BANKRUPTCY IN THE FIFTH CIRCUIT AND BEYOND: CASE UPDATE 2018

***Authors and Contributors*: The Hon. Ronald B. King, Hannah L. Roblyer, Evan J. Atkinson, Debbie B. Langehennig, Brian T. Cumings, Deborah D. Williamson, Aaron M. Kaufman, Jane A. Gerber, William R. Greendyke, Genevieve M. Graham, and Julie Goodrich Harrison**

Case Index

<u>**BUSINESS MATERIALS**</u>

I. <u>ADMINISTRATIVE MATTERS</u>

A. JURISDICTION AND CONSTITUTIONAL AUTHORITY

Gupta v. Quincy Med. Ctr., 858 F.3d 657 (1st Cir. 2017).
During the bankruptcy case, the court approved an asset purchase agreement (APA) that required the purchaser to continue employment compensation and benefits for certain employees following the consummation of the sale. Notwithstanding this provision, on the date of closing, the purchaser notified the employees that it was terminating their employment and would not honor the provision of the APA governing continued compensation. The employees commenced litigation against the purchaser for breach of the APA. The First Circuit concluded that the lower courts lacked jurisdiction over the employees' claims. Specifically, the court found no "arising in" jurisdiction over the severance claims, even though the dispute arose from the court-approved APA and bankruptcy sale order. The court observed that the "[a]ppellants' claims look like ones that could have arisen entirely outside the bankruptcy context. They are essentially employment disputes that could arise in any asset sale, regardless of whether the sale involved a bankruptcy proceeding." Notably, the employees did not assert any other type of jurisdiction and relied solely on "arising in" bankruptcy jurisdiction.

In re Millennium Lab Holdings II, LLC, 575 B.R. 252 (Bankr. D. Del. 2017).
After approving third-party releases as an essential part of a confirmed chapter 11 plan, certain creditors appealed. The district court remanded for a ruling on constitutional authority. The bankruptcy court concluded that it had both statutory authority to confirm a chapter 11 plan, as well as constitutional authority to approve third-party releases as essential components of the plan. The court relied on several post-*Stern* decisions, including *In re Lazy Days' RV Center Inc.*, 724 F.3d 418 (3d Cir. 2013), where the Third Circuit recognized constitutional authority to enter orders on quintessential bankruptcy matters, even where those orders directly or indirectly impact *Stern*-like state court actions. The bankruptcy court held that *Stern* did not prevent it from entering a final confirmation order on a plan that released the claimants' third-party RICO claims against non-debtor entities.

Segner v. Admiral Ins. Co. (In re Palmaz Sci., Inc.), 2018 WL 661409 (Bankr. W.D. Tex. Jan. 31, 2018).

Palmaz Scientific, Inc. (PSI) filed for chapter 11 bankruptcy. Pursuant to the confirmed plan of reorganization, the Palmaz Scientific Litigation Trust (PSLT) was created and a Litigation Trustee was appointed to pursue possible causes of action against PSI's former officers and directors (the "D&O claims"). Prior to filing bankruptcy, PSI had purchased officer and director liability insurance policies (the "D&O policies"). The Litigation Trustee brought D&O claims against several former officers and directors of PSI in state court. The insurance carriers asserted that no coverage existed for the Litigation Trustee's claims because of an exclusion in the D&O policies barring claims brought by one insured against another insured (the "insured versus insured clause"). The Litigation Trustee returned to the bankruptcy court and instituted an adversary proceeding to determine whether the insured versus insured clause applied.

Several of the former officers and directors (plaintiffs) intervened in the adversary proceeding to seek reformation of the D&O policies to exclude the insured versus insured provision; the insurance broker moved to dismiss for lack of SMJ. Plaintiffs countered that SMJ existed because: (1) the court retained jurisdiction for disputes concerning the D&O policies in the plan; (2) plaintiffs' claims were "related to" PSI's bankruptcy; and (3) plaintiffs' claims "arise in" PSI's bankruptcy.

The court rejected plaintiffs' first argument because a bankruptcy court's SMJ is controlled by statute. A court's stated retention of SMJ is only effective to the extent SMJ exists under the statute. Therefore, the court must look to 28 U.S.C. § 1334. The court also rejected plaintiffs' claim that the matter was "related to" PSI's bankruptcy. A matter is "related to" the bankruptcy when "the outcome of that proceeding could conceivably have an effect on the estate." The court concluded that because a plan had already been confirmed, which resulted in the estate ceasing to exist, whether plaintiffs' claim has an effect on PSI's estate could not be the proper analysis. Addressing plaintiffs' third argument, the court also found that there was no "arising in" jurisdiction. Plaintiffs argued that "arising in" jurisdiction existed because the claim would not have arisen *but for* the bankruptcy. The court rejected the "but for" test and found the First Circuit's holding in *Gupta v. Quincy Medical Center* aligned with the Fifth Circuit's brief discussion of "arising in" jurisdiction found in *In re Wood*. The court held that it is not enough that the facts giving rise to the claims are in the context of a bankruptcy because the "fundamental question is whether the proceeding by its nature, not its particular factual circumstances, could arise only in the context of a bankruptcy case."

Finally, the court found that the dispositive question was whether the court had post-confirmation related-to SMJ pursuant to the Fifth Circuit's decision in *In re Craig's Stores of Texas, Inc.* The court concluded it did not. Post-confirmation, a bankruptcy court's jurisdiction is more narrowly defined because the court's expansive pre-confirmation jurisdiction is no longer required to facilitate administration of the estate. Once a plan is confirmed, a bankruptcy court only has jurisdiction over matters that pertain to the implementation or execution of the plan. The court found that the plaintiffs' claim did not involve interpretation, implementation, or enforcement of the plan and, therefore, the court did not have jurisdiction.

Cain v. United Credit Corp of Brookhaven (In re Cain), No. 17-00046-NPO (Bankr. S.D. Miss. Apr. 12, 2018).
The Court found that where the Parties agreed to arbitrate their claims and the Arbitration Agreement contained a valid delegation claims requiring the Debtor's claims to proceed to arbitration, the Court would compel arbitration. The Court further found that it had no discretion to refuse to compel the arbitration of the Adversary, as it was a non-core proceeding

B. THE AUTOMATIC STAY

In re Omni Lion's Run, L.P., 578 B.R. 394 (Bankr. W.D. Tex. 2017).
In jointly administered chapter 11 cases, two secured lenders moved for relief from the automatic stay as to their collateral: two apartment complexes. The creditors argued that the single-asset real estate debtors filed their petitions in bad faith, and that there was insufficient adequate protection and delays would mount administrative expenses. The creditors also argued that there was no equity in the properties and that the properties were not necessary to an effective reorganization of the debtors. The court rejected both the § 362(d)(1) argument and the § 362(d)(2) argument. First, the court found no evidence of bad-faith filing, indicating that there was no appearance that the debtors tried to take advantage of the automatic stay. Second, the court noted that the debtors were in fact making substantial adequate protection payments and working to increase the value of the properties (hiring successful management and infusing the properties with capital). The court also noted that administrative costs alone were not cause to lift the stay in legitimate bankruptcy cases, and observed that the lenders had delayed proceedings in more instances than the debtors had. Finally, the court determined that the debtors might lack equity in the properties, but that it was "undisputed that the only possibility of reorganization would involve the properties" and that a feasible reorganization was reasonably foreseeable. Therefore, the properties were reasonably necessary for the debtors' successful reorganization. The court denied both lift stay motions.

