . Debtors' applicable commitment period is five years. . . . The first payment was due 30 days after the petition date. 11 U.S.C. § 1326(a)(1) . . . . [T]he model plan in this district states the applicable commitment period begins on the date the plan is confirmed. . . . The Court cannot vacate the administrative order or the language in the model plan. It will remain unchanged unless a debtor seeks to change the start date of the commitment period. Because Debtors have sought such change, the Court will abide by the plain language of the statute and start the commitment period 30 days after the petition date when the first plan payment was due under section 1326(a)(1).").

§ 112.4 Cause for Extension beyond Three Years

{585} ***In re Flinn*, 615 B.R. 313, 319–23 (Bankr. D. Kan. Apr. 22, 2020) (Nugent)** (Chapter 13 debtors with CMI less than applicable median family income who propose plans longer than 36 months are not required to specify a fixed number of months for payments; cause to extend plan beyond 36 months is shown when debtors have insufficient disposable income to make required plan payments in less time. "Section 1322(d)'s salutary purpose was to place specific limitations on chapter 13 plans. Debtors could extend those plan periods for up to five years only if the extension was 'completely voluntary, and not imposed on the debtor by creditors or the chapter 13 trustee.' . . . None of the parties to these cases dispute that the debtors have voluntarily sought their extensions for the simple reason that they cannot pay what they must in three years because of their income limitations. . . . [A] below-median debtor's [applicable commitment period] is generally three years under § 1325(b)(4)(A)(i). . . . The trustee argues that courts, including the Tenth Circuit Court of Appeals, have held that the [applicable commitment period] is 'temporal[.]' . . . Nothing in the Code demands it be a whole number. . . . Rather, the period can be 'longer' than three years but not more than five. . . . There is no legal, factual, or practical basis for requiring below-median debtors who extend their plans beyond the [applicable commitment period] of 36 months to establish a finite number of monthly payments thereafter, so long as the plan doesn't run longer than five years.").

§ 112.5 Payment of Claims beyond Length of Plan

{586} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two

days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

J. MISCELLANEOUS PLAN PROVISIONS AND CONFIRMATION CONSIDERATIONS

§ 113.1 Plan Complies with Bankruptcy Code

{587} ***In re Mank*, No. 19-04199-5-SWH, 2020 WL 1228671, at *2–*4 (Bankr. E.D.N.C. Mar. 3, 2020) (Humrickhouse)** (Nonstandard provision that all property vests in debtor at confirmation and that debtor can dispose of property after confirmation without complying with motion practice requirements in § 363(b) is not appropriate for § 1322(b)(11) purposes. The first part—about vesting in the debtor—is redundant of other provisions in the local plan form. The provision about § 363(b) seeks to resolve a legal uncertainty that is not based on actual circumstances in this case. Nonstandard provision that would prohibit the Chapter 13 trustee from seeking approval of a compromise or settlement under Bankruptcy Rule 9019 unless the trustee is the plaintiff is also rejected as "not appropriate" for purposes of § 1322(b)(11). "While nonstandard provisions may be included in a plan under section 1322(b)(11), those provisions must be 'appropriate' and 'not inconsistent' with the Bankruptcy Code. . . . [E]ven if a nonstandard provision is an accurate reflection of the law, or at least 'not inconsistent' with the Bankruptcy Code, that provision could still be inappropriate. . . . A nonstandard provision is not appropriate if it requires the court to clarify the law on an issue that does not specifically affect the debtor. . . . [I]ncluding unnecessary nonstandard provisions only increases the cost of administration and impedes efficient administration of the plan. . . . [A]llowing debtors' attorneys to create 'standard nonstandard' provisions in chapter 13 plans would enable debtors' attorneys to create a new form plan without complying with the procedure for altering the Local Form. . . . Restating the law in a nonstandard provision is unnecessary . . . .").

§ 113.2 Filing Fee Payment Requirement
§ 113.3 Domestic Support Obligations Must Be Current
§ 113.4 All Tax Returns Must Be Filed

{588} ***In re Souter*, No. 19-21582-gmh, 2019 WL 5887174, at *1–*2 (Bankr. E.D. Wis. Sept. 17, 2019) (Halfenger)** (The requirement in § 1325(a)(9) is mandatory—the court cannot confirm a Chapter 13 unless the debtor affirmatively proves that all required tax returns have been filed consistent with § 1308. "The debtors contend that, unless someone objects, the court can confirm a plan in this case even though they did not (and cannot now) satisfy § 1325(a)(9) because they failed to file all of their applicable tax returns as required by § 1308. . . . The Supreme Court has repeatedly read § 1325(a) to permit confirmation only if all of the subsection's requirements are met.").

§ 113.5 Submission of Future Income
§ 113.6 Providing for Postpetition Claims
§ 113.7 Order of Payments to Creditors before BAPCPA
§ 113.8 Order of Payments to Creditors after BAPCPA
§ 113.9 Special Drafting Considerations for Debtor Engaged in Business
§ 113.10 Special Drafting Considerations for Debtor with Seasonal or Irregular Income
§ 113.11 Retention of Property of the Estate: Overcoming 11 U.S.C. § 1327(b)

{589} ***In re Cherry*, 963 F.3d 717, 720 (7th Cir. July 6, 2020) (Easterbrook, Rovner, Hamilton)** (Failure to make case-specific findings of cause required by *In re Steenes*, 918 F.3d 554 (7th Cir. Mar. 14, 2019) (Easterbrook, Rovner, Hamilton), is fatal to confirmation of Chapter 13 plan that retains car in estate; checkbox in form plan rewritten to conform to *Steenes* fails because bankruptcy court did not find case-specific reasons for holding property in the estate after confirmation. "A bankruptcy court may confirm a plan that holds property in the estate only after finding good case-specific reasons for that action. Because the bankruptcy court approved these plans without finding that such reasons exist, its orders are REVERSED.").

{590} ***In re Mank*, No. 19-04199-5-SWH, 2020 WL 1228671, at *2–*4 (Bankr. E.D.N.C. Mar. 3, 2020) (Humrickhouse)** (Nonstandard provision that all property vests in debtor at confirmation and that debtor can dispose of property after confirmation

without complying with motion practice requirements in § 363(b) is not appropriate for § 1322(b)(11) purposes. The first part—about vesting in the debtor—is redundant of other provisions in the local plan form. The provision about § 363(b) seeks to resolve a legal uncertainty that is not based on actual circumstances in this case. Nonstandard provision that would prohibit the Chapter 13 trustee from seeking approval of a compromise or settlement under Bankruptcy Rule 9019 unless the trustee is the plaintiff is also rejected as "not appropriate" for purposes of § 1322(b)(11). "While nonstandard provisions may be included in a plan under section 1322(b)(11), those provisions must be 'appropriate' and 'not inconsistent' with the Bankruptcy Code. . . . [E]ven if a nonstandard provision is an accurate reflection of the law, or at least 'not inconsistent' with the Bankruptcy Code, that provision could still be inappropriate. . . . A nonstandard provision is not appropriate if it requires the court to clarify the law on an issue that does not specifically affect the debtor. . . . [I]ncluding unnecessary nonstandard provisions only increases the cost of administration and impedes efficient administration of the plan. . . . [A]llowing debtors' attorneys to create 'standard nonstandard' provisions in chapter 13 plans would enable debtors' attorneys to create a new form plan without complying with the procedure for altering the Local Form. . . . Restating the law in a nonstandard provision is unnecessary . . . .").

{591} ***In re Johnson*, 614 B.R. 80, 87-93 (Bankr. D. Alaska Jan. 17, 2020) (Spraker)** (Applying *Hamilton v. Lanning*, 560 U.S. 505, 130 S. Ct. 2464, 177 L. Ed. 2d 23 (June 7, 2010), because Alaska Permanent Fund Dividend is virtually certain to be received by Chapter 13 debtor during each year of plan—though amount is not known—plan cannot be confirmed that applies PFD in excess of $1,000 per year already accounted for as current monthly income as a credit against future monthly payments of projected disposable income. Plan cannot vest excess PFD in debtor at confirmation. Debtor included $166.67 in monthly income derived from PFDs to calculate monthly disposable income on Official Form 122C-2. "In 2002, the Local Rules Committee for the United States Bankruptcy Court, District of Alaska, revised [local rules and forms] to account for the inability to determine in advance the amount of annual PFD payments a debtor would receive during a chapter 13 plan commitment period. . . . The combination of [local rules and forms] commits all PFDs received within the plan term to distribution through the plan, and requires the use of a placeholder estimate of $1,000.00 for the annual PFDs as additional payments to the monthly plan payments. . . . The Rules Committee's stated reason for excluding the PFD from the regular periodic payments and providing for turnover in a lump sum was simple: to prevent debtors from understating their disposable income while ensuring performance. . . . The PFD is akin to a tax refund, as at the time of confirmation it is highly likely that Debtor will continue to receive it during the term of her Plan. But like an inheritance, PFDs are not derived from a debtor's labor and resulting wages. In short, at confirmation Alaskan chapter 13 debtors are 'virtually certain' to receive future PFDs in an unknown amount. Utilizing the analysis set forth in *Hamilton*, the court concludes that Debtor's future PFDs constitute projected disposable income. . . . Because Debtor attempts to limit the amount of the future PFDs payable to her Plan, the proposed chapter 13 Plan fails to comply with § 1325(b)(1)(B). . . . Because the local chapter 13 plan excepts future PFDs from vesting in a debtor upon confirmation, § 1327(b) does not remove them from property of the estate . . . . Instead, it commits the future PFDs as projected disposable income to a debtor's plan recognizing that while they may be uncertain in amount, it is sufficiently certain that a PFD shall be paid to necessitate its inclusion in the chapter 13 plan. Debtor may not circumvent the requirement to pay all projected disposable income by capping the amount of future PFDs available to the chapter 13 estate and having any excess amount revest in her.").

{592} ***CitiMortgage, Inc. v. Davis (In re Davis)*, 609 B.R. 324 (Bankr. N.D. Ill. Oct. 28, 2019) (Lynch)** (State court foreclosure removed to bankruptcy court by Chapter 13 debtor is properly remanded to state court. Bankruptcy court has no jurisdiction to consider foreclosure after property vested in the debtor at confirmation and debtor received discharge of debts other than the mortgage. Bankruptcy court previously rejected multiple challenges by debtor to mortgage held by foreclosing creditor.).

§ 113.12 Miscellaneous Objections to Confirmation

{593} ***In re Cowser*, No. 6:19-bk-21008-WJ, 2020 WL 974973 (Bankr. C.D. Cal. Feb. 28, 2020) (Johnson)** (On motion of Chapter 13 trustee, confirmation of plan is denied and case is dismissed because debtor did not list or schedule separate debts of nonfiling spouse. In community property state like California, the debtor is liable as part of the community for separate debts of nonfiling spouse and those creditors must be given notice and opportunity to participate by filing claims and objecting to confirmation. Dismissal is necessary because creditors of nonfiling spouse have been "irreparably prejudiced" by passage of time without notice of Chapter 13 case.).

§ 113.13 Miscellaneous Confirmation Issues Added by BAPCPA

K. PRECONFIRMATION MODIFICATION OF PLAN

§ 114.1 Timing, Procedure and Form

{594} ***In re Footes*, No. 1:19-bk-11844-SDR, 2019 WL 4411817, at *4 (Bankr. E.D. Tenn. Sept. 13, 2019) (Rucker)** (Plan must be renoticed to creditors when prior to confirmation creditors provided for as partially secured are determined to be wholly unsecured based on proofs of claim that do not claim secured status. "In chapter 13, notice to all creditors of the debtor's proposed plan and the creditor's opportunity to object are required by Rule 2002 and 3015 of the Federal Rules of Bankruptcy Procedure . . . . Failure to give notice of a material change to a creditor's treatment under a plan and an opportunity to object to confirmation may make such a plan vulnerable to a later challenge by the creditor as to the binding effect of a plan under 11 U.S.C. § 1327(a). . . . [T]hese creditors have not received notice that they are being treated as unsecured.").

§ 114.2 To Correct Errors in Original Plan

§ 114.3 To Reflect Changed Circumstances
§ 114.4 To Deal with Objections to Original Plan
§ 114.5 To Provide for Postpetition Creditors
§ 114.6 Effect of Preconfirmation Modification on Prior Acceptance or Rejection of the Plan

{595} ***In re Footes*, No. 1:19-bk-11844-SDR, 2019 WL 4411817, at *4 (Bankr. E.D. Tenn. Sept. 13, 2019) (Rucker)** (Plan must be renoticed to creditors when prior to confirmation creditors provided for as partially secured are determined to be wholly unsecured based on proofs of claim that do not claim secured status. "In chapter 13, notice to all creditors of the debtor's proposed plan and the creditor's opportunity to object are required by Rule 2002 and 3015 of the Federal Rules of Bankruptcy Procedure . . . . Failure to give notice of a material change to a creditor's treatment under a plan and an opportunity to object to confirmation may make such a plan vulnerable to a later challenge by the creditor as to the binding effect of a plan under 11 U.S.C. § 1327(a). . . . [T]hese creditors have not received notice that they are being treated as unsecured.").

§ 114.7 Opposing a Preconfirmation Modification of the Plan
L. CONFIRMATION PRACTICE AND PROCEDURE
1. HEARING ON CONFIRMATION
§ 115.1 Timing of Hearing on Confirmation before BAPCPA
§ 115.2 Timing of Hearing on Confirmation after BAPCPA

{596} ***In re Sisk*, 962 F.3d 1133 (9th Cir. June 22, 2020) (Wardlaw, Smith, Bumatay)** (Section 1324 requires the court to hold a confirmation hearing within 45 days, not necessarily conclude that process within 45 days.), *aff'g in part, vacating in part, rev'g in part In re Escarcega*, 573 B.R. 219 (B.A.P. 9th Cir. Sept. 6, 2017) (Jury, Faris, Brand), *aff'g* 557 B.R. 755 (Bankr. N.D. Cal. Sept. 26, 2016) (Hammond, Johnson) (en banc) (Section 1324 requires court to convene confirmation hearing between 20 and 45 days after meeting of creditors but does not require completion of the hearing within any particular time. "Debtors misconstrue § 1324, which requires the court to convene a hearing on confirmation of the plan between 20 and 45 days after the meeting of creditors required by § 341. . . . Nothing in the statute requires a substantive or conclusive hearing within this period, let alone a decision on confirmation.").

§ 115.3 Burden of Proof
§ 115.4 Discovery and Preparation for Confirmation Hearing
2. OBJECTING TO CONFIRMATION
§ 116.1 Standing to Object

{597} ***In re Revels*, 616 B.R. 675 (Bankr. E.D.N.C. Mar. 20, 2020) (Humrickhouse)** (Failure of trustee to object to nonstandard provision of first Chapter 13 plan does not preclude bankruptcy court from consideration of trustee's objection to same nonstandard provision in third amended plan. Bankruptcy court has an "independent duty" to consider confirmation of third amended plan.).

{598} ***In re Coats-Califf*, No. 19-04310-JW, 2020 WL 257315 (Bankr. D.S.C. Jan. 8, 2020) (Waites)** (Lienholder, Cathedral Baptist Church of the Grand Strand, Inc., cannot appear to contest confirmation through its minister, who is not a licensed attorney.).

§ 116.2 Time for Filing Objections
§ 116.3 Time for Filing Objections after BAPCPA

{599} ***In re White*, No. 19-05385-5-SWH, 2020 WL 5187570 (Bankr. E.D.N.C. Aug. 28, 2020) (Humrickhouse)** (Confirmation denied for lack of good faith when debtor failed to schedule interest in 2005 Scion and plan failed to address $2,800 claim secured by car. That Chapter 13 trustee raised good-faith objection for first time at hearing on confirmation and did not comply with seven-day objection requirement in Bankruptcy Rule 3015(f) does not preclude consideration of good faith because factual basis for good-faith objection was raised by the trustee and court has independent duty under *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), to examine good faith at confirmation of every Chapter 13 plan.).

§ 116.4 Form of Objection
3. CHALLENGING THE GRANT OR DENIAL OF CONFIRMATION
§ 117.1 Too Many Choices
§ 117.2 Relief from Confirmation Order: Bankruptcy Rules 9023 and 9024

{600} ***In re Williams*, No. 19 BK 22007, 2020 WL 2301177, at *2 (Bankr. N.D. Ill. May 7, 2020) (Schmetterer)** (Motion to vacate confirmation order is granted based on lack of notice to creditor affected by confirmed plan. "[R]evocation of confirmation orders is allowed in certain limited instances. For example, Section 1330(a) allows creditors to seek revocation of an order of confirmation if the order of confirmation 'was procured by fraud.' . . . Generally, this provision is enforced as a limitation on grounds for revocation. . . . Nonetheless, confirmation orders can also be revoked on constitutional grounds, including violations of due process. . . . [B]ecause of the lack of notice, Creditor did not have an opportunity to dispute the proposed plan. As such, a violation of

due process undoubtedly occurred. Accordingly, grounds exist for vacating the Confirmation Order as a creditor shall not be subjected to a deprivation of due process of law.").

§ 117.3 Revocation of Confirmation

{601} ***In re Brothers*, No. 19-3310, 2020 WL 1157185, at *3 (E.D. Pa. Mar. 10, 2020) (Sánchez)** (Dismissal of underlying Chapter 13 case renders moot tax purchaser's appeal of order denying stay relief and denying revocation of confirmation. Motion to revoke confirmation was untimely filed several years after the 180-day deadline in § 1330. "Madigan filed his motion seeking to invalidate the confirmed plan . . . more than four years after the plan was confirmed. Madigan's attempt to invalidate the plan under § 1330(a) was well past the 180-day limit imposed by that statute and is untimely. Regardless, Madigan has failed to demonstrate by clear and convincing evidence that the plan was confirmed by fraud.").

{602} ***Banco Popular De P.R. v. Rosario (In re Rosario)*, No. 18-00016, 2019 WL 6627479 (Bankr. D.P.R. Dec. 5, 2019) (Tester)** (Material disputed facts with respect to allegations of fraud preclude summary judgment in adversary proceeding to revoke confirmation under § 1330 and to determine debt nondischargeable under § 523(a)(2)(A). Contested facts include home purchase on behalf of an under-aged baseball player and an unrecorded mortgage.).

§ 117.4 Appeal of Grant or Denial of Confirmation
§ 117.5 Appeal of Grant or Denial of Confirmation after BAPCPA

{603} ***In re Sisk*, 962 F.3d 1133 (9th Cir. June 22, 2020) (Wardlaw, Smith, Bumatay)** (Chapter 13 debtors "forced" by bankruptcy court to accept specific plan length terms as condition for confirmation experienced injury in fact sufficient to have standing to appeal confirmation of the plans they did not want. The imposed plan length subjected the debtors to exposure to creditor and trustee action during the extended term. Not an impediment to appellate review that no one appeared in opposition to the debtors' appeals of the provisions imposed by the bankruptcy court.).

{604} ***Penn v. Viegelahn (In re Penn)*, 779 F. App'x 278 (5th Cir. Oct. 9, 2019) (Clement, Elrod, Duncan)** (District court lacked jurisdiction to review bankruptcy court order denying confirmation of plan based on nonstandard provision allowing debtor to keep more than $2,000 of tax refund. Ironically, debtor defeated appellate jurisdiction by requesting voluntary dismissal rather than suffering confirmation of undesirable plan and then appealing confirmation.).

{605} ***Jones v. U.S. Bank, N.A.*, No. 3:18-cv-01680, 2019 WL 5296993 (M.D. Pa. Oct. 18, 2019) (Mariani)** (Order denying confirmation with leave to file an amended plan is not a final appealable order under *Bullard v. Blue Hills Bank*, __ U.S. __, 135 S. Ct. 1686, 191 L. Ed. 2d 621 (May 4, 2015).).

{606} ***In re Moore*, No. 20-40309-EJC, 2020 WL 5633081 (Bankr. S.D. Ga. Aug. 27, 2020) (Coleman)** (Motion for stay pending appeal of order denying confirmation is denied; denial of confirmation is not an appealable order.).

PART 6: POSTCONFIRMATION PRACTICE

§ 118.1 Summary of Part 6

A. STATUTES AND RULES DISCUSSED IN PART 6

§ 119.1 11 U.S.C. § 1325(c): Income Deduction Orders
§ 119.2 11 U.S.C. § 1327: Effects of Confirmation
§ 119.3 11 U.S.C. § 1329: Modification after Confirmation
§ 119.4 Bankruptcy Rule 1016: Death or Incompetency of Debtor
§ 119.5 Bankruptcy Rule 2002(a)(5): Notice of Plan Modification
§ 119.6 Bankruptcy Rule 4001: Stay Relief Procedure

B. EFFECTS OF CONFIRMATION

1. POWERFUL STATUTORY EFFECTS

§ 120.1 11 U.S.C. § 1327: Overview
§ 120.2 11 U.S.C. § 1327(a): Binding Effect on Creditors and Debtors

{607} ***In re Morrone*, No. 19-30708, 2020 WL 5579740, at *2–*3 (Bankr. W.D.N.C. Aug. 27, 2020) (Beyer)** (Creditor with judicial lien on homestead property not entitled to stay relief to pursue nonfiling spouse's interest in tenancy by the entireties because lienholder is bound by confirmation of plan that avoids lien to extent it impairs debtor's homestead exemption under § 522(f) and plan adequately protects lienholder by proposing to pay value of nonexempt equity with respect to which the lien could not be avoided under § 522(f). That completion of plan will sever joint liability and impact lienholder's collection rights against the entireties property is an issue that should have been raised before confirmation. "The Debtor . . . seeks pursuant to 11 U.S.C. § 522(f) to avoid Brettell's Judicial Lien in property held as tenants by the entireties as to the Debtor's interest only. The Debtor's interest in the Residence as entireties property is property of the estate and, for that reason, clearly subject to the provisions of 11 U.S.C. § 522(f) . . . . Debtor has confirmed a Chapter 13

plan in which he has committed to pay Brettell the full value of the Debtor's non-exempt equity in the entireties property. . . . The implication of the confirmed plan is that at the completion of the plan, the debt owed to Brettell will no longer be a joint debt, and, for that reason, as entireties property, the Residence would be protected from execution by Brettell. Brettell had an opportunity to object to this treatment of his debt. He did not. As a result, he is bound by the terms of the confirmed plan. . . . Brettell is adequately protected by the terms of the confirmed plan. In the confirmed plan, the Debtor has provided for full payment of the value of his share of the non-exempt equity.").

{608} ***In re Myles*, No. 14-21802-dob, 2020 WL 3424590, at *2 (Bankr. E.D. Mich. June 22, 2020) (Opperman)** (In a Chapter 13 case in which the debtor is not eligible for discharge because of § 1328(f), at the completion of payments lien of secured creditor is satisfied and released when confirmed plan proposed to pay lienholder's claim in full with a reduced interest rate, lienholder objected to plan but then consented to confirmation and debtor completed payments under the confirmed plan. Lienholder is bound to accept modified contract terms in confirmed plan in full satisfaction of its debt and release of its lien. "Exeter affirmatively accepted the terms of Debtor's Plan when its counsel signed off on the Order Confirming Plan thereby agreeing not to pursue its objection. Because neither the terms of the Chapter 13 Plan or the terms of the Order Confirming plan provide for Exeter's lien retention after plan completion, Exeter's claim was fully paid, and its lien extinguished upon completion of Debtor's Plan.").

{609} ***In re Cottingham*, No. 19-40825-JJR13, 2020 WL 3410170, at *3–*6 (Bankr. N.D. Ala. May 4, 2020) (Robinson)** (Distinguishing *Title Max v. Northington (In re Northington)*, 876 F.3d 1302 (11th Cir. Dec. 11, 2017) (Wilson, Newsom, Moreno), when title pawnbroker's rights matured before the Chapter 13 petition and ownership of car vested in pawnbroker under state law, pawnbroker is nonetheless bound by confirmed plan that treats its interest as a secured claim when pawnbroker failed to object to confirmation, pawnbroker failed to object to or amend claim filed on its behalf by the debtor under Bankruptcy Rule 3004 and pawnbroker cashed checks from trustee. "[I]t is not possible to read *Northington* without concluding that if the pawnbroker in that case had not asserted its state-law rights in its preconfirmation stay-relief motion, the bankruptcy court's confirmation order would not have been disturbed. . . . In the instant case, and in contrast to the preconfirmation motion filed in *Northington*, TitleMax indeed 'slept on its rights.' It took no action to object to confirmation or to object to the claims filed on its behalf prior to confirmation, and after confirmation it accepted payments . . . all before it ever asserted its right to ownership under the Alabama Pawnshop Act. . . . In *Northington*, the vehicle 'dropped out' of the estate postpetition but before confirmation . . . . [I]f that winning argument is not asserted before confirmation, the res judicata effect of the confirmation order under Bankr. Code § 1327(a) will allow the pawnbroker's interest in the pawned vehicle to be treated as a secured claim despite a contrary result under state law. The key to avoiding res judicata is the pawnbroker's *preconfirmation* assertion of its state-law rights in the pawned vehicle. . . . TitleMax waived this argument by its complete failure to act until after all parties in interest, the Trustee, and the court were led to believe that Title Max had accepted its treatment under the confirmed plan.").

§ 120.3 11 U.S.C. § 1327(b): Vesting Effect on Property of Estate

{610} ***In re Cherry*, 963 F.3d 717, 720 (7th Cir. July 6, 2020) (Easterbrook, Rovner, Hamilton)** (Failure to make case-specific findings of cause required by *In re Steenes*, 918 F.3d 554 (7th Cir. Mar. 14, 2019) (Easterbrook, Rovner, Hamilton), is fatal to confirmation of Chapter 13 plan that retains car in estate; checkbox in form plan rewritten to conform to *Steenes* fails because bankruptcy court did not find case-specific reasons for holding property in the estate after confirmation. "A bankruptcy court may confirm a plan that holds property in the estate only after finding good case-specific reasons for that action. Because the bankruptcy court approved these plans without finding that such reasons exist, its orders are REVERSED.").

{611} ***Berkley v. Burchard (In re Berkley)*, 613 B.R. 547, 552–54 (B.A.P. 9th Cir. Apr. 17, 2020) (Faris, Brand, Taylor)** (Trustee's motion to modify confirmed plan to increase payments to creditors was appropriately granted when debtor received unexpected $3.8 million in postconfirmation compensation from stock options. Property of Chapter 13 estate vested in debtor at confirmation but vesting does not preclude modification to capture postconfirmation increase in compensation because income need not be property of the estate to be reached by modification under § 1329. "[C]onfirmation does not shield increases in the debtor's postconfirmation income from the reach of the chapter 13 trustee or creditors. It is well accepted that § 1329 permits the trustee and creditors to modify the plan to capture postconfirmation increases in the debtor's income. . . . [W]e have adopted the so-called 'estate termination approach,' which recognizes 'the vesting of all estate property in the debtor at confirmation . . . .' . . . '[T]he revesting provision of the confirmed plan means that the debtor owns the property outright and that the debtor is entitled to any postpetition appreciation.' . . . Nothing in the Code provides that plan payments may only be funded by estate property. . . . Under § 1329, the bankruptcy court can approve a plan modification that increases the debtor's plan payments due to a postconfirmation increase in the debtor's income, whether or not the additional income is property of the estate. . . . Because the stock options were postconfirmation income that Mr. Berkley earned as part of his compensation package, the bankruptcy court properly committed their proceeds to the Plan.").

{612} ***Black v. Leavitt (In re Black)*, 609 B.R. 518, 528–29 (B.A.P. 9th Cir. Dec. 31, 2019) (Faris, Brand, Hercher)** (When confirmation vested property of the estate in debtor, postpetition appreciation belongs to debtor and cannot be captured by trustee's motion to modify plan to require sale proceeds to be paid to creditors. Confirmed plan required debtor to pay creditors $45,000 from proceeds of sale of property. Property vested in debtor at confirmation and was sold three years later for $107,000. Trustee cannot force excess proceeds to be paid to creditors. Proceeds are not disposable income and appreciation belongs to the debtor. "The Property was

property of the estate when Mr. Black commenced his case. But when the bankruptcy court confirmed the plan, the Property was revested in Mr. Black. . . . Revesting means that Mr. Black owned the property outright, free of his creditors' claims. *See Cal. Franchise Tax Bd. v. Jones (In re Jones)*, 420 B.R. 506, 515 [(B.A.P. 9th Cir. Nov. 24, 2009) (Baum, Dunn, Jury).] . . . We acknowledge that there is a split in authority on this point. . . . In our view, the revesting provision of the confirmed plan means that the debtor owns the property outright and that the debtor is entitled to any postpetition appreciation. . . . [W]e squarely rejected [the *Barbosa v. Solomon*, 235 F.3d 31 (1st Cir. Dec. 21, 2000) (Torruella, Selya, Casellas,] approach in *Jones*. We . . . opted instead for the 'estate termination approach,' which provides that 'all property of the estate vests in the debtor at confirmation[.]'").

{613} ***In re Hernandez*, 612 B.R. 20, 22–23 (Bankr. D. Conn. Jan. 17, 2020) (Manning)** (Because all property of the Chapter 13 estate vested in debtor at confirmation under § 1327(b), at dismissal after confirmation § 349(b)(3) has no application and all funds held by the trustee must be returned to the debtor. *Harris v. Viegelahn*, 575 U.S. 510, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (May 18, 2015), supports this outcome and contrary cases have overlooked vesting effect under § 1327(b). "In this case, as will be true in virtually all Chapter 13 plans confirmed by this Court, the property of the estate vested in the Debtor upon confirmation . . . pursuant to section 1327(b) . . . . The Court finds it is not necessary to turn to section 349(b)(3) because section 1327(b) establishes that the funds vested with the Debtor when the First Amended Plan was confirmed. The cases that rely on section 349(b)(3) to establish a trustee's authority to distribute funds to a debtor in a confirmed but subsequently dismissed Chapter 13 case have not directly addressed the vesting language in section 1327(b). . . . Because property of the estate has already vested in a debtor upon confirmation pursuant to section 1327(b), there is no property to *revest* in the debtor . . . pursuant to section 349(b)(3). Therefore, there is no question that the funds must be returned to the Debtor. . . . Although *Harris* involved conversion rather than dismissal of a case, *Harris* recognizes that section 1327(b) vests all property of the estate in the debtor unless a plan or confirmation order provides otherwise. . . . [I]f the case is subsequently converted or dismissed, that vested property remains that of the debtor.").

{614} ***CitiMortgage, Inc. v. Davis (In re Davis)*, 609 B.R. 324 (Bankr. N.D. Ill. Oct. 28, 2019) (Lynch)** (State court foreclosure removed to bankruptcy court by Chapter 13 debtor is properly remanded to state court. Bankruptcy court has no jurisdiction to consider foreclosure after property vested in the debtor at confirmation and debtor received discharge of debts other than the mortgage. Bankruptcy court previously rejected multiple challenges by debtor to mortgage held by foreclosing creditor.).

§ 120.4 11 U.S.C. § 1327(c): Free and Clear Effect on Liens

{615} ***Lane v. Bank of N.Y. Mellon (In re Lane)*, 959 F.3d 1226, 1228–33 (9th Cir. June 1, 2020) (Paez, Bea, Adelman)** (Distinguishing *HSBC Bank USA v. Blendheim (In re Blendheim)*, 803 F.3d 477 (9th Cir. Oct. 1, 2015) (Paez, Bybee, Callahan), § 506(d) does not void mortgage lien in Chapter 13 case when claim is disallowed because creditor did not prove it was the entity entitled to enforce the debt. "BONY filed a proof of claim . . . and represented that the claim was secured by a deed of trust . . . . Lane objected to BONY's claim. He alleged that the claim 'fail[ed] to establish standing' and failed to establish that BONY was 'the person entitled to enforce payment on the claim.' . . . BONY's attorney did not file a timely response to Lane's objection. . . . The bankruptcy court signed an order stating that the '[o]bjection is sustained' and that the claim is 'disallowed in its entirety.' . . . Lane completed the plan and received a discharge . . . . After receiving his discharge, Lane filed an adversary complaint . . . . Lane alleged that, because the court had disallowed BONY's claim, the court should declare the lien . . . void under 11 U.S.C. § 506(d) . . . . If the secured creditor does not file a proof of claim, it will forfeit its right to proceed against the debtor personally—the creditor will receive no payments through the bankruptcy proceeding and the creditor's right to proceed against the debtor personally will be discharged. However, under a longstanding principle of bankruptcy law, the creditor may ignore the bankruptcy proceeding, in which case its lien will pass through the proceeding unaffected. . . . [A] finding that the claim filer is not the person entitled to enforce the note is a finding that the filer is not the true creditor—it is a finding that someone other than the claim filer may be the person entitled to payment under the note. Importantly, such a finding does not imply that either the note or the lien securing the note is invalid. Rather, such a finding simply establishes that . . . the person before the court is not the person entitled to prosecute the claim . . . . [U]nder the factual record created when the court entered the claim-disallowance order, the person entitled to enforce the note did not file a proof of claim. . . . [A] bankruptcy court cannot destroy the property rights of the person who is the real party in interest based on the actions of a person who is not the real party in interest. . . . *Blendheim* did not involve a claim that was disallowed on the ground that the claim filer was not the person entitled to enforce the note. Instead, the debtor objected to the claim on the ground that the creditor did not attach a copy of the promissory note to its proof of claim and the copy the debtor possessed appeared to bear a forged signature. Thus, when the bankruptcy court sustained the objection and disallowed the claim, . . . it found that the note giving rise to the claim was invalid. Under those findings, § 506(d) voided 'the claim's associated lien.' . . . [A]pplying the bankruptcy court's finding that BONY was not the person entitled to enforce Lane's mortgage debt shows that the deed of trust securing that debt is not void under § 506(d). . . . [T]he deed of trust 'secures a claim against the debtor that is not an allowed secured claim,' but 'such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim.'").

§ 120.5 Effects of Confirmation after BAPCPA

2. LIMITATIONS ON EFFECTS OF CONFIRMATION

§ 121.1 Overview

{616} ***Walkama v. Nellams*, No. C19-1207-JCC, 2020 WL 995853, at *2–*4 (W.D. Wash. Mar. 2, 2020) (Coughenour)** (Plaintiff in discrimination lawsuit against Chapter 13 debtor is entitled to stay relief to liquidate claim against debtor based on findings that notice of bankruptcy was insufficient to bind plaintiff to confirmed plan and lack of notice renders plaintiff's claim nondischargeable in the Chapter 13 case. "Discharging a debt in a Chapter 13 bankruptcy proceeding requires that the plan specifically 'provide for' the debt. . . . Even if the Chapter 13 plan refers to the debt, the plan does not sufficiently provide for that debt unless the creditor to whom the debt is owed is timely notified of the bankruptcy proceeding. . . . Accordingly, if the notice to the creditor is deemed inadequate, then the debt is not dischargeable. . . . Appellee never received formal, statutorily required notice . . . . Appellee was not notified that his claim was subject to discharge under Appellants' proposed Chapter 13 plan. . . . Appellee had no opportunity to be heard or to contest the proposed plan before it was confirmed. . . . Appellee's claim was not subject to discharge in Appellants' proposed plan.").

{617} ***In re Germanis*, No. 19-10588(1)(13), 2020 WL 3041278, at *2 (Bankr. W.D. Ky. June 5, 2020) (Lloyd)** (Objection of Chapter 13 debtor to amended proof of claim with respect to a contract for sale of a residence is overruled when amended claim was filed within a month of confirmation and added attorney's fees that were mentioned but not quantified in original timely filed proof of claim. Confirmation of plan based on amount in original claim did not preclude amended claim that was not delayed and equities favored allowance. "Amendments to proofs of claim that were initially timely filed are to be freely allowed where they specify the amount due under a previously asserted right to payment or simply to cure technical defects in the original claim.").

{618} ***In re Taro*, No. 19-10982 (BLS), 2020 WL 2764751 (Bankr. D. Del. May 26, 2020) (Shannon)** (Neither confirmation order nor *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), bars lienholder's motion to vacate or modify plan because plan contains provision that claims filed after confirmation may require amendment or modification of the plan.).

{619} ***In re Williams*, No. 19 BK 22007, 2020 WL 2301177, at *2 (Bankr. N.D. Ill. May 7, 2020) (Schmetterer)** (Motion to vacate confirmation order is granted based on lack of notice to creditor affected by confirmed plan. "[R]evocation of confirmation orders is allowed in certain limited instances. For example, Section 1330(a) allows creditors to seek revocation of an order of confirmation if the order of confirmation 'was procured by fraud.' . . . Generally, this provision is enforced as a limitation on grounds for revocation. . . . Nonetheless, confirmation orders can also be revoked on constitutional grounds, including violations of due process. . . . [B]ecause of the lack of notice, Creditor did not have an opportunity to dispute the proposed plan. As such, a violation of due process undoubtedly occurred. Accordingly, grounds exist for vacating the Confirmation Order as a creditor shall not be subjected to a deprivation of due process of law.").

{620} ***In re Weyer*, 612 B.R. 192, 195–97 (Bankr. W.D. Wis. Jan. 3, 2020) (Ludwig)** (Car lender that failed to timely file proof of claim is entitled to stay relief after confirmation based on lack of adequate protection; debtors had obligation to file Bankruptcy Rule 3004 claim on behalf of lender or to make adequate protection payments directly to the lender—notwithstanding that confirmed plan required lender to file timely claim to get paid. Estoppel is not available because of Rule 3004 option and equities favor lender because debtors are driving car but not paying for loss of value. Schedules identified Valley Communities Credit Union (VCCU) with liens on cars and confirmed plan provided monthly payment to pay the claims. Form plan in district alerted VCCU that creditors must file a timely proof of claim in order to be paid. VCCU missed the deadline for filing a proof of claim and neither the trustee nor the debtors filed a claim on behalf of VCCU. Nine months after confirmation VCCU filed a motion for stay relief. "[I]t is undisputed that VCCU's property interests in the Weyers' vehicles are not being adequately protected. . . . The failure to make payments on claims secured by depreciating collateral is the quintessential basis for finding a lack of adequate protection and granting relief from stay. . . . Under the plain terms of section 362(d), the court 'shall' grant relief from stay where there is cause, including the lack of adequate protection. . . . The Weyers argue that VCCU cannot obtain relief from stay because the lack of adequate protection is the result of VCCU's own failure to file proofs of claim. . . . *Both* parties failed to act timely under the Rules. Accordingly, the equities do not weigh in the Weyers' favor sufficiently to allow them to continue to use VCCU's collateral without payment. . . . [A] creditor that does not wish to submit to this court's jurisdiction or to participate in plan payments is not required to file a proof of claim. . . . Debtors who wish to pay a creditor's claim through their plan are not left helpless when a creditor fails to file a proof of claim. Rule 3004 gives them a 30-day window, after the creditor fails to file a proof of claim, to file a proof of claim on the creditor's behalf. . . . The Weyers' estoppel defense focuses solely on VCCU's failure to file a timely proof of claim, while ignoring their own failure to act. If the Weyers wanted to treat and pay VCCU's claims through their chapter 13 plan, Rule 3004 gave them the ability to file proofs of claim for VCCU. . . . [E]ven after the Rule 3004 window closed and VCCU filed its motion, the Weyers were not without options. They could have sought an extension of the already-expired Rule 3004 deadline. If they established 'excusable neglect' for their failure to file a proof of claim on VCCU's behalf timely, the Bankruptcy Rules allow the court to give them additional time to file those proofs of claim. *See* Rule 9006(b)(1) . . . . [I]t would be unfairly punitive to VCCU, and would generate an undeserved windfall for the Weyers, if the court were to deny VCCU's motion.").

{621} ***In re Munoz*, 610 B.R. 907 (Bankr. D.N.M. Dec. 4, 2019) (Thuma)** (Failure to properly serve seller under contract for purchase of undeveloped lot means confirmed plan does not bind seller and motion to assume contract does not resolve rights in lot.).

{622} ***In re Bruce*, 610 B.R. 603, 609–15 (Bankr. E.D. Wis. Sept. 27, 2019) (Hanan)** (Because Bankruptcy Rule 2002(f)(7) does not require the court to serve a confirmation order in a Chapter 13 case and the debtor's attorney did not do so for several months, the state child support collection agency cannot be held in contempt of the confirmation order for knowingly or recklessly failing to respect the confirmation order that dealt with the claim. "A violation of the confirmation order is an act of contempt, which, like a violation of the discharge injunction, may be remedied by the court's authority under 11 U.S.C. § 105(a). . . . Rule 2002(f)(7) conspicuously does not require the Clerk of Bankruptcy Court (or BNC) to serve the Chapter 13 plan confirmation order, even though it requires the Clerk to serve confirmation orders of plans issued under other chapters of the Code. There are no advisory committee notes explaining this exception. . . . Given the lack of provision for service of Chapter 13 plan confirmation orders in Rule 2002(f)(7), the debtor's counsel should have undertaken to mail the confirmation order at least to those creditors who . . . do not receive ECF notification, and whose prepetition automatic deductions from the debtor's payroll were to be altered after plan confirmation. . . . There is no clear and convincing evidence to show the Agency knowingly or recklessly disregarded the confirmation order by failing to adjust the child support orders . . . , and thus there is no basis to impose sanctions for contempt.").

{623} ***In re Gilmore*, No. 13-bk-1311, 2019 WL 4673429 (Bankr. N.D. W. Va. Sept. 24, 2019) (Flatley)** (Distinguishing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), and embracing *Reuland v. IRS (In re Reuland)*, 591 B.R. 342 (Bankr. N.D. Ill. Oct. 26, 2018) (Baer), confirmed plan that cured mortgage arrearage and provided for ongoing installment that was less than stated on proof of claim is binding on mortgagee and debtor is current on mortgage at completion of payments but difference between monthly payments made through the Chapter 13 plan and amounts required by loan is nondischargeable. Discrepancy was discovered when trustee made final cure notice under Bankruptcy Rule 3002.1 and U.S. Bank responded that a substantial postconfirmation arrearage developed as a result of the difference between payments under the confirmed plan and the monthly installments stated on the bank's proof of claim. Court orders party to "reconcile payment figures" in light of holding that loan is current but the bank's nondischargeable claim includes discrepancy in monthly installment amount.).

{624} ***In re Waldschmidt*, 605 B.R. 860, 864–66 (Bankr. N.D. Ind. Sept. 24, 2019) (Grant)** (Late-filed claim by car lender is disallowed on objection from Chapter 13 trustee notwithstanding confirmed plan approved by trustee, debtor and car lender that would have paid claim in full with agreed-upon interest had a timely claim been filed. Outcome is not changed by fact that confirmation occurred after claims bar date and treatment of car lender in plan was approved by debtor and trustee. "No statute or rule requires claim objections to precede confirmation . . . . [T]he validity of a claim objection should not turn on the happenstance of when the confirmation hearing was held in relation to the claims bar date. . . . The court is not inclined to read the provisions of the national form plan as either dispensing with the need to file claims or precluding objections to untimely claims.").

§ 121.3 Failure to Provide For
§ 121.4 Other Limitations

{625} ***McDaniel v. Navient Sols., LLC (In re McDaniel)*, No. 18-1445, 2020 WL 5104560 (10th Cir. Aug. 31, 2020) (Briscoe, Holmes, Eid)** (Confirmed Chapter 13 plan that classified student loans as unsecured claims to be deferred until end of plan did not address whether student loan debts were nondischargeable; confirmed plan does not preclude Chapter 13 debtors from challenging student loans as dischargeable debts under § 523(a)(8)(A)(ii).).

{626} ***In re Roebuck*, No. 19-23044-GLT, 2020 WL 5249597, at *2–*3 (Bankr. W.D. Pa. Sept. 3, 2020) (Taddonio)** ("Interim confirmation order" used in district to provide adequate protection to lienholders prior to completion of the confirmation process is not "confirmation" under § 1325 for purposes of modification to extend plan to seven years under § 1329(d) as amended by the CARES Act. "Section 1113(b)(1)(D)(ii) of the CARES Act reiterates that section 1329(d) applies only when '*a plan has been confirmed under section 1325* . . . before the date of enactment of this Act.' . . . An interim confirmation order is not a creature of the Code. Instead, it is unique local practice employed to provide adequate protection to secured and priority creditors pending 'final' plan confirmation. . . . [T]he judges of this district have adopted a form of order that typically enters following the first meeting of creditors and authorizes the Trustee to commence distributions to secured and priority creditors. . . . [T]he Court acknowledges that the form order may contain some unintended ambiguities stemming from its use for both interim and final confirmation. . . . Without belaboring the point, interim confirmation in this district is simply not confirmation under section 1325. . . . Not only does the Court not review the plan or make any findings before entering an interim confirmation order, the Trustee concedes that many plans confirmed on an interim basis do not yet satisfy section 1325. . . . Congress drew a bright line establishing a debtor's eligibility to modify a plan under section 1329(d) . . . .").

{627} ***In re Vega Arroyo*, No. 13-00415 (EAG), 2020 WL 4728098 (Bankr. D.P.R. Aug. 13, 2020) (Godoy)** (Because state court judgment against Chapter 13 debtor with respect to purchaser's rights in property was entered after confirmation order and did not violate stay because of § 362(c)(3), last-in-time order prevails over confirmation order and purchaser has right of specific performance that trumps contrary plan provisions.).

{628} ***Viegelahn v. Ruben's Auto Sales (In re Daniel)*, No. 20-05009-RBK, 2020 WL 4519041, at *6 (Bankr. W.D. Tex. Aug. 5, 2020) (King)** (Confirmation of Chapter 13 plan that treats car lender as secured does not preclude trustee's preference avoidance action

because Bankruptcy Code grants trustee authority to pursue § 547 action and local standing order preserves that power notwithstanding confirmation. Lien on car perfected 32 days after Chapter 13 petition is protected from preference avoidance by enabling loan exception in § 547(c)(3) when 30th day fell on a Saturday and Bankruptcy Rule 9006(a) extended the statutory period to the following Monday. Acknowledging contrary authority, 30-day period in § 547(c)(3) is appropriately extended by Rule 9006(a) because the statute does not specify a method for counting time period. "[T]he statute expressly grants the trustee authority to pursue this cause of action, and . . . this Court's Standing Order . . . specifically reserves the Trustee's ability to seek avoidance actions. While the orders on confirmation do state that Defendant has a valid security interest in Debtor's vehicle, nothing in these orders precludes the Trustee from seeking to avoid this lien as a preferential transfer.").

{629} ***Quintao v. Deutsche Bank Nat'l Tr. Co. (In re Quintao)*, No. 15-1063, 2018 WL 9990318 (Bankr. D. Mass. July 16, 2018) (Bailey)** (Mortgage servicer did not violate automatic stay or confirmed plan by paying taxes and utility arrearages after confirmation when plan did not prohibit mortgagee or servicer from doing so. That plan provided for payment of delinquent taxes and utilities did not preclude the mortgagee from exercising its contract right to pay those amounts, especially after the mortgagee obtained stay relief to foreclose. Neither the mortgagee nor the servicer violated stay or confirmed plan by making internal records of amounts owed by Chapter 13 debtor, notwithstanding confirmed plan that would cure default and maintain installment payments during the case. Sending account statements after the grant of stay relief could not violate the stay. Mortgagee did not violate stay by accurately reporting to credit agency amounts owed by debtor after mortgagee paid taxes and utilities on behalf of the debtor.).

3. SPECIAL EFFECTS OF CONFIRMATION

§ 122.1 Tax Refunds
§ 122.2 Windfalls, Inheritances, Lotteries and the Like
§ 122.3 Loss, Destruction or Surrender of Property after Confirmation

{630} ***In re Smith*, 616 B.R. 773, 778-81 (Bankr. E.D. Ark. June 4, 2020) (Jones)** (At postconfirmation destruction of car, lienholder is entitled to insurance proceeds limited to balance of its secured claim fixed by confirmation order; car lender retains its lien on balance of insurance proceeds until completion of payments and discharge consistent with § 1325(a)(5)(B)(i). Confirmed plan proposed to pay car lender in full but with interest less than contract rate. Casualty insurer tendered proceeds greater than paid-down balance of secured claim but less than contractual lien amount. "GM Financial is correct that pursuant to Section 1325(a)(5)(B)(i), it retains its lien in the proceeds until the Debtors receive a discharge or its claim under nonbankruptcy law is paid in full. . . . [W]hile GM Financial has a lien on all the insurance proceeds under Section 1325(a)(5)(B)(i), GM Financial remains bound by the terms of the confirmed plan. Under the terms of the confirmed plan, the balance of its allowed secured claim is $282.94, which is GM Financial's present interest in the insurance proceeds. . . . GM Financial is entitled to payment of $282.94 from the insurance proceeds. It will retain its lien in the balance of the insurance proceeds until one of the events of Section 1325(a)(5)(B)(i) occurs.").

{631} ***Johnson v. Apex Mortg. (In re Johnson)*, 615 B.R. 919 (Bankr. N.D. Ala. Feb. 27, 2020) (Mitchell)** (Mortgagee did not violate automatic stay when it received and kept insurance proceeds paid to it when car crashed into debtor's business property. Mortgage clause in insurance contract was not property of Chapter 13 estate but belonged to mortgagee and proceeds of that insurance policy never became property of the Chapter 13 estate.).

§ 122.4 Effects of Confirmation on Postpetition Claims

C. REPRESENTING CREDITORS AFTER CONFIRMATION

1. PROBLEMS WITH THE PLAN

§ 123.1 What to Do If Creditor Is Not Receiving Payments
§ 123.2 What to Do If Debtor Defaults
§ 123.3 What to Do If Debtor's Financial Condition Improves
§ 123.4 Representing a Postpetition Claim Holder

2. POSTCONFIRMATION STAY RELIEF PRACTICE

§ 124.1 Procedure
§ 124.2 Confirmation as a Defense to Relief from the Stay
§ 124.3 Does Confirmation Dissolve the Stay?
§ 124.4 Postconfirmation Default and Relief from the Stay

{632} ***In re Genrette*, 797 F. App'x 739 (3d Cir. Mar. 17, 2020) (Shwartz, Restrepo, Nygaard)** (Pro se appeal of stay relief after default under confirmed plan and default under stipulation with respect to relief from the stay is rejected as completely groundless.), *aff'g* No. 18-920 (MN), 2019 WL 4740053 (D. Del. Sept. 27, 2019) (Noreika) (Untimely pro se petition for rehearing denied with respect to appeal of grant of stay relief based on debtor's postconfirmation default in mortgage payments. Debtor's objection to loan modification—a loan modification that debtor sought and agreed to—confused the district court and everyone else.).

§ 124.5 Postpetition Claims and Relief from the Stay
§ 124.6 Alimony and Support Collection after Confirmation

§ 124.7 Effect of Failure to File Proof of Claim on Postconfirmation Relief from the Stay

{633} ***In re Weyer*, 612 B.R. 192, 195–97 (Bankr. W.D. Wis. Jan. 3, 2020) (Ludwig)** (Car lender that failed to timely file proof of claim is entitled to stay relief after confirmation based on lack of adequate protection; debtors had obligation to file Bankruptcy Rule 3004 claim on behalf of lender or to make adequate protection payments directly to the lender—notwithstanding that confirmed plan required lender to file timely claim to get paid. Estoppel is not available because of Rule 3004 option and equities favor lender because debtors are driving car but not paying for loss of value. Schedules identified Valley Communities Credit Union (VCCU) with liens on cars and confirmed plan provided monthly payment to pay the claims. Form plan in district alerted VCCU that creditors must file a timely proof of claim in order to be paid. VCCU missed the deadline for filing a proof of claim and neither the trustee nor the debtors filed a claim on behalf of VCCU. Nine months after confirmation VCCU filed a motion for stay relief. "[I]t is undisputed that VCCU's property interests in the Weyers' vehicles are not being adequately protected. . . . The failure to make payments on claims secured by depreciating collateral is the quintessential basis for finding a lack of adequate protection and granting relief from stay. . . . Under the plain terms of section 362(d), the court 'shall' grant relief from stay where there is cause, including the lack of adequate protection. . . . The Weyers argue that VCCU cannot obtain relief from stay because the lack of adequate protection is the result of VCCU's own failure to file proofs of claim. . . . *Both* parties failed to act timely under the Rules. Accordingly, the equities do not weigh in the Weyers' favor sufficiently to allow them to continue to use VCCU's collateral without payment. . . . [A] creditor that does not wish to submit to this court's jurisdiction or to participate in plan payments is not required to file a proof of claim. . . . Debtors who wish to pay a creditor's claim through their plan are not left helpless when a creditor fails to file a proof of claim. Rule 3004 gives them a 30-day window, after the creditor fails to file a proof of claim, to file a proof of claim on the creditor's behalf. . . . The Weyers' estoppel defense focuses solely on VCCU's failure to file a timely proof of claim, while ignoring their own failure to act. If the Weyers wanted to treat and pay VCCU's claims through their chapter 13 plan, Rule 3004 gave them the ability to file proofs of claim for VCCU. . . . [E]ven after the Rule 3004 window closed and VCCU filed its motion, the Weyers were not without options. They could have sought an extension of the already-expired Rule 3004 deadline. If they established 'excusable neglect' for their failure to file a proof of claim on VCCU's behalf timely, the Bankruptcy Rules allow the court to give them additional time to file those proofs of claim. *See* Rule 9006(b)(1) . . . . [I]t would be unfairly punitive to VCCU, and would generate an undeserved windfall for the Weyers, if the court were to deny VCCU's motion.").

D. INCOME DEDUCTION ORDERS
§ 125.1 Order to Debtor's Employer
§ 125.2 Can Employer Charge a Fee?
§ 125.3 Direct-Pay Orders
§ 125.4 Changing Employers or Source of Income
§ 125.5 Modification and Suspension of Income Deduction Orders
§ 125.6 Failure to Deduct or Remit
§ 125.7 Special Deduction Order Problems: Entitlements, Pensions and Government Employers
E. MODIFICATION OF PLAN AFTER CONFIRMATION
1. PROCEDURE AND STANDARDS FOR MODIFIED PLAN
§ 126.1 Standing, Timing and Procedure

{634} ***Black v. Leavitt (In re Black)*, 609 B.R. 518, 524–25 (B.A.P. 9th Cir. Dec. 31, 2019) (Faris, Brand, Hercher)** (Completion of payments that would cut off trustee's motion to modify under § 1329 had not occurred when confirmed plan provided for 59 monthly payments and debtor tendered total amount from sale of property in 48th month; payments are not complete unless debtor modifies the plan to shorten plan term. Citing *Fridley v. Forsythe (In re Fridley)*, 380 B.R. 538 (B.A.P. 9th Cir. Dec. 18, 2007) (Klein, Montali, Jury), "[w]e have held that, as a general proposition, payments are not 'complete' when the debtor pays them early, unless the debtor modifies the plan pursuant to § 1329 to shorten its term . . . . We have also rejected a chapter 13 plan with an indefinite duration, which would have allowed the debtor to 'complete' his plan whenever he paid off all priority and secured claims. *In re Escarcega*, 573 B.R. 219 [(B.A.P. 9th Cir. Sept. 6, 2017) (Jury, Faris, Brand)]. . . . Mr. Black's plan payments were not 'complete' when he made the lump-sum payment, because he did not modify his plan to shorten its duration. . . . Because Mr. Black's income is less than the applicable median, his 'applicable commitment period' was thirty-six months. . . . But he proposed a fifty-nine month term, probably because he could not afford a larger monthly payment and therefore needed more time to generate plan funding sufficient to meet other confirmation requirements. . . . [T]he statute does not tie the plan modification time limit to the 'applicable commitment period.' Section 1329(a) cuts off the right to modify a plan upon 'completion of payments under such [i.e., the original] plan.' If Congress meant to terminate the modification right upon expiration of the applicable commitment period, it could and would have said exactly that.").

{635} ***In re Zvoch*, No. 17-21385-GLT, 2020 WL 5362380 (Bankr. W.D. Pa. Sept. 8, 2020) (Taddonio)** (*Nunc pro tunc* approval of modification of confirmed plan to validate unrevealed postpetition financing of $33,674 car with monthly payment of $719 is denied for two reasons: *nunc pro tunc* approval is not available after *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, ___ U.S. ___, 140 S. Ct. 696, 206 L. Ed. 2d 1 (Feb. 24, 2020) (per curiam), when reason order was not entered at time of

financing was that debtor did not reveal the borrowing; expensive car is not reasonable or necessary and negatively impacts payments to other creditors.).

{636} ***In re Palmer*, No. 15-20886-GLT, 2020 WL 4743011, at *3–*4 (Bankr. W.D. Pa. Aug. 14, 2020) (Taddonio)** (Debtor is entitled to refund of $213.35 paid to unsecured creditors while motion and order to modify plan were being processed. Modified plan changed math of confirmed plan to eliminate distribution to unsecured creditors that resulted when payment of mortgage arrears was completed in 53d month. Trustee could have and perhaps should have objected to modification that had "retroactive" effect of declaring plan completed. Confirmed plan called for 60 monthly payments to cure mortgage arrearages with acknowledgment that pool of funds available to pay unsecured creditors would be determined after an audit at the time of completion of other payments. Mortgage arrearages were fully paid approximately 53 months into the plan term. Trustee filed a notice of intent to pay unsecured creditors pro rata from funds that became available when mortgage arrears were paid. Debtor responded with plan modification that terminated the debtor's obligations "retroactively" to the completion of payment of mortgage arrears. The court approved the modified plan and a week later the trustee's office disbursed funds on hand to unsecured creditors. "[The trustee] did [not] request a delay in the effective date of the confirmation order to account for the processing limitations of her office. . . . [T]he Court is sympathetic to the Trustee's position even though it cannot authorize her actions in this case. The Trustee's office is one of the largest in the country with disbursements rivaling those of a small financial institution. With such volume and complexity, it is completely understandable that unusual plans would present hardships in administration. . . . When appropriate, however, the Trustee may request that the confirmation order include reasonable terms to grant her the leeway to address any administrative difficulties on a case-by-case basis. . . . [T]he Debtor is entitled to a refund of $213.35.").

{637} ***In re Jones*, No. 17-03500-5-SWH, 2020 WL 907802, at *3 (Bankr. E.D.N.C. Feb. 25, 2020) (Humrickhouse)** (Local rule and practice that permitted Chapter 13 trustee to change "base" and to increase required payments into a plan when attorney's fee was allowed after confirmation are inconsistent with requirements for plan modification in § 1329. Local rule allowed trustee "without application to the court" to modify a Chapter 13 plan to generate funds necessary to pay attorney's fees that might be allowed during term of plan. When allowed fees required plan modification, the trustee could issue a "notice of plan payment change." "[T]he Notice filed by the trustee cannot, and does not, operate to modify the debtor's chapter 13 plan. . . . [T]he local rule, while expedient and practical in terms of case administration, is at odds with the plain language of 11 U.S.C. § 1329(a), which sets out the process by which a plan may be modified after confirmation[.]").

§ 126.2 Application of Tests for Confirmation

{638} ***In re Lugo*, No. 18bk18603, 2020 WL 1817853, at *3 (Bankr. N.D. Ill. Mar. 12, 2020) (Hunt)** (Chapter 13 trustee's motion to modify confirmed plan to capture nonexempt proceeds of postconfirmation personal injury action is granted. Distinguishing *Germeraad v. Powers*, 826 F.3d 962 (7th Cir. June 23, 2016) (Bauer, Williams, Adelman), debtors' objection that only proceeds actually received within 60-month term of plan need be turned over to trustee is rejected. To satisfy best-interests-of-creditors test at modification after confirmation, Chapter 13 debtors must turn over nonexempt proceeds from postconfirmation personal injury action even if proceeds are received after 60 months after first payment under original plan. "[T]he modified plan here is not 'providing for' further plan payments by the Lugos. All the order does is establish a mechanism for the Lugos to turn over estate property for the Trustee to distribute to creditors according to the confirmed plan. . . . [T]he Lugos now have an additional asset to account for in calculating what their creditors are entitled to receive in a chapter 13 case.").

§ 126.3 Does Disposable Income Test Apply?
§ 126.4 Duration of Modified Plan

{639} ***In re Roebuck*, No. 19-23044-GLT, 2020 WL 5249597, at *2–*3 (Bankr. W.D. Pa. Sept. 3, 2020) (Taddonio)** ("Interim confirmation order" used in district to provide adequate protection to lienholders prior to completion of confirmation process is not "confirmation" under § 1325 for purposes of modification to extend plan to seven years under § 1329(d) as amended by the CARES Act. "Section 1113(b)(1)(D)(ii) of the CARES Act reiterates that section 1329(d) applies only when '*a plan has been confirmed under section 1325* . . . before the date of enactment of this Act.' . . . An interim confirmation order is not a creature of the Code. Instead, it is unique local practice employed to provide adequate protection to secured and priority creditors pending 'final' plan confirmation. . . . [T]he judges of this district have adopted a form of order that typically enters following the first meeting of creditors and authorizes the Trustee to commence distributions to secured and priority creditors. . . . [T]he Court acknowledges that the form order may contain some unintended ambiguities stemming from its use for both interim and final confirmation. . . . Without belaboring the point, interim confirmation in this district is simply not confirmation under section 1325. . . . Not only does the Court not review the plan or make any findings before entering an interim confirmation order, the Trustee concedes that many plans confirmed on an interim basis do not yet satisfy section 1325. . . . Congress drew a bright line establishing a debtor's eligibility to modify a plan under section 1329(d) . . . .").

{640} ***In re Drews*, 617 B.R. 579, 580 (Bankr. E.D. Mich. July 30, 2020) (Tucker)** (Notwithstanding absence of objection, plan modification to extend term to 84 months is denied because the 84-month plan term is only available under § 1329(d) in cases confirmed before the CARES Act was enacted on March 27, 2020. "[T]he Debtors' Chapter 13 Plan was confirmed on April 15, 2020 . . . . The

Plan Modification proposes . . . that the Debtors' confirmed Plan be modified to extend the length of the Plan to 84 months (7 years), based on the 'Coronavirus Aid, Relief, and Economic Security Act' (the 'CARES Act') provision that added new § 1329(d) to the Bankruptcy Code. . . . But that section does not apply in this case, because the Debtors' Plan was confirmed *after* the date of enactment of the CARES Act. (The Act was enacted on March 27, 2020[.]). . . . [Section] 1329(d) applies only to cases in which a plan was confirmed before the enactment of the CARES Act. *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 16-136, Sec. 1113 . . . , 134 Stat 281, at *311-12.").

{641} ***In re Cassini*, 614 B.R. 554, 555 (Bankr. E.D. Mich. Apr. 17, 2020) (Tucker)** (Sua sponte—no party having objected—bankruptcy court denies debtor's motion to modify plan that would allow trustee to distribute $628.60 to creditors because $263.95 of that amount was received by the trustee after 60 months after the initial payment was due under confirmed plan. "The Court concludes that approval of this Plan Modification is impermissible, because the Plan as modified would exceed the five-year limit in 11 U.S.C. § 1329(c).").

{642} ***In re Lugo*, No. 18bk18603, 2020 WL 1817853, at *3 (Bankr. N.D. Ill. Mar. 12, 2020) (Hunt)** (Chapter 13 trustee's motion to modify confirmed plan to capture nonexempt proceeds of postconfirmation personal injury action is granted. Distinguishing *Germeraad v. Powers*, 826 F.3d 962 (7th Cir. June 23, 2016) (Bauer, Williams, Adelman), debtors' objection that only proceeds actually received within 60-month term of plan need be turned over to trustee is rejected. To satisfy best-interests-of-creditors test at modification after confirmation, Chapter 13 debtors must turn over nonexempt proceeds from postconfirmation personal injury action even if proceeds are received after 60 months after first payment under original plan. "[T]he modified plan here is not 'providing for' further plan payments by the Lugos. All the order does is establish a mechanism for the Lugos to turn over estate property for the Trustee to distribute to creditors according to the confirmed plan. . . . [T]he Lugos now have an additional asset to account for in calculating what their creditors are entitled to receive in a chapter 13 case.").

{643} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

§ 126.5 Changed-Circumstances Requirement?

{644} ***Whaley v. Guillen (In re Guillen)*, No. 17-13899, 2020 WL 5015287, at *2–*6 (11th Cir. Aug. 25, 2020) (Branch, Marcus, Ungaro)** (Joining First, Fifth and Seventh Circuits and rejecting Fourth Circuit's view, Chapter 13 debtor's right to modify confirmed plan under § 1329 is not conditioned on any particular change in circumstances. "Four months after confirmation, Guillen's counsel submitted an application for compensation to the bankruptcy court. He sought $8,295 for post-petition legal services rendered in connection with Guillen's adversary proceeding against Wells Fargo. To accommodate these new fees, Guillen filed a modified Chapter 13 plan. . . . Guillen's modification fit into [§ 1329(a)(1)]—it sought to reduce the total pool available to unsecured creditors . . . . [T]he Standing Chapter 13 Trustee . . . objected to the modification. . . . As the Supreme Court has explained, confirmation 'has preclusive effect . . . .' [Section] 1329 carves out a limited exception to this general rule . . . . On its face, § 1329 does not impose a requirement that the bankruptcy court find any change in circumstances before modifying a confirmed plan. . . . We can discern no reason to speak where Congress has not . . . . The Seventh Circuit reached the same result in *In re Witkowski*, 16 F.3d 739

(7th Cir. [Feb. 14,]1994) [(Posner, Wood, Manion)]. . . . The First and Fifth Circuits likewise have refused to superimpose this requirement onto the text of the statute. *See In re Meza*, 467 F.3d 874, 877–78 (5th Cir. [Oct. 16,]2006) [(Jones, Barksdale, Benavides)]; *Barbosa v. Solomon*, 235 F.3d 31, 41 (1st Cir. [Dec. 21,]2000) [(Torruella, Selya, Casellas)]. One of our sister circuits, however, disagrees. In *In re Arnold*, the Fourth Circuit held that res judicata bars modification unless there has been an unanticipated, substantial change in the debtor's financial condition. 869 F.2d 240, 243 (4th Cir. [Mar. 6,]1989) [(Ervin, Murnaghan, Wilkinson)]. . . . The Fourth Circuit reaffirmed this holding more recently in *In re Murphy*, 474 F.3d 143, 150 (4th Cir. [Jan. 18,]2007) [(Williams, Traxler, Hamilton)] . . . . It remains true that an unforeseen change in circumstances is a good reason to permit a modification that otherwise satisfies § 1329. But that is not to say it is the only reason. And we reject the Trustee's attempt to convert a sufficient condition into a necessary one. When a bankruptcy court faces a modified plan that satisfies the requirements of § 1329, it may properly consider whether there has been some change in circumstances when deciding whether to confirm the plan as modified. But it is free to confirm the modified plan even where it has not found any change in circumstances."), *aff'g* 570 B.R. 439, 445-48 (Bankr. N.D. Ga. Apr. 10, 2017) (Sacca) (There are no non-statutory bars to modification under § 1329. "The plain language of Section 1329 is one such instance where it is clear that res judicata does not apply. Unlike the First, Fifth and Seventh Circuits cited above, the Fourth Circuit Court of Appeals has placed additional limits on that exception not found on the face of the statute, that being that a confirmed plan is res judicata . . . unless the moving party shows a substantial and unanticipated change in a debtor's financial circumstances. . . . [T]he circumstances justifying the modification, such as whether there is a substantial and unanticipated change of circumstances or just a change in circumstances, goes to whether the modification should be approved, not whether it is res judicata. . . . This Court does not believe that a judicially imposed doctrine of res judicata contrary to a clear statutory scheme is necessary to ensure the proper finality due a Chapter 13 plan confirmation order. . . . [*Barbosa v. Solomon*, 235 F.3d 31 (1st Cir. Dec. 21, 2000) (Torruella, Selya, Casellas)], in particular, but also [*In re Witkowski*, 16 F.3d 739 (7th Cir. Feb. 14, 1994) (Posner, Wood, Manion),] and [*Meza v. Truman (In re Meza)*, 467 F.3d 874 (5th Cir. Oct. 16, 2006) (Jones, Barksdale, Benavides),] contain the better analysis and [*Arnold v. Weast (In re Arnold),* 869 F.2d 240 (4th Cir. Mar. 6, 1989) (Ervin, Murnaghan, Wilkinson),] and [*Murphy v. O'Donnell (In re Murphy)*, 474 F.3d 143 (4th Cir. Jan. 18, 2007) (Williams, Traxler, Hamilton)], with their rigidity, do not.").

§ 126.6 Modification after Confirmation after BAPCPA

{645} ***Brown v. Viegelahn (In re Brown)*, 960 F.3d 711, 717–21 (5th Cir. June 8, 2020) (Southwick, Graves, Engelhardt)** (Not "inherently" bad faith for Chapter 13 plan to pay unsecured creditors 100% using less than all the projected monthly disposable income. To confirm plan, Chapter 13 debtor with excess monthly disposable income was forced to agree to include provision that debtor would not seek to modify the plan under § 1329 to pay less than 100% to unsecured creditors. "The crux of the trustee's argument is that Brown acted in bad faith because his proposed plan makes 'creditors bear the risk of default should there be a future change in the Debtor's circumstances.' . . . We observe the sensible rule that 'debtors are not in bad faith merely for doing what the Code permits them to do.' . . . We thus reject the trustee's view that maintaining excess disposable income is inherently bad faith and manipulation of the Code. . . . Modifications of Chapter 13 plans must meet the same standards as a plan when first proposed. § 1329(b)(1). If, post-confirmation, a debtor in bad faith requests a modification of the plan, it is within the bankruptcy court's discretion to deny that request. Still, a bankruptcy court should not limit Section 1329's availability based on speculation about an as-of-yet non-existent request to modify a Chapter 13 plan.").

{646} ***In re Roebuck*, No. 19-23044-GLT, 2020 WL 5249597, at *2–*3 (Bankr. W.D. Pa. Sept. 3, 2020) (Taddonio)** ("Interim confirmation order" used in district to provide adequate protection to lienholders prior to completion of confirmation process is not "confirmation" under § 1325 for purposes of modification to extend plan to seven years under § 1329(d) as amended by the CARES Act. "Section 1113(b)(1)(D)(ii) of the CARES Act reiterates that section 1329(d) applies only when '*a plan has been confirmed under section 1325* . . . before the date of enactment of this Act.' . . . An interim confirmation order is not a creature of the Code. Instead, it is unique local practice employed to provide adequate protection to secured and priority creditors pending 'final' plan confirmation. . . . [T]he judges of this district have adopted a form of order that typically enters following the first meeting of creditors and authorizes the Trustee to commence distributions to secured and priority creditors. . . . [T]he Court acknowledges that the form order may contain some unintended ambiguities stemming from its use for both interim and final confirmation. . . . Without belaboring the point, interim confirmation in this district is simply not confirmation under section 1325. . . . Not only does the Court not review the plan or make any findings before entering an interim confirmation order, the Trustee concedes that many plans confirmed on an interim basis do not yet satisfy section 1325. . . . Congress drew a bright line establishing a debtor's eligibility to modify a plan under section 1329(d) . . . .").

{647} ***In re Gresham*, 616 B.R. 505, 509-14 (Bankr. E.D. Mich. Mar. 10, 2020) (Shefferly)** (HAVEN Act applies to Chapter 13 cases pending on August 23, 2019, but effect is not "retroactive" in sense that it would be unfair to revisit confirmation; however, confirmed plan can be modified to reduce required payments to unsecured creditors going forward to reflect elimination of veteran's benefits. Debtor confirmed a Chapter 13 plan in March of 2019. Debtor received monthly disability benefits from the Department of Veterans Affairs as a result of a combat-related injury. In October 2019, debtor moved to modify confirmed plan to reduce plan payments from $300 biweekly to $250 biweekly. "The HAVEN Act does not state whether it applies only to new cases filed after August 23, 2019 or whether it also applies to cases that were filed before that date. The legislative history to the HAVEN Act is also silent on this question. . . . The Trustee does not identify, and the Court is not aware of, any manifest injustice that will result from bankruptcy courts immediately applying the HAVEN Act to all CMI decisions, without regard to whether those cases were filed before or after August 23,

2019. . . . To now go back and apply the HAVEN Act 'retroactively' to hold that the Debtor's CMI at the time of confirmation of her plan excluded her VA benefits . . . is fundamentally unfair because the time has long passed for the Debtor's unsecured creditors to object to confirmation of her plan. . . . Here, the Plan Mod is based on a change in the law made by the HAVEN Act after the Debtor confirmed her plan. However, if applied to the calculation of the Debtor's CMI for purposes of the Plan Mod, it would obviously have a substantial impact on the Debtor's financial circumstances by excluding $1,789.00 of VA benefits each month. The passage of the HAVEN Act and its change in the definition of CMI is not something that the Debtor or the Trustee could have anticipated when the Debtor's plan was confirmed. . . . The Court holds that the HAVEN Act provides a legitimate reason for a modification—sufficient under § 1329 and the case law in the Sixth Circuit—to the Debtor's plan for its duration. . . . However, the Court's holding that the HAVEN Act applies to the Plan Mod does not necessarily mean that the Plan Mod is approved. The Plan Mod must meet all of the requirements of § 1329(b)(1).").

{648} ***In re Powell*, No. 18-50818 SLJ, 2020 WL 751982, at *3–*12 (Bankr. N.D. Cal. Jan. 23, 2020) (Johnson)** (General Order in Northern District of California that requires Chapter 13 debtors making long-term payments directly to a creditor to file quarterly declarations of the status of postconfirmation payments cannot be eliminated by plan modification under § 1329; the General Order is a valid procedural provision that enables monitoring of Chapter 13 plans that contain direct payments and is consistent with mandates in § 1322(b)(5) and § 1326(c) that direct payments are payments under the plan and that debtors must maintain payments even if made directly. Confirmed plan provided payment of prepetition arrears would be disbursed by the Chapter 13 trustee but postpetition payments of $2,262 per month would be made directly by debtor to Wells Fargo. Plan further provided that debtor would file quarterly declarations with respect to the status of the postconfirmation payments to Wells Fargo. After confirmation the debtor moved to modify the plan to eliminate the reporting requirement. "[T]he four types of modifications provided in § 1329(a) are exclusive of other changes . . . . The court's authority to enact general orders is granted by Bankruptcy Rule 9029(b), and the use of general orders is specifically recognized in the 1995 Advisory Committee Notes . . . . [T]he option to pay a creditor directly is not the same thing as the right to pay sporadically. . . . Both the Supreme Court and the Ninth Circuit reject Debtor's view that § 1322(b)(5) does not require regular full payments. . . . [T]he postpetition maintenance payments are made according to the terms of the underlying obligation, and these are not modified by § 1322(b)(5). . . . In [*Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)], the BAP . . . joined 'the overwhelming majority of courts' holding that a chapter 13 debtor's direct payments to creditors are payments under the plan that must be completed in order to receive a discharge under § 1328(a). . . . [C]omputation of disposable income to pay creditors under § 1325(b) takes into account any payments that have been promised to secured creditors. A debtor who provided for direct payments to secured creditors in a plan and then fails to make them may be treating unsecured creditors unfairly because their claims are reduced by such phantom expenses. . . . The reporting requirement in GO 34 allows the court to efficiently implement and enforce the provisions of § 1322(b)(5) and § 1328(a) by filling a necessary procedural gap. . . . [A] chapter 13 trustee has a duty to monitor performance under the plan. 11 U.S.C. § 1307(c) . . . . Without a mechanism to monitor a debtor's direct payments during the term of the plan, a debtor's postpetition mortgage arrears may be too large to remedy at the conclusion of the plan, thereby jeopardizing his discharge. GO 34 also serves an important purpose of treating all debtors equally, regardless of which method (direct or through trustee) they use to pay their postpetition maintenance payments. In conduit plans, the trustee is immediately aware that a payment to a secured creditor has not been made timely. . . . [N]o distinction should exist between debtors who propose to pay creditors directly and those who pay through the chapter 13 trustee. . . . Debtor could have opted to make his postpetition mortgage payments through Trustee and secured the peace of mind that so long as he remains current on all his payments under the plan, his mortgage payments would have been properly disbursed and he would be eligible for a discharge, all without the necessity to file quarterly proof of payments.").

