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2005 Bankruptcy Law!



Bankruptcy Issues for State Trial Court Judges

Third Edition

**A Publication of the
American Bankruptcy Institute**

Edited by
Marianne B. Culhane and Michaela M. White
Professors of Law
Creighton University School of Law, Omaha, Nebraska

***Supported by a grant from the
National Conference of Bankruptcy Judges
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Founded on Capitol Hill in 1982, the American Bankruptcy Institute (ABI) is the only multi-disciplinary, nonpartisan organization devoted to the advancement of jurisprudence related to problems of insolvency. The ABI membership includes more than 11,000 attorneys, bankers, judges, accountants, professors, turnaround specialists and other bankruptcy professionals, providing a forum for the exchange of ideas and information. ABI was founded to provide Congress with unbiased testimony and research on insolvency issues.

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Foreword

The United States is in the midst of a more than 20-year bankruptcy boom. Bankruptcy filings in the United States doubled between 1994 and 2004, rising from about 833,000 to more than 1.6 million new cases. Non-business (consumer) filings represent over 95 percent of all cases filed. Nationally, there is one bankruptcy for about every 73 households. In some states, there are as few as 35 households per consumer bankruptcy. The causes of consumer bankruptcies are many, including high debt loads, an interruption in income due to a job loss, family breakup or sustained high medical costs. Personal bankruptcies tend to rise even during a growing, expanding economy, fueled by the same consumer spending that now accounts for two-thirds of the domestic U.S. economy.

The bankruptcy boom is not limited to individuals with household debt. It also affects some of the nation's largest public companies. Some of the biggest corporate bankruptcies in history have been filed in the last few years. Industries such as airlines, automobiles, retail, technology and health care are among those under continued stress and risk of default, because of competitive and other pressures. The ripple effects of large corporate bankruptcies are felt by employees, retirees, customers, suppliers, government agencies and communities.

Against this backdrop of unprecedented bankruptcy activity, Congress in 2005 enacted the most sweeping reform of the laws in the last 25 years. The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) makes significant changes to bankruptcy law and procedure for both individuals and businesses. The new rules restrict access to the bankruptcy courts, limit the scope of relief, cabin judicial discretion, change time limits and make many other substantive and procedural changes to the 1978 Bankruptcy Code. With this rising tide of bankruptcies has come an increasing opportunity for conflict between the work of the state courts and the U.S. Bankruptcy Code.

ABI, the nation's leading multidisciplinary organization devoted to research and education on issues related to insolvency, has designed and thoroughly tested this seminar program to foster an understanding of the many areas where bankruptcy has an impact on state trial court practice. The program has been funded by grants from the State Justice Institute (1991-95) and the National Conference of Bankruptcy Judges (1995-present). It is offered at no cost to the states.

The interrelationship between federal bankruptcy law and state substantive and procedural law presents issues vital to the state court process, in areas such as domestic relations, criminal restitution, jurisdiction and many others. This ABI program is the only one currently available that is designed to assist the resolution of conflicts that may arise between these areas and bankruptcy law. The objective is to help state court trial judges better spot and deal with bankruptcy issues, and thereby improve the harmonization between bankruptcy and state substantive and procedural law.

Chief Justice Rehnquist, in an address to the ABI Annual Spring Meeting on May 18, 1992, highlighted the close connection between this ABI seminar program and the success of the first National Conference on State-Federal Judicial Relationships, held in April in Orlando, Fla.:

As one of its purposes, the [Orlando] conference sought to determine which activities of the federal courts currently provide the greatest friction point between the state and federal systems. Surprisingly, the consensus choice was not *habeas corpus* or diversity jurisdiction, although these continue to be a fertile source for disagreement. Instead, the work of the bankruptcy court was widely recognized as the major friction point.

I suppose that is not surprising when one considers in combination the number of bankruptcy cases in the system and the breadth of the Bankruptcy Code's automatic stay provisions. Even under the best of conditions, a state judge or administrative official may be expected to resent having to put time into a matter only to see it automatically foreclosed by the filing of a bankruptcy petition, or worse yet, to see a state court litigant hauled into bankruptcy court and fined for willfully violating the Code's stay provisions. Moreover, state court counsel and the state judge may be unfamiliar with the Code's procedures for lifting the automatic stay, or may not understand the justification for the wide scope of matters brought within the automatic stay provisions.

The ABI program is conducted as a seminar in which the state judiciary and the ABI faculty interact to find solutions to the practical situations faced by state courts. Because it is expected that many of the programs will be given in connection with already-established judicial conference meetings, this no-cost program is especially helpful to state judicial educators.

Each seminar runs approximately three to four hours. The faculty will be a panel of bankruptcy experts, with emphasis on inclusion of bankruptcy judges and others from the state where the program is conducted. The programs begin with a panel discussion by the faculty outlining the tensions between federal and state law, with suggested methods for dealing with them. This discussion is designed to focus the state court judges on the key areas where they will most need practical understanding of bankruptcy and the role of their counterpart federal judge. The remainder of the program consists of an open exchange among judges and the faculty. The objective is to encourage the maximum input by the state court judges in attendance so that actual situations can be discussed and solutions proposed by the judges themselves, based on the "road map" provided in the prior discussion. In this portion of the program, the faculty will serve as a facilitator, encouraging the development of solutions consistent with the requirements of bankruptcy law.

Each participant will be furnished with a copy of this deskbook of materials, developed by ABI, organized by bankruptcy topic. The materials are oriented to the practical, rather than academic, and are not heavily footnoted. The deskbook covers such issues as the impact of the automatic stay, the power of the bankruptcy courts to enjoin state courts, the effect of bankruptcy on criminal cases, the impact of the bankruptcy discharge and domestic relations. It won much praise from judicial educators who have reviewed it, and this recently updated version makes it an even more useful permanent resource.

ABI thanks the co-authors of this Third Edition, Prof. Marianne B. Culhane and Prof. Michaela M. White, both of Creighton University School of Law in Omaha, Nebraska for their outstanding work incorporating the new law into this edition. We also acknowledge the helpful comments from Karen Cordry (Washington, D.C.) and James Caher (Eugene, Oregon). Layout and design work was handled skillfully by Courtney Reyers, ABI's Communications Assistant.

For more information about the program, or to schedule the program for your state's trial judges, contact ABI at 44 Canal Center Plaza, Suite 404, Alexandria, VA, 22314 or call (703) 739-0800.

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Table of Contents

Foreword	iii
I. Introduction and User's Guide	1
II. The Bankruptcy-State Connection: An Overview	3
III. Structure of the Bankruptcy Court System	5
A. Jurisdiction	5
B. Removal and Remand (Briefly)	6
IV. Types of Bankruptcy Filings	7
A. Chapter 7	7
B. Chapter 11	8
C. Chapter 12	8
D. Chapter 13	9
V. Bankruptcy Concepts	11
A. Property of the Estate	11
B. Property of the Debtor	11
C. Claim	11
VI. Bankruptcy Stays and Injunctions	13
A. Section 362 Stays	13
1. To whom does a §362 stay apply?	14
2. To what conduct does a §362 stay apply?	15
a. Actions against property of the estate	15
b. Actions against property of the debtor	16
c. Actions against the debtor	16
3. How can state court litigants respond to the stay?	17
a. Exceptions to the §362 stay	17
b. Termination of the Stay	19
c. Dismissal of the case or denial of discharge as terminating the stay	20
d. Requesting relief from the stay	20
4. What are the sanctions for violation of the stay?	22
5. What is the effect of an action that violates §362?	22
6. How does the §362 stay affect contractual and statutory time limitations?	22
7. What are the practical ramifications of the stay for state court judges?	23
B. Sections 1201 and 1301 Codebtor Stays	23
VII. Dischargeability Law	25
A. Debts Excepted from Discharge	25
B. Chapter 7	27

C. Chapter 11	28
D. Chapter 12	28
E. Chapter 13	28
VIII. Bankruptcy and Domestic Relations Law	31
A. Domestic Support Obligations	31
B. Property of the Estate and Jointly Owned Real Property	31
1. Jointly Owned Property as Property of the Estate	31
2. Real Estate Held as Tenants by the Entirety	32
3. Exemptions and Entirety Property	32
C. Effect of the Automatic Stay on Domestic Relations Matters	32
D. Exceptions to the Automatic Stay for Domestic Relations Matters	33
E. Relief from the Stay	34
F. Dischargeability and State Court Domestic Relations Issues	34
1. Exceptions to discharge	34
2. Responding to a discharge by modification of support	36
G. Avoidance of Transfers or Liens	36
H. Plan Confirmation	36
IX. Bankruptcy and Criminal Proceedings	37
A. Automatic Stay	37
B. Dischargeability	38
X. Bankruptcy Terms	39
XI. Questions Commonly Asked by State Court Judges	47
XII. United States Bankruptcy Judges	51
XIII. United States Bankruptcy Clerks	63
XIV. United States Trustee Program	67
XV. Applicable Bankruptcy Statutes & Rules: Selected Provisions	73

I. Introduction and User's Guide

Unless state court judges understand bankruptcy law, state proceedings can be unnecessarily interrupted and state rulings inefficiently and unfairly nullified. The first purpose of this deskbook is to provide state judges with a short, readable primer, not about all of bankruptcy law, but merely about the bankruptcy-state law connection.

The deskbook is best utilized in connection with the seminar program offered by ABI. However, it is also designed to be used as a stand-alone product. The expectation is that even one who is totally unfamiliar with bankruptcy law can readily comprehend the text and, by so doing, better protect the interests of the state and its litigants.

The second goal is to provide, by way of appendices, a wealth of additional practical and reference information regarding bankruptcy law and the bankruptcy court system. But do not let these extensive appendices intimidate you from beginning the relatively brief text. Plunge ahead and become acquainted with bankruptcy law. Leave the appendices for later.

II. The Bankruptcy-State Connection: An Overview

Bankruptcy law can affect state courts in many ways, such as:

1. By staying a wide variety of state court proceedings;
2. By rendering state court actions taken in violation of a stay void or voidable;
3. By discharging debts incurred in state proceedings and by discharging claims that could otherwise be raised in such proceedings;
4. By avoiding liens created by state proceedings;
5. By extending the statutory, judicial or contractual time periods within which certain nonbankruptcy acts may be taken.

Consequently, among other things, state court judges should:

1. Learn how bankruptcy stays work, namely:
 - a. When they apply;
 - b. To what they apply;
 - c. What their effects are;
 - d. How their effects may be terminated, modified or nullified—and the fruit of state proceedings thereby saved;
2. Establish rules or procedures to maximize the likelihood that they will learn of any applicable stays;
3. Ascertain which debts are dischargeable and which are not;
4. Formulate findings of fact and law to maximize any collateral estoppel effects they might have; and
5. Fashion consent decrees and formulate support and property settlement obligations in ways that will effectively protect obligees.

In order to begin to appreciate these principles, it is first necessary to learn about the federal bankruptcy courts (Chapter III), various types of bankruptcy filings (Chapter IV) and certain bankruptcy concepts (Chapter V).

III. Structure of the Bankruptcy Court System

Article I, Section 8 of the United States Constitution grants Congress the exclusive power to create laws regulating bankruptcy. Major bankruptcy statutes were enacted in 1800, 1841, 1867, 1898 and 1978. The statute passed in 1978, known as the Bankruptcy Code (the “Code”), has been amended from time to time, most recently by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (P.L. 109-8).

A. Jurisdiction

Congress has vested all jurisdiction over bankruptcy matters in the United States district courts. The district courts have exclusive original jurisdiction over the bankruptcy case itself and original, but non-exclusive, jurisdiction over civil proceedings arising in, arising under, or related to a bankruptcy case.

The district courts are directed to abstain and allow state courts to proceed in civil matters where comity or the interest of justice indicates that the matter should be heard by a state court. Section 1334 of Title 28, U.S. Code, also requires mandatory abstention upon timely motion by a party (1) where the federal courts, absent bankruptcy, would lack jurisdiction over the proceeding, and (2) the proceeding is either (a) pending in a state court at the time the motion is filed or (b) the proceeding arises under state law and the proceeding can be timely adjudicated in state court.

The district courts are authorized to refer bankruptcy matters, with limited exceptions, to bankruptcy courts, which operate as a unit of the district courts. Although Article III of the United States Constitution provides that federal judges be appointed for life, bankruptcy judges are appointed for 14-year terms by the United States court of appeal of the circuit in which they are located. For this reason, as well as others, there are some limitations as to the proceedings that may be held before bankruptcy courts, as to the matters on which bankruptcy courts may issue final or appealable orders, and as to which bankruptcy courts must make recommendations to district courts subject to *de novo* review. Bankruptcy courts may enter final, binding orders as to “core proceedings” and must prepare findings of fact and conclusions of law for *de novo* review by district courts in “related proceedings.”

All district courts have standing orders of reference under which all bankruptcy cases are automatically referred to the bankruptcy courts. Consequently, bankruptcy courts initially hear motions to abstain subject to *de novo* review by the district courts. Nevertheless, the district courts always have discretion to withdraw reference to bankruptcy courts, and, if the proceeding involves a determination of both bankruptcy law and laws of the United States regulating interstate commerce, the withdrawal of the reference is mandatory. Personal injury and wrongful death claims cannot be tried in bankruptcy court and are not subject to mandatory abstention under 28 USC §§157(b)(4) and (5).

Bankruptcy court decisions may be appealed to the United States district court, to the circuit’s bankruptcy appellate panel (BAP) or to the circuit court of appeals. Currently there are BAPs in the First, Sixth, Eighth, Ninth and Tenth Circuits. Nonetheless, any party to an appeal may require that the appeal be heard by the district court rather than by the BAP. Decisions of BAPs and district courts may be appealed to the applicable circuit court of appeal and, ultimately, to the United States Supreme Court. In addition, the 2005 amend-

ments allow direct appeal from bankruptcy court to the circuit court of appeals if the bankruptcy court, district court or BAP certifies that the appeal meets certain requirements and the circuit court authorizes the direct appeal. The precedential value of decisions below circuit level is limited.

B. Removal and Remand (Briefly)

Federal law allows the removal of civil actions from state court to federal district court if jurisdiction exists under 28 U.S.C. §1334 (the federal jurisdictional provision that creates a bankruptcy case). The petition for removal must be filed in the district court to which the matter is removed. Removal is to the federal district court for the jurisdiction in which the state court matter is pending, not to the district in which the bankruptcy case is pending. Consequently, if the bankruptcy case is in a different federal district, a motion for change of venue to that district may be filed after the matter is removed. Ordinarily, the removed matter would be automatically referred to a bankruptcy court. Local Rules may provide for automatic referral of removed actions from district to bankruptcy court, with a notice of removal being filed in bankruptcy court rather than district court.

IV. Types of Bankruptcy Filings

Before discussing how bankruptcy law and state law interrelate, a few basic points are in order regarding the bankruptcy law and the various types of bankruptcy proceedings.

The current bankruptcy law, enacted by Congress in 1978, is known as the Bankruptcy Code (the “Code”). The Code was extensively amended in 2005, and this Third Edition incorporates the 2005 changes. The Code is supplemented by the Federal Rules of Bankruptcy Procedure, as well as local rules, which govern the procedures used in the bankruptcy courts.

The Code is set forth in Title 11 of the United States Code. It consists of nine chapters: chapters 1, 3, 5, 7, 9, 11, 12, 13 and 15. Chapters 1, 3 and 5 are of general applicability. Chapters 7, 9, 11, 12, 13 and 15 each deal with a particular type of bankruptcy proceeding. The Code refers to the financially troubled person or entity in need of bankruptcy assistance as the “debtor.” The term “bankrupt,” well-known under prior bankruptcy legislation, is no longer used.

Debtors file bankruptcy for a variety of reasons. They need not be insolvent to file. Pursuant to various stay provisions, debtors are, upon filing, entitled to a respite from collection activities. In addition, by filing bankruptcy, debtors may obtain a discharge of personal liability from many debts and may be able to restructure others.

There are two basic types of bankruptcy proceedings: liquidations and reorganizations. In liquidations, governed by chapter 7, the debtor’s non-exempt pre-filing assets are sold for the benefit of creditors. In exchange for surrendering these assets, the debtor generally obtains a discharge of personal liability for pre-bankruptcy debts and may enjoy assets acquired after the filing.

Chapters 11, 12 and 13 involve various types of reorganizations. In bankruptcy reorganizations, the debtor’s assets are not sold. Indeed, many debtors choose reorganizations in order to keep pre-bankruptcy assets. Individual debtors, for instance, often file chapter 13 reorganizations in order to save their homes. Reorganization bankruptcies allow a debtor the opportunity to restructure his debt and to pay it, almost always in part and not in whole, through a plan funded by his post-filing income. The plan must be confirmed in accordance with statutory criteria. A debtor in a reorganization bankruptcy may obtain a discharge of most pre-confirmation debts that are provided for, but not paid in full, in the plan.

Chapter 9, on municipal bankruptcies, is rarely invoked, and will not be discussed in any detail. Chapter 15, which covers cross-border insolvency cases, will also not be discussed in detail here.

A. Chapter 7

Chapter 7 governs liquidations. With limited exceptions, chapter 7 is available to individuals and entities. A voluntary chapter 7 proceeding may be initiated by the debtor. An involuntary chapter 7 may be filed by the debtor’s creditors.

In chapter 7 proceedings, an interim bankruptcy trustee is appointed. This interim trustee may be replaced by a bankruptcy trustee elected by creditors or, if no such replacement is elected, may itself continue as the bankruptcy trustee (the “trustee”). A chapter 7 debtor’s non-exempt assets are liquidated by the trustee, and the proceeds are distributed to creditors. In exchange for the loss of these assets, an individual debtor ordinarily receives a discharge of personal liability for most pre-bankruptcy debt and keeps assets acquired after the filing for use in his/her “fresh start.” Thus, an individual debtor’s prior economic life essentially ends with the filing of a chapter 7 bankruptcy, and, Phoenix-like, a second financial life begins. Obtaining a bankruptcy discharge is usually an individual’s primary incentive for a voluntary chapter 7 filing. When the debtor is an entity, rather than an individual, no discharge is granted. After filing a chapter 7 bankruptcy, an entity is generally expected to dissolve under nonbankruptcy law.

B. Chapter 11

Chapter 11 provides for reorganizations. A chapter 11 proceeding, although designed for debtors that are business entities, may also be used by individuals. Chapter 11 proceedings may be commenced voluntarily or involuntarily. In chapter 11, the debtor’s assets are not liquidated. Instead, the debtor pays its debts, in whole or in part, through a plan that must be confirmed in accordance with specific statutory criteria. The Bankruptcy Reform Act of 1994 created a special “fast-track” through which certain small businesses, defined by §101(51C), can confirm their plans through an expedited process. The debtor, referred to as the debtor-in-possession, remains in control of its assets unless a trustee is appointed “for cause.” Upon confirmation of the plan, individuals and entities may obtain a discharge of personal liability for debt incurred prior to confirmation. An individual debtor may be discharged in chapter 11 only from types of debt that are dischargeable in a chapter 7 proceeding. To the extent that a chapter 11 debtor receives a discharge from pre-confirmation debts, it receives a “fresh start.”

C. Chapter 12

Chapter 12 is a reorganization proceeding available only to “family farmers” and, from 2005 on, “family fishermen.” Congress enacted chapter 12 after concluding that chapter 11 was inefficient and burdensome for most family farmers and recognized that many family farmers owed too much debt to qualify for chapter 13. To be eligible for chapter 12, the debtor’s aggregate debts must not exceed \$3,237,000 for farmers or \$1,500,000 for fishermen, and most of the debtor’s income must come from farming or fishing operations. In chapter 12, the debtor’s assets are not liquidated. Instead, the debtor pays its debts, in whole or in part, through a plan that must be confirmed in accordance with specific statutory criteria. A chapter 12 debtor, referred to as the “debtor-in-possession,” remains in control of its assets. A trustee, however, is appointed. The debtor-in-possession pays the trustee, who makes payments to creditors pursuant to the confirmed plan. Chapter 12 debtors get a “fresh start” by obtaining a discharge from pre-confirmation debts that are provided for in the plan or that are not “allowed” by the Code. In chapter 12, as in chapter 11, an individual debtor may be discharged only from types of debt that are dischargeable in a chapter 7. Moreover, except for certain unusual cases, a discharge is granted in chapter 12 only after the debtor has successfully completed the payments prescribed by the plan.

D. Chapter 13

Chapter 13 is a reorganization proceeding available only to individuals who owe \$922,975 or less in secured debt and \$307,675 or less in unsecured debt. (These dollar amounts are adjusted every three years, based on changes in the Consumer Price Index.) In chapter 13, the debtor's assets are not liquidated. Instead, the debtor pays his debts, in whole or in part, through a plan that must be confirmed by the court in accordance with specific statutory criteria. A debtor in chapter 13 remains in control of his assets. A trustee, however, is appointed. The debtor pays the trustee, who makes payments to creditors pursuant to the confirmed plan. Debtors may obtain a discharge of personal liability from a few more types of debts in chapter 13 than in chapters 7, 11 or 12. The chapter 13 discharge, however, is available only after the debtor has made all of the payments specified in the plan. In unusual "hardship" cases, a chapter 13 debtor may obtain a more limited discharge—equivalent to a chapter 7 discharge—without making all of these payments.

V. Bankruptcy Concepts

The bankruptcy provisions that confront state courts most often are those that involve automatic and non-automatic stays and those dealing with the dischargeability of debt. To understand these provisions, one must be acquainted with three bankruptcy concepts: (1) property of the estate; (2) property of the debtor; and (3) claim.

A. Property of the Estate

“Property of the estate” is a term that covers certain assets that, but for the bankruptcy filing, would have belonged to the debtor. The definition differs depending on the type of bankruptcy proceeding involved. Basically, however, property of the debtor consists of the assets which, in any particular bankruptcy proceeding, are to be used to satisfy pre-filing or pre-confirmation debts and the costs of the bankruptcy proceeding.

In chapter 7, property of the estate is defined by Code §541. This definition specifically excludes certain assets from property of the estate. Other assets, although initially characterized as property of the estate, later exit this category because they are exempted by the debtor, abandoned by the trustee as burdensome or inconvenient, redeemed by the debtor or sold by the debtor-in-possession or trustee. In chapter 7, §541 excludes from property of the estate all of the debtor’s earnings from post-petition services. This is consistent with the idea that the filing of the petition begins the chapter 7 fresh start.

The §541 definition of property of the estate applies to reorganizations under chapters 11, 12 and 13 as well. However, both individual and entity debtors in these chapters are expected to fund their plans by using their post-petition income. Consequently, those chapters contain broader definitions of property of the estate which, in addition to §541 types of assets, include post-petition income.

B. Property of the Debtor

“Property of the debtor” includes all of the property owned by the debtor before the bankruptcy filing or acquired by the debtor after the filing that is statutorily excluded from property of the estate. In addition, property of the debtor includes all property exempted by the debtor as well as property abandoned to the debtor by the trustee.

C. Claim

The term “claim” is comprehensively defined. A claim is a right to payment, whether or not the right is reduced to judgment, unsecured, unliquidated, unmatured, contingent or disputed. Even a right to equitable relief for breach of a “performance” may be a claim, if a right to payment is an alternative remedy for the breach of performance giving rise to the right to equitable relief. According to many courts, a party may have a claim even if, under applicable nonbankruptcy law, its cause of action has not yet accrued. For example, potential liability as a secondary party such as a guarantor or an obligation to hold someone harmless can create a claim.

VI. Bankruptcy Stays and Injunctions

Bankruptcy's stay and injunction provisions affect state proceedings far more often than any other aspects of the Code. Extensive changes were made to bankruptcy stays by the 2005 amendments.

State court judges must understand when the Code stays state actions and when it does not. Otherwise, some proceedings might continue in violation of the stay, needlessly wasting the state's and the litigants' resources, while other actions might be unnecessarily and erroneously halted. Furthermore, state judges conversant with the stays, and the steps litigants may take to terminate or obtain relief from them, may promote efficiency and justice by making timely inquiries of, and suggestions to, parties before them. Finally, the stay provisions are important to the extent that they affect statutory, judicial or contractual deadlines for certain actions.