Peaje Invs. LLC v. Garcia-Padilla, 845 F.3d 505 (1st Cir. 2017).
In 2016, in response to Puerto Rico's looming debt crisis, Congress enacted the *Puerto Rico Oversight, Management, and Economic Stability Act* (the "*Act*" or "*PROMESA*"). Among other provisions included in the Act is a temporary bankruptcy-like stay of debt related litigation. The First

Circuit considered two separate actions for relief from the PROMESA stay. The night before the scheduled hearings on their motions, the district court denied both motions and canceled the hearings. The First Circuit noted that PROMESA required relief to be considered “after notice and a hearing.” Here, the district court denied relief and cancelled the hearings. The First Circuit concluded that “[a] hearing may not be necessary where, for example, the material facts are not disputed.”

To determine whether material facts were in dispute, the court considered who had the burden of proof. The First Circuit concluded that Congress’s decision “not to transplant the Bankruptcy Code’s express alteration of the pre-Code burden regime into PROMESA” meant that creditors have the burden on all issues when seeking relief from the PROMESA stay.

Against this backdrop, the court considered the pleadings filed by the movants. With respect to the first movant, the court held that the movant failed to allege that it would be harmed by the continuation of the stay. In fact, the first movant admitted that it had liens on future toll revenues, and failed to allege or dispute that such future revenues were adequate to protect its interests. Thus, the court of appeals affirmed the decision to deny the first movant’s motion for relief, concluding that the denial without a hearing was appropriate. As to the second movant, the court of appeals noted that the pleadings alleged uncertainty about future employer contributions and the potential insufficiency of such contributions to repay the applicable bonds. Based on these allegations, the court reversed the denial of the motion and remanded for a hearing before the district court.

II. CONTESTED MATTERS AND OTHER LITIGATION

A. CLAIM ALLOWANCE, SUBORDINATION, PRIORITY, AND LIEN DISPUTES

Kipp Flores Architects, L.L.C. v. Mid-Continent Cas. Co., 852 F.3d 405 (5th Cir. 2017).

Section 502(a) provides that a properly filed proof of claim is “deemed allowed” unless a party in interest objects. This case raised the issue of what “deemed allowed” means in litigation when there was no reason for a party in interest to file an objection to the bankruptcy claim, because there were no assets to be distributed from the estate.

Plaintiff Kipp Flores Architects (KPA) provided a license for two homebuilders to use KPA's designs. The license allowed the homebuilders to build one house per license. The homebuilders ultimately built hundreds of homes, amassing over $63 million in gross revenues in violation of the license. KPA sued for copyright infringement. The two homebuilders filed separate chapter 7 bankruptcy cases and KPA filed proofs of claim in them. KPA received relief from stay to liquidate its claims against one of the homebuilders. The trial court awarded KPA a $3.2 million judgment against that homebuilder. After the judgment was upheld on appeal, Mid-Continent (the insurer) paid KPA the required amount.

This appeal arose from KPA’s efforts to get Mid-Continent to pay additional amounts based on a proof of claim filed in the other homebuilder’s no-asset chapter 7 case. In that case, KPA filed a claim for $63 million. No one objected, and the trustee filed a no-asset report before the case was closed five weeks later. In separate litigation, KPA and Mid-Continent filed summary judgment motions to determine whether KPA’s $63 million proof of claim in the no-asset bankruptcy case was “deemed allowed” and binding on Mid-Continent as res judicata. The magistrate found that it was not and recommended judgment in favor of Mid-Continent. The district court adopted the findings of the magistrate, and this appeal followed.

While the court acknowledged that § 502(a) plainly provides for a claim to be “deemed allowed” in the absence of objections, it further inquired what “deemed allowed” means in the context of a no-asset chapter 7 case where “[t]he Bankruptcy Rules plainly contemplate pretermitting claims allowance and objection procedures.” Because the allowance of a claim in bankruptcy merely determines a creditor’s right to receive distributions from the bankruptcy estate, the court explained that the weight of an allowed claim is substantially less in no-asset cases where there is no incentive to file claim objections. The court concluded that “deemed allowed” claims from no-asset chapter 7 cases have no res judicata effect in subsequent litigation.

OHA Inv. Corp. v. Schlumberger Tech. Corp. (In re ATP Oil & Gas Corp.), No. 17-20224, (5th Cir. Apr. 17, 2018).
The Fifth Circuit affirmed the district court's dismissal of creditors of ATP Oil and Gas Corp. to collect on liens from the current owner of ATP's offshore royalty rights, finding that where the Louisiana Oil Well Lien Act both created the liens and extinguished them via a safe-harbor provision. The Act allowed the former ATP contractors and suppliers to assert liens against the offshore oil and gas royalty interests the company sold before the bankruptcy, but also contained a safe harbor provision that shielded the new purchaser from the creditors' claims.

The bankruptcy court and the district court found that the Louisiana Oil Well Lien Act did allow the liens to be attached but that they had been cancelled by the safe harbor provision. On appeal, the new purchaser and the creditors argued differing interpretations of the safe harbor provision in their appeal, the creditors saying the provision was intended to apply only to sales of already-extracted oil and gas, and the new purchaser arguing that it could also apply to the sale of interests in oil and gas royalties. While conceding that the law "may not be a model of clarity," the Fifth Circuit found that the safe harbor provision does refer to liens attached to interests on hydrocarbon production and that similar references are found elsewhere in the statute. The Court stated: "By way of this incorporation, the safe harbor decidedly encompasses interests in hydrocarbon production, and OHA's overriding royalties fit squarely within that category."

In re Franchise Sers. of N. Am., Inc., 2018 WL 485959 (Bankr. S.D. Miss. Jan. 17, 2018).
The court upheld the blocking power of a substantial equity holder (golden share equity holder), prohibiting an entity from seeking relief through the bankruptcy courts. Two affiliated parties—one a creditor of the debtor and one the golden share equity holder—moved to dismiss the chapter 11 bankruptcy case as unauthorized. Because the debtor failed to obtain shareholder consent to file bankruptcy (as required by its Certificate of Incorporation), the creditor-affiliate filed a motion to dismiss and the golden-shareholder-affiliate joined. As a matter of public policy, the creditor-affiliate's motion was denied due to its nature of wearing "two hats": hat one as the creditor owed $3 million, and hat two as the equity holder. But the golden-shareholder-affiliate wore only one hat: that of an equity holder with a $15 million interest. The court found it had the unquestioned right to block the filing and, therefore, dismissed the case. Notably, the court then certified three questions for direct appeal to the Fifth Circuit: (1) whether a blocking provision/golden share is enforceable or contrary to public policy; (2) whether a blocking provision is enforceable if the party holding the provision is both a creditor and an equity holder; and (3) whether, under Delaware law, a certificate of incorporation may explicitly contain a blocking provision/golden share; and if yes, whether the shareholder has the fiduciary duty to exercise such provision in the best interests of the corporation.