{649} ***In re Owens*, No. 18-04738-NPO, 2019 WL 9828473 (Bankr. S.D. Miss. Dec. 12, 2019) (Olack)** (Rejecting *Chrysler Financial Corp. v. Nolan (In re Nolan)*, 232 F.3d 528 (6th Cir. Oct. 24, 2000) (Krupansky, Norris, Suhrheinrich), Chapter 13 debtor can modify plan after confirmation to surrender 14-year-old car and treat deficiency as unsecured claim when debtor tried to return the car the day after purchase because of malfunctioning transmission, the seller was unwilling to repair and transmission then failed completely notwithstanding efforts at maintenance by debtor. Modification was proposed in good faith. That debtor allowed insurance to lapse was not *per se* bad faith when no harm to seller resulted.).

2. SPECIFIC MODIFICATIONS

§ 127.1 To Suspend Payments
§ 127.2 To Cure Postconfirmation Default
§ 127.3 To "Add" Prepetition Creditors
§ 127.4 To Provide for Postpetition Claims
§ 127.5 To Incur New Debt

{650} ***In re Zvoch*, No. 17-21385-GLT, 2020 WL 5362380 (Bankr. W.D. Pa. Sept. 8, 2020) (Taddonio)** (*Nunc pro tunc* approval of modification of confirmed plan to validate unrevealed postpetition financing of $33,674 car with monthly payment of $719 is denied for two reasons: *nunc pro tunc* approval is not available after *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, ___ U.S. ___, 140 S. Ct. 696, 206 L. Ed. 2d 1 (Feb. 24, 2020) (per curiam), when reason order was not entered at time of financing was that debtor did not reveal the borrowing; expensive car is not reasonable or necessary and negatively impacts payments to other creditors.).

§ 127.6 To Sell or Refinance Property of the Estate
§ 127.7 To Surrender Collateral, Account for Repossession or Change the Treatment of a Secured Claim

{651} ***In re Owens*, No. 18-04738-NPO, 2019 WL 9828473 (Bankr. S.D. Miss. Dec. 12, 2019) (Olack)** (Rejecting *Chrysler Financial Corp. v. Nolan (In re Nolan)*, 232 F.3d 528 (6th Cir. Oct. 24, 2000) (Krupansky, Norris, Suhrheinrich), Chapter 13 debtor can modify plan after confirmation to surrender 14-year-old car and treat deficiency as unsecured claim when debtor tried to return the car the day after purchase because of malfunctioning transmission, the seller was unwilling to repair and transmission then failed completely notwithstanding efforts at maintenance by the debtor. Modification was proposed in good faith. That debtor allowed insurance to lapse was not *per se* bad faith when no harm to seller resulted.).

{652} ***In re Schroeder*, 607 B.R. 329 (Bankr. E.D. Wis. Sept. 30, 2019) (Halfenger)** (Confirmed plan that provided debtor would negotiate mortgage modification and if not successful would then modify plan to provide for mortgage can be modified to bifurcate the mortgage under §§ 1322(c)(2) and 1329(a)(1) when mortgage is not protected from modification by § 1322(b)(2). Modification does not reclassify the mortgage claim, it simply changes the treatment of that claim as permitted by § 1322(c)(2).).

§ 127.8 To Decrease Payments to Creditors

{653} ***In re Gresham*, 616 B.R. 505, 509-14 (Bankr. E.D. Mich. Mar. 10, 2020) (Shefferly)** (HAVEN Act applies to Chapter 13 cases pending on August 23, 2019, but effect is not "retroactive" in sense that it would be unfair to revisit confirmation; however, confirmed plan can be modified to reduce required payments to unsecured creditors going forward to reflect elimination of veteran's benefits. Debtor confirmed a Chapter 13 plan in March of 2019. Debtor received monthly disability benefits from the Department of Veterans Affairs as a result of a combat-related injury. In October 2019, debtor moved to modify confirmed plan to reduce plan payments from $300 biweekly to $250 biweekly. "The HAVEN Act does not state whether it applies only to new cases filed after August 23, 2019 or whether it also applies to cases that were filed before that date. The legislative history to the HAVEN Act is also silent on this question. . . . The Trustee does not identify, and the Court is not aware of, any manifest injustice that will result from bankruptcy courts immediately applying the HAVEN Act to all CMI decisions, without regard to whether those cases were filed before or after August 23, 2019. . . . To now go back and apply the HAVEN Act 'retroactively' to hold that the Debtor's CMI at the time of confirmation of her plan excluded her VA benefits . . . is fundamentally unfair because the time has long passed for the Debtor's unsecured creditors to object to confirmation of her plan. . . . Here, the Plan Mod is based on a change in the law made by the HAVEN Act after the Debtor confirmed her plan. However, if applied to the calculation of the Debtor's CMI for purposes of the Plan Mod, it would obviously have a substantial impact on the Debtor's financial circumstances by excluding $1,789.00 of VA benefits each month. The passage of the HAVEN Act and its change in the definition of CMI is not something that the Debtor or the Trustee could have anticipated when the Debtor's plan was confirmed. . . . The Court holds that the HAVEN Act provides a legitimate reason for a modification—sufficient under § 1329 and the case law in the Sixth Circuit—to the Debtor's plan for its duration. . . . However, the Court's holding that the HAVEN Act applies to the Plan Mod does not necessarily mean that the Plan Mod is approved. The Plan Mod must meet all of the requirements of § 1329(b)(1).").

§ 127.9 To Increase Payments to Creditors

{654} ***Berkley v. Burchard (In re Berkley)*, 613 B.R. 547, 552–54 (B.A.P. 9th Cir. Apr. 17, 2020) (Faris, Brand, Taylor)** (Trustee's motion to modify confirmed plan to increase payments to creditors was appropriately granted when debtor received unexpected $3.8 million in postconfirmation compensation from stock options. Property of Chapter 13 estate vested in debtor at confirmation but vesting does not preclude modification to capture postconfirmation increase in compensation because income need not be property of the estate to be reached by modification under § 1329. "[C]onfirmation does not shield increases in the debtor's postconfirmation income from the reach of the chapter 13 trustee or creditors. It is well accepted that § 1329 permits the trustee and creditors to modify the plan to capture postconfirmation increases in the debtor's income. . . . [W]e have adopted the so-called 'estate termination approach,' which recognizes 'the vesting of all estate property in the debtor at confirmation . . . .' . . . '[T]he revesting provision of the confirmed plan means that the debtor owns the property outright and that the debtor is entitled to any postpetition appreciation.' . . . Nothing in the Code provides that plan payments may only be funded by estate property. . . . Under § 1329, the bankruptcy court can approve a plan modification that increases the debtor's plan payments due to a postconfirmation increase in the debtor's income, whether or not the additional income is property of the estate. . . . Because the stock options were postconfirmation income that Mr. Berkley earned as part of his compensation package, the bankruptcy court properly committed their proceeds to the Plan.").

{655} ***Crow v. Maney (In re Crow)*, No. AZ-18-1323-SFB, 2020 WL 710351 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Spraker, Faris, Brand)** (Deletion of nonstandard plan provision that preserved Thirteenth Amendment challenge to any future effort by Chapter 13 trustee to increase payments by way of plan modification is not ripe for appellate review because no modification has been sought by trustee. Plan originally contained a footnote that preserved the debtors' argument that any attempt by the Chapter 13 trustee to increase payments by way of plan modification constituted involuntary servitude in violation of the Thirteenth Amendment to the Constitution. Bankruptcy court struck the footnote but confirmed the plan. BAP dodged debtors' appeal by finding that constitutional challenge was not ripe.).

{656} ***Black v. Leavitt (In re Black)*, 609 B.R. 518, 528–29 (B.A.P. 9th Cir. Dec. 31, 2019) (Faris, Brand, Hercher)** (When confirmation vested property of the estate in debtor, postpetition appreciation belongs to debtor and cannot be captured by trustee's motion to modify plan to require sale proceeds to be paid to creditors. Confirmed plan required debtor to pay creditors $45,000 from proceeds of sale of property. Property vested in debtor at confirmation and was sold three years later for $107,000. Trustee cannot force excess proceeds to be paid to creditors. Proceeds are not disposable income and appreciation belongs to the debtor. "[T]he Property was property of the estate when Mr. Black commenced his case. But when the bankruptcy court confirmed the plan, the Property was revested in Mr. Black. . . . Revesting means that Mr. Black owned the property outright, free of his creditors' claims. *See Cal. Franchise Tax Bd. v. Jones (In re Jones)*, 420 B.R. 506, 515 [(B.A.P. 9th Cir. Nov. 24, 2009) (Baum, Dunn, Jury).] . . . We acknowledge that there is a split in authority on this point. . . . In our view, the revesting provision of the confirmed plan means that the debtor owns the property outright and that the debtor is entitled to any postpetition appreciation. . . . [W]e squarely rejected [the *Barbosa v. Solomon*, 235 F.3d 31 (1st Cir. Dec. 21, 2000) (Torruella, Selya, Casellas,] approach in *Jones*. We . . . opted instead for the 'estate termination approach,' which provides that 'all property of the estate vests in the debtor at confirmation[.]'").

{657} ***In re Lugo*, No. 18bk18603, 2020 WL 1817853, at *3 (Bankr. N.D. Ill. Mar. 12, 2020) (Hunt)** (Chapter 13 trustee's motion to modify confirmed plan to capture nonexempt proceeds of postconfirmation personal injury action is granted. Distinguishing *Germeraad v. Powers*, 826 F.3d 962 (7th Cir. June 23, 2016) (Bauer, Williams, Adelman), debtors' objection that only proceeds actually received within 60-month term of plan need be turned over to trustee is rejected. To satisfy best-interests-of-creditors test at modification after confirmation, Chapter 13 debtors must turn over nonexempt proceeds from postconfirmation personal injury action even if proceeds are received after 60 months after first payment under original plan. "[T]he modified plan here is not 'providing for' further plan payments by the Lugos. All the order does is establish a mechanism for the Lugos to turn over estate property for the Trustee to distribute to creditors according to the confirmed plan. . . . [T]he Lugos now have an additional asset to account for in calculating what their creditors are entitled to receive in a chapter 13 case.").

{658} ***In re Jones*, No. 17-03500-5-SWH, 2020 WL 907802, at *3 (Bankr. E.D.N.C. Feb. 25, 2020) (Humrickhouse)** (Local rule and practice that permitted Chapter 13 trustee to change "base" and to increase required payments into a plan when attorney's fee was allowed after confirmation are inconsistent with requirements for plan modification in § 1329. Local rule allowed trustee "without application to the court" to modify a Chapter 13 plan to generate funds necessary to pay attorney's fees that might be allowed during term of plan. When allowed fees required plan modification, the trustee could issue a "notice of plan payment change." "[T]he Notice filed by the trustee cannot, and does not, operate to modify the debtor's chapter 13 plan. . . . [T]he local rule, while expedient and practical in terms of case administration, is at odds with the plain language of 11 U.S.C. § 1329(a), which sets out the process by which a plan may be modified after confirmation[.]").

§ 127.10 To Account for Payments Other Than under the Plan
§ 127.11 To Extend or Reduce the Time for Payments

{659} ***In re Roebuck*, No. 19-23044-GLT, 2020 WL 5249597, at *2–*3 (Bankr. W.D. Pa. Sept. 3, 2020) (Taddonio)** ("Interim confirmation order" used in district to provide adequate protection to lienholders prior to completion of the confirmation process is not "confirmation" under § 1325 for purposes of modification to extend plan to seven years under § 1329(d) as amended by the CARES Act. "Section 1113(b)(1)(D)(ii) of the CARES Act reiterates that section 1329(d) applies only when '*a plan has been confirmed under section 1325* . . . before the date of enactment of this Act.' . . . An interim confirmation order is not a creature of the Code. Instead, it is unique local practice employed to provide adequate protection to secured and priority creditors pending 'final' plan confirmation. . . . [T]he judges of this district have adopted a form of order that typically enters following the first meeting of creditors and authorizes the Trustee to commence distributions to secured and priority creditors. . . . [T]he Court acknowledges that the form order may contain some unintended ambiguities stemming from its use for both interim and final confirmation. . . . Without belaboring the point, interim confirmation in this district is simply not confirmation under section 1325. . . . Not only does the Court not review the plan or make any findings before entering an interim confirmation order, the Trustee concedes that many plans confirmed on an interim basis do not yet satisfy section 1325. . . . Congress drew a bright line establishing a debtor's eligibility to modify a plan under section 1329(d) . . . .").

{660} ***In re Palmer*, No. 15-20886-GLT, 2020 WL 4743011, at *3–*4 (Bankr. W.D. Pa. Aug. 14, 2020) (Taddonio)** (Debtor is entitled to refund of $213.35 paid to unsecured creditors while motion and order to modify plan were being processed. Modified plan changed math of confirmed plan to eliminate distribution to unsecured creditors that resulted when payment of mortgage arrears was completed in 53d month. Trustee could have and perhaps should have objected to modification that had "retroactive" effect of declaring plan completed. Confirmed plan called for 60 monthly payments to cure mortgage arrearages with acknowledgment that pool of funds available to pay unsecured creditors would be determined after an audit at the time of completion of other payments. Mortgage arrearages were fully paid approximately 53 months into the plan term. Trustee filed a notice of intent to pay unsecured creditors pro rata from funds that became available when mortgage arrears were paid. Debtor responded with plan modification that terminated the debtor's obligations "retroactively" to the completion of payment of mortgage arrears. The court approved the modified plan and a week later the trustee's office disbursed funds on hand to unsecured creditors. "[The trustee] did [not] request a delay in the effective date of the confirmation order to account for the processing limitations of her office. . . . [T]he Court is sympathetic to the Trustee's position even

though it cannot authorize her actions in this case. The Trustee's office is one of the largest in the country with disbursements rivaling those of a small financial institution. With such volume and complexity, it is completely understandable that unusual plans would present hardships in administration. . . . When appropriate, however, the Trustee may request that the confirmation order include reasonable terms to grant her the leeway to address any administrative difficulties on a case-by-case basis. . . . [T]he Debtor is entitled to a refund of $213.35.").

{661} ***In re Cassini*, 614 B.R. 554, 555 (Bankr. E.D. Mich. Apr. 17, 2020) (Tucker)** (Sua sponte—no party having objected—bankruptcy court denies debtor's motion to modify plan that would allow trustee to distribute $628.60 to creditors because $263.95 of that amount was received by the trustee after 60 months after the initial payment was due under confirmed plan. "The Court concludes that approval of this Plan Modification is impermissible, because the Plan as modified would exceed the five-year limit in 11 U.S.C. § 1329(c).").

{662} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

F. MISCELLANEOUS POSTCONFIRMATION ISSUES

§ 128.1 Death or Incompetency of Debtor

{663} ***In re Sanford*, No. 15-51166, 2020 WL 5105181, at *3–*7 (Bankr. E.D. Mich. Aug. 28, 2020) (Shefferly)** (After thoughtful analysis of hardship discharge conditions in § 1328(b) and Bankruptcy Rule 1016, deceased debtors are granted hardship discharge and trustee's motion to dismiss is denied. Debtors confirmed Chapter 13 plan in 2015 and by January 2020 both debtors had passed away. Trustee moved to dismiss. Son of deceased debtors objected to dismissal and filed motion for hardship discharge. "[T]he Debtor's [*sic*] delinquency in payments is a material default under their plan . . . that [ ] provides cause to dismiss this case. However, the Court also finds that its discretion under § 1307(c) to dismiss for cause is best exercised by first considering whether the Debtors are eligible for a hardship discharge . . . . Even though all three elements of § 1328(b) are present, the Trustee opposes the Motion for Hardship Discharge on the ground that it is not permitted under Fed. R. Bankr. P. 1016. . . . The first issue . . . is what does 'further administration' mean? A second issue is who are the parties whose 'best interest' must be served by further administration? A third issue is what does 'conclusion in the same manner' mean? . . . [F]urther administration of a chapter 13 case does not necessarily require more payments to be made under a plan. . . . Other tasks may constitute further administration for purposes of Rule 1016. In this case, the filing, consideration, and adjudication of the Motion for Hardship Discharge satisfies [*sic*] the rule's requirement that further administration must be possible. . . . If the Motion for Hardship Discharge is granted, the USDA's junior mortgage on the Home is limited to its allowed secured claim of $36,605.00 . . . . [I]f the Motion for Hardship Discharge is denied, and the case is dismissed, the cramdown of the USDA's secured claim under the plan is no longer in effect. . . . The interest of the Debtors' pre-petition unsecured creditors does not appear to be impacted one way or the other . . . . Either way they will get nothing. . . . [T]here is nothing in the Bankruptcy Code to suggest that the interest of the heirs of a party in a bankruptcy case . . . is a cognizable interest . . . . [T]he interest of post-petition creditors is a cognizable interest . . . . [T]he Debtors incurred at least $35,000.00 of post-petition medical expenses and as much as $70,000.00 of total post-petition claims. . . . If the Motion for Hardship Discharge is granted, it does not discharge the claims of those post-petition creditors. . . . But there is a big difference in their prospects for any recovery depending on whether the Motion for Hardship

Discharge is granted. . . . [I]f the Motion for Hardship Discharge is granted, there is a greater chance that there will be equity in the Home after the mortgages on it are paid off. That means that the post-petition creditors will have a real shot at getting a distribution out of the proceeds of sale of the Home if the Motion for Hardship Discharge is granted, but will have no shot at the proceeds of sale if the Motion of [*sic*] Hardship Discharge is denied. The Court finds that the interest of the Debtors' post-petition creditors is best served by granting the Motion for Hardship Discharge.").

PART 7: CLAIMS

§ 129.1 Summary of Part 7

A. STATUTES AND RULES DISCUSSED IN PART 7

§ 130.1 11 U.S.C. § 501: Filing Proofs of Claim
§ 130.2 11 U.S.C. § 502: Allowance and Disallowance of Claims
§ 130.3 11 U.S.C. § 503: Administrative Expenses
§ 130.4 11 U.S.C. § 506: Extent of Secured Claims
§ 130.5 11 U.S.C. § 507: Priority Claims
§ 130.6 11 U.S.C. § 1305: Postpetition Claims
§ 130.7 Bankruptcy Rule 3001: Proofs of Claim
§ 130.8 Bankruptcy Rule 3002: Filing of Proofs of Claim
§ 130.9 Bankruptcy Rule 3004: Filing of Claims by Debtor or Trustee
§ 130.10 Bankruptcy Rule 3007: Objections to Claims
§ 130.11 Bankruptcy Rule 3012: Valuation of Security
§ 130.12 Bankruptcy Rule 5005: Filing of Papers

B. PROCEDURE, TIMING AND FORM

1. FORM AND FILING OF PROOF OF CLAIM

§ 131.1 Official Form 410 and Variations

{664} ***In re Bowen*, No. 20-01444-JW, 2020 WL 5530074, at *3–*4 (Bankr. D.S.C. Aug. 25, 2020) (Waites)** (Objection to claim of Real Time Resolutions, Inc., is sustained and claim is reduced to $15,948 amount on monthly statement from its predecessor, Shellpoint Mortgage Servicing, rather than $23,251 on proof of claim later filed by Real Time after transfer of claim. Real Time's claim was not entitled to *prima facie* effect under Bankruptcy Rule 3001(c)(2)(C) because it failed to provide a legible copy of note and mortgage, it provided inconsistent information with respect to interest rate and amount of interest due, it did not accurately complete Official Form 410A and it did not appear to contest debtor's objection to its claim. Debtor is entitled to attorney's fees and expenses of $1,812 under Bankruptcy Rule 3001(c)(1)(B)(i) and Real Time is forbidden to present omitted information in any contested matter or adversary proceeding. Chapter 13 case was filed on June 12, 2020. Shellpoint Mortgage was scheduled with a secured claim of $15,948. On April 1, 2020, Shellpoint transferred the mortgage to Real Time and Real Time then filed a proof of claim asserting $23,251 based on a Form 410A which purported to include a payment history beginning in 2006. Debtor objected to the Real Time proof of claim and attached a monthly statement dated January 21, 2020, showing the mortgage amount as $15,948. Real Time did not respond to the debtor's objection. "The payment history, which begins November 5, 2006, does not reflect receipt of any trustee disbursements or payments from Debtor during his prior bankruptcy case . . . . [T]he Proof of Claim does not indicate that the claim was transferred from Shellpoint Mortgage Servicing to Real Time post-petition . . . . Real Time failed to provide a copy of the promissory note and a legible copy of the Mortgage . . . , provided inconsistent information regarding the interest rate and amount of interest due on the loan, and failed to properly and accurately complete the Mortgage Proof of Claim Attachment (Official Form 410A). Real Time's failure to provide the required information to support its claim resulted in the filing the Objection to Claim by Debtor, delay in confirmation of his plan, and the incurrence attorney's fees and expenses in the amount of $1,812.00 . . . .").

§ 131.2 [RESERVED]
§ 131.3 Bankruptcy Rule 3002.1: Mortgage Management after 2011

{665} ***Saccameno v. U.S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1078–88 (7th Cir. Nov. 27, 2019) (Bauer, Brennan, St. Eve)** (For reckless and reprehensible loan servicing and debt collection practices during and after completion of Chapter 13 case, after jury trial, Ocwen ordered to pay compensatory damages of $582,000; punitive damages of $3 million awarded by jury are reduced to $582,000. "[I]n December 2009, [debtor] began a Chapter 13 plan under which she was required to cure her default over 42 months while maintaining her ongoing monthly mortgage payments. . . . [I]n October 2011, shortly after it acquired her previous servicer . . . Ocwen sent her a loan statement saying, inexplicably, that she owed $16,000 immediately. . . . Her statements continued to fluctuate: her February 2013 statement said she owed about $7500, her March statement, $9000. A month later, Ocwen now owed *Saccameno* about $1000 in credit . . . . [T]he bankruptcy court issued a notice of final cure, Fed. R. Bankr. P. 3002.1, informing Ocwen that Saccameno had completed her payments. Ocwen never responded to the notice, and the court entered a discharge order on June 29, 2013. . . . Ocwen . . . reviewed the discharge but mistakenly treated it as a dismissal. . . . [E]ach check was being placed into a suspense account and not being applied to the loan. . . . Saccameno would frequently call Ocwen's customer service line and each time was directed to a new, similarly unhelpful person. . . . Ocwen sent Saccameno an offer to refinance her mortgage . . . . Saccameno's counsel diligently walked Ocwen's representative through its own records payment by payment . . . confirming that Saccameno had made each

payment. . . . [Ocwen] continues to place most of the blame on what it calls 'an isolated "miscoding" error committed by a lone employee, identified as "Marla."' . . . Her error was one among a host of others, and each error was compounded by Ocwen's obstinate refusal to correct them. . . . We are not sure how many human errors a company like Ocwen gets before a jury can reasonably infer a conscious disregard of a person's rights, but we are certain Ocwen passed it. The record is replete with evidence that Ocwen's servicing of Saccameno's loan was chaos from the moment Ocwen began working on the loan in 2011 to the day of the jury's verdict nearly seven years later. . . . The utter lack of explanation also supports a finding of corporate complicity. . . . The jury heard evidence that *no one* at Ocwen took any steps, whatsoever, to investigate how Marla's mistake . . . was made or how Ocwen would prevent it from happening again. . . . Ocwen had no explanation for how this whole ordeal happened, let alone how it might be avoided in the future. . . . The loan modification offers were even worse. Putting to one side their timing, the terms, especially of the second offer, were far from generous. Why would Saccameno, having then endured four years with Ocwen, want to chain herself to the company three decades more, only to owe it money at the end? . . . Ocwen insisted it had not seen errors like these before, but its representative admitted it had never bothered to look. The jury was not required to accept Ocwen's bare assertion that this was a unique case—especially considering the consent decrees implying it was not—and could have inferred that this is just how Ocwen does business. For that, Illinois law permits punitive damages. . . . [T]he record contains evidence that Ocwen was a recidivist. The consent decrees described how it had treated other customers as it did Saccameno, and that it had continued its ways despite repeated warnings from regulators. The number of opportunities Ocwen had to fix its mistakes is the core fact that justifies punishment in this case. . . . Ocwen's conduct was reprehensible . . . . Ocwen was . . . indifferent to her rights, including those rights that originated from her bankruptcy. No evidence supports that Ocwen was acting maliciously, though the number of squandered chances it had to correct its mistakes comes close.").

{666} ***Todd v. Ocwen Loan Servicing, Inc.*, No. 2:19-cv-00085-JMS-DLP, 2020 WL 1328640, at *2–*6 (S.D. Ind. Jan. 30, 2020) (Pryor)** (In Chapter 13 debtor's postdischarge action against Ocwen under RESPA, FDCPA, FCRA and other consumer protection statutes, discovery dispute is resolved by United States Magistrate judge in favor of debtor with respect to "risk convergence reports" and other records relevant to Ocwen's knowledge that its REALServicing platform was broken and could not accurately account for payments in a Chapter 13 case. "Defendant Ocwen used a software-based servicing system, called REALServicing, that was subject to various failings. . . . Ocwen maintained spreadsheets, called 'Risk Convergence Reports,' that tracked regulatory violations and potential areas for risk with the REALServicing platform. . . . Plaintiff sought these Risk Convergence Reports ('RCR'), and any email correspondence . . . , . . . establishing Ocwen's knowledge, willful indifference, or deliberate violation of federal law. . . . Plaintiff has explained . . . that, if provided, the RCRs will be used to show that Ocwen was aware of the widespread problems related to the REALServicing platform, had been aware for a significant period of time, and had not engaged in the appropriate corrective behavior. Accordingly, the Court finds that the Plaintiff's request for the RCRs is relevant. . . . The RCRs, while potentially a result of the nationwide consent decrees, do not necessarily hinge on the terms of those decrees, nor do they reveal any confidential information from the settlement negotiation process. Instead, the RCRs appear to be spreadsheets created in the normal course of Ocwen's business, in an attempt to track potential points of liability and forestall future regulatory action.").

{667} ***Stone v. JPMorgan Chase Bank, N.A.*, 415 F. Supp. 3d 628, 632–34 (E.D. Pa. Nov. 27, 2019) (McHugh)** (Chapter 13 debtor's "disturbing" claims under FDCPA and Pennsylvania consumer protection statutes that Chase violated Bankruptcy Rule 3002.1 final cure order and discharge order are dismissed because Chase was not a debt collector and (ironically) debtor could not prove reliance when debtor knew that servicer was not accounting correctly but continued to send payments anyway. Debtor's claims of violation of discharge injunction must be presented as a motion for contempt to the bankruptcy court that issued the discharge. "Defendant correctly asserts that it is beyond the reach of the FDCPA because it does not qualify as a 'debt collector' under the statute. . . . Plaintiff cannot state a claim under Pennsylvania's UTPCPL because he cannot show justifiable reliance upon the Defendant's alleged wrongful behavior. . . . Plaintiff submitted what he believed to be his correct mortgage payment to Defendant on a monthly basis, consistently disputing Defendant's contention that he was behind on his mortgage and owed additional fees. . . . As a result, it cannot be said that Plaintiff has 'relied' upon the Defendant's purported misrepresentations or deceptive acts in any meaningful sense. In a somewhat ironic outcome, Plaintiff's knowledge of Defendant's allegedly wrongful behavior . . . bars him from bringing a claim against Defendant under the UTPCPL. . . .").

{668} ***Specialized Loan Servicing, LLC v. Devita*, 610 B.R. 513, 517–20 (E.D.N.C. Mar. 14, 2019) (Dever)** (After Notice of final cure under Bankruptcy Rule 3002.1, Specialized Loan Servicing, LLC, not entitled to Rule 60 relief from order that fixed principal balance of mortgage at $104,547.51; SLS did not contest the principal balance amount in its response to the trustee's Notice and did not respond to the trustee's motion to declare the principal balance to be the amount stated in the 3002.1 Notice. Months later SLS stated no ground for relief under Rule 60 other than misunderstanding its obligations under Bankruptcy Rule 3002.1 and under local rule that set procedures for determining amount remaining on a mortgage at end of a Chapter 13 case. "On July 7, 2017, the trustee filed a Notice of Final Cure Payment (the 'Notice') that advised SLS that the Devitas had completed all payments under their Chapter 13 Plan. . . . SLS responded to the Notice and stated that SLS agreed that the Devitas had paid in full the amount required to cure the pre-petition default and that the Devitas had paid all post-petition amounts due . . . . [T]he trustee moved to declare the mortgage payment current in the bankruptcy court. . . . [T]he trustee stated that he requested a detailed payment history from SLS . . . but SLS did not respond. . . . The trustee calculated the principal balance . . . . [T]he trustee sought a declaration from the bankruptcy court that the unpaid principal balance was $104,547.51. . . . SLS did not respond to the trustee's motion. . . . [T]he bankruptcy court adopted the trustee's calculations . . . . SLS acknowledged that, due to a lack of familiarity with local procedures, it inadvertently did not alert the bankruptcy

court to the trustee's alleged erroneous calculation before the court entered the order. . . . Because SLS failed to show that it was not at fault in failing to respond, the bankruptcy court did not abuse its discretion in finding that Rule 60(b)(1) does not provide relief to SLS.").

{669} ***In re Polvorosa*, No. 11-21229-gs, 2020 WL 4938413 (Bankr. D. Nev. Aug. 21, 2020) (Spraker)** (Ocwen is not in contempt of confirmation order or of discharge injunction when debtor defaulted in seven direct monthly payments during Chapter 13 case, Ocwen responded to Chapter 13 trustee's notice of final cure that direct payments were in arrears, discharge was entered and case was closed. Ocwen's successor then entered into mortgage modification with debtor. Ocwen correctly responded to Bankruptcy Rule 3002.1 notice that direct payments had been missed. Trustee certified completion of payments under confirmed plan and bankruptcy court entered discharge notwithstanding that direct payments had been missed. Not clear what remedy debtor wanted and not clear what order Ocwen failed to follow. There was some evidence that payments went into suspense account during the case rather than being credited against ongoing monthly payments or arrears, but in the end accounting showed that debtor was seven months in arrears of direct payments and Ocwen correctly accounted for all the money.).

{670} ***In re Adams*, No. 19-00458, 2020 WL 4743001 (Bankr. D.D.C. Aug. 11, 2020) (Teel)** (On debtor's objection to Bankruptcy Rule 3002.1 notice from Rushmore for postpetition fees and charges, $25 for transfer of claim and $100 for assignment of claim are not allowed because debtor is not responsible to pay those charges; $1,015 for plan review, for objection to plan and for defense of objection to transfer of claim is allowed based on terms of deed of trust.).

{671} ***In re Hill*, No. 15-40593-KKS, 2020 WL 4464219 (Bankr. N.D. Fla. Aug. 4, 2020) (Specie)** (Chapter 13 debtor's postdischarge motion to compel the trustee to "conform" mortgage distribution payments to the plan is denied. What debtor seems to want but did not pursue is a § 524(i) motion against the mortgagee to determine why mortgage is in default and facing foreclosure immediately after completion of payments under plan that cured defaults. Debtor could have but didn't file a notice of final cure under Bankruptcy Rule 3002.1.).

{672} ***In re Moore*, No. 18-12444 CLB, 2020 WL 5551087, at *2 (Bankr. W.D.N.Y. Aug. 4, 2020) (Bucki)** (Mortgagee's Bankruptcy Rule 3002.1 notice for $150 for plan review, $500 for plan objection and $500 for preparation of proof of claim is reduced to $150. Objection to confirmation was unnecessary because Official Form 113 in use in district told mortgagee that its proof of claim would control amount of arrearages and amount of monthly payment without need for objection to confirmation. In routine Chapter 13 case with simple plan on Official Form and no unusual issues, $500 is excessive for preparation of a proof of claim. Reasonable fee for plan review and preparation of a proof of claim is $150. Plan stated that mortgage arrears were $3,000 and the regular monthly mortgage payment was $880. M&T Bank filed an objection to confirmation asserting that actual mortgage arrears were $3,891 and that the regular monthly mortgage payment was $890.87. "By her use of Official Form 113, the debtor precluded any justification for reimbursement of charges for preparing the plan objection. . . . [T]he objection merely advises that the plan misstates the mortgage arrears and the monthly mortgage payment. However, the plan anticipated this correction. Part 3.1 of the plan recites that the stated amount of arrears and mortgage payment are controlling only '[i]n the absence of a contrary timely filed proof of claim.' The proof of claim served fully to correct the listed numbers, without need for any formal objection. Although the plan objection was not improper, it was unnecessary. Accordingly, the Court will deny the requested reimbursement of $500 for the cost of its preparation. . . . M & T holds an undisputed claim for mortgage arrears in a routine case that involves no unusual issues . . . . By using Official Form 113 . . . the debtor minimized the need for extensive creditor review. . . . M & T is an institutional creditor with a large portfolio of loans that regularly become the subject of claims in Chapter 13. In all likelihood, clerical or paralegal staff prepared the proof of claim for expeditious review by counsel. . . . [T]he reasonable fee for plan review and claim preparation should together not exceed $150.").

{673} ***In re Bozeman*, 616 B.R. 407, 414-20 (Bankr. M.D. Ala. June 9, 2020) (Sawyer)** (When confirmed plan paid mortgage claim in full with interest and mortgagee mistakenly filed proof of claim for only arrearage amount, after completion of payments and a Rule 3002.1 notice of final payment, the mortgagee's amended claim for substantially larger principal balance is disallowed as untimely; discharge includes the amount in the disallowed amended claim. Debtor scheduled mortgage for $17,393.04. Plan proposed to pay mortgage in full with contract interest. Plan was confirmed without objection. Believing that plan was a "cure and maintain" plan, not a full-payment plan, mortgagee filed a proof of claim for $6,817.42 arrearage only. More than two years later, trustee filed notice of final cure payment and notice of completion of plan payments. Mortgagee responded that only the mortgage arrearage had been paid and $15,032.73 was owed on the mortgage. Mortgagee then filed amended claims. Debtor objected. "The Bankruptcy Rules do not make any provision for amended claims. . . . Fault for the error in filing Mortgagee's original proof of claim lies solely upon Mortgagee. . . . To allow a late proof of claim here would be to reward Mortgagee for its lack of diligence and its duplicity–in blaming others and unfairly penalize Debtor. . . . Mortgagee asks the Court to protect it from its own folly. . . . Because the Court has disallowed Mortgagee's Claims . . . Debtor is entitled to discharge. . . . Debtor's plan provided to pay Mortgagee's debt in full. The fact that Mortgagee did not object to confirmation of Debtor's proposed plan, and that it filed a proof of claim in an amount less than that scheduled by Debtor in her bankruptcy filings indicate that Mortgagee was then on board with the Debtor's Chapter 13 plan. . . . Mortgagee was actively participating in the case . . . . Debtor has completed her plan payments. . . . Mortgagee stubbornly refuses to acknowledge this is a 'full payment' plan and not a 'cure and maintain' plan. . . . That Mortgagee did not include the entire amount that it believed was owing was folly on its part, but did not result in a violation of the anti-modification rule. . . . Debtor's Motion to Deem mortgage satisfied is granted.").

{674} ***In re Lipscomb*, No. 18-80784, 2020 WL 5106552 (Bankr. M.D.N.C. June 2, 2020) (James)** (Further briefing and hearing are ordered with respect to whether mortgagee properly sought to recoup mistaken calculation of escrow shortage for 2018 by Notice of Mortgage Payment Change in 2019. Use of notice under Bankruptcy Rule 3002.1(b) may have been accurate, but parties need to address whether the increased escrow payment was required to satisfy § 1322(b)(5) under the mortgage agreement.).

{675} ***In re Navarro*, No. 15-10301-SMG, 2020 WL 2843033, at *3–*4, *3 nn.23, 28 (Bankr. S.D. Fla. May 29, 2020) (Grossman)** (Bankruptcy Rule 3002.1 is mandatory: Four years after confirmation of cure and maintain plan, mortgagee's motion for allowance of $16,749 of postpetition attorney's fees is denied because mortgagee failed to comply with Rule 3002.1. Mortgagee claimed that it did not have to comply with the Rule because it filed a motion for fees. Most of the fees claimed were incurred more than 180 days before the filing of the motion. The mortgagee did not use Form 410S2. Debtor's attorney was awarded fees under Rule 3002.1(i)(2) based on findings that the mortgagee's motion was completely without merit and directly contrary to the mandatory procedures in Rule 3002.1. "Rule 3002.1 became effective on December 1, 2011 . . . . Rule 3002.1 sets forth *mandatory* procedures for compliance by a creditor with a security interest in a debtor's principal residence. This includes use of Official Form 410S2 . . . . A creditor with a security interest in a chapter 13 debtor's principal residence must comply with Rule 3002.1 when the plan provides for the trustee or the debtor to make contractual installment payments . . . . Where a secured creditor fails to provide the information required by Rule 3002.1(c) . . . Rule 3002.1(i)(2) authorizes the Court to award appropriate relief, including reasonable expenses and attorneys' fees . . . . [B]ecause the Court finds McCormick's motion to be completely without merit and directly contrary to the mandatory procedures of Rule 3002.1 . . . the Court will grant Mr. Navarro's request for $2,025.00 in attorneys' fees." In footnotes: "Indeed, the very purpose of Rule 3002.1's procedures is to avoid the circumstances presented here: where a debtor is nearing completion of his plan and believes once he is finished he will have fully brought his mortgage back into good standing, only to be hit with a 'surprise' bill . . . that he likely could not pay. . . ." "The Court also notes that $250.00 . . . was for time incurred in preparing notices of payment change, which fees should not be charged to the debtor anyway.").

{676} ***In re Johnson*, No. 14-26650-LMI, 2020 WL 5626117 (Bankr. S.D. Fla. May 22, 2020) (Isicoff)** (Local rule permissibly extends noticing requirements in Bankruptcy Rule 3002.1 to all claims secured by real property; Bayview's failure to comply with notice of payment change requirements with respect to commercial property precludes Bayview from claiming attorney's fees and postpetition arrears that should have been noticed consistent with Bankruptcy Rule 3002.1 but were not. One notice of payment change that was filed was in wrong place on claims register and was inconsistent with subsequent plan modification. Bayview is bound by amounts in modified plan under *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010). Debtor is entitled to attorney's fees under Bankruptcy Rule 3002.1(I) and Bayview is precluded from presenting evidence related to the omitted information.).

{677} ***In re Reece*, No. 4:19-bk-03836-BMW, 2020 WL 2027208, at *3 (Bankr. D. Ariz. Feb. 26, 2020) (Whinery)** (Prepetition fees and costs are allowed mortgagee based on evidence of a substantial arrearage in payments by debtor: postpetition fees and charges are reduced to remove charges for an unnecessary stay relief motion—caused by inaccurate information by a mortgage servicer—and for lumped, block-billing by mortgagee's counsel. "[T]he Creditors have acknowledged that the $2,344.00 in fees and costs incurred to file and pursue the Stay Relief Motion were incurred unnecessarily as a result of incorrect information the Creditors received from a third party servicer . . . .").

{678} ***Williams v. CitiFinancial Servicing LLC (In re Williams)*, 612 B.R. 682, 687–94 (Bankr. M.D.N.C. Jan. 24, 2020) (James)** (After transfers of servicing during Chapter 13 case from CitiFinancial to Carrington (and later, to SN), complaint states plausible claims that all servicers in the chain violated § 524(i) by misapplying or failing to apply payments. "CitiFinancial assigned the deed of trust and the secured claim to Wilmington . . . . Wilmington's servicer [was] Carrington . . . . [T]he Trustee filed a Notice of Final Cure Mortgage Payment, to which Carrington responded . . . , concurring with the Trustee's assessment that Plaintiffs had cured the prepetition arrearage and were current on postpetition mortgage payments . . . . Designed to remedy instances in which creditors misapplied payments under a confirmed plan, § 524(i) is unique in that the provision is 'not limited to acts occurring after discharge.' . . . [Section] 524(i) is applicable to CitiFinancial despite the fact it had transferred its secured claim by the time Plaintiffs had obtained their discharges, because the operable offending conduct for purposes of § 524(i), the alleged misapplication of payments, occurred in part when CitiFinancial still possessed the claim . . . . [D]espite filing a response to the Trustee's Notice of Final Cure Payment that Plaintiffs were current on all postpetition payments, Carrington sent Plaintiffs a . . . mortgage statement incorrectly stating in bold-type that it had not received all mortgage payments due since the bankruptcy filing. . . . SN sent a third letter . . . , which notifies the Plaintiffs of fees assessed and charged to their account, including 'Forebearance Prin Assessment' in . . . an amount that matches the amount of the allowed prepetition arrearage in the Plaintiffs' chapter 13 case . . . . The Court draws the reasonable inference that Carrington sent Plaintiffs a letter showing an inflated balance based on records it received from CitiFinancial . . . . Evidence that could prove CitiFinancial's misapplication of plan payments is controlled by CitiFinancial and has not been turned over to Plaintiffs . . . . [A]llegations that Carrington misapplied payments, which are supported by the alleged communications Plaintiffs received from Carrington and SN that showed missing payments and an overstated balance, are sufficient for purposes of a motion to dismiss . . . . Despite Plaintiffs' successful plan completion, leading to their eventual discharges, the account balance of Plaintiffs' mortgage was in excess of the allowed amount of their secured claim by as much as $27,000 . . . . [T]he inclusion of boilerplate disclaimers is not a talisman, cleansing a creditor's ongoing misrepresentation of the total payoff balance owed on a discharged debtor's

mortgage loan. . . . Plaintiffs' allegations that CitiFinancial and Carrington both transferred Plaintiffs' mortgage account with an inflated balance due to misapplied payments sufficient to constitute an act to collect for the purposes of withstanding a motion to dismiss . . . .").

{679} ***In re Ferris*, 611 B.R. 701, 706–07 (Bankr. M.D. Fla. Dec. 6, 2019) (Funk)** (After transfers of servicing from Ocwen to Seterus to Mr. Cooper, Seterus violated § 524(i) by failing to properly account for payments during Chapter 13 case. Confirmed plan cured default and maintained payments on mortgage consistent with § 1322(b)(5). Debtor filed proof of claim for Ocwen for arrearage of $7,856.59. Ocwen did not object or amend. Debtor made all payments. Trustee filed notice of final cure to which mortgagee responded debtors were current. Chapter 13 case was closed. Seterus then sent multiple demand letters for varying default amounts and threatened foreclosure. Seterus failed to respond to protests from debtors and attorney. Emotional distress damages awarded of $10,000, attorney's fees of approximately $20,000 and punitive damages of $25,000. "Mr. Cooper alleged that the entire chain of events . . . resulted from the Debtors listing an incorrect arrearage amount in their proof of claim. However, Homeward Residential, Inc., which owned the mortgage from the date of the filing of the case until July 7, 2014, neither filed an amended proof of claim nor objected to confirmation of the Debtors' plan. Ocwen Loan Servicing, LLC, which owned the mortgage from July 7, 2014 until October 6, 2015, also took no action in the case. FNMA/Seterus, which acquired the mortgage on October 6, 2015, took no action in the case other than to file Notices of Mortgage Payment Change, which reflected post-petition increases in Debtors' escrow account . . . . [Section] 524(i) provides that a creditor's willful failure to credit payments received under a confirmed plan constitutes a violation of the injunction under § 524(a)(2) if the creditor's failure caused material injury to the debtor. . . . The Court finds that willfulness in the context of § 524(i) requires only that the creditor intended to credit payments improperly . . . . Seterus was put on notice by the Trustee's Motion for Determination of Final Cure that the Debtors had made their mortgage payments through June 2017 and in fact acknowledged such in its November 7, 2017 Response to the Trustee's Motion for Determination of Final Cure. . . . Despite this concession, however, Seterus (and later Mr. Cooper) failed to properly credit the March through June 2017 payments and, from April 2018 until May 2019, bombarded the Debtors with letters and notices demanding payment of the already paid amounts. Mr. Cooper failed to prove that Seterus' and Mr. Cooper's failure to properly credit the payments was in conflict with their normal procedures. The record before the Court clearly supports a finding that Seterus and Mr. Cooper willfully failed to credit the payments.").

{680} ***In re Yotis*, No. 16 BK 30628, 2019 WL 8510293, at *5 (Bankr. N.D. Ill. Nov. 27, 2019) (Schmetterer)** (Applying "commercial reasonableness" standard, debtor's objection to Bankruptcy Rule 3002.1 claim for postpetition fees incurred by mortgagee in successful defense of debtor's prior claim objection is again overruled for lack of evidence of unreasonableness and because debtor's arguments were rejected by bankruptcy and district courts during first challenge. "[T]he Mortgage Agreement permits recovery for reasonable and necessary fees and expenses . . . . But, how reasonableness is determined is a procedural matter and not a substantive matter. . . . [S]ince federal law governs procedure in the federal courts, state law standards of granting attorney fees and costs do not apply in federal courts, and claimed attorney fees and expenses under a fee-shifting contract are assessed under a federal standard of 'commercial reasonableness.'").

{681} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

{682} ***In re Longhurst*, 607 B.R. 822, 826–27 (Bankr. D.S.C. Oct. 29, 2019) (Burris)** (U.S. Bank's Bankruptcy Rule 3002.1 Notice for postpetition fees seeking $1,715—amended to $1,400 after objection by debtor—is limited to $900 because objection to confirmation of plan that paid arrearages according to proof of claim was unnecessary and fees for reviewing plan, filing proof of claim and objecting to plan were overlapping, duplicative and unnecessary. "U.S. Bank asserts the charges in the Amended Rule 3002.1 Notice are reasonable because the fees charged are in accordance with the Fannie Mae guidelines . . . . The portions of the Fannie Mae fee schedule provided by U.S. Bank indicate *maximum* customary charges for certain categories of work. . . . While the schedule has some value here, it is not dispositive. . . . [I]t clearly was necessary for U.S. Bank to file a Proof of Claim and 410 form, review the plan, monitor its progress, file a Rule 3002.1 Notice, and undertake related acts to successfully participate in this case. However, the Court cannot conclude that a separate charge for a plan objection is reasonable or necessary here because, as Longhurst points out, Section 3.1(b) of the plan clearly stated that '[t]he trustee shall pay the arrearage *as stated in creditor's allowed claim* or as otherwise ordered by the Court[]' . . . . The objection was later withdrawn prior to any modified plan because U.S. Bank recognized that 'debtor's plan calls for payment of POC.' The objection was not the cause of any beneficial result for U.S. Bank. Further, the objection to plan is brief and generic in nature, does not appear difficult in any way, and the Court cannot see evidence that it was labor intensive. The record, therefore, does not support a finding that the charge of $500.00 for the objection to plan is reasonable or necessary. . . . [I]t is difficult to determine why plan review would not be a part of the work necessary for a plan objection or included within the charge for the proof of claim.").

{683} ***Dabney v. Bank of Am., N.A. (In re Dabney)*, 613 B.R. 225 (Bankr. D.S.C. Oct. 25, 2019) (Waites)** (Claims that lenders and servicers violated Bankruptcy Rule 3002.1 fail because lenders/servicers correctly responded to final cure notice that arrears had been cured and only attorney's fees remained unpaid—consistent with interpretation that 8% floor in loan documents applied to calculation of mortgage payments during life of Chapter 13 plan.).

{684} ***In re Gilmore*, No. 13-bk-1311, 2019 WL 4673429 (Bankr. N.D. W. Va. Sept. 24, 2019) (Flatley)** (Distinguishing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), and embracing *Reuland v. IRS (In re Reuland)*, 591 B.R. 342 (Bankr. N.D. Ill. Oct. 26, 2018) (Baer), confirmed plan that cured mortgage arrearage and provided for ongoing installment that was less than stated on proof of claim is binding on mortgagee and debtor is current on mortgage at completion of payments but difference between monthly payments made through the Chapter 13 plan and amounts required by loan is nondischargeable. Discrepancy was discovered when trustee made final cure notice under Bankruptcy Rule 3002.1 and U.S. Bank responded that a substantial postconfirmation arrearage developed as a result of the difference between payments under the confirmed plan and the monthly installments stated on the bank's proof of claim. Court orders party to "reconcile payment figures" in light of holding that loan is current but the bank's nondischargeable claim includes discrepancy in monthly installment amount.).

{685} ***In re Maldonado*, No. 19-30177, 2019 WL 4410070, at *1–*3 (Bankr. N.D.N.Y. Aug. 6, 2019) (Cangilos-Ruiz)** (Quicken Loans' $1,150 notice of postpetition fees under Bankruptcy Rule 3002.1 for plan review, filing proof of claim and objection to confirmation is unreasonable and is reduced to $500 when form plan in the district conforms installment payment of mortgage and amount of arrears to amounts shown in a timely filed proof of claim. Most of proof of claim work is administratively performed by the client, not by counsel. Quicken does not automatically get the amounts allowed by Fannie Mae guidelines and Quicken cannot charge the debtor for its counsel's unfamiliarity with local forms and practice. "The fees sought include: 'Attorney fees' of $650.00, for 'Plan Review ($150.00)' and 'Plan Objection ($500.00)' and an additional $500.00 for Quicken Loans' '03/19/19 Proof of Claim'. . . . Quicken Loans timely filed their proof of claim . . . . It states the monthly installment at $12.98 more than as stated in Debtor's plan . . . and prepetition arrears at $422.78 more . . . . Pursuant to the plan terms, the amounts stated in the proof of claim trumped the amounts stated by the Debtors in their proposed plan. . . . Quicken Loans then proceeded to file an objection to the plan . . . . A mortgage holder is entitled to seek reasonable post-petition fees, expenses and charges incurred in connection with a claim. . . . The court finds the fee of $150.00 for plan review reasonable . . . but the $500.00 fee for filing the proof of claim excessive, as has been found by other courts. . . . [P]roofs of claim similar to the claim here are typically prepared by clients, with the attorney subsequently reviewing and filing the claim. . . . To the extent that filing a proof of claim calls for administrative work, these tasks could be completed by a non-attorney. . . . [T]he court affirms the fee of $150.00 for plan review but reduces the $500.00 fee for the proof of claim to $200.00. The court also finds the $500.00 fee charged for filing the objection to the plan unreasonable in this instance as it was completely unnecessary. . . . [T]he language of the standard plan adopted by this District specifies that the amounts stated in a secured creditor's timely-filed proof of claim control over the terms proposed in the plan, absent further court order. . . . Counsel for the creditor is, of course, at liberty to proceed to file an objection to confirmation and may have done so at the client's direction. Absent the necessity for doing so, however, the court will not recognize as reasonable shifting the costs and charging the Debtors $500.00. . . . Quicken Loans relied solely on the Fannie Mae Guidelines . . . and offered no further explanation nor support for its position such as time entries or attorney hourly rates. . . . Quicken Loans' plan objection could easily have been resolved with a telephone call . . . . The court takes judicial notice of Quicken Loans' national presence and geographical breadth and the fact that Quicken Loans must appear in numerous bankruptcy court jurisdictions across the country. The court stresses the importance for parties appearing before this court to become familiar with local rules and customs.").

§ 131.4 Informal Proofs of Claim: Letters, Motions, Pleadings and Conversations

{686} ***In re Douglas*, No. 19-51826-PMB, 2019 WL 6704974, at *2–*3 (Bankr. N.D. Ga. Dec. 6, 2019) (Baisier)** (Untimely proof of claim for deficiency after liquidation of motorcycle relates back to motion for stay relief and attachments which collectively satisfy the criteria for an informal proof of claim in the Eleventh Circuit. "[A] motion for relief from the automatic stay will serve as an informal proof of claim if it (1) apprises the Court of the existence, nature, and amount of a claim, (2) makes clear the creditor's intent to hold the debtor liable for that claim, and (3) was filed before the claims bar date. . . . [T]he Respondent's numerous filings and submissions in this case made prior to the Bar Date, . . . including the Motion for Relief, must be construed as an informal proof of claim under prevailing Eleventh Circuit precedent. . . .").

{687} ***In re Mitchell*, No. 18-80336, 2019 WL 7840716 (Bankr. M.D.N.C. Jan. 16, 2019) (James)** (Objection to confirmation that demanded payment and stated an amount satisfied the informal proof of claim requirements in the Fourth Circuit and can be amended by untimely filed formal proof of claim.).

§ 131.5 Is a Plan Provision a Proof of Claim?

2. WHO SHOULD FILE PROOFS OF CLAIM AND WHEN?

§ 132.1 1994 Code Amendments Changed the Rules
§ 132.2 In General: Filing Is Required for Allowance
§ 132.3 Governmental Units
§ 132.4 Unsecured Claims

{688} ***In re Miller*, No. 19-41236, 2019 WL 6002189, at *1–*2 (Bankr. N.D. Ohio Nov. 12, 2019) (not for publication) (Kendig)** (Unsecured claim holder that states an interest rate on the face of its proof of claim is not entitled to postpetition interest in a Chapter 13 case; it is not necessary for the debtor or trustee to object to every claim that contains an interest rate in order to disallow postpetition interest. "The dilemma for the court, the chapter 13 trustee, and debtors arises because section nine of the official claim form contains a field for interest . . . . Frequently, unsecured creditors complete this section, raising the question of whether inclusion of the interest rate is a request for payment of interest on an unsecured claim or simply a recitation of the contractual terms of the debt at the time the case was filed? Without a clear answer, the chapter 13 trustee cautiously requires an objection to disallow interest on an unsecured claim. . . . Reading the Code to require a claim objection permits a creditor to file a claim for interest to which it is not entitled with the hope that it will benefit from an unwary debtor or trustee. It also burdens the trustee or debtor with filing objections to disallow payment of unauthorized interest. . . . When a creditor files a proof of claim setting forth an unsecured claim, it is not entitled to interest. Exceptions to the rule are inapplicable and do not support forcing a claim objection. From here forward, the court will not require debtors and/or trustees to file claim objections that simply seek to disallow the payment of interest[.]").

§ 132.5 Partially Secured Claims

{689} ***In re Footes*, No. 1:19-bk-11844-SDR, 2019 WL 4411817 (Bankr. E.D. Tenn. Sept. 13, 2019) (Rucker)** (When Chapter 13 plan proposes to treat creditor as partially secured but creditor files proof of claim stating its claim is unsecured, creditor has waived secured status and is unsecured for plan confirmation purposes.).

§ 132.6 Priority Claims, Including Requests for Payment of Administrative Expenses
§ 132.7 Secured Claim Holders

{690} ***In re Spencer*, No. 12-20854-13, 2019 WL 4410352 (Bankr. D. Kan. July 24, 2019) (Berger)** (State court orders determined CitiMortgage's standing to file proof of claim for mortgage in Chapter 13 case but debtor's objection to that claim is sustained because proof of claim was untimely filed—after the 90-day deadline in the former version of Bankruptcy Rule 3002(c). Section 502(b)(9) requires disallowance of claim notwithstanding years of extended litigation of other issues.).

§ 132.8 910-Day PMSI Car Claims: Epilogue
§ 132.9 Postpetition Claims

3. ENLARGEMENT OF AND EXCEPTIONS TO CLAIMS BAR DATES

§ 133.1 General Rules: No Enlargement or Exceptions, Except . . .

{691} ***Eagle One Fed. Credit Union v. Campanile*, No. 19-8103 (RMB), 2020 WL 416182, at *3–*6 (D.N.J. Jan. 27, 2020) (Bumb)** (Junior mortgage holder that did not file timely proof of claim cannot file an allowable late proof of its unsecured claim after senior mortgage holder was granted stay relief and foreclosed. Bankruptcy Rule 3002(c) contains no exception for these facts and "excusable neglect" under Bankruptcy Rule 9006 is not available to extend the deadline for filing a proof of claim in Chapter 13 cases. There is no equitable exception to the Rule 3002(c) deadline and the junior mortgage holder has only itself to blame for failing to timely file a proof of claim. Rule 3002(c)(3) does not support stay relief to allow the junior mortgagee to obtain a deficiency judgment that it could then file within the 30 days allowed by that Rule. Mortgagee was unsecured creditor from the time of the petition because there was no value to support its claim—notwithstanding that debtor represented that property had sufficient value to secure the junior mortgage. "Rule

9006(b)(1)'s excusable neglect analysis has no relevance to the case at hand. . . . [T]his Court, like the Bankruptcy Court below, is precluded from applying Section 105(a) because Rule 3002(c) explicitly prohibits extending the deadline for filing a proof of claim under the circumstances of this case. . . . Rule 3002(c)(3) would not grant Eagle One additional time to file its late claim."), *aff'g* No. 17-24902 (JNP), 2019 WL 968095 (Bankr. D.N.J. Feb. 25, 2019) (Poslusny) (Underwater junior lienholder that failed to timely file proof of its deficiency claim is not entitled to stay relief to end-run disallowance of its untimely claim under Bankruptcy Rule 3002(c)(3). Junior lienholder's lien was not "avoided" within the meaning of Rule 3002(c)(3) when senior lienholder foreclosed. Entry of state court deficiency judgment if stay relief were granted would not be the sort of "judgment" that triggers relief in Bankruptcy Rule 3002(c)(3). Lienholder also missed the 30-day window in Rule 3002(c)(3) and cannot file an allowable claim under that rule.).

{692} ***In re Murray*, No. 19-30380-KKS, 2020 WL 4000849 (Bankr. N.D. Fla. June 10, 2020) (Specie)** (Late-filed claim of former spouse is disallowed as untimely. No provision of Bankruptcy Code or Rules allows late-filed claim when former spouse had notice and simply didn't file a timely claim. Former spouse's claim that debtor tricked him into not filing a claim is better addressed as a good-faith objection to confirmation.).

{693} ***In re Hans Dajung Choe*, No. 18-69400-PMB, 2019 WL 6999722 (Bankr. N.D. Ga. Dec. 19, 2019) (Baisier)** (Motion for reconsideration of disallowance of claim is denied when only ground asserted is lack of notice of objection to claim; presumption of regularity of mails with respect to several notices was not overcome by naked denial of receipt. Timely misfiling of proof of claim in wrong case and then failing to appear in opposition to claim objection resulted in disallowance of claim.).

§ 133.2 Unscheduled Creditors before and after BAPCPA

{694} ***In re Dillon*, No. 16-01682-KMS, 2020 WL 4004886 (Bankr. S.D. Miss. July 14, 2020) (Samson)** (Untimely filed domestic support obligation claim of former spouse was disallowed notwithstanding that former spouse's address was listed incorrectly. Bankruptcy Rule 3002(c)(6) is not available because former spouse's attorney had actual knowledge of the Chapter 13 case two months before bar date and that knowledge is imputed to former spouse. Claim is disallowed and will not be paid through the confirmed Chapter 13 plan but DSO is nondischargeable and can be collected upon the completion of payments and discharge of other debts.).

{695} ***Matthews v. Gamboa (In re Gamboa)*, No. 17-1006-JDL, 2020 WL 118591 (Bankr. W.D. Okla. Jan. 9, 2020) (Loyd)** (Section 726(a)(2)(C) does not apply in Chapter 13 cases and is not a source of authority for late filing of proof of claim by an unscheduled creditor.).

{696} ***In re Kielman*, 609 B.R. 818 (Bankr. E.D. Wis. Dec. 16, 2019) (Hanan)** (Untimely filed proof of claim is disallowed notwithstanding that creditor was not scheduled by pro se debtor.).

{697} ***In re Vanderpol*, 606 B.R. 425, 428–32 (Bankr. D. Colo. Aug. 28, 2019) (Brown)** (Acknowledging split of authority, failure to list specific creditor—as opposed to failure to file the list of creditors under Bankruptcy Rule 1007(a)—is sufficient to trigger extension of time under new Bankruptcy Rule 3002(c)(6). "By its express terms, Rule [3002(c)(6)(A)] only applies when the debtor fails to file the Creditor Matrix on a timely basis, a circumstance that does not apply here. Ordinarily, where the language of a statute is plain, 'the sole function of the courts is to enforce it according to its terms.' . . . By referring only to the failure to file the Creditor Matrix timely and omitting any reference to leaving a particular creditor off the Creditor Matrix, this maxim would counsel the Court to find that the omission was intentional and signals Congressional intent to narrowly grant a discretionary extension. . . . [O]ne court and one commentator have followed this maxim and rejected any attempt to expand its meaning to include an omitted creditor. . . . Without a great deal of analysis, two cases have interpreted the rule more broadly. . . . The Court believes that this new rule provision is one in which legislative intent would be thwarted by a plain language interpretation. . . . [I]f there is no Creditor Matrix on file, the case will be automatically dismissed on the *forty-sixth* day of the case. The deadline for filing a proof of claim . . . is *seventy* days after the filing of a voluntary petition. . . . This means that, in cases in which the debtor fails to file a timely Creditor Matrix, the forty-five-day automatic dismissal deadline will always occur long before any deadline for filing a proof of claim. Thus, if the rule is read narrowly, it will simply never apply. . . . [T]he intent of Congress is best effectuated by reading this rule to apply whenever the debtor fails to timely file a *full and complete* Creditor Matrix.").

§ 133.3 [RESERVED]

§ 133.4 Amended Claims

{698} ***In re Bozeman*, 616 B.R. 407, 414-20 (Bankr. M.D. Ala. June 9, 2020) (Sawyer)** (When confirmed plan paid mortgage claim in full with interest and mortgagee mistakenly filed proof of claim for only arrearage amount, after completion of payments and a Rule 3002.1 notice of final payment, the mortgagee's amended claim for substantially larger principal balance is disallowed as untimely; discharge includes the amount in the disallowed amended claim. Debtor scheduled mortgage for $17,393.04. Plan proposed to pay mortgage in full with contract interest. Plan was confirmed without objection. Believing that plan was a "cure and maintain" plan, not a full-payment plan, mortgagee filed a proof of claim for $6,817.42 arrearage only. More than two years later, trustee filed notice of final cure payment and notice of completion of plan payments. Mortgagee responded that only the mortgage arrearage had been paid and $15,032.73 was owed on the mortgage. Mortgagee then filed amended claims. Debtor objected. "The Bankruptcy Rules do not make

any provision for amended claims. . . . Fault for the error in filing Mortgagee's original proof of claim lies solely upon Mortgagee. . . . To allow a late proof of claim here would be to reward Mortgagee for its lack of diligence and its duplicity–in blaming others and unfairly penalize Debtor. . . . Mortgagee asks the Court to protect it from its own folly. . . . Because the Court has disallowed Mortgagee's Claims . . . Debtor is entitled to discharge. . . . Debtor's plan provided to pay Mortgagee's debt in full. The fact that Mortgagee did not object to confirmation of Debtor's proposed plan, and that it filed a proof of claim in an amount less than that scheduled by Debtor in her bankruptcy filings indicate that Mortgagee was then on board with the Debtor's Chapter 13 plan. . . . Mortgagee was actively participating in the case . . . . Debtor has completed her plan payments. . . . Mortgagee stubbornly refuses to acknowledge this is a 'full payment' plan and not a 'cure and maintain' plan. . . . That Mortgagee did not include the entire amount that it believed was owing was folly on its part, but did not result in a violation of the anti-modification rule. . . . Debtor's Motion to Deem mortgage satisfied is granted.").

{699} ***In re Germanis*, No. 19-10588(1)(13), 2020 WL 3041278, at *2 (Bankr. W.D. Ky. June 5, 2020) (Lloyd)** (Objection of Chapter 13 debtor to amended proof of claim with respect to a contract for sale of a residence is overruled when amended claim was filed within a month of confirmation and added attorney's fees that were mentioned but not quantified in original timely filed proof of claim. Confirmation of plan based on amount in original claim did not preclude amended claim that was not delayed and equities favored allowance. "Amendments to proofs of claim that were initially timely filed are to be freely allowed where they specify the amount due under a previously asserted right to payment or simply to cure technical defects in the original claim.").

{700} ***In re Van*, 612 B.R. 893 (Bankr. N.D. Ill. Jan. 13, 2020) (Goldgar)** (County cannot amend its timely proof of claim for 2015 property taxes 27 months after bar date to add claims for 2012–14 because relation back under Federal Rule of Civil Procedure 15 is not available to claim taxes for a different year. The claim for 2015 taxes did not put debtors on notice that years later the county would reacquire earlier tax claims from purchaser of tax certificates based on declaration of "error" by purchaser. Taxing authority should have filed a contingent claim with respect to the earlier tax years.).

{701} ***In re Schroeder*, 607 B.R. 329 (Bankr. E.D. Wis. Sept. 30, 2019) (Halfenger)** (Amended claim filed more than a year after confirmation and long after claims bar date that more than doubles the amount of claim that is secured based on improvements to property after the petition is disallowed. Valuation for bifurcation purposes should be focused on confirmation date, not a year after confirmation.).

§ 133.5 Tax Claim Exception after BAPCPA

4. FILING OF PROOFS OF CLAIM BY DEBTOR OR TRUSTEE

§ 134.1 Timing, Form, Superseding and Amended Claims before 2005
§ 134.2 Filing of Claims by Debtor or Trustee after 2005 Amendments to Bankruptcy Rule 3004

{702} ***In re Santana Lamboy*, No. 14-9530 (MCF), 2020 WL 4723712, at *6–*8 (Bankr. D.P.R. Aug. 3, 2020) (Caban Flores)** (Neither Ocwen nor US Bank was able to prove possession or ownership of mortgage note, thus neither had standing to file proof of claim or to object to debtor's claim filed on behalf of Ocwen. Debtor's objection to the claim debtor filed on behalf of Ocwen is sustained and trustee is ordered to recover payments made to Ocwen because debtor could not prove that Ocwen was holder of the debt or had any entitlement to enforce the note. Debtor's objections to Ocwen's late-filed proof of claim and to US Bank's even-later-filed claim are sustained—the claims are not allowable and debtor's personal liability will be discharged. Mortgage lien will survive discharge, though it is not clear which entity has the right to enforce that lien. Debtor's motion to modify plan filed in last month of the 60-month plan is denied as unnecessary because debtor has completed payments under confirmed plan, debtor is entitled to discharge and none of the mortgage claims filed by any party—including the Bankruptcy Rule 3004 claim filed by the debtor—is allowable. Chapter 13 case was filed in November 2014. Debtor listed Ocwen as a secured creditor. US Bank filed a notice of appearance and an objection to confirmation. Debtor moved to reserve payments to Ocwen pending proof of Ocwen's secured status given that US Bank was alleging that it was the holder of the mortgage. In the interim, debtor filed a proof of claim on behalf of Ocwen. Neither US Bank nor Ocwen filed a timely proof of claim. Debtor objected to Ocwen's untimely proof of claim. US Bank responded stating that it had inadvertently failed to file a timely proof of claim. The bankruptcy court sustained the debtor's objection to Ocwen's claim. Nineteen months later US Bank filed a motion for reconsideration and for leave to file a late claim. "Ocwen Loan Servicing LLC is not the owner of the mortgage note because its name does not appear as the original mortgagee, on any of the endorsements or in the allonges provided. . . . Ocwen Loan Servicing LLC never owned the mortgage note. . . . US Bank is not Ocwen Loan Servicing LLC. . . . US Bank has not represented that Ocwen Loan Servicing LLC is or was its loan servicer. US Bank has no standing to prosecute Claims . . . in favor of Ocwen Loan Servicing LLC. US Bank never filed a transfer of claim for Claim . . . . US Bank cannot amend a claim filed by a separate legal entity. . . . US Bank has failed to provide the missing link in the chain of title to the mortgage note. . . . The affidavit addresses the relationship between US Bank and [Bank of America]. The highlighted entry of Schedule A refers to BlackRock Capital. . . . The affidavit does not say that US Bank merged with LaSalle or if LaSalle merged with Bank of America. US Bank fails to establish how Bank of America received the mortgage note. There is no allonge or endorsement from LaSalle to [Bank of America]. . . . The Debtor had filed Claim No. 4 in favor of Ocwen . . . . Ocwen was not the original mortgagee and there is no proof that it is or was the owner of the note in the various allonges and endorsements filed with the court. Thus, Claim No. 4 as filed by the Debtor must be disallowed because the Debtor has failed to establish that Ocwen is the owner of the note. It might be the servicer of the

loan since Ocwen bears in its name the term 'servicing,' but the Debtor does not want to pay Ocwen for fear it might pay incorrectly. US Bank cannot defend Ocwen because they are separate legal entities. . . . Once the order of discharge is entered, the Debtor will emerge from bankruptcy with a discharge on his personal liability but maintains a lien on his principal residence. The reserved funds held by the Trustee will be returned to the Debtor because it is unknown who is the true creditor or the owner of the mortgage note pertaining to his principal residence. . . . [T]he Trustee will recover the payments that were made to Ocwen and return them to the Debtor.").

{703} ***In re Karipides*, No. 17-61935, 2020 WL 717954 (Bankr. N.D. Ohio Jan. 21, 2020) (not for publication) (Kendig)** (Chapter 13 debtor's untimely filed Bankruptcy Rule 3004 claim on behalf of student loan creditor is disallowed on trustee's objection. Debtor cannot prove excusable neglect for Bankruptcy Rule 9006(b) purposes when neglect by former counsel caused debtor to miss the Rule 3004 window by 19 months.).

{704} ***In re Weyer*, 612 B.R. 192, 195–97 (Bankr. W.D. Wis. Jan. 3, 2020) (Ludwig)** (Car lender that failed to timely file proof of claim is entitled to stay relief after confirmation based on lack of adequate protection; debtors had obligation to file Bankruptcy Rule 3004 claim on behalf of lender or to make adequate protection payments directly to the lender—notwithstanding that confirmed plan required lender to file timely claim to get paid. Estoppel is not available because of Rule 3004 option and equities favor lender because debtors are driving car but not paying for loss of value. Schedules identified Valley Communities Credit Union (VCCU) with liens on cars and confirmed plan provided monthly payment to pay the claims. Form plan in district alerted VCCU that creditors must file a timely proof of claim in order to be paid. VCCU missed the deadline for filing a proof of claim and neither the trustee nor the debtors filed a claim on behalf of VCCU. Nine months after confirmation VCCU filed a motion for stay relief. "[I]t is undisputed that VCCU's property interests in the Weyers' vehicles are not being adequately protected. . . . The failure to make payments on claims secured by depreciating collateral is the quintessential basis for finding a lack of adequate protection and granting relief from stay. . . . Under the plain terms of section 362(d), the court 'shall' grant relief from stay where there is cause, including the lack of adequate protection. . . . The Weyers argue that VCCU cannot obtain relief from stay because the lack of adequate protection is the result of VCCU's own failure to file proofs of claim. . . . *Both* parties failed to act timely under the Rules. Accordingly, the equities do not weigh in the Weyers' favor sufficiently to allow them to continue to use VCCU's collateral without payment. . . . [A] creditor that does not wish to submit to this court's jurisdiction or to participate in plan payments is not required to file a proof of claim. . . . Debtors who wish to pay a creditor's claim through their plan are not left helpless when a creditor fails to file a proof of claim. Rule 3004 gives them a 30-day window, after the creditor fails to file a proof of claim, to file a proof of claim on the creditor's behalf. . . . The Weyers' estoppel defense focuses solely on VCCU's failure to file a timely proof of claim, while ignoring their own failure to act. If the Weyers wanted to treat and pay VCCU's claims through their chapter 13 plan, Rule 3004 gave them the ability to file proofs of claim for VCCU. . . . [E]ven after the Rule 3004 window closed and VCCU filed its motion, the Weyers were not without options. They could have sought an extension of the already-expired Rule 3004 deadline. If they established 'excusable neglect' for their failure to file a proof of claim on VCCU's behalf timely, the Bankruptcy Rules allow the court to give them additional time to file those proofs of claim. *See* Rule 9006(b)(1) . . . . [I]t would be unfairly punitive to VCCU, and would generate an undeserved windfall for the Weyers, if the court were to deny VCCU's motion.").

{705} ***In re Kielman*, 609 B.R. 818, 823 (Bankr. E.D. Wis. Dec. 16, 2019) (Hanan)** (After disallowance of untimely proof of claim filed by creditor that was not scheduled by pro se debtor, remedy may be available to the debtor under Bankruptcy Rule 3004 to seek allowance of a late-filed claim on behalf of the creditor. The debtor "may choose to seek an extension of the deadline to file a claim under Rule 3004, which may be enlarged under Rule 9006(b)(1) for excusable neglect.").

§ 134.3 [RESERVED]

C. ALLOWANCE AND OBJECTIONS TO CLAIMS

§ 135.1 Timing, Procedure and Evidence Presumption

{706} ***Medina v. Daniel's Jewelers (In re Medina)*, 798 F. App'x 127 (9th Cir. Mar. 10, 2020) (Bybee, Collins, Bress)** (Bankruptcy court did not abuse its discretion by rejecting Chapter 13 debtor's claim objection for lack of prosecution.), *aff'g* BAP No. SC-18-1120-LSF, 2018 WL 6072423 (B.A.P. 9th Cir. Nov. 20, 2018) (not for publication) (Lafferty, Spraker, Faris) (Chapter 13 debtor's objection to $879.82 unsecured claim was appropriately denied based on debtor's failure to attend hearing after multiple continuances and excessive discovery requests.).