Bankruptcy stays principally arise out of §§362, 1201, 1301, 105 and 524. Section 362 applies to all bankruptcy proceedings and provides for a comprehensive stay to arise automatically upon the filing of any bankruptcy petition. Sections 1201 and 1301 also involve automatic stays, but they arise only in chapters 12 and 13, respectively, and they protect only individuals who, although not debtors, are co-obligors with the debtor with respect to consumer debts. Thus, in chapter 12, §§362 and 1201 apply, while in chapter 13, §§362 and 1301 apply. Sections 362, 1201 and 1301 are examined in more detail below.

Section 105, by contrast, does not explicitly refer to the issuance of a stay. Instead, it states that a bankruptcy court "may issue any order, process or judgment that is necessary or appropriate to carry out" the Code's provisions. Courts frequently rely on §105 to issue stays in individual cases, which are essentially injunctions. Of course, these stays do not come about automatically; they depend on the court's issuance of an order. Moreover, the parameters of stays issued under §105 are not specified by statute. Instead, their scope depends on the terms of the court orders that create them.

Section 524 provides that the grant of a bankruptcy discharge operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any discharged debt as a personal liability of the debtor. Section 524 also provides that the discharge operates as an injunction against certain actions with respect to community property. Although the §524 injunctions arise automatically, they do not arise on the filing of a bankruptcy petition, but only if and when the court grants the debtor a discharge.

A. Section 362 Stays

Usually, the filing of a bankruptcy petition under chapter 7, 11, 12 or 13, whether voluntary or involuntary, triggers a stay under §362. The stay arises automatically and is effective nationwide without a court order. The only exceptions are for serial filers, such as individuals who refile within one year after dismissal of at least two prior petitions or debtors who refile within two years of a prior small business chapter 11 confirmation or dismissal. No stay arises in these cases unless the court so orders.

Generally speaking, the §362 stay applies to all entities, other than the debtor, debtor-in-possession or trustee. Thus, it applies to the actors in a state judicial proceeding. According to a strict reading, the stay seems to apply to state judges, and a number of courts construe the Code this way. In any event, even if a state court

judge is not literally stayed, the actions of all of the participants before him or her are stayed, and any judgment that he or she might issue will be void.

The stay: (1) protects the property of the estate from all entities; and (2) protects the property of the debtor and the debtor personally from actions based on pre-petition claims. Section 362 does not generally protect persons other than bankruptcy debtors. Thus, it does not ordinarily apply to actions taken against non-debtors who may be co-obligated with the debtor as to a particular debt. The stay reaches a very broad range of actions.

State courts and state court litigants may respond to the stay by actions in either the nonbankruptcy court or the bankruptcy court. In the nonbankruptcy court, the litigant may assert that the action is not stayed because the particular act is excepted under the Code or because the stay has terminated. In the bankruptcy court, the litigant may seek to terminate, annul or modify the stay. Various forms of relief from the stay are available. In exceptional cases, the stay may be annulled retroactively, thereby rendering effective state court proceedings that would otherwise either be void or voidable.

Entities that violate the stay may be sanctioned either under the specific terms of §362(k), under the general grant of authority provided by §105, or pursuant to the court's inherent power.

Courts disagree on whether actions that violate the stay are absolutely void or merely voidable.

There are seven principal questions regarding a §362 stay:

- (1) To whom does the stay apply?
- (2) To what conduct does the stay apply?
- (3) How can state court litigants respond to the stay?
- (4) What are the sanctions for violations of the stay?
- (5) What is the effect of an action that violates the stay?
- (6) How does the stay affect statutory, judicial or contractual time limitations?
- (7) What are the practical ramifications of the stay for state judges?

This chapter addresses each of these questions.

1. To whom does a §362 stay apply?

An automatic stay under §362 applies to “all entities,” a term broadly defined by the Code to include, among other things, persons and “governmental units.” The term “person” includes individuals, partnerships and corporations. “Governmental units” is also expansively defined and includes, among other things, state and federal agencies, departments and instrumentalities.

In light of these definitions, state courts and state judges can be found to have violated a §362 stay. State judges, however, may be entitled to judicial immunity from any possible sanctions.

The §362 stay is intended to protect the debtor and preserve the estate. By its nature, the stay generally does not apply to actions by the debtor or the trustee. Thus, a debtor or trustee may file a state court action irre-

spective of the automatic stay, because the stay applies to suits against the debtor, not suits by the debtor. Indeed, if a debtor or trustee fails to file an action within the applicable statute of limitations, as such may be affected by the Code, the right to file the action will be lost.

Courts in many jurisdictions also rule that §362 does not prevent non-debtor defendants from taking actions in opposition to suits filed, or counter-claims asserted, by a debtor-in-possession or trustee. These courts argue: (1) that the non-debtor's action is defensive, and is not a proceeding "against the debtor;" and/or (2) that, since the debtor-in-possession or trustee can pursue the action, it is only fair that the non-debtor can oppose it. Thus, a non-debtor could move to dismiss an action or a counter-claim brought by a debtor.

Nevertheless, a non-debtor cannot affirmatively file a claim against the debtor, even a compulsory counter-claim in a suit brought by the debtor, without receiving relief from the stay, as discussed below in (3). The only actions the creditors may take are those that respond directly to and defeat actions by the debtor; they may not take any actions that could result in affirmative relief against the debtor.

2. To what conduct does a §362 stay apply?

Subject to the exceptions set forth in (3), below, a §362 stay generally precludes certain actions against: (a) property of the estate; (b) property of the debtor; and (c) the debtor.

a. Actions against property of the estate.

The stay applies to efforts by any entity to reach property of the estate. The reason for the stay, however, may vary depending on the creditor affected. Creditors whose claims arise after the debtor's fresh start are stayed from acting against property of the estate, because they are supposed to be paid only from the debtor and property of the debtor. The property of the estate is reserved for creditors whose claims arose prior to the debtor's fresh start. But even these creditors are to receive payment from property of the estate only in the manner and to the extent prescribed by the Code. Therefore, §362 prevents them from taking independent action.

Specifically, §362 prevents all entities from:

1. Enforcing a pre-petition judgment against property of the estate ;
2. Any act to obtain possession of, or exercise control over, property of the estate or to obtain property from the estate;
3. Any act to create, perfect or enforce any lien against property of the estate;
4. The setoff of any pre-petition debt owing to the debtor (note: such debt is property of the estate) against a claim against the debtor.

Examples of Acts Enjoined Against Property of the Estate:

1. An action by a creditor to garnish the debtor's bank account;
2. An action by a creditor under a state fraudulent transfer act to recover property from the debtor's transferee;

To the extent the debtor-in-possession or trustee may bring this action, the action is property of the estate;

3. An alter ego action brought by a creditor;

To the extent the debtor-in-possession or trustee may bring this action, the action is property of the estate;

4. Creation and perfection of county property tax liens for pre-petition taxes;
5. Repossession by a secured creditor;
6. A debtor's ex-spouse's use of state proceedings to try to obtain a lien on the homestead to enforce a pre-petition divorce judgment award;
7. A franchisor's attempt to terminate its franchisee's license;
8. Foreclosure sales;
9. Recordation of a sheriff's deed after a foreclosure sale;
10. Cancellation of a liability insurance policy; and
11. Imposing a prejudgment attachment to protect a possible judgment against the debtor.

b. Actions against property of the debtor.

Creditors with pre-petition claims are generally supposed to be paid from property of the estate, not from property of the debtor. Therefore, §362 precludes these creditors from any act to create, perfect or enforce against property of the debtor or any lien to secure a pre-petition claim.

Creditors with post-petition claims, however, often are not entitled to collect from property of the estate and must enforce their claims against the debtor and property of the debtor. Consequently, §362 does not prevent creditors with post-petition claims from attempting to create, perfect or enforce a lien against property of the debtor to secure post-petition claims.

c. Actions against the debtor.

Section 362 forbids creditors from certain actions that may or may not be direct collection attempts but that often are the prelude to collecting on the claim. Other matters are enjoined in order to give the debtor a "breathing spell" from the press of litigation:

1. Commencement or continuation of a judicial, administrative or other action or proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy case;
2. Enforcement against the debtor of a judgment obtained before commencement of the case;
3. Any act to collect, assess or recover a pre-petition claim against the debtor;
4. Commencement or continuation of a proceeding concerning the debtor before the United States Tax Court.

Some examples of actions against the debtor that are enjoined are filing a lawsuit seeking damages, declaratory judgment or injunctive relief; entering a judgment against the debtor, even if the judgment is in favor of the debtor; and making telephonic or written demands for payment. Prosecuting an appeal by a creditor in a suit against the debtor also violates the stay. Many courts rule that even prosecution of an appeal by the debtor violates the stay, if the lawsuit was one in which a non-debtor was the plaintiff. According to these courts, no matter who brings the appeal, the appeal is a continuation of a proceeding against the debtor. Civil contempt proceedings that are intended to coerce the debtor into performing some act can violate the stay. On the other hand, criminal contempt proceedings that are instituted solely to punish the debtor for misbehavior can be excepted from the stay on that basis.

3. How can state court litigants respond to the stay?

State courts and state court litigants may respond to the stay by actions in either the nonbankruptcy court or the bankruptcy court. In state court, the litigant may assert that the action is not stayed because the particular act is excepted under the Code or because the stay has terminated. In the bankruptcy court, the litigant may seek to terminate, annul or modify the stay. Various forms of relief from the stay are available. Many courts will annul the stay retroactively, thereby rendering effective state court proceedings that would otherwise be either void or voidable.

a. Exceptions to the §362 stay.

Section 362(b) lists 28 exceptions to the automatic stay. Several other Code sections also create exceptions to the automatic stay. This chapter will cover only the more common exceptions:

1. The commencement or continuation of a criminal action or proceeding against the debtor, including actions for criminal contempt or probation revocation. Some criminal actions, however, such as prosecution for uttering a bad check, may, in particular cases, be maintained as a quasi-collection action. A few courts hold that such actions, although nominally criminal actions, are not excepted from the stay. Section 362(b)(1).
2. The following domestic relations actions, under §362(b)(2):
 - a. Actions to establish paternity.
 - b. Actions to establish or modify an order for a domestic support obligation.

- c. Actions concerning child custody or visitation.
 - d. Actions for the dissolution of a marriage, except to the extent that such actions seek to determine the division of property that is property of the estate.
 - e. Actions regarding domestic violence.
 - f. The collection of a domestic support obligation from property that is not property of the estate.
 - g. Actions to withhold income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute.
 - h. The withholding, suspension or restriction of a driver's license, a professional or occupational license, or a recreational license under state law, as specified in §466(a)(16) of the Social Security Act.
 - i. The reporting of overdue support owed by a parent to any consumer reporting agency as specified in §466(a)(7) of the Social Security Act.
 - j. The interception of a tax refund, as specified in §§464 and 466(a)(3) of the Social Security Act or under an analogous state law.
 - k. The enforcement of a medical obligation as specified under title IV of the Social Security Act.
3. An act to perfect or continue perfection of an interest in property. This exception applies to acts such as the filing of a continuation statement to preserve perfection of a security interest. Section 362(b)(3);
 4. The commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power. Examples would be prosecution under a rubbish ordinance, an action to close a restaurant for health code violations, or litigation to determine the debtor's liability for consumer protection violations and liquidation of the amounts owed for those violations. The exception extends to enforcement of a judgment, other than a money judgment, obtained by a governmental unit to enforce its police or regulatory power. Section 362(b)(4);
 5. Foreclosure actions by the Secretary of HUD to foreclose a mortgage or deed of trust insured under the National Housing Act and covering five or more living units. Section 362(b)(8);
 6. The commencement or continuation of a governmental audit of the debtor, the issuance to the debtor of a tax deficiency notice, a demand for tax returns or an assessment, notice and demand. Section 362(b)(9);
 7. An act by a lessor of nonresidential real property to evict the debtor if the lease has terminated, either pre-petition or post-petition, by the expiration of its stated term. Section 362(b)(10);
 8. Presentment, notice of dishonor and protest regarding a negotiable instrument. Section 362(b)(11);

9. The creation or perfection of a statutory lien for an *ad valorem* property tax if such tax comes due post-petition. Section 362(b)(18);
10. An act to enforce a lien on real estate if, within the past two years, a bankruptcy court found the debtor took part in a scheme to defraud creditors by transferring the real estate in question without creditor consent or by multiple bankruptcy filings. Section 362(b)(20);
11. An act to enforce a lien on real estate if the debtor violated a prior bankruptcy court order barring the debtor from further bankruptcy filings. Section 362(b)(21);
12. An action by a lessor of residential real property to enforce a pre-bankruptcy judgment of eviction against the debtor, unless the debtor certifies in bankruptcy court that the debtor will cure a default and deposits one month's rent with that court. In that case, eviction is stayed for 30 days. Section 362(b)(22);
13. An action to evict the debtor from residential real property if the lessor certifies to the bankruptcy court that the tenant has endangered the property or allowed use of illegal controlled substances thereon within 30 days prior to the certification. Section 362(b)(23); and
14. Exclusion by the Secretary of Health and Human Services of the debtor from participation in the Medicare program or other federal health care programs. Section 362(b)(28).

Among the exceptions to the stay found outside the §362(b) list are these:

1. No automatic stay arises if the debtor files while the same debtor has a prior small business chapter 11 case pending or if the debtor's prior small business case either was dismissed or had a plan confirmed within two years before the current filing. Section 362(n);
2. No automatic stay arises in a case by or against an individual debtor if the same debtor had two or more bankruptcy cases dismissed within the previous year, unless the dismissals were under §707(b), and the subsequent filings were not in chapter 7. The court may order a stay within 30 days after the case is filed, but such an order is not retroactive. Section 362(c)(4); and
3. The automatic stay does not bar the Securities Investor Protection Corporation from applying for a protective decree under the Securities Investor Protection Act of 1970. Section 742.

b. Termination of the Stay.

Remember that the automatic stay bars acts against property of the estate, property of the debtor and the person of the debtor. The stay may end as to one asset or category of acts earlier than it ends for other categories or assets. The automatic stay protects an asset as property of the estate only so long as the asset is property of the estate. If the asset is exempted, abandoned, redeemed or sold, it is no longer property of the estate. Nevertheless, the asset may still be protected by another §362 provision. For example, although an asset that is exempted is no longer property of the estate, the exempt asset will be protected from pre-petition creditors because it is now property of the debtor.

Under §362, the stay of acts other than those against property of the estate—that is, acts against the debtor and property of the debtor—continues only until the earliest of: (1) the time the case is closed; (2) the time the case is dismissed; or (3) in the chapter 7 case of an individual debtor or in chapter 11, 12 or 13 cases, the time a discharge is granted or denied.

In addition, two provisions added in 2005 terminate the stay more quickly in some cases filed by individual debtors. Under §362(c)(3), the stay of acts to collect a debt or recover property subject to a security interest or lease lasts only 30 days in an individual or joint chapter 7, 11 or 13 (but not 12) case filed within one year after dismissal of a prior case by the same debtor, unless the dismissal was under §707(b) (because the filing was an abuse of chapter 7), and the debtor then refiled in another chapter. Proof of good faith also allows the bankruptcy court to extend the stay.

Under §362(h), where the debtor is an individual, the automatic stay of acts to retake personal property of the estate or the debtor by lessors or secured creditors ends 31 days after the bankruptcy is filed, unless the debtor has filed a statement of intention as to such personal property. If the debtor timely files that statement, but fails to perform the stated intention (that is, fails to surrender, redeem, reaffirm the debt or assume the lease), the stay as to that property ends 31 days after the first date set for the meeting of creditors, unless the court orders the stay extended. Section 521 appears to conflict with §362(h). Section 521(a)(6) says an individual debtor's failure to surrender, redeem or reaffirm as to personal property subject to purchase money security interests terminates the stay as to that property on the 46th day after the meeting of creditors. Both provisions were added in 2005, and the apparent conflict has not been resolved as this is written. The trustee may request extension of the stay if the collateral is of value to the estate.

c. Dismissal of the case or denial of discharge as terminating the stay.

A party may try to terminate the stay by seeking: (1) to have the debtor's discharge denied or (2) to have the bankruptcy action dismissed.

Denial of discharge ends the stay as to acts against the debtor and property of the debtor, but not as to property of the estate. On the other hand, dismissal ends the stay for all purposes. Code chapters 7, 11, 12 and 13 each contain particular grounds for denial of a discharge.

Grounds for dismissal may depend on the chapter in which the bankruptcy is pending. Each chapter, however, allows dismissal "for cause" and gives examples of what may constitute cause. The 2005 amendments added several new grounds for dismissal. Individual consumer debtors with above-median income may be dismissed from chapter 7 under a complex mathematical formula called "means-testing," under §707(b)(2). Creditors have standing to request dismissal only in the case of above-median debtors. Individual chapter 7 and 13 cases are automatically dismissed 46 days after filing, if the debtor fails to file certain information required by §521. The court may extend the time if the debtor or trustee so requests. Section 521(i). Also, a chapter 7 may be dismissed for bad faith or totality of the circumstances under §707(b)(3).

d. Requesting relief from the stay.

A party may effectively obtain relief from the stay if the bankruptcy court exercises its discretion, in the interest of justice or comity, to abstain from a particular matter and to remand it to the state court. Bankruptcy

courts often exercise such discretion in connection with domestic relations law. A party may formally ask the bankruptcy court for partial or complete relief from the stay pursuant to §362(d). The bankruptcy court, in exceptional cases, may even annul the stay, thus retroactively validating state court proceedings that would otherwise be void or voidable.

Actions to determine the division of property attendant upon dissolution of the marriage still require bankruptcy court approval. Many bankruptcy courts previously allowed property rights to be determined, but prohibited the actual property division until the bankruptcy case was concluded. It is reasonable to assume that this practice will continue. In many jurisdictions, trustees often agreed to relief from the stay for a debtor involved in a divorce, but reserved the right to approve any determination of property rights.

Section 362(d) sets forth four alternative, independently sufficient grounds for relief from stay. First, relief may be granted “for cause.” The statute provides one non-exclusive example of such cause, the “lack of adequate protection.” There is a lack of adequate protection when (1) a creditor has a secured claim; (2) there is a substantial risk that the value of the collateral securing the claim will fall below, or fall farther below, the amount of the debt; and (3) there is no other mechanism that protects the creditor in the event that the collateral does in fact fall in value.

Courts have found cause for relief in many other instances. Thus, courts have allowed state actions to proceed nominally against the debtor in order for the creditor to collect from the debtor’s insurance carrier, to permit state courts to liquidate claims in deference to the state court’s perceived subject matter expertise, and to allow the efficient conclusion of an action in state court rather than starting over from scratch in a bankruptcy forum.

Second, a party may get relief from the stay in order to repossess or foreclose upon specific collateral where (1) the debtor has no equity in the property; and (2) the property is not necessary to the debtor’s effective reorganization.

Third, a creditor with a security interest in “single-asset real estate,” that is, a single real estate parcel or project whose operation generates almost all of the debtor’s income, is entitled to have the stay of foreclosure lifted 91 days after the petition is filed, unless the debtor has filed an apparently feasible plan of reorganization or has begun paying the real estate creditors interest at the contract rate. This reduces delay by debtors whose income comes from one hotel, office or apartment building. This ground for relief does not apply to family farmers.

Fourth, a creditor with a security interest in real estate is entitled to relief from stay if the court finds that the debtor tried to defraud the creditor by multiple bankruptcy filings or unauthorized transfer of the real estate. In such cases, the bankruptcy court not only may lift the stay, but also may order that no stay shall arise as to that real estate in any subsequent bankruptcy case filed within two years after entry of the order.

Once a lift-stay motion is filed, the Code requires the bankruptcy court to act relatively quickly or the stay will end automatically as to the movant. If the debtor is an individual in chapter 7, 11 or 13, and a party in interest moves for relief from stay, the stay terminates as to the movant on the 61st day after the motion, unless the court has before then either entered a final decision or extended the time based on consent of all parties or “good cause.” In other cases, the stay terminates as to the movant on the 31st day after the motion, unless

the court has ordered that the stay be continued pending a final hearing. The final hearing must be concluded within thirty (30) days after the preliminary hearing, unless the parties consent to a specific extension. Most bankruptcy courts have become adept at convincing creditors to waive these time requirements to accommodate the court's schedule.

4. What are the sanctions for violation of the stay?

There are several bases for sanctions for violation of the automatic stay. First, §362(k) states that an individual who is injured by any willful violation of a stay “shall” recover actual damages, including costs and attorneys’ fees. Furthermore, this provision states that in appropriate circumstances, such individuals may recover punitive damages. Because §362(k) refers to an “individual,” most courts have held that this section does not authorize recoveries by a debtor, such as a partnership or corporation, who is not an “individual.” Second, however, a number of courts have relied either on the court’s inherent contempt powers or on §105’s broad declaration of authority to impose sanctions on those who violate the automatic stay. Sanctions pursuant to §105 have been levied on violators even when the debtor is not an individual. State court judges, however, may be entitled to judicial immunity from personal liability for violations of the stay.

5. What is the effect of an action that violates §362?

An action that violates §362 is either void or voidable. Consequently, the results of a protracted proceeding may be a nullity—or may be nullified. This result, however, may be avoided if the bankruptcy court annuls the stay pursuant to a request for relief from the stay under §362(d). Only the bankruptcy court has jurisdiction to terminate, modify or annul the stay. Other courts (state and federal) have the power to determine whether the stay applies to their actions, although the federal courts are split as to whether they must defer to a decision by the state court on the applicability of the stay.

6. How does the §362 stay affect contractual and statutory time limitations?

Some state laws provide for the tolling of statutes of limitations during periods within which a potential plaintiff is barred by law from filing suit. In many, if not all, instances, such statutes would presumably apply when §362 precludes someone from commencing an action. In addition, a number of state statutes specifically provide persons additional time to act where a bankruptcy is involved.

The Code provides some relief as well. Section 108(c) applies to creditors. It states that if a deadline fixed by nonbankruptcy law, an order in a nonbankruptcy proceeding or an agreement has not expired prior to the bankruptcy filing, a creditor may take the required action within thirty (30) days after notice of termination or expiration of stay under §§362, 1201 or 1301.

Sections 108(a) and (b) apply to debtors, debtors-in-possession and trustees. Section 108(a) states that if a deadline for the debtor to commence a nonbankruptcy action has not expired when the bankruptcy petition is filed, the trustee, or the debtor-in-possession, may file the action until the later of (1) the nonbankruptcy deadline, and any suspension thereof, or (2) two years after the filing of the bankruptcy petition. Section (b) allows a debtor to act until the later of (1) the applicable nonbankruptcy deadline, plus any applicable suspension, or (2) sixty (60) days after the filing of the bankruptcy petition. Apart from those extensions, deadlines continue to run during a bankruptcy case. The automatic stay does not preclude the passive expiration of statutes of limitations and the consequences thereof.

7. What are the practical ramifications of the stay for state court judges?

Ideally, the Code or the Federal Rules of Bankruptcy Procedure should require that every debtor give prompt notice of his bankruptcy filing to every nonbankruptcy court in which he is a party to litigation. Nevertheless, no such requirement exists.

State court judges should adopt two local rules. The first should require that when a case is filed, each initial pleading state that the party filing the pleading is not a debtor in bankruptcy. The second should require that all parties to an action promptly notify the court if, during the litigation, they become debtors in bankruptcy or if, to their knowledge, other parties to the litigation become debtors in bankruptcy. As applied to non-debtors, such rules should be unobjectionable. Short of the enactment of such overall rules, once a state court judge has been assigned a case, he should ask the parties if they are debtors in bankruptcy and should order them to promptly advise the court if they, or any of the other parties to the action, file bankruptcy during the pendency of the case.

If a state court judge learns that a party in a particular case has filed bankruptcy, the judge must decide whether continuing the state court proceeding would violate the bankruptcy stay. A state court judge may decide whether the stay applies to the proceeding, but only a federal bankruptcy court may grant relief from the stay. Thus, the state court judge may affirmatively determine that the matter is not stayed and that the parties are free to proceed in state court. On the other hand, if the judge finds the stay does apply, the judge should issue a continuance and advise the parties that the case cannot proceed in state court without a bankruptcy court order granting relief from the stay.