FTI Consulting, Inc. v. Merit Mgmt. Grp., LP, 830 F.3d 690 (7th Cir. 2016), *aff'd and remanded*, 138 S. Ct. 883 (Feb. 27, 2018).
Prior to filing for chapter 11 bankruptcy, debtor borrowed funds to purchase another entity. The funds were held in escrow by Citizens Bank of Pennsylvania before being paid to Merit Management Group. During the bankruptcy, a litigation trust was created and FTI Consulting was appointed trustee. FTI, as trustee, sought to avoid the transfer under §§ 544, 548(a)(1)(b), and 550 to recover the funds from Merit. Merit objected on the grounds that the transfer was a "settlement payment . . . made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency . . ." pursuant to § 546(e). The Seventh Circuit overturned the lower court and held that § 546(e) does not protect transfers that are simply conducted through financial institutions named in the section where the entity is neither the debtor nor the transferee but only acts as a conduit. The Supreme Court affirmed and remanded on February 27, 2018.

In re Xenon Anesthesia of Tex., P.L.L.C., 698 Fed. App'x 793 (5th Cir. 2017).
The court affirmed dismissal of a claim objection due to lack of standing. A former equity holder transferred his interests in the debtor to comply with a pre-bankruptcy state court judgment. Upon transferring his equity interests, the former owner also withdrew his proof of claim, but then objected to another creditor's proof of claim. Claimant moved to dismiss, which the bankruptcy court granted. The Fifth Circuit affirmed, concluding that res judicata barred relitigation of the validity of the purchase agreement, and that, without an enforceable claim or equity interest, the former owner was no longer a "party in interest" with standing to object to claims.

In re The Village at Lakeridge, LLC, 814 F.3d 993 (9th Cir. 2016), *aff'd*, 138 S. Ct. 960 (Mar. 5, 2018).
After filing for chapter 11 bankruptcy, a board member of the debtor's managing member approached someone with whom they had a "close relationship" and sold them an unsecured claim valued at $2.7 million for $5,000. The only other creditor objected on the grounds that the purchaser was a statutory and non-statutory insider and that the sale was made in bad faith. On appeal from the bankruptcy court, the BAP found that insider status cannot be assigned as a matter of law and it must be determined on a case-by-case basis based on a factual analysis. The BAP further found that the purchaser was also not a non-statutory insider nor was the sale made in bad faith. The Ninth Circuit affirmed but deviated from the majority approach used by the Third, Seventh, and Tenth Circuits by conducting a clear error review, rather than a de novo review, to determine whether a specific person qualifies as a non-statutory insider. The Supreme Court affirmed the Ninth Circuit's use of clear error review on March 5, 2018.

In re Pioneer Health Sers., Inc., 570 B.R. 228 (Bankr. S.D. Miss. 2017).
In this case, the debtor asked the court to treat two of its physician employees as "critical vendors" and authorize payment of their pre-petition claims in full. The court noted that a small part of the claims would be entitled to priority under § 507(a)(4), and that the unpaid amounts could arguably be paid as cures upon the assumption of the employment agreements under § 365(b). Nevertheless, because the debtors chose to treat these employees as critical vendors, the court considered the request under the standards typically applied to critical vendor payments.

In analyzing the request, the court looked to *Jevic* for the proposition that "*CoServ*'s and *Kmart*'s restrictive view of critical vendor payments is the correct approach." The court held that the debtors failed to carry their burden.

First, the debtors failed to present any testimony about the employees' education, skill, training, or licensing to support the debtors' argument that the employees were "irreplaceable." Second, the court found no evidence that the employees really would leave if they were not paid, rejecting the debtors' preference to "avoid [the] risk" that the employees might actually quit if not paid. Third, the court noted that the employees might be violating the automatic stay by demanding payment on their pre-petition claims, and explained that the debtors' willingness to yield to the employees' demands was not an exercise of sound business judgment. Finally, the court expressed concerns that approval of payment to these two employees ten months into the bankruptcy case would open a floodgate of additional demands from the debtors' other 240 employees. The court denied the motion to pay the employees' pre-petition salaries as critical vendor payments.

***Mission Prod. Holdings, Inc v. Tempnology, LLC (In re Tempnology, LLC)*, 879 F.3d 389 (1st Cir. 2018)**
Generally speaking, when a company files for protection under Chapter 11 of the Bankruptcy Code, the trustee or the debtor-in-possession may secure court approval to "reject" any executory contract of the debtor, meaning that the other party to the contract is left with a damages claim for breach, but not the ability to compel further performance. 11 U.S.C. §§ 365(a) , 1107(a). When the rejected contract, however, is one "under which the debtor is a licensor of a right to intellectual property," the licensee may elect to "retain its rights . . . to such intellectual property," thereby continuing the debtor's duty to license the intellectual property. 11 U.S.C. § 365(n)(1). In this case, the Chapter 11 debtor rejected an agreement

giving certain marketing and distribution rights to Mission. The parties agreed that Mission could insist that the rejection not apply to nonexclusive patent licenses contained in the rejected agreement. They disagreed as to whether the rejection applies to the agreement's grants of a trademark license and of exclusive rights to sell certain of Debtor's goods. In the case of the trademark license, resolving that disagreement poses for this circuit an issue of first impression concerning which other circuits are split. Ultimately, the First Circuit agreed with the bankruptcy court that the rejection left Mission with only a prepetition damages claim in lieu of any obligation by Debtor to further perform under either the trademark license or the grant of exclusive distribution rights.

In re Caprock Oil Tools, Inc., No. 17-80109 (Bankr. S.D. Tex. Mar. 9, 2018)

Creditor asserted a $1,479,870.94 unsecured proof of claim in Debtor's bankruptcy case, owed after Debtor exercised its right of repurchase of Creditor's Common Stock. Debtor filed an objection to the proof of claim alleging that it is subject to mandatory subordination under 11 U.S.C. § 510(b). The parties filed cross motions for summary judgment. The court granted summary judgment for the Debtor and denied summary judgment for the Creditor.

Citing the Fifth Circuit's holding in *In re SeaQuest Diving, L.P.*, 579 F.3d 411 (5th Cir. 2009), the Court held that the security at issue constituted common stock, and it is settled in the Bankruptcy Code that common stock shareholders are not paid until higher priority claims are satisfied. Thus, if the Debtor had never elected its right to repurchase the Creditor's common stock, the Creditor could not argue that he was entitled to repayment as a general unsecured creditor. As such, characterizing the Creditor's debt on pay with other general unsecured creditors would upset the hierarchy of the bankruptcy priorities and allow the Creditor a greater recovery than he would normally be entitled to at the expense of other creditors. Therefore, the Creditor's claim was subject to subordination under § 510(b).

B. CONFIRMATION DISPUTES

In re ADPT DFW Holdings, LLC, 574 B.R. 87 (Bankr. N.D. Tex. 2017).

The debtors included 140 entities engaged in the business of operating five hospitals and ninety-nine free-standing emergency rooms throughout the United States. At issue was whether the bankruptcy court could confirm the debtors' joint plan that would substantively consolidate the 140 entities for voting and plan distribution purposes, even though the reorganized debtors intended to maintain their corporate separateness following confirmation.

The court emphasized that "substantive consolidation" is a judicially created doctrine grounded in principles of equity. The court relied on two decisions from the Second and Third Circuits. Under the Second Circuit's *Augie/Restivo* standard, substantive consolidation could be approved if: (1) creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) the affairs of the debtors are so entangled that consolidation would benefit all creditors. *See In re Augie/Restivo Baking Co., Ltd.*, 860 F.2d 515 (2d Cir. 1988). Under the Third Circuit's more recent *Owens Corning* standard, consolidation could be approved if: (1) pre-petition, the debtors disregarded separateness so significantly that their creditors relied on the breakdown of entity borders and treated them as one legal entity; or (2) the debtors' assets and liabilities are so scrambled together post-petition that separating them is prohibitive and hurts all creditors. *See In re Owens Corning*, 419 F.3d 195, 211 (3d Cir. 2005).