{707} ***In re Bowen*, No. 20-01444-JW, 2020 WL 5530074, at *3–*4 (Bankr. D.S.C. Aug. 25, 2020) (Waites)** (Objection to claim of Real Time Resolutions, Inc., is sustained and claim is reduced to $15,948 amount on monthly statement from its predecessor, Shellpoint Mortgage Servicing, rather than $23,251 on proof of claim later filed by Real Time after transfer of claim. Real Time's claim was not entitled to *prima facie* effect under Bankruptcy Rule 3001(c)(2)(C) because it failed to provide a legible copy of the note and mortgage, it provided inconsistent information with respect to interest rate and amount of interest due, it did not accurately complete Official Form 410A and it did not appear to contest debtor's objection to its claim. Debtor is entitled to attorney's fees and expenses of $1,812 under Bankruptcy Rule 3001(c)(1)(B)(i) and Real Time is forbidden to present omitted information in any contested matter or adversary proceeding. Chapter 13 case was filed on June 12, 2020. Shellpoint Mortgage was scheduled with a secured claim of $15,948. On April 1, 2020, Shellpoint transferred the mortgage to Real Time and Real Time then filed a proof of claim asserting $23,251 based on a

Form 410A which purported to include a payment history beginning in 2006. Debtor objected to the Real Time proof of claim and attached a monthly statement dated January 21, 2020, showing the mortgage amount as $15,948. Real Time did not respond to the debtor's objection. "The payment history, which begins November 5, 2006, does not reflect receipt of any trustee disbursements or payments from Debtor during his prior bankruptcy case . . . . [T]he Proof of Claim does not indicate that the claim was transferred from Shellpoint Mortgage Servicing to Real Time post-petition . . . . Real Time failed to provide a copy of the promissory note and a legible copy of the Mortgage . . . , provided inconsistent information regarding the interest rate and amount of interest due on the loan, and failed to properly and accurately complete the Mortgage Proof of Claim Attachment (Official Form 410A). Real Time's failure to provide the required information to support its claim resulted in the filing the Objection to Claim by Debtor, delay in confirmation of his plan, and the incurrence attorney's fees and expenses in the amount of $1,812.00 . . . .").

{708} ***In re Ramos*, No. 19-05039-5-SWH, 2020 WL 3041273, at *4 (Bankr. E.D.N.C. June 3, 2020) (Humrickhouse)** (Trustee's objection to car lender's proof of claim was sustained because "Electronic Lien and Titling Report" provided by third-party vendor did not satisfy documentation requirements of Bankruptcy Rule 3001(d) and did not give rise to presumption in favor of allowance of claim. ELT was not an official report that could be otherwise admissible as an exception to the hearsay rule. "To gain benefit of the supported proof of claim being prima facie evidence of the perfected claim, the supporting evidence literally must play by the rules.").

{709} ***In re Attariwala*, No. 19-00828, 2020 WL 2843005 (Bankr. D.D.C. May 29, 2020) (Teel)** (Creditor's objection to claim is denied because no proof of claim has been filed to which an objection could attach. Bankruptcy court rejects objecting creditor's argument that Bankruptcy Rule 3003(b) applies in Chapter 13 cases.).

{710} ***In re Booker*, No. 19-30787 (AMN), 2020 WL 930091 (Bankr. D. Conn. Feb. 26, 2020) (Nevins)** (Pro se debtor's motion to reconsider denial of objection to mortgagee's claim is denied because debtor states no ground comprehensible under Federal Rule 60.).

§ 135.2 Allowance and Objections to Claims: Changes by BAPCPA
§ 135.3 Documentation and Assigned Claims

{711} ***In re Santana Lamboy*, No. 14-9530 (MCF), 2020 WL 4723712, at *6–*8 (Bankr. D.P.R. Aug. 3, 2020) (Caban Flores)** (Neither Ocwen nor US Bank was able to prove possession or ownership of mortgage note, thus neither had standing to file proof of claim or to object to debtor's claim filed on behalf of Ocwen. Debtor's objection to the claim debtor filed on behalf of Ocwen is sustained and trustee is ordered to recover payments made to Ocwen because debtor could not prove that Ocwen was holder of the debt or had any entitlement to enforce the note. Debtor's objections to Ocwen's late-filed proof of claim and to US Bank's even-later-filed claim are sustained—the claims are not allowable and debtor's personal liability will be discharged. Mortgage lien will survive discharge, though it is not clear which entity has the right to enforce that lien. Debtor's motion to modify plan filed in last month of the 60-month plan is denied as unnecessary because debtor has completed payments under confirmed plan, debtor is entitled to discharge and none of the mortgage claims filed by any party—including the Bankruptcy Rule 3004 claim filed by the debtor—is allowable. Chapter 13 case was filed in November 2014. Debtor listed Ocwen as a secured creditor. US Bank filed a notice of appearance and an objection to confirmation. Debtor moved to reserve payments to Ocwen pending proof of Ocwen's secured status given that US Bank was alleging that it was the holder of the mortgage. In the interim, debtor filed a proof of claim on behalf of Ocwen. Neither US Bank nor Ocwen filed a timely proof of claim. Debtor objected to Ocwen's untimely proof of claim. US Bank responded stating that it had inadvertently failed to file a timely proof of claim. The bankruptcy court sustained the debtor's objection to Ocwen's claim. Nineteen months later US Bank filed a motion for reconsideration and for leave to file a late claim. "Ocwen Loan Servicing LLC is not the owner of the mortgage note because its name does not appear as the original mortgagee, on any of the endorsements or in the allonges provided. . . . Ocwen Loan Servicing LLC never owned the mortgage note. . . . US Bank is not Ocwen Loan Servicing LLC. . . . US Bank has not represented that Ocwen Loan Servicing LLC is or was its loan servicer. US Bank has no standing to prosecute Claims . . . in favor of Ocwen Loan Servicing LLC. US Bank never filed a transfer of claim for Claim . . . . US Bank cannot amend a claim filed by a separate legal entity. . . . US Bank has failed to provide the missing link in the chain of title to the mortgage note. . . . The affidavit addresses the relationship between US Bank and [Bank of America]. The highlighted entry of Schedule A refers to BlackRock Capital. . . . The affidavit does not say that US Bank merged with LaSalle or if LaSalle merged with Bank of America. US Bank fails to establish how Bank of America received the mortgage note. There is no allonge or endorsement from LaSalle to [Bank of America]. . . . The Debtor had filed Claim No. 4 in favor of Ocwen . . . . Ocwen was not the original mortgagee and there is no proof that it is or was the owner of the note in the various allonges and endorsements filed with the court. Thus, Claim No. 4 as filed by the Debtor must be disallowed because the Debtor has failed to establish that Ocwen is the owner of the note. It might be the servicer of the loan since Ocwen bears in its name the term 'servicing,' but the Debtor does not want to pay Ocwen for fear it might pay incorrectly. US Bank cannot defend Ocwen because they are separate legal entities. . . . Once the order of discharge is entered, the Debtor will emerge from bankruptcy with a discharge on his personal liability but maintains a lien on his principal residence. The reserved funds held by the Trustee will be returned to the Debtor because it is unknown who is the true creditor or the owner of the mortgage note pertaining to his principal residence. . . . [T]he Trustee will recover the payments that were made to Ocwen and return them to the Debtor.").

{712} ***In re Ramos*, No. 19-05039-5-SWH, 2020 WL 3041273, at *4 (Bankr. E.D.N.C. June 3, 2020) (Humrickhouse)** (Trustee's objection to car lender's proof of claim was sustained because "Electronic Lien and Titling Report" provided by third-party vendor did

not satisfy documentation requirements of Bankruptcy Rule 3001(d) and did not give rise to presumption in favor of allowance of claim. ELT was not an official report that could be otherwise admissible as an exception to the hearsay rule. "To gain benefit of the supported proof of claim being prima facie evidence of the perfected claim, the supporting evidence literally must play by the rules.").

{713} ***Derby v. Portfolio Recovery Assocs., LLC (In re Derby)*, No. 18-03097-KLP, 2020 WL 1696099 (Bankr. E.D. Va. Mar. 31, 2020) (Phillips)** (Attorney's fees awarded to Chapter 13 debtor's counsel for prosecuting adversary proceeding against Portfolio Recovery Associates for filing proofs of claim that added interest and charges to principal without disclosure and notwithstanding contrary decision in *Maddux v. Midland Credit Management, Inc. (In re Maddux)*, 567 B.R. 489 (Bankr. E.D. Va. Dec. 1, 2016) (Huennekens). PRA apparently corrected its improper proof of claim practices after *Maddux* only with respect to some claims in some cases. The bankruptcy court found that PRA continued to file proofs of claim that it knew were improper under *Maddux*. PRA is required to review proofs of claim in other cases and amend those claims if necessary consistent with *Maddux*.).

§ 135.4 Reconsideration of Claims

{714} ***In re Hans Dajung Choe*, No. 18-69400-PMB, 2019 WL 6999722 (Bankr. N.D. Ga. Dec. 19, 2019) (Baisier)** (Motion for reconsideration of disallowance of claim is denied when only ground asserted is lack of notice of objection to claim; presumption of regularity of mails with respect to several notices was not overcome by naked denial of receipt. Timely misfiling of proof of claim in wrong case and then failing to appear in opposition to claim objection resulted in disallowance of claim.).

{715} ***In re Kielman*, 609 B.R. 818 (Bankr. E.D. Wis. Dec. 16, 2019) (Hanan)** (Reconsideration under § 502(j) is not available to provide relief from an order disallowing an untimely filed claim because the notice and hearing procedure was not respected and there is no obvious ground for relief given the undeniably late filed claim.).

§ 135.5 Failure to File Proof of Claim

{716} ***Lane v. Bank of N.Y. Mellon (In re Lane)*, 959 F.3d 1226, 1228–33 (9th Cir. June 1, 2020) (Paez, Bea, Adelman)** (Distinguishing *HSBC Bank USA v. Blendheim (In re Blendheim)*, 803 F.3d 477 (9th Cir. Oct. 1, 2015) (Paez, Bybee, Callahan), § 506(d) does not void mortgage lien in Chapter 13 case when claim is disallowed because creditor did not prove it was the entity entitled to enforce the debt. "BONY filed a proof of claim . . . and represented that the claim was secured by a deed of trust . . . . Lane objected to BONY's claim. He alleged that the claim 'fail[ed] to establish standing' and failed to establish that BONY was 'the person entitled to enforce payment on the claim.' . . . BONY's attorney did not file a timely response to Lane's objection. . . . The bankruptcy court signed an order stating that the '[o]bjection is sustained' and that the claim is 'disallowed in its entirety.' . . . Lane completed the plan and received a discharge . . . . After receiving his discharge, Lane filed an adversary complaint . . . . Lane alleged that, because the court had disallowed BONY's claim, the court should declare the lien . . . void under 11 U.S.C. § 506(d) . . . . If the secured creditor does not file a proof of claim, it will forfeit its right to proceed against the debtor personally—the creditor will receive no payments through the bankruptcy proceeding and the creditor's right to proceed against the debtor personally will be discharged. However, under a longstanding principle of bankruptcy law, the creditor may ignore the bankruptcy proceeding, in which case its lien will pass through the proceeding unaffected. . . . [A] finding that the claim filer is not the person entitled to enforce the note is a finding that the filer is not the true creditor—it is a finding that someone other than the claim filer may be the person entitled to payment under the note. Importantly, such a finding does not imply that either the note or the lien securing the note is invalid. Rather, such a finding simply establishes that . . . the person before the court is not the person entitled to prosecute the claim . . . . [U]nder the factual record created when the court entered the claim-disallowance order, the person entitled to enforce the note did not file a proof of claim. . . . [A] bankruptcy court cannot destroy the property rights of the person who is the real party in interest based on the actions of a person who is not the real party in interest. . . . *Blendheim* did not involve a claim that was disallowed on the ground that the claim filer was not the person entitled to enforce the note. Instead, the debtor objected to the claim on the ground that the creditor did not attach a copy of the promissory note to its proof of claim and the copy the debtor possessed appeared to bear a forged signature. Thus, when the bankruptcy court sustained the objection and disallowed the claim, . . . it found that the note giving rise to the claim was invalid. Under those findings, § 506(d) voided 'the claim's associated lien.' . . . [A]pplying the bankruptcy court's finding that BONY was not the person entitled to enforce Lane's mortgage debt shows that the deed of trust securing that debt is not void under § 506(d). . . . [T]he deed of trust 'secures a claim against the debtor that is not an allowed secured claim,' but 'such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim.'").

{717} ***In re Attariwala*, No. 19-00828, 2020 WL 2843005 (Bankr. D.D.C. May 29, 2020) (Teel)** (Creditor's objection to claim is denied because no proof of claim has been filed to which an objection could attach. Bankruptcy court rejects objecting creditor's argument that Bankruptcy Rule 3003(b) applies in Chapter 13 cases.).

§ 135.6 Untimely Filed Claims in Cases Filed before October 22, 1994: The Hausladen Phenomenon

{718} ***In re Santana Lamboy*, No. 14-9530 (MCF), 2020 WL 4723712, at *6–*8 (Bankr. D.P.R. Aug. 3, 2020) (Caban Flores)** (Neither Ocwen nor US Bank was able to prove possession or ownership of mortgage note, thus neither had standing to file proof of claim or to object to debtor's claim filed on behalf of Ocwen. Debtor's objection to the claim debtor filed on behalf of Ocwen is sustained and trustee is ordered to recover payments made to Ocwen because debtor could not prove that Ocwen was holder of the debt or had any entitlement to enforce the note. Debtor's objections to Ocwen's late-filed proof of claim and to US Bank's even-later-filed claim are sustained—the claims are not allowable and debtor's personal liability will be discharged. Mortgage lien will survive discharge, though it is not clear which entity has the right to enforce that lien. Debtor's motion to modify plan filed in last month of the 60-month plan is denied as unnecessary because debtor has completed payments under confirmed plan, debtor is entitled to discharge and none of the mortgage claims filed by any party—including the Bankruptcy Rule 3004 claim filed by the debtor—is allowable. Chapter 13 case was filed in November 2014. Debtor listed Ocwen as a secured creditor. US Bank filed a notice of appearance and an objection to confirmation. Debtor moved to reserve payments to Ocwen pending proof of Ocwen's secured status given that US Bank was alleging that it was the holder of the mortgage. In the interim, debtor filed a proof of claim on behalf of Ocwen. Neither US Bank nor Ocwen filed a timely proof of claim. Debtor objected to Ocwen's untimely proof of claim. US Bank responded stating that it had inadvertently failed to file a timely proof of claim. The bankruptcy court sustained the debtor's objection to Ocwen's claim. Nineteen months later US Bank filed a motion for reconsideration and for leave to file a late claim. "Ocwen Loan Servicing LLC is not the owner of the mortgage note because its name does not appear as the original mortgagee, on any of the endorsements or in the allonges provided. . . . Ocwen Loan Servicing LLC never owned the mortgage note. . . . US Bank is not Ocwen Loan Servicing LLC. . . . US Bank has not represented that Ocwen Loan Servicing LLC is or was its loan servicer. US Bank has no standing to prosecute Claims . . . in favor of Ocwen Loan Servicing LLC. US Bank never filed a transfer of claim for Claim . . . . US Bank cannot amend a claim filed by a separate legal entity. . . . US Bank has failed to provide the missing link in the chain of title to the mortgage note. . . . The affidavit addresses the relationship between US Bank and [Bank of America]. The highlighted entry of Schedule A refers to BlackRock Capital. . . . The affidavit does not say that US Bank merged with LaSalle or if LaSalle merged with Bank of America. US Bank fails to establish how Bank of America received the mortgage note. There is no allonge or endorsement from LaSalle to [Bank of America]. . . . The Debtor had filed Claim No. 4 in favor of Ocwen . . . . Ocwen was not the original mortgagee and there is no proof that it is or was the owner of the note in the various allonges and endorsements filed with the court. Thus, Claim No. 4 as filed by the Debtor must be disallowed because the Debtor has failed to establish that Ocwen is the owner of the note. It might be the servicer of the loan since Ocwen bears in its name the term 'servicing,' but the Debtor does not want to pay Ocwen for fear it might pay incorrectly. US Bank cannot defend Ocwen because they are separate legal entities. . . . Once the order of discharge is entered, the Debtor will emerge from bankruptcy with a discharge on his personal liability but maintains a lien on his principal residence. The reserved funds held by the Trustee will be returned to the Debtor because it is unknown who is the true creditor or the owner of the mortgage note pertaining to his principal residence. . . . [T]he Trustee will recover the payments that were made to Ocwen and return them to the Debtor.").

{719} ***In re Waldschmidt*, 605 B.R. 860, 864–66 (Bankr. N.D. Ind. Sept. 24, 2019) (Grant)** (Late-filed claim by car lender is disallowed on objection from Chapter 13 trustee notwithstanding confirmed plan approved by trustee, debtor and car lender that would have paid claim in full with agreed-upon interest had a timely claim been filed. Outcome is not changed by fact that confirmation occurred after claims bar date and treatment of car lender in plan was approved by debtor and trustee. "No statute or rule requires claim objections to precede confirmation . . . . [T]he validity of a claim objection should not turn on the happenstance of when the confirmation hearing was held in relation to the claims bar date. . . . The court is not inclined to read the provisions of the national form plan as either dispensing with the need to file claims or precluding objections to untimely claims.").

{720} ***In re Spencer*, No. 12-20854-13, 2019 WL 4410352 (Bankr. D. Kan. July 24, 2019) (Berger)** (State court orders determined CitiMortgage's standing to file proof of claim for mortgage in Chapter 13 case but debtor's objection to that claim is sustained because proof of claim was untimely filed—after the 90-day deadline in the former version of Bankruptcy Rule 3002(c). Section 502(b)(9) requires disallowance of claim notwithstanding years of extended litigation of other issues.).

D. PRIORITY CLAIMS AND ADMINISTRATIVE EXPENSES

§ 136.1 Treatment of Priority Claims

{721} ***In re Steenes*, 942 F.3d 834, 836–39 (7th Cir. Nov. 12, 2019) (Easterbrook, Rovner, Hamilton)** (On rehearing, traffic fines incurred by Chapter 13 debtors during confirmed cases are administrative expenses that must be paid in full and promptly. "After bankruptcy judges confirmed their Chapter 13 payment plans, Steenes and Dudley used their cars in ways that led to fines for running red lights, illegal parking, and similar offenses. . . . Allowing debtors in bankruptcy to stiff involuntary creditors, such as cities trying to collect for on-street parking, has nothing to recommend it. . . . [D]ebtors who need cars must pay their involuntary creditors—including cities as well as, say, pedestrians run down by reckless driving—along with the suppliers of gasoline and insurance. . . . [A] debtor making payments under a Chapter 13 plan is not entitled to park for free on city streets, when others must pay in advance or pay fines for parking in forbidden places or at forbidden times. . . . [V]ehicular fines incurred during the course of a Chapter 13 bankruptcy are administrative expenses that must be paid promptly and in full.").

§ 136.2 Taxes before BAPCPA
§ 136.3 Taxes after BAPCPA

{722} ***United States v. Chesteen (In re Chesteen)*, 799 F. App'x 236, 238–41 (5th Cir. Feb. 20, 2020) (Owen, Barksdale, Duncan)** (Shared Responsibility Payment is not an excise tax for purposes of § 507(a)(8)(E)(i) and is not entitled to priority or full payment in a Chapter 13 case. "Section 507(a)(8)(E)(i)—excise tax—is the only priority provision the Government advanced . . . . We . . . need not determine the extent to which [*National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (June 28, 2012),] controls or whether the SRP, as it existed in 2016, is a tax or penalty . . . . Even assuming *arguendo* the provision is a tax in bankruptcy—regardless of whether it is *NFIB* or the bankruptcy functional analysis that would dictate that outcome—the SRP, for the reasons that follow, is not entitled to priority under the one priority provision—'excise tax on . . . a transaction', pursuant to 11 U.S.C. § 507(a)(8)(E)(i) . . . . [A]n excise tax is imposed on some type of activity . . . . This is in harmony with the remainder of the provision, which . . . requires the excise tax be 'on . . . a transaction' . . . . [T]he SRP concerns a person's inactivity in not procuring the requisite insurance. . . . This is the opposite of the activity required for a tax to constitute an 'excise tax' pursuant to § 507(a)(8)(E)(i)."), *rev'g and remanding* No. 18-2077, 2019 WL 1499532 (E.D. La. Feb. 25, 2019) (Lemelle), *rev'g* No. 17-11472, 2018 WL 878847, at *1–*3 (Bankr. E.D. La. Feb. 9, 2018) (Brown) (IRS extraction for failure to purchase health insurance under Affordable Care Act is a penalty, not a tax for § 507(a)(8) purposes. "[T]he IRS describes this 'excise tax' as the debtor's 'shared responsibility payment liability [arising] under Internal Revenue Code § 5000A' for failure to maintain health insurance in 2016. . . . [I]t is apparent that the ACA individual mandate is a penalty designed to deter citizens from living without health insurance. . . . Failure to make the ACA individual mandate payment does not result in any of the typical consequences that result from non-payment of taxes . . . . Rather, an individual who fails to make the ACA individual mandate payment is penalized by having the exaction deducted out of future tax returns. . . . Congress itself labeled the ACA individual mandate a 'penalty' and not a tax. . . . [I]t cannot be said that the ACA individual mandate is an exaction imposed for the purpose of supporting the government. Congress's primary, or dominant, purpose of imposing the individual mandate of the ACA was not to support or fund the government fiscally, but to discourage Americans from living without health insurance coverage. . . . [I]t is not a 'tax' within the meaning of § 507(a)(8).").

{723} ***In re Szczyporski*, 617 B.R. 529 (Bankr. E.D. Pa. June 23, 2020) (FitzSimon)** (Shared Responsibility Payment under Affordable Care Act is a tax under *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (June 28, 2012)—either an income tax or an excise tax—and is entitled to priority in a Chapter 13 case under § 507(a)(8) under either characterization.).

{724} ***In re Gabbidori*, No. 19-13125-BKC-PGH, 2020 WL 3566538 (Bankr. S.D. Fla. June 4, 2020) (Hyman)** (Shared Responsibility Payment under the Affordable Care Act is an excise tax, not a penalty, and is entitled to priority under § 507(a)(8) in a Chapter 13 case.).

{725} ***In re Ford*, 617 B.R. 254, 259-62 (Bankr. E.D.N.C. May 15, 2020) (Callaway)** (Equitable tolling under *Young v. United States*, 535 U.S. 43, 122 S. Ct. 1036, 152 L. Ed. 2d 79 (Mar. 4, 2002), is available with respect to three-year lookback in § 507(a)(8)(A)(i) notwithstanding 2005 amendment that specifically added tolling provision to § 507(a)(8)(A)(ii) but not to (i). Lookback was tolled for the period during which the debtors were in a prior Chapter 7 case and filing of subsequent Chapter 13 case in fewer than three years means tax claims are entitled to priority and full payment. "While the Bankruptcy Code does not contain an explicit provision suspending the priority period of § 507(a)(8)(A)(i) while a debtor is engaged in a bankruptcy proceeding[ ] and the automatic stay is in effect, courts invoke § 108(c) and § 105(a) to toll the lookback period for purpose of § 523(a)(1)(A). . . . The amalgamation of §§ 105(a) and 108(c) of the Bankruptcy Code with § 6503 of the Tax Code demonstrates an intent on the part of Congress not to allow a taxpayer to escape liability by lurking within a bankruptcy proceeding until the statute of limitations expires and then cavalierly dismissing the case. . . . Congress was presumably aware of the holding in *Young* yet only added a tolling provision for subsection (ii). Therefore, the [*Clothier v. IRS (In re Clothier)*, 588 B.R. 28 (Bank. W.D. Tenn. Aug. 13, 2018) (Kennedy),] court reasoned, it must assume that Congress's omission of a tolling provision for § 507(a)(8)(A)(i) and (iii) was intentional . . . . The *Clothier* court ruled that those subsections were not tolled. . . . This court respectfully disagrees . . . . No legislative history or other direct evidence exists only indirect suppositions and inferences, supporting a proposition that by adding a tolling provision to § 507(a)(8)(A)(ii) but not to subsections (i) or (iii) Congress intended to overrule *Young*. . . . [T]he traditional principles of equitable tolling must be applied to the three-year lookback period of § 507(a)(8)(A)(i).").

{726} ***In re Albracht*, No. 19-03672-5-DMW, 2020 WL 1547198 (Bankr. E.D.N.C. Mar. 31, 2020) (Warren)** (Citing *United States v. Chesteen (In re Chesteen)*, No. 19-30195, 2020 WL 859688 (5th Cir. Feb. 20, 2020) (Owen, Barksdale, Duncan), shared responsibility payment is not an excise tax on a transaction for purposes of priority in § 507(a)(8)(E).).

{727} ***In re Cerchia*, No. 19-12655, 2020 WL 1064835, at *3–*4 (Bankr. D.N.J. Mar. 3, 2020) (Kaplan)** (Citing § 511 and New Jersey law, plan cannot require purchaser of tax sale certificate to apply payments from Chapter 13 debtor first to principal portion of claim; state law fixes interest rate and applies GAAP principles to pay interest and penalties before principal. "SLS, as a tax certificate holder, is treated as a secured creditor, holding a lien against the Debtors' Property. . . . [T]o the extent SLS is over-secured, upon application of 11 U.S.C. § 506(a), it is entitled to collect interest on its claim at 'the rate determined under applicable nonbankruptcy law.' 11 U.S.C. § 511(a). . . . Pursuant to § 511, state law must be applied when determining interest due to an over-secured

claimant. . . . [M]unicipalities are required to follow the Generally Accepted Accounting Principles . . . . Debtor may not deviate by applying payments to principal first and interest thereafter.").

{728} ***In re Van*, 612 B.R. 893 (Bankr. N.D. Ill. Jan. 13, 2020) (Goldgar)** (County's claim for property taxes for prepetition tax years is a prepetition claim notwithstanding that claim was sold prepetition and did not revert to county until "error" was declared by purchaser and county repurchased tax claim after bankruptcy. Contingent claim at petition was not a postpetition claim notwithstanding that contingency occurred years after bar date. County is bound by confirmed plan and its claim will be discharged when it did not object to confirmation or file a timely claim. County could have protected itself by filing contingent claims for purchased tax debts.).

{729} ***In re Jones*, 610 B.R. 663, 666–68 (Bankr. D. Mont. Nov. 13, 2019) (Hursh)** (Shared responsibility payment required by 26 U.S.C. § 5000A is an excise tax but it is not entitled to priority under § 507(a)(8)(E) because it is not based on a "transaction" but instead on a failure to engage in a transaction. "[*National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (June 28, 2012),] did not (specifically) address whether the SRP was an excise tax. In fact, the Supreme Court did not even go so far as to label the SRP a true tax. . . . [T]he SRP is an excise tax under 11 U.S.C. § 507(a)(8)(E). . . . [Section] 507(a)(8)(E)(i) and (ii) allow priority status for an excise tax imposed '*on a transaction* . . .' . . . The SRP arises out of a taxpayer's choice to *not* do something (the choice to not maintain minimum health care coverage). . . . Other courts have concluded that the SRP is not an excise tax entitled to priority treatment under § 507(a)(8)(E) because the 'transaction' element is not met merely by failing to do something.").

§ 136.4 Trustees' Fees and Expenses before BAPCPA
§ 136.5 Trustees' Fees and Expenses after BAPCPA

{730} ***In re Massey*, No. 18-33445-tmb13, 2020 WL 5240383, at *3 (Bankr. D. Or. Sept. 1, 2020) (Brown)** (Over debtor's objection, counsel hired by Chapter 13 trustee to litigate estate's interest in a family trust is allowed fees for successfully increasing distribution to unsecured creditors. Counsel was appropriately hired under § 327 to perform legal services outside ordinary competence of the Chapter 13 trustee and services performed were not duplicative of administrative responsibilities of the trustee. "The Bankruptcy Code allows a trustee to hire a professional . . . . 11 U.S.C. § 327(a). . . . While I am unable to articulate an absolute, bright-line rule differentiating the trustee's administrative duties from the professional duties that may be performed by an outside professional, I am confident . . . Mr. Criswell's employment did not consist of performing the trustee's administrative duties. . . . Debtor's proposed *per se* prohibition on chapter 13 trustees hiring outside counsel to work on matters relevant to confirmation would prevent the trustee from effectively representing creditors in unusual and complicated cases such as this one.").

§ 136.6 Debtors' Attorneys' Fees before BAPCPA
§ 136.7 Debtors' Attorneys' Fees after BAPCPA

{731} ***In re Sisk,* No. 18-17445, 2020 WL 5200918 (9th Cir. Sept. 1, 2020) (as amended Sept. 24, 2020) (Wardlaw, Smith, Bumatay)** (Because a Chapter 13 case is not a "civil action brought by or against the United States," the successful debtors in *In re Sisk*, 962 F.3d 1133 (9th Cir. June 22, 2020) (Wardlaw, Smith, Bumatay), are not entitled to recover attorney's fees under the Equal Access to Justice Act.).

{732} ***In re Pugh*, No. 18-cv-06508-JMA, 2020 WL 2836823 (E.D.N.Y. May 31, 2020) (Azrack)** (Fee disgorgement order is affirmed because attorney sought to vacate the bankruptcy court order but sought no affirmative relief on appeal and bankruptcy court did not commit error in finding that second Chapter 13 filing did not benefit the debtor. Purpose of second case was to attempt second loan modification after denial of same loan modification application in first case. Circumstances changed between the cases in ways that made it even less likely that loan modification would be approved in second case.).

{733} ***Deighan Law, LLC v. Daugherty*, 615 B.R. 564, 566-72 (E.D. Mo. Apr. 14, 2020) (Limbaugh)** (Reversing bankruptcy court, Deighan Law, LLC, d/b/a UpRight Law, is an integrated law firm with general and limited partners that did not violate § 504 when part of the fee paid by a Chapter 13 debtor was retained by UpRight in Illinois and part was paid to Deighan in Missouri to handle specifics of the case. UpRight was not just a "referral service" and the legal relationship between the Illinois and the Missouri components was not prohibited by any statute or rule. "[T]he case turns on the narrow question of whether Deighan Law and the local lawyers are members of the same professional association, corporation or partnership—in other words, whether they are members of the same law firm. . . . Deighan Law is an Illinois limited liability company . . . . Deighan Law does business in Missouri under the registered name UpRight Law LLC. . . . [T]hree St. Louis limited partners . . . each operates their own law firm in addition to, and independently of, their association with UpRight Law. . . . Initial fees are collected by Upright Law . . . . [I]n Chapter 13 cases, the limited partner 'receive[s] one hundred percent (100%) of all post-petition fees distributed, provided that [they] perform[ ] all of the post-petition work as is required on the respective case.' . . . [T]his Court is of the opinion that Doyel, Caraker and Magdy are indeed partners in a law firm with UpRight Law so that section 504(b)(1)'s exception to section 504(a)'s fee-sharing prohibition applies. . . . [T]he limited partners identify UpRight Law as their law firm in the bankruptcy petitions . . . . UpRight Law is a firm specializing in bankruptcy law that has three general partners and approximately 300 limited partners, all of whom are lawyers. . . . UpRight law and its limited partners do constitute a law firm. Although the structure and operation of the firm is [*sic*] unconventional, this Court finds no authority that precludes it. . . . [T]he Chicago office continues to monitor the cases, supervises as necessary, and also provides legal assistance from staff lawyers

and other partners as necessary. This alone makes UpRight Law more than a lawyer referral agency. . . . There is no citation . . . , nor does this Court find any authority precluding lawyers from representing clients through two separate practices—one in which they hold themselves out as part of the same firm and one in which they represent clients individually or through a separate firm with other attorneys. . . . Deighan Law's limited partners are partners in a professional association, corporation or partnership who may share compensation under Section 504(b)(1)."), *rev'g and remanding sub nom., In re Richard*, No. 16-42080-659, 2018 WL 5733508, at *5–*8 (Bankr. E.D. Mo. Oct. 10, 2018) (Surratt-States) (Upright Law violated § 504 by sharing fees with three attorneys to whom it referred debtors to file Chapter 13 cases. The three attorneys did not form a single firm with Upright Law for purposes of Missouri law and § 504. "This is a case about the status of three attorneys and a company with whom each attorney signed Partnership Agreements for purposes of fee-splitting. . . . This Court finds that each attorney has contracted with separate entity, Upright Law, to share fees in violation of Bankruptcy Code Section 504. This violation of Section 504 requires the disgorgement of fees paid to Upright Law. . . . Upright Law is nothing more than a lawyer referral agency that completes administrative screening work, then refers the case to attorneys to take on the legal work. . . . [T]he Local Attorneys' status as members of separate legal entities and not a single law firm with Upright Law also means the Local Attorneys are not members, partners, or regular associates in a professional association, corporation, or partnership with Upright Law within meaning of Section 504. Violation of Section 504 requires disgorgement of fees.").

{734} ***Acclaim Legal Servs., P.L.L.C. v. Terry (In re Freeman)*, No. 19-13412, 2020 WL 1473903 (E.D. Mich. Mar. 26, 2020) (Steeh)** (After conversion from Chapter 7 to Chapter 13, attorney's fees for work during the Chapter 7 case are not allowable under § 330(a)(4)(B) because opposing a § 707(b) motion to dismiss and filing multiple amended means test forms did not benefit the debtor or anyone else.).

{735} ***In re Rosebar*, No. 20-00006, 2020 WL 4919693 (Bankr. D.D.C. Aug. 20, 2020) (Teel)** (At dismissal before confirmation, creditor's objection to $15,000 fee application of debtor's counsel is overruled. Debtor's bad faith in responding to discovery in other matters is not properly assignable to counsel. Debtor's counsel is entitled to payment of fees to the extent possible from plan payments received by trustee.).

{736} ***In re Guajardo*, No. 19-10540-ta13, 2020 WL 4919794 (Bankr. D.N.M. Aug. 20, 2020) (Thuma)** (In difficult Chapter 13 case, third attorney to represent debtors is allowed $12,531in fees because work was necessary and billing was reasonable given complexities including a guardianship, a large tax claim and other matters.).

{737} ***In re Cole*, No. 18-35182, 2020 WL 4577236 (Bankr. S.D. Tex. July 20, 2020) (Isgur)** (After intensive loadstar analysis in a Chapter 13 case involving multiple proposed plans, multiple motions to dismiss, claims objections, disputed property interests, various objections to confirmation and ultimately dismissal for nonpayment, fee application for $40,670 is allowed for $32,608.).

{738} ***In re Roberts*, 618 B.R. 213, 217-18 (Bankr. S.D. Ohio July 15, 2020) (Preston)** (Section § 327 requires Chapter 13 debtor to obtain court order hiring special counsel to prosecute postpetition car accident action; applying *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, ___ U.S. ___, 140 S. Ct. 696, 206 L. Ed. 2d 1 (Feb. 24, 2020), bankruptcy court will no longer enter *nunc pro tunc* orders approving counsel but counsel can still seek compensation. Hiring application is denied without prejudice because terms of fee agreement were not revealed. "This Court's decision to belay [*sic*] entry of *nunc pro tunc* orders (unless valid under *Feliciano*) does not mean that services rendered prior to entry of an order authorizing the employment will be uncompensated. . . . [W]hile authority to employ a professional must be granted in order for the professional to be awarded compensation, neither the Sixth Circuit Court of Appeals nor the applicable statutes and rules require that the Court approve employment before compensable services are rendered.").

{739} ***In re Fulayter*, No. 19-53196, 2020 WL 3950274 (Bankr. E.D. Mich. July 9, 2020) (Shefferly)** (Chapter 13 debtor's Bankruptcy Rule 9011 motion for sanctions against prior counsel is denied for lack of merit. Debtor did not substantiate claims that counsel made false statements with respect to services to be provided to the debtor's business or that schedules—signed by debtor—were prepared by counsel in violation of Bankruptcy Rule 9011.).

{740} ***In re Jones*, 617 B.R. 77 (Bankr. N.D. Miss. June 22, 2020) (Woodard)** (Substitute counsel may not have been required to seek an order approving employment by Chapter 13 debtors but counsel is denied fees because he failed to timely file a Bankruptcy Rule 2016 disclosure and he performed services that should have been included in the fully paid fee contract with former counsel.).

{741} ***In re Fulayter*, No. 19-53196, 2020 WL 2844387 (Bankr. E.D. Mich. June 1, 2020) (Shefferly)** (In a convoluted Chapter 13 case that was "basically" the continuation of an endlessly contested divorce, two lawyers duke it out over fees for representing the debtor and both loose at least a little.).

{742} ***In re Valle Carrasquillo*, No. 15-05847 (ESL), 2020 WL 4728121 (Bankr. D.P.R. May 26, 2020) (Lamoutte)** (Fee contract that misleadingly described "no look fee" as a minimum amount preapproved by court fails to satisfy requirement in § 528(a)(1)(A) that fee contract must specify services to be performed and specific fees for each service; defect in contract cannot be cured by "amended" contract after the petition. Contract is void and unenforceable.).

{743} ***In re Uribarry Garcia*, No. 16-02477 (ESL), 2020 WL 4722998 (Bankr. D.P.R. May 14, 2020) (Lamoutte)** (Bankruptcy court overrules trustee's objection to debtors' attorney's fees with respect to whether hourly rate for associates is $185 in original contract or $200 in subsequent disclosure.).

{744} ***In re Blackwell*, No. 20-10130, 2020 WL 1923588, at *2 (Bankr. D. Kan. Apr. 20, 2020) (Nugent)** (After ten years of Chapter 13 practice in district with a "no-look" fee of $3,000, bankruptcy court abrogates that no-look fee amount and declines to fix a new one, allowing "the market" to set fees for Chapter 13 cases, subject to court review under § 1330 upon objection. "Certainly, with the passage of ten years, Wichita attorneys' costs of operations have increased, and their hourly rates have done so as well. If the presumptive fee is to be retained, it should certainly be increased. But should it be retained? . . . Both [Topeka and Kansas City] divisions have historically boasted robust chapter 13 programs without court-sanctioned presumptive fees. I believe this division can do the same. Therefore, the no-look fee . . . is abrogated. Chapter 13 debtors' counsel may seek fees in a reasonable amount consonant with the § 330(a)(3) factors . . . . [T]he Court is content to let the market govern the amount of fees chapter 13 debtors' attorneys charge, subject to determining whether those fees are reasonable based on all relevant factors . . . .").

{745} ***In re Cervantes*, No. 18-10306-B-13, 2020 WL 1884213 (Bankr. E.D. Cal. Apr. 14, 2020) (Lastreto)** (Debtor's attorney, Thomas Gillis, ordered to disgorge $600 when attorney violated flat fee agreement and Rights and Responsibilities pledge in district by demanding additional fee to help debtor deal with postpetition default in payments.).

{746} ***In re Cervantes*, 617 B.R. 687, 688-89 (Bankr. E.D. Cal. Mar. 31, 2020) (Sargis, Clement, Lastreto)** (Bankruptcy court publishes formula for Chapter 13 trustees to use to determine portion of no-look fees that were earned and/or must be refunded by suspended attorney with 481 pending Chapter 13 cases. "In this District, counsel for a chapter 13 debtor can elect to be compensated by a flat fee . . . . Debtor's counsel in these cases elected that option and received the full fee. Since the State Bar of California has suspended counsel for two years, counsel cannot complete the work necessary to earn the fee. The chapter 13 Trustee objected to the fee in each case. We SUSTAIN the objections, present a formula to determine the proper fee, and after applying the formula, order counsel to refund certain amounts to the Chapter 13 Trustee for the benefit of the respective estates.").

{747} ***In re Lewis*, No. 19-51775, 2020 WL 1042032 (Bankr. E.D. Mich. Mar. 3, 2020) (Tucker)** (Fee application is denied sua sponte when $8,000 request far exceeds usual amount for Chapter 13 case dismissed before confirmation, application and proposed order together with stipulation are internally inconsistent and ambiguous and attorney did not comply with local rules with respect to notice and other procedures.).

{748} ***In re Gillis*, No. 20-101-A/B, 2020 WL 970320 (Bankr. E.D. Cal. Feb. 25, 2020) (Clement)** (On motion of Chapter 13 trustees in 481 Chapter 13 cases pending in the district in which debtor's counsel has been suspended from practice by state bar, standing trustees are ordered to cease distributing "no-look" fees to suspended counsel pending more comprehensive solution to how fees will be paid to complete the pending cases.).

{749} ***In re Gonzalez Torres*, No. 14-09581 (ESL), 2020 WL 889347 (Bankr. D.P.R. Feb. 24, 2020) (Lamoutte)** (In a fee dispute between Chapter 13 trustee and attorneys for debtors, because scheduled debts related primarily to a failed business, debtors are not "assisted persons," attorneys are not Debt Relief Agencies and §§ 526, 527 and 528 are not applicable.).

{750} ***In re Gillis*, No. 20-101, 2020 WL 768827, at *7 (Bankr. E.D. Cal. Feb. 14, 2020) (not for publication) (Sargis)** (The United States Bankruptcy Court for the Eastern District of California struggles with a suspended attorney's broken efforts to complete 603 pending bankruptcy cases, including many Chapter 13 cases. "[T]here is substantial pre- and post-confirmation work remaining to be done by an attorney . . . . Because of the Suspension, Mr. Gillis cannot do such work, cannot be allowed fees for such work, and cannot assign such fees for future work. Whomever [*sic*] substitutes in as counsel for the debtor in the future will make the fee arrangement with his or her new client, which fee arrangement is subject to approval by the court before such counsel can assert the right to be paid such fees.").

{751} ***In re Guajardo*, No. 19-10540-ta13, 2020 WL 762828 (Bankr. D.N.M. Feb. 14, 2020) (Thuma)** (Pro se debtors' objection to substitute counsel's $9,200 fee application is resolved largely in favor of counsel and fees are allowed for $9,006.73.).

{752} ***In re Blume*, 610 B.R. 829 (Bankr. E.D. Mich. Dec. 23, 2019) (Tucker)** (Chapter 13 debtors' application to incur postpetition debt to hire nonbankruptcy counsel to pursue state court litigation is granted with conditions on amount and method of payment from postpetition income. Application to employ nonbankruptcy counsel was denied as unnecessary—Chapter 13 debtors can hire any nonbankruptcy counsel they wish to pursue state court litigation; only postpetition payment of nonbankruptcy counsel is subject to bankruptcy court review and approval.).

{753} ***In re Quiroz*, No. 6:17-bk-10255-WJ, 2019 WL 9244665 (Bankr. C.D. Cal. Dec. 12, 2019) (Johnson)** (After exhaustive data collection and analysis by the bankruptcy court, "normal and customary" inflation-adjusted fees for opposing stay relief in a Chapter 13 case involving default in direct payments are allowed for $675 and fees for preparation of local form "Secured Debt Payment History Declaration" are allowed for $650.).

{754} ***In re Husted*, No. 11-41903, 2019 WL 4744759 (Bankr. E.D. Tex. Sept. 27, 2019) (Rhoades)** (Travel expenses for special counsel to Chapter 13 debtor are reduced. Counsel secured a $1.5 million settlement for Chapter 13 debtor based on abuse by a priest but some of the expenses claimed were not documented and some were not of benefit to debtor.).

{755} ***In re Frillman*, No. 3:18-bk-04334-JAF, 2019 WL 4412272 (Bankr. M.D. Fla. Sept. 13, 2019) (Funk)** (Court approves settlement of U.S. trustee's motion for sanctions against debtor's attorney including suspension of practice for 180 days, 15 hours of CLE and refund of attorney's fees in multiple cases. Attorney failed to get wet signature from Chapter 13 debtors, allowed multiple cases to be dismissed for filing deficiencies and made multiple motions to set aside dismissals without correcting deficiencies. Attorney failed to file fee disclosures and rarely completed Chapter 13 cases.).

{756} ***In re Nguyen*, No. 17-27906-GMH, 2019 WL 5887106 (Bankr. E.D. Wis. July 3, 2019) (Halfenger)** (In Chapter 13 case dismissed before confirmation, fee application for $9,645 is denied and counsel is allowed only $2,000 paid before the petition. Local rule created presumption that $1,000 was reasonable compensation for counsel in a Chapter 13 case dismissed before confirmation. Counsel filed detailed fee application to which no one objected. Court rejected fee request as unreasonable notwithstanding that counsel represented debtor in multiple proceedings including stay relief litigation, objections to confirmation and motions to dismiss for nonpayment.).

{757} ***In re Roberts*, No. 17-11846-gs, 2019 WL 5875700 (Bankr. D. Nev. May 22, 2019) (Spraker)** (Chapter 13 debtor's attorney is bound by original fee disclosure of $6,796, which contained no service exclusions. Attorney cannot more than double the amount requested with an amended disclosure and fee application that purports to exclude services that were already performed.).

§ 136.8 Utilities before BAPCPA
§ 136.9 Utilities after BAPCPA
§ 136.10 Leases and Executory Contracts before BAPCPA
§ 136.11 Leases and Executory Contracts after BAPCPA

{758} ***Aire Serv LLC v. Roberts (In re Roberts)*, 607 B.R. 635 (Bankr. N.D. Ill. Oct. 10, 2019) (Barnes)** (On motion for preliminary injunction, franchisor failed to prove likelihood of success against Chapter 13 debtor because covenant not to compete was a claim under Seventh Circuit law which must be asserted by proof of claim, not by plenary action for injunction.).

§ 136.12 Failed Adequate Protection before BAPCPA

{759} ***In re Gravlin*, No. 17-41714-CJP, 2020 WL 3634266 (Bankr. D. Mass. Mar. 6, 2020) (Panos)** (Business buyout debts in marital settlement agreement were not in the nature of support and were not domestic support obligations entitled to priority. Unpaid mortgage payments were intended as maintenance or support for the former spouse, were allowed priority claims under § 507(a)(1) and would not be dischargeable under § 1328(a)(2).).

§ 136.13 Failed Adequate Protection after BAPCPA
§ 136.14 Miscellaneous Administrative Expenses and Priority Claims before BAPCPA
§ 136.15 Miscellaneous Administrative Expenses and Priority Claims after BAPCPA

{760} ***In re Steenes*, 942 F.3d 834, 836–39 (7th Cir. Nov. 12, 2019) (Easterbrook, Rovner, Hamilton)** (On rehearing, traffic fines incurred by Chapter 13 debtors during confirmed cases are administrative expenses that must be paid in full and promptly. "After bankruptcy judges confirmed their Chapter 13 payment plans, Steenes and Dudley used their cars in ways that led to fines for running red lights, illegal parking, and similar offenses. . . . Allowing debtors in bankruptcy to stiff involuntary creditors, such as cities trying to collect for on-street parking, has nothing to recommend it. . . . [D]ebtors who need cars must pay their involuntary creditors—including cities as well as, say, pedestrians run down by reckless driving—along with the suppliers of gasoline and insurance. . . . [A] debtor making payments under a Chapter 13 plan is not entitled to park for free on city streets, when others must pay in advance or pay fines for parking in forbidden places or at forbidden times. . . . [V]ehicular fines incurred during the course of a Chapter 13 bankruptcy are administrative expenses that must be paid promptly and in full.").

{761} ***In re Sylvester*, No. 19-11716, 2020 WL 1140890 (E.D. La. Mar. 9, 2020) (Lemmon)** (After conversion from Chapter 13 to Chapter 7, bankruptcy court appropriately awarded administrative expense to attorney that prosecuted successful fraudulent conveyance action against Chapter 13 debtor. However, fee award is vacated for findings with respect to reasonableness. Creditor that prosecuted fraudulent conveyance action had derivative standing to pursue the avoidance action and Chapter 13 trustee joined as a party in that litigation. Decision is not clear with respect to what priority the administrative expense would have in the Chapter 7 case.).

{762} ***In re Miller*, 610 B.R. 678 (Bankr. S.D. Ala. Nov. 25, 2019) (Oldshue)** (Chapter 13 debtor's failure to post a prepetition security deposit for the lease/purchase of real property is not entitled to the priority described in § 507(a)(7) because that section protects deposits delivered to a Chapter 13 debtor, not deposits the debtor failed to provide to others.).

{763} ***In re Johnson*, 607 B.R. 250, 252–53 (Bankr. W.D. Pa. Oct. 28, 2019) (Taddonio)** (Filing fees unpaid in prior dismissed Chapter 13 case are a general unsecured claim in subsequent case and are not entitled to priority or payment in advance of other unsecured creditors. "The Trustee now requests authority to use funds currently in her possession from the 2017 Case to satisfy the filing fee that accrued in the 2014 Case. . . . [T]he Court finds that the *Motion* is premised on a fundamental legal flaw—that the Court enjoys some sort of priority regarding these unpaid fees that would allow a distribution to the Court before distributions to other creditors. The Trustee has not articulated any legal authority in support of such priority treatment, and the Court is unaware of any that would apply under these circumstances. . . . [A]ny unpaid filing fee assessed against a prior estate is nothing more than a prepetition general unsecured claim in a subsequent bankruptcy filing. . . . As the holder of a general unsecured claim, the Court, *if a proof of claim was filed on its behalf*, would be entitled to a pro rata distribution in pari passu with other similarly-situated creditors. Nothing more, nothing less. . . . The Court recognizes that the Trustee's request was well-intentioned if not legally sustainable. Although it would be tempting for the Court to direct the payment of its filing fees in this manner for hundreds of delinquent cases, it finds that it cannot sacrifice core bankruptcy principles simply to recover lost revenue. The central tenets of the Code mandate that creditor distributions occur in order of priority and that similarly-situated creditors are treated equally. . . . If creditors are expected to abide by these precepts, the Court must do likewise when acting as the holder of a comparable claim. Put simply, the Court cannot contravene the Code simply to move itself to the front of the unsecured-creditors line.").

{764} ***In re Mitchell*, No. 18-80336, 2019 WL 7840716 (Bankr. M.D.N.C. Jan. 16, 2019) (James)** (Proof of claim asserting priority under § 507(a)(3) and § 502(f) is not entitled to priority because § 502(f) does not apply in a voluntary Chapter 13 case.).

§ 136.16 Postpetition Interest on Priority Claims before BAPCPA
§ 136.17 Postpetition Interest on Priority Claims after BAPCPA

{765} ***In re Cerchia*, No. 19-12655, 2020 WL 1064835, at *3–*4 (Bankr. D.N.J. Mar. 3, 2020) (Kaplan)** (Citing § 511 and New Jersey law, plan cannot require purchaser of tax sale certificate to apply payments from Chapter 13 debtor first to principal portion of claim; state law fixes interest rate and applies GAAP principles to pay interest and penalties before principal. "SLS, as a tax certificate holder, is treated as a secured creditor, holding a lien against the Debtors' Property. . . . [T]o the extent SLS is over-secured, upon application of 11 U.S.C. § 506(a), it is entitled to collect interest on its claim at 'the rate determined under applicable nonbankruptcy law.' 11 U.S.C. § 511(a). . . . Pursuant to § 511, state law must be applied when determining interest due to an over-secured claimant. . . . [M]unicipalities are required to follow the Generally Accepted Accounting Principles . . . . Debtor may not deviate by applying payments to principal first and interest thereafter.").

§ 136.18 Secured Priority Claims before BAPCPA
§ 136.19 Secured Priority Claims after BAPCPA

{766} ***In re Cochran*, No. 16-00760, 2020 WL 535998 (Bankr. N.D. Iowa Jan. 31, 2020) (Collins)** (Confirmation of plan that surrendered four co-owned properties to former spouse in full satisfaction of her claim did not discharge former spouse's claim in pending adversary proceeding; judgment of nondischargeability in adversary proceedings is binding and balance of debt to former spouse, now unsecured, is nondischargeable.).

§ 136.20 Alimony, Maintenance and Support in Cases Filed after October 22, 1994
§ 136.21 Domestic Support Obligations after BAPCPA

{767} ***Voss v. Voss (In re Voss)*, No. ID-20-1053-SGF, 2020 WL 4371199 (B.A.P. 9th Cir. July 30, 2020) (not for publication) (Spraker, Gan, Faris)** (Bankruptcy court appropriately determined on a stipulated trial record that state court award to former spouse of $35,000 for attorney's fees was a priority, nondischargeable domestic support obligation.).

{768} ***In re Abbas*, No. 19-56737, 2020 WL 4073210 (Bankr. E.D. Mich. July 20, 2020) (Shefferly)** (Fifty-dollars-per-day penalty assessed by domestic relations court to compel Chapter 13 debtor to produce documents was an allowable claim but not entitled to priority under § 523(a)(5) or § 507(a)(1).).

{769} ***Hauk v. Valdivia (In re Valdivia)*, 617 B.R. 278 (Bankr. E.D. Mich. July 16, 2020) (Tucker)** (Applying *Sorah v. Sorah (In re Sorah)*, 163 F.3d 397 (6th Cir. Dec. 22, 1998) (Nelson, Clay, Gilman), not unreasonable to require Chapter 13 debtor to pay all of $300,000 domestic relations judgment as a priority claim. Debtor has a long history of unreported income and is likely to inherit real estate in years ahead.).

{770} ***In re Kowalski*, No. 18 B 09130, 2020 WL 3547929 (Bankr. N.D. Ill. June 29, 2020) (Cox)** (After conversion from Chapter 13 to Chapter 7, attorney's fees awarded former spouse in prepetition domestic relations litigation are domestic support obligations entitled to priority notwithstanding that the award is payable to attorneys and notwithstanding that some of the award would have been dischargeable had the case stayed in Chapter 13.).

{771} ***In re Quinlan*, No. 19-34000-tmb13, 2020 WL 3120996 (Bankr. D. Or. June 11, 2020) (Brown)** (Money judgment from state domestic relations court compensated former spouse for debtor's failure to make mortgage payments required by property division portion of dissolution decree; money judgment was not domestic support obligation but was a general unsecured claim.).

{772} ***In re Hayes*, No. 19-20941-drd-13, 2020 WL 2601955 (Bankr. W.D. Mo. May 21, 2020) (Dow)** (Assumption of credit card debt as part of negotiated divorce settlement was property settlement, not support; debt was general unsecured claim not entitled to priority in Chapter 13 case.).

{773} ***In re Gentry*, No. 15-20990-beh, 2020 WL 2479662 (Bankr. E.D. Wis. May 13, 2020) (Hanan)** (Almost five years after confirmation of Chapter 13 plan that treated State's claim for overpayment of child support as priority entitled to full payment, change in the law signaled by *In re Dennis*, 927 F.3d 1015 (7th Cir. June 27, 2019) (Wood, Bauer, St. Eve), supports debtor's objection that reclassifies State's claim as a general unsecured debt. Confirmed plan which included settlement of State's priority claim does not bar claim objection based on change in controlling law. Claim objection is not untimely because neither the Code nor Rules set a deadline for claim objections in a Chapter 13 case.).

{774} ***In re Colella*, No. 19-41358, 2020 WL 1968241 (Bankr. N.D. Ohio Apr. 23, 2020) (not for publication) (Kendig)** (Obligation to pay deficiency on sale of former marital residence and obligation to maintain a $4 million life insurance policy at a cost of $2,688 per month are not in the nature of support and are not described as support in the divorce decree, and the life insurance policy would be excessive under Sixth Circuit authority in these circumstances. Neither debt is a DSO, neither is entitled to priority and both are dischargeable at the completion of payments in a Chapter 13 case.).

{775} ***In re Buehler*, No. 19-31696-dwh13, 2020 WL 939159 (Bankr. D. Or. Feb. 24, 2020) (Hercher)** (Based on estimation of state and federal taxes that former spouse is likely to pay that will trigger debtor's obligation to reimburse one-half, proof of claim by former spouse for $87,539.85 is allowed as a nonpriority claim for $16,157.52.).

{776} ***In re Cochran*, No. 16-00760, 2020 WL 535998 (Bankr. N.D. Iowa Jan. 31, 2020) (Collins)** (Confirmation of plan that surrendered four co-owned properties to former spouse in full satisfaction of her claim did not discharge former spouse's claim in pending adversary proceeding; judgment of nondischargeability in adversary proceedings is binding and balance of debt to former spouse, now unsecured, is nondischargeable.).

{777} ***Potts v. Potts (In re Potts)*, No. 18-01052, 2020 WL 476592 (Bankr. N.D. Miss. Jan. 29, 2020) (Maddox)** (Former spouse's claim and lien securing that claim are not entitled to priority and nondischargeability because domestic support obligation factors slightly favor debtor—payments do not cease at remarriage; relative incomes were not considered by state court; and award was intended to compensate for loss of interest in homestead.).

{778} ***In re LaSpina*, 611 B.R. 219 (Bankr. E.D. Pa. Jan. 3, 2020) (Chan)** (After review of state court special master report and considering significant income disparity, one-third of state court award was a priority, nondischargeable support obligation and two-thirds of the award was equitable division of property that could be discharged in a Chapter 13 case.).

{779} ***In re Stuteville*, 611 B.R. 886 (Bankr. D.N.M. Nov. 27, 2019) (Jacobvitz)** ($10,000 judgment in favor of former spouse for guardian ad litem fees for children in divorce is a domestic support obligation entitled to priority in Chapter 13 case; that payment by former spouse to guardian ad litem resulted in assignment of the debt to the former spouse does not defeat the DSO nature of the judgment. In contrast, $1,000 sanction for nonpayment of the debtor's share of guardian ad litem fees was not a DSO.).

{780} ***In re Wobbleton*, 607 B.R. 827 (Bankr. E.D. Va. Sept. 30, 2019) (Kindred)** (Based on disparity of incomes, household needs of children and structure of state court decree, Chapter 13 debtor's obligation to pay mortgage on former marital residence is a domestic support obligation entitled to priority that must be paid in full.).

§ 136.22 Driving or Boating while Intoxicated Priority after BAPCPA

E. POSTPETITION CLAIMS

§ 137.1 Postpetition Claims before BAPCPA
§ 137.2 Postpetition Claims after BAPCPA

{781} ***In re Van*, 612 B.R. 893 (Bankr. N.D. Ill. Jan. 13, 2020) (Goldgar)** (County's claim for property taxes for prepetition tax years is a prepetition claim notwithstanding that claim was sold prepetition and did not revert to county until "error" was declared by purchaser and county repurchased tax claim after bankruptcy. Contingent claim at petition was not a postpetition claim notwithstanding that contingency occurred years after bar date. County is bound by confirmed plan and its claim will be discharged when it did not object to confirmation or file a timely claim. County could have protected itself by filing contingent claims for purchased tax debts.).

{782} ***In re Kielman*, 609 B.R. 818 (Bankr. E.D. Wis. Dec. 16, 2019) (Hanan)** (Postpetition defaults in payments of prepetition car note are not postpetition claims for § 1305 purposes. Postpetition claims under § 1305 are not a route around the failure of a prepetition

car lender to timely file a proof of claim when the pro se debtor failed to schedule the car lender and the late-filed claim of the car lender was disallowed.).

F. MISCELLANEOUS CLAIMS QUESTIONS

§ 138.1 Alimony, Maintenance and Support in Cases Filed before October 22, 1994
§ 138.2 Claims for Creditors' Attorneys' Fees

{783} ***In re Sylvester*, No. 19-11716, 2020 WL 1140890 (E.D. La. Mar. 9, 2020) (Lemmon)** (After conversion from Chapter 13 to Chapter 7, bankruptcy court appropriately awarded administrative expense to attorney that prosecuted successful fraudulent conveyance action against Chapter 13 debtor. However, fee award is vacated for findings with respect to reasonableness. Creditor that prosecuted fraudulent conveyance action had derivative standing to pursue the avoidance action and Chapter 13 trustee joined as a party in that litigation. Decision is not clear with respect to what priority the administrative expense would have in the Chapter 7 case.).

{784} ***In re Melly*, No. 18-26036 (RG), 2020 WL 2617028, at *3–*4 (Bankr. D.N.J. May 22, 2020) (Sherwood)** (When unsecured creditor was granted stay relief and successfully prosecuted fraudulent conveyance action against Chapter 13 debtor and a related entity, creditor is entitled to postpetition interest at federal judgment rate and entitled to recover attorney's fees from the estate. "[W]here the policy considerations supporting § 502(b)(2) are not implicated, some courts have found that there are exceptions to the prohibition on the collection of post-petition interest. . . . [T]his is a unique case involving a 'solvent debtor' dealing with the claims of his mortgage lender . . . . The disallowance of post-petition interest . . . would provide a windfall to the Debtor based solely on the fact that he filed bankruptcy. . . . [T]he federal judgment rate of interest should apply in bankruptcy cases as opposed to the rate established by contract or state law. . . . Essentially, the Court 'deputized' Chartwell as the estate representative to pursue the Fraudulent Transfer Case. Chartwell did so and prevailed . . . . There is no doubt that Chartwell's reasonable fees and expenses incurred in the Fraudulent Transfer Case after it was granted stay relief to continue with the action should be paid.").

{785} ***In re Chapman*, 616 B.R. 523, 526-31 (Bankr. E.D. Wis. Mar. 11, 2020) (Hanan)** (Attorney sanctioned under Bankruptcy Rule 9011 for filing "emergency" Chapter 13 petition based on power of attorney and a fabricated story by the debtor's daughter. Simple investigation would have revealed two prior similar cases within a year. Debtor was not aware that daughter was filing bankruptcy petitions using a power of attorney. Daughter represented that debtor's son would fund the plan, but son was unaware of daughter's misrepresentations. "Neither Attorney Clowers nor [paralegal] spoke with Mrs. Chapman herself prior to filing the Chapter 13 bankruptcy case on her behalf . . . . [Daughter] did not disclose to Attorney Clowers and [paralegal], nor did they discover themselves, that two previous cases had been filed on behalf of Mrs. Chapman in the preceding twelve months. . . . Bankruptcy Rule 9011 includes a 21-day 'safe harbor' provision . . . . But the safe harbor provision does not apply if the challenged paper is a bankruptcy petition . . . . [T]he Clowers firm took [daughter], the power of attorney, at her word . . . . [T]he petition erroneously states 'no previous cases.' . . . [O]ne phone call to the debtor's prior counsel . . . and would have learned that [daughter] had spun the same sham story about a brother whom she claimed would save the day by paying the mortgage arrears, but never actually did so. . . . The fact that counsel filed without adequate investigation, relying on a fairly sympathetic, albeit untrue, story by the debtor's disingenuous and manipulative daughter, suggests a negligent sense of urgency . . . . [A] monetary sanction is warranted . . . . One-third of the fees and costs incurred for the instant, third case seems appropriate.").

{786} ***In re Manz*, No. 19-30090 (JNP), 2020 WL 1180752 (Bankr. D.N.J. Mar. 10, 2020) (Poslusny)** (Chapter 13 debtor is liable to landlord for attorney's fees based on consent agreement notwithstanding ambiguities in contract and covenants with respect to fees. Under state law, fees must be reasonable and reasonableness will require further hearing.).

{787} ***In re Smith*, No. 19-30059-dwh13, 2020 WL 129439 (Bankr. D. Or. Jan. 8, 2020) (Hercher)** (Oversecured lender is allowed attorney's fees with 7.5% interest payable through confirmed plan. Lender is not entitled to immediate payment of attorney's fees but instead is entitled by confirmed plan to be paid at sale or refinance.).

{788} ***In re Vinson*, No. 19-10544-JGR, 2019 WL 6834842, at *5–*8 (Bankr. D. Colo. Dec. 5, 2019) (Rosania)** (Banks $60,000 claim for attorney's fees for four prepetition foreclosures, a prior Chapter 7 case, and participation in current Chapter 13 case is reduced to $11,785. Fee application was almost incomprehensible with lumped entries, multiple lawyers, and entries for noncompensable work. Petition and plan were filed in a good faith effort to save the debtor's home when the only issue was attorney's fees payable to the mortgagee's counsel. "Under Colorado state law, attorney's fees claimed under a contract are subject to a reasonableness standard, . . . , which is determined by reference to the so-called lodestar factors . . . . It has taken the Court hours to decipher a reasonable fee. The Court reviewed the one hundred and thirty-four pages on two different occasions and took fifteen pages of internal notes. The legal fee statements were in reverse chronological order, the fee summary contained a math error that took several hours to uncover, the attorney time was hopelessly lumped, the categories were hopelessly lumped, the categories were combined between the three promissory notes, three lawyers worked on the file . . . , there were multiple inter-office communications, there was legal research on fundamental bankruptcy law issues, and there was random allocation of fees between categories. . . . The Bank was overly aggressive in the post-petition period, using several lawyers on another one lawyer matter and engaging in far-fetched discovery. The animosity between the parties was palpable.").

{789} ***In re Baker*, No. 5:19-bk-71061, 2019 WL 9828490, at *3 (Bankr. W.D. Ark. Dec. 3, 2019) (Barry)** (910-day car claimholder is not entitled to add postpetition attorney's fees to its claim because no provision of the Bankruptcy Code allows attorney's fees for a 910-day car claim. "[A]n undersecured 910-car claimant is not entitled to include post-petition attorney fees in its secured claim. . . . [T]here is no code provision that expressly allows an undersecured 910-car creditor to recover post-petition attorney fees. Therefore, the Court finds that allowing an undersecured 910-car creditor to recover post-petition attorney fees from the estate would impermissibly expand the express exceptions that Congress has provided for in the code.").

{790} ***In re Bulger*, 606 B.R. 526 (Bankr. W.D.N.Y. Sept. 16, 2019) (Bucki)** (Fees sought by mortgagee for filing proof of claim and objecting to Chapter 13 plan are reduced to amounts that would be allowed by Fannie Mae had the lender not been an individual—$4,000 claim reduced to $1,150. $7,500 attorney's fee requested for defending objection to proof of claim is denied in full because settlement of objection reduced amount of claim—indicating that claim was excessive—and it is not reasonable to require Chapter 13 debtors to pay attorney's fees for defense of an excessive claim.).

§ 138.3 Creditors' Attorneys' Fees: New Recovery Rights after BAPCPA

{791} ***In re Sheed*, 607 B.R. 470 (Bankr. E.D. Pa. Oct. 3, 2019) (Coleman)** (Chapter 13 debtor's objection to foreclosure fees and costs included in mortgagee's proof of claim is overruled based on *res judicata* effect of state court foreclosure judgment and ambiguous terms of mortgage modification agreement. Court seems to hold that attorney's fees and costs are not part of "mortgage arrearages" that were folded into the note as part of mortgage modification agreement.).

§ 138.4 Nonrecourse Claims and Claims Discharged in Prior Bankruptcy Case
§ 138.5 Truth-in-Lending and Other Consumer Protection Statutes

{792} ***Soler Somohano v. PRA Receivables Mgmt. LLC (In re Soler Somohano)*, 819 F. App'x 873 (11th Cir. July 23, 2020) (W. Pryor, J. Pryor, Newsom)** (Applying *Midland Funding, LLC v. Johnson*, ___ U.S. ___, 137 S. Ct. 1407, 197 L. Ed. 2d 790 (May 15, 2017), proof of claim that showed on its face that it was time-barred under Florida law is not deceptive, fraudulent or misleading and no action lies under FDCPA.).

{793} ***Goz ex rel. Estate of Travers v. Allied Collection Servs., Inc.*, 812 F. App'x 544 (9th Cir. July 14, 2020) (not for publication) (Miller, Hunsaker, Schiltz)** (Chapter 13 debtor's failure to protest the date of discharge in bankruptcy shown on credit report is fatal to FCRA action alleging that date was inaccurate.).

{794} ***Alexander v. Experian Info. Sols., Inc.*, No. 19-15824, 2020 WL 2111462 (9th Cir. May 4, 2020) (not for publication) (Hawkins, Paez, Restani)** (Chapter 13 debtor's FCRA complaint fails because predischarge Chapter 13 case did not change accuracy of credit reporting that debt existed and was in default.).

{795} ***Crum v. SN Servicing Corp.*, No. 1:19-cv-02045-JRS-TAB, 2020 WL 5629694 (S.D. Ind. Sept. 21, 2020) (Sweeney)** (Chapter 13 debtor's TILA claims against U.S. Bank are dismissed because bank is an assignee of the debt, not the original creditor, and U.S. Bank is not liable under TILA for alleged misconduct not apparent on the face of the loan disclosure documents.).

{796} ***Gilbert v. Coodiles & Assocs., P.C.*, No. 20 C 632, 2020 WL 4726711 (N.D. Ill. Aug. 13, 2020) (Leinenweber)** (Citing *Midland Funding, LLC v. Johnson*, ___ U.S. ___, 137 S. Ct. 1407, 197 L. Ed. 2d 790 (May 15, 2017), Chapter 13 debtor cannot state a claim under FDCPA that motion for relief from stay that stated incorrect loan balance was an actionable communication.).

{797} ***Toye v. Newrez LLC*, No. 19-cv-02322-BAS-LL, 2020 WL 4569128 (S.D. Cal. Aug. 7, 2020) (Bashant)** (Chapter 13 debtor's mortgage rescission action under TILA filed nine years after notice of rescission is time-barred; various other state and federal challenges to mortgage also fail.).

{798} ***Knox v. Equifax Info. Servs. LLC*, No. 3:19-cv-02581-E, 2020 WL 4339016 (N.D. Tex. July 28, 2020) (Brown)** (Chapter 13 debtor's claim that credit reporting agency omitted home mortgage debt from its report is not actionable under FCRA.).

{799} ***Solomon v. Equifax Info. Servs. LLC*, No. 3:19-cv-266, 2020 WL 3027199 (E.D. Va. June 5, 2020) (Gibney)** (District court refuses to approve settlement of Chapter 13 debtor's FCRA action against Equifax for incorrect reporting when proposed settlement included incomprehensible technical agreements about future actions that would constitute compliance with all applicable state and federal laws and included a restriction on practice by debtor's counsel.).

{800} ***Dirdala v. Wells Fargo Bank*, No. 3:20-CV-5153-DWC, 2020 WL 2063564 (W.D. Wash. Apr. 29, 2020) (Christel)** (FDCPA does not apply to Wells Fargo because it was creditor, not a debt collector, with respect to Chapter 13 debtor's mortgage.).

{801} ***Morris v. Equifax Info. Servs., LLC*, No. 2:18-cv-01829-JAD-EJY, 2020 WL 1957550 (D. Nev. Apr. 23, 2020) (Dorsey)** (In FCRA action, Carrington Mortgage Services provided inaccurate and incomplete information about a Chapter 13 debtor when

completion of payments discharged personal liability on mortgage secured by surrendered property and Carrington reported debt as past due and in default; that debtors never moved from property does not change result. Debtors failed to prove damages for FCRA purposes when denial of credit based on credit report by Carrington occurred before Chapter 13 debtors complained and before Carrington had duty to investigate.).

{802} ***Davis v. Carrington Mortg. Servs., LLC*, No. 2:18-cv-02181-APG-VCF, 2020 WL 1853317 (D. Nev. Apr. 10, 2020) (Gordon)** (In FCRA action against Experian and others, not unreasonable that credit report stated mortgage was discharged in Chapter 13 case. Reporting agency was not required to determine complicated legal question whether mortgage debt was discharged.).

{803} ***Slyzko v. Equifax Info. Servs. LLC*, No. 2:19-cv-00176-JAD-EJY, 2020 WL 1433518 (D. Nev. Mar. 23, 2020) (Dorsey)** (Chapter 13 debtor's broad-ranging class action complaint under FCRA against Experian is dismissed for the most part—some claims with, some claims without, leave to amend. Gist of complaint was that Experian inaccurately reported the status of debts during and after Chapter 13 case.).

{804} ***Calvillo v. Experian Info. Sols., Inc.*, No.: 2:19-cv-00279-JAD-BNW, 2020 WL 1433521 (D. Nev. Mar. 23, 2020) (Dorsey)** (Chapter 13 debtor's multi-count complaint against Experian under FCRA and various state consumer protection laws with respect to reporting of debt that was paid during Chapter 13 case and/or discharged, including the use of behavioral information, is partially dismissed.).

{805} ***Steinmetz v. American Honda Fin.*, No. 2:19-cv-00067-APG-EJY, 2020 WL 1324989 (D. Nev. Mar. 20, 2020) (Gordon)** (Chapter 13 debtor's FCRA complaint is dismissed: credit reporting agency does not violate FCRA by reporting $0 owed for debt discharged in Chapter 13 case. METRO 2 guidelines are not binding. That debtor made voluntary payments to creditors after discharge is not within FCRA reporting requirements. Experian's handling of "behavioral data" did not state a claim under FCRA.).

{806} ***Rogers v. Wells Fargo Bank, N.A.*, No. 19-cv-02596, 2020 WL 1081721 (N.D. Ill. Mar. 6, 2020) (Seeger)** (Chapter 13 debtor's FCRA complaint for inappropriate access to credit report after discharge survives motion to dismiss. Wells Fargo accessed debtor's credit report two weeks after discharge in a Chapter 13 case in which the property securing the claim was surrendered and Wells Fargo's debt was discharged as a personal liability. Debtor's challenge to accessing the credit report states a claim for inappropriate access under FCRA.).

{807} ***Howard v. LVNV Funding, LLC*, No. 3:19-cv-93, 2020 WL 978653 (W.D. Pa. Feb. 28, 2020) (Gibson)** (FDCPA is not preempted by Bankruptcy Code when allegation is that LVNV filed false and misleading proofs of claim that combined interest and other charges with principal. Filing proof of claim can violate FDCPA when proof of claim is false or misleading and Chapter 13 debtor's complaint states cause of action that survives motion to dismiss.).

{808} ***Sandifer v. Copiah Bank, N.A*, No. 3:19-CV-623-DPJ-FKB, 2020 WL 854194 (S.D. Miss. Feb. 20, 2020) (Jordan)** (Equifax is instructed to file an amended answer stating specific defenses in Chapter 13 debtor's action under FDCPA with respect to inaccurate reporting of debt discharged in Chapter 13 case.).

{809} ***Todd v. Ocwen Loan Servicing, Inc.*, No. 2:19-cv-00085-JMS-DLP, 2020 WL 1328640, at *2–*6 (S.D. Ind. Jan. 30, 2020) (Pryor)** (In Chapter 13 debtor's postdischarge action against Ocwen under RESPA, FDCPA, FCRA and other consumer protection statutes, discovery dispute is resolved by United States Magistrate judge in favor of debtor with respect to "risk convergence reports" and other records relevant to Ocwen's knowledge that its REALServicing platform was broken and could not accurately account for payments in a Chapter 13 case. "Defendant Ocwen used a software-based servicing system, called REALServicing, that was subject to various failings. . . . Ocwen maintained spreadsheets, called 'Risk Convergence Reports,' that tracked regulatory violations and potential areas for risk with the REALServicing platform. . . . Plaintiff sought these Risk Convergence Reports ('RCR'), and any email correspondence . . . , . . . establishing Ocwen's knowledge, willful indifference, or deliberate violation of federal law. . . . Plaintiff has explained . . . that, if provided, the RCRs will be used to show that Ocwen was aware of the widespread problems related to the REALServicing platform, had been aware for a significant period of time, and had not engaged in the appropriate corrective behavior. Accordingly, the Court finds that the Plaintiff's request for the RCRs is relevant. . . . The RCRs, while potentially a result of the nationwide consent decrees, do not necessarily hinge on the terms of those decrees, nor do they reveal any confidential information from the settlement negotiation process. Instead, the RCRs appear to be spreadsheets created in the normal course of Ocwen's business, in an attempt to track potential points of liability and forestall future regulatory action.").

{810} ***Coordes v. Wells Fargo Bank, N.A.*, No. 2:19-CV-0052-TOR, 2019 WL 5295526 (E.D. Wash. Oct. 18, 2019) (Rice)** (Chapter 13 debtors' class action complaint under state consumer protection statutes with respect to Wells Fargo's flawed software that improperly denied mortgage modification applications survives motion to dismiss for the most part.).