If a creditor proves that it filed a motion for relief and represents that the bankruptcy court did not order continuance of the stay, the debtor should be asked for proof that an order for continuance was issued. Absent such proof, the state judge should assume that the stay automatically terminated under §362(e). Alternatively, the court could call the bankruptcy court clerk's office or access the docket electronically if the applicable jurisdiction has the technology. Phone numbers for each clerk's office appear in this book. Incidentally, some bankruptcy judges do not mind being called directly. Phone numbers for bankruptcy judges also appear in this book.

B. Sections 1201 and 1301 Codebtor Stays

Upon the filing of petitions in chapters 12 or 13, §§1201 and 1301 respectively provide for a stay of a civil action by a creditor to collect a consumer debt of the debtor from any individual liable on such debt with the debtor unless: (1) the individual became liable on the debt in the ordinary course of that individual's business; or (2) the bankruptcy case is closed, dismissed or converted to chapter 7. Creditors who file state court proceedings may violate these stays if they do not halt the proceedings once the stays go into effect. The types of conduct prohibited by these codebtor stays are not as extensively detailed as that proscribed by §362. Sections 1201 and 1301 specifically state that a creditor may present and give notice of dishonor of a negotiable instrument.

Creditors are entitled to relief from these §§1201 and 1301 stays to the extent that: (1) between the debtor and the co-obligor protected by the stay, the co-obligor received the consideration for the creditor's claim; (2) the debtor's plan does not propose to pay the claim; or (3) the creditor's interest would be irreparably harmed by the stay. Twenty days after a creditor moves for relief on one of these three bases, the relief is automatically

granted unless the debtor or any individual liable on the debt with the debtor files and serves upon the movant a written objection to the granting of the relief.

No Code provisions specify sanctions for violation of the §§1201 and 1301 stays.

Section 108(b) extends deadlines for action by the beneficiary of a co-obligor stay until the later of (1) the applicable nonbankruptcy deadline, plus any applicable suspension, or (2) sixty (60) days after the filing of the bankruptcy petition.

To deal with these codebtor stays, state court judges should generally follow the same steps recommended with respect to §362 stays.

VII. Dischargeability Law

Bankruptcy proceedings offer various opportunities for the debtor to be discharged from personal liability on his or her debts. State courts can play a critical role in the dischargeability process. In each chapter there are bases on which debtors may be denied a discharge either of all debt or a discharge of particular debts. State courts apprised of these rules can carefully craft their orders to increase the likelihood that any financial obligations created will be nondischargeable. In addition, a state court may support a judgment with specific findings of fact and law that will assist a bankruptcy court subsequently determining whether the judgment debt is dischargeable. In so doing, the state court may make it unnecessary for the bankruptcy court to engage in an inefficient *de novo* fact-finding proceeding. In some instances, the state court findings may be entitled to collateral estoppel effect.

Furthermore, state courts have jurisdiction to determine whether a particular debt has been discharged.

Assume, for example, that after a bankruptcy case has been closed, a pre-petition creditor sues the former debtor in state court. The debtor, as an affirmative defense, asserts that the debt was discharged in the prior bankruptcy. The state court has jurisdiction to determine whether most types of debts have been discharged. However, certain discharge exceptions (see Section (A)(1), below) can only be heard by the bankruptcy court and, if these exceptions are the ones raised by the creditor, the state court has no jurisdiction to hear them, unless the creditor was not listed in the bankruptcy and had no knowledge of the bankruptcy.

To make this determination, state court judges need to understand bankruptcy dischargeability law. Pre-petition debts can survive discharge in three ways: (1) the particular debt is excepted from a general discharge; (2) the debtor is denied a discharge altogether, or (3) the debtor, usually in chapter 7, reaffirms the debt. Complete denial of discharge is uncommon, but exceptions to discharge and reaffirmation agreements frequently arise.

A. Debts Excepted from Discharge

Section 523(a) sets forth the types of debts that are nondischargeable by an individual in cases under chapters 7, 11 and 12. Exceptions to a chapter 13 discharge are contained in §1328.

Procedure for Excepting Specific Debts from a General Discharge

Most of the exceptions to discharge on the §523(a) list below are self-executing; that is, the debts will be excepted from discharge without any action by the creditor. On the other hand, three of the §523(a) exceptions (dealing with debtor fraud and intentional torts) require timely creditor action in the bankruptcy court, assuming the debtor scheduled the debt. To prevent discharge of such debts under §523(a)(2), (4) or (6), the creditor must make a motion, within (60) sixty days after the first date set for the §341 meeting of creditors, to have the debt determined to be nondischargeable, and the bankruptcy court must determine that the debt is excepted from discharge. If the creditor fails to so move, or the court to so find, the debt will be discharged.

If a state court must decide whether a scheduled debt arguably within the exceptions listed as number 2, 4 or 6 survived discharge, the state court should make a factual finding as to whether the bankruptcy court did

determine the scheduled debt to be excepted from the discharge. Only if the bankruptcy court actually excepted such a debt from discharge is it lawful for the creditor to attempt to collect thereon.

There is an exception for unscheduled debts. If the creditor failed to timely move for determination of dischargeability because the debtor did not schedule the debt and the creditor did not learn of the bankruptcy within the (60) sixty days, the time to move for a determination of dischargeability in bankruptcy court is extended. If such a creditor learns of the bankruptcy only after the case has been closed, the creditor can sue in state court and the state court may determine whether the debt was nondischargeable under the subsection (2), (4) or (6) exceptions to discharge.

The other §523(a) exceptions to discharge include debts:

1. For a tax or customs duties as to which (1) a required return or notice was either not filed or given or was filed or given late, and within two years of the bankruptcy filing; (2) the debtor made a fraudulent return or willfully attempted to evade the tax; or (3) the Code grants priority under §507(a)(2) or (c)(8);
2. For money, property, services or an extension, renewal or refinancing of credit to the extent obtained by: (a) false pretenses, a false representation or actual fraud, other than a statement about the debtor's or an insider's financial condition; (b) a material false statement regarding the debtor's or an insider's financial condition on which the creditor reasonably relied and that the debtor caused to be made or published with intent to deceive; or (c) certain cash advances or credit purchases of luxury consumer goods shortly before an individual debtor filed bankruptcy;
3. Neither listed nor scheduled by the debtor in its list of creditors in time for the creditor to move for a determination that the debt was nondischargeable under §523 (a)(2), (4) or (6), or to file a proof of claim so that it could share in a distribution of property of the estate, unless the creditor had notice or actual knowledge of the bankruptcy proceeding. However, where the debtor had no assets, no bar date is normally set for filing claims, so even unscheduled debts (other than those within §523 (a)(2), (4) or (6)) will normally be discharged because the creditor never lost a right to file a claim or to share in estate assets.
4. For fraud or defalcation while the debtor acted in a fiduciary capacity or for embezzlement or larceny;
5. For a domestic support obligation, i.e., child support, alimony, or maintenance, as discussed in the Bankruptcy and Domestic Relations chapter of this book;
6. For willful and malicious injury by the debtor to another entity or to the property of another entity;
7. To the extent the debt is a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and not compensation for actual financial loss, other than certain tax penalties;
8. For certain educational loans, unless excepting such debt from the discharge will impose an undue hardship on the debtor and the debtor's dependents;

9. For death or personal injury caused by the debtor's operation of a motor vehicle, vessel or aircraft if such operation was unlawful because the debtor was intoxicated from the use of alcohol, drugs or other substances;
10. That was or could have been listed in a prior bankruptcy proceeding in which the debtor either waived or was denied a discharge;
11. Provided in a final judgment, unreviewable order or consent order or decree arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;
12. For malicious or reckless failure to fulfill a commitment by the debtor to a federal depository institutions regulatory agency to maintain the capital of an insured depository institution;
13. For criminal restitution obligations under Title 18 of the U.S. Code;
14. Incurred to pay a nondischargeable tax owed to the United States and any other governmental unit that would be nondischargeable under number 1 above or incurred to pay any fines or penalties imposed under federal election law;
15. Arising from divorce, separation or similar matters, but which is not in the nature of support, if owed to a spouse, former spouse or child of the debtor;
16. For post-petition condominium, homeowner or similar fees as long as the debtor has a legal, equitable or possessory interest in the premises;
17. For certain court costs imposed on a prisoner by the court;
18. For certain debts for loans to the debtor from his or her own pension, profit-sharing or other tax-sheltered plans; and
19. For violation of federal or state securities laws or common law fraud, deceit or manipulation in connection with the purchase or sale of any security, whether the determination that such a violation occurred is made before or after the bankruptcy filing.

B. Chapter 7

Only an individual can get a discharge in chapter 7, and all the §523(a) exceptions apply. In addition to the §523(a) list of debts excepted from discharge, §727 sets forth several bases on which a chapter 7 debtor may be completely denied a discharge of any debts. Although most of these grounds relate to the debtor's conduct in connection with the bankruptcy proceeding itself, there are some exceptions. Thus, an individual debtor may be denied a discharge under §727 if the debtor:

- i. Within one year of the bankruptcy filing and with intent to hinder, delay or defraud a creditor, transferred, removed, destroyed, mutilated or concealed property of the debtor, or permitted such property to be transferred, removed, destroyed, mutilated or concealed; or
- ii. Unjustifiably concealed, destroyed, mutilated, falsified or failed to keep or preserve any recorded information from which the debtor's financial condition or business transactions might be ascertained. Only a bankruptcy court can deny a discharge under §727. Nevertheless, it is possible that in a pre-bankruptcy proceeding, such as an action under a state fraudulent transfer act, a state court could make findings of fact regarding the debtor's intent that would have collateral estoppel effect.

A chapter 7 debtor may "reaffirm" a debt, by signing a writing in which the debtor agrees to retain personal liability on a claim that would otherwise be discharged. Unless the claim is secured by real property, the debtor's attorney or the court must approve the reaffirmation. In addition, such agreements are enforceable only if made before discharge, filed with the bankruptcy court and not rescinded by the debtor. Code §524(c) details reaffirmation requirements. A creditor whose claim has been reaffirmed in accordance with that section may enforce the claim once the automatic stay has been lifted. The discharge injunction does not bar acts to collect on validly reaffirmed pre-petition debts.

C. Chapter 11

In chapter 11, entities that are debtors may obtain a discharge of all pre-confirmation debts. Individual debtors, however, may not obtain a discharge of any debt that would be nondischargeable in chapter 7 under §523(a).

D. Chapter 12

In chapter 12, family farmers and family fishermen may generally obtain a discharge of all pre-confirmation debts provided for in their confirmed plans. They may not, however, obtain a discharge of debts whose due date is after the date on which the final payment is due on the plan. In addition, such debtors are not discharged from the types of debts that are excepted from discharge in chapter 7 under §523(a).

E. Chapter 13

There are two types of discharge in chapter 13. The broader discharge has the following exceptions:

1. Long-term debts on which the debtor's plan provides for continuing payment, if the final payment under the original contract is due after the chapter 13 plan is completed;
2. Certain taxes the debtor was responsible for collecting or withholding (i.e., sales taxes or taxes withheld from employee paychecks);
3. Taxes or customs duties as to which a required return or notice was either not filed or given or was filed or given late and within two years of the bankruptcy filing;
4. Taxes or customs duties as to which the debtor made a fraudulent return or willfully attempted to evade the tax;

5. Debts covered by items (2), (3), (4), (5), (8) and (9) of the §523(a) list set forth above;
6. Criminal fines or restitution in a criminal case; and
7. Debts for damages or restitution in a civil case imposed as a result of willful or malicious injury by the debtor that caused personal injury or death to an individual.

The chapter 13 discharge, formerly nicknamed the “super discharge,” used to be much broader than the chapter 7 discharge. The 2005 amendments narrowed the chapter 13 discharge, but did not completely erase the chapter 13 advantage. A chapter 13 debtor who completes all plan payments can discharge debts covered by items 10 through 19 on the §523(a) list, while a chapter 7 debtor cannot discharge those debts.

If the chapter 13 debtor is unable to make all of the payments called for by the plan, it is sometimes possible to get a more limited “hardship” discharge. This discharge would have all of the §523(a) exceptions.

VIII. Bankruptcy and Domestic Relations Law

Many bankruptcy provisions affect domestic relations law, including: (1) the automatic stay; (2) dischargeability; (3) avoidance of transfers or liens; and (4) confirmation of plans. Dischargeability is affected by whether the debt is categorized as property settlement or a domestic support obligation.

A. Domestic Support Obligations

The 2005 amendments define an important new term, “domestic support obligation.” This term includes not only pre-petition alimony and support, but also post-petition alimony and support, as well as interest under nonbankruptcy law. A domestic support obligation includes obligations established or subject to establishment before, on or after the bankruptcy case is commenced. It includes obligations owed not only to the spouse, former spouse or child of the debtor, but also to the child’s parent, legal guardian or responsible relative, governmental units and nongovernmental units if voluntarily assigned to the latter entity for purposes of collection. As under prior law, the obligation must be in the nature of alimony, maintenance or support to constitute a domestic support obligation. The new term specifically includes assistance provided by a governmental unit as long as it is in the nature of support. Code §101(14A).

B. Property of the Estate and Jointly Owned Real Property

1. *Jointly Owned Property as Property of the Estate.*

Many, but not all, collection actions against property of the estate are stayed under §362. It is important to note that the property of the marriage under the jurisdiction of the state court becomes, upon the filing of the bankruptcy petition, property of the estate. In a community property state, all community property becomes property of the estate. In a non-community property state, only the debtor’s share of jointly owned property becomes property of the estate.

In general, §541 of the Bankruptcy Code identifies the debtor’s interest in real estate in terms of his power to transfer and his creditor’s power to levy on specific property. The relevant provisions of §541 of the Bankruptcy Code provide for the vesting in the bankruptcy trustee of that property of the estate. The concept behind §541 of the Bankruptcy Code is that all property of the debtor, both real and personal, comes into the bankruptcy estate and then may be exempted out of the bankruptcy estate under the applicable federal and state exemption statutes. In some tenancy by the entirety states, the debtor spouse, acting alone, has no power to transfer or alienate his interest in real property held by the entirety. Therefore, when only one spouse files for bankruptcy, no portion of the debtor’s interest in the entirety property comes into the bankruptcy estate and the trustee may not alienate that property. The majority view is that the proceeds from the sale of tenancy by the entirety property, if intact and owned by the married couple, retain the properties of the tenancy by entirety real estate and, accordingly, do not become property of the estate if only one spouse files bankruptcy.

2. Real Estate Held as Tenants by the Entirety.

About half of the states recognize some form of tenancy by the entireties. This estate derives from the former concept of husband and wife as a single legal entity. Peculiarities of the entirety estate are logical extensions of this fundamental concept. Each spouse holds an indestructible right of survivorship in the property, but neither husband nor wife individually can sell his or her rights in the couples' real estate or in any future interest. Similarly, the estate held by the entireties may be immune from seizure to satisfy the individual debt of either spouse. The estate also may be protected from execution on a judgment against either spouse individually. Creditors may, however, have certain rights to foreclose on such property subject to the non-debtor spouse's survivorship, or to attach lifetime rents of the property, or to reach the debtor spouse's survivorship interest. Each of these varieties of creditor rights regarding tenancy by the entirety property may be further limited by rules regarding the nature of the debt and its relation to the actual property. Property held by spouses as tenants by the entirety may, however, be sold by husband and wife acting together, and therefore generally may be reached by joint creditors of the husband and wife. In addition, federal tax liens may be imposed on the debtor spouse's fictional fractional interest as if the property were held as a tenancy in common. States with community property systems generally do not recognize tenancy by the entirety.

3. Exemptions and Entirety Property.

Most states recognizing tenancy by the entirety have opted out of the federal exemption provision in the Bankruptcy Code. When both husband and wife are in bankruptcy, the entirety property becomes property of the estate because the two tenants together are in a position to transfer the estate. The tenants must then rely on exemptions, since the property is no longer excluded from the bankruptcy estate. In some jurisdictions entireties property will not become property of the estate, even in a joint bankruptcy, unless the debtors have joint creditors.

C. Effect of the Automatic Stay on Domestic Relations Matters

Bankruptcy usually triggers an automatic stay, which among other things, prohibits the commencement or continuation of judicial proceedings that were commenced, or could have been commenced, prior to the filing. As discussed in Chapter V of this book, various exceptions to the stay allow many actions and proceedings to continue or be initiated after a bankruptcy case is filed. In addition, bankruptcy courts have the authority to lift the stay to allow certain actions and proceedings to continue. Confirmation of a chapter 11, 12 or 13 plan may have the same effect as the automatic stay since confirmation binds all creditors dealt with in the plan.

The 2005 amendments to the Bankruptcy Code added new exceptions to the stay for child custody, visitation, divorce and domestic violence matters. Many of these were common sense changes for actions and proceedings that were technically subject to the stay, but which many people assumed were not stayed. For example, an action dissolving the marriage bond was technically stayed under the old law and relief from the stay was required. The amendments will now allow entry of such decrees without the necessity of a lift stay order. This will have the beneficial effect of fewer void divorces and technically bigamous marriages. Marital property divisions are still subject to the stay.

Another important amendment allows withholding from wages or other income that is property of the estate and from property of the debtor for a domestic support obligation.

In addition, whether based on an explicit statutory exception or the inherent power of state courts, it is often asserted that the automatic stay will not prevent state courts from entering and enforcing orders relating to the protection of persons and health of the parties.

D. Exceptions to the Automatic Stay for Domestic Relations Matters

Section 362(b)(2) creates exceptions to the automatic stay for the following domestic relations acts and proceedings:

1. Actions to establish paternity;
2. Actions to establish or modify an order for a domestic support obligation;
3. Actions concerning child custody or visitation;
4. Actions to dissolve a marriage, except to the extent that such actions seek to determine the division of property that is property of the estate;
5. Actions regarding domestic violence;
6. The collection of a domestic support obligation from property that is not property of the estate;
7. Actions with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;
8. The withholding, suspension or restriction of a driver's license, a professional or occupational license, or a recreational license under state law, as specified in §466(a)(16) of the Social Security Act;
9. The reporting of overdue support owed by a parent to any consumer reporting agency as specified in §466(a)(7) of the Social Security Act;
10. The interception of a tax refund, as specified in §§464 and 466(a)(3) of the Social Security Act or under an analogous state law; and
11. The enforcement of a medical obligation as specified under title IV of the Social Security Act.

E. Relief from the Stay

Bankruptcy courts routinely acknowledge state court expertise in financial and non-financial domestic relations matters. Consequently, bankruptcy courts usually abstain from domestic relations matters and remand them to state courts or expressly grant relief from the stay under §362(d) to permit state courts to resolve them.

Actions to determine the division of property attendant upon dissolution of the marriage still require bankruptcy court approval. Many bankruptcy courts previously allowed property rights to be determined but prohibited the actual property division until the bankruptcy case was concluded. It is reasonable to assume that this practice will continue. In many jurisdictions, trustees often agreed to relief from the stay but reserved the right to approve any determination of property rights.

F. Dischargeability and State Court Domestic Relations Issues.

Bankruptcy's dischargeability provisions may influence state courts:

1. To explicitly characterize certain obligations as alimony, maintenance or support, and to support such characterizations with applicable findings of fact;
2. To require obligors to secure their obligations by granting security interests in real or personal property;
3. To require obligors to effectuate such security interests through separate documentation rather than relying on the divorce or separation decree to create a judicial lien; and
4. To require, as part of divorce or separation litigation, that obligors certify that they have no intention of filing bankruptcy for the foreseeable future.

1. Exceptions to discharge.

Domestic support obligations are nondischargeable in every kind of bankruptcy case. Property settlement obligations, as opposed to alimony or support, are dischargeable in chapter 13, but not in chapters 7, 11 and 12. The 2005 amendments bar discharge of property settlement debt in those three chapters without regard to: (1) ability to pay or (2) whether discharge would benefit the debtor more than excepting the debt from discharge would benefit the nondebtor spouse. In other words, the amendments abolished the ability to pay and balancing tests that had been used to determine dischargeability of property settlement obligations. Another change is that state courts now have concurrent jurisdiction with bankruptcy courts to determine the dischargeability of a property settlement obligation.

Whether property settlement debts survive discharge in a chapter 13 case depends on whether the debtor has made all of the required plan payments. If so, any remaining property settlement debts are discharged. If the debtor does not make all of the plan payments and the bankruptcy court grants the debtor a so-called "hardship discharge," the property settlement debt survives discharge. Thus, after the 2005 amendments, property settlement obligations will be discharged only in chapter 13 cases in which the debtor makes all payments required by the plan.

Consequently, whether a domestic relations debt is dischargeable in chapter 13 may depend on whether it is in the nature of support. Although this is a question of federal law, not state law, state courts have concurrent jurisdiction to make this determination. Indeed, a debtor's spouse may seek relief from the stay to have this issue resolved in a state court rather than through an adversary proceeding in the debtor's bankruptcy case. Moreover, state courts issuing separation or divorce decrees should consider the possibility that one of the spouses may ultimately be a debtor in bankruptcy. These courts should fashion their decrees in such a way that it is clear which debts are for support and which are not, by recitation of the critical facts indicating an obligation is support. Simply labeling an obligation probably would not, by itself, be conclusive in bankruptcy court.

To decide if a debt is in the nature of support, courts look to such factors as:

1. Whether the parties or the court intended the obligation to be for support;
2. The parties' relative financial resources and earning power;
3. How the debt was characterized in the order or decree;
4. How other obligations, if any, in the order or decree were characterized;
5. Whether the non-debtor spouse had custody of minor children;
6. Whether the obligation was to be paid periodically or in a lump sum;
7. Whether the obligation was expressly subject to modification—if the parties' relative earning power changed or for some other reason;
8. Whether the obligation would terminate upon the non-debtor's remarriage;
9. How the parties treated the obligation for tax purposes;
10. Whether the obligation was expressly enforceable by contempt.

In many cases, debts to pay the non-debtor spouse's attorney fees in connection with divorce, separation or child custody litigation are held to be nondischargeable support obligations.

Even if a debt is clearly property settlement rather than support, state court judges can protect the obligee from discharge in a future chapter 13 case by requiring, whenever possible, that the obligor grant the obligee a security interest in real or personal property to secure payment of the debt. Where the state court divorce order has required the transfer of specific property from one spouse to another, the requirement to do so is not a debt that can be discharged. Rather, the debtor may be required to actually transfer the property so that the order is enforced.

2. Responding to a discharge by modification of support.

When a debtor obtains a discharge of debt to other parties, his ability to pay support may improve. Moreover, when a debtor obtains a discharge of liability for marital debts owed to third parties, the burden of these debts falls more squarely on the shoulder of the debtor's spouse or ex-spouse. Since the parties' relative financial responsibilities are an important factor in fixing a support obligation, the debtor's discharge in bankruptcy may make it reasonable for a state court to modify his duty to provide support.

One problem is that the dissolution law of some states forbids such modifications. Indeed, in some states, alimony is not recognized and all such financial arrangements are treated as non-modifiable property settlements. If, however, the debtor fraudulently misrepresented his intentions regarding a future bankruptcy filing, such fraud might permit the state court to rescind and reformulate such "property" settlements. So long as these obligations are, as a matter of bankruptcy law, for support, such reformulations may not run afoul of the Code. Consequently, it may be appropriate for state courts in domestic relations matters to ask the parties what their plans are regarding the possible filing of a bankruptcy petition. Even if one party lies convincingly as to his intent, the question may at least alert the other party to the prospect of bankruptcy and motivate that party to seek appropriate protection.

G. Avoidance of Transfers or Liens

The Code provides for the possible avoidance by a trustee or debtor-in-possession of certain transfers that prefer one creditor over another. Preferential transfers from a debtor to her spouse at any time during the year preceding the bankruptcy filing might be attacked as a preference. Such transfers may, for example, involve payments of money, transfers of real estate from joint or community ownership to ownership by the non-debtor spouse, conveyances of mortgages, or creations of security interests. Similarly, transfers made by the debtor to third parties regarding debts on which the non-debtor spouse is also personally liable may be avoidable as a preference to the non-debtor spouse. Transfers made to the debtor's spouse, former spouse, or child for domestic support obligations may not be avoided as preferences. This is yet another reason why it is helpful for state court judges to make it clear whether a debt is in the nature of support. Similarly, although the Code generally provides for the avoidance of judicial liens to the extent that they impair the debtor's exemptions, there is an exception to preserve judicial liens securing domestic support obligations.