The court noted that the overwhelming evidence showed that substantially all creditors viewed the 140-entity debtor enterprise as a single economic unit. Of the 140 entities, eighty were borrowers on the pre-petition senior secured loan facility, while the other sixty either had limited or effectively no assets or operations. Post-petition, all 140 entities were liable under the post-petition DIP facility. Importantly, the court was persuaded by the uncontroverted evidence that "the liabilities and contracts of the Debtors were 'a tangled mess' to try to unsort," and concluded that "separating the Debtors would be prohibitive and [would] hurt all creditors." Finally, the court explained that it was irrelevant that the debtors only proposed consolidation for plan purposes, noting that “[n]o reported cases have singled this out as a special circumstance that would impact either negatively or positively the substantive consolidation analysis.” Therefore, the court concluded that substantive consolidation was appropriate, even if only for plan voting and distribution purposes.

In re Zafs Invs., LLC, 2017 WL 1034682 (Bankr. S.D. Tex. Mar. 16, 2017)
The court summarily rejected the creditor’s demand for default interest due to lack of any evidence supporting the creditor’s right to default interest, and applied the *Till* factors, citing *In re Texas Grand Prairie Hotel Realty, LLC*, 710 F.3d 324 (5th Cir. 2013) as authority to use such factors in chapter 11 cases. The court found that the debtor had “diligently pursued development” of the banquet hall and located a long-term tenant to generate a steady stream of future revenue. The court further found that the collateral at issue was mostly raw land with little risk and maintenance costs. The court also found the plan to be feasible in light of the owner’s testimony that he would backstop the plan payments with his own personal cash, with only a slight risk due to the 30-year payment term proposed under the plan. Based on those factors, the court adjusted the cramdown interest rate to 4.75% and held that the plan could be confirmed with the appropriate interest payments.

Grasslawn Lodg., LLC v. Transwest Resort Props., Inc., No. 16-16221 (9th Cir. Jan. 25, 2018)
The Ninth Circuit held that § 1129(a)(10)’s requirements apply on a per-plan basis, rather than a per-debtor basis. Citing to the plain language of § 1129, the Ninth Circuit noted that § 1129(a)(10) refers to *the* plan and makes no distinction concerning or reference to the creditors of different debtors under ‘the plan,’ nor does it distinguish between single-debtor and multi-debtor plans. The Ninth Circuit determined that the singular rather than plural reference allows § 1129(a)(10) to be satisfied once a single impaired class accepts a plan. In so ruling, the Ninth Circuit expressly rejected the argument that § 102(7) requires a per-debtor interpretation of § 1129(a)(1) and the arguments set forth in other cases regarding the interpretation of other subsections in section § 1129(a).

C. POST-CONFIRMATION ISSUES

In re Bros. Materials Ltd., 2017 WL 4785614 (S.D. Tex. Oct. 20, 2017).

Ramon and Rogelio Soliz jointly owned Brothers Materials, Ltd. and an almost 11-acre tract of land (the “property”). The Soliz brothers each owed federal income taxes that were secured, in part, by a lien on the property. The Property was not owned by Brothers Materials.

In 2014, Brothers Materials filed a chapter 11 petition. The debtor filed its First Amended Combined Plan and Disclosure Statement, and the bankruptcy court confirmed the plan without objection.

Although the IRS participated in the chapter 11 case and received a copy of the plan and notice of the confirmation hearing, the IRS did not object to the plan, attend the confirmation hearing, or appeal the confirmation order. The confirmed plan specifically provided that the Soliz brothers would contribute their property, even though it was not an estate asset of Brothers Materials, and the sale proceeds from the property would, in this order, (1) fund administrative expenses; (2) satisfy the bank; and only then (3) pay the IRS. In July 2016, over the IRS’s objection, the court granted the debtor’s motion to enforce the Plan, permitting the debtor to pay attorneys’ fees of $69,000 from the property’s sale proceeds. The bankruptcy court declined the IRS’s request to reconsider its enforcement order.

The IRS collaterally attacked the court’s confirmation order by challenging the debtor’s motion to enforce the plan, asserting that the bankruptcy court lacked (1) subject-matter jurisdiction to permit the reorganized debtor to use the property’s sale proceeds for administrative expenses, and (2) that subject-matter jurisdiction issues can be raised at any time during a civil action. The district court held that the bankruptcy court can interpret and enforce its own prior orders, and can issue more than one final judgment in a bankruptcy case, such as an order confirming a plan. The court relied on two Supreme Court cases to prohibit the IRS’s challenge: *Travelers Indemnity Co. v. Bailey* and *United Student Aid Funds, Inc. v. Espinosa*.

The IRS also challenged the bankruptcy court's holding because it resulted in stripping the IRS's secured claim from the property, but this argument failed as well because the plan met the requirements needed to void a lien. The court found that the IRS missed its opportunities to challenge the debtor's confirmation order before it became final.

In re Pilgrim's Pride Corp., 564 B.R. 534 (Bankr. N.D. Tex. 2017).

After confirmation of the debtor's plan, the Department of Labor (DOL) filed three administrative complaints against the debtor for pre-petition violations. The complaints sought: (1) monetary relief; (2) reinstatement of the employees; (3) cancellation of government contracts; (4) debarment from future government contracts; and (5) injunctive relief against the reorganized debtor for future violations.

The reorganized debtors moved to reopen the bankruptcy cases and enforce the confirmation order against the DOL. The reorganized debtors argued that the DOL's claims had been discharged by the plan and, thus, the relief sought by the DOL was barred. The DOL responded that, among other things, the relief requested were not "claims" and that, even if they were, the claims were not discharged because the DOL had not received proper notice. Finally, the DOL argued that the reorganized debtors should be equitably estopped from arguing bankruptcy discharge as a defense.

The bankruptcy court held that, with the exception of (5) above, all of the relief sought by the DOL had been discharged under the confirmed plan. Specifically, the court held that the alleged hiring and employment practices complained about by the DOL had all occurred pre-petition and pre-confirmation. Moreover, all of the relief requested was for payment of monetary damages or for an equitable remedy in lieu of payment (excluding the forward-looking injunctive relief). Thus, the court held that the DOL's claims had been discharged and were now barred, unless notice was insufficient. The notice argument ultimately failed as well: due to the size and significance of the bankruptcy case and the involvement of the DOL's regional offices, the court concluded that notice to the regional offices was sufficient to impute such notice to the entire DOL.

Noble Energy, Inc. v. ConocoPhillips Co., 532 S.W.3d 771 (Tex. 2017), *reh'g denied* (Dec. 15, 2017).

In 1994, ConocoPhilips Company (Conoco) and Alma Energy Corp. (Alma) entered into an Exchange Agreement, stating that each party "accepted responsibility and indemnified the other for any environmental claims related to the properties received, no matter who caused the injury or when, whether before the swap or after." In addition, "the mutual indemnities would 'survive . . . the transfer of the Assets.'" The Agreement also stated the agreement "would 'extend to, bind and inure to the benefit of the parties . . . , their heirs, successors and assigns.'"