{811} ***Wortman v. Rushmore Loan Mgmt. Servs. LLC*, No. 19 C 2860, 2019 WL 5208893 (N.D. Ill. Oct. 16, 2019) (Kendall)** (Chapter 13 debtors' post-discharge claims under FDCPA and state Consumer Protection Act fail because debtors did not give the pre-suit notice required by the mortgage. That debtors claimed discharge of the mortgage does not change this outcome because only personal

liability was discharged in the completed Chapter 13 case. The mortgage lien survived and its terms require notice before initiating litigation.).

{812} ***Steinmetz v. American Honda Fin.*, No. 2:19-CV-64 JCM (VCF), 2019 WL 4415090 (D. Nev. Sept. 16, 2019) (Mahan)** (Motion to dismiss FCRA action is granted because reporting zero balances and charge-offs after discharge in a Chapter 13 case is accurate notwithstanding that debtor continues to make voluntary payments after the discharge of personal liability.).

{813} ***Steed v. GSRAN-Z, LLC (In re Steed)*, No. 19-5201-JWC, 2020 WL 1562526 (Bankr. N.D. Ga. Apr. 1, 2020) (Cavender)** (*Ad valorem* taxes and fees being collected by purchaser of tax certificates are not "debts" for purposes of FDCPA.).

{814} ***Barkley v. Santander Consumer USA Inc. (In re Martin)*, No. 19-02193-NPO, 2020 WL 1670254 (Bankr. S.D. Miss. Mar. 30, 2020) (Samson)** (Chapter 13 debtor's adversary proceeding against Santander under FDCPA, Bankruptcy Rule 9011 and various other theories for filing a proof of claim for a debt it knew to be extinguished by Mississippi law more than nine years before the petition is dismissed based on *Midland Funding, LLC v. Johnson*, ___ U.S. ___, 137 S. Ct. 1407, 197 L. Ed. 2d 790 (May 15, 2017).).

{815} ***Nagel v. Kentucky Tax Billing Servicing, Inc. (In re Nagel)*, No. 19-2009, 2020 WL 1182664 (Bankr. E.D. Ky. Feb. 21, 2020) (Wise)** (Chapter 13 debtor's action against purchaser of tax certificates for filing false claims is dismissed because there is no independent cause of action for filing a false claim in bankruptcy based on the criminal liability described in 18 U.S.C. § 152(4). Bankruptcy court abstains from various state law causes of action. Debtor alleged that purchaser of tax certificates routinely and falsely filed secured claims and filed claims against debtors based on *in rem* judgments against specific tax sale property that would not give rise to liens on other property and would not create personal liability.).

{816} ***McGarvey v. USAA Sav. Bank (In re McGarvey)*, 613 B.R. 285 (Bankr. E.D. Cal. Feb. 21, 2020) (Sargis)** (FCRA claims against bank for reporting debts as delinquent instead of reporting that debts were provided for in a confirmed Chapter 13 plan consistent with METRO guidelines are dismissed for the most part because prior to discharge the information reported was not inaccurate and industry standards do not control in FCRA cases; one claim remaining for trial is whether bank violated automatic stay by not correcting its credit reporting to show that debt was involved in a Chapter 13 case.).

{817} ***Marshall v. Abdoun (In re Marshall)*, 613 B.R. 194 (Bankr. E.D. Pa. Feb. 11, 2020) (Chan)** (Purchaser at prepetition tax sale violated Pennsylvania consumer protection statutes by demanding rent to which there was no entitlement, demanding possession when possession belonged to debtor, and intimidating debtor in effort to force debtor to vacate property. Purchaser at prepetition tax sale demanded rent and otherwise acted like owner of property after debtor exercised redemption right by proposing plan that would pay redemption amount over life of plan. Exercise of redemption right through plan before it expired cut off vesting of title in purchaser. Chapter 13 debtor satisfied redemption right by proposing plan that paid redemption amount over life of plan as permitted by Bankruptcy Code. Exercise of redemption right does not require completion of payment of redemption amount to stop title from vesting in purchaser. Debtor recovers nominal actual damages, not including emotional distress damages, and is awarded attorney's fees.).

{818} ***Torres Melendez v. Collazo Connelly & Surillo, LLC (In re Torres Melendez)*, No. 19-0400, 2020 WL 557320 (Bankr. D.P.R. Feb. 4, 2020) (Lamoutte)** (Bankruptcy court has jurisdiction over Chapter 13 debtors' FDCPA action when any recovery will increase payments to unsecured creditors through the confirmed plan. Complaint against foreclosure law firm states claim under FDCPA when notices from law firm were timed from mailing instead of from receipt by debtors and complaint alleges that law firm was a debt collector.).

{819} ***Bernadin v. U.S. Bank Nat'l Ass'n (In re Bernadin)*, 610 B.R. 787, 795–803 (Bankr. E.D. Pa. Dec. 20, 2019) (Frank)** (On reconsideration—see *Bernadin v. U.S. Bank Nat'l Ass'n (In re Bernadin)*, 609 B.R. 26 (Bankr. E.D. Pa. Oct. 28, 2019) (Frank)—complaint pleads sufficient facts to find that Ocwen violated the FDCPA by filing a proof of claim that included attorney's fees to which the mortgagee was not entitled under state law; *Midland Funding, LLC v. Johnson*, ___ U.S. ___, 137 S. Ct. 1407, 197 L. Ed. 2d 790 (May 15, 2017), did not decide whether the filing of a proof of claim could violate the FDCPA in a bankruptcy case and that issue remains for factual development and trial. The Bankruptcy Code and FDCPA are not irreconcilable with respect to filing of a proof of claim by a mortgagee with a prepetition foreclosure judgment because the creditor can simply treat the judgment amount as the principal balance on Part 2 of Official From 410A. Ocwen, through its law firm Phelan Hallinan Diamond & Jones, LLP, filed a proof of claim that included various expense advances that were not chargeable to the debtor after entry of a prepetition foreclosure judgment. "The Debtor asserts that in demanding payment of these uncollectible charges in the POC, Ocwen misrepresented the character, amount, or legal status of the debt . . . . In *Midland Funding*, the Court held that filing a proof of claim in a chapter 13 bankruptcy case that is obviously time barred is not a false, deceptive, misleading, unfair, or unconscionable debt collection practice within the meaning of the FDCPA. . . . Ocwen proposes a broad reading of *Midland Funding* . . . . I decline Ocwen's invitation to hold that a debt collector can never violate the FDCPA when it files a proof of claim in a bankruptcy case. . . . I conclude that a creditor can complete Official Forms B410 and B410A . . . accurately and without violating the FDCPA. In this respect, there is no conflict between the bankruptcy claims allowance process and the FDCPA. . . . *[I]t is possible* for a debt collector of a residential mortgage creditor to complete Part 2 of Form 410A accurately when the creditor's mortgage has merged into a prepetition foreclosure judgment. This is accomplished simply by treating the foreclosure judgment amount as the 'principal balance' amount to be filled in on the Form and then adding to that amount

those post-judgment charges that survive the merger of the mortgage into the judgment or that otherwise are authorized by law."), *vacating in part on reconsideration*, 609 B.R. 26 (Bankr. E.D. Pa. Oct. 28, 2019) (FDCPA claims against U.S. Bank fail because U.S. Bank is the creditor holding the debt, not a debt collector.), *amending and superseding*, 609 B.R. 133 (Bankr. E.D. Pa. Oct. 24, 2019).

§ 138.6 U.C.C. and Other Commercial Law Questions

{820} ***Hernandez v. Franklin Credit Mgmt. Corp. (In re Hernandez)*, 820 F. App'x 593 (9th Cir. Sept. 8, 2020) (not for publication) (Hawkins, McKeown, Kendall)** (Statute of limitations for enforcement of deed of trust was triggered by Chapter 7 discharge in 2012 and mortgagee's foreclosure right was lost before debtor filed current Chapter 13 case. Statute of limitations to foreclose on deed of trust ran from last installment due before debtor's discharge, more than six years before current Chapter 13 petition.).

{821} ***In re Hornaday*, No. 18-24483-BKC-PGH, 2020 WL 1847163 (Bankr. S.D. Fla. Apr. 9, 2020) (Hyman)** (Second mortgagee's claim for deficiency after foreclosure by first mortgagee is barred by one-year statute of limitations under Florida law. Junior mortgagee had one year from issuance of certificate of sale after foreclosure by first mortgagee in which to bring suit to collect its deficiency.).

{822} ***Real Time Resolutions, Inc. v. United States Small Bus. Admin. (In re Stewart)*, No. 19-1105, 2020 WL 1228669 (Bankr. E.D. La. Mar. 12, 2020) (Grabill)** (In inter-creditor dispute, lienholder is relieved of its unintended release of senior mortgage under exception to Louisiana public records doctrine.).

{823} ***In re Donohue*, No. 19-41271 CN, 2020 WL 419727 (Bankr. N.D. Cal. Jan. 27, 2020) (Novack)** (240% interest rate in loan by Gaia Finance to Chapter 13 debtor is unconscionable.).

{824} ***In re Jarvis*, No. 19-10085, 2020 WL 211406 (Bankr. W.D.N.C. Jan. 2, 2020) (Hodges)** (Applying Virginia UCC, security interest perfected in name of parent entity in a prior transaction does not create a perfected security interest in a subsequent transaction with an affiliate. Debt is unsecured in the Chapter 13 case.).

{825} ***Coots v. Ford Motor Credit Co., LLC (In re Coots)*, No. 19-ap-10, 2019 WL 4458375 (Bankr. N.D. W. Va. Sept. 17, 2019) (Flatley)** (Ford Motor Credit did not violate Uniform Enforcement of Foreign Judgments Act when it garnished debtor in Ohio but debtor lived in West Virginia.).

§ 138.7 Miscellaneous Claims Issues

{826} ***Green v. Prince George's Cnty. Office of Child Support*, No. TDC-19-2852, 2020 WL 4436371 (D. Md. Aug. 3, 2020) (Chuang)** (Appeal of denial of second objection to child support claim is dismissed by district court because the underlying objection is still in litigation in the bankruptcy court and no final judgment has entered for purposes of appeal. Arguments in the second objection are redundant of the first objection and were previously rejected by the bankruptcy court.).

{827} ***Shiell v. Jones*, No. 19-848-WBV-KWR, 2020 WL 2331637 (E.D. La. May 11, 2020) (Vitter)** (Forbearance agreement and release signed by Chapter 13 debtor in 2013 that acknowledge liability on note preclude adversary proceeding in 2019 in which debtor claims the note was a forgery. Grant of stay relief in Chapter 13 case together with state court orders confirm that *res judicata* also bars debtor's adversary proceeding challenging the note as a forgery.).

{828} ***Barnes v. Henry*, No. 19-cv-00210-DKW-RT, 2020 WL 201457 (D. Haw. Jan. 13, 2020) (Watson)** (Veil piercing may be available to allow plaintiffs' admiralty claim for maintenance and cure to be asserted against the vessel that would then be owned by the Chapter 13 debtor, rather than by the debtor's corporation; but cure and maintenance claim cannot be asserted against the debtor personally because *in personam* liability would be dischargeable in the debtor's Chapter 13 case.).

{829} ***Murphy v. World Acceptance Corp. of Okla. (In re Murphy)*, No. 20-1035-JDL, 2020 WL 5519483 (Bankr. W.D. Okla. Sept. 14, 2020) (Lloyd)** (Chapter 13 debtors' complaint against World Acceptance Corporation for failing to qualify to do business under Oklahoma law and for excessive interest charges is dismissed with respect to qualifying to do business but survives with respect to excess interest claim.).

{830} ***In re Melly*, No. 18-26036 (RG), 2020 WL 2617028, at *3–*4 (Bankr. D.N.J. May 22, 2020) (Sherwood)** (When unsecured creditor was granted stay relief and successfully prosecuted fraudulent conveyance action against Chapter 13 debtor and a related entity, creditor is entitled to postpetition interest at federal judgment rate and entitled to recover attorney's fees from the estate. "[W]here the policy considerations supporting § 502(b)(2) are not implicated, some courts have found that there are exceptions to the prohibition on the collection of post-petition interest. . . . [T]his is a unique case involving a 'solvent debtor' dealing with the claims of his mortgage lender . . . . The disallowance of post-petition interest . . . would provide a windfall to the Debtor based solely on the fact that he filed bankruptcy. . . . [T]he federal judgment rate of interest should apply in bankruptcy cases as opposed to the rate established by contract or state law. . . . Essentially, the Court 'deputized' Chartwell as the estate representative to pursue the Fraudulent Transfer Case.

Chartwell did so and prevailed . . . . There is no doubt that Chartwell's reasonable fees and expenses incurred in the Fraudulent Transfer Case after it was granted stay relief to continue with the action should be paid.").

{831} ***In re Greene*, No. 3:18-bk-01303-JAF, 2020 WL 1987790 (Bankr. M.D. Fla. Apr. 24, 2020) (Funk)** (Judgment creditor with two judgments on two notes, both guaranteed by Chapter 13 debtor, has allowed claim for sum of the two judgments; second judgment did not merge into first under state law because each judgment involved a different note.).

{832} ***In re Wagner*, No. 17-11252-TPA, 2020 WL 1844615 (Bankr. W.D. Pa. Apr. 9, 2020) (Agresti)** (With one spouse in Chapter 13 and the other in Chapter 12 and after several failed attempts to inspire the parties to complete a state court divorce with equitable distribution of property, the bankruptcy court carries through its threat to perform the equitable distribution of property in the bankruptcy court applying Pennsylvania domestic relations law principles.).

{833} ***Dennis' Seven Dees Landscaping, Inc. v. Pickett (In re Pickett)*, No. 19-3004-tmb, 2020 WL 812990 (Bankr. D. Or. Feb. 18, 2020) (Brown)** (After successfully defending action for misappropriation of trade secrets under Oregon Uniform Trade Secrets Act, debtor's motion for attorney's fees is denied. Trade secrets action was not brought in bad faith and debtor would have incurred same attorney's fees defending non–Trade Secrets Act portion of lawsuit.).

{834} ***Maldonado Perez v. Banco Santander P.R. (In re Maldonado Perez)*, No. 18-00102 (BKT), 2020 WL 741233 (Bankr. D.P.R. Feb. 13, 2020) (Tester)** (Bankruptcy court denied Bankruptcy Rule 9023 relief from judgment that debtor's adversary proceeding to strip bank's lien is beyond jurisdiction of the bankruptcy court because it involves property of a corporation that is not property of the Chapter 13 estate.).

{835} ***In re Al-Saoudi*, No. 10-44521-drd-11, 2020 WL 443831 (Bankr. W.D. Mo. Jan. 27, 2020) (Dow)** (Creditor's motion to vacate discharge entered in prior Chapter 11 case is denied in subsequent Chapter 13 case in which debtor objected to proof of claim on the basis that it could not be allowed in an amount other than the amount established in the prior Chapter 11 case. Creditor's motion was filed more than a year after entry and without a ground that could be considered under Federal Rule of Civil Procedure 60.).

{836} ***In re Digirolamo*, 612 B.R. 726 (Bankr. M.D. La. Jan. 6, 2020) (Dodd)** (Faulty stucco work was not personal liability of Chapter 13 debtor because contract for work was between general contractor and limited liability corporation. There was no privity of contract between the debtor individually and the injured homeowner and no proof sufficient to pierce corporate veil to find debtor was alter ego of LLC.).

{837} ***In re Thiessen*, No. 18-23176 (RDD), 2020 WL 62607 (Bankr. S.D.N.Y. Jan. 3, 2020) (Drain)** (Claim against Chapter 13 debtor for guaranty of attorney's fees in state court matrimonial dispute is barred by New York State law that precluded collection of attorney's fees in matrimonial representation when attorney required debtor to sign confession of judgment without proper disclosures and court approval.).

{838} ***Little v. Career Educ. Corp. (In re Little)*, 610 B.R. 558 (Bankr. D.S.C. Jan. 3, 2020) (Waites)** (Bankruptcy court declines to order arbitration of core bankruptcy issues including abuse of process under § 105(a) and dischargeability under § 523(a)(8) with respect to claims against Colorado Technical University, Inc. Hearing is scheduled with respect to arbitration of related state law claims of unfair trade practices, breach of contract and the like.).

{839} ***In re Bair*, No. 15-61403, 2019 WL 6045481, at *3 (Bankr. N.D. Ohio Nov. 14, 2019) (not for publication) (Kendig)** (Applying § 347, Chapter 13 debtor's objection to claim of Citi is not proper procedure for debtor to obtain funds paid by Chapter 13 trustee to Citi pursuant to confirmed plan but returned to trustee when creditor was not found. Instead, funds are properly paid into the court registry and held for Citi to claim; failing that, money will be paid to Treasury after five years. "[Section] 347(a) would be rendered meaningless[] if a trustee or a debtor could simply ask the court to disallow a claim every time the trustee was unable to locate a creditor during a case. . . . [T]he funds on hand for the Claim belong to Citi—not Debtor. And if the funds remain unpaid 90 days after the Trustee's final distribution under 11 U.S.C. § 1326, they must be paid into the court for disposition as unclaimed funds pursuant to § 347(a).").

{840} ***In re Miller*, No. 19-41236, 2019 WL 6002189, at *1–*2 (Bankr. N.D. Ohio Nov. 12, 2019) (not for publication) (Kendig)** (Unsecured claim holder that states an interest rate on the face of its proof of claim is not entitled to postpetition interest in a Chapter 13 case; it is not necessary for the debtor or trustee to object to every claim that contains an interest rate in order to disallow postpetition interest. "The dilemma for the court, the chapter 13 trustee, and debtors arises because section nine of the official claim form contains a field for interest . . . . Frequently, unsecured creditors complete this section, raising the question of whether inclusion of the interest rate is a request for payment of interest on an unsecured claim or simply a recitation of the contractual terms of the debt at the time the case was filed? Without a clear answer, the chapter 13 trustee cautiously requires an objection to disallow interest on an unsecured claim. . . . Reading the Code to require a claim objection permits a creditor to file a claim for interest to which it is not entitled with the hope that it will benefit from an unwary debtor or trustee. It also burdens the trustee or debtor with filing objections to disallow payment of unauthorized interest. . . . When a creditor files a proof of claim setting forth an unsecured claim, it is not entitled to interest.

Exceptions to the rule are inapplicable and do not support forcing a claim objection. From here forward, the court will not require debtors and/or trustees to file claim objections that simply seek to disallow the payment of interest[.]").

{841} ***DeWitt v. First Nat'l Bank of Pa. (In re DeWitt)*, 608 B.R. 794 (Bankr. W.D. Pa. Nov. 4, 2019) (Deller)** (Chapter 13 debtors are entitled to a Bankruptcy Rule 2004 examination of a mortgagee with the respect to the existence of credit disability insurance and/or the mortgagee's failure to obtain credit disability insurance.).

{842} ***Peterson v. Phares (In re Peterson)*, 609 B.R. 704 (Bankr. N.D. Ohio May 11, 2018) (Woods)** (Disallowance of claim based on a note is not appropriate when improper acceleration did not excuse Chapter 13 debtor's obligation to pay. Unmatured portions of note are part of the claim for bankruptcy purposes. Bankruptcy court lacks jurisdiction to hear debtor's state law claims against lender.).

§ 138.8 Mortgage Claim Issues

{843} ***Hernandez v. Franklin Credit Mgmt. Corp. (In re Hernandez)*, 820 F. App'x 593 (9th Cir. Sept. 8, 2020) (not for publication) (Hawkins, McKeown, Kendall)** (Statute of limitations for enforcement of deed of trust was triggered by Chapter 7 discharge in 2012 and mortgagee's foreclosure right was lost before debtor filed current Chapter 13 case. Statute of limitations to foreclose on deed of trust ran from last installment due before debtor's discharge, more than six years before current Chapter 13 petition.), *aff'g* No. C19-0207-JCC, 2020 WL 583814 (W.D. Wash. Feb. 6, 2020) (Coughenour) (Applying Washington State's reciprocal attorney's fees statute, Chapter 13 debtor recovers $21,945 in attorney's fees from mortgagee after prevailing before district court in claim objection based on time bar to enforcement of deed of trust.).

{844} ***Lane v. Bank of N.Y. Mellon (In re Lane)*, 959 F.3d 1226, 1228–33 (9th Cir. June 1, 2020) (Paez, Bea, Adelman)** (Distinguishing *HSBC Bank USA v. Blendheim (In re Blendheim)*, 803 F.3d 477 (9th Cir. Oct. 1, 2015) (Paez, Bybee, Callahan), § 506(d) does not void mortgage lien in Chapter 13 case when claim is disallowed because creditor did not prove it was the entity entitled to enforce the debt. "BONY filed a proof of claim . . . and represented that the claim was secured by a deed of trust . . . . Lane objected to BONY's claim. He alleged that the claim 'fail[ed] to establish standing' and failed to establish that BONY was 'the person entitled to enforce payment on the claim.' . . . BONY's attorney did not file a timely response to Lane's objection. . . . The bankruptcy court signed an order stating that the '[o]bjection is sustained' and that the claim is 'disallowed in its entirety.' . . . Lane completed the plan and received a discharge . . . . After receiving his discharge, Lane filed an adversary complaint . . . . Lane alleged that, because the court had disallowed BONY's claim, the court should declare the lien . . . void under 11 U.S.C. § 506(d) . . . . If the secured creditor does not file a proof of claim, it will forfeit its right to proceed against the debtor personally—the creditor will receive no payments through the bankruptcy proceeding and the creditor's right to proceed against the debtor personally will be discharged. However, under a longstanding principle of bankruptcy law, the creditor may ignore the bankruptcy proceeding, in which case its lien will pass through the proceeding unaffected. . . . [A] finding that the claim filer is not the person entitled to enforce the note is a finding that the filer is not the true creditor—it is a finding that someone other than the claim filer may be the person entitled to payment under the note. Importantly, such a finding does not imply that either the note or the lien securing the note is invalid. Rather, such a finding simply establishes that . . . the person before the court is not the person entitled to prosecute the claim . . . . [U]nder the factual record created when the court entered the claim-disallowance order, the person entitled to enforce the note did not file a proof of claim. . . . [A] bankruptcy court cannot destroy the property rights of the person who is the real party in interest based on the actions of a person who is not the real party in interest. . . . *Blendheim* did not involve a claim that was disallowed on the ground that the claim filer was not the person entitled to enforce the note. Instead, the debtor objected to the claim on the ground that the creditor did not attach a copy of the promissory note to its proof of claim and the copy the debtor possessed appeared to bear a forged signature. Thus, when the bankruptcy court sustained the objection and disallowed the claim, . . . it found that the note giving rise to the claim was invalid. Under those findings, § 506(d) voided 'the claim's associated lien.' . . . [A]pplying the bankruptcy court's finding that BONY was not the person entitled to enforce Lane's mortgage debt shows that the deed of trust securing that debt is not void under § 506(d). . . . [T]he deed of trust 'secures a claim against the debtor that is not an allowed secured claim,' but 'such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim.'"), *aff'g* 589 B.R. 399, 407–11 (B.A.P. 9th Cir. Sept. 26, 2018) (Brand, Spraker, Taylor) (Distinguishing *HSBC Bank USA, N.A. v. Blendheim (In re Blendheim)*, 803 F.3d 477 (9th Cir. Oct. 1, 2015) (Paez, Bybee, Callahan), default disallowance of first mortgagee's claim based on lack of standing to enforce the note was a substantive decision for purposes of lien voidance under § 506(d) but unlike *Blendheim*, debtor never disputed that he owed someone and disallowance of BONY's claim did not include any finding or holding that the debt was not enforceable by someone else. Debtor did not serve any other entity and the underlying lien was still enforceable by that other lienholder notwithstanding disallowance of BONY's claim in the Chapter 13 case. Bankruptcy court should not have voided lien under § 506(d) and should not have awarded debtor fees under California's reciprocal attorney fee statute. Lane scheduled Bank of America as holding the first-position mortgage on the debtor's residence. BONY filed proof of claim for the first-position lien. The debtor objected arguing that BONY failed to establish that it was the entity entitled to enforce the debt. BONY failed to oppose the claim objection and a default order was entered disallowing the claim. Lane made no payments on the first lien during a five-year Chapter 13 case and BONY never moved for relief from stay. After plan completion and discharge, BONY moved for reconsideration of disallowance of its claim. The bankruptcy court denied that motion and sustained the debtor's adversary proceeding with a judgment voiding the first deed of trust under § 506(d). "[T]he question of whether standing is a substantive or procedural objection has been addressed by only a few courts. However, those courts are unanimous in stating that it is a substantive objection under § 502(b)(1), which provides that a claim may be disallowed to the extent it is unenforceable

against a debtor under any applicable law, including state law. . . . [A] challenge to a claimant's standing is a substantive objection under § 502(b)(1), and not merely a procedural one, because it goes directly to the claimant's ability to enforce the debt. . . . Thus, the bankruptcy court did not err in concluding that lack of standing is a substantive objection under § 502(b)(1). And it matters not that the Claim Disallowance Order was entered as a result of BONY's default. . . . This is where we part company with the bankruptcy court's decision. We conclude that *Blendheim* is not applicable . . . because the bankruptcy court never adjudicated the validity of the first-position lien and the underlying note in the Claim Disallowance Order. . . . Implicit in *Blendheim*'s analysis is a conclusion that § 506(d) should apply only when a claim disallowance addresses the merits of the underlying debt. . . . The bankruptcy court never judged the first-position lien to be invalid in substance, only that BONY lacked standing to enforce it. . . . [T]he 'true' lienholder never subjected itself to the bankruptcy court's jurisdiction by filing a proof of claim; nor was this never-filed claim deemed disallowed. . . . In the Lien Avoidance action, Lane served only BONY and asked the court to avoid BONY's first-position lien. . . . Lane failed to notice the proper lienholder of his intent to avoid the lien under § 506(d), and the bankruptcy court violated an unknown party's due process rights by expunging its deed of trust without notice and an opportunity to be heard.").

{845} ***Griffin v. Hope Fed. Credit Union*, 810 F. App'x 450 (6th Cir. May 1, 2020) (Boggs, Griffin, Readler)** (Stipulation of dismissal with prejudice of Chapter 13 debtor's wrongful foreclosure action against mortgagee was appropriate and within jurisdiction of district court notwithstanding separate pending wrongful detainer action.).

{846} ***Farrington v. U.S. Bank Tr. N.A. (In re Farrington)*, 790 F. App'x 490 (3d Cir. Jan. 14, 2020) (Jordan, Bibas, Phipps)** (*Res judicata* barred Chapter 13 debtor's adversary proceeding challenging U.S. Bank's standing to foreclose. State court decided identical standing issue against debtor in prepetition foreclosure action.).

{847} ***Saccameno v. U.S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1078–88 (7th Cir. Nov. 27, 2019) (Bauer, Brennan, St. Eve)** (For reckless and reprehensible loan servicing and debt collection practices during and after completion of Chapter 13 case, after jury trial, Ocwen ordered to pay compensatory damages of $582,000; punitive damages of $3 million awarded by jury are reduced to $582,000. "[I]n December 2009, [debtor] began a Chapter 13 plan under which she was required to cure her default over 42 months while maintaining her ongoing monthly mortgage payments. . . . [I]n October 2011, shortly after it acquired her previous servicer . . . Ocwen sent her a loan statement saying, inexplicably, that she owed $16,000 immediately. . . . Her statements continued to fluctuate: her February 2013 statement said she owed about $7500, her March statement, $9000. A month later, Ocwen now owed *Saccameno* about $1000 in credit . . . . [T]he bankruptcy court issued a notice of final cure, Fed. R. Bankr. P. 3002.1, informing Ocwen that Saccameno had completed her payments. Ocwen never responded to the notice, and the court entered a discharge order on June 29, 2013. . . . Ocwen . . . reviewed the discharge but mistakenly treated it as a dismissal. . . . [E]ach check was being placed into a suspense account and not being applied to the loan. . . . Saccameno would frequently call Ocwen's customer service line and each time was directed to a new, similarly unhelpful person. . . . Ocwen sent Saccameno an offer to refinance her mortgage . . . . Saccameno's counsel diligently walked Ocwen's representative through its own records payment by payment . . . confirming that Saccameno had made each payment. . . . [Ocwen] continues to place most of the blame on what it calls 'an isolated "miscoding" error committed by a lone employee, identified as "Marla."' . . . Her error was one among a host of others, and each error was compounded by Ocwen's obstinate refusal to correct them. . . . We are not sure how many human errors a company like Ocwen gets before a jury can reasonably infer a conscious disregard of a person's rights, but we are certain Ocwen passed it. The record is replete with evidence that Ocwen's servicing of Saccameno's loan was chaos from the moment Ocwen began working on the loan in 2011 to the day of the jury's verdict nearly seven years later. . . . The utter lack of explanation also supports a finding of corporate complicity. . . . The jury heard evidence that *no one* at Ocwen took any steps, whatsoever, to investigate how Marla's mistake . . . was made or how Ocwen would prevent it from happening again. . . . Ocwen had no explanation for how this whole ordeal happened, let alone how it might be avoided in the future. . . . The loan modification offers were even worse. Putting to one side their timing, the terms, especially of the second offer, were far from generous. Why would Saccameno, having then endured four years with Ocwen, want to chain herself to the company three decades more, only to owe it money at the end? . . . Ocwen insisted it had not seen errors like these before, but its representative admitted it had never bothered to look. The jury was not required to accept Ocwen's bare assertion that this was a unique case—especially considering the consent decrees implying it was not—and could have inferred that this is just how Ocwen does business. For that, Illinois law permits punitive damages. . . . [T]he record contains evidence that Ocwen was a recidivist. The consent decrees described how it had treated other customers as it did Saccameno, and that it had continued its ways despite repeated warnings from regulators. The number of opportunities Ocwen had to fix its mistakes is the core fact that justifies punishment in this case. . . . Ocwen's conduct was reprehensible . . . . Ocwen was . . . indifferent to her rights, including those rights that originated from her bankruptcy. No evidence supports that Ocwen was acting maliciously, though the number of squandered chances it had to correct its mistakes comes close.").

{848} ***Lanton v. Ocwen Loan Servicing, LLC*, 793 F. App'x 398 (6th Cir. Nov. 26, 2019) (Boggs, Moore, Stranch)** (Court of appeals reverses dismissal of Chapter 13 debtors' RESPA claims against mortgage servicer—district court applied too narrow analysis of debtors' claim of damages from Ocwen's misapplication of payments and mishandling of escrow.).

{849} ***Lee v. Select Portfolio Servicing, Inc. (In re Lee)*, 781 F. App'x 677 (9th Cir. Oct. 24, 2019) (Farris, Leavy, Rawlinson)** (Dismissal of Chapter 13 debtor's complaint against mortgage servicer was appropriate without leave to amend because amendment would be futile.), *aff'g*, No. CV 18-6851-JFW, 2018 WL 7501124 (C.D. Cal. Dec. 7, 2018) (Walter) (After dismissal of

most recent Chapter 13 case in a series of cases filed to stop foreclosure, bankruptcy court appropriately retained jurisdiction to dismiss with prejudice debtor's adversary proceeding challenging the mortgage.).

{850} ***Investment Consultants, Inc. v. Ramirez Ramirez (In re Ramirez Ramirez)*, No. CC-19-1257-STaF, 2020 WL 4436263 (B.A.P. 9th Cir. Aug. 3, 2020) (not for publication) (Spraker, Taylor, Faris)** (Bankruptcy court erroneously disallowed HELOC claim based on finding that debt was owned by someone other than the creditor that filed the proof of claim; recorded assignment to filing creditor was sufficient to prove that claimholder was owner of the loan and could file proof of claim. Remand was necessary to determine actual amount of debt and to determine whether debtors' counsel's funding of the HELOC without telling the debtors renders the debt unenforceable.).

{851} ***Rickert v. Specialized Loan Servicing LLC (In re Rickert)*, No. MT-19-1120-LBG, 2020 WL 1170732 (B.A.P. 9th Cir. Mar. 9, 2020) (not for publication) (Lafferty, Brand, Gan)** (Specialized Loan Servicing LLC was real party in interest with possession of mortgage note and proof of an assignment. SLS had standing to file claim for mortgage debt in Chapter 13 case. Debtor's persistent meritless arguments to the contrary were rejected and stay relief granted.), *aff'g* No. 18-60937-13, 2019 WL 1959898 (Bankr. D. Mont. Apr. 29, 2019) (Hursh) (Specialized Loan Servicing has standing to file proof of claim on behalf of original holder of mortgage. Prima facie validity of proof of claim under Bankruptcy Rule 3001(f) was not overcome by debtor's frivolous theories gathered from the Internet. SLS tendered evidence that it was in possession of the original note endorsed in blank.).

{852} ***Reilly v. Wells Fargo Bank (In re Reilly)*, No. AZ-19-1187-SFB, 2020 WL 710371 (B.A.P. 9th Cir. Feb. 11, 2020) (not for publication) (Spraker, Faris, Brand)** (Bankruptcy court correctly determined that Wells Fargo was successor by merger to rights of Wachovia and World Savings as original lender to Chapter 13 debtor and debtor's discharge in prior Chapter 7 case did not extinguish Wells Fargo's lien or debt.).

{853} ***Lee v. Nationstar Mortg., LLC (In re Lee)*, No. OR-19-1140-FBS, 2020 WL 710360 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Faris, Brand, Spraker)** (In context of reverse mortgage, bankruptcy court correctly determined that Nationstar could advance funds for payment of property taxes and then charge payments to loan balance. Taxes were due under Oregon law at the time paid by Nationstar notwithstanding that state could not foreclose delinquent taxes for three years.).

{854} ***Zenteno v. Bank of Am., N.A.*, No. 8:17-cv-02591-T-02TGW, 2020 WL 4816037 (M.D. Fla. Aug. 19, 2020) (Jung)** (Chapter 13 debtors' claim that Bank of America committed fraud and misrepresentation in connection with a HAMP modification application submitted after the Chapter 13 petition survives summary judgment. Complaint alleges that in 2009 BOA advised the debtors to refrain from making regular mortgage payments to qualify for a HAMP modification, encouraged the debtors to make trial payments and then initiated foreclosure, never intending to approve a loan modification.).

{855} ***Acevedo v. Loan Co. of San Diego*, No. 20-cv-1263-BAS-MSB, 2020 WL 4596760 (S.D. Cal. Aug. 10, 2020) (Bashant)** (Within days of dismissal of Chapter 13 petition, debtor's motion to district court for temporary restraining order to stop foreclosure is denied based on findings that debtor was dilatory in seeking relief in the district court and had little likelihood of success on merits of various claims under state and federal consumer protection statutes.).

{856} ***Zubair v. Bank of Am.*, No. 20-CV-1308 (LLS), 2020 WL 4431571 (S.D.N.Y. July 29, 2020) (Stanton)** (Chapter 13 debtor's claims against mortgagee and government for failing to maintain and secure a property in foreclosure are dismissed because there are no private causes of action under the FTC Act or under the Consumer Financial Protection Act. Pendent state law claims under the Zombie House laws are best left to other courts.).

{857} ***Yammine v. PNC Bank Nat'l Ass'n*, No. 3:19-cv-138-K-BN, 2020 WL 4720095 (N.D. Tex. July 9, 2020) (Horan), *report and recommendation adopted*, No. 3:19-cv-138-K, 2020 WL 4698326 (N.D. Tex. Aug. 12, 2020) (Kinkeade)** (Magistrate judge recommends dismissal of Chapter 13 debtor's claims that mortgage bank and its servicer promised to send application and other documents with respect to a home mortgage modification but never did so, resulting in a foreclosure and bankruptcy filing. Negligent misrepresentation action failed because it was based on misrepresentations about future conduct—promised modification that never came—and debtor's fraud claims failed to plausibly allege knowing or reckless misconduct.).

{858} ***Green v. 1900 Capital Tr. II*, No. TDC-19-2270, 2020 WL 3469506 (D. Md. June 25, 2020) (Chuang)** (After multiple litigations in state and federal courts, appeal of Chapter 13 debtor's adversary proceeding against mortgagee remanded to bankruptcy court to address debtor's claim that the mortgage was canceled and is now a fraudulent debt.).

{859} ***Keyes v. Wells Fargo Bank, N.A.*, No. 3:20-cv-633-G-BN, 2020 WL 4228168 (N.D. Tex. June 23, 2020) (Horan), *report and recommendation adopted by* No. 3:20-CV-633-G (BN), 2020 WL 4220459 (N.D. Tex. July 22, 2020) (Fish)** (Magistrate judge recommends dismissal of Chapter 13 debtor's complaint against substitute trustee under deed of trust based on Texas statute that grants qualified immunity to substitute trustees under some circumstances.).

{860} ***Harrell v. Carrington Mortg. Servs., LLC*, No. 20-2359, 2020 WL 3412546 (E.D. Pa. June 22, 2020) (Kearney)** (Chapter 13 debtor's claims that mortgagee violated various state and federal laws by unlawful collection action were properly removed to the district court in Pennsylvania and should now be transferred to the bankruptcy court in Florida for consideration of abstention and other issues.).

{861} ***Woodard v. Deutsche Bank Nat'l Tr. Co.*, 615 B.R. 664 (D. Mass. June 5, 2020) (Gorton)** (Loan modification that reduced mortgage principal by $202,000 resolved Chapter 13 debtor's claims that prepetition foreclosure was invalid and debtor failed to prove elements of other state and federal causes of action against mortgagee.).

{862} ***In re Deville*, No. EDCV 20-158 JGB, 2020 WL 5044197 (C.D. Cal. June 3, 2020) (Bernal)** (Chapter 13 debtors lack standing to object to transfer of mortgage claim from Bank of America to Specialized Loan Servicing, LLC, and lack standing to appeal the denial of their objection. Bankruptcy Rule 3001(e)(2) limits standing to object to the transferor of a claim.).

{863} ***Trupp v. Bank of Am., N.A.*, No. 3:19-CV-00479-GNS, 2020 WL 1815940 (W.D. Ky. Apr. 9, 2020) (Stivers)** (Chapter 13 debtors' adversary proceeding against Bank of America and others for invasion of privacy, defamation and violations of FDCPA is dismissed because filing a proof of claim is protected by judicial statement immunity with respect to state law causes of action and FDCPA claim is barred by statute of limitations.).

{864} ***Ocwen Loan Servicing, LLC v. Winnecour*, No. 2:19-CV-527-NR, 2020 WL 1532286 (W.D. Pa. Mar. 31, 2020) (Ranjan)** (Bankruptcy court order granting trustee's motion to require loan histories and proof of correction of inappropriate fees and expenses charged in Chapter 13 cases—and prohibiting future charges—is vacated and remanded for further fact finding and legal conclusions.).

{865} ***Konar v. Ocwen Loan Servicing LLC*, No. 7:19-CV-119-D, 2020 WL 1492767 (E.D.N.C. Mar. 23, 2020) (Dever)** (District court dismisses Chapter 13 debtor's misguided appeal of orders that rejected debtor's objection to Ocwen's mortgage claim, denied confirmation of plan and dismissed Chapter 13 case.).

{866} ***Maggio v. Cenlar FSB*, No. CCB-19-1939, 2020 WL 1331930 (D. Md. Mar. 23, 2020) (Blake)** (Allegation that Cenlar FSB falsely claimed to have sent loan modification agreement to Chapter 13 debtors states a claim for breach of contract. Cenlar claimed that it sent final loan modification agreement to debtors by Federal Express but Federal Express records showed Cenlar never delivered package to Federal Express. Cause of action under Maryland consumer protection statutes fails because debtors failed to adequately plead reliance and damages.).

{867} ***Coppedge v. Specialized Loan Servicing LLC (In re Coppedge)*, No. 19-12-MN, 2020 WL 1332993 (D. Del. Mar. 23, 2020) (Noreika)** (In decade-long battle between pro se debtor and mortgagee that included "vague, repetitive, and nonsensical" claims that debts payable in currency had been forgiven by Congress in 1933, stay relief was appropriately granted to mortgagee. Multiple bankruptcy cases and endless litigation and relitigation—all barred by res judicata after state court foreclosure judgment—supported stay relief and other sanctions previously imposed by bankruptcy court and other courts.).

{868} ***Nowling v. SN Servicing Corp.*, No. 19-CV-1605 (PJS/TNL), 2020 WL 1244809 (D. Minn. Mar. 16, 2020) (Schiltz)** (Although factors under *New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (May 29, 2001), are all present with respect to Chapter 13 debtors' undisclosed RESPA action against mortgage servicer, judicial estoppel is not appropriate because debtors had no motive to conceal the action. The likelihood of any substantial recovery was very low. Even if revealed, debtors could have amended exemptions to cover any likely damage award. And once revealed in Chapter 13 case—albeit after completion of payments and discharge—Chapter 13 trustee showed no interest in pursuing any potential recovery on behalf of unsecured creditors.).

{869} ***Arkansas v. Wilmington Tr. Nat'l Ass'n*, No. 3:18-CV-1481-L, 2020 WL 1249570, at *8 (N.D. Tex. Mar. 16, 2020) (Lindsay)** (Neither grant of stay relief nor confirmation of plan that included payment of mortgage precluded—by judicial estoppel or res judicata—subsequent challenge to validity of mortgage lien because debtor claims not to have been aware of defect in lien at time of stay relief motion and validity of mortgage lien was not at issue at confirmation of plan. "The court, however, is not convinced that the treatment and allowance of Wells Fargo's claim in Plaintiff's Chapter 13 bankruptcy case was a final judgment or adjudication on the validity of Wells Fargo's lien because no party sought a determination regarding the status or validity of the lien on Plaintiff's homestead in the bankruptcy case, and, while the plan as confirmed and modified provides for the allowance of Wells Fargo's claim, it does not address the validity of the lien that forms the basis of the claim.").

{870} ***Colone v. Marshall (In re Colone)*, No. 19 C 6571, 2020 WL 1233775 (N.D. Ill. Mar. 12, 2020) (Coleman)** (Claim objection based on argument that Bank of America lacked chain of title or ownership of note was properly rejected based on rejection of identical arguments in prior Chapter 13 case.).

{871} ***Opperwall v. Bank of Am., N.A.*, No. 18-cv-07711-JST, 2020 WL 1227170 (N.D. Cal. Mar. 2, 2020) (Tigar)** (After many years of litigation and relitigation, dismissal of Chapter 13 debtor's claim that Bank of America was bound by a nonexistent mortgage modification agreement was appropriate.), *aff'g* No. 18-04090, 2018 WL 6133544 (Bankr. N.D. Cal. Nov. 21, 2018) (Lafferty) (Postdischarge adversary proceeding alleging that Bank of America agreed to modify mortgage is dismissed based on binding effect of

confirmation of plan that said debtor would seek mortgage modification and preclusive effect of dismissal of prior adversary proceeding in which debtor made same allegations. Confirmation of plan that "assumed" mortgage modification was binding on debtor and BOA but did not modify underlying mortgage. Debtor was substantially in arrears after years of paying at rate in confirmed plan but debtor failed in two adversary proceedings to demonstrate that BOA agreed to a loan modification. Rule 9011 sanctions awarded to BOA—filing of second adversary proceeding was frivolous and it was brought for improper purpose.).

{872} ***Todd v. Ocwen Loan Servicing, Inc.*, No. 2:19-cv-00085-JMS-DLP, 2020 WL 588589 (S.D. Ind. Feb. 6, 2020) (Magnus-Stinson)** (District court declines to consolidate civil actions against Ocwen and PHH in which Chapter 13 debtors claim use of REALServicing system by servicers produced a pattern and practice of broken and abusive mortgage servicing in Chapter 13 cases. Court concludes that factual differences overcome similar legal theories and that cases are at different stages of development.).

{873} ***Sutton v. Eagle Vista Equities LLC*, No. 19-cv-03880-EMC, 2020 WL 571056 (N.D. Cal. Feb. 5, 2020) (Chen)** (Based on presumption of regularity of foreclosure sale, bankruptcy court correctly determined that purchaser at mortgage foreclosure sale was a bona fide purchaser whose interests could not be avoided by Chapter 13 debtor.).

{874} ***Guiuan v. Wells Fargo Bank, N.A.*, No. 18-11423 (ES), 2020 WL 219870 (D.N.J. Jan. 15, 2020) (Salas)** (*Pro se* appeal of Chapter 13 debtor's challenge to foreclosure is dismissed for lack of merit and lack of compliance with appellate filing requirements.).

{875} ***Kajla v. U.S. Bank Nat'l Ass'n (In re Kajla)*, No. 19-1043 (MAS), 2019 WL 7288891 (D.N.J. Dec. 30, 2019) (Shipp)** (Chapter 13 debtor's claims of fraud by foreclosing mortgage holder were repeatedly rejected by courts in various challenges by debtor and spouse through four tag-team bankruptcies.).

{876} ***Koola v. Ditech Fin. LLC,* 611 B.R. 251 (D.S.C. Dec. 26, 2019) (Gergel), *aff'd,* 816 F. App'x 887 (4th Cir. Aug. 24, 2020) (not for publication) (Gregory, Wynn, Quattlebaum)** (Fannie Mae, U.S. Bank and Ditech, as servicer, all had standing to enforce the note in Chapter 13 case, including standing to seek stay relief, object to confirmation and seek dismissal.), *aff'g* 604 B.R. 240 (Bankr. D.S.C. Jan. 15, 2019) (Waites) (Chapter 13 debtor's motion for new trial of claim objection against mortgagee and servicers is denied because there was ample evidence of standing, copies of lost note were admitted and transfers to bank from Fannie Mae were documented. Ditech as servicer had authority to file proof of claim.).

{877} ***Beach v. Nationstar Mortg. LLC*, No. 4:19-cv-00340-DCN, 2019 WL 6467814 (D. Idaho Dec. 2, 2019) (Nye)** (Chapter 13 debtors' convoluted claims against mortgagee and servicer are barred by judicial estoppel given that debtors conceded in open court that defendants had standing and that debtors would not oppose foreclosure once defendants proved possession of the note. Defendants proved possession of the note and debtors then brought an identical lawsuit raising same issues.).

{878} ***Stone v. JPMorgan Chase Bank, N.A.*, 415 F. Supp. 3d 628, 632–34 (E.D. Pa. Nov. 27, 2019) (McHugh)** (Chapter 13 debtor's "disturbing" claims under FDCPA and Pennsylvania consumer protection statutes that Chase violated Bankruptcy Rule 3002.1 final cure order and discharge order are dismissed because Chase was not a debt collector and (ironically) debtor could not prove reliance when debtor knew that servicer was not accounting correctly but debtor continued to send payments anyway. Debtor's claims of violation of discharge injunction must be presented as a motion for contempt to the bankruptcy court that issued the discharge. "Defendant correctly asserts that it is beyond the reach of the FDCPA because it does not qualify as a 'debt collector' under the statute. . . . Plaintiff cannot state a claim under Pennsylvania's UTPCPL because he cannot show justifiable reliance upon the Defendant's alleged wrongful behavior. . . . Plaintiff submitted what he believed to be his correct mortgage payment to Defendant on a monthly basis, consistently disputing Defendant's contention that he was behind on his mortgage and owed additional fees. . . . As a result, it cannot be said that Plaintiff has 'relied' upon the Defendant's purported misrepresentations or deceptive acts in any meaningful sense. In a somewhat ironic outcome, Plaintiff's knowledge of Defendant's allegedly wrongful behavior . . . bars him from bringing a claim against Defendant under the UTPCPL. . . .").

{879} ***Lawson v. Deutsche Bank Nat'l Tr. Co.*, No. 1:18-cv-14855-NLH, 2019 WL 4386746 (D.N.J. Sept. 13, 2019) (Hillman)** (Bankruptcy correctly determined that state court foreclosure judgment precluded Chapter 13 debtor's challenge to mortgagee's standing because state court rejected debtor's claims of fraud and rejected debtor's arguments about deficiencies in the chain of assignments.).

{880} ***Walton v. Carrington Mortg. Servs., LLC*, No. 1:17-cv-330, 2018 WL 10509379 (E.D. Tenn. Nov. 14, 2018) (McDonough)** (Pro se Chapter 13 debtors' multi-count complaint against mortgagee and servicer is barred by res judicata effect of confirmed plan that surrendered the property.).

{881} ***In re Caraballo Torres*, No. 15-06680-BKT13, 2020 WL 5499095 (Bankr. D.P.R. Sept. 10, 2020) (Tester)** (Disputed material facts with respect to payment history during 59 months of plan prevent summary judgment with respect to whether debtors are current on their mortgage.).

{882} ***French v. Federal Home Loan Mortg. Corp. (In re French)*, No. 18-01501 (MBK), 2020 WL 5105180 (Bankr. D.N.J. Aug. 28, 2020) (Kaplan)** (Reconsideration of denial of FHLMC's motion to dismiss Chapter 13 debtor's adversary proceeding is denied

but, *sua sponte*, bankruptcy court determines that it lacks subject matter jurisdiction over debtor's claims that she was victimized by foreclosure rescue scheme that left her property subject to a mortgage; adversary proceeding is dismissed without prejudice.).

{883} ***Crockett v. Nationstar Mortg., LLC (In re Crockett)*, No. 19-10030, 2020 WL 5083261 (Bankr. D.D.C. Aug. 27, 2020) (Teel)** (Pro se Chapter 13 debtor's motion to reconsider order dismissing adversary proceeding against Nationstar is denied. Debtor failed to timely file an amended complaint and now states no cause for relief from dismissal other than disagreement with dismissal.), denying reconsideration of No. 19-10030, 2020 WL 425388, at *3 (Bankr. D.D.C. Jan. 27, 2020) (Teel) (Chapter 13 debtor's multicount complaint against Nationstar and others is dismissed for the most part for failure to state claims under RESPA and failure to allege sufficient facts under many other theories. Claims objections embedded in the adversary proceeding were previously rejected and cannot be raised again in this complaint.).

{884} ***In re Bowen*, No. 20-01444-JW, 2020 WL 5530074, at *3–*4 (Bankr. D.S.C. Aug. 25, 2020) (Waites)** (Objection to claim of Real Time Resolutions, Inc., is sustained and claim is reduced to $15,948 amount on monthly statement from its predecessor, Shellpoint Mortgage Servicing, rather than $23,251 on proof of claim later filed by Real Time after transfer of claim. Real Time's claim was not entitled to *prima facie* effect under Bankruptcy Rule 3001(c)(2)(C) because it failed to provide a legible copy of note and mortgage, it provided inconsistent information with respect to interest rate and amount of interest due, it did not accurately complete Official Form 410A and it did not appear to contest debtor's objection to its claim. Debtor is entitled to attorney's fees and expenses of $1,812 under Bankruptcy Rule 3001(c)(1)(B)(i) and Real Time is forbidden to present omitted information in any contested matter or adversary proceeding. Chapter 13 case was filed on June 12, 2020. Shellpoint Mortgage was scheduled with a secured claim of $15,948. On April 1, 2020, Shellpoint transferred the mortgage to Real Time and Real Time then filed a proof of claim asserting $23,251 based on a Form 410A which purported to include a payment history beginning in 2006. Debtor objected to the Real Time proof of claim and attached a monthly statement dated January 21, 2020, showing the mortgage amount as $15,948. Real Time did not respond to the debtor's objection. "The payment history, which begins November 5, 2006, does not reflect receipt of any trustee disbursements or payments from Debtor during his prior bankruptcy case . . . . [T]he Proof of Claim does not indicate that the claim was transferred from Shellpoint Mortgage Servicing to Real Time post-petition . . . . Real Time failed to provide a copy of the promissory note and a legible copy of the Mortgage . . . , provided inconsistent information regarding the interest rate and amount of interest due on the loan, and failed to properly and accurately complete the Mortgage Proof of Claim Attachment (Official Form 410A). Real Time's failure to provide the required information to support its claim resulted in the filing the Objection to Claim by Debtor, delay in confirmation of his plan, and the incurrence attorney's fees and expenses in the amount of $1,812.00 . . . .").

{885} ***In re Santana Lamboy*, No. 14-9530 (MCF), 2020 WL 4723712, at *6–*8 (Bankr. D.P.R. Aug. 3, 2020) (Caban Flores)** (Neither Ocwen nor US Bank was able to prove possession or ownership of mortgage note, thus neither had standing to file proof of claim or to object to debtor's claim filed on behalf of Ocwen. Debtor's objection to the claim debtor filed on behalf of Ocwen is sustained and trustee is ordered to recover payments made to Ocwen because debtor could not prove that Ocwen was holder of the debt or had any entitlement to enforce the note. Debtor's objections to Ocwen's late-filed proof of claim and to US Bank's even-later-filed claim are sustained—the claims are not allowable and debtor's personal liability will be discharged. Mortgage lien will survive discharge, though it is not clear which entity has the right to enforce that lien. Debtor's motion to modify plan filed in last month of the 60-month plan is denied as unnecessary because debtor has completed payments under confirmed plan, debtor is entitled to discharge and none of the mortgage claims filed by any party—including the Bankruptcy Rule 3004 claim filed by the debtor—is allowable. Chapter 13 case was filed in November 2014. Debtor listed Ocwen as a secured creditor. US Bank filed a notice of appearance and an objection to confirmation. Debtor moved to reserve payments to Ocwen pending proof of Ocwen's secured status given that US Bank was alleging that it was the holder of the mortgage. In the interim, debtor filed a proof of claim on behalf of Ocwen. Neither US Bank nor Ocwen filed a timely proof of claim. Debtor objected to Ocwen's untimely proof of claim. US Bank responded stating that it had inadvertently failed to file a timely proof of claim. The bankruptcy court sustained the debtor's objection to Ocwen's claim. Nineteen months later US Bank filed a motion for reconsideration and for leave to file a late claim. "Ocwen Loan Servicing LLC is not the owner of the mortgage note because its name does not appear as the original mortgagee, on any of the endorsements or in the allonges provided. . . . Ocwen Loan Servicing LLC never owned the mortgage note. . . . US Bank is not Ocwen Loan Servicing LLC. . . . US Bank has not represented that Ocwen Loan Servicing LLC is or was its loan servicer. US Bank has no standing to prosecute Claims . . . in favor of Ocwen Loan Servicing LLC. US Bank never filed a transfer of claim for Claim . . . . US Bank cannot amend a claim filed by a separate legal entity. . . . US Bank has failed to provide the missing link in the chain of title to the mortgage note. . . . The affidavit addresses the relationship between US Bank and [Bank of America]. The highlighted entry of Schedule A refers to BlackRock Capital. . . . The affidavit does not say that US Bank merged with LaSalle or if LaSalle merged with Bank of America. US Bank fails to establish how Bank of America received the mortgage note. There is no allonge or endorsement from LaSalle to [Bank of America]. . . . The Debtor had filed Claim No. 4 in favor of Ocwen . . . . Ocwen was not the original mortgagee and there is no proof that it is or was the owner of the note in the various allonges and endorsements filed with the court. Thus, Claim No. 4 as filed by the Debtor must be disallowed because the Debtor has failed to establish that Ocwen is the owner of the note. It might be the servicer of the loan since Ocwen bears in its name the term 'servicing,' but the Debtor does not want to pay Ocwen for fear it might pay incorrectly. US Bank cannot defend Ocwen because they are separate legal entities. . . . Once the order of discharge is entered, the Debtor will emerge from bankruptcy with a discharge on his personal liability but maintains a lien on his principal residence. The reserved funds held by the Trustee will be returned to the Debtor because it is unknown who is the true creditor or the owner of the mortgage note

pertaining to his principal residence. . . . [T]he Trustee will recover the payments that were made to Ocwen and return them to the Debtor.").

{886} ***Holmes v. Ocwen Loan Servicing, LLC (In re Holmes)*, No. 19-08295 (SHL), 2020 WL 4279576 (Bankr. S.D.N.Y. July 24, 2020) (Lane)** (*Rooker-Feldman* doctrine and *res judicata* effect of state court foreclosure judgment bar Chapter 13 debtor's challenge to mortgagee's right to foreclose and preclude dispute about the amount of the foreclosure judgment.).

{887} ***Woodward v. U.S. Bank Nat'l Ass'n (In re Woodward)*, No. 18-00219-MDC, 2020 WL 4252638 (Bankr. E.D. Pa. July 21, 2020) (Coleman)** (Because default judgment against Chapter 13 debtor in state court foreclosure action was void, mortgagee is not precluded by that judgment or by *Stendardo v. Federal National Mortgage Ass'n (In re Stendardo)*, 991 F.2d 1089 (3d Cir. Apr. 9, 1993) (Mansmann, Hutchinson, Garth), from claiming different, larger amount pursuant to the note and mortgage in the Chapter 13 case.).

{888} ***In re Farzan*, No. 19-29256 (CMG), 2020 WL 2769046 (Bankr. D.N.J. May 27, 2020) (Gravelle)** (After multiple litigations in various state and federal courts, Chapter 13 debtor's objection to mortgagee's claim is barred by *Rooker-Feldman* and by collateral estoppel based on final judgment of foreclosure. Abstention is also appropriate and stay relief because debtor has made no payments to mortgagee in five years and has not offered or provided adequate protection.).

{889} ***Gibbs v. Gibbs (In re Gibbs)*, No. 19-5272, 2020 WL 2146487 (Bankr. N.D. Ga. May 5, 2020) (Hagenau)** (Debtor's nonfiling spouse is not entitled to reconsideration of judgment setting aside default judgment against Mr. Cooper and abstaining in adversary proceeding challenging mortgagee's right to foreclose mortgage with respect to which nonfiling spouse is not obligated personally.).

{890} ***Dells Land & Cattle Co. II, LLC v. Krus (In re Krus)*, No. 19-48, 2020 WL 2300409 (Bankr. W.D. Wis. Apr. 24, 2020) (Furay)** (Bankruptcy court has jurisdiction and neither compulsory nor permissive abstention is appropriate with respect to mortgagee's complaint that debtors trashed property after stay relief allowed mortgagee to foreclose. Dismissal is not appropriate because foreclosure judgment after stay relief did not resolve mortgagee's damages action with respect to property.).

{891} ***In re Dekom*, No. 19-30082-KKS, 2020 WL 4001046 (Bankr. N.D. Fla. Apr. 17, 2020) (Specie)** (In a decade-long effort by Chapter 13 debtor to avoid paying Mr. Cooper, debtor's third challenge to admissibility of certified final judgment of foreclosure is rejected.).

{892} ***In re Black*, No. 3:19-bk-31280-SHB, 2020 WL 1923638 (Bankr. E.D. Tenn. Apr. 16, 2020) (Bauknight)** (Chapter 13 debtors' claim that 2004 home mortgage was fraudulent is rejected based on failure to overcome presumption of regularity arising from proper notarization and estoppel based on debtors' reaffirmation of the same mortgage debt in prior Chapter 7 case.).

{893} ***In re Dekom*, No. 19-30082-KKS, 2020 WL 4001044 (Bankr. N.D. Fla. Apr. 6, 2020) (Specie)** (After nine years of not paying mortgage, a final judgment of foreclosure, litigation in several courts and years of mortgagee paying taxes and insurance, plan was not proposed in good faith, case was not filed in good faith, plan calling for sale some time in next two years is not feasible and stay relief is appropriate for cause.).

{894} ***In re Content*, No. 18-27925 (JKS), 2020 WL 1685844 (Bankr. D.N.J. Apr. 3, 2020) (Sherwood)** (Motion to set aside foreclosure sale that occurred while Chapter 13 case was dismissed and before reinstatement is denied without prejudice when notice to mortgagee may have been defective and debtor's request for equitable relief requires an adversary proceeding.).

{895} ***In re Segui*, No. 17-13441, 2020 WL 1488400, at *2 (Bankr. S.D.N.Y. Mar. 20, 2020) (Morris)** (Chapter 13 debtor's motion to compel discovery from Specialized Loan Servicing is granted with respect to "guidelines, program rules and regulations" used by SLS in denying loss mitigation to debtor. "[T]he Debtor is not challenging the denial of her loan modification request, but rather requesting information about how the Creditor arrived at its determination to deny the Debtor's loss mitigation request. The Creditor's blanket refusal to provide the information . . . does not assist the Debtor in determining whether to appeal and what appeal should address.").

{896} ***Jacobson v. Wells Fargo Bank, N.A. (In re Jacobson)*, No. 19-02094-gmh, 2020 WL 1237930 (Bankr. E.D. Wis. Mar. 13, 2020) (Halfenger)** (Objection to Wells Fargo's proof of clam and debtor's lawsuit against Wells Fargo are precluded in part by *Rooker-Feldman* effect of prepetition foreclosure judgment and in part by collateral estoppel effect of unsuccessful prepetition litigation. Claims of fraud at inception of loan by former spouse were adjudicated against the debtor, or could have been, in state court litigation and cannot be relitigated affirmatively or defensively in claims litigation in Chapter 13 case.).

{897} ***In re Dekom*, No. 19-30082-KKS, 2020 WL 4001043 (Bankr. N.D. Fla. Feb. 11, 2020) (Specie)** (Abusively litigious Chapter 13 debtor's *pro se* motion for stay pending appeal of order overruling objections to mortgage claim is denied. *Rooker-Feldman* doctrine bars debtor's repetitive challenges to final judgment of foreclosure.).

{898} ***Trevino v. HSBC Mortg. Servs., Inc. (In re Trevino)*, No. 13-7031, 2020 WL 535198, at *3–*21 (Bankr. S.D. Tex. Jan. 31, 2020) (Rodriguez)** (After transfer of loan by HSBC to U.S. Bank/Caliber, Caliber and U.S. Bank are jointly and severally liable for punitive damages of $9,000, statutory damages of $1,000 and attorney's fees for abuse of process, violation of several provisions of the FDCPA and under § 105(a). HSBC filed 3002.1 notice to collect ad valorem taxes that were paid by the trustee through the confirmed plan. Double payment of taxes resulted and HSBC received a refund from the taxing authority. Caliber acquired loan from HSBC subject to the pending 3002.1 notice but did not withdraw or amend the erroneous notice. "Of particular import are the 2010 and 2012 taxes that HSBC paid to Hidalgo County . . . . Notwithstanding the refunding of $4,450.15 on June 7, 2013, HSBC filed its July 24, 2013 Notice of Post-Petition Mortgage Fee, Expenses, and Charges . . . , claiming it was owed $4,450.15 from Plaintiffs' bankruptcy estate. . . . As a consequence of HSBC's 3002.1 Notice, . . . the Trustee filed her motion to dismiss Plaintiffs' case for failure to propose a feasible Plan. . . . On September 30, 2013, HSBC sold Plaintiffs' mortgage loan to USBT, with Caliber as servicer of the loan. . . . Included within the transfer to Caliber was the outstanding 3002.1 Notice. . . . At no time during the period in which Caliber and USBT owned/serviced the mortgage note did they amend, withdraw, or seek leave from this Court to withdraw the 3002.1 Notice. . . . Under Rule 3006, once Plaintiffs filed their Adversary Proceeding against Caliber and USBT, Defendants could not withdraw the 3002.1 Notice without Court intervention. . . . Defendants' complete failure in conducting due diligence and diligently pursuing a withdrawal or modification of the 3002.1 Notice is troublesome. . . . As assignees of the loan, Defendants had a responsibility to ensure the accuracy of all filings with this Court. . . . Defendants' actions, or lack thereof, taken together, constituted a maneuver which undermined the integrity of the bankruptcy system, disrupted the bankruptcy process, and were a deliberate abuse of the judicial process. . . . Defendants must bear the burden of proving its [*sic*] entitlement to the post-petition fees. Under Rule 3002.1(d), the prima facie evidentiary benefits of filing a proof of claim under Rule 3001(f) do not apply to a creditor's notice of post-petition fees . . . . [A] 3002.1 notice that is intended to result in some recovery for the creditor on the debt set out within the notice would be classified as 'debt collection.' . . . [A] proof of claim—or 3002.1 notice—filed in a bankruptcy case would be actionable under the FDCPA if it violated one of the Act's provisions. . . . Because there was a pre-petition arrearage . . . at the time Caliber acquired the mortgage servicing rights from HSBC, Plaintiffs were in default on their loan. Therefore, Caliber is a debt collector under the provisions of the FDCPA. . . . While there is at least one post-[*Midland Funding, LLC v. Johnson*, ___ U.S. ___, 137 S. Ct. 1407, 197 L. Ed. 2d 790 (May 15, 2017),] bankruptcy court that holds that the filing of a proof of claim cannot be an unconscionable debt collection practice prohibited by the FDCPA, many other courts continue to evaluate FDCPA claims arising from creditor conduct occurring during a bankruptcy case on their merits. . . . Caliber was not entitled to collect on taxes it was never owed. And by failing to withdraw, failing to seek leave to withdraw, or failing to modify the 3002.1 Notice, Caliber asserted its entitlement to reimbursement of the 2010 taxes. Because Caliber's 3002.1 Notice was a false representation in connection with a debt collection, this Court finds that the filing of the 3002.1 Notice violates § 1692e of the FDCPA . . . . By failing to withdraw, failing to seek leave to withdraw, or failing to modify the 3002.1 Notice, USBT claimed reimbursement of monies under the ad valorem provisions of the contract in which it was not entitled to. As such, this Court finds that USBT breached the Note and Deed of Trust. . . . Because Defendants deliberately abused the bankruptcy process, the Court found that Defendants' actions constituted bad faith. This Court . . . finds that pursuant to § 105(a), Defendants should be jointly and severally liable to Plaintiffs for punitive damages in the sum of $9,000, and should additionally compensate Plaintiffs for their reasonable and necessary attorneys' fees and expenses in prosecuting the abuse of process claim in an amount to be determined . . . . Because Rule 3002.1(i) provides relief in situations involving a lack of notice, rather than incorrect notice, the Court finds that it should deny Plaintiffs' request to award reasonable and necessary fees and expenses under Rule 3002.1(i).").

{899} ***Booker v. U.S. Bank Nat'l Ass'n (In re Booker)*, No. 19-30787 (AMN), 2020 WL 504799 (Bankr. D. Conn. Jan. 30, 2020) (Nevins)** (Prepetition foreclosure judgment preclusively determined U.S. Bank's standing to file proof of claim and also fixed value of property for purposes of stay relief in Chapter 13 case. *Rooker-Feldman* applies and debtor's arguments are precluded by state court judgment.), *reconsideration denied*, No. 19-30787 (AMN), 2020 WL 930091 (Bankr. D. Conn. Feb. 26, 2020) (Nevins).

{900} ***Williams v. CitiFinancial Servicing LLC (In re Williams)*, 612 B.R. 682 (Bankr. M.D.N.C. Jan. 24, 2020) (James)** (Bankruptcy court lacks jurisdiction with respect to Chapter 13 debtor's complaint that mortgage servicers violated FDCPA by demanding incorrect loan amounts after discharge based on misapplication of payments during Chapter 13 case. Other parts of complaint—including violations of § 524(i) and stay violations under § 362(k)—survive motion to dismiss.).

{901} ***In re Dekom*, No. 19-30082-KKS, 2020 WL 4000847 (Bankr. N.D. Fla. Jan. 21, 2020) (Specie)** (District court order dismissing Chapter 13 debtor's action alleging "public corruption" and "legal weirdness" by various courts and judges did not violate stay because it was not an action against the debtor, it was a frivolous action brought by the debtor.).

{902} ***Furrier v. Liberty Home Equity Sols., Inc. (In re Furrier)*, 611 B.R. 491 (Bankr. D. Mass. Jan. 16, 2020) (Bailey)** (Reverse mortgagee's motion to dismiss Chapter 13 debtor's complaint with respect to inherited property is denied; causes of action for failing to respond to payoff requests, for proceeding to foreclosure when debtor had pending sale that would pay mortgage in full and for breach of various duties under state law survive for trial.).

{903} ***In re Vega*, No. 19-20099-PRW, 2020 WL 211408 (Bankr. W.D.N.Y. Jan. 10, 2020) (Warren)** ($10,000 good-faith refundable deposit required by local law to insure that foreclosing mortgagee inspects and maintains property during foreclosure is disallowed as a component of mortgagee's arrearage claim. Mortgagee can file a 3002.1 notice if it is actually required to expend funds for inspections

or maintenance during the case. Mortgagee is denied attorney's fees based on borderline frivolousness of claim that the $10,000 deposit is a recoverable advance.).

{904} ***In re Vinson*, No. 19-10544-JGR, 2019 WL 6834842, at *5–*8 (Bankr. D. Colo. Dec. 5, 2019) (Rosania)** (Banks $60,000 claim for attorney's fees for four prepetition foreclosures, a prior Chapter 7 case, and participation in current Chapter 13 case is reduced to $11,785. Fee application was almost incomprehensible with lumped entries, multiple lawyers, and entries for noncompensable work. Petition and plan were filed in a good faith effort to save the debtor's home when the only issue was attorney's fees payable to the mortgagee's counsel. "Under Colorado state law, attorney's fees claimed under a contract are subject to a reasonableness standard, . . . , which is determined by reference to the so-called lodestar factors . . . . It has taken the Court hours to decipher a reasonable fee. The Court reviewed the one hundred and thirty-four pages on two different occasions and took fifteen pages of internal notes. The legal fee statements were in reverse chronological order, the fee summary contained a math error that took several hours to uncover, the attorney time was hopelessly lumped, the categories were hopelessly lumped, the categories were combined between the three promissory notes, three lawyers worked on the file . . . , there were multiple inter-office communications, there was legal research on fundamental bankruptcy law issues, and there was random allocation of fees between categories. . . . The Bank was overly aggressive in the post-petition period, using several lawyers on another one lawyer matter and engaging in far-fetched discovery. The animosity between the parties was palpable.").

{905} ***In re Smith*, No. 19-40227, 2019 WL 5688183 (Bankr. N.D. Ohio Nov. 1, 2019) (not for publication) (Kendig)** (Debtor states no ground to alter or amend judgment that state court foreclosure precludes argument that mortgagee lacked standing to seek stay relief.).

{906} ***CitiMortgage, Inc. v. Davis (In re Davis)*, 609 B.R. 324 (Bankr. N.D. Ill. Oct. 28, 2019) (Lynch)** (State court foreclosure removed to bankruptcy court by Chapter 13 debtor is properly remanded to state court. Bankruptcy court has no jurisdiction to consider foreclosure after property vested in the debtor at confirmation and debtor received discharge of debts other than the mortgage. Bankruptcy court previously rejected multiple challenges by debtor to mortgage held by foreclosing creditor.).

{907} ***Dabney v. Bank of Am., N.A. (In re Dabney)*, 613 B.R. 225 (Bankr. D.S.C. Oct. 25, 2019) (Waites)** (After remand, mortgage note, deed of trust and adjustable rate rider must be read together to conclude that 8% floor applied to loan throughout life of Chapter 13 plan; lenders/servicers did not violate various rules and statutes by flooring the mortgage interest rate at 8%.).

{908} ***In re Dees*, No. 19-40286-KKS, 2019 WL 9406122 (Bankr. N.D. Fla. Oct. 4, 2019) (Specie)** (In 14th bankruptcy by debtor and/or spouse all filed to contest payments made on a mortgage, venue is transferred from Northern District of Florida to Northern District of Georgia because debtor has no contacts with Florida and all property and other interests are in Georgia.).

{909} ***Pierce v. Deutsche Bank Nat'l Tr. (In re Pierce)*, No. 19-05271-LRC, 2019 WL 4686333 (Bankr. N.D. Ga. Sept. 25, 2019) (Craig)** (After dismissal of Chapter 13 case, bankruptcy court abstains in adversary proceeding challenging foreclosing creditor under various theories. One (odd) theory was that debtor owned a secret interest in property subject to foreclosure through a dba that transferred the property without the debtor's signature.).

{910} ***In re Crockett*, No. 19-00101, 2019 WL 4877576 (Bankr. D.D.C. Sept. 23, 2019) (Teel), *amended on reconsideration by* No. 19-00101, 2019 WL 6794441 (Bankr. D.D.C. Dec. 12, 2019) (Teel)** (Chapter 13 debtor's pro se motion to reconsider order denying debtor's objection to claim filed by Nationstar is granted in part: Nationstar's failure to explain disappearance of $1,289.18 of "unapplied funds" requires disallowance of that portion of Nationstar's claim.).

{911} ***In re Bulger*, 606 B.R. 526 (Bankr. W.D.N.Y. Sept. 16, 2019) (Bucki)** (Fees sought by mortgagee for filing proof of claim and objecting to Chapter 13 plan are reduced to amounts that would be allowed by Fannie Mae had the lender not been an individual—$4,000 claim reduced to $1,150. $7,500 attorney's fee requested for defending objection to proof of claim is denied in full because settlement of objection reduced amount of claim—indicating that claim was excessive—and it is not reasonable to require Chapter 13 debtors to pay attorney's fees for defense of an excessive claim.).

{912} ***In re Whittaker*, No. 12-20385, 2019 WL 9242990 (Bankr. D. Me. Aug. 23, 2019) (Cary)** (Mortgagee's motion to compel Chapter 13 debtor to execute quitclaim deed to carry out confirmed plan that surrendered property and required debtor to execute deed is granted. A quitclaim deed was apparently executed before this motion but mortgagee does not have possession of the original deed for recording purposes and asked the bankruptcy court to compel execution of a replacement deed.).

{913} ***In re Fikrou*, No. 19-13180-MKN, 2019 WL 5783260 (Bankr. D. Nev. Aug. 8, 2019) (Nakagawa)** (Foreclosure sale five years before Chapter 13 petition cannot be challenged because judgments of other courts resolved all of debtor's claims of fraud and there is no property interest remaining in debtor to support litigation in the bankruptcy court.).

{914} ***In re Spencer*, No. 12-20854-13, 2019 WL 4410352 (Bankr. D. Kan. July 24, 2019) (Berger)** (State court orders determined CitiMortgage's standing to file proof of claim for mortgage in Chapter 13 case but debtor's objection to that claim is sustained because

proof of claim was untimely filed—after the 90-day deadline in the former version of Bankruptcy Rule 3002(c). Section 502(b)(9) requires disallowance of claim notwithstanding years of extended litigation of other issues.).

{915} ***In re Lewis*, No. 15-15696-MKN, 2019 WL 5884339 (Bankr. D. Nev. June 10, 2019) (Nakagawa)** (After nearly four years in Chapter 13 with no confirmed plan and several mortgage claim assignments, Wilmington loses motion for stay relief based on absence of evidence from which bankruptcy court could grant relief.).