Judicial liens, however, may still be avoidable if they secure property settlements, rather than support obligations. Often one party is given possession of an important asset, such as real estate, on the condition that he or she make payments to the other party. Sometimes the courts rely on the decree itself as a judgment lien to secure this obligation. Although case law renders such judicial liens unavoidable in some instances, in other cases they may prove avoidable. A court may provide some additional protection for the obligee by requiring the obligor, as a condition to possession of the property, to execute a separate mortgage or deed of trust.

H. Plan Confirmation

Another reason it is important for state courts to clarify whether a debt is for alimony, maintenance and support (a domestic support obligation) is that such claims are accorded first priority in payment. This is particularly important in chapters 11, 12 and 13, which do not permit confirmation of the debtor's plan over the objection of priority claimants unless the plan provides full payment of priority claims. For an individual debtor to confirm a chapter 11 plan over a support creditor's objections, the plan must, on its effective date, pay domestic support obligation in full. A chapter 12 or 13 debtor may confirm a plan over a support creditor's objection only if the plan provides for the full payment of the claim, in deferred cash payments.

IX. Bankruptcy and Criminal Proceedings

Bankruptcy's stay and dischargeability provisions interact with state criminal proceedings.

A. Automatic Stay

Section 362(b) excepts the following actions, among others, from the automatic stay:

1. The commencement or continuation of a criminal proceeding against the debtor;
2. An act to perfect, or to maintain or continue the perfection, of an interest in property within thirty (30) days after the interest is created or to the extent that the trustee's rights and powers are subject to such perfection;
3. The commencement or continuation of an action or proceeding by a governmental unit to enforce such unit's police or regulatory power, including the enforcement of a judgment, other than a money judgment.

Courts often have difficulty applying these provisions to particular cases. However, courts generally find that the automatic stay does not halt criminal contempt proceedings to punish the debtor for contumacious conduct; orders to pay criminal restitution to the victim of a crime; or issuance of summonses, determination of guilt and imposition of fines in connection with traffic citations.

Somewhat more controversy surrounds bad check prosecutions and asset forfeitures. Bad check prosecutions are excepted from the stay if they are good faith criminal prosecutions. If, however, they are merely disguised debt collection actions, a few courts find either that they are stayed by §362 and/or that they may be enjoined under §105. Most courts disagree, holding that, even if the effect of the prosecution is to collect the debt, the action is still criminal and not subject to the stay. Such courts generally conclude that the prosecutor's independent judgment as to whether or not to pursue the matter precludes the action from being treated as that of the private creditor.

The stay does not apply to asset forfeiture proceedings if they are found to be criminal proceedings or proceedings to enforce police powers. Another argument may apply where the asset was seized prior to the bankruptcy filing. Many asset forfeiture statutes provide that the government obtains title as of the time the property was seized, not at the time the forfeiture proceeding is concluded. Under this view, the asset may never have become property of the estate and, even if it did, the forfeiture proceeding may be characterized as an action to "perfect" the government's interest and, because the interest is perfected retroactively, the trustee's power may be subject to this government interest. Courts are in disagreement as to the correct result.

Trustees may contest any criminal plea agreements in which debtors waive their interest in assets involved in crime. They may argue that these agreements constitute fraudulent transfers.

B. Dischargeability

Criminal restitution debts are not dischargeable in any bankruptcy proceeding. A debt for a fine, penalty or forfeiture payable to or for the benefit of a governmental unit is also nondischargeable. Non-criminal fines are still dischargeable in chapter 13.

X. Bankruptcy Terms

Abandonment

A disclaimer of any interest by the trustee or debtor in burdensome or inconsequential property. Once property has been “abandoned,” it is no longer property of the estate.

Abstention

A bankruptcy court may abstain from hearing a particular civil proceeding on the finding that it is in the interest of justice or in the interest of comity with state courts or state law. A bankruptcy court must abstain from a hearing involving a non-core proceeding based on a cause created by state law, where such cause is actually pending and can be timely adjudicated in a forum of appropriate jurisdiction. The bankruptcy court may, although rarely does, abstain from hearing an entire bankruptcy case on the finding that the interest of both creditors and the debtor will be served by dismissal of the petition.

Administrative Expense Claim

A priority claim including the cost and expenses of preserving the estate or operating the business after the petition, and all professional fees and charges that are allowed.

Adversary Proceeding

A lawsuit within a bankruptcy case.

After Notice and Hearing

After such notice as is appropriate under the circumstances and an opportunity for a hearing.

Asset Case

A case that consists of an estate with sufficient non-exempt, unencumbered assets to potentially provide a distribution for unsecured creditors.

Automatic Stay

The filing of a voluntary, joint or involuntary petition under any chapter of the Bankruptcy Code automatically operates as a stay against the commencement or continuation of most judicial, administrative or other proceedings against the debtor or the debtor’s estate. The purpose of the stay is to give the chapter 11, chapter 12 or chapter 13 debtor “breathing time” for rehabilitation, to give the chapter 7 trustee the protection necessary for administering the assets of the estate, and to relieve the chapter 7 debtor from the pressure of creditor collection efforts. The law provides a number of exceptions to this general rule. A party seeking relief from the automatic stay must file a motion to lift stay.

Avoiding Power

The Bankruptcy Code grants the trustee the power to avoid certain transactions or transfers occurring before the commencement of the case, including preferences and fraudulent conveyances.

Bankrupt

A term formerly used under the Bankruptcy Act to describe a debtor who had been adjudicated a bankrupt under the Bankruptcy Act. This term is not used in the Bankruptcy Code.

Bankruptcy Act

The Bankruptcy Act of 1898 is sometimes referred to as the “ Bankruptcy Act.” The Bankruptcy Act was repealed effective Sept. 1, 1979, and was replaced by the Bankruptcy Code.

Bankruptcy Code (the “Code”)

Legislation found at 11 U.S.C. §101 et. seq. (“Title 11”) containing both substantive and procedural law for bankruptcy liquidation and rehabilitation cases. The Code has been amended several times since its passage in 1978.

Bankruptcy Court Clerk

The clerk of the bankruptcy court receives all documents that are placed in the court record in a bankruptcy case. In addition, the clerk’s office schedules hearings for the bankruptcy judges, usually upon written request by an attorney.

Bankruptcy Judge

The role of the bankruptcy judge is to preside over the administration of a bankruptcy case, and to decide contested aspects of that case, which involve either the liquidation or reorganization of a debtor. A bankruptcy judge does not become actively involved in the daily administration of the bankruptcy case, as that task has been delegated to the debtor, U.S. Trustee, appointed trustees, examiners and creditors’ committees.

Cash Collateral

Cash, negotiable instruments, documents of title, securities, deposit accounts or other cash equivalents in which the debtor’s estate and an entity other than the estate have an interest. Cash collateral may not be used, sold or leased in the ordinary course of business unless the creditor with an interest in the collateral consents or the court, after notice and a hearing, authorizes the transaction.

Chapters of the Bankruptcy Code:

Chapter 7

Chapter of the Code addressing liquidation, available both to individual and business debtors. Its purpose is to achieve a fair distribution to creditors of whatever non-exempt property the debtor has and to give the individual debtor a fresh start through the discharge in bankruptcy.

Chapter 9

Chapter of the Code addressing the adjustments of debts of a municipality.

Chapter 11

Chapter of the Code addressing reorganization, available both to individual and business debtors. The purpose of chapter 11 is to rehabilitate a business as a going concern or reorganize an individual’s finances. The chapter 11 debtor is given a fresh start through the binding effect on all concerned of the order of confirmation of a reorganization plan.

Chapter 12

Chapter of the Code designed to give special relief to a family farmer or family fisherman with regular income.

Chapter 13

Chapter of the Code used as a rehabilitation vehicle for an individual with regular income whose debts do not exceed specified amounts, typically used to budget some of the debtor's future earnings under a plan through which creditors are paid in whole or in part.

Civil Proceeding

Any action that occurs within a bankruptcy case and includes contested matters, adversary proceedings and plenary actions as well as disputes related to administrative matters in a bankruptcy case.

Claim

Any right to payment, as well as any right to an equitable remedy for breach of performance if that breach also gives right to payment.

Confirmation

The process by which the bankruptcy judge approves a plan of reorganization of a debtor.

Core Matters

Proceedings arising under Title 11 or arising in a case under Title 11 in which the bankruptcy judge may conduct the entire proceeding and may enter the final and dispositive order or judgment.

Cramdown

One of two methods by which a debtor can confirm its chapter 11 plan. Creditors may consent to the debtor's plan, or the debtor may "cram down" a plan over the objections of creditors where at least one class of impaired claims or interests has voted in the requisite number and amount to accept the plan, and certain other requirements are met with respect to all non-consenting impaired classes or claims or interests. The term cramdown is also used in chapter 13 to refer to reduction of a secured claim to collateral value where that value is less than the unpaid balance.

Creditor

Any entity that has a monetary claim against the debtor that arose at the time of or before the order for relief.

Creditors' Committee

A group of unsecured creditors appointed by the U.S. Trustee to represent the interests of all unsecured creditors before the court. The committee may retain counsel and other professionals at the expense of the estate in order to be heard in a wide range of matters.

Debtor

The individual or entity that seeks voluntary relief under the Bankruptcy Code, or that has been forced involuntarily into a chapter 7 or 11 bankruptcy case by petitioning creditors.

Debtor-in-possession

A chapter 11 or chapter 12 debtor that operates its own business and remains in possession of its assets and property. The bankruptcy judge may order that the debtor-in-possession be replaced by a trustee appointed by the U.S. Trustee.

Discharge

An order that bars the debtor's *in personam* liability on claims within its scope and acts as a permanent injunction against judicial proceedings or nonjudicial collection efforts with respect to such claims.

Dischargeability

Refers to a process or finding on whether an individual debt is excepted from discharge.

Disclosure Statement

A pleading filed with the bankruptcy court clerk and sent to creditors that contains information about the debtor and the proposed plan of reorganization.

Domestic Support Obligation

A debt for alimony, support and interest thereon owed to a spouse, former spouse or child of the debtor or to a governmental unit. The term is defined more precisely in Code §101(14A).

Estate

Created by the filing of a voluntary or involuntary petition and consisting of all of the debtor's legal and equitable interest in property as of the commencement of the case. An individual debtor is able to exempt certain property from the estate. Property of the estate also does not include (1) any power that a debtor can exercise for someone else's benefit; and (2) spendthrift trust interests, including pensions covered by Title I of the Employee Retirement Income Security Act (ERISA). 29 U.S.C. §1001 et seq. The estate is administered by a debtor, debtor-in-possession or trustee.

Examiner

An individual who may be appointed by the bankruptcy court with duties limited to conducting an investigation of specified acts and business affairs of the debtor-in-possession. The appointment of an examiner does not change the status of a debtor as a debtor-in-possession who remains in control of the property of the estate during the chapter 11 bankruptcy case.

Executory Contract

A contract under which the obligations of both the debtor and the other party are so far unperformed that the failure of either to complete performance would constitute a material breach excusing the performance of the other. The Code grants the trustee the ability to assume, assign or reject executory contracts and unexpired leases for the benefit of the estate, subject to bankruptcy court approval.

Exemptions

A debtor's claims that remove certain property from the bankruptcy estate. The debtor retains exempt property free from the claims of its unsecured creditors. The debtor may claim exemptions under state law or, if state law permits, under a set of exemptions in the Bankruptcy Code.

Federal Rules of Bankruptcy Procedure

An appendix to Title 11 that provides the procedural law of bankruptcy. Besides the Federal Rules of Bankruptcy Procedure, each district as well as each individual bankruptcy judge may have their own local rules.

Fraudulent Conveyance

A transfer that can be avoided by the trustee if the transfer was made with (1) actual fraud evidenced by an intent to defraud, hinder or delay creditors; or (2) constructive fraud evidenced by the debtor's receipt of less than reasonably equivalent value in exchange for the transfer.

Means-Testing

A ground for dismissal of individual chapter 7 petitions added by the 2005 amendments to §707(b). The means-test starts with the debtor's gross income, deducts secured and priority debt payments, as well as living expense allowances based on IRS standards for delinquent taxpayers, to determine whether the debtor has sufficient disposable income that he or she could likely fund a plan of reorganization.

No-asset Case

A case with too few non-exempt, unencumbered assets to provide a distribution to unsecured creditors.

Objection to Claim

The filing of an objection to a claim initiates a process that will ultimately result in the allowance or disallowance of that claim by the bankruptcy court.

Petition: Voluntary and Involuntary

A voluntary petition is filed if a debtor voluntarily seeks relief under one of the chapters of the Bankruptcy Code. The filing of a voluntary petition operates automatically to invoke the stay. An involuntary petition is filed when creditors seek to place the debtor in either chapter 7 or 11. If the debtor contests and prevails, the court shall dismiss the involuntary petition. If the debtor does not contest, or contests and loses, the bankruptcy court shall enter an order for relief.

Plan of Reorganization

The document the debtor submits for confirmation to restructure and perhaps forgive certain pre-petition debt. The debtor proposes plans in chapters 11, 12 and 13. Creditors may propose their own plans in chapter 11, but not in chapters 12 and 13.

Preference

A transfer of the debtor's property to or for the benefit of a creditor, for or on account of an antecedent debt, made while the debtor was insolvent, within 90 days before bankruptcy (or within one year before bankruptcy in an "insider" situation), the effect of which was to give the creditor more than it would have otherwise received in a chapter 7 distribution. The trustee's power to avoid preferences is designed to foster equality of distribution among the creditors of an insolvent debtor.

Priority Claim

Unsecured claims entitled to priority in distribution over other unsecured claims, including domestic support obligations, administrative expenses, claims arising in the ordinary course of the debtor's business after the filing of an involuntary petition and before the entry of the Order for Relief, certain wage, salary or commission claims, certain contributions to employee benefit plans, certain claims of farmers and fishermen, certain consumer claims, personal injury or wrongful death claims where the debtor drove a vehicle or boat while intoxicated, and certain unsecured tax claims.

Proof of Claim

Document a creditor files with the clerk of the bankruptcy court to become eligible for payment from the estate. The proof of claim should include all supporting evidence of such claim, including documentation reflecting perfection of a security interest, if any. There is usually a deadline in which to file a proof of claim.

Reaffirmation Agreement

A writing in which the debtor agrees to retain personal liability on a claim that would otherwise be discharged. Unless the claim is secured by real property, the debtor's attorney or the court must approve the reaffirmation. In addition, such agreements are enforceable only if made before discharge, filed with the court and not rescinded by the debtor.

Redemption

When an individual debtor reclaims property intended primarily for personal, family or household use, from a lien securing a dischargeable consumer debt, if the property is exempt, or has been abandoned, by paying the lienholder the amount of the allowed secured claim of the lienholder that is secured by such lien. Redemption must be a cash transaction, unless the creditor consents to pay out over time.

Reference

Device by which the district courts delegate bankruptcy jurisdiction to the bankruptcy court, and bankruptcy judges act as trial courts-in-fact in nearly all bankruptcy matters.

Related Matter

Proceeding related to cases under Title 11 in which, unless the parties consent otherwise, the bankruptcy judge submits proposed findings and conclusions and the district court makes the dispositive orders.

Removal

Process by which either the defendant or plaintiff may transfer a civil action in a nonbankruptcy forum involving the debtor to the district court (and by the standing order of reference to the bankruptcy court).

Schedules

Pleadings the debtor must file with the bankruptcy court clerk listing the debtor's assets, liabilities, income and expenses.

Secured Claim

A claim secured by collateral of equal or greater value than the amount of the claim.

Statement of Affairs

Pleadings filed with the bankruptcy court clerk containing information about the financial transactions and affairs of a debtor.

Trustee

The court-appointed representative of the estate who actually administers the estate. A chapter 7 trustee is in charge of liquidating the estate. In some chapter 11 cases, the debtor-in-possession is replaced by a chapter 11 trustee who administers the estate. In chapters 12 and 13, there ordinarily is at least one standing trustee in each district to whom all cases under chapter 12 or chapter 13 are assigned.

U.S. Trustee

Responsible for matters of administration of a bankruptcy case. Employed by the U.S. Department of Justice, the U.S. Trustee's responsibilities include (1) appointing from the private sector the members of a panel of trustees who administer bankruptcy cases; and (2) supervising the actions of the private trustees and the administration of all bankruptcy cases.

Unsecured Claim

A claim that is not secured by collateral.

Withdrawal of Reference

District court's power to withdraw in whole or in part matters that have been referred to the bankruptcy court, including both core and non-core proceedings as well as cases.

XI. Questions Commonly Asked by State Court Judges

What follows are questions that are commonly asked of bankruptcy practitioners by state court trial judges and short responses meant for quick reference. Most of the topics addressed are covered in greater detail in these materials.

1. Which actions, motions and proceedings in state court are not stayed by the filing of a bankruptcy?

ANSWER: Certain actions are excluded by statute from the operation of the automatic stay. The most common actions that are not stayed are criminal proceedings, many domestic relations cases and proceedings, police or regulatory enforcement actions brought by a governmental unit (*e.g.*, consumer protection and environmental actions); and certain set-offs.

Most of the statutory exceptions from the stay appear at 11 U.S.C. §362(b) and are discussed at greater length in the chapter of this book entitled “Bankruptcy Stays and Injunctions.”

2. Can a state court judge act in violation of the bankruptcy stay?

ANSWER: Yes. While it is more likely that a party or counsel for a party would be acting contrary to the automatic stay, a state court judge could violate it in a myriad of ways ranging from conducting a pre-trial conference in a mortgage foreclosure action to a trial of a contract dispute. Essentially any act that inches a matter forward on a claim against a debtor or property of the estate during the pendency of a bankruptcy violates the stay. As a practical matter, only acts in willful violation of the stay result in contempt proceedings, from which state court judges might be immune.

3. In a lawsuit before me, three defendants are alleged to be joint tortfeasors. Our state law provides for percentage apportionment of liability. One of the three defendants files bankruptcy.

(a) Can the case proceed?

(b) Should it?

ANSWER: (a) Maybe. The case against three joint tortfeasors could proceed against two of them after the third files bankruptcy in a state that apportions liability by percentage unless the courts in your state or circuit have held that the automatic stay applies because the ultimate determination could conclusively establish liability of the debtor.

(b) Probably not. In light of the numerous possible problems with collateral estoppel and duplication of efforts, the case should not proceed until the plaintiff or a codefendant obtains relief from the automatic stay.

4. A defendant in a tort suit files bankruptcy. All parties before me acknowledge that the defendants are covered by insurance, and that the liability of the defendant will be limited to the extent of this coverage. Do I need a bankruptcy court order to proceed with this case?

ANSWER: Yes. Even in tort cases where a defendant is insured and liability is limited to the extent of coverage, a party in your proceeding should seek an order granting relief from the automatic stay to remove any doubt about the effects of proceeding with the action. See answer to question number 3.

5. (a) Can the bankruptcy court reexamine or undo my awards of child support, alimony or attorney fees in a divorce action?

(b) To what extent?

ANSWER: (a) Yes. The bankruptcy court can reexamine awards of child support, alimony or attorney fees, defined as “domestic support obligations,” made in a divorce action. Since domestic support obligations are nondischargeable, questions arise about the characterization of those awards (as well as attorney fee awards) and their relation to property settlement obligations, which are sometimes dischargeable in chapter 13 cases. However, findings of fact by a state court may have preclusive effect in bankruptcy.

(b) Bankruptcy courts undo such state court awards if their characterization is inconsistent with the parties’ true intentions and dischargeability rights of the debtor.

The issue is discussed further in the chapter entitled “Bankruptcy and Domestic Relations Law.”

6. (a) Once a party to a case before me has filed bankruptcy, can the bankruptcy court remove the entire case or part of the case to its jurisdiction for determination?

(b) Can that same court remand the cases back to me for determination?

ANSWER: (a) Yes, however, the bankruptcy court is not likely to remove or retain cases such as personal injury actions that are traditionally determined in state court. Note, though, that an action by a governmental unit exercising its police and regulatory powers is not subject to removal to bankruptcy court.

(b) Yes. See the section of this book entitled “Removal and Remand.”

7. (a) Other than judgments for domestic support obligations, what specific state court judgments are truly nondischargeable under the different Bankruptcy Code chapters?

(b) Can such nondischargeable judgments be collaterally attacked in the bankruptcy court?

ANSWER: (a) Examples of state court judgments other than for domestic support obligations that are not dischargeable in chapter 7, chapter 12 and individual chapter 11 cases include: Judgments imposing fines, penalties or forfeitures; money judgments based on fraud, breaches of fiduciary duties, embezzlement, larceny, willful or malicious injury to persons or property and money judgments based on drunken driving incidents and property settlement obligations. Chapter 13 provides a somewhat broader discharge than these other chapters. For example, property settlement debts may be discharged in chapter 13, but not in chapters 7, 11 or 12.

(b) Yes, but collateral estoppel applies in bankruptcy proceedings to matters that have been fully litigated in state courts. Default judgments or issues not fully litigated may be subject to collateral attack in the bankruptcy court, depending on the state law under which the judgment is entered. Discharge issues are discussed at greater length in this book in the chapter entitled “Dischargeability Law.”

8. I’ve heard that if a debtor files a chapter 13, they can even discharge judgments for property settlement obligations and some intentional torts. Is this true?

ANSWER: Yes. Chapter 13 debtors can obtain a somewhat broader discharge than debtors under other chapters. Property settlements can be discharged in chapter 13, as can debts for intentional torts resulting only in property damage. Intentional torts causing personal injury or death, however, are no longer dischargeable in chapter 13. The rationale for a broader discharge in chapter 13 than in chapter 7 is that chapter 13 debtors usually pay some, and sometimes a substantial part, of their obligations over an extended period of time through court-approved plans, and they are not entitled to a discharge until successful completion of the plan. Chapter 7 debtors liquidate, and they typically obtain discharge a short time after filing. Unsecured creditors receive only slight, if any, distributions in most chapter 7 cases.

**9. (a) Are there any circumstances where restitution or fines in a criminal case are dischargeable?
(b) If so, can I craft my orders to insure that such restitution and fines will not be dischargeable under any circumstances?**

ANSWER: (a) Fines and restitution orders in a criminal case are not dischargeable in bankruptcy. A few courts have made a distinction if restitution was ordered paid directly to the victim. That concern can be avoided by crafting the order, if possible, to require payment to the government, and (b) let it transfer the payment to the victim. Non-criminal fines are dischargeable in chapter 13.

10. The defendant in a collection suit before me affirmatively alleges discharge in bankruptcy. Shall I resolve this issue, or is the dischargeability issue only within the jurisdiction of the bankruptcy court?

ANSWER: Only bankruptcy courts can determine whether to grant or deny a discharge in bankruptcy, but state court judges can ascertain whether discharge has in fact been granted or denied through evidentiary methods of proof of any fact. In addition, unless the debt is one of the few types reserved for determination exclusively by the bankruptcy court, state court judges have concurrent jurisdiction to hear and resolve such matters. Courts disagree on whether a state court determination that a debt was not discharged may be revisited by the bankruptcy court. Issues relating to discharge are addressed in more detail in various places throughout these materials.

11. A lawyer for a party calls and advises me that a client has filed bankruptcy. How do I verify this?

ANSWER: Call the bankruptcy court clerk's office or access the docket electronically. Phone numbers for each clerk's office appear in this book.