Alma filed for chapter 11 protection in 1999, and in 2000, the bankruptcy court approved the sale of Alma's leases, mineral interest, "and other significant Assets described in Exhibit 'A'" of the APA to Noble Energy, Inc. (Noble). The assets that were the subject of the Exchange Agreement were not listed in the APA or its exhibits; however, the APA clarified that Noble was buying Alma's rights and interests, encompassing all agreements "in any way associated with the Assets, including but not limited to, those Material Contracts." This also included "agreement[s] of indemnification" outside the ordinary course of business.

Acting as though it had assumed the Exchange Agreement, Noble decommissioned a tank battery on an Exchange Agreement property in 2008, and defended and indemnified Conoco in two environmental lawsuits. But in 2010, Noble refused to indemnify Conoco under the Exchange Agreement. Conoco sued Noble for breach, and the trial court granted Noble's summary judgment against Conoco. The court of appeals reversed and rendered summary judgment for Conoco, holding that the Exchange Agreement was an executory contract and was assigned to Noble in Alma's bankruptcy proceedings.

The Texas Supreme Court affirmed the court of appeals, emphasizing that the indemnities in the Exchange Agreement were a crucial component of the value Conoco and Alma had exchanged, and "a claim based on a contract that provides indemnification from liability does not accrue until the indemnitee's liability becomes fixed and certain." In addition, the bankruptcy plan and confirmation order reinforced the APA's language that executory contracts not specifically named were "assumed and assigned" to Noble, unless Noble rejected these contracts at closing.

In re All. Consulting Grp., LLC, No. 13-51937-KMS (Bankr. S.D. Miss. Mar. 19, 2018).
Movant had no standing to reopen case, and even if it did, cause to reopen did not exist. Although the movant was hired to install equipment on the site of the Debtor's business, the Debtor was not obligated on any debt owed to the Movant, as the estate did not contract with the movant and did not own the equipment the movant installed. Rather, the estate contracted with a creditor who contracted with the movant, therefore the movant was a creditor of a creditor, with no standing to bring the motion to reopen the case.

***Mission Prod. Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 879 F.3d 376 (1st Cir. 2018).**
The First Circuit affirmed the sale of Debtor's remaining finished goods inventory to Schleicher and Stebbins Hotels LLC (S&S) after Debtor auctioned of its assets pursuant to section 363 of the Bankruptcy Code. Debtor and S&S completed the sale with the bankruptcy court's approval. Mission Product Holdings, Inc. (Mission), an unsuccessful bidder at the auction, appealed, challenged the inventory sale. The bankruptcy court ultimately approved the sale of the inventory to S&S. The Bankruptcy Appellate Panel (BAP) concluded that the bankruptcy court applied the correct legal standards and that S&S was a good faith purchaser. The First Circuit affirmed, holding (1) S&S was a good faith purchaser entitled to the protection of section 363(m); and (2) Mission's remaining challenges to the sale order were therefore rendered statutorily moot.

CONSUMER MATERIALS

A. MISCELLANEOUS

Capistrano v. Bank of N.Y. Mellon, 2017 WL 1758052 (E.D. Tex. Apr. 3, 2017).
In an attempt to delay foreclosure and avoid repaying creditors' real estate loans on a property, debtor filed numerous claims against his creditors. Eventually, debtor and creditors entered an agreed order modifying the bankruptcy stay. Under the agreed order, debtor admitted that creditors held a valid promissory note secured by the property and also agreed that upon debtor's failure to comply with the order, creditors could initiate foreclosure proceedings pursuant to the terms of the note and deed of trust. Thus, the creditors filed a Rule 12(b)(6) motion to dismiss. The bankruptcy court granted the motion based on these facts and found that debtor lacked standing to assert any claims against creditors because these claims were the property of his bankruptcy estate and may only be asserted by the bankruptcy trustee. Additionally, the court ruled that even if debtor had standing, the claims asserted against creditors are insufficient to withstand Rule 12(b)(6) scrutiny due to the debtor's failure to adequately fulfill the requirements for any of his several claims.

Kelly v. D Realty Invs., Inc. (In re Kelly), 568 B.R. 19 (Bankr. N.D. Tex. 2017).
Debtor filed adversary complaint against tax sale purchaser, seeking, inter alia, a declaratory judgment that, following tax sale of business at which debtor resided, he was entitled to redeem the property. The court held that the debtor properly chose to pursue his claim through declaratory judgment, rather than through a trespass to try title suit. Additionally, the court held that the debtor, as an adverse possessor of the subject property, was an "owner" of the property for purposes of the Texas Tax Code § 34.21 (the redemption statute) since the debtor successfully fulfilled the requirements for adverse possession of the property as required by Texas law.

In re Rosbottom, 2017 WL 3034261 (5th Cir. July 17, 2017).
Chapter 11 trustee for estate of debtor who was incarcerated for committing bankruptcy crimes sought a declaratory judgment that a condominium (the "condo") belonged to the bankruptcy estate rather than to the debtor's trust. The condo had been purchased with proceeds from the sale of a Louisiana home originally owned by the debtor and his wife but subsequently conveyed into separate trusts, one for the husband and one for the wife. The trustee argued that the conveyance by the debtor and his wife into their separate trusts was void because it violated article 2337 of the Louisiana Civil Code, which prohibits a spouse subject to a community property regime from alienating, encumbering, or leasing his undivided interest in any community property. The circuit court held that the original conveyance of the home was an absolute nullity because it was done in violation of article 2337, and as such title to the home was never transferred and, therefore, the condo purchased with the proceeds from the sale of the Louisiana home was property of the bankruptcy estate and not the trust.

Schott v. Raborn (In re Raborn), 2017 WL 1417204 (Bankr. M.D. La. Apr. 20, 2017).
Chapter 7 trustee sued debtor to avoid as a fraudulent conveyance under § 548, the prepetition rescission of a transfer of stock resulting from a state court judgment. The trustee sought approval from the bankruptcy court, under Rule 9019(a), of a compromise of that lawsuit as well as other claims between the estate and several other persons and entities. Debtor objected to the compromise. Bankruptcy court first held that the debtor did not have standing to oppose the settlement since her estate was insolvent. Additionally, the court held that the compromise served the best interests of the creditors and the estate since the Fifth Circuit's *Jackson Brewing* and *Foster Mortgage* factors supported the decision. Thus, the compromise was approved and all the debtor's objections were overruled because, even assuming *arguendo* that the debtor had standing to oppose the compromise, her objections either lacked a legal basis or evidentiary support.

Raborn v. Schott, 2017 WL 5473885 (M.D. La. Nov. 14, 2017).
Chapter 7 debtor appealed bankruptcy court's approval of a Rule 9019 settlement that brought money into the estate and resolved outstanding litigation pending in state and federal court. The court struck affidavits and other exhibits that appellant attempted to add to the record on appeal despite having failed to present them at trial. The court found that debtor lacked standing because she failed to show that a successful appeal would generate assets in excess of liabilities; the court further found that the appeal was moot because the debtor had not obtained a stay in the bankruptcy court and the settlement had already been consummated.

In re Marquez, 2017 WL 5438306 (Bankr. W.D. Tex. Nov. 13, 2017).
Chapter 7 debtors filed a statement of intent indicating that they intended to retain a mobile home and continue making payments without reaffirming. Secured lender sent reaffirmation agreement to debtors, but debtors refused to sign. Secured lender moved the court to compel the debtors to make a selection under § 521(a)(2) to either surrender, redeem, or reaffirm their debt on the mobile home. The court found that post-BAPCPA there is no "ride-through" option and that the debtors must choose between surrender, redemption, and reaffirmation.