§ 138.9 Claim Reduction under § 502(k) after BAPCPA
§ 138.10 Chapter 7 Trustee Compensation: § 1326(b)(3) after BAPCPA

PART 8: CONVERSION AND DISMISSAL

§ 139.1 Summary of Part 8
§ 139.2 BAPCPA: More Grounds; Changed Consequences
A. STATUTES AND RULES DISCUSSED IN PART 8
§ 140.1 11 U.S.C. § 1307: Conversion and Dismissal
§ 140.2 11 U.S.C. § 706: Conversion to Chapter 13
§ 140.3 11 U.S.C. § 1112(d): Conversion to Chapter 13
§ 140.4 11 U.S.C. § 348: Effects of Conversion
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§ 140.6 Bankruptcy Rule 1017: Procedure for Conversion or Dismissal
§ 140.7 Bankruptcy Rule 1019: New Lists, Reports and So Forth
B. CONVERSION TO CHAPTER 7
1. PROCEDURE AND GROUNDS FOR CONVERSION
§ 141.1 Conversion by Debtor

{916} ***In re Webster*, No. 16-11147, 2020 WL 1867904, at *2 (Bankr. M.D. La. Apr. 14, 2020) (Dodd)** (Applying *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), trustee's objection to Chapter 13 debtor's conversion to Chapter 7 is overruled when basis for objection is "ordinary" failure to make payments and failure to turn over tax refund—insufficient proof of bad faith to prevent statutory right to convert. "The chapter 13 trustee's motion does not allege facts that if proven would support a finding that the debtor has concealed assets, made misrepresentations in his schedules or engaged in any other conduct that constitutes bad faith. She alleges facts that are neither unusual nor extraordinary: many debtors fall behind in payments and fail to turn over tax refunds. Absent proof of more, those actions or inactions alone are insufficient evidence of bad faith to prevent a debtor's statutory right under section 1307(a) to convert to a chapter 7 liquidation.").

§ 141.2 Conversion on Request of Creditor or Trustee

{917} ***Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 618 B.R. 1, 8–13 (B.A.P. 9th Cir. Aug. 12, 2020) (Taylor, Lafferty, Brand)** (Neither *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), nor *Law v. Siegel*, 571 U.S. 415, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (Mar. 4, 2014), overruled *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. Sept. 24, 2008) (Fletcher, Paez, Schwarzer): the bankruptcy court appropriately granted conversion motion rather than debtors' competing motion to dismiss to prevent debtors from continuing to delay and abuse the bankruptcy process while they dealt with criminal misconduct. Alternatively, debtors' failure to file tax returns required by § 1308 was ground for conversion under § 1307(e) and bankruptcy court appropriately determined that interests of creditors favored conversion over competing motion to dismiss. "*Law* characterized *Marrama*'s conclusion that a bankruptcy court could deny dismissal pursuant to § 105(a) as 'dictum.' . . . But *Law* reinforced that § 105(a) could be used to avoid [ ] 'futile procedural niceties . . . ' . . . . Section 1307(c) proffers a statutory basis to refuse to honor a § 1307(b) dismissal request, just as §§ 706(d) and 1307(c), read together, proffer a statutory basis to refuse to honor a § 706(a) conversion request. . . . [W]e hold that *Rosson* remains good law; a debtor's § 1307(b) right to dismissal is not absolute. . . . [T]here is no indication in the legislative history that Congress intended to grant debtors who have abused the bankruptcy process an unqualified right to choose the means by which they exit chapter 13. . . . [A]llowing the bankruptcy court to convert a chapter 13 case to chapter 7 for bad faith conduct, abuse of process, or a failure to file tax returns despite a debtor's § 1307(b) dismissal motion honors Congress' intention of keeping chapter 13 proceedings voluntary while preserving the integrity of the bankruptcy system by allowing the bankruptcy court to address abusive behavior. . . . Section 1307(e) unambiguously provides that a bankruptcy court 'shall' dismiss the case or convert the case to chapter 7 . . . if the debtor fails to comply with § 1308 and a party in interest requests dismissal or conversion. . . . Given the mandatory language of § 1307(e), the bankruptcy court was required to consider the interests of creditors. It thoughtfully did so and determined that conversion, and not dismissal, would best serve their interests."), *aff'g* No. 4:18-bk-09638-BMW, 2020 WL 881443 (Bankr. D. Ariz. Feb. 21, 2020) (Whinery) (Bankruptcy court denies motion for stay pending appeal of order converting Chapter 13 case to Chapter 7 and denying debtors' competing motion to dismiss. Bankruptcy court found debtors' conduct to be in bad faith and abusive of bankruptcy.), *denying stay pending appeal of* No. 4:18-bk-09638-BMW, 2020 WL 504745 (Bankr. D. Ariz. Jan. 30, 2020) (Whinery).).

{918} ***In re Boyd*, No. 18-00832-NPO, 2019 WL 5061163 (Bankr. S.D. Miss. July 30, 2019) (Olack)** (Motion to convert to Chapter 7 is denied when trustee is holding postpetition wages which have not been distributed that would have to be returned to the debtor if conversion were granted. In addition, prepetition wrongful death case remains an asset of the Chapter 13 estate and postpetition car accident claim would be lost as an asset if the case converted to Chapter 7. That debtor lied during the Chapter 13 case to defraud grocery store of $1,200 cash can be addressed in various ways in the Chapter 13 case.).

§ 141.3 Cause for Conversion

{919} ***Clark v. S&J Adver., Inc.*, 611 B.R. 669 (E.D. Cal. Nov. 15, 2019) (Nunley)** (Conversion from Chapter 13 to Chapter 7 is appropriate based on abuse of the bankruptcy process when Chapter 13 debtors played fast and loose with respect to the value of an interest in a corporation. Debtors valued the interest at $42,250 in their schedules. Corporation then offered to buy the debtors' interest for $247,000. Debtors then argued that $247,000 was not enough but proposed and confirmed a plan based on the lower valuation in the schedules without revealing the true higher value.).

{920} ***In re Klosinski*, No. 18-12543-MKN, 2019 WL 5880400 (Bankr. D. Nev. July 2, 2019) (Nakagawa)** (Conversion to Chapter 7 based on unreasonable delay that is prejudicial to creditors is appropriate when debtor must pay homeowners' association in full because of substantial value in property but debtor has no visible means to do so in spite of numerous opportunities to amend plan or to sell the property.).

§ 141.4 Cause for Conversion Added or Changed by BAPCPA

{921} ***In re Calascibetta*, No. 19-20558-PRW, 2020 WL 260992 (Bankr. W.D.N.Y. Jan. 16, 2020) (Warren)** (After 220 days in a Chapter 13 case in which debtor failed to make payments, failed to comply with orders to provide for $400,000 tax claim and failed to demonstrate any ability to reorganize, debtor's motion to convert to Chapter 11 is denied and creditor's motion to convert to Chapter 7 is granted. Cause for conversion included prejudicial delay, failure to make payments and failure to offer a confirmable plan under § 1307(c)(1), (c)(3) and (c)(4).).

§ 141.5 Conversion *Sua Sponte*
§ 141.6 Automatic Conversion: The "Drop Dead" Clause

2. EFFECTS OF CONVERSION

a. IN GENERAL

§ 142.1 New Schedules, Statement, Meeting of Creditors and Deadlines
§ 142.2 Deadlines and Filing Requirements at Conversion after BAPCPA
§ 142.3 Application of § 707(b) Abuse Test at Conversion
§ 142.4 Notice Issues under § 342 at Conversion
§ 142.5 On Postpetition Claims
§ 142.6 On Relief from Stay

{922} ***In re Hardison*, No. 2:06-bk-20225, 2020 WL 1547906, at *3–*10 (Bankr. S.D. W. Va. Mar. 31, 2020) (Volk)** (After seven years in a Chapter 13 case without a confirmed plan and six years in Chapter 7 after conversion, stay relief granted to mortgagee for "cause." "[T]he Hardisons' mortgage note is in practically irretrievable default. Their last remittance was the September 2005 payment, over fourteen years ago. . . . This regrettable saga must come to a close.").

b. ON ENTITLEMENT TO POSTPETITION PROPERTY

§ 143.1 In Cases Filed before October 22, 1994
§ 143.2 In Cases Filed after October 22, 1994

{923} ***Brown v. Barclay (In re Brown)*, 953 F.3d 617, 618–24 (9th Cir. Mar. 23, 2020) (Schroeder, Friedland, Nelson)** (Funds fraudulently conveyed by debtor during Chapter 13 case remain in constructive possession of debtor at conversion to Chapter 7 for purposes of § 348(f)(1)(A) and are recoverable by Chapter 7 trustee. "[T]he debtor made unauthorized and fraudulent transfers of funds during the Chapter 13 proceeding. After the Bankruptcy Court converted the proceedings to Chapter 7 in response, the debtor argued that the transferred funds were no longer in the estate. . . . We agree that the funds should remain property of the estate, but we must endeavor to harmonize that result with the language of § 348(f)(1) . . . . [Section] 348(f)(1)(A) . . . effectively adopted the Chapter 7 approach, by defining the converted estate to exclude assets acquired after the initial filing. . . . This means that, after conversion to Chapter 7, creditors are barred from recovering property that was acquired by the debtor after filing the Chapter 13 petition. . . . Congress, in § 348(f)(1)(A), limited the property of the converted estate to include only property that 'remains in the possession of or is under the control of the debtor on the date of conversion.' . . . This second limitation prevents creditors from seeking to recover funds that were lawfully spent during the Chapter 13 proceeding and therefore no longer property of the estate. . . . The BAP majority . . . [concluded] that because the funds were not spent in good faith on ordinary living expenses, they remained part of the converted estate. . . . Although the BAP majority's approach . . . seems sensible, the statute does not say that. . . . The debtor Jason transferred the funds out of his actual possession to a close family member, in an effort to avoid payments to his creditors . . . . In

analogous criminal contexts, courts have consistently rejected efforts to evade the operation of the law by disguising ownership of fraudulently obtained funds or contraband. . . . We therefore hold that those funds remained within his constructive possession or control, and hence should be considered property of the converted estate under § 348(f)(1)(A).”), *aff'g* BAP No. SC–17–1068–AKuS, 2018 WL 2308267 (B.A.P. 9th Cir. May 21, 2018) (not for publication) (Alston, Kurtz, Spraker) (After conversion from Chapter 13 to Chapter 7, Chapter 7 trustee can recover inheritance received by debtor during Chapter 13 case that was transferred in bad faith to debtor's siblings. Notwithstanding plain language of § 348(f)(1), property transferred in bad faith before conversion remained property of the bankruptcy estate that could be recovered by the Chapter 7 trustee under § 549 when debtor did not use the inherited funds for necessary expenses during the Chapter 13 case. Shortly after filing a Chapter 13 case, the debtor received $64,267.97 from a probate estate. During the Chapter 13 case, without notice or court order, the debtor distributed $12,372 to each of his brothers. After conversion, the Chapter 7 trustee sought to avoid the postpetition transfers to the brothers under § 549. “Section 549 did not give Jason control over the transferred Inheritance Proceeds during his chapter 13 case within the meaning of section 348(f)(1)(A). . . . At best, Jason had a claim against his brothers and a right to initiate a lawsuit against them to attempt to recover the Inheritance Proceeds. . . . Thus, the bankruptcy court erred by concluding the Inheritance Proceeds remained property of Jason's chapter 7 estate under section 348(f)(1)(A) because Jason maintained control over them. . . . The Inheritance Proceeds Jason transferred to his brothers became property of estate in the converted case under section 348(f)(1) because Jason did not use those particular funds for ordinary and necessary living expenses. Declining to strictly apply the plain language of section 348(f)(1)(A), this Panel and other courts have consistently imposed a good faith requirement when a case is converted from chapter 13 to another chapter. . . . '[I]n enacting [s]ection 348(f), Congress intended to equalize the treatment of a debtor in a Chapter 13 case that is subsequently converted to a Chapter 7 case with the treatment of a debtor who filed a Chapter 7 petition originally.' . . . That code section, however, 'was never designed to be a safe harbor for debtors who fraudulently and surreptitiously dispose of property of the estate while in chapter 13.' . . . [C]ases support the proposition that Congress did not intend section 348(f)(1)(A) to allow debtors to freely dispose of property during chapter 13 proceedings that would otherwise have been part of the chapter 7 estate had the case been originally filed under chapter 7. Section 348(f)(1) only shields assets from becoming property of the estate if the debtor used the assets for 'ordinary' and 'necessary' living expenses prior to conversion. . . . [P]roperty of the chapter 13 estate on the petition date which later leaves the debtor's possession or control, but was not used for ordinary and necessary expenses, flows into the chapter 7 estate upon conversion. . . . The Inheritance Proceeds were property of Jason's estate as of the petition date. Jason never asserted his transfer of the Inheritance Proceeds to his brothers was done to pay his ordinary and necessary living expenses. . . . The bankruptcy court correctly determined that the Inheritance Proceeds were recoverable . . . under section 549 because the transferred Inheritance Proceeds remained property of the post-conversion estate under section 348(f)(1)(A).”).

{924} ***Castillo v. E.M. Dimitri, D.O. Prof'l Med. Corp.*, No. 19-10888, 2020 WL 1689871 (E.D. La. Apr. 7, 2020) (Guidry)** (Wrongful discharge action that arose when Chapter 13 debtor was terminated from employment after confirmation and one month before conversion to Chapter 7 is barred by judicial estoppel notwithstanding that action did not become property of Chapter 7 estate. District court does not reveal nature of reliance by bankruptcy court on nondisclosure one month before conversion.).

{925} ***El-Scari v. Comprehensive Mental Health Servs.*, No. 4:19-00179-CV-RK, 2019 WL 5386489, at *3 (W.D. Mo. Oct. 21, 2019) (Ketchmark)** (Judicial estoppel has no application when race discrimination and retaliation claims arose during Chapter 13 case that was immediately converted to Chapter 7. In absence of bad faith allegation, cause of action is not property of the Chapter 7 estate and judicial estoppel is not implicated. “Assets acquired post-petition are only included in the estate of a case converted from Chapter 13 under § 348 as a penalty for converting in bad faith. § 348(f)(2). . . . [T]he alleged discrimination occurred after Plaintiff filed her original bankruptcy petition. As a result, her potential claims would not have been included in the converted Chapter 7 bankruptcy estate even if she had disclosed them to the bankruptcy court[.]”).

{926} ***In re Braun*, No. 17-30532-btf7, 2020 WL 53818, at *2 (Bankr. W.D. Mo. Jan. 2, 2020) (Fenimore)** (Inheritance received 233 days after Chapter 13 petition is not property of Chapter 7 estate when debtors converted to Chapter 7 before inheritance is paid; applying § 348(f)(1)(A), inheritance did not exist at Chapter 13 petition and was not in the debtor's control on the date of conversion. Inheritance is not property of the Chapter 7 estate and is not subject to turnover to the trustee after conversion. “There is no evidence in the record that the debtors converted their chapter 13 case to chapter 7 in bad faith. So § 348(f)(2) does not apply . . . . Because the inheritance was neither property of the estate as of the filing of the chapter 13 petition nor in the possession of or under the control of the debtors on the date of conversion . . . under § 348(f)(1)(A) . . . the inheritance is not property of the debtors' chapter 7 estate.”).

§ 143.3 Payments Held by Chapter 13 Trustee at Conversion: § 1326(a)(2) after BAPCPA

{927} ***In re Evans*, 618 B.R. 493 (Bankr. E.D. Mich. Aug. 19, 2020) (Tucker)** (At conversion from Chapter 13 to Chapter 7 before confirmation, *Harris v. Viegelahn*, 575 U.S. 510, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (May 18, 2015), does not control; § 1326(a)(2) controls and trustee is directed to pay administrative expenses, including attorney's fees, before returning balance to the debtor.).

{928} ***In re Arnold*, No. 19-54252, 2020 WL 2462525, at *2 (Bankr. E.D. Mich. May 12, 2020) (Shefferly)** (Distinguishing *Harris v. Viegelahn*, 575 U.S. 510, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (May 18, 2015), at conversion to Chapter 7 before confirmation, third sentence in § 1326(a)(2) controls and trustee must pay administrative expenses—including debtor's attorney's fees—before returning balance on hand to debtor. “[T]he Court does not read the broad language [in] *Harris* as overriding the plain and unambiguous statutory

command in the third sentence of § 1326(a)(2) . . . . *Harris* did not address what a trustee should do about unpaid expenses of administration when a case is converted from Chapter 13 to Chapter 7.").

§ 143.4 Priorities after Conversion: Two Trustees and a DSO

{929} ***In re Sylvester*, No. 19-11716, 2020 WL 1140890 (E.D. La. Mar. 9, 2020) (Lemmon)** (After conversion from Chapter 13 to Chapter 7, bankruptcy court appropriately awarded administrative expense to attorney that prosecuted successful fraudulent conveyance action against Chapter 13 debtor. However, fee award is vacated for findings with respect to reasonableness. Creditor that prosecuted fraudulent conveyance action had derivative standing to pursue the avoidance action and Chapter 13 trustee joined as a party in that litigation. Decision is not clear with respect to what priority the administrative expense would have in the Chapter 7 case.).

§ 143.5 Bad-Faith Conversion

c. ON EXEMPTIONS AND LIEN AVOIDANCE

§ 144.1 Exemptions at Conversion

{930} ***In re Hampton*, 616 B.R. 917 (Bankr. S.D. Fla. June 18, 2020) (Grossman)** (Chapter 13 debtor owned homestead on petition date and is entitled to Florida homestead exemption without regard to conversion or sale or other disposition of property after petition. HELOC withdrawals used to pay creditors and family members were exempt equity from a homestead that did not defeat homestead exemption claim as of the original Chapter 13 petition date.).

§ 144.2 Lien Avoidance at Conversion

d. ON SECURED CLAIMS

§ 145.1 In Cases Filed before October 22, 1994

§ 145.2 In Cases Filed after October 22, 1994

{931} ***In re Jackson*, No. 16-42695-drd7, 2020 WL 536018, at *2–*4 (Bankr. W.D. Mo. Feb. 3, 2020) (Dow)** (Applying § 348(f), after conversion from Chapter 13 to Chapter 7, value of car for purposes of redemption under § 722 is not reduced by payments during Chapter 13 phase of case. When debtor chose not to file insurance claim for damage to car during Chapter 13 case, repaired value, not "as is" value, determines redemption amount after conversion. "[T]he pre-BAPCPA version specified that, for purposes of valuation, allowed secured claims in a chapter 13 were to carry through to any converted case, with the valuation reduced by payments made pursuant to the plan. In contrast, the amended version of § 348(f) explicitly states that valuations of allowed secured claims will not apply to a case converted to chapter 7. . . . [I]t is implicit from the language carving out chapter 7 cases that the payments made previously [ ] by the chapter 13 trustee are irrelevant to the valuation of the secured claim. . . . [T]he redemption value is not to be reduced by payments made to the secured creditor under the previous chapter 13. . . . The appropriate time for valuing collateral for purposes of redemption is the date the motion to redeem is filed or, if contested, the hearing date on the motion. . . . [A] debtor who chooses not to submit an insurance claim on damage to collateral should not be able to reap the benefits of his or her inaction. . . . [I]t would create a windfall in favor of the debtor who could redeem the property at a lower value, then collect the insurance proceeds and repair the damaged property, and enjoy the enhanced value at the expense of the lienholder.").

§ 145.3 Lienholders' Rights at Conversion under § 348(f) after BAPCPA

C. CONVERSION TO CHAPTER 11

§ 146.1 Standing, Procedure and Grounds for Conversion to Chapter 11

{932} ***In re Tsung Yu Chien*, No. CV 19-2131 JGB, 2020 WL 3965031 (C.D. Cal. Apr. 2, 2020) (Bernal)** (Debtor's motion to convert back to Chapter 11 from Chapter 13 under § 1307(d) after conversion from Chapter 11 to Chapter 13 was properly denied because of lack of evidence of the possibility of reorganization.).

{933} ***Burgess v. Powers*, No. 3:19-CV-2711-B, 2019 WL 7037581 (N.D. Tex. Dec. 20, 2019) (Boyle)** (Conversion from Chapter 13 to Chapter 11 is not automatic. Bad-faith conversion need not be addressed by bankruptcy court before the underlying Chapter 13 case is dismissed with a bar to refiling to stop bad-faith use of bankruptcy to stop foreclosure and other creditor action.).

{934} ***In re Elwell*, No. 17-51442, 2020 WL 762214, at *2 (Bankr. D. Conn. Feb. 14, 2020) (Manning)** (Mortgagee's motion to dismiss is granted and debtor's competing motion to convert from Chapter 13 to Chapter 11 is denied when debtor has failed to confirm a plan for two years and any reorganization is dependent on speculative appeal of litigation with mortgagee that debtor lost. "A motion to convert under section 1307(d) may also be denied and a case dismissed under section 1307(c) where the proposed plan is predicated on the outcome of litigation that remains pending because the feasibility of such a plan is speculative and protracted.").

{935} ***In re Calascibetta*, No. 19-20558-PRW, 2020 WL 260992 (Bankr. W.D.N.Y. Jan. 16, 2020) (Warren)** (After 220 days in a Chapter 13 case in which debtor failed to make payments, failed to comply with orders to provide for $400,000 tax claim and failed to demonstrate any ability to reorganize, debtor's motion to convert to Chapter 11 is denied and creditor's motion to convert to Chapter 7

is granted. Cause for conversion included prejudicial delay, failure to make payments and failure to offer a confirmable plan under § 1307(c)(1), (c)(3) and (c)(4).).

{936} ***In re Bello*, 610 B.R. 583, 585 (Bankr. E.D. Mich. Jan. 15, 2020) (Tucker)** (After finding that debtor was not eligible for Chapter 13, conversion to Chapter 11 is allowed subject to reservation of creditor's right to seek further conversion or dismissal based on bad faith and misconduct during Chapter 13 case. "While [*Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007)], concerned a debtor's motion to convert from Chapter 7 to Chapter 13, this Court has held that *Marrama*'s holding and reasoning applies [*sic*] as well to a motion to convert to Chapter 11.").

§ 146.2 Strategic Considerations: Costs and Benefits of Conversion to Chapter 11

{937} ***In re Monge*, No. 19-10475-t11, 2020 WL 1649616 (Bankr. D.N.M. Apr. 2, 2020) (Thuma)** (After conversion from Chapter 13 to Chapter 11, motion to reconsider stay relief is denied for ample cause including that debtors failed to pay mortgage since 2008, conveyed property to son to foil continuing foreclosure effort and debtors did nothing to advance either in the Chapter 13 case or after conversion to Chapter 11.).

§ 146.3 Incentives to Convert to Chapter 11 after BAPCPA
D. CONVERSION TO CHAPTER 12
§ 147.1 Standing, Procedure and Strategic Considerations
§ 147.2 Incentives to Convert to Chapter 12 after BAPCPA
E. CONVERSION TO CHAPTER 13
1. CONVERSION FROM CHAPTER 7 TO CHAPTER 13
§ 148.1 Procedure
§ 148.2 Absolute Right of Debtor?

{938} ***Woodberry v. McDermott (In re Woodberry)*, No. 19-CV-12576, 2020 WL 1508604, at *2–*4 (E.D. Mich. Mar. 30, 2020) (Steeh)** (With fraudulent conveyance and § 727 discharge actions pending, bankruptcy court appropriately denied Chapter 7 debtor's motion to convert to Chapter 13 for lack of good faith. Debtor failed to disclose significant transfers and acted in bad faith throughout Chapter 7 case. "[T]he Chapter 7 Trustee has initiated an adversary proceeding against Debtor's wife to avoid and recover the transfers, and United States Trustee against Debtor, seeking to deny his discharge because Debtor has concealed, destroyed, falsified or failed to keep recorded information . . . . Debtor's *pro se* status cannot excuse the fraudulent transfers he made which are proper grounds for the denial of his motion to convert his Chapter 7 case to Chapter 13."), *aff'g* 604 B.R. 336 (Bankr. E.D. Mich. Aug. 21, 2019) (Shefferly) (Applying *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), *Alt v. United States (In re Alt)*, 305 F.3d 413, 414 (6th Cir. Oct. 2, 2002) (Daughtrey, Clay, Williams), and *Copper v. Copper (In re Copper)*, 426 F.3d 810 (6th Cir. Oct. 18, 2005) (Boggs, Norris, Cook), pro se motion to convert from Chapter 7 to Chapter 13 is denied: debtor transferred assets before the bankruptcy petition to defeat collection of a judgment; debtor filed inaccurate statements and schedules; debtor was abusive toward opposing parties and attorneys; and debtor litigated frivolously and in bad faith.).

{939} ***Campbell v. Conway*, 611 B.R. 38 (M.D. Pa. Jan. 23, 2020) (Brann)** (Denial of conversion from Chapter 7 to Chapter 13 was not abuse of discretion when two bankruptcy cases were filed on eve of foreclosures, debtor's income information kept changing, debtor's dairy farm was making less and less money, family trust was unable to distribute additional funds to support a plan and milk prices were not likely to recover in time to fund a plan. Speculative income from a closed quarry on the debtor's property would not save the case.), *aff'g* 598 B.R. 775 (Bankr. M.D. Pa. Apr. 23, 2019) (Opel) (Citing *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), lack of good faith and lack of feasibility bar Chapter 7 debtor from converting to Chapter 13. Evidence of bad faith included timing of filing on eve of foreclosure and multiple amendments to schedules showing dramatic changes in income. Feasibility failed because of speculative nature of gas royalties and farming income.).

{940} ***Bush v. Nathan (In re Bush)*, No. 19-11425, 2019 WL 4416313 (E.D. Mich. Sept. 16, 2019) (Cox)** (Conversion from Chapter 7 to Chapter 13 denied for bad faith when debtor failed to reveal employment discrimination lawsuit then tried to convert when Chapter 7 trustee discovered the lawsuit and proposed to settle the lawsuit out from under the debtor. Meager proposed plan was evidence that conversion was a bad-faith effort to continue to use bankruptcy to avoid paying creditors while shielding employment discrimination lawsuit from those same creditors.).

{941} ***In re Wester*, No. 19-13140-SDM, 2020 WL 233168 (Bankr. N.D. Miss. Jan. 14, 2020) (Maddox)** (Applying *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), bankruptcy court refuses conversion from Chapter 7 to Chapter 13 when motion was filed to control inheritance that would pay unsecureds in full if case remained in Chapter 7. Debtors wanted to use inheritance to pay off HELOC and proposed 100% plan that court found could not be funded because debtors had no disposable income.).

{942} ***In re Cyrilla*, No. 18-20017-GLT, 2020 WL 96680, at *2 (Bankr. W.D. Pa. Jan. 8, 2020) (Taddonio)** (After conversion from Chapter 11 to Chapter 7, debtor is not eligible for conversion to Chapter 13 because debts at time of original Chapter 11 petition

exceeded eligibility limits in § 109(e); postpetition events cannot change eligibility calculus and conversion does not effect a change in the petition date for eligibility purposes. "[T]he Bankruptcy Code requires that eligibility be determined as of the petition date, which conversion does not change. . . . [T]here is unanimous agreement among published decisions that postpetition events, such as the reduction of debts, are not considered in determining whether a debtor is eligible for the desired chapter. . . . ").

{943} ***In re Feliciano*, No. 19-05016 (EAG), 2019 WL 7041858 (Bankr. D.P.R. Dec. 19, 2019) (Godoy)** (Not bad faith for purposes of *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), at conversion from Chapter 7 to Chapter 13 that the debtor converted after the Chapter 7 trustee discovered a preferentially perfected security interest in the debtor's car. Car lender's choice to record its security interest during the preference period was not within debtor's control and converting to Chapter 13 was the only obvious way for debtor to keep the car.).

{944} ***In re Dale*, 610 B.R. 524 (Bankr. E.D.N.C. Dec. 9, 2019) (Humrickhouse)** (Applying *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), conversion from Chapter 7 to Chapter 13 is denied based on bad faith intent to wrest control of discrimination lawsuit from Chapter 7 trustee. Debtor failed to prove sufficient regular income to cover the value of the employment discrimination settlement negotiated by the Chapter 7 trustee. Also, debtor proposed not to pay a substantial student loan if allowed to convert to Chapter 13.).

{945} ***In re Tillman*, No. 19-12224-JDW, 2019 WL 6127483 (Bankr. N.D. Miss. Nov. 18, 2019) (Woodard)** (Applying *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), conversion from Chapter 7 to Chapter 13 is denied when debtor concealed $17,000 interest in real property and did not credibly testify that she was unaware of owning the property until confronted by Chapter 7 trustee at meeting of creditors. Did not help that debtor was deeded the property by her parents and the debtor then mortgaged the property and repaid that debt before filing the Chapter 13 case.).

§ 148.3 Effects of Conversion from Chapter 7 to Chapter 13

{946} ***Acclaim Legal Servs., P.L.L.C. v. Terry (In re Freeman)*, No. 19-13412, 2020 WL 1473903 (E.D. Mich. Mar. 26, 2020) (Steeh)** (After conversion from Chapter 7 to Chapter 13, attorney's fees for work during the Chapter 7 case are not allowable under § 330(a)(4)(B) because opposing a § 707(b) motion to dismiss and filing multiple amended means test forms did not benefit the debtor or anyone else.).

{947} ***Bush v. Nathan (In re Bush)*, No. 19-11425, 2019 WL 4416313 (E.D. Mich. Sept. 16, 2019) (Cox)** (At attempted conversion from Chapter 7 to Chapter 13, debtor not entitled to exemption in proceeds of settlement of employment discrimination lawsuit under § 522(d)(11)(E) because debtor did not seek recovery for loss of future earnings.).

{948} ***In re Guevarra*, No. 18-25306-B-7, 2020 WL 2844384 (Bankr. E.D. Cal. June 1, 2020) (Jaime)** (After conversion from Chapter 7 to Chapter 13, bankruptcy court sustains Chapter 7 trustee's objection to debtor's claim of exemption in proceeds from sale of property that the debtor does not own. On convoluted facts, debtor claimed exemption in sale proceeds in effort to insulate proceeds from claims against debtor's nephew, the actual owner of the property that was sold.).

{949} ***Christensen v. Jubber (In re Christensen)*, No. 19-2059, 2020 WL 2027232 (Bankr. D. Utah Mar. 27, 2020) (Mosier)** (Chapter 13 debtors' claim that Chapter 7 trustee, prior to conversion, breached fiduciary duties by moving to sell over-encumbered homestead with carve-out for fees agreed to by IRS fails to state a claim because trustee gave notice and acted with full transparency, including that bankruptcy court sustained debtors' objection to sale.).

§ 148.4 Conversion to Chapter 13 after BAPCPA

{950} ***In re Estilette*, No. 18-11692, 2020 WL 1493546, at *1–*3 (Bankr. S.D. Ala. Jan. 27, 2020) (Barrett)** (Resolving a statutory anomaly created by BAPCPA, at conversion from Chapter 7 to Chapter 13, bankruptcy court orders that payments commence under § 1326(a) and the applicable commitment period runs from 30 days after the order for conversion. "Section 1326(a) (1) provides chapter 13 plan payments are to commence 'not later than 30 days after the date of filing of the plan or the order for relief, whichever is earlier.' . . . A statutory anomaly arises when a case filed as a chapter 7 converts to a chapter 13 more than 30 days after the petition date. A 'plan' is not filed in a chapter 7 case and debtors do not make monthly plan payments in a chapter 7. Nevertheless, the 'order for relief' in such a converted case remains the petition date, not the conversion date. 11 U.S.C. § 348. . . . [T]he plain language of § 1326(a), as amended in 2005, produces an absurd, if not an impossible result . . . . Section 1326(a) provides 'unless the court orders otherwise' plan payments commence not later than 30 days from the filing of the plan or the order for relief, whichever is earlier. . . . [T]he Court ORDERS plan payments and the applicable commitment period to commence 30 days from entry of the order converting the case from a chapter 7 to a chapter 13.").

{951} ***In re Freeman*, 607 B.R. 317, 323 (Bankr. E.D. Mich. Nov. 4, 2019) (Tucker)** (When Chapter 7 case converts to Chapter 13, debtor's counsel can recover fees as a priority administrative expense under § 330(a)(4)(B) for work done in the Chapter 13 case but cannot recover fees for work during the Chapter 7 phase of the case. "[T]he better and more reasonable interpretation is that the phrase

'in connection with the bankruptcy case' in § 330(a)(4)(B) refers, in the context of a converted case, to the Chapter 13 phase of the case only."), *aff'd*, No. 19-13412, 2020 WL 1473903 (E.D. Mich. Mar. 26, 2020) (Steeh).

2. CONVERSION FROM OTHER CHAPTERS TO CHAPTER 13

§ 149.1 Conversion from Chapter 11 to Chapter 13

{952} ***In re Tsung Yu Chien*, No. CV 19-2131 JGB, 2020 WL 3965031 (C.D. Cal. Apr. 2, 2020) (Bernal)** (After conversion from Chapter 11 to Chapter 13, once bankruptcy court determined that debtor exceeded debt limits only choices under § 1307(c) were conversion to Chapter 7 or dismissal. The parties agreed that no purpose would be served by conversion to Chapter 7 and bankruptcy court then committed no error by dismissing the Chapter 13 case.).

{953} ***Askri v. Fitzgerald*, 612 B.R. 500 (E.D. Va. Feb. 18, 2020) (Ellis)** (Conversion of Chapter 11 case to Chapter 7 rather than conversion to Chapter 13 was appropriate in sixth bankruptcy case in seven years filed by debtor and/or spouse to stop foreclosure. Debtor made no mortgage payments in seven years and arrearage of $500,000 far exceeded ability to pay in any bankruptcy case. Conversion to Chapter 13 from Chapter 11 is not available because debtor's conversion request came after the bankruptcy court had already converted the Chapter 11 case to Chapter 7.).

§ 149.2 Conversion from Chapter 12 to Chapter 13

3. RECONVERSION TO CHAPTER 13

§ 150.1 Reconversion from Chapter 7 or Chapter 11 to Chapter 13

{954} ***In re Andrews*, No. 19-58083, 2020 WL 1503461 (Bankr. E.D. Mich. Mar. 27, 2020) (Tucker)** (Applying strict construction of § 706(a), debtor cannot convert case from Chapter 7 to Chapter 13 because case was previously converted from Chapter 13 to Chapter 7.).

§ 150.2 Reconversion to Chapter 13 after BAPCPA

{955} ***Reid v. Cohen*, No. PWG-19-752, 2020 WL 886181 (D. Md. Feb. 24, 2020) (Grimm)** (Debtors' appeal of denial of motion to reconvert to Chapter 13 is dismissed when debtors failed to designate the record on appeal and failed to timely file brief. Reconversion was denied based on ineligibility, inability to propose a feasible plan and lack of good faith.), *dismissing appeal of* No. 18-21383-LSS, 2019 WL 1004707 (Bankr. D. Md. Feb. 26, 2019) (Simpson) (Reconversion to Chapter 13 after conversion from Chapter 13 to Chapter 7 is permissive but not appropriate in this case. Debtors are not eligible for Chapter 13 because unsecured portion of mortgage debt exceeds debt limitation in § 109(e). Proposed plan is not feasible because debtors cannot afford to cure mortgage default that exceeds $442,000. Debtors have exhausted all good-faith uses of bankruptcy to keep their home.).

F. DISMISSAL

1. DISMISSAL BY DEBTOR

§ 151.1 Procedure, Timing and Form

{956} ***In re Shapiro*, No. CV 19-7633-DMG, 2020 WL 4227296, at *2 (C.D. Cal. July 22, 2020) (Gee)** (Ambiguous oral request from debtor's counsel to dismiss Chapter 13 case was not made by motion under § 1307(b) and did not require bankruptcy court to dismiss rather than grant creditor's motion to convert to Chapter 7. "[T]he most faithful reading of the transcript is that Shapiro's counsel requested that the Bankruptcy Court dismiss the case *under section 1307(c)*, the section at issue at the hearing. There is no indication in the record that Shapiro's counsel suddenly switched gears and began arguing for relief under a different statutory provision. . . . Although Rule 9013 permits motions 'made during a hearing,' Shapiro's counsel's request 'for dismissal' fell far short of stating 'with particularity' the grounds supporting the request. Indeed, her counsel made no mention at all of section 1307(b) or her purported absolute right to dismiss her case rather than have it converted to a Chapter 7 bankruptcy.").

§ 151.2 Absolute Right of Debtor?

{957} ***Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 618 B.R. 1, 8–13 (B.A.P. 9th Cir. Aug. 12, 2020) (Taylor, Lafferty, Brand)** (Neither *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), nor *Law v. Siegel*, 571 U.S. 415, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (Mar. 4, 2014), overruled *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. Sept. 24, 2008) (Fletcher, Paez, Schwarzer): the bankruptcy court appropriately granted conversion motion rather than debtors' competing motion to dismiss to prevent debtors from continuing to delay and abuse the bankruptcy process while they dealt with criminal misconduct. Alternatively, debtors' failure to file tax returns required by § 1308 was ground for conversion under § 1307(e) and bankruptcy court appropriately determined that interests of creditors favored conversion over competing motion to dismiss. "*Law* characterized *Marrama*'s conclusion that a bankruptcy court could deny dismissal pursuant to § 105(a) as 'dictum.' . . . But *Law* reinforced that § 105(a) could be used to avoid [ ] 'futile procedural niceties . . . ' . . . . Section 1307(c) proffers a statutory basis to refuse to honor a § 1307(b) dismissal request, just as §§ 706(d) and 1307(c), read together, proffer a statutory basis to refuse to honor a § 706(a) conversion request. . . . [W]e hold that *Rosson* remains good law; a debtor's § 1307(b) right to dismissal is

not absolute. . . . [T]here is no indication in the legislative history that Congress intended to grant debtors who have abused the bankruptcy process an unqualified right to choose the means by which they exit chapter 13. . . . [A]llowing the bankruptcy court to convert a chapter 13 case to chapter 7 for bad faith conduct, abuse of process, or a failure to file tax returns despite a debtor's § 1307(b) dismissal motion honors Congress' intention of keeping chapter 13 proceedings voluntary while preserving the integrity of the bankruptcy system by allowing the bankruptcy court to address abusive behavior. . . . Section 1307(e) unambiguously provides that a bankruptcy court 'shall' dismiss the case or convert the case to chapter 7 . . . if the debtor fails to comply with § 1308 and a party in interest requests dismissal or conversion. . . . Given the mandatory language of § 1307(e), the bankruptcy court was required to consider the interests of creditors. It thoughtfully did so and determined that conversion, and not dismissal, would best serve their interests."), *stay pending appeal denied by* No. 4:18-bk-09638-BMW, 2020 WL 881443 (Bankr. D. Ariz. Feb. 21, 2020) (Whinery) (Bankruptcy court denies motion for stay pending appeal of order converting Chapter 13 case to Chapter 7 and denying debtors' competing motion to dismiss. Bankruptcy court found debtors' conduct to be in bad faith and abusive of bankruptcy.), *denying stay pending appeal of* No. 4:18-bk-09638-BMW, 2020 WL 504745 (Bankr. D. Ariz. Jan. 30, 2020) (Whinery) (Absolute right to dismiss Chapter 13 case is qualified by *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. Sept. 24, 2008) (Fletcher, Paez, Schwarzer). After 17 months in Chapter 13 without any progress toward confirmation, voluntary dismissal is denied and conversion to Chapter 7 is ordered. Debtors have been camped out in Chapter 13 while they deal with criminal charges. Debtors failed to file tax returns and have not acted in good faith.).

{958} ***In re Shapiro*, No. CV 19-7633-DMG, 2020 WL 4227296, at *2 (C.D. Cal. July 22, 2020) (Gee)** (Ambiguous oral request from debtor's counsel to dismiss Chapter 13 case was not made by motion under § 1307(b) and did not require bankruptcy court to dismiss rather than grant creditor's motion to convert to Chapter 7. "[T]he most faithful reading of the transcript is that Shapiro's counsel requested that the Bankruptcy Court dismiss the case *under section 1307(c)*, the section at issue at the hearing. There is no indication in the record that Shapiro's counsel suddenly switched gears and began arguing for relief under a different statutory provision. . . . Although Rule 9013 permits motions 'made during a hearing,' Shapiro's counsel's request 'for dismissal' fell far short of stating 'with particularity' the grounds supporting the request. Indeed, her counsel made no mention at all of section 1307(b) or her purported absolute right to dismiss her case rather than have it converted to a Chapter 7 bankruptcy.").

{959} ***Weakley v. Marshall*, No. 3:19-cv-00549-RDP-JHE, 2020 WL 136870, at *2 (N.D. Ala. Jan. 13, 2020) (Proctor)** (District court finds no statutory or constitutional basis for habeas corpus relief for Chapter 13 debtor ordered by state criminal court to pay restitution through the Chapter 13 plan. That dismissal of Chapter 13 case by the debtor might result in incarceration raises no right to relief in the district court. "Weakley does not point to any authority to support that a right to dismiss a Chapter 13 bankruptcy petition is constitutional in nature. In fact, any right to dismiss a Chapter 13 petition is statutory—it is wholly a creation of the bankruptcy code itself. *See* 11 U.S.C. § 1307(b) . . . . That Weakley has a statutory right under the bankruptcy code to dismiss his Chapter 13 petition does not mean that exercising that right exempts him from the consequences of doing so, nor does it make those consequences a matter of constitutional import solely because they might result in the imposition of a suspended sentence. Neither of these objections hold water.").

{960} ***In re Fulayter*, No. 19-53196, 2020 WL 1943208, at *6–*10 (Bankr. E.D. Mich. Apr. 22, 2020) (Shefferly)** (Chapter 13 debtor's right to dismiss under § 1307(b) is not subject to a "good faith" exception; *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 379, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (Feb. 21, 2007), is neither controlling nor contrary and filing motion to dismiss after creditor's motion to convert does not change outcome. "[S]ome courts—including some circuit courts of appeals—have declined to dismiss a Chapter 13 case when requested by a debtor, despite the plain and unambiguous language of § 1307(b). Those cases invariably involve a debtor who is a bad actor. . . . The Court respectfully disagrees with . . . decisions relying on *Marrama* to hold that a Chapter 13 debtor's right to dismiss under § 1307(b) is somehow subject to a bad actor exception . . . . Even assuming that Louie has acted in bad faith, what Bankruptcy Code right in dealing with his creditors can he truly be said to have 'forfeited' by such bad faith conduct? Has he 'forfeited' the right to deal with his creditors outside of the bankruptcy court, with no help from the Bankruptcy Code? Nothing in *Marrama*, which focused on who is entitled to enjoy Bankruptcy Code relief, suggests such a result. . . . *Marrama* can only be read to support denial of a Chapter 13 debtor's motion to dismiss under § 1307(b) if it is construed as a case about punishment rather than about who has the right to seek bankruptcy relief. . . . A bankruptcy court may punish a Chapter 13 debtor's misconduct, and has lots of tools to do so, but there is nothing in the Bankruptcy Code that permits a bankruptcy court to punish a Chapter 13 debtor's misconduct by denying the debtor's motion to dismiss under § 1307(b). *Marrama* does not hold otherwise. *Marrama* is not about punishing bad conduct, but about ensuring that only individuals eligible for bankruptcy relief get such relief. [*Law v. Siegel*, 571 U.S. 415, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (Mar. 4, 2014),] makes clear that a bankruptcy court may not use its inherent power or § 105(a) to contravene the plain language of the Bankruptcy Code in § 1307(b) by creating a bad actor exception.").

{961} ***In re Cenk*, 612 B.R. 323, 326–29 (Bankr. W.D. Pa. Feb. 27, 2020) (Taddonio)** (Notwithstanding allegations of bad faith and abuse, debtor's motion to dismiss Chapter 13 case is granted. Dismissal of a not previously converted Chapter 13 case is mandatory until an appellate court tells the bankruptcy courts that bad faith or other misconduct can be considered. "[T]here is significant disagreement at the circuit level about whether a debtor's right to dismiss under section 1307(b) is truly absolute. The United States Court of Appeals for the Second Circuit has held that a chapter 13 debtor 'has an absolute right to dismiss a Chapter 13 petition under § 1307(b), subject only to the limitation explicitly stated in that provision[.]' . . . In contrast, the United States Courts of Appeal for the Fifth, Eighth, and Ninth Circuits have all held that a debtor's right to voluntarily dismiss a chapter 13 case is qualified by an implied

exception for bad faith conduct or abuse of the bankruptcy system. . . . The United States Court of Appeals for the Third Circuit has yet to confront the issue head on. . . . While the Court would appreciate the discretion to handle an array of factual circumstances differently, particularly to prevent abuse of the bankruptcy system, the existence of such discretion is doubtful.").

{962} ***In re Bolling*, 609 B.R. 454 (Bankr. D. Conn. Dec. 18, 2019) (Manning)** (Debtor has absolute right to dismiss Chapter 13 case that was not previously converted but under § 349(a) court conditions dismissal with prejudice to refiling for two years based on series of filings to stop foreclosure sales and no evidence of attempt by debtor to actually pay debts through a Chapter 13 plan.).

§ 151.3 Strategic Considerations: Consequences of Voluntary Dismissal

2. DISMISSAL ON REQUEST OF PARTY IN INTEREST

§ 152.1 Procedure, Timing and Form

{963} ***Coleman v. JP Morgan Chase Bank N.A. (In re Coleman)*, No. 20-cv-1204 (BMC), 2020 WL 5531557 (E.D.N.Y. Sept. 15, 2020) (Cogan)** (Pro se Chapter 13 debtor's appeal of dismissal is incomprehensible; district court strives mightily to figure out what the debtor claimed as error.).

{964} ***Washington v. Chapter 13 Tr.*, No. 19-CV-7028 (PKC), 2020 WL 5077403 (E.D.N.Y. Aug. 26, 2020) (Chen)** (Bankruptcy court appropriately dismissed pro se Chapter 13 case without an evidentiary hearing based on uncontested facts after *in rem* stay relief was granted to mortgagee under § 362(d)(4); facts relevant to dismissal were known to the bankruptcy court based on record in the Chapter 13 case.).

{965} ***In re Watson*, No. 8:20CV103, 2020 WL 3428969 (D. Neb. June 22, 2020) (Bataillon)** (District court lacks jurisdiction to review order granting unopposed trustee's motion to dismiss Chapter 13 case of deceased debtor because party appealing—the daughter of the deceased debtor—lacks a pecuniary interest in the Chapter 13 case.).

{966} ***Jones-Williams v. Surratt-States*, No. 4:20-cv-00035-JAR, 2020 WL 2526562 (E.D. Mo. May 18, 2020) (Ross)** (Appeal of order dismissing Chapter 13 case for nonpayment is not ripe and district court lacks jurisdiction because of motion for reconsideration and rehearing pending before bankruptcy court.).

{967} ***Bey v. U.S. Bank Nat'l Ass'n (In re Bey)*, No. 3:18-CV-02093 (KAD), 2020 WL 292323 (D. Conn. Jan. 21, 2020) (Dooley)** (U.S. Bank had standing to seek dismissal of Chapter 13 case under § 1307(c) because it was holder of strict foreclosure judgment by assignment from Bank of America.).

{968} ***Burgess v. Powers*, No. 3:19-CV-2711-B, 2019 WL 7037581 (N.D. Tex. Dec. 20, 2019) (Boyle)** (Motion for injunction, treated as a motion for stay pending appeal of dismissal, is denied. Debtor filed nine bankruptcy cases and innumerable appeals of actions in other courts with respect to mortgage and other debts that had not been paid in more than a decade. Chapter 13 case was bad-faith continuation of that litigation. Debtor did not comply with Bankruptcy Rule 8007 by first asking bankruptcy court for stay.).

{969} ***In re Soler*, No. 18-20790-CIV-COOKE, 2019 WL 9631678 (S.D. Fla. Feb. 28, 2019) (Cooke)** (Bankruptcy court appropriately denied Chapter 13 debtor's motion to proceed on appeal of dismissal *in forma pauperis* based on finding that appeal was frivolous and debtor could not both have sufficient income to fund a Chapter 13 plan and have insufficient income to pay the filing fee on appeal.).

{970} ***In re Ely*, No. 19-20818-drd-13, 2020 WL 2071483 (Bankr. W.D. Mo. Apr. 29, 2020) (Dow)** (Creditor that failed to timely file a proof of claim nonetheless has standing to move for dismissal based on ineligibility under §§ 1307 and 109(e).).

§ 152.2 Cause for Dismissal—In General

{971} ***In re Rees*, 817 F. App'x 258 (7th Cir. July 17, 2020) (Wood, Barrett, St. Eve)** (Rule 60 relief is not appropriate to set aside dismissal when Chapter 13 debtors defaulted for third time in 55th month of plan, debtors did not move to modify plan and debtors sought to set aside dismissal by tendering money after dismissal. No extraordinary circumstances were alleged to justify failing to deal with default before dismissal order became final.).

{972} ***In re Grasty*, No. 19-3199, 2020 WL 1623755 (7th Cir. Apr. 2, 2020) (Wood, Flaum, Barrett)** (Chapter 13 debtor's "unfounded" and "extreme" claims of bias cannot erase fact that case was appropriately dismissed for material default in payments under § 1307(c)(6).).

{973} ***Bote v. Derham-Burk*, 801 F. App'x 498 (9th Cir. Mar. 4, 2020) (Paez, Bea, Jack)** (Not an abuse of discretion for bankruptcy court to grant U.S. trustee's motion to dismiss when debtor failed to complete payments under plan within 60 months required by plan.), *aff'g* No. 3:18-cv-02246-WHO, 2018 WL 5454150 (N.D. Cal. Oct. 29, 2018) (Orrick) (Dismissal for cause was appropriate when Chapter 13 debtor waited four and a half years to object to plan-busting priority claim that could not be paid in 60 months. Debtor's

objection to the large priority claim straddled hearing on trustee's motion to dismiss and debtor failed to timely object to dismissal motion.).

{974} ***Taneja v. Preuss (In re Taneja)*, 789 F. App'x 907 (2d Cir. Dec. 2, 2019) (Walker, Lynch, Sullivan)** (Dismissal of Chapter 13 case for cause was appropriate when pro se debtor failed to prove regular or stable income that would fund any confirmable plan.), *aff'g* No. 17-CV-9429 (JGK), 2019 WL 1949839 (S.D.N.Y. Apr. 19, 2019) (Koeltl) (Third motion for "reconsideration" of order affirming bankruptcy court's dismissal of Chapter 13 case is denied for complete lack of merit.).

{975} ***Engen v. Wilson-aguilar (In re Engen)*, No. WW-20-1019-BSG, 2020 WL 3661748 (B.A.P. 9th Cir. July 6, 2020) (not for publication) (Brand, Spraker, Gan)** (Material default constituting cause for dismissal under § 1307(c)(6) included that plan required sale of real property to pay IRS within 18 months and debtor took no steps to sell the property. Debtor unsuccessfully challenged IRS's claim and filed incomprehensible "Notice of Legal Conundrum" instead of complying with plan.).

{976} ***Erickson v. Wilson-Aguilar (In re Erickson)*, No. WW-19-1251-FSTa, 2020 WL 2849930 (B.A.P. 9th Cir. May 29, 2020) (not for publication) (Faris, Spraker, Taylor)** (After ten years of not paying home mortgage, Chapter 13 debtor had adequate notice of motion to dismiss Chapter 13 case and bankruptcy court appropriately dismissed case based on unreasonable delay and the impossibility of confirming any plan that would deal with a $600,000 arrearage on mortgage.).

{977} ***Fountain v. Deutsche Bank Nat'l Tr. Co. (In re Fountain)*, 612 B.R. 743 (B.A.P. 9th Cir. Mar. 10, 2020) (Gan, Lafferty, Brand)** (Dismissal of Chapter 13 case based on ineligibility was appropriate because noncontingent liquidated unsecured debts exceeded § 109(e) limitations.).

{978} ***Jimenez v. ARCPE 1, LLP (In re Jimenez)*, 613 B.R. 537 (B.A.P. 9th Cir. Mar. 3, 2020) (Taylor, Lafferty, Gan)** (Bankruptcy court committed no error in dismissing case for unreasonable delay that was prejudicial under § 1307(c)(1) when debtor failed to propose a confirmable plan, failed to file required documents and otherwise failed to perform duties.).

{979} ***Burton v. Maney (In re Burton)*, 610 B.R. 633 (B.A.P. 9th Cir. Jan. 14, 2020) (Lafferty, Taylor, Faris)** (Chapter 13 case filed by debtors who abandoned a defunct marijuana business is dismissed *sua sponte* without an evidentiary hearing because bankruptcy court found that possibility of recovery in contract litigation remaining after closure of marijuana business threatened to engage trustee and court in "illegal conduct." Incongruously, BAP found no abuse of discretion that bankruptcy court dismissed Chapter 13 case based on failure of debtors to prove the negative—that the litigation would not produce proceeds from an illegal enterprise—and found it was not an abuse of discretion to reach that conclusion without affording the debtors an opportunity to put on evidence.).

{980} ***Hunter v. Morris (In re Hunter)*, No. 3:20-cv-0159, 2020 WL 3023062 (S.D. W. Va. June 4, 2020) (Chambers)** (Plan was not feasible under § 1325(a)(6) and dismissal for cause was appropriate under § 1307(c) when amount necessary to cure mortgage arrearage exceeded debtor's gross monthly income.).

{981} ***Mileusnic v. Chael*, No. 2:19-cv-427, 2020 WL 2307497 (N.D. Ind. May 8, 2020) (Simon)** (Bankruptcy court appropriately dismissed Chapter 13 case under § 1307(c)(4) when debtor was more than $10,000 in default of payments under amended plan; that debtor disputed mortgagee's possession of note was irrelevant to trustee's motion to dismiss based on undisputed default in payments.).

{982} ***Colone v. Marshall (In re Colone)*, No. 19 C 6571, 2020 WL 1233775 (N.D. Ill. Mar. 12, 2020) (Coleman)** (Bankruptcy court appropriately dismissed Chapter 13 case under § 1307(c)(1) and (c)(5) after six-month delay, three unconfirmable plans and debtor failed to make all payments required by § 1326.).

{983} ***Kufrovich v. DeHart*, No. 3:19-1057, 2019 WL 5721910 (M.D. Pa. Nov. 5, 2019) (Mannion)** (Bankruptcy court committed no error in granting trustee's motion to dismiss Chapter 13 case based on debtor's failure to make plan payments.).

{984} ***Bristol v. Branigan*, No. PJM 18-02957, 2019 WL 4600304 (D. Md. Sept. 20, 2019) (Messitte)** (Bankruptcy court appropriately dismissed Chapter 13 case under § 1307(c) when debtor failed to commence payments within 30 days as required by § 1326. That debtor claims her attorney told her not to begin making payments until a motion for stay relief was filed does not change result.).

{985} ***Ferguson v. Sapir (In re Ferguson)*, No. 17 Civ. 2051 (PAE), 2018 WL 9963877 (S.D.N.Y. Mar. 27, 2018) (Engelmayer)** (Bankruptcy court appropriately dismissed Chapter 13 case based on debtor's failure to propose a confirmable plan when plan would pay trustee $80,000 but would not pay mortgage arrears of $157,000.).

{986} ***In re Zamora*, No. 19-01040-WLH13, 2020 WL 4289926 (Bankr. E.D. Wash. July 27, 2020) (Holt)** (After five confirmation attempts over more than a year, plan is still not confirmable and dismissal under § 1307(c)(5) is in best interest of largest creditor that wishes to proceed in state court. After conversion from Chapter 7 to Chapter 13, debtor amends schedules to reveal unscheduled assets and narrowly avoids finding of bad faith for dismissal purposes. Delay for more than a year was not unreasonable and prejudice to creditors was not clear.).

{987} ***In re Berk*, No. DG 17-04498, 2020 WL 1651228 (Bankr. W.D. Mich. Apr. 2, 2020) (Dales)** (Not "excusable neglect" that Chapter 13 debtor mailed payment that was received one day after deadline that triggered automatic dismissal. Debtor could have provided payment in person or by delivery other than by mail. Order of dismissal was issued instantaneously and mailed to creditors, making it complicated to unscramble the egg.).

{988} ***In re Horton*, No. 20-00033, 2020 WL 1328796, at *2 (Bankr. D.D.C. Mar. 19, 2020) (Teel)** (Chapter 13 case filed to stop eviction with respect to property that was foreclosed before the petition and is not property of the estate is filed in bad faith; case is dismissed with bar to refiling for 180 days. Debt with respect to property was discharged in prior Chapter 7 case. Debtor failed to file a plan in current Chapter 13 case and did not need bankruptcy to deal with any existing debts—all were discharged in prior Chapter 7 case. "Filing this bankruptcy case to stay the eviction of Horton served no legitimate bankruptcy purpose. Horton no longer owns the Property[.]").

{989} ***In re Moore*, No. 19-51257(JAM), 2020 WL 1207911 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Dismissal for cause under § 1307(c) is appropriate because debtor's secured debts exceed eligibility limitation under § 109(e). Dismissal with prejudice to refiling for three years is also appropriate because debtor has filed multiple bankruptcies beginning in 2012 to stop foreclosures and to litigate and relitigate frivolous issues, many of which were decided against the debtor in previous Chapter 13 cases.).

{990} ***In re Cowser*, No. 6:19-bk-21008-WJ, 2020 WL 974973 (Bankr. C.D. Cal. Feb. 28, 2020) (Johnson)** (On motion of Chapter 13 trustee, confirmation of plan is denied and case is dismissed because debtor did not list or schedule separate debts of nonfiling spouse. In community property state like California, the debtor is liable as part of the community for separate debts of nonfiling spouse and those creditors must be given notice and opportunity to participate by filing claims and objecting to confirmation. Dismissal is necessary because creditors of nonfiling spouse have been "irreparably prejudiced" by passage of time without notice of Chapter 13 case.).

{991} ***In re Elwell*, No. 17-51442, 2020 WL 762214, at *2 (Bankr. D. Conn. Feb. 14, 2020) (Manning)** (Mortgagee's motion to dismiss is granted and debtor's competing motion to convert from Chapter 13 to Chapter 11 is denied when debtor has failed to confirm a plan for two years and any reorganization is dependent on speculative appeal of litigation with mortgagee that debtor lost. "A motion to convert under section 1307(d) may also be denied and a case dismissed under section 1307(c) where the proposed plan is predicated on the outcome of litigation that remains pending because the feasibility of such a plan is speculative and protracted.").

{992} ***In re Lewis*, No. 15-15696-MKN, 2019 WL 5777647 (Bankr. D. Nev. Oct. 3, 2019) (Nakagawa)** (Motion to dismiss Chapter 13 case for lack of eligibility—filed four years after petition—is granted when *pro se* debtor scheduled no visible source of income and mortgagee filed a proof of claim indicating arrearages of more than $96,000. Debtor's responsive claim that there are undisclosed assets and sources of income only made the matter worse for the debtor.).

{993} ***In re Malone*, No. 19-80149-TRC, 2019 WL 4686330 (Bankr. E.D. Okla. Sept. 25, 2019) (Cornish)** (Noting that *In re Pratola*, 578 B.R. 414 (Bankr. N.D. Ill. Dec. 27, 2017) (Baer), was reversed, 589 B.R. 779 (N.D. Ill. Aug. 31, 2018) (Dow), dismissal is mandatory when student loan debt exceeds eligibility limit in § 109(e).).

§ 152.3 Cause for Dismissal Added or Changed by BAPCPA

{994} ***Rees v. Marshall*, No. 19-cv-3004, 2020 WL 616465 (N.D. Ill. Feb. 10, 2020) (Blakey), *aff'd,* 817 F. App'x 258 (7th Cir. July 17, 2020) (Wood, Barrett, St. Eve)** (Bankruptcy court did not abuse discretion by refusing Rule 60 relief from order dismissing Chapter 13 case in 58th month of 60-month plan notwithstanding that debtors tendered sufficient money to pay unsecured creditors the 93.78% required by confirmed plan. Applying an "extraordinary circumstances" standard, the bankruptcy court refused Rule 60 relief from the dismissal order and the district court embraced the double-negative that the bankruptcy court's exercise of discretion was not "unreasonable.").

{995} ***Lall v. Powers*, No. 3:19-CV-00398-X, 2020 WL 619916 (N.D. Tex. Feb. 7, 2020) (Starr)** (Bankruptcy court appropriately dismissed Chapter 13 case and refused debtor's Federal Rule of Civil Procedure 59 motion to vacate dismissal and reinstate the case when the grounds offered were a modified plan filed after dismissal and a challenge to mortgage foreclosure that was not new.).

{996} ***In re Nevarez Bruno*, No. 18-05191-BKT, 2020 WL 4723722 (Bankr. D.P.R. July 27, 2020) (Tester)** (Cause for dismissal under § 1307(c)(11) that Chapter 13 debtor failed to pay postpetition domestic support obligations, including attorney's fees awarded former spouse.).

{997} ***In re Brief*, No. 19-00838, 2020 WL 598213 (Bankr. D.D.C. Feb. 6, 2020) (Teel)** (Motion to vacate dismissal order that resulted when Chapter 13 debtor failed to resolve filing fee and document-filing issues raised in show-cause order is denied because debtor has continued to fail to file documents required by § 521(a)(1)(B) and continuing delay is prejudicial to creditors. Alternatively, under § 521(i), on request of any party, the court would declare the Chapter 13 case automatically dismissed based on debtor's failure to file schedules and other documents within 45 days of the petition. Although § 1307(c)(9) reserves to the U.S. trustee pursuit of motions to

dismiss for failure to timely file documents required by § 521(a)(1), bankruptcy court has sua sponte dismissal authority under § 105(a) for the same reasons.).

{998} ***In re Davis*, No. 19-36077-KLP, 2020 WL 581505 (Bankr. E.D. Va. Feb. 5, 2020) (Phillips)** (In fourth bankruptcy case in 10 years, motion to reconsider order denying further extension of time to file necessary documents and dismissing Chapter 13 case is denied because debtor offered no ground for reconsideration and court committed no error.).

§ 152.4 Cause for Dismissal, Including Bad-Faith, Multiple and Abusive Filings

{999} ***Stone v. Viegelahn (In re Stone)*, No. 19-51047, 2020 WL 3273034 (5th Cir. June 17, 2020) (not for publication) (King, Graves, Willett)** (In third Chapter 13 case within a year, bankruptcy court appropriately dismissed case for bad faith by debtor and correctly determined that no stay was in effect with respect to foreclosure a few days after the petition because of § 362(c)(4).).

{1000} ***Hernandez v. Wilmington Tr., Nat'l Ass'n (In re Hernandez)*, No. CC-19-1319-FSG, 2020 WL 4192056 (B.A.P. 9th Cir. July 21, 2020) (not for publication) (Faris, Spraker, Gan)** (Bankruptcy court appropriately dismissed ninth bankruptcy case with prejudice to refiling for 180 days.).

{1001} ***Sobayo v. Derham-Burk (In re Sobayo)*, No. NC-19-1231-TaFS, 2020 WL 2777333 (B.A.P. 9th Cir. May 28, 2020) (not for publication) (Taylor, Faris, Spraker)** (Pro se debtor offered no reason why bankruptcy court erred when it dismissed third Chapter 13 case. Debtor was not eligible for Chapter 13, debtor failed to pay creditors as required by the plan and debtor failed to comply with reporting requirements of local rules.).

{1002} ***Bauman v. Skelton (In re Bauman)*, No. SC-18-1190-SLG, 2020 WL 1899557 (B.A.P. 9th Cir. Apr. 16, 2020) (not for publication) (Spraker, Lafferty, Gan)** (Dismissal of fifth bankruptcy since 2010 was appropriate based on debtor's failure to commence payments required by § 1326(a)(1) and failure to provide tax return required by § 521(e)(2)(A). Chapter 13 trustee has standing to seek dismissal based on both of those grounds.).

{1003} ***Steiner v. Wilmington Sav. Fund Soc'y, FSB (In re Steiner)*, 613 B.R. 176, 179 (B.A.P. 8th Cir. Mar. 23, 2020) (Saladino, Schermer, Shodeen)** (After 10 Chapter 13 cases since 2010, all filed to stop foreclosures, debtors' current Chapter 13 cases were appropriately dismissed with 180-day bar to refiling. "[T]he bankruptcy court found the Steiners' filings were part of a 'long-running scheme to manipulate and abuse the Bankruptcy Code and the bankruptcy system to the extreme detriment of their creditors, particularly Wilmington Savings.'").

{1004} ***Aguilar v. Specialized Loan Servicing, LLC (In re Aguilar)*, No. CC-19-1112-GTaL, 2020 WL 710349 (B.A.P. 9th Cir. Feb. 10, 2020) (not for publication) (Gan, Taylor, Lafferty)** (In ninth bankruptcy case filed by debtor and/or spouse in war with real estate lender and servicers, dismissal under § 1307(c)(4) was appropriate based on debtors' failure to make payments required by § 1326.).

{1005} ***Washington v. Chapter 13 Tr.*, No. 19-CV-7028 (PKC), 2020 WL 5077403 (E.D.N.Y. Aug. 26, 2020) (Chen)** (Bankruptcy court appropriately dismissed pro se Chapter 13 case without an evidentiary hearing based on uncontested facts after *in rem* stay relief was granted to mortgagee under § 362(d)(4); facts relevant to dismissal were known to the bankruptcy court based on the record in Chapter 13 case.).

{1006} ***In re Buhl*, No. 3:19-CV-01190 (KAD), 2020 WL 1849393 (D. Conn. Apr. 13, 2020) (Dooley)** (Bankruptcy court appropriately dismissed Chapter 13 case with one-year bar to refiling after debtor and spouse filed six tag-team bankruptcies each timed to stop foreclosure or foil eviction. Bad-faith evidence included history of filings, failure to make payments and admission by debtor that filings were intended to keep debtors in home that they were not paying for.), *aff'g* No. 19-30803 (AMN), 2019 WL 3302400 (Bankr. D. Conn. July 22, 2019) (Nevins) (Cause for dismissal with one-year bar to refiling under §§ 1307(c), 1307(c)(4) and 349(a) included three bankruptcy filings to stop foreclosure and eviction, failure to make any payments in current case, lack of good-faith intention to reorganize and two-party nature of underlying dispute.), *amending and superseding* No. 19-30803 (AMN), 2019 WL 3282970 (Bankr. D. Conn. July 19, 2019) (Nevins) (Third Chapter 13 case filed to stay foreclosure or to stop eviction is dismissed with bar to refiling for one year. Cause included failure to commence payments under § 1307(c)(4), a pattern of filings to stop foreclosure and eviction and the two-party nature of the case.).

{1007} ***Koola v. Ditech Fin. LLC,* 611 B.R. 251 (D.S.C. Dec. 26, 2019) (Gergel), *aff'd,* 816 F. App'x 887 (4th Cir. Aug. 24, 2020) (not for publication) (Gregory, Wynn, Quattlebaum)** (Failure to confirm multiple amended plans and inability to fund any plan that would resolve huge mortgage arrearage are cause for dismissal.).

{1008} ***In re Bartley*, No. 3:19-CV-00400 (KAD), 2019 WL 6467353 (D. Conn. Dec. 2, 2019) (Dooley)** (Tag-team bankruptcies and multiple meritless state court and bankruptcy court lawsuits with respect to foreclosure demonstrate bad-faith abuse by Chapter 13 debtor that justified denial of extension of stay and dismissal with prejudice to refiling for two years.).

{1009} ***Cody v. Micale*, No. 7:19-cv-00433, 2019 WL 5967962 (W.D. Va. Nov. 13, 2019) (Urbanski)** (Dismissal of fourth petition since 2016 was appropriate for bad faith based on evidence that debtor lacked sufficient income to fund a plan and serial filings to stop sale of property were abusive.).

{1010} ***Woodroffe v. Waage*, No. 8:18-cv-1437-T-36, 2019 WL 4644425 (M.D. Fla. Sept. 24, 2019) (Honeywell)** (Bankruptcy court appropriately denied confirmation and dismissed third Chapter 13 case when plan made no provision for mortgage and debtor failed to appear at confirmation hearing after failing to file required amended plan. Unreasonable delay resulted for purposes of § 1307(c)(1).).

{1011} ***In re Pellechia*, No. 19-21972 (JJT), 2020 WL 3455644 (Bankr. D. Conn. June 24, 2020) (Tancredi)** (After 12 years of not paying mortgage, $53,000 of advances by mortgagee for taxes and insurance and four bankruptcies, current Chapter 13 case is dismissed with prejudice to refiling for two years and with *in rem* relief under § 362(d)(1) and (d)(4) based on findings of bad faith and intent to delay mortgagee.).

{1012} ***In re Errico*, No. 9:19-bk-06350-FMD, 2020 WL 3454242 (Bankr. M.D. Fla. June 22, 2020) (Delano)** (Ninth bankruptcy case is dismissed for bad faith with one–year bar to refiling and *in rem* relief under § 362(d). Evidence of bad faith included a series of filings to stop foreclosures, suspicious transfers of real property on the eve of bankruptcy filings, lying to creditors about the status and priority of liens and an "abatement motion" based on COVID-19 that would extend plan even further without paying creditors.).

{1013} ***In re Nehring*, No. 20-50012 (JAM), 2020 WL 3414630 (Bankr. D. Conn. June 19, 2020) (Manning)** (In fifth bankruptcy case, fourth Chapter 13 case, bad–faith cause for dismissal with prejudice to refiling for one year included that serial filings were timed to interrupt foreclosures, debtor did not seek stay extension under § 362(c)(3) and debtor with negative disposable income could not propose feasible plan that would pay mortgage arrears in excess of $600,000.).

{1014} ***In re Massie*, No. 19-51593, 2020 WL 2500623 (Bankr. D. Conn. May 14, 2020) (Manning)** (Dismissal of Chapter 13 case is appropriate under § 1307(c) because mortgage claim in excess of $5 million renders debtor ineligible; that debtor disputes mortgage claim does not change outcome. Dismissal also appropriate with two-year bar to refiling because current case was filed in bad-faith effort to frustrate foreclosure by mortgagee. Discharge in prior Chapter 7 case did not resolve mortgagee's *in rem* claim and debtor does not have financial ability to pay that claim.).

{1015} ***In re Hartley*, No. 19-31049 (AMN), 2020 WL 1908326 (Bankr. D. Conn. Apr. 14, 2020) (Nevins)** (Cause for dismissal of second Chapter 13 case that debtor did not pay pre- or postpetition property taxes across two cases spanning several years and debtor lacks financial ability to protect mortgage lender from priming statutory lien of taxing authority. Request for two-year bar to refiling is denied because mortgage lender still has equity cushion and debtor's litigation strategy in bankruptcy court and in state court foreclosure action does not rise to level of bad faith.).

{1016} ***In re McClain*, No. 19-11325, 2020 WL 1867906 (Bankr. M.D. La. Apr. 14, 2020) (Dodd)** (Bankruptcy court declined to reconsider dismissal of second Chapter 13 case in which debtors failed to make required payments to trustee, failed to make payments directly to mortgage holder and debtors' fluctuating incomes are too unstable to maintain a Chapter 13 case.).

{1017} ***In re Moore*, No. 19-51257(JAM), 2020 WL 1207911 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Dismissal for cause under § 1307(c) is appropriate because debtor's secured debts exceed eligibility limitation under § 109(e). Dismissal with prejudice to refiling for three years is also appropriate because debtor has filed multiple bankruptcies beginning in 2012 to stop foreclosures and to litigate and relitigate frivolous issues, many of which were decided against the debtor in previous Chapter 13 cases.).

{1018} ***In re Via*, No. 3:19-bk-33999-SHB, 2020 WL 1015264 (Bankr. E.D. Tenn. Feb. 27, 2020) (Bauknight)** (In eleventh bankruptcy case since 2002, dismissal with five-year bar to refiling is appropriate because of extraordinary abuse by debtor, including failing to file documents, failing to comply with court orders, failing to pay filing fees and failing to pay creditors.).

{1019} ***In re Johnson*, 613 B.R. 471 (Bankr. N.D. Okla. Jan. 29, 2020) (Michael)** (Chapter 13 case is dismissed for bad faith after totality-of-circumstances review. Sole purpose of filing was to defeat or minimize state court sanctions judgment against debtor, an attorney, for professional misconduct in litigation. Case is one creditor case in which debtor would relitigate state court sanctions judgment if permitted. If confirmed, proposed plan would pay 15% of judgment while shielding assets in trust with wife worth more than $700,000.).

{1020} ***In re Othello*, No. 19-51502, 2020 WL 232836 (Bankr. D. Conn. Jan. 14, 2020) (Manning)** (*Pro se* fourth Chapter 13 petition filed without necessary documents is dismissed as abusive and filed in bad faith with two-year bar to refiling under §§ 349(b) and 105(a).).

{1021} ***In re Meltzer*, No. 19-21110-PRW, 2020 WL 129441 (Bankr. W.D.N.Y. Jan. 10, 2020) (Warren)** (Third *pro se* Chapter 13 petition filed to stop foreclosure is dismissed for cause—including bad faith, prejudicial delay, failure to make payments and lack of

adequate protection—with 18-month bar to refiling under § 1307(c)(1), (c)(3) and (c)(4) and §§ 105(a) and 349(a). *In rem* relief is also appropriate under § 362(d)(4)(B). Court declines to dismiss "with prejudice" to discharge of debts in a future bankruptcy case.).

{1022} ***In re Perkins*, No. 19-51202 (JAM), 2020 WL 223910 (Bankr. D. Conn. Jan. 7, 2020) (Manning)** (Dismissal with two-year bar to refiling is appropriate in third bare-bones Chapter 13 filing within a year. All cases were filed to stop foreclosures. Debtor did not file necessary documents. Debtor failed to appear at meeting of creditors. Debtor did not move to impose a stay despite fact that no stay was in effect because of § 362(c)(4).).

{1023} ***In re Partch*, No. 19-51084, 2020 WL 211447 (Bankr. D. Conn. Jan. 7, 2020) (Manning)** (Second Chapter 13 case within a year is dismissed with bar to refiling for two years based on bad faith and abuse of bankruptcy process. Multiple bankruptcy cases and litigation in other courts were filed to impede foreclosure on an inherited home. Debtor failed to comply with duties in the bankruptcy cases and did not respond to dismissal motion. Debtor did not seek to extend stay under § 362(c)(3) and did not demonstrate any intent to propose a confirmable plan.).

{1024} ***In re Ballentine*, 605 B.R. 710 (Bankr. M.D.N.C. Apr. 4, 2019) (Aron)** (Dismissal with 180-day bar to refiling is appropriate when Chapter 13 case was filed in bad faith to stop foreclosure of reverse mortgage. Debtor lied about ownership of trust property, failed to make postpetition payments and has no disposable income from which to make any plan payments.).

{1025} ***In re Foster*, No. 18-80466, 2019 WL 7841547 (Bankr. M.D.N.C. Feb. 8, 2019) (James)** (After six years of litigation with Wells Fargo, two Chapter 13 cases, 15 months without confirmation and nine amended plans that failed to address that Wells Fargo had not been paid since 2012, motions to reconsider or vacate order dismissing Chapter 13 case are denied and stay pending appeal of dismissal is denied.).