XII. United States Bankruptcy Judges

ALABAMA **11th Circuit**

Northern

Hon. Thomas B. Bennett
U.S. Bankruptcy Court
Robert S. Vance Federal Bldg
1800 Fifth Ave N, Room 120
Birmingham, AL 35203
(205) 714-3880

Hon. Jack A. Caddell
U.S. Bankruptcy Court
PO Box 2748
Decatur, AL 35602-1289
(256) 340-2730

Hon. Benjamin Cohen
Chief Judge
U.S. Bankruptcy Court
Robert S. Vance Federal Bldg
1800 Fifth Ave N, Room 120
Birmingham, AL 35203
(205) 714-3865

Hon. Tamara O. Mitchell
U.S. Bankruptcy Court
Robert S. Vance Federal Bldg
1800 Fifth Ave N, Room 120
Birmingham, AL 35203
(205) 714-3850

Hon. James S. Sledge
U.S. Bankruptcy Court
U.S. Courthouse
1129 Noble St
Anniston, AL 36202
(256) 741-1529

Hon. C. Michael Stilson
U.S. Bankruptcy Court
PO Box 3226
Tuscaloosa, AL 35403
(205) 561-1623

Middle

Hon. William R. Sawyer
Chief Judge
U.S. Bankruptcy Court
PO Box 1248
Montgomery, AL 36102
(334) 954-3881

Hon. Dwight H. Williams, Jr.
U.S. Bankruptcy Court
PO Box 1248
Montgomery, AL 36102
(334) 954-3891

Southern

Hon. Margaret A. Mahoney
U.S. Bankruptcy Court
201 St. Louis St
Mobile, AL 36602
(251) 441-4128

Hon. William S. Schulman
Chief Judge
U.S. Bankruptcy Court
201 St. Louis St
Mobile, AL 36602
(251) 441-4130

ALASKA **9th Circuit**

Hon. Donald MacDonald, IV
Chief Judge
U.S. Bankruptcy Court
605 W Fourth Ave, Suite 138
Anchorage, AK 99501
(907) 271-2667

Hon. Herbert A. Ross
Recalled Judge
U.S. Bankruptcy Court
605 W Fourth Ave, Suite 138
Anchorage, AK 99501
(907) 271-2630

ARIZONA **9th Circuit**

Hon. Redfield T. Baum
U.S. Bankruptcy Court
230 N First Ave, Suite 101
Phoenix, AZ 85003
(602) 682-4184

Hon. Charles G. Case, II
U.S. Bankruptcy Court
230 N First Ave, Suite 101
Phoenix, AZ 85003
(602) 682-4224

Hon. Sarah S. Curley
Chief Judge
U.S. Bankruptcy Court
230 N First Ave, Suite 101
Phoenix, AZ 85003
(602) 682-4146

Hon. Randolph J. Haines
U.S. Bankruptcy Court
230 N First Ave, Suite 101
Phoenix, AZ 85003
(602) 682-4244

Hon. Eileen W. Hollowell
U.S. Bankruptcy Court
38 S Scott Ave
Tucson, AZ 85701
(520) 202-7964

Hon. James M. Marlar
U.S. Bankruptcy Court
38 S Scott Ave
Tucson, AZ 85701
(520) 202-7984

Hon. George B. Nielsen, Jr.
U.S. Bankruptcy Court
230 N First Ave, Suite 101
Phoenix, AZ 85003
(602) 682-4164

ARKANSAS **8th Circuit**

Eastern & Western

Hon. Audrey Evans
Chief Judge
U.S. Bankruptcy Court
PO Box 3777
Little Rock, AR 72203-3777
(501) 918-5660

Hon. Richard D. Taylor
U.S. Bankruptcy Court
PO Box 3097
Fayetteville, AR 72702
(479) 582-9800

Hon. James G. Mixon
U.S. Bankruptcy Court
PO Box 3777
Little Rock, AR 72203-3777
(501) 918-5640

CALIFORNIA **9th Circuit**

Northern

Hon. Thomas E. Carlson
U.S. Bankruptcy Court
PO Box 7341
San Francisco, CA 94120-7341
(415) 268-2360

Hon. James R. Grube
U.S. Bankruptcy Court
U.S. Courthouse
280 S First St, Suite 3035
San Jose, CA 95113
(408) 535-5122

Hon. Alan Jaroslovsky
U.S. Bankruptcy Court
99 S 'E' St
Santa Rosa, CA 95404
(707) 525-8520

Hon. Edward D. Jellen
U.S. Bankruptcy Court
PO Box 2070
Oakland, CA 94604-2070
(510) 879-3525

Hon. Dennis Montali
U.S. Bankruptcy Court
PO Box 7341
San Francisco, CA 94120-7341
(415) 268-2320

Hon. Marilyn Morgan
U.S. Bankruptcy Court
U.S. Courthouse
280 S First St, Suite 3035
San Jose, CA 95113
(408) 535-5100

Hon. Randall J. Newsome
Chief Judge
U.S. Bankruptcy Court
PO Box 2070
Oakland, CA 94604-2070
(510) 879-3530

Hon. Leslie J. Tchaikovsky
U.S. Bankruptcy Court
PO Box 2070
Oakland, CA 94604-2070
(510) 879-3540

Hon. Arthur S. Weissbrodt
U.S. Bankruptcy Court
U.S. Courthouse
280 S First St, Suite 3035
San Jose, CA 95113
(408) 535-5116

Eastern

Hon. Brett J. Dorian
Recalled Judge
U.S. Bankruptcy Court
U.S. Courthouse
1130 'O' St, Suite 2656
Fresno, CA 93721
(559) 498-7329

Hon. Richard T. Ford
Recalled Judge
U.S. Bankruptcy Court
U.S. Courthouse
1130 'O' St, Suite 2656
Fresno, CA 93721
(805) 929-8146

Hon. Thomas Holman
U.S. Bankruptcy Court
U.S. Courthouse
501 'I' St, Suite 3-200
Sacramento, CA 95814
(916) 930-4513

Hon. Christopher M. Klein
U.S. Bankruptcy Court
U.S. Courthouse
501 'I' St, Suite 3-200
Sacramento, CA 95814
(916) 930-4510

Hon. W. Richard Lee
U.S. Bankruptcy Court
U.S. Courthouse
1130 'O' St, Suite 2656
Fresno, CA 93721
(559) 498-7390

Hon. Jane Dickson McKeag
U.S. Bankruptcy Court
U.S. Courthouse
501 'I' St, Suite 3-200
Sacramento, CA 95814
(916) 930-4521

Hon. Michael S. McManus
Chief Judge
U.S. Bankruptcy Court
U.S. Courthouse
501 'I' St, Suite 3-200
Sacramento, CA 95814
(916) 930-4537

Hon. Whitney Rimel
U.S. Bankruptcy Court
U.S. Courthouse
1130 'O' St, Suite 2656
Fresno, CA 93721
(559) 498-7512

Hon. David E. Russell
Recalled Judge
U.S. Bankruptcy Court
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501 'I' St, Suite 3-200
Sacramento, CA 95814
(916) 930-4502

Central

Hon. Alan M. Ahart
U.S. Bankruptcy Court
Edward R. Roybal Federal Bldg
& Courthouse
255 E Temple St
Los Angeles, CA 90012
(213) 894-3745

Hon. Robert W. Alberts
U.S. Bankruptcy Court
Ronald Reagan Federal Bldg
& U.S. Courthouse
411 W Fourth St, Suite 6135
Santa Ana, CA 92701
(714) 338-5420

Hon James N. Barr
U.S. Bankruptcy Court
Ronald Reagan Federal Bldg
& U.S. Courthouse
411 W Fourth St, Suite 5085
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(714) 338-5471

Hon. Sheri Bluebond
U.S. Bankruptcy Court
Edward R. Roybal Federal
Bldg & Courthouse
255 E Temple St
Los Angeles, CA 90012
(213) 894-8980

Hon. Samuel L. Bufford
U.S. Bankruptcy Court
Edward R. Roybal Federal
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Los Angeles, CA 90012
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Hon. Peter H. Carroll
U.S. Bankruptcy Court
3420 12th St, Suite 365
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Hon. Ellen Carroll
U.S. Bankruptcy Court
Edward R. Roybal Federal Bldg
& Courthouse
255 E Temple St
Los Angeles, CA 90012
(213) 894-4039

Hon. Thomas B. Donovan
U.S. Bankruptcy Court
Edward R. Roybal Federal Bldg
& Courthouse
255 E Temple St
Los Angeles, CA 90012
(213) 894-1577

Hon. Mitchel R. Goldberg
U.S. Bankruptcy Court
3420 12th St, Room 325
Riverside, CA 92501
(951) 774-1026

Hon. Meredith A. Jury
U.S. Bankruptcy Court
3420 12th St, Room 345
Riverside, CA 92501
(951) 774-1043

Hon. Kathleen T. Lax
U.S. Bankruptcy Court
21041 Burbank Blvd
Woodland Hills, CA 91367
(818) 587-2823

Hon. Maureen A. Tighe
U.S. Bankruptcy Court
21041 Burbank Blvd
Woodland Hills, CA 91367
(818) 587-2806

Hon. Geraldine Mund
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21041 Burbank Blvd
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U.S. Bankruptcy Court
3420 12th St, Room 385
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(951) 774-1021

Hon. Robin L. Riblet
U.S. Bankruptcy Court
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1415 State St
Santa Barbara, CA 93101
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Hon. Ernest M. Robles
U.S. Bankruptcy Court
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255 E Temple St
Los Angeles, CA 90012
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Hon. Barry Russell
Chief Judge
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Hon. John E. Ryan
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U.S. Bankruptcy Court
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Bldg & Courthouse
255 E Temple St
Los Angeles, CA 90012
(213) 894-4080

Hon. Vincent P. Zurzolo
U.S. Bankruptcy Court
Edward R. Roybal Federal
Bldg & Courthouse
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Los Angeles, CA 90012
(213) 894-3721

Southern

Hon. Louise DeCarl Adler
U.S. Bankruptcy Court
Jacob Weinberger U.S.
Courthouse
325 W 'F' St
San Diego, CA 92101
(619) 557-5661

Hon. Peter W. Bowie
U.S. Bankruptcy Court
Jacob Weinberger U.S.
Courthouse
325 W 'F' St
San Diego, CA 92101
(619) 557-5158

Hon. John J. Hargrove
Chief Judge
U.S. Bankruptcy Court
Jacob Weinberger U.S.
Courthouse
325 W 'F' St
San Diego, CA 92101
(619) 557-6580

Hon. James W. Meyers
U.S. Bankruptcy Court
Jacob Weinberger U.S.
Courthouse
325 W 'F' St
San Diego, CA 92101
(619) 557-7642

COLORADO **10th Circuit**

Hon. Sidney B. Brooks
Chief Judge
U.S. Bankruptcy Court
U.S. Custom House
721 19th St
Denver, CO 80202-2508
(303) 844-5997

Hon. Elizabeth Edina Brown
U.S. Bankruptcy Court
U.S. Custom House
721 19th St
Denver, CO 80202-2508
(303) 844-4978

Hon. Alexander B. Campbell
U.S. Bankruptcy Court
U.S. Custom House
721 19th St
Denver, CO 80202-2508
(303) 844-2294

Hon. Howard R. Tallman
U.S. Bankruptcy Court
U.S. Custom House
721 19th St
Denver, CO 80202-2508
(303) 844-3809

Hon. Michael E. Romero
U.S. Bankruptcy Court
U.S. Customs House
721 19th St
Denver, CO 80202-2508
(303) 844-7273

CONNECTICUT **2nd Circuit**

Hon. Albert S. Dabrowski
U.S. Bankruptcy Court
Connecticut Financial Ctr
157 Church St, 18th Floor
New Haven, CT 06510
(203) 773-2132

Hon. Robert L. Krechevsky
U.S. Bankruptcy Court
Federal Bldg & U.S.
Courthouse
450 Main St
Hartford, CT 06103
(860) 240-3679

Hon. Alan H.W. Shiff
Chief Judge
U.S. Bankruptcy Court
Brien McMahon Federal Bldg
& U.S. Courthouse
915 Lafayette Blvd
Bridgeport, CT 06604
(203) 579-5806

Hon. Lorraine M. Weil
U.S. Bankruptcy Court
Connecticut Financial Ctr
157 Church St, 18th Floor
New Haven, CT 06510
(203) 773-2717

DELAWARE **3rd Circuit**

Hon. Mary F. Walrath
Chief Judge
U.S. Bankruptcy Court
Marine Midland Plz
824 N Market St
Wilmington, DE 19801
(302) 252-2929

Hon. Peter J. Walsh
U.S. Bankruptcy Court
Marine Midland Plz
824 N Market St
Wilmington, DE 19801
(302) 252-2925

DISTRICT OF COLUMBIA **D.C. Circuit**

Hon. S. Martin Teel, Jr.
U.S. Bankruptcy Court
Suite 4400
333 Constitution Ave NW
Washington, DC 20001
(202) 565-2500

FLORIDA **11th Circuit**

Northern

Hon. Lewis M. Killian, Jr.
Chief Judge
U.S. Bankruptcy Court
110 E Park Ave, Suite 100
Tallahassee, FL 32301
(850) 521-5031

Middle

Hon. Arthur B. Briskman
U.S. Bankruptcy Court
Century Plz Bldg
135 W Central Blvd, Suite 950
Orlando, FL 32801
(407) 648-6225

Hon. K. Rodney May
U.S. Bankruptcy Court
Sam M. Gibbons U.S.
Courthouse
801 N Florida Ave, Suite 727
Tampa, FL 33602-3899
(813) 301-5200

Hon. Jerry A. Funk
U.S. Bankruptcy Court
300 N Hogan St, Suite 4-104
Jacksonville, FL 32202
(904) 301-6560

Hon. Paul M. Glenn
Chief Judge
U.S. Bankruptcy Court
Sam M. Gibbons U.S.
Courthouse
801 N Florida Ave, Suite 727
Tampa, FL 33602-3899
(813) 301-5052

Hon. Karen S. Jennemann
U.S. Bankruptcy Court
Century Plz Bldg
135 W Central Blvd, Suite 950
Orlando, FL 32801
(407) 648-6832

Hon. Catherine Peek McEwen
U.S. Bankruptcy Court
Sam M. Gibbons U.S.
Courthouse
801 N Florida Ave, Suite 727
Tampa, FL 33602-3899
(813) 301-5082

Hon. Alexander L. Paskay
U.S. Bankruptcy Court
Sam M. Gibbons U.S.
Courthouse
801 N Florida Ave, Suite 727
Tampa, FL 33602-3899
(813) 301-5146

Hon. George L. Proctor
U.S. Bankruptcy Court
300 N Hogan St, Suite 4-413
Jacksonville, FL 32202
(904) 301-6550

Hon. Michael G. Williamson
U.S. Bankruptcy Court
Sam M. Gibbons U.S.
Courthouse
801 N Florida Ave, Suite 1054
Tampa, FL 33602-3899
(813) 301-5520

Southern

Hon. A. Jay Cristol
U.S. Bankruptcy Court
Claude Pepper Federal Bldg
51 SW First Ave
Miami, FL 33130
(305) 714-1770

Hon. Steven H. Friedman
U.S. Bankruptcy Court
Forum Building Complex
1675 Palm Beach Lakes Blvd
8th Floor
West Palm Beach, FL 33401
(561) 514-4140

Hon. Paul G. Hyman, Jr.
U.S. Bankruptcy Court
U.S. Courthouse
299 E Broward Blvd
Ft. Lauderdale, FL 33301
(954) 769-5771

Hon. Robert A. Mark
Chief Judge
U.S. Bankruptcy Court
Claude Pepper Federal Bldg
51 SW First Ave
Miami, FL 33130
(305) 714-1760

Hon. Raymond B. Ray
U.S. Bankruptcy Court
U.S. Courthouse
299 E Broward Blvd
Ft. Lauderdale, FL 33301
(954) 769-5761

GEORGIA
11th Circuit

Northern

Hon. Joyce Bihary
Chief Judge
U.S. Bankruptcy Court
Richard B. Russell Federal Bldg
& U.S. Courthouse
75 Spring St SW, Suite 1431
Atlanta, GA 30303
(404) 215-1030

Hon. Paul W. Bonapfel
U.S. Bankruptcy Court
Richard B. Russell Federal Bldg
& U.S. Courthouse
75 Spring St SW, Suite 1492
Atlanta, GA 30303
(404) 215-1018

Hon. Robert E. Brizendine
U.S. Bankruptcy Court
Richard B. Russell Federal Bldg
& U.S. Courthouse
75 Spring St SW, Suite 1234
Atlanta, GA 30303
(404) 215-1014

Hon. Mary Grace Diehl
U.S. Bankruptcy Court
Richard B. Russel Federal Bldg
& U.S. Courthouse
75 Spring St SW, Suite 1215
Atlanta, GA 30303
(404) 215-1202

Hon. W. Homer Drake, Jr.
U.S. Bankruptcy Court
Richard B. Russell Federal Bldg
& U.S. Courthouse
75 Spring St SW, Suite 1471
Atlanta, GA 30303
(404) 215-1022

Hon. James E. Massey
U.S. Bankruptcy Court
Richard B. Russell Federal Bldg
& U.S. Courthouse
75 Spring St SW, Suite 1415
Atlanta, GA 30303
(404) 215-1010

Hon. C. Ray Mullins
U.S. Bankruptcy Court
Richard B. Russell Federal Bldg
& U.S. Courthouse
75 Spring St SW, Suite 1270
Atlanta, GA 30303
(404) 215-1002

Hon. Margaret H. Murphy
U.S. Bankruptcy Court
Richard B. Russell Federal Bldg
& U.S. Courthouse
75 Spring St SW, Suite 1290
Atlanta, GA 30303
(404) 215-1006

Middle

Hon. Robert F. Hershner, Jr.
Chief Judge
U.S. Bankruptcy Court
433 Cherry St
PO Box 1957
Macon, GA 31202
(478) 752-3505

Hon. John T. Laney, III
U.S. Bankruptcy Court
PO Box 1540
Columbus, GA 31902
(706) 649-7840

Hon. James D. Walker, Jr.
U.S. Bankruptcy Court
433 Cherry St
PO Box 1957
Macon, GA 31202
(478) 752-3505

Southern

Hon. John S. Dalis
U.S. Bankruptcy Court
PO Box 1487
Augusta, GA 30903
(706) 724-4439

Hon. James D. Walker, Jr.
U.S. Bankruptcy Court
PO Box 8347
Savannah, GA 31412
(912) 650-4120

Hon. Lamar W. Davis, Jr.
Chief Judge
U.S. Bankruptcy Court
PO Box 8347
Savannah, GA 31412
(912) 650-4109

GUAM
9th Circuit

Joaquin Manibusan, Jr.
Magistrate Judge
U.S. District Court
U.S. Courthouse, 3rd Floor
520 W Soledad Ave
Hagatna, GU 96910
(671) 473-9180

HAWAII
9th Circuit

Hon. Robert J. Faris
Chief Judge
U.S. Bankruptcy Court
First Hawaiian Twr, Suite 250L
1132 Bishop St
Honolulu, HI 96813-2830
(808) 522-8100

Hon. Lloyd King
U.S. Bankruptcy Court
First Hawaiian Twr, Suite 250L
1132 Bishop St, Suite 250L
Honolulu, HI 96813-2830
(808) 522-8100

IDAHO
9th Circuit

Hon. Terry L. Myers
Chief Judge
U.S. Bankruptcy Court
Federal Bldg & U.S.
Courthouse, Room 400
550 W Fort St
Boise, ID 83724
(208) 334-9341

Hon. Jim D. Pappas
U.S. Bankruptcy Court
Federal Bldg & U.S.
Courthouse, Room 400
550 W Fort St
Boise, ID 83724
(208) 334-9369

ILLINOIS
7th Circuit

Northern

Hon. Manuel Barbosa
U.S. Bankruptcy Court
Federal Bldg
211 S Court St, Chambers 121
Rockford, IL 61101
(815) 987-4366

Hon. Bruce Black
U.S. Bankruptcy Court
Everett McKinley Dirksen
U.S. Courthouse
219 S Dearborn St
Chambers 662
Chicago, IL 60604
(312) 435-6867

Hon. Jacqueline P. Cox
U.S. Bankruptcy Court
Everett McKinley Dirksen
U.S. Courthouse
219 S Dearborn St
Chambers 656
Chicago, IL 60604
(312) 435-5679

Hon. Carol A. Doyle
U.S. Bankruptcy Court
Everett McKinley Dirksen
U.S. Courthouse
219 S Dearborn St
Chambers 738
Chicago, IL 60604
(312) 435-6010

Hon. A. Benjamin Goldgar
U.S. Bankruptcy Court
Everett McKinley Dirksen
U.S. Courthouse
219 S Dearborn St
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Chicago, IL 60604
(312) 435-5642

Hon. Pamela S. Hollis
U.S. Bankruptcy Court
Everett McKinley Dirksen
U.S. Courthouse
219 S Dearborn St
Chambers 648
Chicago, IL 60604
(312) 435-5534

Hon. Jack B. Schmetterer
U.S. Bankruptcy Court
Everett McKinley Dirksen
U.S. Courthouse
219 S Dearborn St
Chambers 600
Chicago, IL 60604
(312) 435-5654

Hon. John D. Schwartz
Recalled Judge
U.S. Bankruptcy Court
Everett McKinley Dirksen
U.S. Courthouse
219 S Dearborn St, Chambers 756
Chicago, IL 60604
(312) 435-5652

Hon. Susan Pierson Sonderby
U.S. Bankruptcy Court
Everett McKinley Dirksen
U.S. Courthouse
219 S Dearborn St, Chambers 638
Chicago, IL 60604
(312) 435-5646

Hon. John H. Squires
U.S. Bankruptcy Court
Everett McKinley Dirksen
U.S. Courthouse
219 S Dearborn St
Chambers 676
Chicago, IL 60604
(312) 435-7580

Hon. Eugene R. Wedoff
Chief Judge
U.S. Bankruptcy Court
Everett McKinley Dirksen
U.S. Courthouse
219 S Dearborn St
Chambers 748
Chicago, IL 60604
(312) 435-5644

Central

Hon. William V. Altenberger
U.S. Bankruptcy Court
216 Federal Bldg
100 NE Monroe St
Peoria, IL 61602
(309) 671-7035

Hon. Gerald D. Fines
Chief Judge
U.S. Bankruptcy Court
130 Federal Bldg
201 N Vermillion St
Danville, IL 61832
(217) 431-4817

Hon. Larry L. Lessen
U.S. Bankruptcy Court
226 Paul Findley Federal Bldg
600 E Monroe St
Springfield, IL 62701
(217) 492-4566

Hon. Thomas L. Perkins
U.S. Bankruptcy Court
216 Federal Bldg
100 NE Monroe St
Peoria, IL 61602
(309) 671-7035

Southern

Hon. Kenneth J. Meyers
U.S. Bankruptcy Court
750 Missouri Ave
East St. Louis, IL 62201
(618) 482-9307

INDIANA 7th Circuit

Northern

Hon. Harry C. Dees, Jr.
Chief Judge
U.S. Bankruptcy Court
Northern District of Indiana
PO Box 7003
South Bend, IN 46634-7003
(574) 968-2100

Hon. Robert E. Grant
U.S. Bankruptcy Court
Northern District of Indiana
PO Box 2547
Fort Wayne, IN 46801
(260) 420-5100

Hon. Kent Lindquist
U.S. Bankruptcy Court
Northern District of Indiana
PO Box 890
Lafayette, IN 47902
(765) 420-6300

Hon. J.P. Klingeberger
U.S. Bankruptcy Court
Northern District of Indiana
5400 Federal Plz
Hammond, IN 46320
(219) 852-3480

Southern

Hon. James K. Coachys
U.S. Bankruptcy Court
PO Box 44978
Indianapolis, IN 46244
(317) 229-3800

Hon. Basil H. Lorch III
Chief Judge
U.S. Bankruptcy Court
110 U.S. Courthouse
121 W Spring St
New Albany, IN 47150
(812) 542-4540

Hon. Anthony John Metz III
U.S. Bankruptcy Court
PO Box 44978
Indianapolis, IN 46244
(317) 229-3800

Hon. Frank J. Otte
U.S. Bankruptcy Court
PO Box 44978
Indianapolis, IN 46244
(317) 229-3800

IOWA 8th Circuit

Northern

Hon. William L. Edmonds
U.S. Bankruptcy Court
Northern District of Iowa
320 Sixth St, Federal Bldg
Sioux City, IA 51101
(712) 233-3949

Hon. Paul J. Kilburg
Chief Judge
U.S. Bankruptcy Court
425 Second St SE, 8th Floor
Cedar Rapids, IA 52401
(319) 286-2230

Southern

Hon. Lee M. Jackwig
Chief Judge
U.S. Bankruptcy Court
443 U.S. Courthouse Annex
110 E Court Ave
Des Moines, IA 50309
(515) 284-6231

KANSAS 10th Circuit

Hon. Robert D. Berger
U.S. Bankruptcy Court
161 U.S. Courthouse
500 State Ave
Kansas City, KS 66101
(913) 551-6732

Hon. Janice Miller Karlin
U.S. Bankruptcy Court
240 U.S. Courthouse
444 SE Quincy St
Topeka, KS 66683
(785) 295-2646