In re McCray, 578 B.R. 403 (E.D. Mich. 2017).
The debtor filed for chapter 7 bankruptcy and filed a statement of intent to retain a mobile home and enter into a reaffirmation agreement with the creditor. When the debtor ultimately did not enter into the reaffirmation agreement, the creditor moved to force compliance with § 521(a)(2) and to delay entry of discharge—essentially forcing the debtor to choose. The court held that there was no "ride-through" or "pay and retain" option and the debtor must redeem or reaffirm in order to retain personal property securing a debt. Yet, the court also held it could not, as a remedy for the debtor's failure to surrender the property or redeem or reaffirm, delay the entry of the debtor's discharge until the debtor performed her

statutory duties under § 521(a) with respect to the mobile home. Instead, the court lifted the automatic stay and allowed the creditor to go forward with its non-bankruptcy remedies.

Haynes v. Wells Fargo Bank, N.A., 2017 WL 5895160 (E.D. Tex. Oct. 30, 2017), *adopted by* ***Haynes v. Wells Fargo Bank, N.A.***, 2017 WL 5890050 (E.D. Tex. Nov. 29, 2017).
Chapter 13 debtor's plan included provisions to pay mortgage arrearages. After successful completion of plan, mortgage holder sent default notices claiming debtor was in default based upon undisclosed fees assessed during the chapter 13 case. Debtor sought class certification in lawsuit claiming FDCPA violations related to the mortgage holders failure to comply with Rule 2016(a). The court denied class certification, holding that the predominance and superiority requirements of Rule 23(b)(3) were not met because Rule 2016(a) had not been uniformly applied nationally and that the implementation of Rule 3002.1 meant that most of the proposed class members were individuals who did not face further harm from the mortgage holder's actions.

In re JFK Capital Holdings, L.L.C., 2018 WL 564371 (5th Cir. Jan. 26, 2018).
In a Chapter 7 case that had seen many contested issues, objection was made to the trustee's fee application. Applying §§ 330 and 326, the court held that the commission percentages reflected in § 326(a) are presumptively reasonable and that only under "extraordinary circumstances" could that compensation scheme be adjusted downward.

U.S. v. Grant, 850 F.3d 209 (5th Cir. 2017).
Serial-filing debtor was indicted for bankruptcy fraud under 18 U.S.C. § 152(3). Among the allegations were that in her bankruptcy filings, she had failed to disclose all of the Social Security numbers that she had used and failed to disclose prior bankruptcy filings. The debtor argued that the indictment was defective because it misstated the disclosure requirement with respect to her Social Security numbers, an argument that the circuit court rejected because it found that the indictment nevertheless informed the debtor as to the charges against her. The circuit court also held that any error in the jury instructions with respect to the Social Security numbers was harmless because the jury was presented with applicable law governing the disclosure issue being challenged by the debtor and, therefore, was able to discern whether there were any discrepancies between the indictment's legal conclusions and the actual law. Rejecting the debtor's argument that a fraud standard should apply and that her creditors were not harmed by any potential flaws in her disclosures, the court applied the perjury standard and upheld the debtor's conviction.

B. LIENS

21st Mortg. Corp. v. Glenn, 2017 WL 2912474 (N.D. Miss. July 7, 2017), *appeal docketed*, 17-60533 (5th Cir. July 31, 2017).
The issue before the court was whether delivery and setup costs may be included in the valuation of the debtor's mobile home. Debtor filed for chapter 13 bankruptcy; 21st Mortgage held a perfected security interest in the debtor's mobile home. The debtor planned to keep possession of the mobile home and pay 21st Mortgage the value of the home, plus interest. Section 506(a)(2) of the Bankruptcy Code requires individual debtors to include a retail valuation of personal property "without deduction for costs of sale and marketing." 21st Mortgage argued that this provision applied in the instant case, and that delivery and setup should be included in the sale and marketing consideration. The bankruptcy court and the district court disagreed, finding that the debtor's proposed use was relevant and that delivery and setup were not within the types of costs contemplated by § 506 and its amendments.

In re Hutchings, 2017 WL 4174394 (Bankr. W.D. Tex. Sept. 19, 2017).
Debtor received a home equity loan from HomeEq, secured by her homestead. Later, debtor hired New Leaf to build a new home, but after disagreements about the construction, the parties settled and New

Leaf agreed to buy back the new home. New Leaf also agreed to refinance debtor's loan with HomeEq, but later reneged, saying only the original lender could refinance a home equity loan. New Leaf was, after lengthy arbitration, ordered to provide the $70,000 to the debtor to refinance her loan; New Leaf complied, sending the money to the debtor's attorney, who sent the funds to HomeEq. Debtor executed a promissory note for $70,000, payable to New Leaf. Eventually, HomeEq released its lien, debtor defaulted on her promissory note, and New Leaf obtained a default judgment. Debtor filed for chapter 7 bankruptcy and moved to avoid New Leaf's lien as an impairment on exempt property. New Leaf responded that equitable subrogation allows it to step into the shoes of HomeEq and its lien is not avoidable. The court agreed with New Leaf. Because HomeEq's lien involved a home equity loan for which the debtor was primarily liable, and because New Leaf was legally obligated to refinance the loan (involuntarily through the settlement agreement), the elements of equitable subrogation were satisfied. Finally, the debtor attempted to argue that equitable subrogation required funds to be transferred directly from the new lender to the old lender (without the transfer to the debtor's attorney, in this case). The court rejected this argument as baseless and refused to impose this additional requirement upon the doctrine.

In re Markos, 2017 WL 1317824 (Bankr. S.D. Tex. Apr. 6, 2017).
Debtor objected to HOA's proof of claim, challenging the HOA's assertion that its attorney's fees were a cost of collection of assessments and, therefore, secured by a vendor's lien on the debtor's property. Based on the language of the restrictive covenants and the inclusion of "cost of collection" of assessments as a category for which the HOA was entitled to a lien, the bankruptcy court held that the attorney's fees incurred by the HOA in attempting to collect the assessment were entitled to secured status.

In re Windham, 568 B.R. 263 (Bankr. N.D. Miss. 2017).
Pre-petition, husband and wife debtors had each signed a deed of trust encumbering their homestead that was owned solely by the wife. The deed of trust included a future advances clause (the "dragnet clause"). The husband subsequently guaranteed two additional loans. In bankruptcy, the wife challenged whether the dragnet clause was valid as to the two additional loans because she was unaware of those loans and had not authorized them. The court held that the dragnet clause unambiguously applied to subsequent obligations and that it was, therefore, not relevant that the wife (a sophisticated business woman) was unaware of the additional loans and had not authorized them.

Mainoo v. Comerica Bank (In re Mainoo), 2017 WL 2709737 (N.D. Tex. June 22, 2017).
Chapter 13 debtor listed debt secured by deed of trust on real property as unsecured. Bank holding lien did not object to plan or file a proof of claim. Three years after plan confirmation, bank moved to terminate the automatic stay pursuant to § 362(d); debtor argued that the bank waived its right to enforce the lien by not objecting to his plan, and the statute of limitations had expired because bank had not abandoned an acceleration that it made in 2006. The district court found that, as a secured creditor, the bank was not required to file a proof of claim in order to be entitled to seek satisfaction of its claim as against its collateral, and that the bankruptcy court did not err in concluding that the bank's acceptance of payments after the 2006 acceleration constituted an abandonment of that acceleration.