{1026} ***In re Goldsmith*, No. 19-24475-JAD, 2019 WL 7599885 (Bankr. W.D. Pa. Jan. 17, 2019) (Deller)** (Dismissal of third bankruptcy filed to stop eviction is not reconsidered given that debtor failed to file documents necessary to maintain the Chapter 13 case, debtor failed to commence payments to the Chapter 13 trustee, debtor lacks regular income and only ground for relief from dismissal order is debtor's desire for a stay to stop eviction.).

§ 152.5 Cause Not Found

{1027} ***In re Mojica Nieves*, No. 18-01866 (ESL), 2020 WL 4725445 (Bankr. D.P.R. July 15, 2020) (Lamoutte)** (Motion to dismiss Chapter 13 case filed by association that provides financial services to government employees and pensioners is denied because Chapter 13 plan preserves the association's statutory lien on deposits and savings and permissively pays the association's debt with regular monthly payments consistent with § 1325(a)(5)(B)(i)(I). Association's contrary claims seem to be based on misunderstanding of its rights and failure to adhere to prior court rulings.).

{1028} ***In re Taro*, No. 19-10982 (BLS), 2020 WL 2764751, at *9 (Bankr. D. Del. May 26, 2020) (Shannon)** (Filing Chapter 13 to stop sheriff's sale of homestead does not prove bad faith in absence of other factors. "Filing a bankruptcy petition to stop a sheriff's sale of property will not, on its own, suggest a bad faith filing. Debtors often file bankruptcy cases to save their homes and 'filing a petition to preserve property is not indicative of bad faith.'").

{1029} ***In re Gravlin*, No. 17-41714-CJP, 2020 WL 3635579 (Bankr. D. Mass. Mar. 6, 2020) (Panos)** (Former spouse's motion to dismiss Chapter 13 case is denied. Petition was not filed in bad faith, debtor was not dishonest in statements or schedules, support payments were current for § 1307(c)(11) purposes and delay in reaching confirmation was caused by need to resolve contested DSO claims which was not unreasonable. Various objections to confirmation by former spouse are resolved in debtor's favor, including claims that debtor had undisclosed gambling debts and that debtor fraudulently conveyed a masonry business to his second former spouse.).

§ 152.6 Strategic Considerations
§ 152.7 Sua Sponte Dismissal

3. EFFECTS OF DISMISSAL

§ 153.1 In General

{1030} ***Jimenez v. ARCPE 1, LLP (In re Jimenez)*, 613 B.R. 537 (B.A.P. 9th Cir. Mar. 3, 2020) (Taylor, Lafferty, Gan)** (Appeal of grant of stay relief was moot because underlying Chapter 13 case was dismissed, terminating the stay.).

{1031} ***Marshall v. McCarty (In re Marshall)*, 611 B.R. 861 (B.A.P. 8th Cir. Feb. 18, 2020) (Saladino, Nail, Dow)** (Chapter 13 debtor lacks standing to appeal final report of trustee because debtor has not offered any theory by which she is impacted, much less harmed, by the final report. After case was dismissed for debtor's failure to make payments, the Chapter 13 trustee issued a final report and account. Debtor disputes some of the information in the final report but none of the disputed items affects the debtor financially or in any other cognizable way.).

{1032} ***Murray v. Safir Law P.L.C. (In re Murray)*, No. 19-12613, 2020 WL 5291964 (E.D. Mich. Sept. 4, 2020) (Borman)** (After six bankruptcy cases between 2015 and 2019 and after dismissal of current Chapter 13 case, bankruptcy court appropriately dismissed Chapter 13 debtor's adversary proceeding against law firm that allegedly mishandled lawsuit against insurance company during prior case in 2016. Adversary proceeding could only conceivably affect dismissed 2016 case, not the current, now also dismissed, Chapter 13 case filed in 2019.).

{1033} ***Bullock v. Simon*, No. 19-cv-310-SMY, 2020 WL 1472063 (S.D. Ill. Mar. 26, 2020) (Yandle)** (Dismissal of Chapter 13 case based on material default in payments renders moot the appeal of orders that required the debtor to amend the confirmed plan to account for the settlement of an undisclosed workers' compensation action.).

{1034} ***In re Johnson*, No. 19-43854, 2020 WL 1943205 (Bankr. E.D. Mich. Apr. 22, 2020) (Randon)** (After dismissal before confirmation and refiling, funds held by trustee at dismissal of first case become property of estate in second case subject to § 503(b) claim for counsel's fees in first case. Creditor that served Chapter 13 trustee with garnishment at dismissal of first case is subject to automatic stay with respect to its levy when debtor refiles and funds subject to levy became property of the estate in second case.).

{1035} ***Steed v. Educational Credit Mgmt. Corp. (In re Steed)*, No. 19-5219-JWC, 2020 WL 1596476 (Bankr. N.D. Ga. Apr. 1, 2020) (Cavender)** (Chapter 13 debtor's objection to student loan claim that included issues under § 523(a)(8) is moot and is dismissed because debtor dismissed underlying Chapter 13 case. Bankruptcy court exercises discretion to abstain with respect to various included causes of action.).

{1036} ***In re Hernandez*, 612 B.R. 20, 22–23 (Bankr. D. Conn. Jan. 17, 2020) (Manning)** (Because all property of the Chapter 13 estate vested in debtor at confirmation under § 1327(b), at dismissal after confirmation § 349(b)(3) has no application and all funds held by the trustee must be returned to the debtor. *Harris v. Viegelahn*, 575 U.S. 510, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (May 18, 2015), supports this outcome and contrary cases have overlooked vesting effect under § 1327(b). "In this case, as will be true in virtually all Chapter 13 plans confirmed by this Court, the property of the estate vested in the Debtor upon confirmation . . . pursuant to section 1327(b) . . . . The Court finds it is not necessary to turn to section 349(b)(3) because section 1327(b) establishes that the funds vested with the Debtor when the First Amended Plan was confirmed. The cases that rely on section 349(b)(3) to establish a trustee's authority to distribute funds to a debtor in a confirmed but subsequently dismissed Chapter 13 case have not directly addressed the vesting language in section 1327(b). . . . Because property of the estate has already vested in a debtor upon confirmation pursuant to section 1327(b), there is no property to *revest* in the debtor . . . pursuant to section 349(b)(3). Therefore, there is no question that the funds must be returned to the Debtor. . . . Although *Harris* involved conversion rather than dismissal of a case, *Harris* recognizes that section 1327(b) vests all property of the estate in the debtor unless a plan or confirmation order provides otherwise. . . . [I]f the case is subsequently converted or dismissed, that vested property remains that of the debtor.").

{1037} ***In re Marve*, No. 15-32251-jda, 2019 WL 5688178, at *3 (Bankr. E.D. Mich. Nov. 1, 2019) (Applebaum)** (That counsel competently represented the debtor and has not been paid for postpetition services is not "cause" for § 349(b)(3) purposes; funds on hand at dismissal are returned to the debtor without paying balance due for fees. "[T]he 'for cause' language in § 349(b) was deliberately included by Congress, presumably to address circumstances where it would be unfair or inappropriate to allow funds to be returned to a debtor. The cases arising under § 349(b) generally address situations in which creditors or other parties were uniquely disadvantaged by the circumstances or implications of dismissing the chapter 13 case . . . . Routine attorney fees are a different matter. . . . [C]ompetently performed services . . . are not atypical in a dismissed chapter 13 case. . . . [T]hese services simply do not rise to the level of 'cause' required by § 349(b)(3).").

{1038} ***Pierce v. Deutsche Bank Nat'l Tr. (In re Pierce)*, No. 19-05271-LRC, 2019 WL 4686333 (Bankr. N.D. Ga. Sept. 25, 2019) (Craig)** (After dismissal of Chapter 13 case, bankruptcy court abstains in adversary proceeding challenging foreclosing creditor under various theories. One (odd) theory was that debtor owned a secret interest in property subject to foreclosure through a dba that transferred the property without the debtor's signature.).

§ 153.2 Consequences of Dismissal Added or Changed by BAPCPA

{1039} ***In re Schaffer*, 606 B.R. 228 (E.D. Pa. Oct. 23, 2019) (Kenney)** (Failure to accurately or completely disclose assets during prior Chapter 13 case was one reason stay relief was appropriate in subsequent Chapter 11 case filed after voluntary dismissal of prior Chapter 13 case.).

{1040} ***In re Nelums*, 617 B.R. 70, 74–75 (Bankr. D.S.C. July 6, 2020) (Waites)** (Distinguishing *Harris v. Viegelahn*, 575 U.S. 510, 135 S. Ct. 1829, 191 L. Ed. 2d 783 (May 18, 2015), and consistent with local rules and § 1326(a)(2), at dismissal before confirmation Chapter 13 trustee appropriately paid attorney's fees as an administrative expense under §§ 503(b) and 330(a)(4)(B) and then returned the balance on hand to debtor. "The majority of courts have held that § 1326(a)(2) controls the disbursement of funds held by the Chapter 13 Trustee upon the preconfirmation dismissal of a chapter 13 case. . . . *Harris* is distinguishable because it addressed a post confirmation conversion governed by § 348 and not a pre-confirmation dismissal governed by § 349 and § 1326(a)(2) . . . . The majority of cases considering the application of *Harris* to a Chapter 13 case that has been dismissed prior to confirmation have agreed that the

holding in *Harris* does not apply in these cases and § 1326(a)(2) instead controls the distribution of payments held by the Chapter 13 trustee. . . . [Section] 1326(a)(2) requires the Trustee to return the undistributed plan payments to Debtor, after deducting any unpaid claim allowed under § 503(b).").

{1041} ***In re Evans*, 615 B.R. 290, 296-300 (Bankr. D. Idaho Feb. 13, 2020) (Meier)** (Applying § 1326(a)(2), in derogation of 28 U.S.C. § 586(e), in Chapter 13 case dismissed before confirmation, Chapter 13 trustee must regurgitate compensation and reimbursement of expenses collected from payments by debtor. "Section 1326(b) requires the trustee to pay the trustee's percentage fee before or at the time of each payment to creditors under the plan. . . . Section 1326(a)(2) only allows the trustee to pay creditors after a plan is confirmed. . . . If the trustee cannot pay creditors until a plan is confirmed pursuant to § 1326(a)(2), then § 1326(b) is not operative until a plan is in effect. . . . Because § 1226(b)(2) and § 1326(b)(2) contain almost identical language, but § 1226(a)(2) expressly allows a trustee to deduct a percentage fee in unconfirmed cases, and § 1326(b)(2) is inoperative until a plan is in effect, the Court does not find § 1326(b)(2) permits trustee fees to be paid regardless of whether a plan is confirmed. . . . Just as § 586(e) does not contemplate that once a fee is collected, any part of it should be refunded to the debtor, it also does not contemplate that any portion of the fee is irrevocable. . . . [T]his Court concludes it must rely on the text of the statute, and its interpretation thereof, and not decide the matter based on conflicting public policy arguments.").

§ 153.3 Court-Imposed Conditions and Restrictions on Dismissal

{1042} ***Hernandez v. Wilmington Tr., Nat'l Ass'n (In re Hernandez)*, No. CC-19-1319-FSG, 2020 WL 4192056 (B.A.P. 9th Cir. July 21, 2020) (not for publication) (Faris, Spraker, Gan)** (Bankruptcy court appropriately dismissed ninth bankruptcy case with prejudice to refiling for 180 days.).

{1043} ***Bauman v. Billingslea (In re Bauman)*, No. SC-19-1060-LGS, 2020 WL 1672770 (B.A.P. 9th Cir. Apr. 6, 2020) (not for publication) (Lafferty, Gan, Spraker)** (After six bankruptcy cases, including four Chapter 13 cases, pro se debtor's motion to extend time for appeal of dismissal with prejudice to refiling for one year was appropriately denied by bankruptcy court. Debtor presented no excusable neglect. Claim of lack of notice was refuted by mailbox rule.).

{1044} ***Steiner v. Wilmington Sav. Fund Soc'y, FSB (In re Steiner)*, 613 B.R. 176, 179 (B.A.P. 8th Cir. Mar. 23, 2020) (Saladino, Schermer, Shodeen)** (After 10 Chapter 13 cases since 2010, all filed to stop foreclosures, debtors' current Chapter 13 cases were appropriately dismissed with 180-day bar to refiling. "[T]he bankruptcy court found the Steiners' filings were part of a 'long-running scheme to manipulate and abuse the Bankruptcy Code and the bankruptcy system to the extreme detriment of their creditors, particularly Wilmington Savings.'").

{1045} ***In re Buhl*, No. 3:19-CV-01190 (KAD), 2020 WL 1849393 (D. Conn. Apr. 13, 2020) (Dooley)** (Bankruptcy court appropriately dismissed Chapter 13 case with one-year bar to refiling after debtor and spouse filed six tag-team bankruptcies each timed to stop foreclosure or foil eviction. Bad-faith evidence included history of filings, failure to make payments and admission by debtor that filings were intended to keep debtors in home that they were not paying for.), *aff'g* No. 19-30803 (AMN), 2019 WL 3302400 (Bankr. D. Conn. July 22, 2019) (Nevins) (Cause for dismissal with one-year bar to refiling under §§ 1307(c), 1307(c)(4) and 349(a) included three bankruptcy filings to stop foreclosure and eviction, failure to make any payments in current case, lack of good-faith intention to reorganize and two-party nature of underlying dispute.), *amending and superseding* No. 19-30803 (AMN), 2019 WL 3282970 (Bankr. D. Conn. July 19, 2019) (Nevins) (Third Chapter 13 case filed to stay foreclosure or to stop eviction is dismissed with bar to refiling for one year. Cause included failure to commence payments under § 1307(c)(4), a pattern of filings to stop foreclosure and eviction and the two-party nature of the case.).

{1046} ***In re Bartley*, No. 3:19-CV-00400 (KAD), 2019 WL 6467353 (D. Conn. Dec. 2, 2019) (Dooley)** (Tag-team bankruptcies and multiple meritless state court and bankruptcy court lawsuits with respect to foreclosure demonstrate bad-faith abuse by Chapter 13 debtor that justified denial of extension of stay and dismissal with prejudice to refiling for two years.).

{1047} ***Morisset v. Gorman*, No. 1:18-cv-633 (AJT/JFA), 2019 WL 8752361 (E.D. Va. Mar. 29, 2019) (Trenga)** (Sixth bankruptcy case since 2006 was appropriately dismissed with prejudice to refiling Chapter 13.).

{1048} ***In re Pellechia*, No. 19-21972 (JJT), 2020 WL 3455644 (Bankr. D. Conn. June 24, 2020) (Tancredi)** (After 12 years of not paying mortgage, $53,000 of advances by mortgagee for taxes and insurance and four bankruptcies, current Chapter 13 case is dismissed with prejudice to refiling for two years and with *in rem* relief under § 362(d)(1) and (d)(4) based on findings of bad faith and intent to delay mortgagee.).

{1049} ***In re Errico*, No. 9:19-bk-06350-FMD, 2020 WL 3454242 (Bankr. M.D. Fla. June 22, 2020) (Delano)** (Ninth bankruptcy case is dismissed for bad faith with one–year bar to refiling and *in rem* relief under § 362(d). Evidence of bad faith included a series of filings to stop foreclosures, suspicious transfers of real property on the eve of bankruptcy filings, lying to creditors about the status and priority of liens and an "abatement motion" based on COVID-19 that would extend plan even further without paying creditors.).

{1050} ***In re Nehring*, No. 20-50012 (JAM), 2020 WL 3414630 (Bankr. D. Conn. June 19, 2020) (Manning)** (In fifth bankruptcy case, fourth Chapter 13 case, bad–faith cause for dismissal with prejudice to refiling for one year included that serial filings were timed to interrupt foreclosures, debtor did not seek stay extension under § 362(c)(3) and debtor with negative disposable income could not propose feasible plan that would pay mortgage arrears in excess of $600,000.).

{1051} ***In re Llangari-Pico*, No. 20-50058 (JAM), 2020 WL 2500625 (Bankr. D. Conn. May 14, 2020) (Manning)** (Citing §§ 1307(c), 349(a) and 105(a), fourth or fifth Chapter 13 petition by debtor or spouse to stop foreclosure is dismissed with two-year bar to refiling.).

{1052} ***In re Kearns*, No. 20-10354-PRW, 2020 WL 2311883 (Bankr. W.D.N.Y. May 8, 2020) (Warren)** (After four skeletal Chapter 13 petitions in 24 months—all filed on eve of foreclosure, all filed by same attorney—and 12 years of no payments to underwater mortgagee, *in rem* stay relief is granted under § 362(d)(4)(B) and case is dismissed with prejudice to refiling anywhere in United States for two years. Court orders U.S. trustee to investigate whether the attorney is running a "cottage industry" stopping foreclosures for undisclosed fees by filing Chapter 13 cases with no intention to proceed beyond imposing a brief stay.).

{1053} ***In re Hartley*, No. 19-31049 (AMN), 2020 WL 1908326 (Bankr. D. Conn. Apr. 14, 2020) (Nevins)** (Cause for dismissal of second Chapter 13 case that debtor did not pay pre- or postpetition property taxes across two cases spanning several years and debtor lacks financial ability to protect mortgage lender from priming statutory lien of taxing authority. Request for two-year bar to refiling is denied because mortgage lender still has equity cushion and debtor's litigation strategy in bankruptcy court and in state court foreclosure action does not rise to level of bad faith.).

{1054} ***In re Horton*, No. 20-00033, 2020 WL 1328796, at *2 (Bankr. D.D.C. Mar. 19, 2020) (Teel)** (Chapter 13 case filed to stop eviction with respect to property that was foreclosed before the petition and is not property of the estate is filed in bad faith; case is dismissed with bar to refiling for 180 days. Debt with respect to property was discharged in prior Chapter 7 case. Debtor failed to file a plan in current Chapter 13 case and debtor did not need bankruptcy to deal with any existing debts—all were discharged in the prior Chapter 7 case. "Filing this bankruptcy case to stay the eviction of Horton served no legitimate bankruptcy purpose. Horton no longer owns the Property[.]").

{1055} ***In re Moore*, No. 19-51257(JAM), 2020 WL 1207911 (Bankr. D. Conn. Mar. 10, 2020) (Manning)** (Dismissal for cause under § 1307(c) is appropriate because debtor's secured debts exceed eligibility limitation under § 109(e). Dismissal with prejudice to refiling for three years is also appropriate because debtor has filed multiple bankruptcies beginning in 2012 to stop foreclosures and to litigate and relitigate frivolous issues, many of which were decided against the debtor in previous Chapter 13 cases.).

{1056} ***In re Via*, No. 3:19-bk-33999-SHB, 2020 WL 1015264 (Bankr. E.D. Tenn. Feb. 27, 2020) (Bauknight)** (In eleventh bankruptcy case since 2002, dismissal with five-year bar to refiling is appropriate because of extraordinary abuse by debtor, including failing to file documents, failing to comply with court orders, failing to pay filing fees and failing to pay creditors.).

{1057} ***In re Othello*, No. 19-51502, 2020 WL 232836 (Bankr. D. Conn. Jan. 14, 2020) (Manning)** (*Pro se* fourth Chapter 13 petition filed without necessary documents is dismissed as abusive and filed in bad faith with two-year bar to refiling under §§ 349(b) and 105(a).).

{1058} ***In re Meltzer*, No. 19-21110-PRW, 2020 WL 129441 (Bankr. W.D.N.Y. Jan. 10, 2020) (Warren)** (Third *pro se* Chapter 13 petition filed to stop foreclosure is dismissed for cause—including bad faith, prejudicial delay, failure to make payments and lack of adequate protection—with 18-month bar to refiling under § 1307(c)(1), (c)(3) and (c)(4) and §§ 105(a) and 349(a). *In rem* relief is also appropriate under § 362(d)(4)(B). Court declines to dismiss "with prejudice" to discharge of debts in a future bankruptcy case.).

{1059} ***In re Perkins*, No. 19-51202 (JAM), 2020 WL 223910 (Bankr. D. Conn. Jan. 7, 2020) (Manning)** (Dismissal with two-year bar to refiling is appropriate in third bare-bones Chapter 13 filing within a year. All cases were filed to stop foreclosures. Debtor did not file necessary documents. Debtor failed to appear at meeting of creditors. Debtor did not move to impose a stay despite fact that no stay was in effect because of § 362(c)(4).).

{1060} ***In re Partch*, No. 19-51084, 2020 WL 211447 (Bankr. D. Conn. Jan. 7, 2020) (Manning)** (Second Chapter 13 case within a year is dismissed with bar to refiling for two years based on bad faith and abuse of bankruptcy process. Multiple bankruptcy cases and litigation in other courts were filed to impede foreclosure on an inherited home. Debtor failed to comply with duties in the bankruptcy cases and did not respond to dismissal motion. Debtor did not seek to extend stay under § 362(c)(3) and did not demonstrate any intent to propose a confirmable plan.).

{1061} ***In re Johnson*, No. 19-57871-WLH, 2020 WL 61827, at *2–*4 (Bankr. N.D. Ga. Jan. 6, 2020) (Hagenau)** (Not appropriate to dismiss sixth bankruptcy case with bar to refiling under § 109(g)(1) because default in payments in current case was not alone sufficient to prove willful failure to abide by court order. Conduct in a particular case is at issue under § 109(g), not debtor's history of filings. "The dismissal of the case was not a mistake or a surprise. Debtor's payment was returned for insufficient funds and she knew

it. She took no action to remedy the situation despite written notice from the Trustee, so her actions were not inadvertent. . . . Section 109(g)(1) prohibits refiling by a debtor who has 'willfully' failed to abide by order of the court or to appear before the court to prosecute the case. The court must look to the circumstances of the particular case to determine willfulness. A mere failure to make a payment under a chapter 13 plan or failure to appear at the first meeting or a court hearing, will not, in itself, be sufficient to sustain a finding of willful conduct under this subsection. . . . [I]t appears that dismissal was based on the Debtor's failure to pay rather than on her failure to prosecute the chapter 13 case as a whole. Debtor failed to make the required plan payments to the Chapter 13 Trustee, but she did not otherwise willfully fail to abide by the Court's orders. While the Debtor has a long history of bankruptcy filings, the Trustee sought dismissal with prejudice pursuant to [§]109(g), under which the Court must consider the Debtor's conduct in a particular case rather than the debtor's history of filings and dismissals. Therefore, the Court finds grounds exist to modify the Dismissal Order prohibiting the Debtor from refiling the case within 180 days of its dismissal.").

{1062} ***In re Toggas*, No. 19-00598, 2019 WL 7172878 (Bankr. D.D.C. Dec. 23, 2019) (Teel)** (Stay pending appeal is denied with respect to orders dismissing Chapter 13 case and imposing equitable servitude on real property to prevent abusive debtor and spouse from continuing to file tag-team bankruptcies to stop foreclosure.).

{1063} ***In re Bolling*, 609 B.R. 454 (Bankr. D. Conn. Dec. 18, 2019) (Manning)** (Debtor has absolute right to dismiss Chapter 13 case that was not previously converted but under § 349(a) court conditions dismissal with prejudice to refiling for two years based on series of filings to stop foreclosure sales and no evidence of attempt by debtor to actually pay debts through a Chapter 13 plan.).

{1064} ***In re Ballentine*, 605 B.R. 710 (Bankr. M.D.N.C. Apr. 4, 2019) (Aron)** (Dismissal with 180-day bar to refiling is appropriate when Chapter 13 case was filed in bad faith to stop foreclosure of reverse mortgage. Debtor lied about ownership of trust property, failed to make postpetition payments and has no disposable income from which to make any plan payments.).

§ 153.4 Reinstatement after Dismissal

{1065} ***In re Rees*, 817 F. App'x 258 (7th Cir. July 17, 2020) (Wood, Barrett, St. Eve)** (Rule 60 relief is not appropriate to set aside dismissal when Chapter 13 debtors defaulted for third time in 55th month of plan, debtors did not move to modify plan and debtors sought to set aside dismissal by tendering money after dismissal. No extraordinary circumstances were alleged to justify failing to deal with default before dismissal order became final.).

{1066} ***Lall v. Powers*, No. 3:19-CV-00398-X, 2020 WL 619916 (N.D. Tex. Feb. 7, 2020) (Starr)** (Bankruptcy court appropriately dismissed Chapter 13 case and refused debtor's Federal Rule of Civil Procedure59 motion to vacate dismissal and reinstate the case when the grounds offered were a modified plan filed after dismissal and a challenge to mortgage foreclosure that was not new.).

{1067} ***Davis v. Bates*, No. 3:19cv388, 2020 WL 428115 (E.D. Va. Jan. 27, 2020) (Lauck)** (Chapter 13 debtor's efforts to reopen closed case and vacate dismissal are rejected by district court for lack of appellate jurisdiction. Nothing debtor did was a timely appeal of orders that denied reopening and that refused to vacate dismissal based on failure to make payments.).

{1068} ***In re Content*, No. 18-27925 (JKS), 2020 WL 1685844 (Bankr. D.N.J. Apr. 3, 2020) (Sherwood)** (Motion to set aside foreclosure sale that occurred while Chapter 13 case was dismissed and before reinstatement is denied without prejudice when notice to mortgagee may have been defective and debtor's request for equitable relief requires an adversary proceeding.).

{1069} ***In re Brief*, No. 19-00838, 2020 WL 598213 (Bankr. D.D.C. Feb. 6, 2020) (Teel)** (Motion to vacate dismissal order that resulted when Chapter 13 debtor failed to resolve filing fee and document-filing issues raised in show-cause order is denied because debtor has continued to fail to file documents required by § 521(a)(1)(B) and continuing delay is prejudicial to creditors. In any case, under § 521(i), on request of any party, the court would declare the Chapter 13 case automatically dismissed based on debtor's failure to file schedules and other documents within 45 days of the petition. Although § 1307(c)(9) reserves to the U.S. trustee pursuit of motions to dismiss for failure to timely file documents required by § 521(a)(1), bankruptcy court has sua sponte dismissal authority under § 105(a) for the same reasons.).

{1070} ***In re Stewart*, No. 18-00482, 2020 WL 597843, at *1 (Bankr. D.D.C. Feb. 4, 2020) (Teel)** (Motion to reopen dismissed, closed Chapter 13 case is denied because reopening more than a year after closing serves no purpose. The Chapter 13 case would still be dismissed and the debtor's offer of amended schedules would have no effect on the added creditors. "Even though the case is a dismissed case, it is a closed case for which a motion to reopen may be filed. . . . Upon reopening, the case would remain a dismissed case in which Stewart is not entitled to the protection of the automatic stay against future collection efforts by creditors . . . . [N]othing would be gained by reopening the case to permit Stewart to add creditors to the schedules. . . . Stewart may mistakenly think that a reopening of the case would vacate the order dismissing the case. Reopening of a dismissed case is not the appropriate vehicle for setting aside an order dismissing the case. Instead, such relief must be sought via a motion under Fed. R. Bankr. P. 9023 or 9024. . . . Stewart's motion does not offer any grounds that, under those rules, would justify vacating the order dismissing the case, particularly in light of the case having been dismissed more than a year before Stewart filed her motion to reopen the case.").

{1071} ***In re Taharaka*, No. 18-00697, 2020 WL 96678 (Bankr. D.D.C. Jan. 8, 2020) (Teel)** (Motion to set aside dismissal of Chapter 13 case is unnecessary when purpose is to allow debtor to seek contempt of an order requiring a mortgagee to file an affidavit with respect to escrow distributions. Moreover, mortgagee substantially complied with the affidavit requirement by affirmation of an employee.).

{1072} ***In re Johnson*, No. 19-57871-WLH, 2020 WL 61827 (Bankr. N.D. Ga. Jan. 6, 2020) (Hagenau)** (Reopening dismissed Chapter 13 case was not warranted by any ground in Federal Rule of Civil Procedure 60. Sixth bankruptcy case was dismissed for nonpayment after default by debtor under order that allowed prior case to continue.).

PART 9: DISCHARGE

§ 154.1 Summary of Part 9

A. STATUTES AND RULES DISCUSSED IN PART 9

§ 155.1 11 U.S.C. § 523: Exceptions to Discharge
§ 155.2 11 U.S.C. § 524: Effects of Discharge and Discharge Hearing
§ 155.3 11 U.S.C. § 1328: Discharge
§ 155.4 Bankruptcy Rule 1016: Death or Incompetency of Debtor
§ 155.5 Bankruptcy Rule 4007: Time for Filing Complaint Objecting to Dischargeability
§ 155.6 Bankruptcy Rule 4008: Discharge Hearing

B. TIMING AND PROCEDURE CONSIDERATIONS: BEFORE AND AFTER BAPCPA

§ 156.1 Timing and Procedure for Discharge and Objecting to Discharge

{1073} ***Myers v. United States Tr.*, No. 8:19-cv-00637-PX, 2020 WL 758157 (D. Md. Feb. 13, 2020) (Xinia)** (After 15 bankruptcy appeals and five civil cases, district court denies rehearing of dismissal of appeal of bankruptcy court order denying Chapter 13 debtor's request to discharge debts.).

{1074} ***Barnes v. Henry*, No. 19-cv-00212-DKW-RT, 2019 WL 7116098 (D. Haw. Dec. 23, 2019) (Watson)** (Incomprehensible appeal of bankruptcy court order granting Chapter 13 discharge and lifting protective orders is rejected.).

{1075} ***Mathews v. Ellison (In re Ellison)*, No. 20-80001-JW, 2020 WL 5612076 (Bankr. D.S.C. Apr. 23, 2020) (Waites)** (Bankruptcy court has retained jurisdiction in a dismissed Chapter 13 case to determine dischargeability of a debt under § 523(a)(2) and it is appropriate to determine nondischargeability by default when debtor understood that nondischargeable debt might result. Bankruptcy court can determine the amount of the nondischargeable judgment based on the complaint and proof of claim from creditor. Plaintiff can recover attorney's fees for litigation of a nondischargeability complaint under § 523(a)(2) when underlying contract allows fees and plaintiff has prevailed, but fee request is denied because fees were not requested in the complaint or included in the proof of claim. The Supreme Court has authorized recovery of fees for litigating dischargeability complaints when it overruled *Fobian v. Western Farm Credit Bank (In re Fobian)*, 951 F.2d 1149 (9th Cir. Dec. 24, 1991) (Fletcher, Wiggins, Kozinski), in *Travelers Casualty & Surety Co. of America v. Pacific Gas & Electric Co*., 549 U.S. 443, 127 S. Ct. 1199, 167 L. Ed. 2d 178 (Mar. 20, 2007). Determination of nondischargeability in a (dismissed) Chapter 13 case under § 523(a)(2) may have *res judicata* effect in a subsequent bankruptcy case, but that outcome is not properly declared in advance.).

{1076} ***In re Dedo*, No. 18-00657, 2020 WL 961311 (Bankr. D.D.C. Feb. 24, 2020) (Teel)** (Motion by creditor for leave to file complaint to determine dischargeability of debt under § 523(a)(3) is denied without prejudice to creditor's right to file a complaint objecting to dischargeability under § 523(a)(3). Stay relief is allowed to permit creditor to pursue its claims against debtor—including its § 523(a)(3) action—in state court. Leave of court is not required to file a complaint under § 523(a)(3) and a motion is not the proper route to that determination.).

{1077} ***Formador, Inc. v. Ortiz Franco (In re Ortiz Franco)*, 610 B.R. 163, 167 (Bankr. D.P.R. Dec. 27, 2019) (Lamoutte)** (On convoluted facts, motion to reconsider denial of request to extend time to file a complaint under § 523(a)(2) was not an amendable complaint to which an untimely complaint could relate. Complaint against Chapter 13 debtor was untimely and dismissed. Sanctions were not imposed notwithstanding that bankruptcy court warned plaintiff that it had to file a timely complaint and that the time to do so had expired. "Fed. R. Bankr. P. 4004(a) and 4007(c) establish a sixty (60) day time limit within which a creditor may file a complaint to dispute the discharge of the debtor under § 727(a) of the Bankruptcy Code and the dischargeability of debts under § 523(c) of the Bankruptcy Code [. . .]. This time limit begins to run from the first date set for the meeting of creditors under 341(a) of the Bankruptcy Code.").

§ 156.2 Limitations on Successive Discharges

{1078} ***In re Myles*, No. 14-21802-dob, 2020 WL 3424590, at *2 (Bankr. E.D. Mich. June 22, 2020) (Opperman)** (In a Chapter 13 case in which the debtor is not eligible for discharge because of § 1328(f), at the completion of payments lien of secured creditor is

satisfied and released when confirmed plan proposed to pay lienholder's claim in full with a reduced interest rate, lienholder objected to plan but then consented to confirmation and debtor completed payments under the confirmed plan. Lienholder is bound to accept modified contract terms in confirmed plan in full satisfaction of its debt and release of its lien. "Exeter affirmatively accepted the terms of Debtor's Plan when its counsel signed off on the Order Confirming Plan thereby agreeing not to pursue its objection. Because neither the terms of the Chapter 13 Plan or the terms of the Order Confirming plan provide for Exeter's lien retention after plan completion, Exeter's claim was fully paid, and its lien extinguished upon completion of Debtor's Plan.").

{1079} ***In re Ford*, 617 B.R. 254, 257-58 (Bankr. E.D.N.C. May 15, 2020) (Callaway)** (When Chapter 13 case is converted to Chapter 7 and debtors received discharge, eligibility for discharge in a subsequent Chapter 13 case is limited by the four-year filing-to-filing test in § 1328(f)(1) measured from the first Chapter 13 petition date, not from the date of conversion of the first case to Chapter 7. "The majority of cases . . . support a reading that the discharge dates referenced in § 1328(f)(1) pertain to the chapter under which the discharge was entered rather than the case initiating chapter. Applying a literal interpretation of § 1328(f) would ignore § 348 of the Bankruptcy Code and lead to a contrary result. . . . [T]he 4-year waiting period contained in § 1328(f)(1) applies . . . . Here, the Debtors received their discharge in Case #1 under chapter 7 . . . . The fact that they initially filed Case #1 under chapter 13 is irrelevant. Accordingly, the original filing date . . . is the petition date controlling eligibility for discharge, not the conversion date.").

§ 156.3 Time for Determining Dischargeability of Debt

{1080} ***Mansfield v. Swiger (In re Swiger)*, 617 B.R. 537 (Bankr. W.D. Pa. July 24, 2020) (Deller)** (Determination that a debt is dischargeable property settlement under § 523(a)(15) in a Chapter 13 case is premature two years into a five-year Chapter 13 plan because the answer turns on whether the debtor completes payments under the confirmed plan.).

{1081} ***Heag Pain Mgmt. Ctr., P.A. v. Davis (In re Davis)*, No. 20-02007, 2020 WL 3485122 (Bankr. M.D.N.C. June 25, 2020) (Kahn)** (Bankruptcy court lacks jurisdiction over adversary proceeding challenging the dischargeability of a debt in a Chapter 13 case when the underlying case was dismissed and debtor is barred to refile for 180 days.).

{1082} ***Owens v. Educational Credit Mgmt. Corp. (In re Owens)*, No. 20-01002-KKS, 2020 WL 4000851 (Bankr. N.D. Fla. May 28, 2020) (Specie)** (Acknowledging conflicting authority, student loan dischargeability under § 523(a)(8) is not ripe during early months of a Chapter 13 case.).

{1083} ***Sharp v. Sharp (In re Sharp)*, No. 18-00193, 2019 WL 7602221 (Bankr. W.D. Tenn. Apr. 1, 2019) (Latta)** (Fraud counterclaim by former spouse in debtor's adversary proceeding to determine dischargeability of debts in divorce decree is dismissed as untimely filed six years after complaint deadline for § 523(c) actions. Court rejects equitable tolling argument based on claim that former spouse did not have notice that debtor would seek to discharge debts to former spouse.).

§ 156.4 Domestic Support Obligation Certification
§ 156.5 Instructional Course Requirement
§ 156.6 Delay of Discharge: § 522(q)(1) and Pending Proceedings

C. DISCHARGE AFTER COMPLETION OF ALL PAYMENTS

1. FULL-PAYMENT DISCHARGE

§ 157.1 Broadest Discharge Available

{1084} ***In re Moss*, 618 B.R. 123, 129-30 (Bankr. D.N.J. June 17, 2020) (Kaplan)** (Discharge in Chapter 13 case in 2016 included discharge of nonpriority municipal fines; municipality violated discharge injunction by threatening arrest and other collection action and is liable for compensatory damages, including attorney's fees. Sovereign immunity is not available to municipality because of waiver in § 106 and New Jersey Tort Claims Act does not apply. Municipal fines may be nondischargeable under § 523(a)(7) but that exception does not apply in Chapter 13 cases under § 1328(a) and municipal fines are not "criminal" fines for purposes of discharge exception in § 1328(a)(3). *Taggart v. Lorenzen*, ___ U.S. ___, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (June 3, 2019), does not change contempt finding because municipality was warned decades earlier by Administrative Office of New Jersey Courts that municipal fines were dischargeable in Chapter 13 cases. "While Congress lists several exceptions to dischargeability, it excluded 11 U.S.C. § 523(a)(7) . . . . Municipal court fines fall within the definition of § 523(a)(7), and as such are dischargeable in a chapter 13 bankruptcy case if the case proves successful. . . . [M]unicipal court fines do not fall within the Code's definition or interpretation of 'criminal fines' under 11 U.S.C. § 1328(a)(3) . . . . Applying the Supreme Court's articulated objective standard as outlined in *Taggart*, this Court determines it is unassailable that Defendant's attempts to enforce the pre-petition municipal fines were unlawful, both subjectively and objectively.").

{1085} ***Credit Assocs. Inc. Blevins (In re Blevins)*, No. 20-3002-dwh, 2020 WL 2529329 (Bankr. D. Or. May 15, 2020) (Hercher)** (Objection to discharge under § 727 is not cognizable in a Chapter 13 case.).

{1086} ***Weaver v. Hartman (In re Hartman)*, No. 18-ap-00054, 2019 WL 5616256 (Bankr. N.D. W. Va. Sept. 27, 2019) (Flatley)** (Complaint to bar Chapter 13 debtor's discharge under various subsections of § 727 is dismissed because § 727 does not apply in Chapter 13 cases.).

{1087} ***Pool v. Winstead (In re Winstead)*, 605 B.R 432 (Bankr. S.D. Miss. Sept. 24, 2019) (Olack)** (Complaint to bar discharge under § 727 is dismissed because § 727 does not apply in Chapter 13 cases.).

§ 157.2 BAPCPA Shrank the Discharge
§ 157.3 Completion of Payments after BAPCPA

{1088} ***Black v. Leavitt (In re Black)*, 609 B.R. 518, 524–25 (B.A.P. 9th Cir. Dec. 31, 2019) (Faris, Brand, Hercher)** (Completion of payments that would cut off trustee's motion to modify under § 1329 had not occurred when confirmed plan provided for 59 monthly payments and debtor tendered total amount from sale of property in 48th month; payments are not complete unless debtor modifies the plan to shorten plan term. Citing *Fridley v. Forsythe (In re Fridley)*, 380 B.R. 538 (B.A.P. 9th Cir. Dec. 18, 2007) (Klein, Montali, Jury), "[w]e have held that, as a general proposition, payments are not 'complete' when the debtor pays them early, unless the debtor modifies the plan pursuant to § 1329 to shorten its term . . . . We have also rejected a chapter 13 plan with an indefinite duration, which would have allowed the debtor to 'complete' his plan whenever he paid off all priority and secured claims. *In re Escarcega*, 573 B.R. 219 [(B.A.P. 9th Cir. Sept. 6, 2017) (Jury, Faris, Brand)]. . . . Mr. Black's plan payments were not 'complete' when he made the lump-sum payment, because he did not modify his plan to shorten its duration. . . . Because Mr. Black's income is less than the applicable median, his 'applicable commitment period' was thirty-six months. . . . But he proposed a fifty-nine month term, probably because he could not afford a larger monthly payment and therefore needed more time to generate plan funding sufficient to meet other confirmation requirements. . . . [T]he statute does not tie the plan modification time limit to the 'applicable commitment period.' Section 1329(a) cuts off the right to modify a plan upon 'completion of payments under such [i.e., the original] plan.' If Congress meant to terminate the modification right upon expiration of the applicable commitment period, it could and would have said exactly that.").

{1089} ***In re Peterson*, No. 3:19-CV-00249 (KAD), 2019 WL 6467351 (D. Conn. Dec. 2, 2019) (Dooley)** (When Chapter 13 debtor obtained a judgment against the owner of a corporation and that corporation obtained $25,000 by way of settlement of other litigation, debtor's indirect interest in the $25,000 did not become property of the Chapter 13 estate because the debtor took no action to collect from the corporation and the Chapter 13 trustee had no obligation to do so. Because the confirmed plan was funded in part by the proceeds of that litigation, the bankruptcy court did not err in closing the case without discharge when the debtor did not liquidate the claim and did not bring any portion of the settlement proceeds into the estate.), *reconsideration denied*, No. 3:19-CV-00249 (KAD), 2020 WL 607153 (D. Conn. Feb. 7, 2020) (Dooley).

{1090} ***In re Powell*, No. 18-50818 SLJ, 2020 WL 751982, at *3–*12 (Bankr. N.D. Cal. Jan. 23, 2020) (Johnson)** (General Order in Northern District of California that requires Chapter 13 debtors making long-term payments directly to a creditor to file quarterly declarations of the status of postconfirmation payments cannot be eliminated by plan modification under § 1329; the General Order is a valid procedural provision that enables monitoring of Chapter 13 plans that contain direct payments and is consistent with mandates in § 1322(b)(5) and § 1326(c) that direct payments are payments under the plan and that debtors must maintain payments even if made directly. Confirmed plan provided payment of prepetition arrears would be disbursed by the Chapter 13 trustee but postpetition payments of $2,262 per month would be made directly by debtor to Wells Fargo. Plan further provided that debtor would file quarterly declarations with respect to the status of the postconfirmation payments to Wells Fargo. After confirmation the debtor moved to modify the plan to eliminate the reporting requirement. "[T]he four types of modifications provided in § 1329(a) are exclusive of other changes . . . . The court's authority to enact general orders is granted by Bankruptcy Rule 9029(b), and the use of general orders is specifically recognized in the 1995 Advisory Committee Notes . . . . [T]he option to pay a creditor directly is not the same thing as the right to pay sporadically. . . . Both the Supreme Court and the Ninth Circuit reject Debtor's view that § 1322(b)(5) does not require regular full payments. . . . [T]he postpetition maintenance payments are made according to the terms of the underlying obligation, and these are not modified by § 1322(b)(5). . . . In [*Derham-Burk v. Mrdutt (In re Mrdutt)*, 600 B.R. 72 (B.A.P. 9th Cir. May 6, 2019) (Brand, Taylor, Faris)], the BAP . . . joined 'the overwhelming majority of courts' holding that a chapter 13 debtor's direct payments to creditors are payments under the plan that must be completed in order to receive a discharge under § 1328(a). . . . [C]omputation of disposable income to pay creditors under § 1325(b) takes into account any payments that have been promised to secured creditors. A debtor who provided for direct payments to secured creditors in a plan and then fails to make them may be treating unsecured creditors unfairly because their claims are reduced by such phantom expenses. . . . The reporting requirement in GO 34 allows the court to efficiently implement and enforce the provisions of § 1322(b)(5) and § 1328(a) by filling a necessary procedural gap. . . . [A] chapter 13 trustee has a duty to monitor performance under the plan. 11 U.S.C. § 1307(c) . . . . Without a mechanism to monitor a debtor's direct payments during the term of the plan, a debtor's postpetition mortgage arrears may be too large to remedy at the conclusion of the plan, thereby jeopardizing his discharge. GO 34 also serves an important purpose of treating all debtors equally, regardless of which method (direct or through trustee) they use to pay their postpetition maintenance payments. In conduit plans, the trustee is immediately aware that a payment to a secured creditor has not been made timely. . . . [N]o distinction should exist between debtors who propose to pay creditors directly and those who pay through the chapter 13 trustee. . . . Debtor could have opted to make his postpetition mortgage payments through Trustee and secured the peace of mind that so long as he remains current on all his payments under the plan, his mortgage payments would have been properly disbursed and he would be eligible for a discharge, all without the necessity to file quarterly proof of payments.").

{1091} ***In re Kinney*, No. 13-27912 EEB, 2019 WL 7938816, at *4–*6 (Bankr. D. Colo. Nov. 22, 2019) (Brown)** (On reconsideration, distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), bankruptcy court has no discretion to allow Chapter 13 debtor to make up missed mortgage payments after 60 months have expired. "In *Klaas*, there was no new payment arrangement. The parties discovered an unpaid, undisclosed fee. . . . The debtors were not trying to extend the time to make the known plan payments. All of the known payments had been made by the end of the five years. And the *Klaas* court adopted a test that, if applied narrowly and cautiously, would not threaten to undercut the statutory prohibition against extending plan arrangements beyond five years. However, . . . parties will advocate for application of that test to allow debtors additional months to complete known plan payments. That creates a very slippery slope. Soon the five-year term limit is no more than a guideline. . . . The Debtor made all of her required Trustee payments by the end of the five years, but she failed to make the September through November mortgage payments until she cured them . . . almost two and one-half months beyond the end of the five years. . . . Although it is difficult to articulate why, to this Court, this situation is different from the undisclosed fee paid sixteen days after the plan ended or the receipt of a final payment two days after the end of the plan. It is an attempt to extend the time for payments. It is a new payment arrangement made to complete known plan payments. That is a plan modification pursuant to § 1329(a). And it is an attempt to extend the plan beyond five years in direct contravention of § 1329(c). . . . [D]ebtors with five-year plans will need to complete all plan payments, including direct mortgage payments that come due during the plan, before the end of the five years. . . . [T]here may be cases with circumstances more akin to the situation described in *Klaas*, where debtors are unable to complete plan payments due to circumstances beyond their control and subsequently cure a small arrearage in one payment, very shortly after the end of the plan. Although such circumstances are not present here, this Court leaves open the possibility that it will allow such a cure without construing it as a plan modification to extend the time for payment."), *denying reconsideration of* No. 13-27912 EEB, 2019 WL 7938815, at *4 (Bankr. D. Colo. Feb. 27, 2019) (Brown) (After final cure notice indicated direct payment of mortgage was current, Chapter 13 debtor's default in direct payment of mortgage precludes entry of discharge; distinguishing *In re Klaas*, 858 F.3d 820 (3d Cir. June 1, 2017) (Fisher, Vanaskie, Krause), debtor cannot cure default in direct payment of mortgage after 60 months and case must be dismissed without discharge—notwithstanding that debtor paid small mortgage delinquency within two and one-half months of end of 60-month plan. "Unfortunately, it is too late for the Debtor in this case. Her failure to timely pay her mortgage payments during the five-year applicable commitment period constitutes a material default of the plan and is cause for dismissal. 11 U.S.C. § 1307(c)(6).").

2. EXCEPTIONS TO FULL-PAYMENT DISCHARGE BEFORE BAPCPA

§ 158.1 Alimony, Maintenance or Support
§ 158.2 Student Loans
§ 158.3 Driving while Intoxicated
§ 158.4 Criminal Restitution and Criminal Fines

{1092} ***In re Moss*, 618 B.R. 123, 129-30 (Bankr. D.N.J. June 17, 2020) (Kaplan)** (Discharge in Chapter 13 case in 2016 included discharge of nonpriority municipal fines; municipality violated discharge injunction by threatening arrest and other collection action and is liable for compensatory damages, including attorney's fees. Sovereign immunity is not available to municipality because of waiver in § 106 and New Jersey Tort Claims Act does not apply. Municipal fines may be nondischargeable under § 523(a)(7) but that exception does not apply in Chapter 13 cases under § 1328(a) and municipal fines are not "criminal" fines for purposes of discharge exception in § 1328(a)(3). *Taggart v. Lorenzen*, ___ U.S. ___, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (June 3, 2019), does not change contempt finding because municipality was warned decades earlier by Administrative Office of New Jersey Courts that municipal fines were dischargeable in Chapter 13 cases. "While Congress lists several exceptions to dischargeability, it excluded 11 U.S.C. § 523(a)(7) . . . . Municipal court fines fall within the definition of § 523(a)(7), and as such are dischargeable in a chapter 13 bankruptcy case if the case proves successful. . . . [M]unicipal court fines do not fall within the Code's definition or interpretation of 'criminal fines' under 11 U.S.C. § 1328(a)(3) . . . . Applying the Supreme Court's articulated objective standard as outlined in *Taggart*, this Court determines it is unassailable that Defendant's attempts to enforce the pre-petition municipal fines were unlawful, both subjectively and objectively.").

§ 158.5 Claims Not Provided for by the Plan or Disallowed under § 502

{1093} ***In re Hidalgo*, No. 19-13904-RAM, 2019 WL 9270223, at *1 (Bankr. S.D. Fla. Dec. 18, 2019) (Mark)** (Secured creditor being paid directly by the debtor "outside" Chapter 13 plan is not entitled to "comfort order" that its debt will not be discharged because, after *Dukes v. Suncoast Credit Union (In re Dukes)*, 909 F.3d 1306 (11th Cir. Dec. 6, 2018) (Pryor, Carnes, Conway), a comfort order is unnecessary. "The Plan states that Bayview's secured claim will be paid directly outside of the Plan. The *Dukes* holding is clear. Secured claims paid directly outside of a chapter 13 plan are not 'provided for' in the plan and therefore any personal liability of a debtor that pays a secured claim directly will not be subject to a discharge entered under 11 U.S.C. § 1328. There is no need for a comfort order . . . .").

§ 158.6 Postpetition Claims
§ 158.7 Long-Term Debts

{1094} ***In re Starling*, 617 B.R. 208 (Bankr. S.D.N.Y. June 22, 2020) (Morris)** (Acknowledging contrary authority and applying *Beard v. Commissioner*, 82 T.C. 766 (May 24, 1984) (Whitaker), *aff'd*, 793 F.2d 139 (6th Cir. June 24, 1986) (Keith, Nelson, Edwards), Chapter 13 debtor's Form 1040 filed after assessment by IRS was a "return" and taxes for 2002 tax year were discharged in Chapter 13 case completed in 2016.).

{1095} ***California Franchise Tax Bd. v. Berkovich (In re Berkovich)*, 610 B.R. 893, 898–900 (Bankr. C.D. Cal. Jan. 23, 2020) (Tighe)** (Completed Chapter 13 plan does not discharge state taxes under § 523(a)(1)(B)(i) with respect to which debtor was required but did not file correcting report of changes to amounts reported to the IRS. That IRS filed a report of corrected assessments with state taxing authority did not relieve debtor of obligation to provide corrected reports and notices. California Franchise Tax Board filed complaint in 2019 to determine dischargeability of Chapter 13 debtor's taxes for 2003, 2004 and 2005. Chapter 13 plan was confirmed in 2012 but debtor failed to report to FTB additional assessments of federal income taxes for the prior years. IRS filed notices of amendment with FTB. Debtor did not. Addressing 2005 amendments to § 523(a)(1)(B), "[i]f [26 U.S.C.] § 6020(b) can no longer provide an equivalent return, the IRS filing the changes or corrections to Debtor's federal tax assessment with the FTB would likewise not be equivalent to Debtor filing the corrections with the FTB. . . . Debtor never reported the changes . . . . Although the IRS eventually provided the FTB this information, it does not satisfy Debtor's obligation . . . to file the report himself with the FTB. The fact that he filed tax returns years before the IRS assessments does not excuse him from this later requirement. Congress amended the statute to require both a return and any subsequent required report and revised it at the same time to emphasize the debtor's individual duty.").

{1096} ***Kriss v. United States (In re Kriss)*, No. 18-01064-BAH, 2019 WL 4745361 (Bankr. D.N.H. Oct. 1, 2019) (Harwood)** (Applying *Fahey v. Massachusetts Department of Revenue (In re Fahey)*, 779 F.3d 1 (1st Cir. Feb. 18, 2015) (Torruella, Thompson, Kayatta), and rejecting *Beard v. Commissioner*, 82 T.C. 766 (May 24, 1984), *aff'd*, 793 F.2d 139 (6th Cir. June 24, 1986) (Keith, Nelson, Edwards), late-filed returns are not "returns" for purposes of § 523(a)(1)(B) and hanging paragraph at the end of § 523(a); IRS did not violate discharge injunction with respect to postpetition interest and priority taxes that were not paid during the Chapter 13 case. Court leaves for another day the question whether the bankruptcy court has jurisdiction to award attorney's fees and actual damages for violation of the discharge injunction when debtor did not exhaust administrative remedies with respect to the IRS. Emotional distress damages are definitely not recoverable from the IRS under any circumstances.).

{1097} ***Campagna v. IRS (In re Campagna)*, No. A18-8332, 2019 WL 4554512 (Bankr. D. Neb. Sept. 19, 2019) (Saladino)** (Discharge in Chapter 13 case did not discharge taxes with respect to which returns were filed late and within two years of bankruptcy for purposes of § 523(a)(1)(B)(ii). That debtor objected to proof of claim and inadequate notice may have misled IRS to not respond to objection do not change determination that the underlying taxes were not discharged.).

{1098} ***In re Widick*, No. BK10-40187, 2019 WL 4894543 (Bankr. D. Neb. Sept. 10, 2019) (Saladino)** (IRS did not violate discharge injunction by offsetting tax refund and Social Security payments to collect interest on nondischargeable taxes and penalties that were paid without interest through completed Chapter 13 plan.).

§ 159.2 False Representations and Fraud: § 523(a)(2)

{1099} ***Superior Cleaning Serv. LLC v. Munoz (In re Munoz)*, 784 F. App'x 653 (10th Cir. Oct. 29, 2019) (Eid, Kelly, Carson)** (Bankruptcy court appropriately apportioned state court judgment to determine that $2 of that judgment was nondischargeable in a Chapter 13 case under § 523(a)(2)(A).), *aff'g in part, appeal dismissing in part* 592 B.R. 736 (D. Colo. Sept. 5, 2018) (Martinez) (Citing *Cohen v. de la Cruz*, 523 U.S. 213, 118 S. Ct. 1212, 140 L. Ed. 2d 341 (Mar. 24, 1998), state court judgment for nominal damages of $2 was nondischargeable under § 523(a)(2); remand necessary to address recovery of $91,000 in attorney fees.), *report and recommendation adopting in part, rejecting in part*, No. 17-cv-01910-WJM-STV, 2018 WL 4697328 (D. Colo. July 3, 2018) (Varholak) (Citing *Cohen v. de la Cruz*, 523 U.S. 213, 118 S. Ct. 1212, 140 L. Ed. 2d 341 (Mar. 24, 1998), magistrate judge recommends that bankruptcy court erred in finding only $2 of state court judgment nondischargeable. Damages for contract breach based on claims of fraud could include entire amount of resulting judgment within § 523(a)(2) as interpreted by the Supreme Court in *Cohen*. Attorney fees awarded under contract after judgment for fraud would also be nondischargeable.).

{1100} ***Excellent Home Props., Inc. v. Kinard (In re Kinard)*, No. 4:19-CV-00411-BCW, 2020 WL 4918015 (W.D. Mo. July 22, 2020) (Wimes)** (In § 523(a)(2)(A) action against Chapter 13 debtor, investor failed to prove justifiable reliance when it credit bid its entire debt based on mistaken belief that debtor had made improvements to property that had not actually been made. Red flags should have alerted sophisticated investor to investigate before credit bidding entire debt. Investor also could not prove damages because the full credit bid extinguished the mortgage and debt.).

{1101} ***Mansfield v. Swiger (In re Swiger)*, 617 B.R. 537 (Bankr. W.D. Pa. July 24, 2020) (Deller)** (Applying *Archer v. Warner*, 538 U.S. 314, 123 S. Ct. 1462, 155 L. Ed. 2d 454 (Mar. 31, 2003), consent judgment in domestic relations court with respect to debtor's

obligation to pay student loan signed only by former spouse is not preclusive of former spouse's claim under § 523(a)(A)(2) that debtor committed fraud by signing former spouse's signature to the student loan.).

{1102} ***F & M Bank v. Frost (In re Frost)*, No. A19-4054-TLS, 2020 WL 3685006 (Bankr. D. Neb. July 7, 2020) (Saladino)** (Summary judgment denied in dischargeability litigation under § 523(a)(2)(A) and (B) because material facts are disputed with respect to intent and reliance in loan transactions involving a welding business.).

{1103} ***Fiebelkorn v. Cooke (In re Cooke)*, No. 3:18-ap-00519-DPC, 2020 WL 3256805 (Bankr. D. Ariz. June 15, 2020) (Collins)** (Debtor committed no nondischargeable act under § 523(a)(2) or (4) in connection with failure to pay former spouse $68,925 from sale or refinance of marital home. Debtor always intended to pay until she learned the obligation was dischargeable in a Chapter 13 case. Debtor did not embezzle the proceeds from sale or commit any defalcation in connection with the sale.).

{1104} ***Credit Assocs. Inc. Blevins (In re Blevins)*, No. 20-3002-dwh, 2020 WL 2529329 (Bankr. D. Or. May 15, 2020) (Hercher)** (Applying *Husky International Electronics, Inc. v. Ritz*, ___ U.S. ___, 136 S. Ct. 1581, 194 L. Ed. 2d 655 (May 16, 2016), Chapter 13 debtor may have committed fraud for purposes of § 523(a)(2)(A) when the debtor conveyed property of a decedent's estate to herself.).

{1105} ***Wernes v. Kroesen (In re Kroesen)*, No. 19-04003, 2020 WL 2121273 (Bankr. W.D. Mo. May 1, 2020) (Norton)** (Chapter 13 debtor's debt to former investor in house rehab project is nondischargeable under § 523(a)(2)(A) based on evidence that debtor misrepresented condition of house, debtor lied about status of debt on property and "benefit of bargain" damages were due to investor.).

{1106} ***Mathews v. Ellison (In re Ellison)*, No. 20-80001-JW, 2020 WL 5612076 (Bankr. D.S.C. Apr. 23, 2020) (Waites)** (Bankruptcy court has retained jurisdiction in a dismissed Chapter 13 case to determine dischargeability of a debt under § 523(a)(2) and it is appropriate to determine nondischargeability by default when debtor understood that nondischargeable debt might result. Bankruptcy court can determine the amount of the nondischargeable judgment based on the complaint and proof of claim from creditor. Plaintiff can recover attorney's fees for litigation of a nondischargeability complaint under § 523(a)(2) when underlying contract allows fees and plaintiff has prevailed, but fee request is denied because fees were not requested in the complaint or included in the proof of claim. The Supreme Court has authorized recovery of fees for litigating dischargeability complaints when it overruled *Fobian v. Western Farm Credit Bank (In re Fobian)*, 951 F.2d 1149 (9th Cir. Dec. 24, 1991) (Fletcher, Wiggins, Kozinski), in *Travelers Casualty & Surety Co. of America v. Pacific Gas & Electric Co*., 549 U.S. 443, 127 S. Ct. 1199, 167 L. Ed. 2d 178 (Mar. 20, 2007). Determination of nondischargeability in a (dismissed) Chapter 13 case under § 523(a)(2) may have *res judicata* effect in a subsequent bankruptcy case, but that outcome is not properly declared in advance.).

{1107} ***Atlantic Trade LLP v. Aung (In re Aung)*, 611 B.R. 145 (Bankr. D. Mass. Jan. 31, 2020) (Bailey)** (Chapter 13 debtor committed false representations and false pretenses in connection with sale of grocery store sushi counters that debtor did not own; judgment debts were nondischargeable under § 523(a)(2)(A).).

{1108} ***Wheeler Bros., Inc. v. Jones (In re Jones)*, 611 B.R. 685 (Bankr. M.D. Ala. Jan. 24, 2020) (Creswell)** (District court judgment that debtor committed willful, malicious and intentional fraud collaterally estops Chapter 13 debtor from litigating nondischargeability under § 523(a)(2)(A). District court judgment for sanctions for discovery abuse lacked findings necessary for preclusion and remains for trial.).

{1109} ***Beabout v. Medlin (In re Medlin)*, 611 B.R. 547 (Bankr. E.D.N.C. Dec. 16, 2019) (Warren)** (Awkwardly pleaded § 523(a)(2) action against Chapter 13 debtor fails on motion to dismiss because debtor's forgery of signature came after extension of credit and plaintiff's indemnity claim does not fit the exception to dischargeability.).

{1110} ***Dennis' Seven Dees Landscaping, Inc. v. Pickett (In re Pickett)*, No. 19-3004-tmb, 2019 WL 6768712 (Bankr. D. Or. Dec. 11, 2019) (not for publication) (Brown)** (Complex nondischargeability proceeding against Chapter 13 debtor under § 523(a)(2) fails for lack of proof of intent to defraud and reliance. Case arose out of a landscaping business in which the debtor was an employee who also did business with his employer. Irregularities in the contract relationship between the debtor and employer obscured whether debtor committed fraud or simply breach of contract and ongoing employer/employee relationship put reliance in question.).

{1111} ***Banco Popular De P.R. v. Rosario (In re Rosario)*, No. 18-00016, 2019 WL 6627479 (Bankr. D.P.R. Dec. 5, 2019) (Tester)** (Material disputed facts with respect to allegations of fraud preclude summary judgment in adversary proceeding to revoke confirmation under § 1330 and to determine debt nondischargeable under § 523(a)(2)(A). Contested facts include home purchase on behalf of an under-aged baseball player and an unrecorded mortgage.).

{1112} ***Trentzsch v. Trentzsch (In re Trentzsch)*, No. 1:19-ap-00069-HWV, 2019 WL 10432058 (Bankr. M.D. Pa. Dec. 5, 2019) (Van Eck)** (Former spouse's claims of nondischargeability under § 523(a)(2) and (a)(4) fail because no money, services or misrepresentations are alleged, no fraud is pleaded with particularity, no embezzlement or larceny is alleged and plaintiff did not plead bad intent by debtor.).

{1113} ***Tobias v. Alvarado (In re Alvarado)*, 608 B.R. 877 (Bankr. W.D. Okla. Nov. 27, 2019) (Loyd)** ($132,000 obtained by Chapter 13 debtor by false pretenses—through abuse of a friendship—is a nondischargeable debt under § 523(a)(2)(A).).

{1114} ***Contreras v. Arguelles (In re Arguelles)*, No. 5:18-ap-7046, 2019 WL 5075943 (Bankr. W.D. Ark. Oct. 9, 2019) (Barry)** (A convoluted, deconstruction of default judgment and jury determination of damages renders punitive damages portion of state court judgment nondischargeable for fraud under § 523(a)(2)(A) and other portion of judgment nondischargeable for embezzlement of a car under § 523(a)(4).).

{1115} ***Weaver v. Hartman (In re Hartman)*, No. 18-ap-00054, 2019 WL 5616256 (Bankr. N.D. W. Va. Sept. 27, 2019) (Flatley)** (Complaint for fraud under § 523(a)(2) and (a)(4) fails because no claim is made that debtor misrepresented facts or committed fraud before creditor invested in debtor's gun business and failure to pay creditor a share of profits was breach of contract, perhaps, but not fraud.).

{1116} ***Pool v. Winstead (In re Winstead)*, 605 B.R 432 (Bankr. S.D. Miss. Sept. 24, 2019) (Olack)** (Complaint objecting to dischargeability under § 523(a)(2)(A) and (B) is dismissed when no misrepresentation or fraud is alleged and no document is referenced. After dismissal of complaint to bar dischargeability under § 523 court acknowledges that debtor may seek attorney's fees under § 523(d).).

{1117} ***Kansas v. Jones (In re Jones)*, No. 19-4018, 2019 WL 4670876 (Bankr. W.D. Mo. Sept. 23, 2019) (Dow)** (Administrative determination by Kansas Department of Labor that debtor "willfully and knowingly" made false statements to obtain unemployment benefits collaterally estops Chapter 13 debtor to litigate nondischargeability under § 523(a)(2)(A).).

{1118} ***Sharp v. Sharp (In re Sharp)*, No. 18-00193, 2019 WL 7602221 (Bankr. W.D. Tenn. Apr. 1, 2019) (Latta)** (Fraud counterclaim by former spouse in debtor's adversary proceeding to determine dischargeability of debts in divorce decree is dismissed as untimely filed six years after complaint deadline for § 523(c) actions. Court rejects equitable tolling argument based on claim that former spouse did not have notice that debtor would seek to discharge debts to former spouse.).

§ 159.3 Fraud and Defalcation: § 523(a)(4)

{1119} ***Camp Inn Lodge, LLC v. Kirvan (In re Kirvan)*, No. 17-2120-dob, 2020 WL 4873571 (Bankr. E.D. Mich. Aug. 19, 2020) (Opperman)** (By embezzlement or larceny, Chapter 13 debtor took $55,000 from business and treble that amount is nondischargeable under § 523(a)(4) and § 523(a)(6). No discussion of § 1328(a)(4) and no discussion whether § 523(a)(6) applies in what seems to be a Chapter 13 case.).

{1120} ***Bioconvergence LLC v. Attariwala (In re Attariwala)*, No. 20-10009, 2020 WL 3443808 (Bankr. D.D.C. June 22, 2020) (Teel)** (Not appropriate to enter a default judgment with respect to nondischargeability of claims for misappropriation of trade secrets, embezzlement or larceny under § 523(a)(4) when pleadings are not clear with respect to which causes of action produced nondischargeable debts.).

{1121} ***Fiebelkorn v. Cooke (In re Cooke)*, No. 3:18-ap-00519-DPC, 2020 WL 3256805 (Bankr. D. Ariz. June 15, 2020) (Collins)** (Debtor committed no nondischargeable act under § 523(a)(2) or (4) in connection with failure to pay former spouse $68,925 from sale or refinance of marital home. Debtor always intended to pay until she learned the obligation was dischargeable in a Chapter 13 case. Debtor did not embezzle the proceeds from sale or commit any defalcation in connection with the sale.).

{1122} ***Credit Assocs. Inc. Blevins (In re Blevins)*, No. 20-3002-dwh, 2020 WL 2529329 (Bankr. D. Or. May 15, 2020) (Hercher)** (Creditor of decedent's estate states claim for nondischargeability under § 523(a)(4) based on evidence that debtor as representative of estate and in violation of probate law transferred real property to herself without first satisfying claims of creditors.).

{1123} ***Kessler-Maue v. Maue (In re Maue)*, 611 B.R. 367 (Bankr. W.D. Wash. Dec. 23, 2019) (Barreca)** (Family members are entitled to judgment against Chapter 13 debtor for $686,496.60 that is nondischargeable under § 523(a)(4) based on more than two decades of self-dealing and other defalcations by the debtor as trustee for various family trusts.).

{1124} ***Dennis' Seven Dees Landscaping, Inc. v. Pickett (In re Pickett)*, No. 19-3004-tmb, 2019 WL 6768712 (Bankr. D. Or. Dec. 11, 2019) (not for publication) (Brown)** (Section 523(a)(4) nondischargeability proceeding against Chapter 13 debtor fails for lack of proof of embezzlement or larceny. Debtor was employee of landscaping business while doing business with his employer.).

{1125} ***Trentzsch v. Trentzsch (In re Trentzsch)*, No. 1:19-ap-00069-HWV, 2019 WL 10432058 (Bankr. M.D. Pa. Dec. 5, 2019) (Van Eck)** (Former spouse's claims of nondischargeability under § 523(a)(2) and (a)(4) fail because no money, services or misrepresentations are alleged, no fraud is pleaded with particularity, no embezzlement or larceny is alleged and plaintiff did not plead bad intent by debtor.).

{1126} ***Contreras v. Arguelles (In re Arguelles)*, No. 5:18-ap-7046, 2019 WL 5075943 (Bankr. W.D. Ark. Oct. 9, 2019) (Barry)** (A convoluted, deconstruction of default judgment and jury determination of damages renders punitive damages portion of state court judgment nondischargeable for fraud under § 523(a)(2)(A) and other portion of judgment nondischargeable for embezzlement of a car under § 523(a)(4).).

{1127} ***Vrana v. Thornhill (In re Thornhill)*, No. 19-2001, 2019 WL 4795601 (Bankr. E.D. Tex. Sept. 30, 2019) (Parker)** (State court judgment against Chapter 13 debtor for breach of Texas Construction Trust Fund Act established all elements of nondischargeability under § 523(a)(4).).

{1128} ***Weaver v. Hartman (In re Hartman)*, No. 18-ap-00054, 2019 WL 5616256 (Bankr. N.D. W. Va. Sept. 27, 2019) (Flatley)** (Complaint for fraud under § 523(a)(2) and (a)(4) fails because no claim is made that debtor misrepresented facts or committed fraud before creditor invested in debtor's gun business and failure to pay creditor a share of profits was breach of contract, perhaps, but not fraud.).

§ 159.4 Unscheduled Creditors: § 523(a)(3)

{1129} ***Walkama v. Nellams*, No. C19-1207-JCC, 2020 WL 995853, at *2–*4 (W.D. Wash. Mar. 2, 2020) (Coughenour)** (Plaintiff in discrimination lawsuit against Chapter 13 debtor is entitled to stay relief to liquidate claim against debtor based on findings that notice of bankruptcy was insufficient to bind plaintiff to confirmed plan and lack of notice renders plaintiff's claim nondischargeable in the Chapter 13 case. "Discharging a debt in a Chapter 13 bankruptcy proceeding requires that the plan specifically 'provide for' the debt. . . . Even if the Chapter 13 plan refers to the debt, the plan does not sufficiently provide for that debt unless the creditor to whom the debt is owed is timely notified of the bankruptcy proceeding. . . . Accordingly, if the notice to the creditor is deemed inadequate, then the debt is not dischargeable. . . . Appellee never received formal, statutorily required notice . . . . Appellee was not notified that his claim was subject to discharge under Appellants' proposed Chapter 13 plan. . . . Appellee had no opportunity to be heard or to contest the proposed plan before it was confirmed. . . . Appellee's claim was not subject to discharge in Appellants' proposed plan.").

{1130} ***Matthews v. Gamboa (In re Gamboa)*, No. 17-1006-JDL, 2020 WL 5587431 (Bankr. W.D. Okla. Sept. 17, 2020) (Loyd)** (Chapter 13 debtor is not entitled to recover attorney's fees from creditor after debtor successfully defeated nondischargeability litigation under § 523(a)(3); § 523(d) does not apply and no other statute, rule or contract overcomes the usual American Rule.).

{1131} ***Matthews v. Gamboa (In re Gamboa)*, No. 17-1006-JDL, 2020 WL 4778158 (Bankr. W.D. Okla. Aug. 17, 2020) (Loyd)** (Motion to disqualify bankruptcy judge filed by creditor/attorney after unsuccessful dischargeability litigation under § 523(a)(3) in a Chapter 13 case is denied and creditor is warned that motion verges on Bankruptcy Rule 9011 material.).

{1132} ***In re Ohm*, No. 15-60029, 2020 WL 4810066 (Bankr. N.D. Ohio July 31, 2020) (Kendig)** (On debtor's motion to avoid the lien of former counsel for attorney's fees, bankruptcy court cites § 523(a)(3) for proposition that attorney's lien and debt are not dischargeable because the debtor did not schedule former counsel and did not provide for the debt or lien in confirmed plan. After unsuccessful prior Chapter 13, counsel obtained a state court judgment and lien. Two years later in a second Chapter 13 case debtor did not schedule the lien or the debt and confirmed a plan that provided for neither. Five years later, debtor's motion to avoid the judgment lien was denied.).

{1133} ***In re Dedo*, No. 18-00657, 2020 WL 961311 (Bankr. D.D.C. Feb. 24, 2020) (Teel)** (Motion by creditor for leave to file complaint to determine dischargeability of debt under § 523(a)(3) is denied without prejudice to creditor's right to file a complaint objecting to dischargeability under § 523(a)(3). Stay relief is allowed to permit creditor to pursue its claims against debtor—including its § 523(a)(3) action—in state court. Leave of court is not required to file a complaint under § 523(a)(3) and a motion is not the proper route to that determination.).

{1134} ***Matthews v. Gamboa (In re Gamboa)*, No. 17-1006-JDL, 2020 WL 118591, at *6–*8 (Bankr. W.D. Okla. Jan. 9, 2020) (Loyd)** (Disputed facts with respect to whether debtor knew of debt at time schedules and list were filed precludes summary judgment in action by unscheduled and unlisted creditor to determine dischargeability under § 523(a)(3). Unscheduled creditor's objection to discharge under § 727(a)(4) demonstrates a "profound misunderstanding" of the Bankruptcy Code given that § 727 does not apply in Chapter 13 cases. "The undisputed facts show that Gamboa did not list or schedule a debt owed to Matthews prior to the claims bar date, and that Matthews did not have notice or actual knowledge of the case until . . . long after the . . . time established to file a timely Proof of Claim . . . . Thus, all the elements under § 523(a)(3)(A) for Matthews to establish, as a matter of law, an exception to Gamboa's discharge appear to have been met. That, however, does not end the dispute. . . . Section 523(a)(3) makes non-dischargeable debts which a debtor neither listed nor scheduled '*if known to the debtor*.' . . . Simply put, § 523(a)(3)(A) does not apply when the debtor has no knowledge of the claim in time to include it in the schedules before the bar date has run. . . . [T]he issue of Gamboa's knowledge of Matthews' claim at the time of the filing of the bankruptcy is disputed . . . .").

{1135} ***Voss v. Voss (In re Voss)*, No. ID-20-1053-SGF, 2020 WL 4371199 (B.A.P. 9th Cir. July 30, 2020) (not for publication) (Spraker, Gan, Faris)** (Bankruptcy court appropriately determined on a stipulated trial record that state court award to former spouse of $35,000 for attorney's fees was a priority, nondischargeable domestic support obligation.).

{1136} ***In re Siegfried*, No. 1:19-cv-02850-DDD, 2020 WL 4437334 (D. Colo. Aug. 3, 2020) (Domenico)** (Bankruptcy court correctly determined that debtor's obligation to pay part of home mortgage debt was domestic support that was nondischargeable in a Chapter 13 case under § 523(a)(5). State court said it was support and other indicia of support were consistent with that characterization.).

{1137} ***Metheney v. Metheney*, No. 4:19CV971 JCH, 2020 WL 4334943 (E.D. Mo. July 28, 2020) (Hamilton)** (Applying *Bush v. Taylor*, 912 F.2d 989 (8th Cir. Aug. 30, 1990) (en banc), former spouse's right to proceeds from sale of restricted stock was not a debtor-creditor relationship and does not require nondischargeability analysis in a Chapter 13 case under § 523; instead, former spouse's interest was fully vested before bankruptcy, the debtor is only a trustee for the former spouse's share and Chapter 13 case has no effect on the former spouse's entitlement.).

{1138} ***Welch v. Welch (In re Welch)*, No. 19-50002, 2020 WL 4341876 (Bankr. S.D. Ind. July 28, 2020) (Carr)** (Consistent with prenuptial agreement that waived support, judgment in state court contract action that debtor owes former spouse one-half of mortgage payments was an ordinary unsecured debt, not a domestic support obligation. Former spouse's failure to schedule contract judgment against debtor in former spouse's separate bankruptcy cases judicially estops former spouse to claim that debtor owes a DSO based on the unscheduled judgment.).