Hon. Robert E. Nugent
Chief Judge
U.S. Bankruptcy Court
167 U.S. Courthouse
401 N Market St
Wichita, KS 67202
(316) 269-6404

Hon. Dale L. Somers
U.S. Bankruptcy Court
240 U.S. Courthouse
444 SE Quincy St
Topeka, KS 66683
(785) 295-2786

KENTUCKY 6th Circuit

Eastern

Hon. William S. Howard
U.S. Bankruptcy Court
PO Box 1111
Lexington, KY 40588
(859) 233-2465

Hon. Joe Lee
U.S. Bankruptcy Court
PO Box 1111
Lexington, KY 40588
(859) 233-2608

Hon. Joseph M. Scott, Jr.
Chief Judge
U.S. Bankruptcy Court
PO Box 1111
Lexington, KY 40588
(859) 233-2814

Western

Hon. Joan Lloyd Cooper
U.S. Bankruptcy Court
Gene Snyder U.S. Courthouse
601 W Broadway, Suite 541
Louisville, KY 40202
(502) 627-5525

Hon. Thomas H. Fulton
U.S. Bankruptcy Court
Gene Snyder U.S. Courthouse
601 W Broadway, Suite 528
Louisville, KY 40202
(502) 627-5550

Hon. David T. Stosberg
Chief Judge
U.S. Bankruptcy Court
Gene Snyder U.S. Courthouse
601 W Broadway, Suite 533
Louisville, KY 40202
(502) 627-5575

LOUISIANA
5th Circuit

Eastern

Hon. Jerry A. Brown
Chief Judge
U.S. Bankruptcy Court
Hale Boggs Federal Bldg
500 Poydras St, Suite B-601
New Orleans, LA 70130
(504) 589-7810

Middle

Hon. Douglas D. Dodd
U.S. Bankruptcy Court
707 Florida St, Room 119
Baton Rouge, LA 70801
(225) 389-0371

Western

Hon. Stephen V. Callaway
Chief Judge
U.S. Bankruptcy Court
300 Fannin St, Suite 4400
Shreveport, LA 71101
(318) 676-4269

Hon. Henley A. Hunter
U.S. Bankruptcy Court
300 Jackson St, Suite 216
Alexandria, LA 71301
(318) 443-8083

Hon. Gerald H. Schiff
U.S. Bankruptcy Court
214 Jefferson St, Suite 100
Lafayette, LA 70501
(337) 262-6384

MAINE
1st Circuit

Hon. James B. Haines, Jr.
U.S. Bankruptcy Court
537 Congress St, 2nd Floor
Portland, ME 04101
(207) 780-3482

Hon. Louis Kornreich
Chief Judge
U.S. Bankruptcy Court
202 Harlow St, 3rd Floor
Bangor, ME 04401
(207) 945-0348

MARYLAND
4th Circuit

Hon. E. Stephen Derby
U.S. Bankruptcy Court
Edward A. Garmatz Bldg
& U.S. Courthouse
101 W Lombard St, Suite 8308
Baltimore, MD 21201
(410) 962-7801

Hon. Duncan W. Keir
U.S. Bankruptcy Court
Edward A. Garmatz Bldg
& U.S. Courthouse
101 W Lombard St, Suite 8308
Baltimore, MD 21201
(410) 962-3555

Hon. James F. Schneider
Chief Judge
U.S. Bankruptcy Court
Edward A. Garmatz Bldg
& U.S. Courthouse
101 W Lombard St, Suite 8308
Baltimore, MD 21201
(410) 962-2820

Hon. Paul Mannes
U.S. Bankruptcy Court
U.S. Courthouse
6500 Cherrywood Ln, Suite 300
Greenbelt, MD 20770
(301) 344-8040

Hon. Nancy V. Alquist
U.S. Bankruptcy Court
U.S. Courthouse
6500 Cherrywood Ln, Suite 300
Greenbelt, MD 20770
(301) 344-3660

MASSACHUSETTS
1st Circuit

Eastern

Hon. Joan N. Feeney
Chief Judge
U.S. Bankruptcy Court
1101 Thomas P. O'Neill, Jr.
Federal Bldg
10 Causeway St
Boston, MA 02222-1074
(617) 565-6049

Hon. William C. Hillman
U.S. Bankruptcy Court
1101 Thomas P. O'Neill, Jr.
Federal Bldg
10 Causeway St
Boston, MA 02222-1074
(617) 565-6097

Hon. Robert Somma
U.S. Bankruptcy Court
1101 Thomas P. O'Neill, Jr.
Federal Bldg
10 Causeway St
Boston, MA 02222-1074
(617) 565-6066

Western

Hon. Henry J. Boroff
U.S. Bankruptcy Court
Donohue Federal Bldg
595 Main St, Suite 211
Worcester, MA 01608-2076
(508) 770-8940

Hon. Joel B. Rosenthal
U.S. Bankruptcy Court
Donohue Federal Bldg
595 Main St
Worcester, MA 01608-2076
(508) 770-8901

MICHIGAN
6th Circuit

Eastern

Hon. Marci B. McIvor
U.S. Bankruptcy Court
211 W Fort St, Suite 1850
Detroit, MI 48226
(313) 234-0014

Hon. Steven W. Rhodes
Chief Judge
U.S. Bankruptcy Court
211 W Fort St, Suite 1800
Detroit, MI 48226
(313) 234-0020

Hon. Walter Shapero
U.S. Bankruptcy Court
111 First St
Bay City, MI 48708
(989) 894-8844

Hon. Phillip J. Shefferly
U.S. Bankruptcy Court
211 W Fort St, Suite 1950
Detroit, MI 48226
(313) 234-0043

Hon. Thomas J. Tucker
U.S. Bankruptcy Court
211 W Fort St, Suite 1900
Detroit, MI 48226
(313) 234-0033

Western

Hon. James D. Gregg
U.S. Bankruptcy Court
PO Box 3310
Grand Rapids, MI 49501
(616) 456-2264

Hon. Jeffrey R. Hughes
U.S. Bankruptcy Court
PO Box 3310
Grand Rapids, MI 49501
(616) 456-2233

Hon. Jo Ann C. Stevenson
Chief Judge
U.S. Bankruptcy Court
PO Box 3310
Grand Rapids, MI 49501
(616) 456-2949

MINNESOTA
8th Circuit

Hon. Nancy C. Dreher
U.S. Bankruptcy Court
3001 U.S. Courthouse, 7W
300 S Fourth St
Minneapolis, MN 55415
(612) 664-5260

Hon. Gregory F. Kishel
Chief Judge
U.S. Bankruptcy Court
200 U.S. Courthouse, Suite 210
316 N Robert St
St. Paul, MN 55101-1423
(651) 848-1060

Hon. Robert J. Kressel
U.S. Bankruptcy Court
301 U.S. Courthouse, 8W
300 S Fourth St
Minneapolis, MN 55415
(612) 664-5250

Hon. Dennis D. O'Brien
U.S. Bankruptcy Court
200 U.S. Courthouse, Suite 238
316 N Robert St
St. Paul, MN 55101
(651) 848-1050

MISSISSIPPI
5th Circuit

Northern

Hon. David W. Houston, III
U.S. Bankruptcy Court
PO Box 867
Aberdeen, MS 39730
(662) 369-2624

Southern

Hon. Edward Ellington
Chief Judge
U.S. Bankruptcy Court
100 E Capitol St
Jackson, MS 39201
(601) 965-5301

Hon. Edward R. Gaines
U.S. Bankruptcy Court
Dan M. Russell, Jr. U.S.
Courthouse
2012 15th St, Suite 244
Gulfport, MS 39501
(228) 563-1790

MISSOURI
8th Circuit

Eastern

Hon. James J. Barta
Chief Judge
U.S. Bankruptcy Court
Thomas F. Eagleton
U.S. Courthouse
111 S Tenth St, 4th Floor
St. Louis, MO 63102
(314) 244-4500

Hon. David P. McDonald
U.S. Bankruptcy Court
Thomas F. Eagleton
U.S. Courthouse
111 S Tenth St, 4th Floor
St. Louis, MO 63102
(314) 244-4500

Hon. Barry S. Schermer
U.S. Bankruptcy Court
Thomas F. Eagleton
U.S. Courthouse
111 S Tenth St, 4th Floor
St. Louis, MO 63102
(314) 244-4500

Hon. Kathy A. Surratt-States
U.S. Bankruptcy Court
Thomas F. Eagleton
U.S. Courthouse
111 S Tenth St, 4th Floor
St. Louis, MO 63102
(314) 244-4500

Western

Hon. Dennis R. Dow
U.S. Bankruptcy Court
Charles Evans Whittaker
U.S. Courthouse
400 E Ninth St, Suite 6562
Kansas City, MO 64106
(816) 512-1880

Hon. Arthur B. Federman
Chief Judge
U.S. Bankruptcy Court
Charles Evans Whittaker
U.S. Courthouse
400 E Ninth St, Suite 6552
Kansas City, MO 64106
(816) 512-1910

Hon. Jerry W. Venters
U.S. Bankruptcy Court
Charles Evans Whittaker
U.S. Courthouse
400 E Ninth St, Suite 6462
Kansas City, MO 64106
(816) 512-1895

MONTANA
9th Circuit

Hon. Ralph B. Kirscher
U.S. Bankruptcy Court
Mike Mansfield Federal Bldg
& U.S. Courthouse
400 N Main St, Suite 303
Butte, MT 59701
(406) 782-3338

Hon. John L. Peterson
(recall status)
U.S. Bankruptcy Court
Mike Mansfield Federal Bldg
& U.S. Courthouse
400 N Main St, Suite 303
Butte, MT 59701
(406) 782-3338

NEBRASKA
8th Circuit

Hon. Timothy J. Mahoney
Chief Judge
U.S. Bankruptcy Court
111 S 18th Plz, Suite 1125
Omaha, NE 68102
(402) 661-7480

NEVADA
9th Circuit

Hon. Bert M. Goldwater
U.S. Bankruptcy Court
C. Clifton Young Federal Bldg
& U.S. Courthouse
300 Booth St
Reno, NV 89509
(775) 784-5017

Hon. Bruce A. Markell
U.S. Bankruptcy Court
Foley Federal Bldg
300 Las Vegas Blvd S
Las Vegas, NV 89101
(702) 388-6505

Hon. Linda B. Riegler
U.S. Bankruptcy Court
Foley Federal Bldg
300 Las Vegas Blvd S
Las Vegas, NV 89101
(702) 388-6120

Hon. Gregg W. Zive
Chief Judge
U.S. Bankruptcy Court
C. Clifton Young Federal Bldg
& U.S. Courthouse
300 Booth St
Reno, NV 89509
(775) 784-5017

NEW HAMPSHIRE
1st Circuit

Hon. J. Michael Deasy
U.S. Bankruptcy Court
1000 Elm St, Suite 1001
Manchester, NH 03101
(603) 222-2640

Hon. Mark W. Vaughn
Chief Judge
U.S. Bankruptcy Court
1000 Elm St, Suite 1001
Manchester, NH 03101
(603) 222-2680

NEW JERSEY
3rd Circuit

Hon. Gloria M. Burns
U.S. Bankruptcy Court
PO Box 2067
Camden, NJ 08101
(856) 757-5485

Hon. Kathryn C. Ferguson
U.S. Bankruptcy Court
Clarkson S. Fisher Federal
Bldg & U.S. Courthouse
402 E State St, 3rd Floor
Trenton, NJ 08608
(609) 989-0550

Hon. Rosemary Gambardella
Chief Judge
U.S. Bankruptcy Court
Martin Luther King, Jr.
Federal Bldg & U.S.
Courthouse
50 Walnut St, 3rd Floor
Newark, NJ 07102
(973) 645-2322

Hon. Raymond T. Lyons
U.S. Bankruptcy Court
Clarkson S. Fisher Federal
Bldg & U.S. Courthouse
402 E State St, 2nd Floor
Trenton, NJ 08608
(609) 656-2565

Hon. Donald H. Steckroth
U.S. Bankruptcy Court
Martin Luther King, Jr.
Federal Bldg & U.S.
Courthouse
50 Walnut St, 3rd Floor
Newark, NJ 07102
(973) 645-6022

Hon. Morris Stern
U.S. Bankruptcy Court
Martin Luther King, Jr.
Federal Bldg & Courthouse
50 Walnut St, 3rd Floor
Newark, NJ 07102
(973) 368-1244

Hon. Novalyn L. Winfield
U.S. Bankruptcy Court
Martin Luther King, Jr.
Federal Bldg & Courthouse
50 Walnut St, 3rd Floor
Newark, NJ 07102
(973) 645-2187

Hon. Judith H. Wizmur
U.S. Bankruptcy Court
PO Box 2067
Camden, NJ 08101
(856) 757-5485

NEW MEXICO **10th Circuit**

Hon. Mark B. McFeeley
U.S. Bankruptcy Court
PO Box 546
Albuquerque, NM 87103-0546
(505) 348-2525

Hon. James S. Starzynski
Chief Judge
U.S. Bankruptcy Court
PO Box 546
Albuquerque, NM 87103-0546
(505) 348-2420

NEW YORK **2nd Circuit**

Northern

Hon. Stephen D. Gerling
Chief Judge
U.S. Bankruptcy Court
220 Alexander Pirnie
Federal Bldg
10 Broad St
Utica, NY 13501
(315) 793-8111

Hon. Robert E. Littlefield, Jr.
U.S. Bankruptcy Court
James T. Foley U.S. Courthouse
445 Broadway, Suite 327
Albany, NY 12207-2965
(518) 257-1661

Southern

Hon. Prudence Carter Beatty
U.S. Bankruptcy Court
Alexander Hamilton Custom
House, 7th Floor
One Bowling Green
New York, NY 10004-1408
(212) 668-5637

Hon. Stuart M. Bernstein
Chief Judge
U.S. Bankruptcy Court
Alexander Hamilton Custom
House, 7th Floor
One Bowling Green
New York, NY 10004-1408
(212) 668-2304

Hon. Robert D. Drain
U.S. Bankruptcy Court
Alexander Hamilton Custom
House, 6th Floor
One Bowling Green
New York, NY 10004-1408
(212) 668-2301

Hon. Robert E. Gerber
U.S. Bankruptcy Court
Alexander Hamilton Custom
House, 6th Floor
One Bowling Green
New York, NY 10004-1408
(212) 668-5660

Hon. Arthur J. Gonzalez
U.S. Bankruptcy Court
Alexander Hamilton Custom
House, 5th Floor
One Bowling Green
New York, NY 10004-1408
(212) 668-2894

Hon. Allan L. Gropper
U.S. Bankruptcy Court
Alexander Hamilton Custom
House, 5th Floor
One Bowling Green
New York, NY 10004-1408
(212) 668-5629

Hon. Adlai S. Hardin, Jr.
U.S. Bankruptcy Court
U.S. Courthouse
300 Quarropas St
White Plains, NY 10601
(914) 390-4155

Hon. Burton R. Lifland
U.S. Bankruptcy Court
Alexander Hamilton Custom
House, 6th Floor
One Bowling Green
New York, NY 10004-1408
(212) 668-5663

Hon. Cecelia G. Morris
U.S. Bankruptcy Court
176 Church St
Poughkeepsie, NY 12601
(845) 452-4200

Eastern

Hon. Stan Bernstein
U.S. Bankruptcy Court
Long Island Federal
Courthouse
290 Federal Plz
Central Islip, NY 11722
(631) 712-6200 x5740

Hon. Carla E. Craig
U.S. Bankruptcy Court
75 Clinton St
Brooklyn, NY 11201
(718) 330-2188 x225

Hon. Melanie L. Cyganowski
U.S. Bankruptcy Court
Long Island Federal
Courthouse
290 Federal Plz
Central Islip, NY 11722
(631) 712-6200 x5680

Hon. Conrad B. Duberstein
Chief Judge
U.S. Bankruptcy Court
75 Clinton St
Brooklyn, NY 11201
(718) 330-2188 x270

Hon. Dorothy T. Eisenberg
U.S. Bankruptcy Court
Long Island Federal
Courthouse
290 Federal Plz
Central Islip, NY 11722
(631) 712-6200 x5690

Hon. Jerome Feller
U.S. Bankruptcy Court
75 Clinton St
Brooklyn, NY 11201
(718) 330-2188 x246

Hon. Dennis E. Milton
U.S. Bankruptcy Court
75 Clinton St
Brooklyn, NY 11201
(718) 330-2188 x309

Hon. Elizabeth S. Stong
U.S. Bankruptcy Court
75 Clinton St
Brooklyn, NY 11201
(718) 330-2188 x224

Western

Hon. Carl L. Bucki
U.S. Bankruptcy Court
Olympic Twrs
300 Pearl St, Suite 250
Buffalo, NY 14202
(716) 551-4207

Hon. Michael J. Kaplan
U.S. Bankruptcy Court
Olympic Twrs
300 Pearl St, Suite 250
Buffalo, NY 14202
(716) 551-4208

Hon. John Charles Ninfo, II
Chief Judge
U.S. Bankruptcy Court
1220 U.S. Courthouse
100 State St
Rochester, NY 14614
(585) 613-4200

**NORTH CAROLINA
4th Circuit**

Eastern

Hon. J. Rich Leonard
Chief Judge
U.S. Bankruptcy Court
PO Box 2807
Wilson, NC 27894-2807
(252) 237-0248

Hon. A. Thomas Small
U.S. Bankruptcy Court
PO Box 1441
Raleigh, NC 27602-1441
(919) 856-4752

Middle

Hon. Catharine R. Carruthers
U.S. Bankruptcy Court
PO Box 4798
Winston Salem, NC 27115
(336) 631-5351

Hon. William L. Stocks
Chief Judge
U.S. Bankruptcy Court
PO Box 26100
Greensboro, NC 27420-6100
(336) 333-5080

Hon. Thomas W. Waldrep, Jr.
U.S. Bankruptcy Court
PO Box 26100
Greensboro, NC 27420-6100
(336) 333-5029

Hon. James B. Wolfe, Jr.
Recalled Judge
U.S. Bankruptcy Court
PO Box 26100
Greensboro, NC 27420-6100
(336) 333-5729

Western

Hon. George R. Hodges
Chief Judge
U.S. Bankruptcy Court
PO Box 34189
Charlotte, NC 28234
(704) 350-7575

Hon. J. Craig Whitley
U.S. Bankruptcy Court
PO Box 34189
Charlotte, NC 28234
(704) 350-7575

Hon. Marvin R. Wooten
Recalled Judge
U.S. Bankruptcy Court
PO Box 34189
Charlotte, NC 28234
(704) 350-7575

**NORTH DAKOTA
8th Circuit**

Hon. William A. Hill
Chief Judge
U.S. Bankruptcy Court
Quentin N. Burdick
U.S. Courthouse
655 First Ave N, Suite 350
Fargo, ND 58102
(701) 297-7140

**OHIO
6th Circuit**

Northern

Hon. Randolph Baxter
Chief Judge
U.S. Bankruptcy Court
Howard Metzenbaum
U.S. Courthouse
201 Superior Ave
Cleveland, OH 44114
(216) 615-4300

Hon. Arthur I. Harris
U.S. Bankruptcy Court
Howard Metzenbaum
U.S. Courthouse
201 Superior Ave
Cleveland, OH 44114
(216) 615-4300

Hon. Russ Kendig
U.S. Bankruptcy Court
Frank T. Bow Federal Bldg
201 Cleveland Ave SW
Canton, OH 44702
(330) 489-4430

**Hon. Pat E. Morgenstern-
Clarren**
U.S. Bankruptcy Court
Howard Metzenbaum
U.S. Courthouse
201 Superior Ave
Cleveland, OH 44114
(216) 615-4300

Hon. Marilyn Shea-Stonum
U.S. Bankruptcy Court
U.S. Courthouse & Federal Bldg
2 S Main St, Suite 240
Akron, OH 44308
(330) 375-5780

Hon. Richard L. Speer
U.S. Bankruptcy Court
U.S. Courthouse
1716 Spielbusch Ave, Suite 113
Toledo, OH 43624
(419) 259-7559

Hon. Mary Ann Whipple
U.S. Bankruptcy Court
U.S. Courthouse
1716 Spielbusch Ave, Suite 111
Toledo, OH 43624
(419) 259-6327

Hon. Kay Woods
U.S. Bankruptcy Court
10 E Commerce St
Youngstown, OH 44503-1621
(330) 746-7027

Southern

Hon. J. Vincent Aug, Jr.
U.S. Bankruptcy Court
221 E Fourth St
Atrium Two, Suite 800
Cincinnati, OH 45202
(513) 684-2572 x132

Hon. Charles M. Caldwell
U.S. Bankruptcy Court
170 N High St
Columbus, OH 43215
(614) 469-6638 x260

Hon. Donald E. Calhoun, Jr.
U.S. Bankruptcy Court
170 N High St
Columbus, OH 43215
(614) 469-6638 x240

Hon. William A. Clark
U.S. Bankruptcy Court
120 W Third St
Dayton, OH 45402
(937) 225-2516 x301

Hon. John E. Hoffman, Jr.
U.S. Bankruptcy Court
170 N High St
Columbus, OH 43215
(614) 469-6638 x282

Hon. Jeffery P. Hopkins
U.S. Bankruptcy Court
221 E Fourth St
Atrium Two, Suite 800
Cincinnati, OH 45202
(513) 684-2572 x146

Hon. Burton Perlman
U.S. Bankruptcy Court
221 E Fourth St
Atrium Two, Suite 800
Cincinnati, OH 45202
(513) 684-2572 x131

Hon. Barbara J. Sellers
U.S. Bankruptcy Court
170 N High St
Columbus, OH 43215
(614) 469-6638 x250

Hon. Thomas F. Waldron
Chief Judge
U.S. Bankruptcy Court
120 W Third St
Dayton, OH 45402
(937) 225-2516 x338

Hon. Lawrence S. Walter
U.S. Bankruptcy Court
120 W Third St
Dayton, OH 45402
(937) 225-2516 x307

**OKLAHOMA
10th Circuit**

Northern

Hon. Terrence L. Michael
U.S. Bankruptcy Court
Federal Bldg
224 S Boulder Ave, Suite 105
Tulsa, OK 74103
(918) 699-4065

Hon. Dana L. Rasure
U.S. Bankruptcy Court
Federal Bldg
224 S Boulder Ave, Suite 122
Tulsa, OK 74103
(918) 699-4085

Eastern

Hon. Tom R. Cornish
Chief Judge
U.S. Bankruptcy Court
PO Box 1347
Okmulgee, OK 74447
(918) 758-0366

Western

Hon. Richard L. Bohanon
U.S. Bankruptcy Court
Old Post Office Bldg
215 Dean A. McGee Ave,
9th Floor
Oklahoma City, OK 73102
(405) 609-5660

Hon. Niles L. Jackson
U.S. Bankruptcy Court
Old Post Office Bldg
215 Dean A. McGee Ave,
2nd Floor
Oklahoma City, OK 73102
(405) 609-5678

Hon. Thomas M. Weaver
U.S. Bankruptcy Court
Old Post Office Bldg
215 Dean A. McGee Ave,
6th Floor
Oklahoma City, OK 73102
(405) 609-5610

OREGON
9th Circuit

Hon. Frank R. Alley, III
U.S. Bankruptcy Court
151 W Seventh Ave, Suite 300
Eugene, OR 97401
(541) 465-6767

Hon. Trish M. Brown
U.S. Bankruptcy Court
1001 SW Fifth Ave, Room 700
Portland, OR 97204
(503) 326-4961

Hon. Randall L. Dunn
U.S. Bankruptcy Court
1001 SW Fifth Ave, Room 700
Portland, OR 97204
(503) 326-4175

Hon. Elizabeth L. Perris
U.S. Bankruptcy Court
1001 SW Fifth Ave, Room 700
Portland, OR 97204
(503) 326-4173

Hon. Albert E. Radcliffe
Chief Judge
U.S. Bankruptcy Court
151 W Seventh Ave, Suite 300
Eugene, OR 97401
(541) 465-6802

PENNSYLVANIA
3rd Circuit

Eastern

Hon. Kevin J. Carey
U.S. Bankruptcy Court
Nix Federal Bldg
900 Market St, Suite 201
Philadelphia, PA 19107
(215) 408-2970

Hon. Bruce I. Fox
U.S. Bankruptcy Court
Nix Federal Bldg
900 Market St, Suite 202
Philadelphia, PA 19107
(215) 408-2974