In re Caldwell-Blow, 687 Fed. App'x 380 (5th Cir. 2017).
Debtor executed a promissory note and a deed of trust for the purchase of property; both contained acceleration clauses and were serviced by the mortgagee. When the debtor defaulted, the mortgagee accelerated the loan, but later issued a Notice of Rescission of Acceleration of Loan Maturity after negotiating with the debtor. After a series of unpaid payments, litigation ensued and the mortgagee filed counterclaims. In response, the debtor claimed that the statute of limitations contained in Texas Civil Practice and Remedies Code § 16.035(a) barred the enforcement of the lien on the property. The bankruptcy court disagreed and held that § 16.035(a) did not bar enforcement of the deed of trust and that the mortgagee's claim was secured by a lien on the property. The district court affirmed. On appeal, the

circuit court agreed and held that the mortgagee's rescission sufficiently abandoned the acceleration and thus the mortgagee's claims were not barred by the statute of limitations.

Viegelahn v. Randolph Brooks Fed. Credit Union (In re Guiles), 2017 WL 4570704 (Bankr. W.D. Tex. Oct. 12, 2017).
This adversary proceeding arose out of a chapter 13 bankruptcy in which the debtor obtained two loans from the same creditor, secured by the same collateral: her vehicle. The creditor issued the first note and properly perfected its interest by noting its lien on the certificate of title, as required by the Texas Certificate of Title Act. Years later, the creditor issued a second note; the debtor used the funds to pay off the balance of the first note, and retained the remaining money for personal use. The creditor did not note anything about the second loan on the certificate of title. The trustee brought an avoidance action, claiming that the lien had been satisfied when the first note was paid off, and that the creditor's interest was now unperfected. The creditor responded by arguing that the trustee did not have standing to bring the avoidance action and that the second note was a future advance, merely extending the lien rather than creating a new security interest. The court agreed with the trustee on the standing issue and the creditor on the perfection issue. The court determined that the trustee was properly exercising her powers under §§ 544 and 1302 to object to the transfer and bring the action; if her efforts were successful, the estate would be appropriately benefited. The court then determined that the second note was a future advance—evidenced by the future advance language in the security agreement—and did not create a new security interest. Relying on *In re Conte* and referencing other jurisdictions with similar state law, the court found that the dragnet clause was valid, the lien had never been released, and the creditor had properly perfected its security interest.

Wilmington Savings Fund Soc'y v. Garza (In re Garza), 2017 WL 5197857 (Bankr. S.D. Tex. Nov. 9, 2017).
Debtors argued that mortgage holder had accelerated the note more than four years prior without foreclosing and therefore was barred by statute of limitations from foreclosing and that release issued by mortgage holder's predecessor in interest was binding as to the mortgage holder. Mortgage holder argued that several actions it had taken subsequent to acceleration had served as abandonment of the acceleration, including a letter informing the debtors that the mortgage holder intended to accelerate but demanding only the default amounts, and requested that the release issued by its predecessor in interest be deemed rescinded. The court held that the mortgage holder had established abandonment of the acceleration and that the release would be rescinded because the debtors had failed to present any evidence that they were no longer obligated to repay the purchase money on their home.

C. EXEMPTIONS – STATE

In re Pearson, 570 B.R. 237 (Bankr. N.D. Tex. 2017).
Debtors claimed state law exemptions in four vehicles and in an unspecified 170.44 homestead acres out of a 320-acre tract. Upon objection by a creditor, the court held that the four vehicles were non-exempt farming vehicles with respect to the debtors because they were leased to the farming entities owned by the debtors and, therefore, not used by the debtors themselves for farming. Although the homestead acreage was likewise leased to the debtors' farming entities, the court held that the lease term was temporary and that the debtors could, therefore, still claim a homestead interest in the acreage, but that they were required to identify the specific acreage as to which they claimed their homestead exemption.

In re Stanford, 573 B.R. 205 (Bankr. W.D. Tex. 2017).
After a lengthy dispute surrounding a family property, debtors, who individually had interest in the property, were allowed to make the property their homestead. Upon hearing this, creditor moved to attach the debtors' homestead property to its pre-existing judgment lien. Bankruptcy court denied the motion and found that, because the debtors immediately impressed the property with the homestead

characterization even though they did not immediately physically possess the property, the lien did not attach. Moreover, the court found that, under *Steger*, the merger doctrine did not apply since the merger would be disadvantageous to the debtors, the debtors do not own the property in the same right, and because the debtors showed no intent of merging their interests.

In re Kara, 573 B.R. 696 (Bankr. W.D. Tex. 2017).
Chapter 7 trustee objected to debtor's claim of exemption in an inherited IRA that were claimed based on state exemptions under §§ 522(b)(3) and 42.0021 of the Texas Property Code. Distinguishing the facts from that of *Clark v. Rameker* (in which debtors claimed exemption in inherited IRA under § 523(b)(3)(C)), the court rejected the argument that § 523(b)(3)(C) preempts state law exemption statutes and found that the exemption claimed under § 42.0021(a) of the Texas Property Code was enforceable in the chapter 7 case.

Wiggains v. Reed (In re Wiggains), 848 F.3d 655 (5th Cir. 2017).
Chapter 7 trustee brought adversary proceeding to avoid, as fraudulent transfer, debtor's prepetition partition of residence that he owned as community property with his non-debtor wife. The bankruptcy court entered judgment in favor of trustee. Following sale of this property, the wife moved for award of a portion of the sales proceeds based on her Texas homestead interest in the property. The bankruptcy court determined that the wife was limited to what she would receive by virtue of debtor-husband's capped homestead exemption in the property. Appeal was taken from both decisions directly to the court of appeals. The court affirmed the decision, noting that the only reason for the partition was to avoid payment to the creditors.

D. COMMENCEMENT OF CASE – VOLUNTARY/INVOLUNTARY/SUBSTANTIAL ABUSE

In re Mathews, 2017 WL 4216561 (Bankr. W.D. La. Sept. 19, 2017).
Joint debtors filed their credit counseling certificates, but wife's certificate reflected completion of the counseling more than 180 days before the petition date. Under a show cause order as to why she should not be dismissed from the case for failure to comply with § 109(h), the wife argued exigent circumstances arising out of a misunderstanding with respect to how the consumer counseling website processed efforts to re-certify completion of the counseling. The court found that the debtor and her counsel's mistake did not constitute exigent circumstances and that dismissal of the wife from the joint case was appropriate.

In re Carroll, 850 F.3d 811 (5th Cir. 2017).
Chapter 7 trustee sought: (1) declaration that debtors and their adult daughters were vexatious litigants; (2) an order barring them from seeking relief against her individually and as trustee in any judicial or non-judicial forum; and (3) award of attorney's fees. The bankruptcy court granted the motion in part, declaring debtors and their daughters to be vexatious litigants, issuing a pre-filing injunction, and sanctioning debtors, jointly and severally, in the amount of $49,432. The district court affirmed. On appeal, the circuit court also affirmed and held that the bankruptcy court did not abuse its discretion in imposing the pre-filing injunction and in ordering debtors to pay $49,432, which represented the amount of attorney's fees incurred by trustee in responding to certain instances of debtors' bad faith conduct, that included their intent to harass and delay the trustee throughout the suit.