{1139} ***In re Dillon*, No. 16-01682-KMS, 2020 WL 4004886 (Bankr. S.D. Miss. July 14, 2020) (Samson)** (Obligation to pay $9,000 of equity to former spouse from sale of marital home was nondischargeable domestic support obligation based on language in decree, disparity of income and testimony of former spouse.).

{1140} ***Fiebelkorn v. Cooke (In re Cooke)*, No. 3:18-ap-00519-DPC, 2020 WL 3256805 (Bankr. D. Ariz. June 15, 2020) (Collins)** (Debtor's obligation to pay former spouse $68,925 from sale or refinance of marital home was dischargeable property settlement, not domestic support obligation.).

{1141} ***In re Ciampa*, No. 16-10913-FJB, 2020 WL 1987719 (Bankr. D. Mass. Apr. 24, 2020) (Bailey)** (Chapter 13 debtor's agreement in divorce decree to pay $50,000 student loan for former spouse's separate child was domestic support obligation entitled to priority and nondischargeability. Parties stated the debt was assumed by debtor in lieu of support and debtor treated debt as a DSO in Chapter 13 plan.).

{1142} ***In re Colella*, No. 19-41358, 2020 WL 1968241 (Bankr. N.D. Ohio Apr. 23, 2020) (not for publication) (Kendig)** (Obligation to pay deficiency on sale of former marital residence and obligation to maintain a $4 million life insurance policy at a cost of $2,688 per month are not in the nature of support and are not described as support in the divorce decree, and the life insurance policy would be excessive under Sixth Circuit authority in these circumstances. Neither debt is a DSO, neither is entitled to priority and both are dischargeable at the completion of payments in a Chapter 13 case.).

{1143} ***Quintanilla v. Crews (In re Crews)*, No. 19-4027 CN, 2020 WL 1518534 (Bankr. N.D. Cal. Mar. 30, 2020) (Novack)** ($108,000 "equalizing" payment in divorce settlement agreement was not actually in the nature of support when amount was out of proportion to ability of spouse to pay, award did not end on death or remarriage and payments were tax-free.).

{1144} ***In re Gravlin*, No. 17-41714-CJP, 2020 WL 3634266 (Bankr. D. Mass. Mar. 6, 2020) (Panos)** (Business buyout debts in marital settlement agreement were not in the nature of support and were not domestic support obligations entitled to priority. Unpaid mortgage payments were intended as maintenance or support for the former spouse, were allowed priority claims under § 507(a)(1) and would not be dischargeable under § 1328(a)(2).).

{1145} ***Carpenter v. Amos (In re Amos)*, No. 18-4031-659, 2020 WL 930094 (Bankr. E.D. Mo. Feb. 24, 2020) (Surratt-States)** (Attorney's fees awarded former spouse in litigation to defend and collect support are in nature of support and are nondischargeable in Chapter 13 case under § 523(a)(5); sanctions imposed on debtor for discovery abuse in contempt action to collect support are not in the nature of support and are dischargeable.).

{1146} ***In re Pittman*, No. 19-41057, 2020 WL 859435 (Bankr. D. Kan. Feb. 20, 2020) (Somers)** (Chapter 13 filing two days after settlement agreement in state court divorce was not filed in bad faith notwithstanding that settlement agreement recites inaccurately that "even-up" provision will be nondischargeable in bankruptcy and Chapter 13 plan recites inconsistently that even-up provision will be discharged at completion of payments. At time settlement agreement was filed, both debtor and former spouse believed that even-up provision would be nondischargeable. They were both wrong but no bad-faith motive could be ascribed to debtor.).

{1147} ***In re Cochran*, No. 16-00760, 2020 WL 535998 (Bankr. N.D. Iowa Jan. 31, 2020) (Collins)** (Confirmation of plan that surrendered four co-owned properties to former spouse in full satisfaction of her claim did not discharge former spouse's claim in pending adversary proceeding; judgment of nondischargeability in adversary proceedings is binding and balance of debt to former spouse, now unsecured, is nondischargeable.).

{1148} ***Potts v. Potts (In re Potts)*, No. 18-01052, 2020 WL 476592 (Bankr. N.D. Miss. Jan. 29, 2020) (Maddox)** (Former spouse's claim and lien securing that claim are not entitled to priority and nondischargeability because domestic support obligation factors slightly favor debtor—payments do not cease at remarriage; relative incomes were not considered by state court; and award was intended to compensate for loss of interest in homestead.).

{1149} ***Trentzsch v. Trentzsch (In re Trentzsch)*, No. 1:19-ap-00069-HWV, 2019 WL 10432058 (Bankr. M.D. Pa. Dec. 5, 2019) (Van Eck)** (Although § 523(a)(15) is not an exception to discharge under § 1328(a), former spouse has pleaded a nondischargeable ownership interest in a portion of the debtor's 401(k) pension plan based on a QDRO and former spouse has an ownership interest in stock; debtor holds former spouse's interests in constructive trust.).

{1150} ***In re Redfearn*, 608 B.R. 556 (Bankr. D.N.M. Nov. 15, 2019) (Thuma)** ($500 per month "equalization payments" were intended to support former spouse, were entitled to priority and were nondischargeable in Chapter 13 case. Former spouse was working at a grocery store, not making enough money to pay utilities and rent at time of state court decree.).

{1151} ***Sharp v. Sharp (In re Sharp)*, No. 18-00193, 2019 WL 7602209 (Bankr. W.D. Tenn. June 27, 2019) (Latta)** (After months of discovery abuse by Chapter 13 debtor and debtor's counsel, bankruptcy court imposes sanctions under Bankruptcy Rule 7037 exceeding $12,000 and declares debts owed to former spouse nondischargeable based on finding that former spouse cannot have a fair trial of § 523(a)(5) issues because of debtor's failure to cooperate in discovery.).

§ 159.6 Student Loans: § 523(a)(8)

{1152} ***McDaniel v. Navient Sols., LLC (In re McDaniel)*, No. 18-1445, 2020 WL 5104560, at *1–*13 (10th Cir. Aug. 31, 2020) (Briscoe, Holmes, Eid)** (Tuition Answer Loans are not excepted from discharge by § 523(a)(8)(A)(ii) because they are student loans that are not obligations to repay funds received as an educational benefit. "This case raises a question of first impression in this circuit: does an educational loan constitute 'an obligation to repay funds received as an educational benefit,' within the meaning of § 523(a)(8)(A)(ii)? We conclude that it does not. . . . [B]ecause § 523(a)(8)'s exceptions from discharge under subsections (A)(i) and (B) expressly mention the word 'loans,' *see* 11 U.S.C. § 523(a)(8)(A)(i), (B), Congress presumably did not intend the exception set forth in § 523(a)(8)(A)(ii)—which does not mention the word 'loan' at all—to also cover them . . . . [T]he statutory terms 'obligation to repay funds received as an educational benefit' and 'educational loan' mean separate things. . . . [S]ince the exception at issue here—that is, § 523(a)(8)(A)(ii)—does not include the term 'educational loan,' we presume it does not reach such loans. . . . [A] student loan is not an educational benefit. . . . Navient argues first that Congress amended the statute's exceptions in 2005 'to specifically cover private student loans.' . . . Navient, however, does not explain how those 2005 amendments modified the scope of the exception set forth in 11 U.S.C. § 523(a)(8)(A)(ii), which . . . first appeared in the statute in 1990. . . . We believe that the later addition of § 523(a)(8)(B) does not establish that Congress intended § 523(a)(8)(A)(ii) to cover educational loans and except them from discharge."), *aff'g and remanding* 590 B.R. 537, 542–51 (Bankr. D. Colo. Sept. 24, 2018) (Tyson) (Confirmed plan that treated student loan claims as "deferred to end of plan" did not determine whether Navient's claims were dischargeable for purposes of § 523(a)(8) litigation two years after completion of payments and discharge. Adopting emerging narrow reading, § 523(a)(8)(A)(ii) does not encompass Navient's Tuition Answer Loans. Premature to dismiss claims that Navient violated discharge injunction and was in contempt for attempting collection of Tuition Answer Loans that were not excepted from discharge by § 523(a)(8)(A)(ii). "Plaintiffs borrowed . . . $107,467 through the Tuition Answer Loans, 'made outside the financial aid office and [not] for qualified education expenses.' . . . Debtors made payments totaling $26,782 on the Tuition Answer Loans during their Chapter 13 bankruptcy case. . . . Section 523(a)(8)(A)(ii) excepts from discharge 'an obligation to repay funds received as an educational benefit, scholarship or stipend.' . . . The crux of the dispute is whether the Tuition Answer Loans fall within the ambit of this subsection as a matter of law. Courts in other jurisdictions are divided on the issue . . . . The disjunctive 'or' in Section 523(a)(8)(A)(i) is significant, because it distinguishes an 'educational benefit overpayment' from a 'loan.' . . . [G]iven the specific language employed by Congress in Sections 523(a)(8)(A)(i) and (B) and the absence of the word 'loan' from Section 523(a)(8)(A)(ii), the Court concludes 'an obligation to repay funds received as an educational benefit, scholarship or stipend' does not include a loan. . . . Section 523(a)(8)(A)(ii) does not encompass the Tuition Answer Loans . . . .").

{1153} ***Juber v. Conklin (In re Conklin)*, No. 3:19-CV-00091-KDB, 2020 WL 1672786, at *7–*9 (W.D.N.C. Apr. 6, 2020) (Bell)** (Loan from almost in-laws to almost daughter-in-law that paid off student loans is a "refinancing" that can be nondischargeable under § 523(a)(8)(B) notwithstanding that loan was not itself an educational loan; only the loan that is refinanced must qualify as an educational loan for nondischargeability purposes. "[I]f a loan fits the definition of a 'qualified education loan' under [26 U.S.C. §] 221(d)(1), then it is also a[n] 'educational loan' under section 523(a)(8)(B). . . . [T]he proper question is not whether the Jubers' loan was educational in nature, but rather whether the Jubers' loan is a *refinance* of the Three Original Loans, which would in turn make it a qualified education loan . . . . [T]he Jubers provided Ms. Conklin the loan for the purpose of paying off the Three Original Loans, which are admittedly educational in nature. . . . So long as the loan being refinanced is a 'qualified education loan,' then the refinancing loan may

still be considered nondischargeable debt under 11 U.S.C. § 523(a)(8)(B) whether or not it would itself be independently considered an 'educational loan.'"), *rev'g and remanding* 606 B.R. 664, 673–74 (Bankr. W.D.N.C. Aug. 26, 2019) (Beyer) (Loan from almost in-laws to pay off student loans was not itself a nondischargeable student loan under § 523(a)(8)(B). "[T]he Jubers were not extending credit, as an institutional lender would, to fund an education . . . . Instead, the Oral Loan was personal in nature. It was extended to the Debtor as a means of helping the Juber[s'] Son. . . . [T]he loan was made so that his son and future daughter-in-law could start their marriage on the right foot. . . . The Oral Loan was the Jubers' good-hearted, albeit misguided, attempt to get rid of debt their son could ultimately be responsible for upon marriage. It was not educational in nature.").

{1154} ***Bledsoe v. DeVos (In re Ferris)*, No. 19-00080-5-SWH, 2020 WL 3884735 (Bankr. E.D.N.C. July 9, 2020) (Humrickhouse)** (When confirmed Chapter 13 plan pays nothing to unsecured creditors, no legitimate purpose is served by debtors' fraudulent conveyance action against student loan lender that seeks to nullify Parent Federal Direct PLUS Loan. Debtors' fraudulent conveyance action is an indirect attempt to discharge a student loan debt without satisfying § 523(a)(8). In dicta, that Chapter 13 debtor would maintain fraudulent conveyance action that only benefits the debtor with no prospect for recovering anything for the estate is perhaps a good reason to require trustee participation in fraudulent conveyance actions in Chapter 13 cases.).

{1155} ***Owens v. Educational Credit Mgmt. Corp. (In re Owens)*, No. 20-01002-KKS, 2020 WL 4000851 (Bankr. N.D. Fla. May 28, 2020) (Specie)** (Acknowledging conflicting authority, student loan dischargeability under § 523(a)(8) is not ripe during early months of a Chapter 13 case.).

{1156} ***Lee v. U.S. Bank Nat'l Ass'n (In re Lee)*, No. 19-5061, 2019 WL 5849059 (Bankr. D. Kan. Nov. 7, 2019) (Nugent)** (Chapter 13 debtor's complaint fails to plead sufficient facts to support claim that student loans to daughter guaranteed by debtor were not qualified educational loans for purposes of § 523(a)(8)(B).).

{1157} ***Pongco v. Devos (In re Pongco)*, No. 18-90002-GS, 2019 WL 7602220 (Bankr. D. Alaska May 15, 2019) (Spraker)** (Material disputed facts with respect to actual knowledge of plan and discharge preclude summary judgment in Chapter 13 debtor's action against Sallie Mae for contempt when plan confirmed in 2009 provided for discharge of student loans. Application of *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), depends on whether student lender had actual knowledge of discharge provision in plan.).

§ 159.7 Willful or Malicious Injury: § 1328(a)(4)

{1158} ***Avila v. Long (In re Avila)*, No. 19-4019-pwb, 2020 WL 5105182 (Bankr. N.D. Ga. Aug. 28, 2020) (Bonapfel)** (In closed Chapter 13 case, material disputed facts preclude summary judgment under § 1328(a)(4) with respect to whether sex between a parole officer and a parolee is willful and malicious injury when officer pleaded guilty to a state law felony but claims the sex was consensual.).

{1159} ***Schoonover v. Elford (In re Elford)*, No. 20-2014, 2020 WL 5031914, at *4–*24 (Bankr. E.D. Cal. Aug. 24, 2020) (Sargis)** (Multimillion-dollar claims resulting from head-on collision for which debtor pleaded no contest to felony drunk driving by a minor are nondischargeable in a Chapter 13 case under § 523(a)(9) and § 1328(a)(4); claims under § 1328(a)(3) fail because debtor was a minor at time of accident. "Plaintiff was injured in a car accident . . . when the vehicle driven by Defendant-Debtor, who was seventeen (17) years of age at the time, struck Plaintiff's vehicle head-on. . . . [C]laims for nondischargeability pursuant to 11 U.S.C. § 523(a)(9) and 11 U.S.C. § 1328(a)(3) and (a)(4) are not time-barred . . . . [R]estitution [was] ordered based on the felony drunk driving by Defendant-Debtor for which he was adjudged a ward of the court—which is not a criminal conviction. . . . [J]udgment for the Defendant-Debtor denying Plaintiff relief pursuant to 11 U.S.C. § 1328(a)(3) is proper. . . . Defendant-Debtor admitted he was intoxicated . . . . The obligations owed by Defendant-Debtor to Plaintiff under the Restitution Order and the Amended Judgment on Verdict are nondischargeable pursuant to 11 U.S.C. § 523(a)(9). . . . The conduct of Defendant-Debtor in driving while intoxicated was willful as that term is used in 11 U.S.C. § 523(a)(6) . . . . The conduct of Defendant-Debtor in driving while intoxicated was malicious. It is a wrongful act which is in violation of the law. . . . The obligations of Defendant-Debtor to Plaintiff arising under the Restitution Order and the Judgment are nondischargeable pursuant to 11 U.S.C. § 1328(a)(4).").

{1160} ***Camp Inn Lodge, LLC v. Kirvan (In re Kirvan)*, No. 17-2120-dob, 2020 WL 4873571 (Bankr. E.D. Mich. Aug. 19, 2020) (Opperman)** (By embezzlement or larceny, Chapter 13 debtor stole $55,000 from business and treble that amount is nondischargeable under § 523(a)(4) and § 523(a)(6). No discussion of § 1328(a)(4) and no discussion whether § 523(a)(6) applies in what seems to be a Chapter 13 case.).

{1161} ***Cofresi Ortiz v. Velez Ovalles (In re Velez Ovalles)*, No. 15-00270 (EAG), 2020 WL 4728120 (Bankr. D.P.R. June 18, 2020) (Godoy)** (Multimillion-dollar judgment in tort action for injuries when debtor fell asleep at wheel and plowed into parked car is dischargeable in a Chapter 13 case under § 1328(a)(4). Judgment for gross recklessness is not preclusive of willfulness or maliciousness and there is no evidence on summary judgment that debtor acted intentionally or with knowledge that injury was certain. Section § 1328(a)(4) does not require a prepetition judgment. Willful or malicious conduct must result in personal injury, not just property damage, to be actionable under § 1328(a)(4). Willful or malicious is disjunctive in § 1328(a)(4) unlike § 523(a)(6).).

{1162} ***Michael v. Denson (In re Denson)*, No. 19-50014, 2020 WL 1547493, at *3–*4 (Bankr. S.D. Ind. Mar. 30, 2020) (Carr)** (Default judgment for sexual assault of an inmate was nondischargeable under § 1328(a)(4). District court entered default judgment for battery, assault, intentional infliction of emotional distress, and civil rights violations by the debtor while a correctional officer at Indiana's women's prison. "[U]nlike § 523(a)(6)'s more stringent conjunctive standard, § 1328(a)(4) requires a plaintiff to show that debtor's actions were willful *or* malicious. Only one need be proven, not both . . . . The term 'personal injury' is not specifically defined . . . . Debtor's actions caused personal injury . . . . Michael suffered both bodily injury from the non-consensual touching and non-physical injuries from emotional distress.").

{1163} ***Papillon v. Jones (In re Jones)*, No. A19-8027, 2020 WL 908445, at *2 (Bankr. D. Neb. Feb. 25, 2020) (Saladino)** (State court judgment for "willfully, maliciously, and recklessly" violating the privacy of the debtor's ex-spouse by making unauthorized recordings is for a personal injury that is nondischargeable in a Chapter 13 case under § 1328(a)(4). "Only a handful of reported cases have addressed the scope of . . . § 1328(a)(4), but those cases have concluded that non-physical injuries to an individual, caused by a debtor's willful or malicious conduct, are covered. . . . Mr. Jones' actions violated Ms. Papillon's reasonable expectations of privacy in her communications, . . . and for that he was ordered to pay damages . . . . [T]he state court judgment was for a personal injury suffered by Ms. Papillon.").

{1164} ***Dennis' Seven Dees Landscaping, Inc. v. Pickett (In re Pickett)*, No. 19-3004-tmb, 2019 WL 6768712 (Bankr. D. Or. Dec. 11, 2019) (not for publication) (Brown)** (Without discussion of § 1328(a)(4), plaintiff failed to prove a nondischargeability claim for conversion or for intentional interference with economic relations for § 523(a)(6) purposes.).

{1165} ***Pool v. Winstead (In re Winstead)*, 605 B.R 432 (Bankr. S.D. Miss. Sept. 24, 2019) (Olack)** (Objection to dischargeability under § 523(a)(6) is dismissed because § 523(a)(6) does not apply at the completion of payments in a Chapter 13 case.).

{1166} ***Sharp v. Sharp (In re Sharp)*, No. 18-00193, 2019 WL 7602221 (Bankr. W.D. Tenn. Apr. 1, 2019) (Latta)** (Former spouse's counterclaim under § 523(a)(6) in debtor's adversary proceeding with respect to discharge of debts in divorce judgment is dismissed because § 523(a)(6) does not apply at full-payment discharge in a Chapter 13 case and financial injuries are not actionable under § 1328(a)(4).).

§ 159.8 Boating or Flying while Intoxicated: § 523(a)(9)

{1167} ***Schoonover v. Elford (In re Elford)*, No. 20-2014, 2020 WL 5031914, at *4–*24 (Bankr. E.D. Cal. Aug. 24, 2020) (Sargis)** (Multimillion-dollar claims resulting from head-on collision for which debtor pleaded no contest to felony drunk driving by a minor are nondischargeable in a Chapter 13 case under § 523(a)(9) and § 1328(a)(4); claims under § 1328(a)(3) fail because debtor was a minor at time of accident. "Plaintiff was injured in a car accident . . . when the vehicle driven by Defendant-Debtor, who was seventeen (17) years of age at the time, struck Plaintiff's vehicle head-on. . . . [C]laims for nondischargeability pursuant to 11 U.S.C. § 523(a)(9) and 11 U.S.C. § 1328(a)(3) and (a)(4) are not time-barred . . . . [R]estitution [was] ordered based on the felony drunk driving by Defendant-Debtor for which he was adjudged a ward of the court—which is not a criminal conviction. . . . [J]udgment for the Defendant-Debtor denying Plaintiff relief pursuant to 11 U.S.C. § 1328(a)(3) is proper. . . . Defendant-Debtor admitted he was intoxicated . . . . The obligations owed by Defendant-Debtor to Plaintiff under the Restitution Order and the Amended Judgment on Verdict are nondischargeable pursuant to 11 U.S.C. § 523(a)(9). . . . The conduct of Defendant-Debtor in driving while intoxicated was willful as that term is used in 11 U.S.C. § 523(a)(6) . . . . The conduct of Defendant-Debtor in driving while intoxicated was malicious. It is a wrongful act which is in violation of the law. . . . The obligations of Defendant-Debtor to Plaintiff arising under the Restitution Order and the Judgment are nondischargeable pursuant to 11 U.S.C. § 1328(a)(4).").

§ 159.9 Chapter 7 Trustee Compensation: § 1326(d)

D. HARDSHIP DISCHARGE: DISCHARGE BEFORE COMPLETION OF ALL PAYMENTS

§ 160.1 In General
§ 160.2 Timing, Filing and Procedural Considerations
§ 160.3 Circumstances for Which the Debtor Should Not Justly Be Held Accountable

{1168} ***In re Quintyne*, 610 B.R. 462 (Bankr. S.D.N.Y. Jan. 16, 2020) (Lane)** (Hardship discharge denied under § 1328(b) after 53 months of 60-month plan because explanation by debtor—that 2006 auto needed to be replaced—was foreseeable, and real reason for default under plan appeared to be increased expenses unrelated to the failed car that were not explained by the debtor. Motion fails even if court applies less stringent standard than "catastrophic" events required by some courts. Debtor also failed to address why modification of plan was not practicable.).

§ 160.4 Best-Interests-of-Creditors Test
§ 160.5 Modification Is Not Practicable

{1169} ***In re Quintyne*, 610 B.R. 462 (Bankr. S.D.N.Y. Jan. 16, 2020) (Lane)** (Hardship discharge denied under § 1328(b) after 53 months of 60-month plan because explanation by debtor—that 2006 auto needed to be replaced—was foreseeable, and real reason for

default under plan appeared to be increased expenses unrelated to the failed car that were not explained by the debtor. Motion fails even if court applies less stringent standard than "catastrophic" events required by some courts. Debtor also failed to address why modification of plan was not practicable.).

§ 160.6 Exceptions to Hardship Discharge before BAPCPA
§ 160.7 Exceptions to Hardship Discharge Added or Changed by BAPCPA
E. WAIVER AND REVOCATION OF DISCHARGE
§ 161.1 Waiver of Discharge
§ 161.2 Revocation of Discharge and Relief from Discharge Order
F. EFFECTS OF DISCHARGE
§ 162.1 In General, Including Discharge Hearing and Discharge Injunction

{1170} ***Henry v. Educational Fin. Serv. (In re Henry),* 941 F.3d 147 (5th Cir. Oct. 17, 2019), *withdrawn and superseded*, 944 F.3d 587 (5th Cir. Dec. 16, 2019) (King, Higginson, Duncan)** (Bankruptcy court has discretion to refuse to enforce arbitration clause in action by Chapter 13 debtor to enforce discharge injunction against a student loan creditor. This result is not changed by *Epic Systems Corp. v. Lewis*, __ U.S. __, 138 S. Ct. 1612, 200 L. Ed. 2d 889 (May 21, 2018).).

{1171} ***In re Moon*, No. 13-12466-MKN, 2019 WL 5783253 (Bankr. D. Nev. Sept. 7, 2019) (Nakagawa)** (Rushmore Loan Management Service's motion to continue hearing on Chapter 13 debtor's motion for sanctions for violations of the discharge injunction is denied because Rushmore had plenty of time to prepare for the hearing and the substitution of counsel is not a ground for continuance when new counsel had plenty of time to get ready.).

§ 162.2 Discharge Injunction and § 524(i) after BAPCPA

{1172} ***Freeman v. Nationstar Mortg. LLC (In re Freeman)*, No. CC-18-1261-TaFS, 2019 WL 5584884, at *5–*6, *4–*5 (B.A.P. 9th Cir. Oct. 29, 2019) (not for publication) (Taylor, Faris, Spraker)** (After payment in full of agreed-upon value of mortgagee's claim secured by nonresidential real property, underlying lien was discharged by operation of California law and § 506(d). Mortgagee violated discharge injunction by proceeding with foreclosure after discharge of its secured claim and lien. However, because the Supreme Court rejected the Ninth Circuit's standard for determining whether a creditor is in contempt for violating the discharge injunction in *Taggert v. Lorenzen*, ___ U.S. ___, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (June 3, 2019), remand is necessary for bankruptcy court to reconsider its decision that postdischarge foreclosure did not constitute contempt when creditor thought, erroneously, that its lien survived payment of its agreed-upon secured claim. "Payment in full of a secured claim has import under the controlling California law. In California, a lien does not exist independently of the underlying debt; satisfaction of the underlying debt satisfies the lien. . . . Put differently, § 506(d) voids liens when a creditor's claim is not allowed in the bankruptcy. . . . [F]ull payment of an allowed secured claim voids (i.e., extinguishes) the lien securing that claim by operation of state law and the Bankruptcy Code." With respect to *Taggert*: "[T]he Ninth Circuit's *Taggart* standard was forgiving to creditors: it allowed a creditor to proceed with otherwise objectively unreasonable acts so long as it held a subjective good faith belief that it was in the right. . . . The Supreme Court rejected the Ninth Circuit's 'good faith belief' standard . . . .").

{1173} ***Crum v. SN Servicing Corp.*, No. 1:19-cv-02045-JRS-TAB, 2020 WL 5629694 (S.D. Ind. Sept. 21, 2020) (Sweeney)** (Chapter 13 debtor's § 524(i) claims against mortgagee and servicer alleging that someone failed to properly account for payments from the trustee were waived when debtor did not respond to defendants' motion to dismiss.).

{1174} ***Todd v. Ocwen Loan Servicing, Inc.*, No. 2:19-cv-00085-JMS-DLP, 2020 WL 1328640, at *2–*6 (S.D. Ind. Jan. 30, 2020) (Pryor)** (In Chapter 13 debtor's postdischarge action against Ocwen under RESPA, FDCPA, FCRA and other consumer protection statutes, discovery dispute is resolved by United States Magistrate judge in favor of debtor with respect to "risk convergence reports" and other records relevant to Ocwen's knowledge that its REALServicing platform was broken and could not accurately account for payments in a Chapter 13 case. "Defendant Ocwen used a software-based servicing system, called REALServicing, that was subject to various failings. . . . Ocwen maintained spreadsheets, called 'Risk Convergence Reports,' that tracked regulatory violations and potential areas for risk with the REALServicing platform. . . . Plaintiff sought these Risk Convergence Reports ('RCR'), and any email correspondence . . . , . . . establishing Ocwen's knowledge, willful indifference, or deliberate violation of federal law. . . . Plaintiff has explained . . . that, if provided, the RCRs will be used to show that Ocwen was aware of the widespread problems related to the REALServicing platform, had been aware for a significant period of time, and had not engaged in the appropriate corrective behavior. Accordingly, the Court finds that the Plaintiff's request for the RCRs is relevant. . . . The RCRs, while potentially a result of the nationwide consent decrees, do not necessarily hinge on the terms of those decrees, nor do they reveal any confidential information from the settlement negotiation process. Instead, the RCRs appear to be spreadsheets created in the normal course of Ocwen's business, in an attempt to track potential points of liability and forestall future regulatory action.").

{1175} ***Stone v. JPMorgan Chase Bank, N.A.*, 415 F. Supp. 3d 628, 632–34 (E.D. Pa. Nov. 27, 2019) (McHugh)** (Chapter 13 debtor's "disturbing" claims under FDCPA and Pennsylvania consumer protection statutes that Chase violated Bankruptcy Rule 3002.1 final cure order and discharge order are dismissed because Chase was not a debt collector and (ironically) debtor could not prove reliance

when debtor knew that servicer was not accounting correctly but debtor continued to send payments anyway. Debtor's claims of violation of discharge injunction must be presented as a motion for contempt to the bankruptcy court that issued the discharge. "Defendant correctly asserts that it is beyond the reach of the FDCPA because it does not qualify as a 'debt collector' under the statute. . . . Plaintiff cannot state a claim under Pennsylvania's UTPCPL because he cannot show justifiable reliance upon the Defendant's alleged wrongful behavior. . . . Plaintiff submitted what he believed to be his correct mortgage payment to Defendant on a monthly basis, consistently disputing Defendant's contention that he was behind on his mortgage and owed additional fees. . . . As a result, it cannot be said that Plaintiff has 'relied' upon the Defendant's purported misrepresentations or deceptive acts in any meaningful sense. In a somewhat ironic outcome, Plaintiff's knowledge of Defendant's allegedly wrongful behavior . . . bars him from bringing a claim against Defendant under the UTPCPL. . . .").

{1176} ***Yordan v. IRS (In re Yordan)*, No. 19-00459, 2020 WL 5105689, at *3–*4 (Bankr. D.P.R. Aug. 25, 2020) (Godoy)** (Failure to exhaust administrative remedies is fatal to Chapter 13 debtors' adversary proceeding against IRS for violation of discharge injunction. "'In the First Circuit, the exhaustion of administrative remedies . . . is jurisdictional.' . . . The administrative claim process for causes of action based on discharge violations under section 7433 of the IRC, including the recovery of litigation costs under section 7430 of the IRC, is outlined in 26 C.F.R. § 301.7433-2(e) (2020). Those regulations require that the claim 'be sent in writing to the Chief, Local Insolvency Unit, for the judicial district in which the taxpayer filed the underlying bankruptcy case giving rise to the alleged violation.' . . . [T]he two letters attached to the opposition to the motion to dismiss . . . do not satisfy the IRS's regulations . . . .").

{1177} ***In re Polvorosa*, No. 11-21229-gs, 2020 WL 4938413 (Bankr. D. Nev. Aug. 21, 2020) (Spraker)** (Ocwen is not in contempt of confirmation order or of discharge injunction when debtor defaulted in seven direct monthly payments during Chapter 13 case, Ocwen responded to Chapter 13 trustee's notice of final cure that direct payments were in arrears, discharge was entered and case was closed. Ocwen's successor then entered into mortgage modification with debtor. Ocwen correctly responded to Bankruptcy Rule 3002.1 notice that direct payments had been missed. Trustee certified completion of payments under confirmed plan and bankruptcy court entered a discharge notwithstanding that direct payments had been missed. Not clear what remedy debtor wanted and not clear what order Ocwen failed to follow. There was some evidence that payments went into suspense account during the case rather than being credited against ongoing monthly payments or arrears, but in the end accounting showed that debtor was seven months in arrears of direct payments and Ocwen correctly accounted for all the money.).

{1178} ***In re Hill*, No. 15-40593-KKS, 2020 WL 4464219 (Bankr. N.D. Fla. Aug. 4, 2020) (Specie)** (Chapter 13 debtor's postdischarge motion to compel the trustee to "conform" mortgage distribution payments to the plan is denied. What debtor seems to want but did not pursue is a § 524(i) motion against the mortgagee to determine why mortgage is in default and facing foreclosure immediately after completion of payments under plan that cured all defaults. Debtor could have but didn't file a notice of final cure under Bankruptcy Rule 3002.1.).

{1179} ***In re Starling*, 617 B.R. 208, 215-17 (Bankr. S.D.N.Y. June 22, 2020) (Morris)** (Sovereign immunity does not protect IRS from action for violation of discharge injunction. No immunity arises from 26 U.S.C. § 7433 and § 106(a) of the Bankruptcy Code abrogates sovereign immunity without any condition that the debtor must exhaust administrative remedies. However, § 7433 is the more specific statute and failure to exhaust administrative remedies precludes damages for violation of the discharge injunction by the IRS. Section 7433 does not protect contractor that collected discharged debt for the IRS. Contractor ordered to pay compensatory damages and attorney's fees for contempt of discharge order. "Section 7433 of the IRC prohibits an action against the IRS for damages associated with a violation of the discharge injunction, unless administrative remedies are exhausted, while § 106 of the Bankruptcy Code allows such actions outright. . . . Court[s] must try to interpret each statute[] in order to give effect to both apparently conflicting statutes, this Court holds that in order for the bankruptcy court to award a 'judgment for damages' against the IRS, a taxpayer must exhaust administrative remedies as required under IRC § 7433. . . . ConServe is a 'private collection agency' that the IRS contracted with to assist it 'in collecting certain overdue federal taxes.' . . . As a private contractor, ConServe is not afforded the same protections as the IRS for violations of the discharge injunctions. . . . Debtor did not need to exhaust administrative remedies before bringing an action for damages against ConServe.").

{1180} ***In re Moss*, 618 B.R. 123, 129-30 (Bankr. D.N.J. June 17, 2020) (Kaplan)** (Discharge in Chapter 13 case in 2016 included discharge of nonpriority municipal fines; municipality violated discharge injunction by threatening arrest and other collection action and is liable for compensatory damages, including attorney's fees. Sovereign immunity is not available to municipality because of waiver in § 106 and New Jersey Tort Claims Act does not apply. Municipal fines may be nondischargeable under § 523(a)(7) but that exception does not apply in Chapter 13 cases under § 1328(a) and municipal fines are not "criminal" fines for purposes of discharge exception in § 1328(a)(3). *Taggart v. Lorenzen*, ___ U.S. ___, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (June 3, 2019), does not change contempt finding because municipality was warned decades earlier by Administrative Office of New Jersey Courts that municipal fines were dischargeable in Chapter 13 cases. "While Congress lists several exceptions to dischargeability, it excluded 11 U.S.C. § 523(a)(7) . . . . Municipal court fines fall within the definition of § 523(a)(7), and as such are dischargeable in a chapter 13 bankruptcy case if the case proves successful. . . . [M]unicipal court fines do not fall within the Code's definition or interpretation of 'criminal fines' under 11 U.S.C. § 1328(a)(3) . . . . Applying the Supreme Court's articulated objective standard as outlined in *Taggart*, this Court determines it is unassailable that Defendant's attempts to enforce the pre-petition municipal fines were unlawful, both subjectively and objectively.").

{1181} ***In re Moon*, No. 13-12466-MKN, 2020 WL 3348351 (Bankr. D. Nev. May 29, 2020) (Nakagawa)** (After finding Rushmore in willful violation of automatic stay and discharge injunction and awarding debtors damages exceeding $300,000, attorney's fees and expert witness fees are also awarded in excess of $66,000.).

{1182} ***Christie v. Fort Gibson State Bank (In re Christie)*, 614 B.R. 726, 736 (Bankr. E.D. Okla. Feb. 13, 2020) (Cornish)** (Bank did not violate discharge injunction or § 524(i) when it demanded additional money from debtor after completion of payments in Chapter 13 case because discharge was actually entered after demand. However, bank did violate automatic stay. "The discharge order had not yet been entered at the time the Bank demanded additional monies in excess of the Plan payments before it would issue lien releases. . . . The Plaintiff offered no legal authority for its interpretation of § 524(i) that the actual entry of the discharge order is not a prerequisite for the Court to find a violation of the discharge injunction. The Court reads § 524(i) in conjunction with § 524(a). . . . Here, Fort Gibson State Bank attempted to collect debts before the entry of the discharge order, not after. Therefore, the Court finds that no violation of the discharge injunction occurred.").

{1183} ***Williams v. CitiFinancial Servicing LLC (In re Williams)*, 612 B.R. 682, 687–94 (Bankr. M.D.N.C. Jan. 24, 2020) (James)** (After transfers of servicing during Chapter 13 case from CitiFinancial to Carrington (and later, to SN), complaint states plausible claims that all servicers in the chain violated § 524(i) by misapplying or failing to apply payments. "CitiFinancial assigned the deed of trust and the secured claim to Wilmington . . . . Wilmington's servicer [was] Carrington . . . . [T]he Trustee filed a Notice of Final Cure Mortgage Payment, to which Carrington responded . . . , concurring with the Trustee's assessment that Plaintiffs had cured the prepetition arrearage and were current on postpetition mortgage payments . . . . Designed to remedy instances in which creditors misapplied payments under a confirmed plan, § 524(i) is unique in that the provision is 'not limited to acts occurring after discharge.' . . . [Section] 524(i) is applicable to CitiFinancial despite the fact it had transferred its secured claim by the time Plaintiffs had obtained their discharges, because the operable offending conduct for purposes of § 524(i), the alleged misapplication of payments, occurred in part when CitiFinancial still possessed the claim . . . . [D]espite filing a response to the Trustee's Notice of Final Cure Payment that Plaintiffs were current on all postpetition payments, Carrington sent Plaintiffs a . . . mortgage statement incorrectly stating in bold-type that it had not received all mortgage payments due since the bankruptcy filing. . . . SN sent a third letter . . . , which notifies the Plaintiffs of fees assessed and charged to their account, including 'Forebearance Prin Assessment' in . . . an amount that matches the amount of the allowed prepetition arrearage in the Plaintiffs' chapter 13 case . . . . The Court draws the reasonable inference that Carrington sent Plaintiffs a letter showing an inflated balance based on records it received from CitiFinancial . . . . Evidence that could prove CitiFinancial's misapplication of plan payments is controlled by CitiFinancial and has not been turned over to Plaintiffs . . . . [A]llegations that Carrington misapplied payments, which are supported by the alleged communications Plaintiffs received from Carrington and SN that showed missing payments and an overstated balance, are sufficient for purposes of a motion to dismiss . . . . Despite Plaintiffs' successful plan completion, leading to their eventual discharges, the account balance of Plaintiffs' mortgage was in excess of the allowed amount of their secured claim by as much as $27,000 . . . . [T]he inclusion of boilerplate disclaimers is not a talisman, cleansing a creditor's ongoing misrepresentation of the total payoff balance owed on a discharged debtor's mortgage loan. . . . Plaintiffs' allegations that CitiFinancial and Carrington both transferred Plaintiffs' mortgage account with an inflated balance due to misapplied payments sufficient to constitute an act to collect for the purposes of withstanding a motion to dismiss . . . .").

{1184} ***In re Ferris*, 611 B.R. 701, 706–07 (Bankr. M.D. Fla. Dec. 6, 2019) (Funk)** (After transfers of servicing from Ocwen to Seterus to Mr. Cooper, Seterus violated § 524(i) by failing to properly account for payments during Chapter 13 case. Confirmed plan cured default and maintained payments on mortgage consistent with § 1322(b)(5). Debtor filed proof of claim for Ocwen for arrearage of $7,856.59. Ocwen did not object or amend. Debtor made all payments. Trustee filed notice of final cure to which mortgagee responded debtors were current. Chapter 13 case was closed. Seterus then sent multiple demand letters for varying default amounts and threatened foreclosure. Seterus failed to respond to protests from debtors and attorneys. Emotional distress damages awarded of 10,000, attorney's fees of approximately $20,000 and punitive damages of $25,000. "Mr. Cooper alleged that the entire chain of events . . . resulted from the Debtors listing an incorrect arrearage amount in their proof of claim. However, Homeward Residential, Inc., which owned the mortgage from the date of the filing of the case until July 7, 2014, neither filed an amended proof of claim nor objected to confirmation of the Debtors' plan. Ocwen Loan Servicing, LLC, which owned the mortgage from July 7, 2014 until October 6, 2015, also took no action in the case. FNMA/Seterus, which acquired the mortgage on October 6, 2015, took no action in the case other than to file Notices of Mortgage Payment Change, which reflected post-petition increases in Debtors' escrow account . . . . [Section] 524(i) provides that a creditor's willful failure to credit payments received under a confirmed plan constitutes a violation of the injunction under § 524(a)(2) if the creditor's failure caused material injury to the debtor. . . . The Court finds that willfulness in the context of § 524(i) requires only that the creditor intended to credit payments improperly . . . . Seterus was put on notice by the Trustee's Motion for Determination of Final Cure that the Debtors had made their mortgage payments through June 2017 and in fact acknowledged such in its November 7, 2017 Response to the Trustee's Motion for Determination of Final Cure. . . . Despite this concession, however, Seterus (and later Mr. Cooper) failed to properly credit the March through June 2017 payments and, from April 2018 until May 2019, bombarded the Debtors with letters and notices demanding payment of the already paid amounts. Mr. Cooper failed to prove that Seterus' and Mr. Cooper's failure to properly credit the payments was in conflict with their normal procedures. The record before the Court clearly supports a finding that Seterus and Mr. Cooper willfully failed to credit the payments.").

{1185} ***Dabney v. Bank of Am., N.A. (In re Dabney)*, 613 B.R. 225 (Bankr. D.S.C. Oct. 25, 2019) (Waites)** (Section 524(i) claims of misapplication of payments during Chapter 13 case fail because lenders and servicers correctly applied 8% floor in loan documents; payment change notices during case were consistent with correct interpretation of loan documents.).

{1186} ***Kriss v. United States (In re Kriss)*, No. 18-01064-BAH, 2019 WL 4745361 (Bankr. D.N.H. Oct. 1, 2019) (Harwood)** (Applying *Fahey v. Massachusetts Department of Revenue (In re Fahey)*, 779 F.3d 1 (1st Cir. Feb. 18, 2015) (Torruella, Thompson, Kayatta), and rejecting *Beard v. Commissioner*, 82 T.C. 766 (May 24, 1984), *aff'd*, 793 F.2d 139 (6th Cir. June 24, 1986) (Keith, Nelson, Edwards), late-filed returns are not "returns" for purposes of § 523(a)(1)(B) and hanging paragraph at the end of § 523(a); IRS did not violate discharge injunction with respect to postpetition interest and priority taxes that were not paid during the Chapter 13 case. Court leaves for another day the question whether the bankruptcy court has jurisdiction to award attorney's fees and actual damages for violation of the discharge injunction when debtor did not exhaust administrative remedies with respect to the IRS. Emotional distress damages are definitely not recoverable from the IRS under any circumstances.).

{1187} ***In re Widick*, No. BK10-40187, 2019 WL 4894543 (Bankr. D. Neb. Sept. 10, 2019) (Saladino)** (IRS did not violate discharge injunction by offsetting tax refund and Social Security payments to collect interest on nondischargeable taxes and penalties that were paid without interest through completed Chapter 13 plan.).

{1188} ***Pongco v. Devos (In re Pongco)*, No. 18-90002-GS, 2019 WL 7602220 (Bankr. D. Alaska May 15, 2019) (Spraker)** (Material disputed facts with respect to actual knowledge of plan and discharge preclude summary judgment in Chapter 13 debtor's action against Sallie Mae for contempt when plan confirmed in 2009 provided for discharge of student loans. Application of *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), depends on whether student lender had actual knowledge of discharge provision in plan.).

§ 162.3 On Liens
§ 162.4 Effects of Discharge on Liens after BAPCPA

{1189} ***Lane v. Bank of N.Y. Mellon (In re Lane)*, 959 F.3d 1226, 1228–33 (9th Cir. June 1, 2020) (Paez, Bea, Adelman)** (Distinguishing *HSBC Bank USA v. Blendheim (In re Blendheim)*, 803 F.3d 477 (9th Cir. Oct. 1, 2015) (Paez, Bybee, Callahan), § 506(d) does not void mortgage lien in Chapter 13 case when claim is disallowed because creditor did not prove it was the entity entitled to enforce the debt. "BONY filed a proof of claim . . . and represented that the claim was secured by a deed of trust . . . . Lane objected to BONY's claim. He alleged that the claim 'fail[ed] to establish standing' and failed to establish that BONY was 'the person entitled to enforce payment on the claim.' . . . BONY's attorney did not file a timely response to Lane's objection. . . . The bankruptcy court signed an order stating that the '[o]bjection is sustained' and that the claim is 'disallowed in its entirety.' . . . Lane completed the plan and received a discharge . . . . After receiving his discharge, Lane filed an adversary complaint . . . . Lane alleged that, because the court had disallowed BONY's claim, the court should declare the lien . . . void under 11 U.S.C. § 506(d) . . . . If the secured creditor does not file a proof of claim, it will forfeit its right to proceed against the debtor personally—the creditor will receive no payments through the bankruptcy proceeding and the creditor's right to proceed against the debtor personally will be discharged. However, under a longstanding principle of bankruptcy law, the creditor may ignore the bankruptcy proceeding, in which case its lien will pass through the proceeding unaffected. . . . [A] finding that the claim filer is not the person entitled to enforce the note is a finding that the filer is not the true creditor—it is a finding that someone other than the claim filer may be the person entitled to payment under the note. Importantly, such a finding does not imply that either the note or the lien securing the note is invalid. Rather, such a finding simply establishes that . . . the person before the court is not the person entitled to prosecute the claim . . . . [U]nder the factual record created when the court entered the claim-disallowance order, the person entitled to enforce the note did not file a proof of claim. . . . [A] bankruptcy court cannot destroy the property rights of the person who is the real party in interest based on the actions of a person who is not the real party in interest. . . . *Blendheim* did not involve a claim that was disallowed on the ground that the claim filer was not the person entitled to enforce the note. Instead, the debtor objected to the claim on the ground that the creditor did not attach a copy of the promissory note to its proof of claim and the copy the debtor possessed appeared to bear a forged signature. Thus, when the bankruptcy court sustained the objection and disallowed the claim, . . . it found that the note giving rise to the claim was invalid. Under those findings, § 506(d) voided 'the claim's associated lien.' . . . [A]pplying the bankruptcy court's finding that BONY was not the person entitled to enforce Lane's mortgage debt shows that the deed of trust securing that debt is not void under § 506(d). . . . [T]he deed of trust 'secures a claim against the debtor that is not an allowed secured claim,' but 'such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim.'").

{1190} ***In re Barksdale*, No. 20-8008, 2020 WL 5092877 (B.A.P. 6th Cir. Aug. 28, 2020) (not for publication) (Croom, Mashburn, Wise)** (After conversion from Chapter 13 to Chapter 7 and discharge, debtor failed to establish cause to reopen the bankruptcy case to avoid consensual lien on the debtor's car and a statutory lien for property taxes. Discharge did not upset the consensual lien on the debtor's car and the taxing authority's statutory lien cannot be avoided under § 522(f).).

{1191} ***Freeman v. Nationstar Mortg. LLC (In re Freeman)*, BAP No. CC-18-1261-TaFS, 2019 WL 5584884, at *5–*6, *4–*5 (B.A.P. 9th Cir. Oct. 29, 2019) (not for publication) (Taylor, Faris, Spraker)** (After payment in full of agreed-upon value of mortgagee's claim secured by nonresidential real property, underlying lien was discharged by operation of California law and § 506(d).

Mortgagee violated discharge injunction by proceeding with foreclosure after discharge of its secured claim and lien. However, because the Supreme Court rejected the Ninth Circuit's standard for determining whether a creditor is in contempt for violating the discharge injunction in *Taggert v. Lorenzen*, ___ U.S. ___, 139 S. Ct. 1795, 204 L. Ed. 2d 129 (June 3, 2019), remand is necessary for bankruptcy court to reconsider its decision that postdischarge foreclosure did not constitute contempt when creditor thought, erroneously, that its lien survived completion of payment of its secured claim. "Payment in full of a secured claim has import under the controlling California law. In California, a lien does not exist independently of the underlying debt; satisfaction of the underlying debt satisfies the lien. . . . Put differently, § 506(d) voids liens when a creditor's claim is not allowed in the bankruptcy. . . . [F]ull payment of an allowed secured claim voids (i.e., extinguishes) the lien securing that claim by operation of state law and the Bankruptcy Code." With respect to *Taggert*: "[T]he Ninth Circuit's *Taggart* standard was forgiving to creditors: it allowed a creditor to proceed with otherwise objectively unreasonable acts so long as it held a subjective good faith belief that it was in the right. . . . The Supreme Court rejected the Ninth Circuit's 'good faith belief' standard . . . .").

{1192} ***Wortman v. Rushmore Loan Mgmt. Servs. LLC*, No. 19 C 2860, 2019 WL 5208893 (N.D. Ill. Oct. 16, 2019) (Kendall)** (Chapter 13 debtors' post-discharge claims under FDCPA and state Consumer Protection Act fail because debtors did not give the pre-suit notice required by the mortgage. That debtors claimed discharge of the mortgage does not change this outcome because only personal liability was discharged in the completed Chapter 13 case. The mortgage lien survived and its terms require notice before initiating litigation.).

{1193} ***In re Vega Arroyo*, No. 13-00415 (EAG), 2020 WL 4728098 (Bankr. D.P.R. Aug. 13, 2020) (Godoy)** (Discharge in Chapter 13 case does not upset purchaser's judgment for specific performance with respect to Chapter 13 debtor's *in rem* rights in real property. Judgment for specific performance was entered after confirmation of a contrary plan, but because § 362(c)(3) terminated the automatic stay the specific performance judgment was effective and trumped the confirmation order. Discharge did not upset purchaser's right to specific performance.).

{1194} ***In re Santana Lamboy*, No. 14-9530 (MCF), 2020 WL 4723712, at *6–*8 (Bankr. D.P.R. Aug. 3, 2020) (Caban Flores)** (Neither Ocwen nor US Bank was able to prove possession or ownership of mortgage note, thus neither had standing to file proof of claim or to object to debtor's claim filed on behalf of Ocwen. Debtor's objection to the claim debtor filed on behalf of Ocwen is sustained and trustee is ordered to recover payments made to Ocwen because debtor could not prove that Ocwen was holder of the debt or had any entitlement to enforce the note. Debtor's objections to Ocwen's late-filed proof of claim and to US Bank's even-later-filed claim are sustained—the claims are not allowable and debtor's personal liability will be discharged. Mortgage lien will survive discharge, though it is not clear which entity has the right to enforce that lien. Debtor's motion to modify plan filed in last month of the 60-month plan is denied as unnecessary because debtor has completed payments under confirmed plan, debtor is entitled to discharge and none of the mortgage claims filed by any party—including the Bankruptcy Rule 3004 claim filed by the debtor—is allowable. Chapter 13 case was filed in November 2014. Debtor listed Ocwen as a secured creditor. US Bank filed a notice of appearance and an objection to confirmation. Debtor moved to reserve payments to Ocwen pending proof of Ocwen's secured status given that US Bank was alleging that it was the holder of the mortgage. In the interim, debtor filed a proof of claim on behalf of Ocwen. Neither US Bank nor Ocwen filed a timely proof of claim. Debtor objected to Ocwen's untimely proof of claim. US Bank responded stating that it had inadvertently failed to file a timely proof of claim. The bankruptcy court sustained the debtor's objection to Ocwen's claim. Nineteen months later US Bank filed a motion for reconsideration and for leave to file a late claim. "Ocwen Loan Servicing LLC is not the owner of the mortgage note because its name does not appear as the original mortgagee, on any of the endorsements or in the allonges provided. . . . Ocwen Loan Servicing LLC never owned the mortgage note. . . . US Bank is not Ocwen Loan Servicing LLC. . . . US Bank has not represented that Ocwen Loan Servicing LLC is or was its loan servicer. US Bank has no standing to prosecute Claims . . . in favor of Ocwen Loan Servicing LLC. US Bank never filed a transfer of claim for Claim . . . . US Bank cannot amend a claim filed by a separate legal entity. . . . US Bank has failed to provide the missing link in the chain of title to the mortgage note. . . . The affidavit addresses the relationship between US Bank and [Bank of America]. The highlighted entry of Schedule A refers to BlackRock Capital. . . . The affidavit does not say that US Bank merged with LaSalle or if LaSalle merged with Bank of America. US Bank fails to establish how Bank of America received the mortgage note. There is no allonge or endorsement from LaSalle to [Bank of America]. . . . The Debtor had filed Claim No. 4 in favor of Ocwen . . . . Ocwen was not the original mortgagee and there is no proof that it is or was the owner of the note in the various allonges and endorsements filed with the court. Thus, Claim No. 4 as filed by the Debtor must be disallowed because the Debtor has failed to establish that Ocwen is the owner of the note. It might be the servicer of the loan since Ocwen bears in its name the term 'servicing,' but the Debtor does not want to pay Ocwen for fear it might pay incorrectly. US Bank cannot defend Ocwen because they are separate legal entities. . . . Once the order of discharge is entered, the Debtor will emerge from bankruptcy with a discharge on his personal liability but maintains a lien on his principal residence. The reserved funds held by the Trustee will be returned to the Debtor because it is unknown who is the true creditor or the owner of the mortgage note pertaining to his principal residence. . . . [T]he Trustee will recover the payments that were made to Ocwen and return them to the Debtor.").

{1195} ***In re Ohm*, No. 15-60029, 2020 WL 4810066, at *3–*4 (Bankr. N.D. Ohio July 31, 2020) (Kendig)** (Although motion to avoid judgment lien of former counsel meets all conditions in § 522(f), lien is not avoidable because debtor did not schedule former counsel or deal with the debt or lien in the confirmed plan; due process prohibits avoidance of the unscheduled lien and claim. After unsuccessful Chapter 13 case, former counsel obtained a state court judgment and lien for unpaid fees. Two years later in a second

Chapter 13 case, debtor did not schedule the lien or former counsel and confirmed plan provided for neither. Five years later, debtor amended schedules to add former counsel and filed a motion to avoid the lien under § 522(f). "Debtor's failure to provide for the lien in the confirmed plan is fatal. . . . Courts adhere to the notice requirement even if a lienholder would not have received a distribution under the plan. . . . Treatment of Mr. Miller's lien was clearly something that should have been addressed through the plan and was not. To raise it now violates not only due process principles, but also raises *res judicata* concerns. Therefore, the court will deny Debtor's motion to avoid lien under 11 U.S.C. § 522(f). . . . Debtor's failure to notify Mr. Miller of his case or his plan means Mr. Miller's claim is not discharged and the lien passes through the bankruptcy unaffected.").

{1196} ***In re Myles*, No. 14-21802-dob, 2020 WL 3424590, at *2 (Bankr. E.D. Mich. June 22, 2020) (Opperman)** (In a Chapter 13 case in which the debtor is not eligible for a discharge because of § 1328(f), at the completion of payments lien of secured creditor is satisfied and released when confirmed plan proposed to pay lienholder's claim in full with a reduced interest rate, lienholder objected to plan but then consented to confirmation and debtor completed payments under the confirmed plan. Lienholder is bound to accept modified contract terms in confirmed plan in full satisfaction of its debt and release of its lien. "Exeter affirmatively accepted the terms of Debtor's Plan when its counsel signed off on the Order Confirming Plan thereby agreeing not to pursue its objection. Because neither the terms of the Chapter 13 Plan or the terms of the Order Confirming plan provide for Exeter's lien retention after plan completion, Exeter's claim was fully paid, and its lien extinguished upon completion of Debtor's Plan.").

{1197} ***In re Bozeman*, 616 B.R. 407, 414-20 (Bankr. M.D. Ala. June 9, 2020) (Sawyer)** (When confirmed plan paid mortgage claim in full with interest and mortgagee mistakenly filed proof of claim for only arrearage amount, after completion of payments and a Rule 3002.1 notice of final payment, the mortgagee's amended claim for substantially larger principal balance is disallowed as untimely; discharge includes the amount in the disallowed amended claim. Debtor scheduled mortgage for $17,393.04. Plan proposed to pay mortgage in full with contract interest. Plan was confirmed without objection. Believing that plan was a "cure and maintain" plan, not a full-payment plan, mortgagee filed a proof of claim for $6,817.42 arrearage only. More than two years later, trustee filed notice of final cure payment and notice of completion of plan payments. Mortgagee responded that only the mortgage arrearage had been paid and $15,032.73 was owed on the mortgage. Mortgagee then filed amended claims. Debtor objected. "The Bankruptcy Rules do not make any provision for amended claims. . . . Fault for the error in filing Mortgagee's original proof of claim lies solely upon Mortgagee. . . . To allow a late proof of claim here would be to reward Mortgagee for its lack of diligence and its duplicity–in blaming others and unfairly penalize Debtor. . . . Mortgagee asks the Court to protect it from its own folly. . . . Because the Court has disallowed Mortgagee's Claims . . . Debtor is entitled to discharge. . . . Debtor's plan provided to pay Mortgagee's debt in full. The fact that Mortgagee did not object to confirmation of Debtor's proposed plan, and that it filed a proof of claim in an amount less than that scheduled by Debtor in her bankruptcy filings indicate that Mortgagee was then on board with the Debtor's Chapter 13 plan. . . . Mortgagee was actively participating in the case . . . . Debtor has completed her plan payments. . . . Mortgagee stubbornly refuses to acknowledge this is a 'full payment' plan and not a 'cure and maintain' plan. . . . That Mortgagee did not include the entire amount that it believed was owing was folly on its part, but did not result in a violation of the anti-modification rule. . . . Debtor's Motion to Deem mortgage satisfied is granted.").

{1198} ***In re Gilmore*, No. 13-bk-1311, 2019 WL 4673429 (Bankr. N.D. W. Va. Sept. 24, 2019) (Flatley)** (Distinguishing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (Mar. 23, 2010), and embracing *Reuland v. IRS (In re Reuland)*, 591 B.R. 342 (Bankr. N.D. Ill. Oct. 26, 2018) (Baer), confirmed plan that cured mortgage arrearage and provided for ongoing installment that was less than stated on proof of claim is binding on mortgagee and debtor is current on mortgage at completion of payments but difference between monthly payments made through the Chapter 13 plan and amounts required by loan is nondischargeable. Discrepancy was discovered when trustee made final cure notice under Bankruptcy Rule 3002.1 and U.S. Bank responded that a substantial postconfirmation arrearage developed as a result of the difference between payments under the confirmed plan and the monthly installments stated on the bank's proof of claim. Court orders party to "reconcile payment figures" in light of holding that loan is current but the bank's nondischargeable claim includes discrepancy in monthly installment amount.).

{1199} ***In re Warenski*, No. 10-32582-MKN, 2019 WL 5777657 (Bankr. D. Nev. Aug. 2, 2019) (Nakagawa)** (Citizens Bank violated plan and discharge injunction by failing to release its unsecured lien after completion of payments and discharge in a Chapter 13 case. Pecuniary damages including emotional distress damages and attorney's fees are awarded.).

§ 162.5 On Administrative Expenses
§ 162.6 Reopening Closed Cases

{1200} ***In re Barksdale*, No. 20-8008, 2020 WL 5092877 (B.A.P. 6th Cir. Aug. 28, 2020) (not for publication) (Croom, Mashburn, Wise)** (After conversion from Chapter 13 to Chapter 7 and discharge, debtor failed to establish cause to reopen the bankruptcy case to avoid consensual lien on the debtor's car and a statutory lien for property taxes. Discharge did not upset the consensual lien on the debtor's car and the taxing authority's statutory lien cannot be avoided under § 522(f).).

{1201} ***In re Stewart*, No. 18-00482, 2020 WL 597843, at *1 (Bankr. D.D.C. Feb. 4, 2020) (Teel)** (Motion to reopen dismissed, closed Chapter 13 case is denied because reopening more than a year after closing serves no purpose. The Chapter 13 case would still be dismissed and the debtor's offer of amended schedules would have no effect on the added creditors. "Even though the case is a

dismissed case, it is a closed case for which a motion to reopen may be filed. . . . Upon reopening, the case would remain a dismissed case in which Stewart is not entitled to the protection of the automatic stay against future collection efforts by creditors . . . . [N]othing would be gained by reopening the case to permit Stewart to add creditors to the schedules. . . . Stewart may mistakenly think that a reopening of the case would vacate the order dismissing the case. Reopening of a dismissed case is not the appropriate vehicle for setting aside an order dismissing the case. Instead, such relief must be sought via a motion under Fed. R. Bankr. P. 9023 or 9024. . . . Stewart's motion does not offer any grounds that, under those rules, would justify vacating the order dismissing the case, particularly in light of the case having been dismissed more than a year before Stewart filed her motion to reopen the case.").

{1202} ***In re Lana*, No. 12-21357, 2019 WL 9242988 (Bankr. D. Kan. Nov. 7, 2019) (Berger)** (Years after completion of payments and discharge, Chapter 13 case is reopened to address settlement of pelvic mesh injury that arose during Chapter 13 case. Trustee's motion to dismiss is denied because it fails to advance the many unresolved issues regarding entitlement to the settlement proceeds.).

APPENDIX

RECENT CHAPTER 13 CASES

FROM THE THIRD CIRCUIT AND WESTERN DISTRICT OF PENNSYLVANIA

2018 – PRESENT

CHAPTER 13 RECENT DEVELOPMENTS

PART 1: HISTORY, RESOURCES, GENERAL PRINCIPLES AND "READ FIRST!"

§ 1.1 Introduction to Lundin On Chapter 13

A. HISTORY AND RESOURCES

§ 2.1 Brief History of Chapter 13 before 2005
§ 2.2 Brief History, Including "Legislative History," of BAPCPA
§ 2.3 Brief History of Chapter 13 after BAPCPA
§ 2.4 Sources of Information and Resources You Need

B. GENERAL PRINCIPLES AFTER BAPCPA

§ 3.1 Understanding Chapter 13 after BAPCPA
§ 3.2 One: Those Who Can Pay Should Pay
§ 3.3 Two: Don't Trust Debtors
§ 3.4 Three: Don't Trust Judges
§ 3.5 Four: Don't Trust Lawyers
§ 3.6 Five: Make the Door Smaller
§ 3.7 Six: The Rich Fare Better Than the Poor
§ 3.8 Seven: Unsecured Creditors Don't Count
§ 3.9 Eight: Debtors Must Beg for Relief
§ 3.10 Nine: Malice or Incompetence?
§ 3.11 Ten: The Prior Law Is Still There
§ 3.12 Conclusion: The Job Ahead

C. "READ FIRST!"

§ 4.1 WARNING! You Are a Debt Relief Agency
§ 4.2 Bankruptcy Petition Preparers
§ 4.3 Section 342: Notice What Didn't Happen
§ 4.4 Other Sections You Should Read

PART 2: PREFILING CONSIDERATIONS

§ 5.1 Summary of Part 2

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§ 6.1 11 U.S.C. § 101(30): Individual with Regular Income
§ 6.2 11 U.S.C. § 109(e): Debt Limitations
§ 6.3 11 U.S.C. § 109(g): 180-Day Bar to Refiling
§ 6.4 11 U.S.C. § 109(h): Prefiling Briefing
§ 6.5 11 U.S.C. § 707(b): "Abuse" Bar to Chapter 7 Relief

B. BEFORE CONSIDERING BANKRUPTCY RELIEF

§ 7.1 Nonbankruptcy Alternatives Are Exhausted

C. WHEN IS CHAPTER 13 THE BEST BANKRUPTCY CHOICE?

§ 8.1 Debtor Wants to Pay Creditors
§ 8.2 Debtor Has Some Ability to Pay Creditors
§ 8.3 Prior Bankruptcy Discharge
§ 8.4 Chapter 12 Not Available or Not Helpful
§ 8.5 Other Chapters Too Expensive, Too Complicated or Unfriendly
§ 8.6 11 U.S.C. § 707(b) Problems Are Likely
§ 8.7 Debt to Be Discharged Is Small
§ 8.8 Too Many Reaffirmations
§ 8.9 Debtor Cannot Reaffirm or Redeem Property
§ 8.10 The Pleasures of Possession and Un-repossession
§ 8.11 Discharge or Dischargeability Problems
§ 8.12 Home Mortgage Problems
§ 8.13 Cosigner Problems
§ 8.14 Exemption Problems
§ 8.15 Fraudulent Conveyance or Preference Problems
§ 8.16 Domestic Relations Problems
§ 8.17 Criminal Problems
§ 8.18 Debtor Likely to Need Future Bankruptcy Relief
§ 8.19 Debtor Needs Discipline of a Chapter 13 Case

D. ELIGIBILITY FOR CHAPTER 13

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§ 9.2 Prefiling Eligibility Planning
§ 9.3 How to Challenge Eligibility
§ 9.4 Burden of Proof in an Eligibility Dispute
§ 9.5 Consequences of Ineligibility: Jurisdiction; Automatic Stay; Strike, Dismiss or Excuse?
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{1203} ***In re Ward*, 610 B.R. 804 (Bankr. W.D. Pa. Jan. 15, 2020) (Deller)** (Chapter 13 debtor's seventh motion for additional time to file basic documents to commence case is denied for lack of cause; hearing is set to determine whether dismissal should be with prejudice under § 109(g).).

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{1204} ***In re Willis*, 604 B.R. 206 (Bankr. W.D. Pa. Aug. 5, 2019) (Deller)** (In numerous Chapter 13 cases in which an attorney collected $500 that included filing fees that weren't paid, attorney misrepresented that he had retained wet signatures on all relevant documents. Sanctions included refunding $100 in each case in which the attorney failed to obtain and preserve a wet signature.).

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{1205} ***In re Willis*, 604 B.R. 206, 207–09 (Bankr. W.D. Pa. Aug. 5, 2019) (Deller)** (In numerous Chapter 13 cases, attorney is sanctioned for collecting a $500 "expense retainer" that included filing fees, then filing installment fee applications with respect to which no fees were paid. Attorney kept the $500 as attorney's fees. Installment filing fee applications misrepresented debtors' abilities to pay fees. Sanctions included that attorney develop a one-hour CLE program on best practices in consumer bankruptcy cases. "Willis received an advance expense retainer of $500 from each of his clients. Included as part of the expenses incurred in bankruptcy cases are the filing fees . . . . Willis caused the 32 bankruptcy cases to be filed without the payment of the requisite filing fees . . . . Instead, Willis filed motions asking that his clients be permitted to pay the filing fees over time . . . . Willis made no mention in his pleadings of the expense retainers previously paid to Willis by his clients. . . . In the cases which were closed or dismissed it appears that not only were the fees unpaid, it is undisputed that Willis did not return the unused funds to either his client or remit them to the Court. Instead, Willis kept the funds. . . . [T]hrough the course of administration of some of the cases . . . Willis received payment of further attorney fees from certain bankruptcy estates. . . . Such payments violate Fed.R.Bankr.P. 1006(b)(3) . . . . The Chapter 13 Trustee . . . filed the Disgorgement Motions to compel the payment of the filing fees, which for the first time made the Court aware of this problem with Willis' practices.").

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{1206} ***In re Willis*, 604 B.R. 206, 207–09 (Bankr. W.D. Pa. Aug. 5, 2019) (Deller)** (In numerous Chapter 13 cases, attorney is sanctioned for collecting a $500 "expense retainer" that included filing fees, then filing installment fee applications with respect to which no fees were paid. Attorney kept the $500 as attorney's fees. Installment filing fee applications misrepresented debtors' abilities to pay fees. Sanctions included that attorney develop a one-hour CLE program on best practices in consumer bankruptcy cases. "Willis received an advance expense retainer of $500 from each of his clients. Included as part of the expenses incurred in bankruptcy cases are the filing fees . . . . Willis caused the 32 bankruptcy cases to be filed without the payment of the requisite filing fees . . . . Instead, Willis filed motions asking that his clients be permitted to pay the filing fees over time . . . . Willis made no mention in his pleadings of the expense retainers previously paid to Willis by his clients. . . . In the cases which were closed or dismissed it appears that not only were the fees unpaid, it is undisputed that Willis did not return the unused funds to either his client or remit them to the Court. Instead, Willis kept the funds. . . . [T]hrough the course of administration of some of the cases . . . Willis received payment of further attorney fees from certain bankruptcy estates. . . . Such payments violate Fed.R.Bankr.P. 1006(b)(3) . . . . The Chapter 13 Trustee . . . filed the Disgorgement Motions to compel the payment of the filing fees, which for the first time made the Court aware of this problem with Willis' practices.").

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§ 39.2 11 U.S.C. § 521(1): Debtor's Duties
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§ 39.4 11 U.S.C. § 1302: Powers and Duties of Trustee
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§ 39.7 11 U.S.C. § 1321: Filing of Plan
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§ 39.10 Bankruptcy Rule 1007(h): Mandatory Amendments
§ 39.11 Bankruptcy Rule 1009: Amendments to Petition, Lists, Statements and Schedules
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§ 39.17 Bankruptcy Rule 3012: Valuation of Security
§ 39.18 Bankruptcy Rule 3013: Classification of Claims
§ 39.19 Bankruptcy Rule 3015: Filing of Plan
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§ 42.1 Filing Requirements and Other Duties: A List
§ 42.2 Consequences of Failure to File Required Information, Including "Automatic Dismissal"

{1207} ***In re Ward*, 610 B.R. 804 (Bankr. W.D. Pa. Jan. 15, 2020) (Deller)** (Chapter 13 debtor's seventh motion for additional time to file basic documents to commence case is denied for lack of cause; hearing is set to determine whether dismissal should be with prejudice under § 109(g).).

§ 42.3 Payment Advices
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§ 46.1 What Is Property of the Chapter 13 Estate?
§ 46.2 Property of the Chapter 13 Estate—Changes by BAPCPA
§ 46.3 Postpetition Earnings
§ 46.4 Prepetition Repossession, Levy, Sale or Conveyance

{1208} ***In re Barrett*, No. 18-21501-GLT, 2019 WL 3890147 (Bankr. W.D. Pa. Aug. 16, 2019) (Taddonio)** (Because prepetition distributive award vested ownership of one-half of proceeds from sale of debtor's business in former spouse, only bare legal title to that half of the funds came into Chapter 13 estate; former spouse is entitled to stay relief to cause the transfer of funds from domestic relations attorney to the former spouse.).

§ 46.5 Proceeds, Rents or Profits from Property of the Estate
§ 46.6 Gifts, Loans and Windfalls
§ 46.7 Pension Benefits
§ 46.8 Entitlements Programs
§ 46.9 Leases and Other Contract Rights
§ 46.10 Insurance Policies and Proceeds
§ 46.11 Causes of Action—Including Judicial Estoppel Issues

{1209} ***Miller v. Eicher (In re Miller)*, No. 18-108 Erie, 2018 WL 6696867 (W.D. Pa. Dec. 20, 2018) (Baxter)** (District court withdraws reference of Chapter 13 debtor's trial-ready state law action against contractor for shoddy work.).

§ 46.12 Miscellaneous Real and Personal Property
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§ 48.3 Exemptions and Exemption Limitations Added by BAPCPA
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b. LIEN AVOIDANCE UNDER 11 U.S.C. § 522(f)
§ 49.1 Available in Chapter 13 Cases
§ 49.2 Procedure for Lien Avoidance
§ 49.3 Limitations on Lien Avoidance

{1210} ***In re Berger*, No. 2:19-cv-00417, 2019 WL 5310145, at *3–*4 (W.D. Pa. Oct. 21, 2019) (Conti)** (Stripping a wholly unsecured tax lien under §§ 506(a) and 1322(b)(2) is an *in rem* proceeding with respect to which the state has no sovereign immunity. Citing *Central Virginia Community College v. Katz*, 546 U.S. 356, 126 S. Ct. 990, 163 L. Ed. 2d 945 (Jan. 23, 2006), and *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 124 S. Ct. 1905, 158 L. Ed. 2d 764 (May 17, 2004): "The Supreme Court explained that state sovereign immunity is not implicated by proceedings that are 'ancillary to' the bankruptcy court's *in rem* jurisdiction, even when they arguably could be characterized as a suit against the state . . . . Lien stripping falls within the bankruptcy court's *in rem* jurisdiction. . . . [T]he State had no sovereign immunity to raise under the circumstances of this case.").

{1211} ***In re Dolfi*, 607 B.R. 243, 247–48 (Bankr. W.D. Pa. Oct. 3, 2019) (Böhm)** (Applying math in § 522(f)(2)(A), judgment lien is avoidable in full because it impairs homestead exemption notwithstanding possibility that lien is in first position ahead of first mortgage. "*[E]ven if* [lienholder] established that he obtained a first priority lien on the residence, he failed to establish that the alleged priority prevents avoidance under § 522(f). Section 522(f)(2)(A) sets forth the method for determining whether a lien impairs an exemption such that avoidance under § 522(f)(1)(A) is appropriate. . . . [T]he plain language of the statute does not appear to condition avoidance on whether a judgment lien is junior to unavoidable liens on the property. . . . [E]ven unavoidable junior mortgages are considered in the analysis.").

§ 49.4 Section 522(f) after BAPCPA: Household Goods Corrupted
§ 49.5 Protecting Lienholder after Lien Avoidance
7. AVOIDANCE AND RECOVERY POWERS
§ 50.1 Turnover of Property

{1212} ***Kent v. Skoda Minotti & Co. (In re Kent)*, 615 B.R. 171 (Bankr. W.D. Pa. May 5, 2020) (Agresti)** (Chapter 13 debtor is entitled to turnover of accounting records by former accountants notwithstanding that debtor's breach of contract action against same accountants fails.).

§ 50.2 Relief from Garnishments
§ 50.3 Strong-Arm Powers, Statutory Liens, Preferences and Fraudulent Conveyances
§ 50.4 Avoidance Powers after BAPCPA
§ 50.5 Preferences after BAPCPA

{1213} ***Hackler v. Arianna Holdings Co., LLC (In re Hackler)*, 938 F.3d 473, 479 (3d Cir. Sept. 12, 2019) (McKee, Porter, Roth)** (Distinguishing *BFP v. Resolution Trust Corp*., 511 U.S. 531, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (May 23, 1994), and finding that Tax Injunction Act does not apply, Chapter 13 debtor can avoid a New Jersey tax sale foreclosure as a preferential transfer under § 547. "[A]t New Jersey tax sales the public bids only on the rate of interest on the unpaid taxes. The main conclusion of *BFP*—that the price reached via a foreclosure conducted according to state law should be considered to be the 'reasonably equivalent value' of the property—is not pertinent here, because in New Jersey, the relationship between the winning bid and the value of the underlying property is not merely attenuated but nonexistent.").

§ 50.6 Fraudulent Transfers after BAPCPA
§ 50.7 Postpetition Transfers

8. MISCELLANEOUS POWERS AND DUTIES

§ 51.1 Can Debtor Sue and Be Sued?

{1214} ***Miller v. Eicher (In re Miller)*, No. 18-108 Erie, 2018 WL 6696867 (W.D. Pa. Dec. 20, 2018) (Baxter)** (District court withdraws reference of Chapter 13 debtor's trial-ready state law action against contractor for shoddy work.).

{1215} ***Kent v. Skoda Minotti & Co. (In re Kent)*, 615 B.R. 171 (Bankr. W.D. Pa. May 5, 2020) (Agresti)** (Breach of contract by debtor and "voluntary payment" doctrine defeat Chapter 13 debtor's contract action against accountants with respect to unfinished prepetition accounting work.).