Hon. Stephen Raslavich
U.S. Bankruptcy Court
Nix Federal Bldg
900 Market St, Suite 204
Philadelphia, PA 19107
(215) 408-2982

Hon. Diane W. Sigmund
Chief Judge
U.S. Bankruptcy Court
Nix Federal Bldg
900 Market St, Suite 203
Philadelphia, PA 19107
(215) 408-2978

Hon. Thomas M. Twardowski
U.S. Bankruptcy Court
Madison Bldg
400 Washington St, Suite 301
Reading, PA 19601
(610) 320-5093

Middle

Hon. Mary D. France
U.S. Bankruptcy Court
PO Box 908
Harrisburg, PA 17108
(717) 901-2840

Hon. John J. Thomas
Chief Judge
U.S. Bankruptcy Court
274 Max Rosen U.S. Courthouse
197 S Main St
Wilkes Barre, PA 18701
(570) 826-6336

Western

Hon. Thomas P. Agresti
U.S. Bankruptcy Court
5430 U.S. Steel Twr
600 Grant St
Pittsburgh, PA 15219
(412) 644-4060 x120

Hon. Warren W. Bentz
U.S. Bankruptcy Court
17 S Park Row
Erie, PA 16501
(814) 464-9780

Hon. Judith K. Fitzgerald
U.S. Bankruptcy Court
5490 U.S. Steel Twr
600 Grant St
Pittsburgh, PA 15219
(412) 644-3541

Hon. Bernard Markovitz
U.S. Bankruptcy Court
5454 U.S. Steel Twr
600 Grant St
Pittsburgh, PA 15219
(412) 644-4533

Hon. M. Bruce McCullough
Chief Judge
U.S. Bankruptcy Court
5464 U.S. Steel Twr
600 Grant St
Pittsburgh, PA 15219
(412) 644-4329

PUERTO RICO
1st Circuit

Hon. Gerardo A. Carlo
Chief Judge
U.S. Bankruptcy Court
U.S. Courthouse
& Post Office Bldg
300 Recinto Sur St, Suite 245
San Juan, PR 00901
(787) 977-6040

Hon. Sara E. De Jesus
U.S. Bankruptcy Court
U.S. Courthouse
& Post Office Bldg
300 Recinto Sur St, Suite 238
San Juan, PR 00901
(787) 977-6020

Hon. Enrique S. Lamoutte
U.S. Bankruptcy Court
U.S. Courthouse
& Post Office Bldg
300 Recinto Sur St, Suite 251
San Juan, PR 00901
(787) 977-6030

RHODE ISLAND
1st Circuit

Hon. Arthur N. Votolato, Jr.
U.S. Bankruptcy Court
The Federal Ctr
Suite 615
380 Westminster St, 6th Floor
Providence, RI 02903
(401) 528-4487

SOUTH CAROLINA
4th Circuit

Hon. Wm. Thurmond Bishop
Chief Judge
U.S. Bankruptcy Court
J. Bratton Davis
U.S. Bankruptcy Courthouse
1100 Laurel St
Columbia, SC 29201
(803) 765-5850

Hon. John E. Waites
U.S. Bankruptcy Court
J. Bratton Davis
U.S. Bankruptcy Courthouse
1100 Laurel St
Columbia, SC 29201
(803) 253-3030

SOUTH DAKOTA
8th Circuit

Hon. Irvin N. Hoyt
Chief Judge
U.S. Bankruptcy Court
Federal Bldg & Courthouse
225 S Pierre St, Suite 211
Pierre, SD 57501
(605) 224-0560

TENNESSEE
6th Circuit

Eastern

Hon. John C. Cook
Chief Judge
U.S. Bankruptcy Court
Historic U.S. Courthouse
31 E 11th St
Chattanooga, TN 37402
(423) 752-5260

Hon. Marcia P. Parsons
U.S. Bankruptcy Court
U.S. Courthouse
220 W Depot St, Suite 321
Greenville, TN 37743-4924
(423) 638-2264

Hon. Richard S. Stair, Jr.
U.S. Bankruptcy Court
Howard H. Baker, Jr.
U.S. Courthouse
800 Market St, Suite 330
Knoxville, TN 37902
(865) 545-4284

Hon. R. Thomas Stinnett
U.S. Bankruptcy Court
Historic U.S. Courthouse
31 E 11th St
Chattanooga, TN 37402
(423) 752-5104

Middle

Hon. Marian F. Harrison
U.S. Bankruptcy Court
Customs House
701 Broadway, Suite 232
Nashville, TN 37203
(615) 736-5589

Hon. Keith M. Lundin
U.S. Bankruptcy Court
Customs House
701 Broadway, Suite 260
Nashville, TN 37203
(615) 736-5586

Hon. George C. Paine, II
Chief Judge
U.S. Bankruptcy Court
Customs House
701 Broadway, Suite 218
Nashville, TN 37203
(615) 736-5587

Western

Hon. G. Harvey Boswell
U.S. Bankruptcy Court
111 S Highland Ave, Room 107
Jackson, TN 38301
(731) 421-9300

Hon. William H. Brown
U.S. Bankruptcy Court
One Memphis Pl
200 Jefferson Ave, Suite 675
Memphis, TN 38103
(901) 328-3532

Hon. David S. Kennedy
Chief Judge
U.S. Bankruptcy Court
One Memphis Pl
200 Jefferson Ave, Suite 950
Memphis, TN 38103
(901) 328-3522

Hon. Jennie Latta
U.S. Bankruptcy Court
One Memphis Pl
200 Jefferson Ave, Suite 650
Memphis, TN 38103
(901) 328-3542

TEXAS **5th Circuit**

Northern

Hon. Steven A. Felsenthal
Chief Judge
U.S. Bankruptcy Court
1254 Earle Cabell Federal Bldg
& U.S. Courthouse
1100 Commerce St
Dallas, TX 75242-1496
(214) 753-2040

Hon. Harlin D. Hale
U.S. Bankruptcy Court
1254 Earle Cabell Federal Bldg
& U.S. Courthouse
1100 Commerce St
Dallas, TX 75242-1496
(214) 753-2016

Hon. Barbara J. Houser
U.S. Bankruptcy Court
1254 Earle Cabell Federal Bldg
& U.S. Courthouse
1100 Commerce St
Dallas, TX 75242-1496
(214) 753-2055

Hon. Robert L. Jones
U.S. Bankruptcy Court
George H. Mahon
Federal Bldg
1205 Texas Ave, Room 312
Lubbock, TX 79401
(806) 472-5020

Hon. Dennis Michael Lynn
U.S. Bankruptcy Court
U.S. Courthouse
501 W Tenth St, Room 128
Fort Worth, TX 76102
(817) 333-6020

Hon. Russell F. Nelms
Recalled Judge
U.S. Bankruptcy Court
U.S. Courthouse
501 W Tenth St, Room 206
Fort Worth, TX 76102
(817) 333-6025

Southern

Hon. Jeff Boehm
U.S. Bankruptcy Court
Bob Casey U.S. Courthouse
515 Rusk Ave
Houston, TX 77002
(713) 250-5470

Hon. Letitia Z. Clark
U.S. Bankruptcy Court
Bob Casey U.S. Courthouse
515 Rusk Ave
Houston, TX 77002
(713) 250-5410

Hon. Marvin Isgur
U.S. Bankruptcy Court
Bob Casey U.S. Courthouse
515 Rusk Ave
Houston, TX 77002
(713) 250-5421

Hon. Richard S. Schmidt
U.S. Bankruptcy Court
1133 N Shoreline Blvd
Corpus Christi, TX 78401
(361) 888-3484

Hon. Wesley W. Steen
U.S. Bankruptcy Court
Bob Casey U.S. Courthouse
515 Rusk Ave
Houston, TX 77002
(713) 250-5779

Eastern

Hon. Bill G. Parker
Chief Judge
U.S. Bankruptcy Court
110 N College Ave, 9th Floor
Tyler, TX 75702
(903) 590-3240

Hon. Brenda T. Rhoades
U.S. Bankruptcy Court
660 N Central Expwy, Suite
300B
Plano, TX 75074
(972) 509-1240

Western

Hon. Leif M. Clark
U.S. Bankruptcy Court
U.S. Courthouse
615 E Houston St, Suite 383
PO Box 1439
San Antonio, TX 78295-1439
(210) 472-5181

Hon. Larry E. Kelly
Chief Judge
U.S. Bankruptcy Court
Homer J. Thornberry
Judicial Bldg
903 San Jacinto Blvd, Suite 332
Austin, TX 78701
(512) 916-5875

Hon. Ronald B. King
U.S. Bankruptcy Court
U.S. Courthouse
615 E Houston St, Suite 505
PO Box 1439
San Antonio, TX 78295-1439
(210) 472-6609

Hon. Frank R. Monroe
U.S. Bankruptcy Court
Homer J. Thornberry
Judicial Bldg
903 San Jacinto Blvd, Suite 326
Austin, TX 78701
(512) 916-5800

UTAH **10th Circuit**

Hon. Judith A. Boulden
U.S. Bankruptcy Court
Frank E. Moss U.S. Courthouse
350 S Main St, Suite 330
Salt Lake City, UT 84101
(801) 524-5749

Hon. Glen E. Clark
Chief Judge
U.S. Bankruptcy Court
Frank E. Moss U.S. Courthouse
350 S Main St, Suite 365
Salt Lake City, UT 84101
(801) 524-6549

Hon. William T. Thurman
U.S. Bankruptcy Court
Frank E. Moss U.S. Courthouse
350 South Main St, Suite 358
Salt Lake City, UT 84101
(801) 524-6572

VERMONT
2nd Circuit

Hon. Colleen A. Brown
U.S. Bankruptcy Court
PO Box 575
Rutland, VT 05702-6648
(802) 770-5806

VIRGINIA
4th Circuit

Eastern

Hon. David H. Adams
U.S. Bankruptcy Court
Walter E. Hoffman
U.S. Courthouse
600 Granby St, 4th Floor
Norfolk, VA 23510
(757) 776-2030

Hon. Robert G. Mayer
U.S. Bankruptcy Court
Martin V.B. Bostetter, Jr.
U.S. Courthouse
200 S Washington St
Alexandria, VA 22314
(703) 258-1280

Hon. Stephen S. Mitchell
U.S. Bankruptcy Court
Martin V.B. Bostetter, Jr.
U.S. Courthouse
200 S Washington St
Alexandria, VA 22314
(703) 258-1240

Hon. Stephen C. St. John
U.S. Bankruptcy Court
Walter E. Hoffman
U.S. Courthouse
600 Granby St, 4th Floor
Norfolk, VA 23510
(757) 222-7480

Hon. Douglas O. Tice, Jr.
Chief Judge
U.S. Bankruptcy Court
1100 E Main St, Suite 310
Richmond, VA 23219
(804) 916-2460

Western

Hon. William E. Anderson
U.S. Bankruptcy Court
PO Box 442
Lynchburg, VA 24505
(434) 846-3118

Hon. Ross W. Krumm
Chief Judge
U.S. Bankruptcy Court
PO Box 191
Harrisonburg, VA 22803
(540) 434-6747

Hon. William F. Stone, Jr.
U.S. Bankruptcy Court
PO Box 2389
Roanoke, VA 24010-2389
(540) 857-2394

WASHINGTON
9th Circuit

Eastern

Hon. John M. Klobucher
U.S. Bankruptcy Court
PO Box 2164
Spokane, WA 99210
(509) 353-2404

Hon. John A. Rossmeissl
U.S. Bankruptcy Court
The Tower Bldg, Suite 200
402 E Yakima Ave
Yakima, WA 98901
(509) 454-5660

Hon. Patricia C. Williams
U.S. Bankruptcy Court
PO Box 2164
Spokane, WA 99210
(509) 353-2404

Western

Hon. Philip H. Brandt
Chief Judge
U.S. Bankruptcy Court
1717 Pacific Ave, Suite 2100
Tacoma, WA 98402
(253) 593-6345

Hon. Thomas T. Glover
U.S. Bankruptcy Court
700 Stewart St, Suite 6301
Seattle, WA 98101
(206) 370-5310

Hon. Karen A. Overstreet
U.S. Bankruptcy Court
700 Stewart St, Suite 6301
Seattle, WA 98101
(206) 370-5330

Hon. Paul B. Snyder
U.S. Bankruptcy Court
1717 Pacific Ave, Suite 2100
Tacoma, WA 98402
(253) 593-6342

Hon. Samuel J. Steiner
U.S. Bankruptcy Court
700 Stewart St, Suite 6301
Seattle, WA 98101
(206) 370-5300

WEST VIRGINIA
4th Circuit

Northern

Hon. L. Edward Friend, II
U.S. Bankruptcy Court
PO Box 70
Wheeling, WV 26003
(304) 233-1655

Southern

Hon. Ronald G. Pearson
U.S. Bankruptcy Court
6408 Robert C. Byrd
U.S. Courthouse
300 Virginia St E
Charleston, WV 25301
(304) 347-3238

WISCONSIN
7th Circuit

Eastern

Hon. Susan V. Kelley
U.S. Bankruptcy Court
162 U.S. Courthouse
& Federal Bldg
517 E Wisconsin Ave
Milwaukee, WI 53202
(414) 297-3291

Hon. Margaret Dee McGarity
Chief Judge
U.S. Bankruptcy Court
162 U.S. Courthouse
& Federal Bldg
517 E Wisconsin Ave
Milwaukee, WI 53202
(414) 297-3291

Hon. James E. Shapiro
U.S. Bankruptcy Court
140 U.S. Courthouse
& Federal Bldg
517 E Wisconsin Ave
Milwaukee, WI 53202
(414) 297-3291

Western

Hon. Robert D. Martin
Chief Judge
U.S. Bankruptcy Court
PO Box 548
Madison, WI 53701-0548
(608) 264-5188

Hon. Thomas S. Utschig
U.S. Bankruptcy Court
PO Box 5009
Eau Claire, WI 54702-5009
(715) 839-2985

WYOMING
10th Circuit

Hon. Peter J. McNiff
U.S. Bankruptcy Court
Federal Bldg
2120 Capitol Ave, Suite 6004
Cheyenne, WY 82001
(307) 433-2250

XIII. United States Bankruptcy Clerks

ALABAMA **11th Circuit**

Northern

Eligah D. Clark
U.S. Bankruptcy Court
120 Robert S. Vance
Federal Bldg
1800 Fifth Ave N
Birmingham, AL 35203
(205) 714-4000

Middle

Richard S. Oda
U.S. Bankruptcy Court
PO Box 1248
Montgomery, AL 36102
(334) 954-3800

Southern

Geraldine S. Lester
U.S. Bankruptcy Court
201 Saint Louis St
Mobile, AL 36602
(251) 441-5391

ALASKA **9th Circuit**

Wayne W. Wolfe
U.S. Bankruptcy Court
605 W Fourth Ave, Suite 138
Anchorage, AK 99501-2296
(907) 271-2655

ARIZONA **9th Circuit**

Terrence S. Miller
U.S. Bankruptcy Court
230 First Ave, Suite 101
Phoenix, AZ 85003
(602) 682-4000

ARKANSAS **8th Circuit**

Jean Rolfs
U.S. Bankruptcy Court
PO Box 3777
Little Rock, AR 72203-3777
(501) 918-5500

CALIFORNIA **9th Circuit**

Northern

Gloria Franklin
U.S. Bankruptcy Court
PO Box 7341
San Francisco, CA 94120
(415) 268-2340

Central

Jon D. Ceretto
U.S. Bankruptcy Court
1260 Edward R. Roybal
Federal Bldg & Courthouse
255 E Temple St
Los Angeles, CA 90012
(213) 894-6046

Eastern

Richard G. Heltzel
U.S. Bankruptcy Court
3-200 U.S. Courthouse
501 'I' St
Sacramento, CA 95814
(916) 930-4400

Southern

Barry K. Lander
U.S. Bankruptcy Court
Jacob Weinberger
U.S. Courthouse
325 W 'F' St
San Diego, CA 92101-6991
(619) 557-6582

COLORADO **10th Circuit**

Bradford L. Bolton
U.S. Bankruptcy Court
U.S. Custom House
721 19th St
Denver, CO 80202-2508
(303) 844-4045

CONNECTICUT **2nd Circuit**

Deborah S. Hunt
U.S. Bankruptcy Court
157 Church St, 18th Floor
New Haven, CT 06510
(203) 773-2009

DELAWARE **3rd Circuit**

David Bird
U.S. Bankruptcy Court
Marine Midland Plz
824 Market St, 3rd Floor
Wilmington, DE 19801
(302) 252-2900

DISTRICT OF COLUMBIA **D.C. Circuit**

Denise H. Curtis
U.S. Bankruptcy Court
Room 4400
333 Constitution Ave NW
Washington, DC 20001
(202) 565-2520

FLORIDA **11th Circuit**

Northern

William Blevins
U.S. Bankruptcy Court
110 E Park Ave, Suite 100
Tallahassee, FL 32301
(850) 521-5001

Middle

David K. Oliveria
U.S. Bankruptcy Court
Sam M. Gibbons
U.S. Courthouse
801 N Florida Ave, Suite 727
Tampa, FL 33602
(813) 301-5050

Southern

Karen Eddy
U.S. Bankruptcy Court
Room 1517
Claude Pepper Federal Bldg
51 SW First Ave
Miami, FL 33130
(305) 714-1800

GEORGIA **11th Circuit** *Northern*

W. Yvonne Evans
U.S. Bankruptcy Court
Richard B. Russell Federal Bldg
& U.S. Courthouse, Suite 1340
75 Spring St SW
Atlanta, GA 30303-3367
(404) 215-1000

Middle

William E. Tanner
U.S. Bankruptcy Court
PO Box 1957
Macon, GA 31202
(478) 752-3506 x3321

Southern

Lucinda B. Rauback
Acting Clerk
U.S. Bankruptcy Court
PO Box 8347
Savannah, GA 31412
(912) 650-4100

GUAM **9th Circuit**

Mary Moran
U.S. Bankruptcy Court
U.S. Courthouse, 4th Floor
520 W Soledad Ave
Hagatna, Guam 96910
(671) 473-9100

HAWAII **9th Circuit**

Mark Van Allsburg
U.S. Bankruptcy Court
1132 Bishop St, Suite 250L
Honolulu, HI 96813
(808) 522-8100 x116

IDAHO
9th Circuit

Cameron S. Burke
U.S. Bankruptcy Court
550 W Fort St
Boise, ID 83724
(208) 334-1074

ILLINOIS
7th Circuit

Northern

Kenneth Gardner
U.S. Bankruptcy Court
Everett McKinley Dirksen
U.S. Courthouse
219 S Dearborn St
Chicago, IL 60604
(312) 435-5694

Central

Hardin W. Hawes
U.S. Bankruptcy Court
Paul Findley Federal Bldg
Suite 226
600 E Monroe St
Springfield, IL 62701-1626
(217) 492-4551

Southern

Wayne A. Bannert
U.S. Bankruptcy Court
Melvin Price Federal Courthouse
750 Missouri Ave
East Saint Louis, IL 62201
(618) 482-9400

INDIANA
7th Circuit

Northern

Christopher M. DeToro
U.S. Bankruptcy Court
Northern District of Indiana
PO Box 7003
South Bend, IN 46634-7003
(574) 968-2100

Southern

John A. O'Neal
U.S. Bankruptcy Court
116 U.S. Courthouse
46 E Ohio St
Indianapolis, IN 46204
(317) 229-3800

IOWA
8th Circuit

Southern

Mary M. Weibel
U.S. Bankruptcy Court
PO Box 9264
Des Moines, IA 50306-9264
(515) 284-6230

Northern

Sean F. McAvoy
U.S. Bankruptcy Court
Northern District of Iowa
PO Box 74890
Cedar Rapids, IA 52407
(319) 286-2200

KANSAS
10th Circuit

Fred W. Jamison
U.S. Bankruptcy Court
167 U.S. Courthouse
401 N Market St
Wichita, KS 67202
(316) 269-6486

KENTUCKY
6th Circuit

Eastern

Leslie G. Whitmer
U.S. Bankruptcy Court
101 Barr St, Room 206
PO Box 3074
Lexington, KY 40588-3074
(859) 233-2503

Western

Diane S. Robi
U.S. Bankruptcy Court
601 W Broadway, Suite 450
Louisville, KY 40202
(502) 627-5700

LOUISIANA
5th Circuit

Eastern

Marla Hamilton
U.S. Bankruptcy Court
Hale Boggs Federal Bldg
Suite B-601
500 Poydras St
New Orleans, LA 70130
(504) 589-7878
Middle

Monica M. Menier
U.S. Bankruptcy Court
707 Florida St, Room 119
Baton Rouge, LA 70801
(225) 389-0211

Western

J. Barry Dunford
U.S. Bankruptcy Court
300 Fannin St, Suite 2201
Shreveport, LA 71101
(318) 676-4267

MAINE
1st Circuit

Celia E. Strickler
U.S. Bankruptcy Court
537 Congress St, 2nd Floor
Portland, ME 04101
(207) 780-3482

MARYLAND
4th Circuit

Mark Sammons
U.S. Bankruptcy Court
Edward A. Garmatz Federal Bldg
& U.S. Courthouse, Suite B-601
101 W Lombard St, Suite 8308
Baltimore, MD 21201
(410) 962-2688

MASSACHUSETTS
1st Circuit

James M. Lynch
U.S. Bankruptcy Court
1101 Thomas P. O'Neill, Jr.
Federal Bldg
10 Causeway St
Boston, MA 02222-1074
(617) 565-8950

MICHIGAN
6th Circuit

Eastern

Sheila M. Tighe
U.S. Bankruptcy Court
211 W Fort St, Suite 2100
Detroit, MI 48226
(313) 234-0068

Western

Daniel M. LaVille
U.S. Bankruptcy Court
PO Box 3310
Grand Rapids, MI 49501
(616) 456-2693

MINNESOTA
8th Circuit

Lori Vosejпка
U.S. Bankruptcy Court
301 U.S. Courthouse
300 S Fourth St
Minneapolis, MN 55415
(612) 664-5200

MISSISSIPPI
5th Circuit

Northern

Joseph E. Wroten
U.S. Bankruptcy Court
PO Box 867
Aberdeen, MS 39730
(662) 369-2596

Southern

Charlene J. Kennedy
U.S. Bankruptcy Court
100 E Capitol St
Jackson, MS 39201
(601) 965-5301

MISSOURI
8th Circuit

Eastern

Dana McWay
U.S. Bankruptcy Court
Thomas F. Eagleton
U.S. Courthouse
111 S Tenth St, 4th Floor
Saint Louis, MO 63102
(314) 244-4500

Western

Patricia Brune
U.S. Bankruptcy Court
Charles Evans Whittaker U.S.
Courthouse
400 E Ninth St
Kansas City, MO 64106
(816) 512-5000

MONTANA
9th Circuit

Bernard F. McCarthy
U.S. Bankruptcy Court
303 Federal Bldg
400 N Main St
Butte, MT 59701
(406) 497-1243

NEBRASKA
8th Circuit

Diane Zech
U.S. Bankruptcy Court
Roman L. Hruska
U.S. Courthouse, Suite 1125
111 S 18th Plz
Omaha, NE 68102-1321
(402) 661-7444

NEVADA
9th Circuit

Patricia Gray
U.S. Bankruptcy Court
Foley Federal Bldg
300 Las Vegas Blvd S
Las Vegas, NV 89101
(702) 388-6719

NEW HAMPSHIRE
1st Circuit

George A. Vannah
U.S. Bankruptcy Court
1000 Elm St, Suite 1001
Manchester, NH 03101-1708
(603) 222-2600

NEW JERSEY
3rd Circuit

James J. Waldron
U.S. Bankruptcy Court
PO Box 1352
Newark, NJ 07101
(973) 645-4764

NEW MEXICO
10th Circuit

Norman Meyer
U.S. Bankruptcy Court
PO Box 546
Albuquerque, NM 87103
(505) 348-2500

NEW YORK
2nd Circuit

Northern

Richard G. Zeh, Sr.
U.S. Bankruptcy Court
James T. Foley
U.S. Courthouse, Suite 327
445 Broadway
Albany, NY 12207
(518) 257-1661

Eastern

Joseph P. Hurley
U.S. Bankruptcy Court
75 Clinton St
Brooklyn, NY 11201
(718) 330-2188

Southern

Kathleen Farrell-Willoughby
U.S. Bankruptcy Court
Alexander Hamilton Custom
House, 6th Floor
One Bowling Green
New York, NY 10004-1408
(212) 668-2870

Western

Paul R. Warren
U.S. Bankruptcy Court
Olympic Twrs, Suite 250
300 Pearl St
Buffalo, NY 14202
(716) 551-4130

NORTH CAROLINA
4th Circuit

Eastern

Peggy B. Deans
U.S. Bankruptcy Court
PO Box 2807
Wilson, NC 27894-2807
(252) 237-0248

Middle

William L. Schwenn
U.S. Bankruptcy Court
PO Box 26100
Greensboro, NC 27420
(336) 333-5647 x3101

Western

David E. Weich
U.S. Bankruptcy Court
PO Box 34189
Charlotte, NC 28234-4189
(704) 350-7500

NORTH DAKOTA
8th Circuit

Dianne G. Schmitz
U.S. Bankruptcy Court
Quentin N. Burdick
U.S. Courthouse, Suite 210
655 First Ave N
Fargo, ND 58102
(701) 297-7100

OHIO
6th Circuit

Northern

Kenneth J. Hirz
U.S. Bankruptcy Court
Howard Metzenbaum
U.S. Courthouse
201 Superior Ave
Cleveland, OH 44114
(216) 615-4300

Southern

Michael D. Webb
U.S. Bankruptcy Court
120 W Third St
Dayton, OH 45402
(937) 225-2516

OKLAHOMA
10th Circuit

Northern

Michael L. Williams
U.S. Bankruptcy Court
105 Tulsa Federal Bldg
224 S Boulder Ave
Tulsa, OK 74103
(918) 699-4000

Eastern

Therese Buthod
U.S. Bankruptcy Court
PO Box 1347
Okmulgee, OK 74447
(918) 758-0126
Western

Grant E. Price
U.S. Bankruptcy Court
Old Post Office Bldg
215 Dean A. McGee Ave
Oklahoma City, OK 73102
(405) 609-5700

OREGON
9th Circuit

Terence H. Dunn
U.S. Bankruptcy Court
1001 SW Fifth Ave, Suite 700
Portland, OR 97204
(503) 326-2231

PENNSYLVANIA
3rd Circuit

Eastern

Walter C. Stoertz, Jr.
Acting Clerk of Court
U.S. Bankruptcy Court
Suite 400
Robert N.C. Nix, Sr. Federal Bldg
900 Market St
Philadelphia, PA 19107
(215) 408-2800

Middle

Arlene Byers
U.S. Bankruptcy Court
PO Box 908
Harrisburg, PA 17108
(717) 901-2816

Western

Theodore S. Hopkins
U.S. Bankruptcy Court
5414 U.S. Steel Twr
600 Grant St
Pittsburgh, PA 15219
(412) 644-2700

PUERTO RICO**1st Circuit**

Celestino Matta-Mendez
U.S. Bankruptcy Court
U.S. Courthouse and
Post Office Bldg, Suite 109
300 Recinto Sur St
San Juan, PR 00901
(787) 977-6000

RHODE ISLAND**1st Circuit**

Susan Thurston
U.S. Bankruptcy Court
Suite 615
The Federal Ctr
380 Westminster St, 6th Floor
Providence, RI 02903
(401) 528-4477

SOUTH CAROLINA**4th Circuit**

Brenda K. Argoe
U.S. Bankruptcy Court
J. Bratton Davis U.S.
Courthouse
1100 Laurel St
Columbia, SC 29201
(803) 765-5436

SOUTH DAKOTA**8th Circuit**

Charles L. Nail, Jr.
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XV. Applicable Bankruptcy Statutes & Rules

Selected Provisions

11 U.S.C. §101: Some Bankruptcy Code Definitions

(5) The term “claim” means—

- (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
- (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

(7) The term “community claim” means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case;

(14A) The term ‘domestic support obligation’ means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

- (i) a spouse, former spouse, or child of the debtor or such child’s parent, legal guardian, or responsible relative; or
- (ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child’s parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

- (i) a separation agreement, divorce decree, or property settlement agreement;
- (ii) an order of a court of record; or
- (iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child’s parent, legal guardian, or responsible relative for the purpose of collecting the debt.

(15) The term “entity” includes person, estate, trust, governmental unit, and United States Trustee.

(18) The term “family farmer” means—

- (A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed \$3,237,000 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming oper-

ation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—

(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding;

the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed \$3,237,000 and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded.

(19) The term “family farmer with regular annual income” means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.

(27) The term “governmental unit” means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States Trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

(53) The term “statutory lien” means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.

(54) The term ‘transfer’ means—

(A) the creation of a lien;

(B) the retention of title as a security interest;

(C) the foreclosure of a debtor's equity of redemption; or

(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

(i) property; or

(ii) an interest in property.

11 U.S.C. §105: Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall

be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest,

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

11 U.S.C. §108: Extension of time

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or

loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2) 60 days after the order for relief.

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

§ 305: Abstention

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

- (1) the interests of creditors and the debtor would be better served by such dismissal or suspension; or
- (2) (A) a petition under section 1515 for recognition of a foreign proceeding has been granted; and
(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.

(b) A foreign representative may seek dismissal or suspension under subsection (a)(2) of this section.

(c) An order under subsection (a) of this section dismissing a case or suspending all proceedings in a case, or a decision not so to dismiss or suspend, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of title 28 or by the Supreme Court of the United States under section 1254 of title 28.

§ 341: Meetings of creditors and equity security holders

(a) Within a reasonable time after the order for relief in a case under this title, the U.S. Trustee shall convene and preside at a meeting of creditors.

(b) The United States Trustee may convene a meeting of any equity security holders.

(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors. Notwithstanding any local court rule, provision of a State constitution, any otherwise applicable nonbankruptcy law, or any other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or

13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.

(d) Prior to the conclusion of the meeting of creditors or equity security holders, the trustee shall orally examine the debtor to ensure that the debtor in a case under chapter 7 of this title is aware of—

- (1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history;
- (2) the debtor's ability to file a petition under a different chapter of this title;
- (3) the effect of receiving a discharge of debts under this title; and
- (4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d) of this title.

(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States Trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.

§ 362: Automatic stay [a - g only]

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
- (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

- (1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;
- (2) under subsection (a)—
 - (A) of the commencement or continuation of a civil action or proceeding—
 - (i) for the establishment of paternity;
 - (ii) for the establishment or modification of an order for domestic support obligations;
 - (iii) concerning child custody or visitation;
 - (iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or
 - (v) regarding domestic violence;
 - (B) of the collection of a domestic support obligation from property that is not property of the estate;
 - (C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;
 - (D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;
 - (E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;
 - (F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or
 - (G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;
- (3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;
- (4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;
- (5) Repealed. Pub. L. 105-277, div. I, title VI, Sec. 603(1), Oct. 21, 1998, 112 Stat. 2681-866;
- (6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761 of this title, forward contracts, or securities contracts, as defined in section 741 of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, arising out of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by, pledged to, under the control of or due from such commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing

agency to margin, guarantee, secure, or settle commodity contracts, forward contracts, or securities contracts;

(7) under subsection (a) of this section, of the setoff by a repo participant or financial participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, arising out of repurchase agreements against cash, securities, or other property held by, pledged to, under the control of or due from such repo participant or financial participant to margin, guarantee, secure or settle repurchase agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of—

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under section 207 or title XI of the Merchant Marine Act, 1936, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under section 207 or title XI of the Merchant Marine Act, 1936;

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a), of the setoff by a swap participant or financial participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant or financial participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, under the control of, or due from such swap participant or financial participant to margin, guarantee, secure, or settle any swap agreement;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title; but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preced

ing the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of—

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

(27) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and (28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under §707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4) (A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization; or

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

- (ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or
- (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either—
 - (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
 - (B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than two years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

- (e)
 - (1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.
 - (2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—
 - (A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or
 - (B) such 60-day period is extended—
 - (i) by agreement of all parties in interest; or
 - (ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

- (1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and
- (2) the party opposing such relief has the burden of proof on all other issues.

§ 523: Exceptions to discharge

(a) A discharge under §§727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

- (1) for a tax or a customs duty—
 - (A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;
 - (B) with respect to which a return, or equivalent report or notice, if required—
 - (i) was not filed or given; or
 - (ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or
 - (C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;
- (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—
 - (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;
 - (B) use of a statement in writing—
 - (i) that is materially false;
 - (ii) respecting the debtor's or an insider's financial condition;
 - (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
 - (iv) that the debtor caused to be made or published with intent to deceive; or
 - (C)
 - (i) for purposes of subparagraph (A)—
 - (I) consumer debts owed to a single creditor and aggregating more than \$500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and
 - (II) cash advances aggregating more than \$750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and
 - (ii) for purposes of this subparagraph—
 - (I) the terms 'consumer', 'credit', and 'open end credit plan' have the same meanings as in section 103 of the Truth in Lending Act; and
 - (II) the term 'luxury goods or services' does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.

- (3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—
- (A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or
 - (B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;
- (4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;
- (5) for a domestic support obligation;
- (6) for willful and malicious injury by the debtor to another entity or to the property of another entity;
- (7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty—
- (A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or
 - (B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;
- (8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—
- (A)
 - (i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
 - (ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
 - (B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;
- (9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;
- (10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;
- (11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;
- (12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;
- (13) for any payment of an order of restitution issued under title 18, United States Code;
- (14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);
- (14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

- (14B) incurred to pay fines or penalties imposed under Federal election law;
- (15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record or, a determination made in accordance with State or territorial law by a governmental unit;
- (16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a dwelling unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;
- (17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law);
- (18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—
- (A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or
 - (B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title; but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or
- (19) that—
- (A) is for—
 - (i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or
 - (ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and
 - (B) results, before, on, or after the date on which the petition was filed, from—
 - (i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;
 - (ii) any settlement agreement entered into by the debtor; or
 - (iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A of the Higher Education Act of 1965, or under section 733(g) of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c) (1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

§ 524: Effect of discharge [a - f only]

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from dis-

charge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

(b) Subsection (a)(3) of this section does not apply if—

- (1) (A) the debtor's spouse is a debtor in a case under this title, or a bankrupt or a debtor in a case under the Bankruptcy Act, commenced within six years of the date of the filing of the petition in the case concerning the debtor; and
(B) the court does not grant the debtor's spouse a discharge in such case concerning the debtor's spouse; or
- (2) (A) the court would not grant the debtor's spouse a discharge in a case under chapter 7 of this title concerning such spouse commenced on the date of the filing of the petition in the case concerning the debtor; and
(B) a determination that the court would not so grant such discharge is made by the bankruptcy court within the time and in the manner provided for a determination under §727 of this title of whether a debtor is granted a discharge.

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

- (1) such agreement was made before the granting of the discharge under §727, 1141, 1228, or 1328 of this title;
- (2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;
- (3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that—
 - (A) such agreement represents a fully informed and voluntary agreement by the debtor;
 - (B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and
 - (C) the attorney fully advised the debtor of the legal effect and consequences of—
 - (i) an agreement of the kind specified in this subsection; and
 - (ii) any default under such an agreement;
- (4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;
- (5) the provisions of subsection (d) of this section have been complied with; and
- (6) (A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—
 - (i) not imposing an undue hardship on the debtor or a dependent of the debtor; and
 - (ii) in the best interest of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1228, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section and was not represented by an attorney during the course of negotiating such agreement, then the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall—

(1) inform the debtor—

(A) that such an agreement is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of—

(i) an agreement of the kind specified in subsection (c) of this section; and

(ii) a default under such an agreement; and

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.

§547: Preferences

(a) In this section—

(1) “inventory” means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

(2) “new value” means money or money’s worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

(3) “receivable” means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.

(b) Except as provided in subsections (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

- (5) that enables such creditor to receive more than such creditor would receive if—
 - (A) the case were a case under chapter 7 of this title;
 - (B) the transfer had not been made; and
 - (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

(c) The trustee may not avoid under this section a transfer—

- (1) to the extent that such transfer was—
 - (A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and
 - (B) in fact a substantially contemporaneous exchange;
- (2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—
 - (A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or
 - (B) made according to ordinary business terms;
- (3) that creates a security interest in property acquired by the debtor—
 - (A) to the extent such security interest secures new value that was—
 - (i) given at or after the signing of a security agreement that contains a description of such property as collateral;
 - (ii) given by or on behalf of the secured party under such agreement;
 - (iii) given to enable the debtor to acquire such property; and
 - (iv) in fact used by the debtor to acquire such property; and
 - (B) that is perfected on or before 30 days after the debtor receives possession of such property;
- (4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor—
 - (A) not secured by an otherwise unavoidable security interest; and
 - (B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;
- (5) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of—
 - (A)
 - (i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or
 - (ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; or
 - (B) the date on which new value was first given under the security agreement creating such security interest;
- (6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title;
- (7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;
- (8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600; or
- (9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,000.

(d) The trustee may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the trustee or the amount paid to the trustee.

(e) (1) For the purposes of this section—

(A) a transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and

(B) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made—

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such 30 days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—

(i) the commencement of the case; or

(ii) 30 days after such transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the debtor has acquired rights in the property transferred.

(f) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a transfer under subsection (b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.

(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment schedule between the debtor and any creditor of the debtor created by an approved nonprofit budget and credit counseling agency.

(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.

§548: Fraudulent transfers and obligations

- (a) (1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—
- (A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
 - (B) (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
 - (ii) (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
 - (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or
 - (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
 - (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.
- (2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which—
- (A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or
 - (B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.
- (b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.
- (c) Except to the extent that a transfer or obligation voidable under this section is avoidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.
- (d) (1) For the purposes of this section, a transfer is made when such transfer is so perfected that a *bona fide* purchaser from the debtor against whom applicable law permits such transfer to be perfected can not acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

- (2) In this section—
- (A) “value” means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor;
 - (B) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment;
 - (C) a repo participant or financial participant that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment;
 - (D) a swap participant or financial participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer; and
 - (E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.
- (3) In this section, the term “charitable contribution” means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution—
- (A) is made by a natural person; and
 - (B) consists of—
 - (i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or
 - (ii) cash.
- (4) In this section, the term “qualified religious or charitable entity or organization” means—
- (A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or
 - (B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.
- (e) (1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—
- (A) such transfer was made to a self-settled trust or similar device;
 - (B) such transfer was by the debtor;
 - (C) the debtor is a beneficiary of such trust or similar device; and
 - (D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.
- (2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by—
- (A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or
 - (B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78l and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).

11 U.S.C. §550: Liability of transferee of avoided transfer

- (a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—
- (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
 - (2) any immediate or mediate transferee of such initial transferee.
- (b) The trustee may not recover under section (a)(2) of this section from—
- (1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or
 - (2) any immediate or mediate good faith transferee of such transferee.
- (c) If a transfer made between 90 days and one year before the filing of the petition—
- (1) is avoided under section 547(b) of this title; and
 - (2) was made for the benefit of a creditor that at the time of such transfer was an insider; the trustee may not recover under subsection (a) from a transferee that is not an insider.
- (d) The trustee is entitled to only a single satisfaction under subsection (a) of this section.
- (e)
- (1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of—
 - (A) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and
 - (B) any increase in the value of such property as a result of such improvement, of the property transferred.
 - (2) In this subsection, “improvement” includes—
 - (A) physical additions or changes to the property transferred;
 - (B) repairs to such property;
 - (C) payment of any tax on such property;
 - (D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and
 - (E) preservation of such property.
- (f) An action or proceeding under this section may not be commenced after the earlier of—
- (1) one year after the avoidance of the transfer on account of which recovery under this section is sought; or
 - (2) the time the case is closed or dismissed.

11 U.S.C. §554: Abandonment of property of the estate

- (a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
- (b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

11 U.S.C. §722: Redemption

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

§ 727: Discharge

- (a) The court shall grant the debtor a discharge, unless—
- (1) the debtor is not an individual;
 - (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—
 - (A) property of the debtor, within one year before the date of the filing of the petition; or
 - (B) property of the estate, after the date of the filing of the petition;
 - (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;
 - (4) the debtor knowingly and fraudulently, in or in connection with the case—
 - (A) made a false oath or account;
 - (B) presented or used a false claim;
 - (C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forbearing to act; or
 - (D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;
 - (5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;
 - (6) the debtor has refused, in the case—
 - (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;
 - (B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

- (C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;
- (7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;
- (8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition;
- (9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—
- (A) 100 percent of the allowed unsecured claims in such case; or
 - (B) (i) 70 percent of such claims; and (ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort;
- (10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter;
- (11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States Trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States Trustee or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.); or
- (12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—
- (A) section 522(q)(1) may be applicable to the debtor; and
 - (B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

- (c) (1) The trustee, a creditor, or the United States Trustee may object to the granting of a discharge under subsection (a) of this section.
- (2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.
- (d) On request of the trustee, a creditor, or the United States Trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

- (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;
 - (2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;
 - (3) the debtor committed an act specified in subsection (a)(6) of this section; or
 - (4) the debtor has failed to explain satisfactorily—
 - (A) a material misstatement in an audit referred to in section 586(f) of title 28; or
 - (B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.
- (e) The trustee, a creditor, or the United States Trustee may request a revocation of a discharge—
- (1) under subsection (d)(1) of this section within one year after such discharge is granted; or
 - (2) under subsection (d)(2) or (d)(3) of this section before the later of—
 - (A) one year after the granting of such discharge; and
 - (B) the date the case is closed.

§ 1121: Who may file a plan

- (a) The debtor may file a plan with a petition commencing a voluntary case, or at any time in a voluntary case or an involuntary case.
- (b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.
- (c) Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if—
- (1) a trustee has been appointed under this chapter;
 - (2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or
 - (3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.
- (d)
- (1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.
 - (2)
 - (A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.
 - (B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.
- (e) In a small business case—
- (1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—
 - (A) extended as provided by this subsection, after notice and a hearing; or
 - (B) the court, for cause, orders otherwise;

- (2) the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief; and
- (3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—
 - (A) the debtor, after providing notice to parties in interest (including the United States Trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;
 - (B) a new deadline is imposed at the time the extension is granted; and
 - (C) the order extending time is signed before the existing deadline has expired.

§ 1141: Effect of confirmation

- (a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.
- (b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.
- (c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.
- (d)
 - (1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—
 - (A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—
 - (i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;
 - (ii) such claim is allowed under section 502 of this title; or
 - (iii) the holder of such claim has accepted the plan; and
 - (B) terminates all rights and interests of equity security holders and general partners provided for by the plan.
 - (2) A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.
 - (3) The confirmation of a plan does not discharge a debtor if—
 - (A) the plan provides for the liquidation of all or substantially all of the property of the estate;
 - (B) the debtor does not engage in business after consummation of the plan; and
 - (C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.
 - (4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

- (5) In a case in which the debtor is an individual—
- (A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;
 - (B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—
 - (i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and
 - (ii) modification of the plan under section 1127 is not practicable; and
 - (C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—
 - (i) section 522(q)(1) may be applicable to the debtor; and
 - (ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).
- (6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—
- (A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or
 - (B) for a tax or customs duty with respect to which the debtor—
 - (i) made a fraudulent return; or
 - (ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

11 U.S.C. §1201: Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—

- (1) such individual became liable on or secured such debt in the ordinary course of such individual's business;
- or (2) the case is closed, dismissed, or converted to a case under chapter 7 of this title.

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

- (1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

- (2) the plan filed by the debtor proposes not to pay such claim; or

- (3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

§ 1227: Effect of confirmation

(a) Except as provided in section 1228(a) of this title, the provisions of a confirmed plan bind the debtor, each creditor, each equity security holder, and each general partner in the debtor, whether or not the claim of such creditor, such equity security holder, or such general partner in the debtor is provided for by the plan, and whether or not such creditor, such equity security holder, or such general partner in the debtor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in section 1228(a) of this title and except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

§1228: Discharge

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall

grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt— (1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or (2) of the kind specified in section 523(a) of this title.

(b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

- (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- (3) modification of the plan under section 1229 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

- (1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or
- (2) of a kind specified in section 523(a) of this title.

(d) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

- (1) such discharge was obtained by the debtor through fraud; and
- (2) the requesting party did not know of such fraud until after such discharge was granted.

(e) After the debtor is granted a discharge, the court shall terminate the services of any trustee serving in the case.

(f) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

- (1) section 522(q)(1) may be applicable to the debtor; and
- (2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

§ 1301: Stay of action against codebtor

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—

- (1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or
- (2) the case is closed, dismissed, or converted to a case under chapter 7 or 11 of this title.

(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

- (1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;
- (2) the plan filed by the debtor proposes not to pay such claim; or
- (3) such creditor's interest would be irreparably harmed by continuation of such stay.

(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

11 U.S.C. §1327: Effect of confirmation of Chapter 13 plan

(a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

§ 1328: Discharge

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

- (1) provided for under section 1322(b)(5);
- (2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);
- (3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or
- (4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

(b) Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

- (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
- (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
- (3) modification of the plan under section 1329 of this title is not practicable.

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

- (1) provided for under section 1322(b)(5) of this title; or
- (2) of a kind specified in section 523(a) of this title.

(d) Notwithstanding any other provision of this section, a discharge granted under this section does not discharge the debtor from any debt based on an allowed claim filed under section 1305(a)(2) of this title if prior approval by the trustee of the debtor's incurring such debt was practicable and was not obtained.

(e) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a hearing, the court may revoke such discharge only if—

- (1) such discharge was obtained by the debtor through fraud; and
- (2) the requesting party did not know of such fraud until after such discharge was granted.

(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

- (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or
- (2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.

(g) (1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

(2) Paragraph (1) shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States Trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States Trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

- (1) section 522(q)(1) may be applicable to the debtor; and
- (2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

28 U.S.C. § 157: Procedures

- (a) Each district court may provide that any or all cases under Title 11 and any or all proceedings arising under Title 11 or arising in or related to a case under Title 11 shall be referred to the bankruptcy judges for the district.
- (b) (1) Bankruptcy judges may hear and determine all cases under Title 11 and all core proceedings arising under Title 11, or arising in a case under Title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.
- (2) Core proceedings include, but are not limited to—
- (A) matters concerning the administration of the estate;
 - (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of Title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under Title 11;
 - (C) counterclaims by the estate against persons filing claims against the estate;
 - (D) orders in respect to obtaining credit;
 - (E) orders to turn over property of the estate;
 - (F) proceedings to determine, avoid, or recover preferences;
 - (G) motions to terminate, annul, or modify the automatic stay;
 - (H) proceedings to determine, avoid, or recover fraudulent conveyances;
 - (I) determinations as to the dischargeability of particular debts;
 - (J) objections to discharges;
 - (K) determinations of the validity, extent, or priority of liens;
 - (L) confirmations of plans;
 - (M) orders approving the use or lease of property, including the use of cash collateral;
 - (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;
 - (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and
 - (P) recognition of foreign proceedings and other matters under chapter 15 of Title 11.
- (3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under Title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.
- (4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).
- (5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.
- (c) (1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under Title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by

the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under Title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both Title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

28 U.S.C. § 1334: Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under Title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under Title 11, or arising in or related to cases under Title 11.

(c) (1) Except with respect to a case under chapter 15 of Title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under Title 11 or arising in or related to a case under Title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under Title 11 but not arising under Title 11 or arising in a case under Title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of Title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under Title 11 is commenced or is pending shall have exclusive jurisdiction—

- (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and
- (2) over all claims or causes of action that involve construction of section 327 of Title 11, United States Code, or rules relating to disclosure requirements under section 327.

28 U.S.C. §1452: Removal of claims related to bankruptcy cases

(a) A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

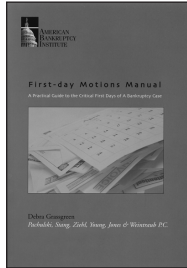
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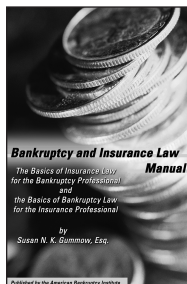
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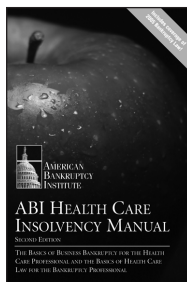
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