{1216} ***Miller v. Mercer Cnty. State Bank (In re Miller)*, No. 18-01009-JAD, 2020 WL 1522402 (Bankr. W.D. Pa. Mar. 30, 2020) (Deller)** (For lack of a case or controversy, bankruptcy court is without jurisdiction to take any action with respect to letter from disgruntled counsel for the defendant in a lawsuit brought by Chapter 13 debtor that was withdrawn to the district court for a jury trial and then dismissed by the debtor.).

§ 51.2 Debtor Must File a Plan
§ 51.3 Assume, Reject or Assign Leases, Rental Agreements and Executory Contracts
§ 51.4 Preconfirmation Assumption and Rejection of Leases and Executory Contracts after BAPCPA
§ 51.5 Review Claims, Object to Claims and File Proofs of Claim

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§ 52.1 Operating a Chapter 13 Debtor Engaged in Business
§ 52.2 Additional Filing and Reporting Requirements
§ 52.3 Debtors Engaged in Business after BAPCPA

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§ 53.1 Know the Trustee's Operating Procedures
§ 53.2 Who Will Be the Trustee?
§ 53.3 Removal and Liability of Trustee
§ 53.4 Procedure for Removal after BAPCPA
§ 53.5 Advise and Assist Debtor
§ 53.6 Appear and Be Heard with Respect to Confirmation of a Plan
§ 53.7 Appear and Be Heard with Respect to the Value of Collateral
§ 53.8 Appear and Be Heard with Respect to Modification of Plans after Confirmation
§ 53.9 Ensure Debtor Commences Making Timely Payments
§ 53.10 Make Payments to Creditors Unless Plan or Confirmation Order Provides Otherwise
§ 53.11 Payments to Creditors before Confirmation
§ 53.12 Avoidance and Recovery Powers

§ 53.13 Recovery of Overpayments

{1217} ***In re Palmer*, No. 15-20886-GLT, 2020 WL 4743011, at *3–*4 (Bankr. W.D. Pa. Aug. 14, 2020) (Taddonio)** (Debtor is entitled to refund of $213.35 paid to unsecured creditors while motion and order to modify plan were being processed. Modified plan changed math of confirmed plan to eliminate distribution to unsecured creditors that resulted when payment of mortgage arrears was completed in 53d month. Trustee could have and perhaps should have objected to modification that had "retroactive" effect of declaring plan completed. Confirmed plan called for 60 monthly payments to cure mortgage arrearages with acknowledgment that pool of funds available to pay unsecured creditors would be determined after an audit at the time of completion of other payments. Mortgage arrearages were fully paid approximately 53 months into the plan term. Trustee filed a notice of intent to pay unsecured creditors pro rata from funds that became available when mortgage arrears were paid. Debtor responded with plan modification that terminated the debtor's obligations "retroactively" to the completion of payment of mortgage arrears. The court approved the modified plan and a week later the trustee's office disbursed funds on hand to unsecured creditors. "[The trustee] did [not] request a delay in the effective date of the confirmation order to account for the processing limitations of her office. . . . [T]he Court is sympathetic to the Trustee's position even though it cannot authorize her actions in this case. The Trustee's office is one of the largest in the country with disbursements rivaling those of a small financial institution. With such volume and complexity, it is completely understandable that unusual plans would present hardships in administration. . . . When appropriate, however, the Trustee may request that the confirmation order include reasonable terms to grant her the leeway to address any administrative difficulties on a case-by-case basis. . . . [T]he Debtor is entitled to a refund of $213.35.").

§ 53.14 Seek Conversion or Dismissal
§ 53.15 Review Claims, Object to Claims and File Proofs of Claim
§ 53.16 Noticing Responsibilities
§ 53.17 § 342 Noticing Issues
§ 53.18 Audits by U.S. Trustee
§ 53.19 Trustees' Role in Debtor Education
§ 53.20 Trustees' Final Report

2. COMPENSATION AND EXPENSES
§ 54.1 Standard Percentage Fee and Expenses
§ 54.2 Compensation and Expenses of Chapter 13 Trustee after BAPCPA
§ 54.3 Lowered Percentage in a Case
§ 54.4 "No-Costing" Payments on a Claim
§ 54.5 Quantum Meruit
§ 54.6 Compensation on Direct Payments by Debtor
§ 54.7 Compensation on Sale or Transfer of Assets
§ 54.8 Compensation When Trustee Is Not a Standing Trustee
§ 54.9 Compensation When Case Is Dismissed or Converted before Confirmation

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§ 55.2 Eligibility Attacks
§ 55.3 Conversion or Dismissal
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§ 56.1 How to Determine Proposed Treatment of a Creditor
§ 56.2 Working with the Chapter 13 Trustee
§ 56.3 Attending Meeting of Creditors
§ 56.4 Representation at Meeting of Creditors after BAPCPA
§ 56.5 Preconfirmation Discovery Rights of Creditors
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§ 57.2 Adequate Protection Rights
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§ 57.4 Preconfirmation Rights of Landlords and Lessors after BAPCPA
§ 57.5 Domestic Support Obligations: Preconfirmation Rights after BAPCPA
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§ 57.8 Policing Debtor's Compliance with Preconfirmation Duties
§ 57.9 Negotiating for a Secured Claim Holder
§ 57.10 Negotiating for a Home Mortgage Holder
§ 57.11 Representing an Unsecured Claim Holder

E. AUTOMATIC STAY AND PRECONFIRMATION RELIEF FROM STAY

1. EXTENT OF AUTOMATIC STAY

§ 58.1 Usual Protections
§ 58.2 BAPCPA Shrank Stay
§ 58.3 Additional Protection for Postpetition Property and Income
§ 58.4 Postpetition Creditors
§ 58.5 Alimony and Support Exception
§ 58.6 Domestic Support Obligation Exception after BAPCPA

{1218} ***In re Wagner*, No. 17-11252-TPA, 2020 WL 1844615 (Bankr. W.D. Pa. Apr. 9, 2020) (Agresti)** (With one spouse in Chapter 13 and the other in Chapter 12 and after several failed attempts to inspire the parties to complete a state court divorce with equitable distribution of property, the bankruptcy court carries through its threat to perform the equitable distribution of property in the bankruptcy court applying Pennsylvania domestic relations law principles.).

§ 58.7 Criminal Action or Proceeding Exception
§ 58.8 Police and Regulatory Power Exception
§ 58.9 Real Estate, Landlord and In Rem Exceptions after BAPCPA
§ 58.10 Pension Loans Exception after BAPCPA
§ 58.11 Miscellaneous New Stays and Exceptions after BAPCPA
§ 58.12 Setoffs and Recoupments
§ 58.13 Termination of Services to Debtor and Discrimination against Debtor
§ 58.14 Expiration of Stay

2. 11 U.S.C. § 362(c)(3) AND (c)(4): 30-DAY STAY TERMINATION; NO STAY

§ 59.1 In General

a. 11 U.S.C. § 362(c)(3): 30-DAY STAY TERMINATION

§ 60.1 When Does § 362(c)(3) Apply?
§ 60.2 Which Stays Terminate?
§ 60.3 Timing, Procedure and Form for Extension of Stay
§ 60.4 (Rebuttable) Presumption of Lack of Good Faith
§ 60.5 Proof of Good Faith

b. 11 U.S.C. § 362(c)(4): NO STAY

§ 61.1 When Does § 362(c)(4) Apply?
§ 61.2 Procedure, Timing and Form for Imposing Stay
§ 61.3 (Rebuttable) Presumption of Lack of Good Faith
§ 61.4 Proof of Good Faith

3. VIOLATION OF STAY AND REMEDIES

§ 62.1 Examples of Stay Violations, and Not

{1219} ***In re Denby-Peterson*, 941 F.3d 115, 123–26 (3d Cir. Oct. 28, 2019) (McKee, Shwartz, Fuentes)** (Adopting minority position, car lender does not violate automatic stay by retaining possession of car repossessed before the petition so long as lender does not take any affirmative action to enforce its lien. Lender can retain possession notwithstanding demand for turnover until bankruptcy court orders return of car. "Under the majority position, held by the Second, Seventh, Eighth, Ninth, and Eleventh Circuits, a secured creditor, upon learning of the bankruptcy filing, must return the collateral to the debtor and failure to do so violates the automatic stay. . . . However, both the Tenth and D.C. Circuits disagree with the majority's interpretation of the automatic stay provision. . . . Under their view, a secured creditor is not obligated to return the collateral to the debtor until the debtor obtains a court order from the Bankruptcy Court requiring the creditor to do so. . . . While we agree that Section 362(a)(3) is unambiguous, we decline to hold that a plain reading of that Section compels the conclusion that the creditors in this case violated the automatic stay by failing to turn over the Corvette to Denby-Peterson. . . . [W]e agree with the minority position . . . the text of Section 362(a)(3) requires a post-petition affirmative act to exercise control over property of the estate. . . . Although the creditors exercised control over the Corvette by keeping it in their possession after learning of the bankruptcy filing, the requisite post-petition affirmative 'act . . . to exercise control over' the Corvette is not present in this case. . . . " The Supreme Court has granted review of this issue in an unrelated case, *In re Fulton*, 926 F.3d 916 (7th Cir. June 19, 2019), *cert. granted sub nom. Chicago v. Fulton*, No. 19-357, 2019 WL 6880702 (U.S. Dec. 18, 2019), *aff'g* 595 B.R. 184, 189-90 (D.N.J. Nov. 1, 2018) (Hillman) (Adopting minority rule and without discussion of *Whiting Pools*, car lender did not violate stay by refusing to return car repossessed before the petition. "The majority position, which is followed in the Second, Seventh, Eighth, and Ninth Circuit Courts of Appeals advises that a creditor violates the automatic stay when it fails to affirmatively and immediately return qualifying property of the debtor that was seized pre-petition. . . . The minority position . . . has only been followed in the Tenth and District of Columbia Circuit Court of Appeals. This position finds no violation of the automatic stay as long as the creditor merely maintains the status quo in effect at the time of the automatic stay. . . . [T]his Court finds the minority position more persuasive. . . . [T]he *exercise* of control is not stayed, but the act to exercise control is stayed."), *aff'g and dismissing appeal of* 576 B.R. 66, 81-83 (Bankr. D.N.J. Oct. 20, 2017) (Altenburg) (Repossessing creditor did not violate automatic stay by refusing to turn over car when debtor's interest in car was disputed and retaining possession maintained status quo pending hearing on turnover.

"[T]he practice in this district has been that a creditor holding a car repossessed prepetition may request proof of insurance naming it as loss payee prior to turnover without violating the stay. But once proof of insurance has been produced, the creditor violates the stay by not returning the car. Yet it could find no case rationalizing this. Section 362(b) does not include an exception for adequate protection. . . . The court sees no reason to abandon the long established practice of maintaining the *status quo* in repossessed vehicle cases until a debtor provides proper proof of adequate protection, i.e., insurance. . . . In this case, this court finds the minority position particularly persuasive. That position criticizes the majority's claim that section 542(a) is self-effectuating, as it does not allow for the possibility of defenses to turnover. . . . It would simply be unfair to declare a stay violation for not turning the Vehicle over when the Debtor's true interest in the Vehicle was unknown. . . . The personal property presents a different result. There is no question that at the time of the bankruptcy filing, the Debtor had a legal right to her possessions and the Creditors had no right to that property. Unlike the Vehicle, there is no question of ownership. . . . The court cannot determine with certainty whether there has been a stay violation under section 362 as to the personal property.").

§ 62.2 What Court?

{1220} ***Potter v. Newkirk*, 802 F. App'x 696, 700 (3d Cir. Feb. 4, 2020) (Shwartz, Restrepo, Rendell)** (Action under § 362(k) to remedy stay violation is a civil action with respect to which the United States district court has jurisdiction independent of the bankruptcy court in which the bankruptcy case arose. "We have recently held that an action under § 362(k) for violation of an automatic stay is an independent private cause of action which need not be litigated as part of the bankruptcy proceeding. . . . As such, a district court has jurisdiction to entertain it.").

§ 62.3 Sanctions or Contempt?
§ 62.4 Motion Practice or Adversary Proceeding?
§ 62.5 Remedies for Violation of Stay
§ 62.6 Limitation on Monetary Penalties after BAPCPA

4. PRECONFIRMATION RELIEF FROM STAY

a. PROCEDURE

§ 63.1 Strategic Considerations
§ 63.2 Timing, Procedure and Form

{1221} ***In re Hinchliffe*, 792 F. App'x 154 (3d Cir. Feb. 5, 2020) (McKee, Shwartz, Phipps)** (Third Circuit summarily affirms grant of stay relief to mortgagee. Chapter 13 debtor raised no issue warranting review.).

b. GROUNDS FOR RELIEF FROM STAY

§ 64.1 Lack of Adequate Protection
§ 64.2 Other Cause for Relief

{1222} ***In re Butko*, No. 20-21255-GLT, 2020 WL 3574444, at *3 (Bankr. W.D. Pa. July 1, 2020) (Taddonio)** (Stay relief is appropriate under § 362(d)(1) because debtors as purchasers under a defaulted land sale contract had no legal or equitable interest in the underlying property, only a bare possessory interest that cannot support management through a Chapter 13 plan. In a prior bankruptcy case, the court entered a judgment for possession when the debtors defaulted on a court-approved settlement in years-long litigation about rights in a residential property. The current Chapter 13 case was filed in an effort to cure the default under the settlement agreement from the prior case. "[T]he *Judgment* against the Butkos is a final, unappealable order. Consequently, their equitable interest in the property has long since terminated, leaving them with no right to cure their default under state or federal law. A bare possessory interest on the petition date without a colorable legal or equitable claim 'is not enough to sustain the protections of the automatic stay.'").

{1223} ***In re Barrett*, No. 18-21501-GLT, 2019 WL 3890147 (Bankr. W.D. Pa. Aug. 16, 2019) (Taddonio)** (Because prepetition distributive award vested ownership of one-half of proceeds from sale of debtor's business in former spouse, only bare legal title to that half of the funds came into Chapter 13 estate; former spouse is entitled to stay relief to cause the transfer of funds from domestic relations attorney to the former spouse.).

§ 64.3 Prospective, In Rem and Automatic Relief from Stay
§ 64.4 Annulment of the Stay
§ 64.5 Application of § 362(d)(2) in Chapter 13 Cases

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1. EXTENT OF CODEBTOR STAY

§ 65.1 Cosigners and Joint Obligors Are Protected
§ 65.2 Consumer Debts Only
§ 65.3 Codebtor Heaven after BAPCPA
§ 65.4 Can Plan Enlarge Codebtor Stay?
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§ 67.3 Postpetition Interest, Attorneys' Fees, Costs and Other Charges
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§ 71.4 11 U.S.C. § 1324: Confirmation Hearing
§ 71.5 11 U.S.C. § 1325: Confirmation Standards
§ 71.6 Bankruptcy Rule 2002: Notice of Confirmation Hearing
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§ 73.7 Secured Priority Claims?
§ 73.8 Special Provisions for Attorneys' Fees
§ 73.9 Attorney Fees after BAPCPA
§ 73.10 Filing Fees

{1224} ***In re Willis*, 604 B.R. 206, 207–09 (Bankr. W.D. Pa. Aug. 5, 2019) (Deller)** (In numerous Chapter 13 cases, attorney is sanctioned for collecting a $500 "expense retainer" that included filing fees, then filing installment fee applications with respect to which no fees were paid. Attorney kept the $500 as attorney's fees. Installment filing fee applications misrepresented debtors' abilities to pay fees. Sanctions included that attorney develop a one-hour CLE program on best practices in consumer bankruptcy cases. "Willis received an advance expense retainer of $500 from each of his clients. Included as part of the expenses incurred in bankruptcy cases are the filing fees . . . . Willis caused the 32 bankruptcy cases to be filed without the payment of the requisite filing fees . . . . Instead, Willis filed motions asking that his clients be permitted to pay the filing fees over time . . . . Willis made no mention in his pleadings of the expense retainers previously paid to Willis by his clients. . . . In the cases which were closed or dismissed it appears that not only were the fees

unpaid, it is undisputed that Willis did not return the unused funds to either his client or remit them to the Court. Instead, Willis kept the funds. . . . [T]hrough the course of administration of some of the cases . . . Willis received payment of further attorney fees from certain bankruptcy estates. . . . Such payments violate Fed.R.Bankr.P. 1006(b)(3) . . . . The Chapter 13 Trustee . . . filed the Disgorgement Motions to compel the payment of the filing fees, which for the first time made the Court aware of this problem with Willis' practices.").

§ 73.11 Filing Fees after BAPCPA

{1225} ***In re Johnson*, 607 B.R. 250, 252–53 (Bankr. W.D. Pa. Oct. 28, 2019) (Taddonio)** (Filing fees unpaid in prior dismissed Chapter 13 case are a general unsecured claim in subsequent case and are not entitled to priority or payment in advance of other unsecured creditors. "The Trustee now requests authority to use funds currently in her possession from the 2017 Case to satisfy the filing fee that accrued in the 2014 Case. . . . [T]he Court finds that the *Motion* is premised on a fundamental legal flaw—that the Court enjoys some sort of priority regarding these unpaid fees that would allow a distribution to the Court before distributions to other creditors. The Trustee has not articulated any legal authority in support of such priority treatment, and the Court is unaware of any that would apply under these circumstances. . . . [A]ny unpaid filing fee assessed against a prior estate is nothing more than a prepetition general unsecured claim in a subsequent bankruptcy filing. . . . As the holder of a general unsecured claim, the Court, *if a proof of claim was filed on its behalf*, would be entitled to a pro rata distribution in pari passu with other similarly-situated creditors. Nothing more, nothing less. . . . The Court recognizes that the Trustee's request was well-intentioned if not legally sustainable. Although it would be tempting for the Court to direct the payment of its filing fees in this manner for hundreds of delinquent cases, it finds that it cannot sacrifice core bankruptcy principles simply to recover lost revenue. The central tenets of the Code mandate that creditor distributions occur in order of priority and that similarly-situated creditors are treated equally. . . . If creditors are expected to abide by these precepts, the Court must do likewise when acting as the holder of a comparable claim. Put simply, the Court cannot contravene the Code simply to move itself to the front of the unsecured-creditors line.").

D. PROVIDING FOR SECURED CLAIMS

1. GENERAL RULES BEFORE AND AFTER BAPCPA

§ 74.1 General Rules before BAPCPA
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§ 74.3 Acceptance of Plan before BAPCPA
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§ 74.11 The Power to Modify

{1226} ***Berger v. Pennsylvania Dep't of Rev. (In re Berger)*, No. 18-02130-GLT, 2019 WL 1458934, at *5–*10 (Bankr. W.D. Pa. Mar. 29, 2019) (Taddonio), *aff'd*, No. 2:19-cv-00417, 2019 WL 5310145 (W.D. Pa. Oct. 21, 2019) (Conti)** (Sovereign immunity does not bar Chapter 13 debtors' actions to strip down and strip off tax liens held by state of Pennsylvania. State waived sovereign immunity by filing proofs of claim. Inclusion of §§ 506 and 1327 in § 106 is a statutory waiver of sovereign immunity that empowers Chapter 13 debtors to value and then modify liens of state using § 1322(b)(2) through confirmed plans. Alternatively, lien stripping is an *in rem* proceeding that does not trigger sovereign immunity concerns in the first instance. "Instead of relying on § 506(d)'s lien-voiding language, the chapter 13 debtor 'modif[ies] the rights of holders of secured claims' via § 1322(b)(2), stripping the lien by addressing it in their plan of reorganization. . . . Revenue did in fact file proofs of claim in both debtors' cases. . . . By doing so, Revenue subjected itself to the claims allowance process and any subsequent determination as to the nature and extent of its claims . . . . The proofs of claim and the adversary complaints arise out of the same 'transaction or occurrence,' and Revenue has therefore waived its sovereign immunity with respect to the debtors' complaints. . . . [T]he Court alternatively finds that sovereign immunity was abrogated by Congress pursuant to § 106(a). . . . While Revenue is correct in stating that § 1322 is not listed among the provisions of § 106(a), its inclusion would be entirely obviated by the inclusion of § 1327. Section 1327 is an enabling clause; if sovereign immunity has been abrogated with respect to the power to bind creditors to the terms of a confirmed plan, then § 1322's provisions detailing the components of a plan are subsumed within that abrogation to give effect to § 1327's inclusion. . . . Lien stripping is nothing more than a determination of the rights in a debtor's *res*, in exactly the same way as the discharge of student loan debt in [*Tennessee Student Assistance Corp. v. Hood)*, 541 U.S. 440, 124 S. Ct. 1905, 158 L. Ed. 2d 764 (May 17, 2004)] and the avoidance of a preferential transfer in [*Central Va. Comty. College v. Katz)*, 546 U.S. 356, 126 S. Ct. 990, 163 L. Ed. 2d 945 (Jan. 23, 2006)]. Indeed, the assessment and modification of liens against estate assets is the quintessential *in rem* proceeding, much more so than the actions evaluated by the Supreme Court in those two cases.").

§ 74.12 Lien Retention before BAPCPA
§ 74.13 Lien Retention after BAPCPA, Including in No-Discharge Cases

§ 74.14 Equal Monthly Installments after BAPCPA
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§ 76.1 Valuation, Claim Splitting and *Dewsnup*

{1227} ***Berger v. Pennsylvania Dep't of Rev. (In re Berger)*, No. 18-02130-GLT, 2019 WL 1458934, at *5–*10 (Bankr. W.D. Pa. Mar. 29, 2019) (Taddonio), *aff'd*, No. 2:19-cv-00417, 2019 WL 5310145 (W.D. Pa. Oct. 21, 2019) (Conti)** (Sovereign immunity does not bar Chapter 13 debtors' actions to strip down and strip off tax liens held by state of Pennsylvania. State waived sovereign immunity by filing proofs of claim. Inclusion of §§ 506 and 1327 in § 106 is a statutory waiver of sovereign immunity that empowers Chapter 13 debtors to value and then modify liens of state using § 1322(b)(2) through confirmed plans. Alternatively, Lien stripping is an *in rem* proceeding that does not trigger sovereign immunity concerns in the first instance. "Instead of relying on § 506(d)'s lien-voiding language, the chapter 13 debtor 'modif[ies] the rights of holders of secured claims' via § 1322(b)(2), stripping the lien by addressing it in their plan of reorganization. . . . Revenue did in fact file proofs of claim in both debtors' cases. . . . By doing so, Revenue subjected itself to the claims allowance process and any subsequent determination as to the nature and extent of its claims . . . . The proofs of claim and the adversary complaints arise out of the same 'transaction or occurrence,' and Revenue has therefore waived its sovereign immunity with respect to the debtors' complaints. . . . [T]he Court alternatively finds that sovereign immunity was abrogated by Congress pursuant to § 106(a). . . . While Revenue is correct in stating that § 1322 is not listed among the provisions of § 106(a), its inclusion would be entirely obviated by the inclusion of § 1327. Section 1327 is an enabling clause; if sovereign immunity has been abrogated with respect to the power to bind creditors to the terms of a confirmed plan, then § 1322's provisions detailing the components of a plan are subsumed within that abrogation to give effect to § 1327's inclusion. . . . Lien stripping is nothing more than a determination of the rights in a debtor's *res*, in exactly the same way as the discharge of student loan debt in [*Tennessee Student Assistance Corp. v. Hood)*, 541 U.S. 440, 124 S. Ct. 1905, 158 L. Ed. 2d 764 (May 17, 2004)] and the avoidance of a preferential transfer in [*Central Va. Comty. College v. Katz)*, 546 U.S. 356, 126 S. Ct. 990, 163 L. Ed. 2d 945 (Jan. 23, 2006)]. Indeed, the assessment and modification of liens against estate assets is the quintessential *in rem* proceeding, much more so than the actions evaluated by the Supreme Court in those two cases.").

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{1228} ***Ocwen Loan Servicing, LLC for Deutsche Bank Nat'l Tr. Co. v. Randolph*, No. 18-21, 2018 WL 2220843 (W.D. Pa. May 15, 2018) (Conti)** (District court denies untimely motion to extend time to move for rehearing of appeal of show-cause order requiring Ocwen to explain why it failed to comply with court orders to provide loan histories to Chapter 13 trustee after Ocwen confessed that it had wrongfully charged attorney fees for reviews of Chapter 13 plans.).

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§ 91.4 Debtor or Dependent
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{1230} ***In re Venanzio*, 602 B.R. 921 (Bankr. W.D. Pa. July 30, 2019) (Böhm)** (Mortgage holder's proof of claim is disallowed on trustee's objection for two reasons: proof of claim was untimely filed one year after bar date; confirmed plan is res judicata with respect to amount of arrears that may be collected by mortgage holder. Confirmed plan provided for arrearage claim of $4,895—an amount paid by the confirmed plan. Untimely filed claim was for $10,453. Court order states that mortgagee is "disallowed" from collecting larger amount in any action or proceeding.).

{1231} ***Fraser v. CitiMortgage, Inc. (In re Fraser)*, 599 B.R. 830 (Bankr. W.D. Pa. Apr. 26, 2019) (Böhm)** (Confirmed plan that treated first mortgage as fully secured and allowed 90 days after confirmation within which debtor could challenge filed claim is binding and precludes adversary proceeding 18 months after confirmation seeking to value property and bifurcate the mortgage.).

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{1232} ***In re Roebuck*, No. 19-23044-GLT, 2020 WL 5249597, at *2–*3 (Bankr. W.D. Pa. Sept. 3, 2020) (Taddonio)** ("Interim confirmation order" used in district to provide adequate protection to lienholders prior to completion of the confirmation process is not "confirmation" under § 1325 for purposes of modification to extend plan to seven years under § 1329(d) as amended by the CARES Act. "Section 1113(b)(1)(D)(ii) of the CARES Act reiterates that section 1329(d) applies only when '*a plan has been confirmed under section 1325* . . . before the date of enactment of this Act.' . . . An interim confirmation order is not a creature of the Code. Instead, it is unique local practice employed to provide adequate protection to secured and priority creditors pending 'final' plan confirmation. . . . [T]he judges of this district have adopted a form of order that typically enters following the first meeting of creditors and authorizes the Trustee to commence distributions to secured and priority creditors. . . . [T]he Court acknowledges that the form order may contain some unintended ambiguities stemming from its use for both interim and final confirmation. . . . Without belaboring the point, interim confirmation in this district is simply not confirmation under section 1325. . . . Not only does the Court not review the plan or make any findings before entering an interim confirmation order, the Trustee concedes that many plans confirmed on an interim basis do not yet satisfy section 1325. . . . Congress drew a bright line establishing a debtor's eligibility to modify a plan under section 1329(d) . . . .").

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{1233} ***In re Genrette*, 797 F. App'x 739 (3d Cir. Mar. 17, 2020) (Shwartz, Restrepo, Nygaard)** (Pro se appeal of stay relief after default under confirmed plan and default under stipulation with respect to relief from the stay is rejected as completely groundless.), *aff'g* No. 18-920 (MN), 2019 WL 4740053 (D. Del. Sept. 27, 2019) (Noreika) (Untimely pro se petition for rehearing denied with respect to appeal of grant of stay relief based on debtor's postconfirmation default in mortgage payments. Debtor's objection to loan modification—a loan modification that debtor sought and agreed to—confused the district court and everyone else.).

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§ 126.1 Standing, Timing and Procedure

{1234} ***In re Zvoch*, No. 17-21385-GLT, 2020 WL 5362380 (Bankr. W.D. Pa. Sept. 8, 2020) (Taddonio)** (*Nunc pro tunc* approval of modification of confirmed plan to validate unrevealed postpetition financing of $33,674 car with monthly payment of $719 is denied for two reasons: *nunc pro tunc* approval is not available after *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, ___ U.S. ___, 140 S. Ct. 696, 206 L. Ed. 2d 1 (Feb. 24, 2020) (per curiam), when reason order was not entered at time of financing was that debtor did not reveal the borrowing; expensive car is not reasonable or necessary and negatively impacts payments to other creditors.).

{1235} ***In re Palmer*, No. 15-20886-GLT, 2020 WL 4743011, at *3–*4 (Bankr. W.D. Pa. Aug. 14, 2020) (Taddonio)** (Debtor is entitled to refund of $213.35 paid to unsecured creditors while motion and order to modify plan were being processed. Modified plan changed math of confirmed plan to eliminate distribution to unsecured creditors that resulted when payment of mortgage arrears was completed in 53d month. Trustee could have and perhaps should have objected to modification that had "retroactive" effect of declaring plan completed. Confirmed plan called for 60 monthly payments to cure mortgage arrearages with acknowledgment that pool of funds available to pay unsecured creditors would be determined after an audit at the time of completion of other payments. Mortgage arrearages were fully paid approximately 53 months into the plan term. Trustee filed a notice of intent to pay unsecured creditors pro rata from funds that became available when mortgage arrears were paid. Debtor responded with plan modification that terminated the debtor's obligations "retroactively" to the completion of payment of mortgage arrears. The court approved the modified plan and a week later the trustee's office disbursed funds on hand to unsecured creditors. "[The trustee] did [not] request a delay in the effective date of the confirmation order to account for the processing limitations of her office. . . . [T]he Court is sympathetic to the Trustee's position even though it cannot authorize her actions in this case. The Trustee's office is one of the largest in the country with disbursements rivaling those of a small financial institution. With such volume and complexity, it is completely understandable that unusual plans would present hardships in administration. . . . When appropriate, however, the Trustee may request that the confirmation order include reasonable terms to grant her the leeway to address any administrative difficulties on a case-by-case basis. . . . [T]he Debtor is entitled to a refund of $213.35.").

§ 126.2 Application of Tests for Confirmation
§ 126.3 Does Disposable Income Test Apply?
§ 126.4 Duration of Modified Plan

{1236} ***In re Roebuck*, No. 19-23044-GLT, 2020 WL 5249597, at *2–*3 (Bankr. W.D. Pa. Sept. 3, 2020) (Taddonio)** ("Interim confirmation order" used in district to provide adequate protection to lienholders prior to completion of confirmation process is not "confirmation" under § 1325 for purposes of modification to extend plan to seven years under § 1329(d) as amended by the CARES Act. "Section 1113(b)(1)(D)(ii) of the CARES Act reiterates that section 1329(d) applies only when '*a plan has been confirmed under section 1325* . . . before the date of enactment of this Act.' . . . An interim confirmation order is not a creature of the Code. Instead, it is unique local practice employed to provide adequate protection to secured and priority creditors pending 'final' plan confirmation. . . . [T]he judges of this district have adopted a form of order that typically enters following the first meeting of creditors and authorizes the Trustee to commence distributions to secured and priority creditors. . . . [T]he Court acknowledges that the form order may contain some unintended ambiguities stemming from its use for both interim and final confirmation. . . . Without belaboring the point, interim confirmation in this district is simply not confirmation under section 1325. . . . Not only does the Court not review the plan or make any findings before entering an interim confirmation order, the Trustee concedes that many plans confirmed on an interim basis do not yet satisfy section 1325. . . . Congress drew a bright line establishing a debtor's eligibility to modify a plan under section 1329(d) . . . .").

§ 126.5 Changed-Circumstances Requirement?

{1237} ***Fraser v. CitiMortgage, Inc. (In re Fraser)*, 599 B.R. 830, 838 (Bankr. W.D. Pa. Apr. 26, 2019) (Böhm)** (Modification after confirmation under § 1329 is not available to value a secured claim and bifurcate the claim when undersecurity was known at confirmation and no substantial, unanticipated change in circumstances occurred to support modification. "This Court has ruled that 'a modification of a confirmed plan under § 1329(a) must be based upon a change in circumstances that is substantial, material or unanticipated at the time of the initial confirmation.' . . . Stating that a general 'devaluation' of the property has occurred, without more, is insufficient to prove a 'substantial or material' change in circumstances. . . . Debtor knew or should have known about the diminished value of the property pre-confirmation, such a devaluation likely would not have been 'unanticipated.'").

§ 126.6 Modification after Confirmation after BAPCPA

{1238} ***In re Roebuck*, No. 19-23044-GLT, 2020 WL 5249597, at *2–*3 (Bankr. W.D. Pa. Sept. 3, 2020) (Taddonio)** ("Interim confirmation order" used in district to provide adequate protection to lienholders prior to completion of confirmation process is not "confirmation" under § 1325 for purposes of modification to extend plan to seven years under § 1329(d) as amended by the CARES Act. "Section 1113(b)(1)(D)(ii) of the CARES Act reiterates that section 1329(d) applies only when '*a plan has been confirmed under section 1325* . . . before the date of enactment of this Act.' . . . An interim confirmation order is not a creature of the Code. Instead, it is

unique local practice employed to provide adequate protection to secured and priority creditors pending 'final' plan confirmation. . . . [T]he judges of this district have adopted a form of order that typically enters following the first meeting of creditors and authorizes the Trustee to commence distributions to secured and priority creditors. . . . [T]he Court acknowledges that the form order may contain some unintended ambiguities stemming from its use for both interim and final confirmation. . . . Without belaboring the point, interim confirmation in this district is simply not confirmation under section 1325. . . . Not only does the Court not review the plan or make any findings before entering an interim confirmation order, the Trustee concedes that many plans confirmed on an interim basis do not yet satisfy section 1325. . . . Congress drew a bright line establishing a debtor's eligibility to modify a plan under section 1329(d) . . . .").

2. SPECIFIC MODIFICATIONS

§ 127.1 To Suspend Payments
§ 127.2 To Cure Postconfirmation Default
§ 127.3 To "Add" Prepetition Creditors
§ 127.4 To Provide for Postpetition Claims
§ 127.5 To Incur New Debt

{1239} ***In re Zvoch*, No. 17-21385-GLT, 2020 WL 5362380 (Bankr. W.D. Pa. Sept. 8, 2020) (Taddonio)** (*Nunc pro tunc* approval of modification of confirmed plan to validate unrevealed postpetition financing of $33,674 car with monthly payment of $719 is denied for two reasons: *nunc pro tunc* approval is not available after *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, ___ U.S. ___, 140 S. Ct. 696, 206 L. Ed. 2d 1 (Feb. 24, 2020) (per curiam), when reason order was not entered at time of financing was that debtor did not reveal the borrowing; expensive car is not reasonable or necessary and negatively impacts payments to other creditors.).

§ 127.6 To Sell or Refinance Property of the Estate
§ 127.7 To Surrender Collateral, Account for Repossession or Change the Treatment of a Secured Claim
§ 127.8 To Decrease Payments to Creditors
§ 127.9 To Increase Payments to Creditors
§ 127.10 To Account for Payments Other Than under the Plan
§ 127.11 To Extend or Reduce the Time for Payments

{1240} ***In re Roebuck*, No. 19-23044-GLT, 2020 WL 5249597, at *2–*3 (Bankr. W.D. Pa. Sept. 3, 2020) (Taddonio)** ("Interim confirmation order" used in district to provide adequate protection to lienholders prior to completion of the confirmation process is not "confirmation" under § 1325 for purposes of modification to extend plan to seven years under § 1329(d) as amended by the CARES Act. "Section 1113(b)(1)(D)(ii) of the CARES Act reiterates that section 1329(d) applies only when '*a plan has been confirmed under section 1325* . . . before the date of enactment of this Act.' . . . An interim confirmation order is not a creature of the Code. Instead, it is unique local practice employed to provide adequate protection to secured and priority creditors pending 'final' plan confirmation. . . . [T]he judges of this district have adopted a form of order that typically enters following the first meeting of creditors and authorizes the Trustee to commence distributions to secured and priority creditors. . . . [T]he Court acknowledges that the form order may contain some unintended ambiguities stemming from its use for both interim and final confirmation. . . . Without belaboring the point, interim confirmation in this district is simply not confirmation under section 1325. . . . Not only does the Court not review the plan or make any findings before entering an interim confirmation order, the Trustee concedes that many plans confirmed on an interim basis do not yet satisfy section 1325. . . . Congress drew a bright line establishing a debtor's eligibility to modify a plan under section 1329(d) . . . .").

{1241} ***In re Palmer*, No. 15-20886-GLT, 2020 WL 4743011, at *3–*4 (Bankr. W.D. Pa. Aug. 14, 2020) (Taddonio)** (Debtor is entitled to refund of $213.35 paid to unsecured creditors while motion and order to modify plan were being processed. Modified plan changed math of confirmed plan to eliminate distribution to unsecured creditors that resulted when payment of mortgage arrears was completed in 53d month. Trustee could have and perhaps should have objected to modification that had "retroactive" effect of declaring plan completed. Confirmed plan called for 60 monthly payments to cure mortgage arrearages with acknowledgment that pool of funds available to pay unsecured creditors would be determined after an audit at the time of completion of other payments. Mortgage arrearages were fully paid approximately 53 months into the plan term. Trustee filed a notice of intent to pay unsecured creditors pro rata from funds that became available when mortgage arrears were paid. Debtor responded with plan modification that terminated the debtor's obligations "retroactively" to the completion of payment of mortgage arrears. The court approved the modified plan and a week later the trustee's office disbursed funds on hand to unsecured creditors. "[The trustee] did [not] request a delay in the effective date of the confirmation order to account for the processing limitations of her office. . . . [T]he Court is sympathetic to the Trustee's position even though it cannot authorize her actions in this case. The Trustee's office is one of the largest in the country with disbursements rivaling those of a small financial institution. With such volume and complexity, it is completely understandable that unusual plans would present hardships in administration. . . . When appropriate, however, the Trustee may request that the confirmation order include reasonable terms to grant her the leeway to address any administrative difficulties on a case-by-case basis. . . . [T]he Debtor is entitled to a refund of $213.35.").

F. MISCELLANEOUS POSTCONFIRMATION ISSUES
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PART 7: CLAIMS
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§ 130.4 11 U.S.C. § 506: Extent of Secured Claims
§ 130.5 11 U.S.C. § 507: Priority Claims
§ 130.6 11 U.S.C. § 1305: Postpetition Claims
§ 130.7 Bankruptcy Rule 3001: Proofs of Claim
§ 130.8 Bankruptcy Rule 3002: Filing of Proofs of Claim
§ 130.9 Bankruptcy Rule 3004: Filing of Claims by Debtor or Trustee
§ 130.10 Bankruptcy Rule 3007: Objections to Claims
§ 130.11 Bankruptcy Rule 3012: Valuation of Security
§ 130.12 Bankruptcy Rule 5005: Filing of Papers
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1. FORM AND FILING OF PROOF OF CLAIM
§ 131.1 Official Form 410 and Variations
§ 131.2 [RESERVED]
§ 131.3 Bankruptcy Rule 3002.1: Mortgage Management after 2011

{1242} ***Ocwen Loan Servicing, LLC for Deutsche Bank Nat'l Tr. Co. v. Randolph*, No. 18-21, 2018 WL 2220843 (W.D. Pa. May 15, 2018) (Conti)** (District court denies untimely motion to extend time to move for rehearing of appeal of show-cause order requiring Ocwen to explain why it failed to comply with court orders to provide loan histories to Chapter 13 trustee after Ocwen confessed that it had wrongfully charged attorney fees for reviews of Chapter 13 plans.), *denying reconsideration of* Nos. 18-21, 18-22, 2018 WL 1141737, at *1 (W.D. Pa. Mar. 2, 2018) (Conti) (District court easily rejects Ocwen's request for immediate appeal of bankruptcy court orders to show cause with respect to noncompliance with prior orders requiring complete loan histories in cases in which Ocwen admits it inappropriately charged $400 legal fees for "plan review." "[T]he bankruptcy court observed that Ocwen Loan Servicing, LLC . . . , a mortgage servicing company, had improperly charged a $400 legal fee for 'plan review' in both cases. Further inquiry revealed that Ocwen may have charged this improper fee in at least 30 other bankruptcy cases. Ocwen conceded that the fees should not have been charged and agreed to remove them from the loans. In order to verify that this had been done, the bankruptcy court issued an order directing Ocwen to produce the complete loan histories for all those cases to the Chapter 13 Trustee for review. . . . [T]he trustee . . . reported to the bankruptcy court that Ocwen had only provided partial loan histories . . . . The bankruptcy court issued a second order on each docket . . . directing Ocwen to respond . . . . At the hearing, the bankruptcy court confirmed that Ocwen had provided only partial loan histories to the Trustee. The bankruptcy court issued another order on each docket directing Ocwen to supply complete loan histories and raising the possibility of sanctions for non-compliance. . . . [T]he Trustee reported that Ocwen had still not complied. The bankruptcy court issued an order in each case . . . directing Ocwen and its counsel to appear at a hearing to 'show cause for and justify their failure to comply' with the three previous orders.").

{1243} ***In re Ransom*, 599 B.R. 791, 796–821 (Bankr. W.D. Pa. Mar. 28, 2019) (Agresti)** (After nearly two years of litigation with trustee, Ocwen is found in contempt of court orders requiring complete loan histories in Chapter 13 cases in which Ocwen improperly filed 3002.1 notices of postpetition fees that were not recoverable. Trustee's attorney's fees up to $70,000 were payable by Ocwen and Ocwen's outside counsel was reprimanded for misconduct before the bankruptcy court. "[T]he Court was operating from the premise that, unless otherwise qualified by an additional limiting term such as 'partial' or 'post-petition,' a loan history meant a record of the loan from the date of its inception up to the present. That was consistent with the language in the various default orders directed against Ocwen . . . . Those default orders provided that Ocwen was to provide 'full and comprehensible loan histories from the inception of the loan.' . . . Ocwen filed Affidavits . . . . According to the body of the Affidavit, allegedly attached to each of the Affidavits was a 'complete and accurate post-petition loan payment history.' . . . Ocwen had failed to provide a 'complete loan history' . . . . Ocwen acknowledged that it had not provided complete loan histories . . . but then went on to argue that the Trustee's definition was over broad and unnecessary. . . . Ocwen had actual knowledge . . . and an obligation arose in it to provide proof of removal of the charges and a complete loan history from the inception of the loan . . . . Ocwen did absolutely nothing to even attempt to comply with those orders. . . . [T]he testimony provided by the 'Ocwen people' as to why it responded . . . in the manner it did . . . is tortuous and contradictory to the point that the Court has no confidence in exactly what happened. . . . By 'looking the other way' and going along with Ocwen's strained interpretation that he himself in all likelihood knew was incorrect, . . . Eisenberg put his own professional conduct and reputation at risk. If Ocwen insisted on acting under an interpretation . . . that he knew was wrong, Eisenberg could have chosen to withdraw from representation at that point. . . . Eisenberg was in essence not being candid with the Court, and acting contrary to the

basic principle that court orders must be obeyed. . . . Ocwen should be found in civil contempt and sanctioned for its disobedience of and failure to comply with the respective Orders.").

{1244} ***In re Dworek*, 589 B.R. 267, 270–76 (Bankr. W.D. Pa. Aug. 22, 2018) (Agresti)** (Quicken Loans is allowed to withdraw 3002.1 notices with respect to postpetition attorney fees that are not allowable under Pennsylvania law with conditions: withdrawal is with prejudice to any collection of postpetition attorney fees; mortgagee must certify that the fees have been removed from the debtors' loans and will not be assessed again in the future; fees for litigating the withdrawal of these notices may not be added to the loans; mortgagee must supply a complete loan history to prove compliance with all conditions; and court reserves right to seek sanctions under Bankruptcy Rule 9011 given that mortgagee had no good-faith claim to fees under Pennsylvania law but litigated at great length before moving to withdraw its notices. Pennsylvania law contains limitation that attorney fees are recoverable only if a foreclosure or other legal action had been commenced. Quicken filed 3002.1 notice seeking attorney fees of $550 and a second notice seeking attorney fees of $150 for filing an amended proof of claim. The trustee objected. After months of back-and-forth with the trustee, Quicken moved to withdraw its notices. "Counsel for Quicken stated that the Notice in this and the other cases were being withdrawn because Quicken had concluded that under [Pennsylvania law] attorney fees were not recoverable in the current matter. . . . [T]he dispute between Quicken and the Trustee as to whether Quicken should be permitted to add attorney fees on to its claims against the various debtors in these matters is a contested matter, and dismissal of that matter is therefore governed by *Fed.R.Civ.P. 41*. . . . [T]he only way that the Notices may be voluntarily withdrawn is by court order, on such terms as the Court considers proper, pursuant to *Rule 41(a)(2)*. . . . It is troubling to the Court that Quicken commenced this litigation in the first place by filing the Notices, and then vigorously pursued it for so long after the Objections were filed, before coming to the realization that [Pennsylvania law] posed a statutory roadblock to the requested fees . . . . [M]any such Notices were being filed with little or no supporting documentation, yet were passing through the system without objection, apparently because the amounts being sought in the Notices (typically less than $1000) meant that the legal expense the debtor would incur in challenging them could not be financially justified. . . . [W]hat happened in the three cases addressed in the present Order is not merely an isolated problem. . . . Quicken's filing of the Notices and its continued litigation of the Objection in the face of the [Pennsylvania law] prohibition seems a clear violation of *Fed.R.Bankr.P. 9011(b)(1)* . . . . Should not an attorney conducting a reasonable inquiry in advance of filing the Notices have realized that existing law did not support the claim for attorney fees? . . . Quicken shall file a certification in each of these three cases stating that it has provided an Affidavit to the Trustee and the respective debtors to the effect that the loan history in each case has been corrected to eliminate any reference to the attorney fees that are the subject of the particular Notice, that it will not seek to impose any of its expenses related to this litigation on the debtors, and that it has provided the Trustee with a complete loan history from the inception of the loan to the date of this Order.").

§ 131.4 Informal Proofs of Claim: Letters, Motions, Pleadings and Conversations
§ 131.5 Is a Plan Provision a Proof of Claim?

2. WHO SHOULD FILE PROOFS OF CLAIM AND WHEN?
§ 132.1 1994 Code Amendments Changed the Rules
§ 132.2 In General: Filing Is Required for Allowance
§ 132.3 Governmental Units
§ 132.4 Unsecured Claims
§ 132.5 Partially Secured Claims
§ 132.6 Priority Claims, Including Requests for Payment of Administrative Expenses
§ 132.7 Secured Claim Holders
§ 132.8 910-Day PMSI Car Claims: Epilogue
§ 132.9 Postpetition Claims

3. ENLARGEMENT OF AND EXCEPTIONS TO CLAIMS BAR DATES
§ 133.1 General Rules: No Enlargement or Exceptions, Except . . .
§ 133.2 Unscheduled Creditors before and after BAPCPA
§ 133.3 [RESERVED]
§ 133.4 Amended Claims
§ 133.5 Tax Claim Exception after BAPCPA

4. FILING OF PROOFS OF CLAIM BY DEBTOR OR TRUSTEE
§ 134.1 Timing, Form, Superseding and Amended Claims before 2005
§ 134.2 Filing of Claims by Debtor or Trustee after 2005 Amendments to Bankruptcy Rule 3004
§ 134.3 [RESERVED]

C. ALLOWANCE AND OBJECTIONS TO CLAIMS
§ 135.1 Timing, Procedure and Evidence Presumption
§ 135.2 Allowance and Objections to Claims: Changes by BAPCPA
§ 135.3 Documentation and Assigned Claims

§ 135.4 Reconsideration of Claims

{1245} ***Fraser v. CitiMortgage, Inc. (In re Fraser)*, 599 B.R. 830 (Bankr. W.D. Pa. Apr. 26, 2019) (Böhm)** (Reconsideration of mortgage claim under § 502(j) is not available when debtor delayed 18 months to bring adversary proceeding seeking to bifurcate mortgage. Confirmed plan treated mortgage as fully secured and plan contained a 90-day deadline within which debtor had to but failed to challenge the filed proof of claim. Claim reconsideration under § 502(j) is not an end run around the 90-day deadline in the confirmed plan.).

§ 135.5 Failure to File Proof of Claim
§ 135.6 Untimely Filed Claims in Cases Filed before October 22, 1994: The Hausladen Phenomenon
§ 135.7 Untimely Filed Claims in Cases Filed after October 22, 1994

{1246} ***In re Venanzio*, 602 B.R. 921 (Bankr. W.D. Pa. July 30, 2019) (Böhm)** (Mortgage holder's proof of claim is disallowed on trustee's objection for two reasons: proof of claim was untimely filed one year after bar date; confirmed plan is res judicata with respect to amount of arrears that may be collected by mortgage holder. Confirmed plan provided for arrearage claim of $4,895—an amount paid by the confirmed plan. Untimely filed claim was for $10,453. Court order states that mortgagee is "disallowed" from collecting larger amount in any action or proceeding.).

D. PRIORITY CLAIMS AND ADMINISTRATIVE EXPENSES

§ 136.1 Treatment of Priority Claims
§ 136.2 Taxes before BAPCPA
§ 136.3 Taxes after BAPCPA

{1247} ***Berger v. Pennsylvania Dep't of Rev. (In re Berger)*, No. 18-02130-GLT, 2019 WL 1458934, at *5–*10 (Bankr. W.D. Pa. Mar. 29, 2019) (Taddonio), *aff'd*, No. 2:19-cv-00417, 2019 WL 5310145 (W.D. Pa. Oct. 21, 2019) (Conti)** (Sovereign immunity does not bar Chapter 13 debtors' actions to strip down and strip off tax liens held by state of Pennsylvania. State waived sovereign immunity by filing proofs of claim. Inclusion of §§ 506 and 1327 in § 106 is a statutory waiver of sovereign immunity that empowers Chapter 13 debtors to value and then modify liens of state using § 1322(b)(2) through confirmed plans. Alternatively, lien stripping is an *in rem* proceeding that does not trigger sovereign immunity concerns in the first instance. "Instead of relying on § 506(d)'s lien-voiding language, the chapter 13 debtor 'modif[ies] the rights of holders of secured claims' via § 1322(b)(2), stripping the lien by addressing it in their plan of reorganization. . . . Revenue did in fact file proofs of claim in both debtors' cases. . . . By doing so, Revenue subjected itself to the claims allowance process and any subsequent determination as to the nature and extent of its claims . . . . The proofs of claim and the adversary complaints arise out of the same 'transaction or occurrence,' and Revenue has therefore waived its sovereign immunity with respect to the debtors' complaints. . . . [T]he Court alternatively finds that sovereign immunity was abrogated by Congress pursuant to § 106(a). . . . While Revenue is correct in stating that § 1322 is not listed among the provisions of § 106(a), its inclusion would be entirely obviated by the inclusion of § 1327. Section 1327 is an enabling clause; if sovereign immunity has been abrogated with respect to the power to bind creditors to the terms of a confirmed plan, then § 1322's provisions detailing the components of a plan are subsumed within that abrogation to give effect to § 1327's inclusion. . . . Lien stripping is nothing more than a determination of the rights in a debtor's *res*, in exactly the same way as the discharge of student loan debt in [*Tennessee Student Assistance Corp. v. Hood)*, 541 U.S. 440, 124 S. Ct. 1905, 158 L. Ed. 2d 764 (May 17, 2004)] and the avoidance of a preferential transfer in [*Central Va. Comty. College v. Katz)*, 546 U.S. 356, 126 S. Ct. 990, 163 L. Ed. 2d 945 (Jan. 23, 2006)]. Indeed, the assessment and modification of liens against estate assets is the quintessential *in rem* proceeding, much more so than the actions evaluated by the Supreme Court in those two cases.").

§ 136.4 Trustees' Fees and Expenses before BAPCPA
§ 136.5 Trustees' Fees and Expenses after BAPCPA
§ 136.6 Debtors' Attorneys' Fees before BAPCPA
§ 136.7 Debtors' Attorneys' Fees after BAPCPA
§ 136.8 Utilities before BAPCPA
§ 136.9 Utilities after BAPCPA
§ 136.10 Leases and Executory Contracts before BAPCPA
§ 136.11 Leases and Executory Contracts after BAPCPA
§ 136.12 Failed Adequate Protection before BAPCPA
§ 136.13 Failed Adequate Protection after BAPCPA
§ 136.14 Miscellaneous Administrative Expenses and Priority Claims before BAPCPA
§ 136.15 Miscellaneous Administrative Expenses and Priority Claims after BAPCPA

{1248} ***In re Johnson*, 607 B.R. 250, 252–53 (Bankr. W.D. Pa. Oct. 28, 2019) (Taddonio)** (Filing fees unpaid in prior dismissed Chapter 13 case are a general unsecured claim in subsequent case and are not entitled to priority or payment in advance of other unsecured creditors. "The Trustee now requests authority to use funds currently in her possession from the 2017 Case to satisfy the filing

fee that accrued in the 2014 Case. . . . [T]he Court finds that the *Motion* is premised on a fundamental legal flaw—that the Court enjoys some sort of priority regarding these unpaid fees that would allow a distribution to the Court before distributions to other creditors. The Trustee has not articulated any legal authority in support of such priority treatment, and the Court is unaware of any that would apply under these circumstances. . . . [A]ny unpaid filing fee assessed against a prior estate is nothing more than a prepetition general unsecured claim in a subsequent bankruptcy filing. . . . As the holder of a general unsecured claim, the Court, *if a proof of claim was filed on its behalf*, would be entitled to a pro rata distribution in pari passu with other similarly-situated creditors. Nothing more, nothing less. . . . The Court recognizes that the Trustee's request was well-intentioned if not legally sustainable. Although it would be tempting for the Court to direct the payment of its filing fees in this manner for hundreds of delinquent cases, it finds that it cannot sacrifice core bankruptcy principles simply to recover lost revenue. The central tenets of the Code mandate that creditor distributions occur in order of priority and that similarly-situated creditors are treated equally. . . . If creditors are expected to abide by these precepts, the Court must do likewise when acting as the holder of a comparable claim. Put simply, the Court cannot contravene the Code simply to move itself to the front of the unsecured-creditors line.").

§ 136.16 Postpetition Interest on Priority Claims before BAPCPA
§ 136.17 Postpetition Interest on Priority Claims after BAPCPA
§ 136.18 Secured Priority Claims before BAPCPA
§ 136.19 Secured Priority Claims after BAPCPA
§ 136.20 Alimony, Maintenance and Support in Cases Filed after October 22, 1994
§ 136.21 Domestic Support Obligations after BAPCPA
§ 136.22 Driving or Boating while Intoxicated Priority after BAPCPA

E. POSTPETITION CLAIMS

§ 137.1 Postpetition Claims before BAPCPA
§ 137.2 Postpetition Claims after BAPCPA

F. MISCELLANEOUS CLAIMS QUESTIONS

§ 138.1 Alimony, Maintenance and Support in Cases Filed before October 22, 1994
§ 138.2 Claims for Creditors' Attorneys' Fees
§ 138.3 Creditors' Attorneys' Fees: New Recovery Rights after BAPCPA
§ 138.4 Nonrecourse Claims and Claims Discharged in Prior Bankruptcy Case
§ 138.5 Truth-in-Lending and Other Consumer Protection Statutes

{1249} ***Howard v. LVNV Funding, LLC*, No. 3:19-cv-93, 2020 WL 978653 (W.D. Pa. Feb. 28, 2020) (Gibson)** (FDCPA is not preempted by Bankruptcy Code when allegation is that LVNV filed false and misleading proofs of claim that combined interest and other charges with principal. Filing proof of claim can violate FDCPA when proof of claim is false or misleading and Chapter 13 debtor's complaint states cause of action that survives motion to dismiss.).

§ 138.6 U.C.C. and Other Commercial Law Questions
§ 138.7 Miscellaneous Claims Issues

{1250} ***In re Wagner*, No. 17-11252-TPA, 2020 WL 1844615 (Bankr. W.D. Pa. Apr. 9, 2020) (Agresti)** (With one spouse in Chapter 13 and the other in Chapter 12 and after several failed attempts to inspire the parties to complete a state court divorce with equitable distribution of property, the bankruptcy court carries through its threat to perform the equitable distribution of property in the bankruptcy court applying Pennsylvania domestic relations law principles.).

{1251} ***DeWitt v. First Nat'l Bank of Pa. (In re DeWitt)*, 608 B.R. 794 (Bankr. W.D. Pa. Nov. 4, 2019) (Deller)** (Chapter 13 debtors are entitled to a Bankruptcy Rule 2004 examination of a mortgagee with the respect to the existence of credit disability insurance and/or the mortgagee's failure to obtain credit disability insurance.).

§ 138.8 Mortgage Claim Issues

{1252} ***Farrington v. U.S. Bank Tr. N.A. (In re Farrington)*, 790 F. App'x 490 (3d Cir. Jan. 14, 2020) (Jordan, Bibas, Phipps)** (*Res judicata* barred Chapter 13 debtor's adversary proceeding challenging U.S. Bank's standing to foreclose. State court decided identical standing issue against debtor in prepetition foreclosure action.).

{1253} ***Hartman v. Wells Fargo Bank NA (In re Hartman)*, 763 F. App'x 160 (3d Cir. Feb. 6, 2019) (not for publication) (Smith, McKee, Fisher)** (Foreclosure by Wells Fargo was not time-barred under New Jersey law because correct statute of limitations was 20 years from default by debtors, not six years from acceleration. Wells Fargo owed no duty to borrower with respect to loan modification applications.), *aff'g* No. 15-7093 (ES), 2017 WL 2230336 (D.N.J. May 22, 2017) (Salas) (Debtor's claim of negligent misrepresentation by Wells Fargo during loan modification process fails to state a claim because Wells Fargo, as servicer of loan, is not alleged to owe the debtor any duty other than its contractual obligations.), *aff'g in part* No. 15-01968 (JKS), 2015 WL 4974092 (Bankr. D.N.J. Aug. 19, 2015) (unpublished) (Sherwood) (Acceleration of mortgage did not affect maturity date for purposes of applicable limitations period; foreclosure action was not time barred under state's Fair Foreclosure Act.)).

{1254} ***Danise v. Saxon Mortg. Servs. Inc.*, 738 F. App'x 47 (3d Cir. June 7, 2018) (unpublished) (McKee, Ambro, Restrepo)** (Postdischarge Chapter 13 debtor is judicially estopped to maintain action against Saxon and Ocwen for wrongful denial of loan modification applications before and during completed Chapter 13 case. Debtor failed to schedule the causes of action during the Chapter 13 case.), *aff'g* No. 15-06062 (JLL), 2017 WL 838799 (D.N.J. Mar. 3, 2017) (unpublished) (Linares) (Debtor's failure to reveal FDCPA action against mortgagee during Chapter 13 case is fatal to complaint filed after discharge.), *denying reconsideration of* No. 15-06062 (JLL), 2016 WL 7340287 (D.N.J. Dec. 19, 2016) (unpublished) (Linares) (Judicial estoppel bars post-discharge action against Saxon and Ocwen alleging breach of contract and violations of various consumer fraud statutes when defendants failed to modify mortgages under HAMP; loan modification was denied before confirmation of the plan and debtors waited five years to bring putative class action against Saxon/Ocwen.).

{1255} ***Ocwen Loan Servicing, LLC v. Winnecour*, No. 2:19-CV-527-NR, 2020 WL 1532286 (W.D. Pa. Mar. 31, 2020) (Ranjan)** (Bankruptcy court order granting trustee's motion to require loan histories and proof of correction of inappropriate fees and expenses charged in Chapter 13 cases—and prohibiting future charges—is vacated and remanded for further fact finding and legal conclusions.).

{1256} ***Ocwen Loan Servicing, LLC for Deutsche Bank Nat'l Tr. Co. v. Randolph*, No. 18-21, 2018 WL 2220843 (W.D. Pa. May 15, 2018) (Conti)** (District court denies untimely motion to extend time to move for rehearing of appeal of show-cause order requiring Ocwen to explain why it failed to comply with court orders to provide loan histories to Chapter 13 trustee after Ocwen confessed that it had wrongfully charged attorney fees for reviews of Chapter 13 plans.).

{1257} ***In re Venanzio*, 602 B.R. 921 (Bankr. W.D. Pa. July 30, 2019) (Böhm)** (Mortgage holder's proof of claim is disallowed on trustee's objection for two reasons: proof of claim was untimely filed one year after bar date; confirmed plan is res judicata with respect to amount of arrears that may be collected by mortgage holder. Confirmed plan provided for arrearage claim of $4,895—an amount paid by the confirmed plan. Untimely filed claim was for $10,453. Court order states that mortgagee is "disallowed" from collecting larger amount in any action or proceeding.).

{1258} ***In re Simpson*, No. 16-24013-GLT, 2019 WL 1453069 (Bankr. W.D. Pa. Mar. 29, 2019) (Taddonio)** (Chapter 13 debtor's challenge to Wells Fargo's mortgage claim is overruled. *Rooker-Feldman* doctrine precludes review of foreclosure judgment and its components. Debtor presented no proof to overcome *prima facie* validity of claim amount and did not prove miscalculation or misconduct by Wells Fargo.).

{1259} ***In re Ransom*, 599 B.R. 791, 796–821 (Bankr. W.D. Pa. Mar. 28, 2019) (Agresti)** (After nearly two years of litigation with trustee, Ocwen is found in contempt of court orders requiring complete loan histories in Chapter 13 cases in which Ocwen improperly filed 3002.1 notices of postpetition fees that were not recoverable. Trustee's attorney's fees up to $70,000 were payable by Ocwen and Ocwen's outside counsel was reprimanded for misconduct before the bankruptcy court. "[T]he Court was operating from the premise that, unless otherwise qualified by an additional limiting term such as 'partial' or 'post-petition,' a loan history meant a record of the loan from the date of its inception up to the present. That was consistent with the language in the various default orders directed against Ocwen . . . . Those default orders provided that Ocwen was to provide 'full and comprehensible loan histories from the inception of the loan.' . . . Ocwen filed Affidavits . . . . According to the body of the Affidavit, allegedly attached to each of the Affidavits was a 'complete and accurate post-petition loan payment history.' . . . Ocwen had failed to provide a 'complete loan history' . . . . Ocwen acknowledged that it had not provided complete loan histories . . . but then went on to argue that the Trustee's definition was over broad and unnecessary. . . . Ocwen had actual knowledge . . . and an obligation arose in it to provide proof of removal of the charges and a complete loan history from the inception of the loan . . . . Ocwen did absolutely nothing to even attempt to comply with those orders. . . . [T]he testimony provided by the 'Ocwen people' as to why it responded . . . in the manner it did . . . is tortuous and contradictory to the point that the Court has no confidence in exactly what happened. . . . By 'looking the other way' and going along with Ocwen's strained interpretation that he himself in all likelihood knew was incorrect, . . . Eisenberg put his own professional conduct and reputation at risk. If Ocwen insisted on acting under an interpretation . . . that he knew was wrong, Eisenberg could have chosen to withdraw from representation at that point. . . . Eisenberg was in essence not being candid with the Court, and acting contrary to the basic principle that court orders must be obeyed. . . . Ocwen should be found in civil contempt and sanctioned for its disobedience of and failure to comply with the respective Orders.").

{1260} ***Wells Fargo Bank, N.A. v. Winnecour (In re Wells Fargo Bank, N.A.)*, No. 17-204-GLT, 2019 WL 642850, at *2 (Bankr. W.D. Pa. Feb. 14, 2019) (Taddonio)** (Under § 107(b), not appropriate to seal "confidential settlement" of litigation in which Wells Fargo (incomprehensibly) sued the Chapter 13 trustee 77 times to stop RESPA requests for loan histories from which trustee could evaluate whether Wells Fargo complied with settlement of other litigation with U.S. trustee. "[T]he Settlement Amount is not . . . scandalous or defamatory matter. Nor can there be any plausible assertion that it is a trade secret, confidential research, or development. . . . [T]he terms of a settlement agreement, including the amount of any settlement payments, are not 'commercial information' and, therefore, should not be restricted from public view.").

§ 138.9 Claim Reduction under § 502(k) after BAPCPA
§ 138.10 Chapter 7 Trustee Compensation: § 1326(b)(3) after BAPCPA

PART 8: CONVERSION AND DISMISSAL

§ 139.1 Summary of Part 8
§ 139.2 BAPCPA: More Grounds; Changed Consequences

A. STATUTES AND RULES DISCUSSED IN PART 8

§ 140.1 11 U.S.C. § 1307: Conversion and Dismissal
§ 140.2 11 U.S.C. § 706: Conversion to Chapter 13
§ 140.3 11 U.S.C. § 1112(d): Conversion to Chapter 13
§ 140.4 11 U.S.C. § 348: Effects of Conversion
§ 140.5 11 U.S.C. § 349: Effects of Dismissal
§ 140.6 Bankruptcy Rule 1017: Procedure for Conversion or Dismissal
§ 140.7 Bankruptcy Rule 1019: New Lists, Reports and So Forth

B. CONVERSION TO CHAPTER 7

1. PROCEDURE AND GROUNDS FOR CONVERSION

§ 141.1 Conversion by Debtor
§ 141.2 Conversion on Request of Creditor or Trustee
§ 141.3 Cause for Conversion

{1261} ***In re Smith*, No. 18-3000, 2018 WL 6617891 (3d Cir. Dec. 17, 2018) (unpublished) (Ambro, Krause, Porter)** (Third bankruptcy case filed by debtor and/or spouse to stop collection of $800,000 fraud judgment was appropriately converted to Chapter 7. Debtors were ineligible for Chapter 13, among other problems.).

§ 141.4 Cause for Conversion Added or Changed by BAPCPA
§ 141.5 Conversion *Sua Sponte*
§ 141.6 Automatic Conversion: The "Drop Dead" Clause

2. EFFECTS OF CONVERSION

a. IN GENERAL

§ 142.1 New Schedules, Statement, Meeting of Creditors and Deadlines
§ 142.2 Deadlines and Filing Requirements at Conversion after BAPCPA
§ 142.3 Application of § 707(b) Abuse Test at Conversion
§ 142.4 Notice Issues under § 342 at Conversion
§ 142.5 On Postpetition Claims
§ 142.6 On Relief from Stay

b. ON ENTITLEMENT TO POSTPETITION PROPERTY

§ 143.1 In Cases Filed before October 22, 1994
§ 143.2 In Cases Filed after October 22, 1994
§ 143.3 Payments Held by Chapter 13 Trustee at Conversion: § 1326(a)(2) after BAPCPA
§ 143.4 Priorities after Conversion: Two Trustees and a DSO
§ 143.5 Bad-Faith Conversion

c. ON EXEMPTIONS AND LIEN AVOIDANCE

§ 144.1 Exemptions at Conversion
§ 144.2 Lien Avoidance at Conversion

d. ON SECURED CLAIMS

§ 145.1 In Cases Filed before October 22, 1994
§ 145.2 In Cases Filed after October 22, 1994
§ 145.3 Lienholders' Rights at Conversion under § 348(f) after BAPCPA

C. CONVERSION TO CHAPTER 11

§ 146.1 Standing, Procedure and Grounds for Conversion to Chapter 11
§ 146.2 Strategic Considerations: Costs and Benefits of Conversion to Chapter 11
§ 146.3 Incentives to Convert to Chapter 11 after BAPCPA

D. CONVERSION TO CHAPTER 12

§ 147.1 Standing, Procedure and Strategic Considerations
§ 147.2 Incentives to Convert to Chapter 12 after BAPCPA

E. CONVERSION TO CHAPTER 13

1. CONVERSION FROM CHAPTER 7 TO CHAPTER 13

§ 148.1 Procedure
§ 148.2 Absolute Right of Debtor?

{1262} ***In re Cyrilla*, No. 18-20017-GLT, 2020 WL 96680, at *2 (Bankr. W.D. Pa. Jan. 8, 2020) (Taddonio)** (After conversion from Chapter 11 to Chapter 7, debtor is not eligible for conversion to Chapter 13 because debts at time of original Chapter 11 petition

exceeded eligibility limits in § 109(e); postpetition events cannot change eligibility calculus and conversion does not effect a change in the petition date for eligibility purposes. "[T]he Bankruptcy Code requires that eligibility be determined as of the petition date, which conversion does not change. . . . [T]here is unanimous agreement among published decisions that postpetition events, such as the reduction of debts, are not considered in determining whether a debtor is eligible for the desired chapter. . . . ").

§ 148.3 Effects of Conversion from Chapter 7 to Chapter 13
§ 148.4 Conversion to Chapter 13 after BAPCPA
2. CONVERSION FROM OTHER CHAPTERS TO CHAPTER 13
§ 149.1 Conversion from Chapter 11 to Chapter 13
§ 149.2 Conversion from Chapter 12 to Chapter 13
3. RECONVERSION TO CHAPTER 13
§ 150.1 Reconversion from Chapter 7 or Chapter 11 to Chapter 13
§ 150.2 Reconversion to Chapter 13 after BAPCPA
F. DISMISSAL
1. DISMISSAL BY DEBTOR
§ 151.1 Procedure, Timing and Form
§ 151.2 Absolute Right of Debtor?

{1263} ***In re Cenk*, 612 B.R. 323, 326–29 (Bankr. W.D. Pa. Feb. 27, 2020) (Taddonio)** (Notwithstanding allegations of bad faith and abuse, debtor's motion to dismiss Chapter 13 case is granted. Dismissal of a not previously converted Chapter 13 case is mandatory until an appellate court tells the bankruptcy courts that bad faith or other misconduct can be considered. "[T]here is significant disagreement at the circuit level about whether a debtor's right to dismiss under section 1307(b) is truly absolute. The United States Court of Appeals for the Second Circuit has held that a chapter 13 debtor 'has an absolute right to dismiss a Chapter 13 petition under § 1307(b), subject only to the limitation explicitly stated in that provision[.]' . . . In contrast, the United States Courts of Appeal for the Fifth, Eighth, and Ninth Circuits have all held that a debtor's right to voluntarily dismiss a chapter 13 case is qualified by an implied exception for bad faith conduct or abuse of the bankruptcy system. . . . The United States Court of Appeals for the Third Circuit has yet to confront the issue head on. . . . While the Court would appreciate the discretion to handle an array of factual circumstances differently, particularly to prevent abuse of the bankruptcy system, the existence of such discretion is doubtful.").

§ 151.3 Strategic Considerations: Consequences of Voluntary Dismissal
2. DISMISSAL ON REQUEST OF PARTY IN INTEREST
§ 152.1 Procedure, Timing and Form

{1264} ***In re Ruiz*, 776 F. App'x 750 (3d Cir. July 23, 2019) (McKee, Shwartz, Bibas)** (District court appropriately dismissed appeal of order dismissing Chapter 13 case based on pro se former spouse's failure to file a brief.).

§ 152.2 Cause for Dismissal—In General
§ 152.3 Cause for Dismissal Added or Changed by BAPCPA
§ 152.4 Cause for Dismissal, Including Bad-Faith, Multiple and Abusive Filings

{1265} ***In re Goldsmith*, No. 19-24475-JAD, 2019 WL 7599885 (Bankr. W.D. Pa. Jan. 17, 2019) (Deller)** (Dismissal of third bankruptcy filed to stop eviction is not reconsidered given that debtor failed to file documents necessary to maintain the Chapter 13 case, debtor failed to commence payments to the Chapter 13 trustee, debtor lacks regular income and only ground for relief from dismissal order is debtor's desire for a stay to stop eviction.).

§ 152.5 Cause Not Found
§ 152.6 Strategic Considerations
§ 152.7 Sua Sponte Dismissal
3. EFFECTS OF DISMISSAL
§ 153.1 In General
§ 153.2 Consequences of Dismissal Added or Changed by BAPCPA
§ 153.3 Court-Imposed Conditions and Restrictions on Dismissal
§ 153.4 Reinstatement after Dismissal

PART 9: DISCHARGE
§ 154.1 Summary of Part 9
A. STATUTES AND RULES DISCUSSED IN PART 9
§ 155.1 11 U.S.C. § 523: Exceptions to Discharge
§ 155.2 11 U.S.C. § 524: Effects of Discharge and Discharge Hearing
§ 155.3 11 U.S.C. § 1328: Discharge
§ 155.4 Bankruptcy Rule 1016: Death or Incompetency of Debtor

§ 155.5 Bankruptcy Rule 4007: Time for Filing Complaint Objecting to Dischargeability
§ 155.6 Bankruptcy Rule 4008: Discharge Hearing
B. TIMING AND PROCEDURE CONSIDERATIONS: BEFORE AND AFTER BAPCPA
§ 156.1 Timing and Procedure for Discharge and Objecting to Discharge

{1266} ***Yori v. Ruiz*, No. 1:18-cv-179, 2018 WL 6928021 (W.D. Pa. Dec. 31, 2018) (Baxter), *aff'd*, 776 F. App'x 750 (3d Cir. July 23, 2019) (McKee, Swartz, Bibas)** (Former spouse's pro se appeal of unspecified orders of bankruptcy court—most likely discharge and final report of Chapter 13 trustee—is dismissed for failure to prosecute.).

{1267} ***In re Ruiz*, No. 12-11687-JAD, 2018 WL 2272634 (Bankr. W.D. Pa. May 16, 2018) (Deller)** (Pro se former spouse's awkward effort to challenge discharge by attacking trustee's final report is untimely filed and bankruptcy court lacks jurisdiction because former spouse has also appealed final report and entry of discharge to district court.).

§ 156.2 Limitations on Successive Discharges
§ 156.3 Time for Determining Dischargeability of Debt

{1268} ***Mansfield v. Swiger (In re Swiger)*, 617 B.R. 537 (Bankr. W.D. Pa. July 24, 2020) (Deller)** (Determination that a debt is dischargeable property settlement under § 523(a)(15) in a Chapter 13 case is premature two years into a five-year Chapter 13 plan because the answer turns on whether the debtor completes payments under the confirmed plan.).

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{1269} ***Mansfield v. Swiger (In re Swiger)*, 617 B.R. 537 (Bankr. W.D. Pa. July 24, 2020) (Deller)** (Applying *Archer v. Warner*, 538 U.S. 314, 123 S. Ct. 1462, 155 L. Ed. 2d 454 (Mar. 31, 2003), consent judgment in domestic relations court with respect to debtor's obligation to pay student loan signed only by former spouse is not preclusive of former spouse's claim under § 523(a)(A)(2) that debtor committed fraud by signing former spouse's signature to the student loan.).

§ 159.3 Fraud and Defalcation: § 523(a)(4)
§ 159.4 Unscheduled Creditors: § 523(a)(3)
§ 159.5 Domestic Support Obligations: § 523(a)(5)

{1270} ***In re Beeghley*, 737 F. App'x 75 (3d Cir. June 20, 2018) (Greenaway, Vanaskie, Roth)** (Former spouse waited too long—10 years—to challenge bankruptcy court and district court orders relating to status of QDRO from 20-year-old divorce, *aff'g* 529 B.R. 98, 102 (Bankr. E.D. Pa. Apr. 29, 2015) (Raslavich) Ex-wife violated discharge injunction when she attempted to relitigate issues previously decided by bankruptcy court and divorce court. Ex-wife enjoined by bankruptcy court to end "'obstinate, tenacious, unrelenting, unyielding desire to destroy her former husband.'").

{1271} ***In re Ruiz*, No. 12-11687-JAD, 2018 WL 2272634 (Bankr. W.D. Pa. May 16, 2018) (Deller)** (Pro se former spouse's awkward effort to challenge discharge by attacking trustee's final report is untimely filed and bankruptcy court lacks jurisdiction because former spouse has also appealed final report and entry of discharge to district court.).

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