E. AUTOMATIC STAY AND PROPERTY OF THE ESTATE

House v. Craft Auto Sales, LLC (In re House), 2017 WL 2579026 (Bankr. S.D. Miss. June 14, 2017).
Debtors brought suit for turnover of property, contempt, and violation of the automatic stay pursuant to § 362(a) against the defendant car dealership. Before the debtors filed for chapter 13 bankruptcy, the defendant repossessed the vehicle the debtors bought from them but never returned the vehicle after bankruptcy was declared. Bankruptcy court found that the defendant willfully violated the automatic stay

by retaining the vehicle past the point of any good faith negotiation since the defendant knew, but disregarded, the fact that the debtors insured their vehicle. Nevertheless, because the vehicle was not insured until after the start date of the debtors' potential employment, the court held that the debtors could only recover the contents of their vehicle that were improperly destroyed by defendant and attorney's fees, but not any damages for lost income. Additionally, no punitive damages were awarded since this was not a recurring issue for the defendant.

In re Mosher, 2017 WL 6939884 (Bankr. S.D. Tex. Nov. 9, 2017).
Debtor, a retired attorney, failed to pay IRS taxes for multiple years, then began moving money in an effort to thwart IRS collection efforts. Settlement was reached providing that debtor would pay IRS within 120 days in lieu of foreclosure and that if debtor failed to pay, an agreed judgment would be entered allowing the IRS to foreclose on the debtor's homestead. Debtor failed to timely make payment and then filed chapter 13 petition in order to prevent entry of agreed judgment. Finding the debtor's conduct to be shameful and in bad faith, the bankruptcy court lifted the automatic stay so that the IRS could have the agreed judgment entered.

In re Ramirez, 2017 WL 3575696 (Bankr. S.D. Tex. Aug. 16, 2017).
The debtors were siblings who both filed separately for chapter 11 bankruptcy; their cases were eventually jointly administered. Both debtors listed one-half interests in more than a dozen pieces of real property that they inherited from their father. The issues before the court were whether: (1) the bankruptcy estate included property of the deceased father's probate estate; and (2) the estate taxes are payable under the chapter 11 plan. The IRS filed proofs of claim that included estate taxes, but also later filed objections to the plan in which it argued the debtors' equitable interests were not property of the bankruptcy estate, and the debtors were also personally liable for the estate taxes. The court found that interests in a probate estate, even where the estate has not yet been fully administered, are properly categorized as property of the bankruptcy estate. The debtors filed for bankruptcy already having acquired equitable interests in the decedent's probate estate. The court also found that the debtors were personally liable for the estate taxes and that the taxes were payable under the plan, but additionally allowed the proofs of claim in the bankruptcy cases, because the debtors did not object or list the scheduled debts as disputed, contingent, or unliquidated.

F. EXEMPTIONS IN BANKRUPTCY

In re Ayobami, 879 F.3d 152 (5th Cir. 2018).
A debtor in chapter 13 filed her Schedule C form, on which she checked the box indicating her intent to exempt 100% of fair market value for most of her claimed exemptions. She referenced § 522(d)(1), (3)–(5) (capping the value of a debtor's interest that may be exempted at a statutory limit) as the specific laws allowing the exemption. The district court allowed the exemption but required the debtor to also list a claimed amount within the statutory limit. The bankruptcy court certified the question: may a debtor claiming federal exemptions under § 522 ever exempt 100% interest in an asset? The Fifth Circuit determined yes, a debtor may do so, because the provision caps the *value* of the asset a debtor may exempt, rather than capping the *debtor's interest* in that asset.

In re Clark, 2017 WL 5505135 (Bankr. W.D. Tex. Nov. 13, 2017).
Debtors had previously filed four chapter 13 cases that were dismissed and one chapter 7 case in which they received a discharge, claiming baseball cards and NASCAR collectibles as exempt home furnishings under Tex. Prop. Code § 42.002(a)(1) and drawing no objections. Debtors filed another chapter 13 case and the trustee objected to the exemption of the baseball cards and NASCAR collectibles as home furnishings; debtors argued that res judicata precluded the trustee from objecting. The bankruptcy court found that res judicata did not apply because the chapter 13 cases had been dismissed and because the chapter 13 trustee had not been a party to the chapter 7 case. Looking to dictionary definitions of

“collectible,” the court concluded that collectibles do not qualify as “home furnishings” and granted the trustee’s objection to the exemptions.

In re Farmer, 2017 WL 3207679 (Bankr. E.D. Tex. July 27, 2017).
Debtors filed for chapter 13 bankruptcy and claimed federal exemptions under § 522(d)(1) and 522(d)(5). They claimed the full fair market value of their home ($78,950, with a mortgage lien of $62,750, yielding $16,200 in equity) and $12,442 in personal property. The debtors argued that they used only $16,200 of the $47,350 homestead exemption they were allowed under § 522(d)(1), so up to $23,700 of any unused amount of the exemption could be carried over as an additional wildcard exemption on top of the $2,500 allowed in § 522(d)(5). The trustee objected to the personal property exemptions, arguing that the debtors had used all of their homestead exemption by exercising the “*Schwab* option” when they claimed 100% of the fair market value of the home and therefore the Bankruptcy Code limits the personal property exemption to $2,500. The court agreed with the debtors, finding that the debtors were not arguing that their exempt interest equaled the statutory cap, but instead followed the Schedule C instructions and claimed “up to” the statutory amount of the exemption, thereby indicating their intent to remove the asset from the estate. Because the trustee did not establish that the value of the claimed exemptions exceeded the statutory limits, the objection was overruled and the debtors were allowed the wildcard carry over for the personal property exemption.

In re Ortiz-Peredo, 2017 WL 3050486 (Bankr. W.D. Tex. July 18, 2017).
Debtors filed for chapter 13 bankruptcy and proposed a plan that would pay 100% of the allowed administrative, secured, and priority claims, and 23% of the nonpriority unsecured claims. The trustee argued that the plan did not satisfy the best efforts test in § 1325(b) because debtors did not include lawsuit proceeds in their disposable income to pay the unsecured creditors. Debtors allege that the lawsuit proceeds were exempt property and, therefore, could not be included in the projected disposable income. The bankruptcy court disagreed with debtors, finding—as in *In re Launza*—that the lawsuit proceeds constituted income not reasonably necessary for maintenance or support and were therefore disposable income. The court distinguished *In re Frost*, saying the chronological considerations in *Frost* exemptions did not apply to the examination of an unconditional settlement-proceeds exemption. The court further noted that exemptions are less significant for chapter 13 debtors and that having the debtors pay otherwise exempt income to their creditors furthered the goals of the chapter 13 system.

Jones v. Wells Fargo Bank, N.A. (In re Jones), 2017 WL 4083546 (Bankr. N.D. Tex. Aug. 30, 2017).
Non-judicial foreclosure sale of homestead occurred one day before filing of chapter 13 petition. Debtor brought an adversary proceeding arguing that there was no completed foreclosure sale because the substitute trustee’s deed was not delivered to the purchaser nor recorded with the county prior to the filing of the bankruptcy petition. Debtor sought to avoid the foreclosure sale under §§ 522(h) and 544(a)(3) of the Bankruptcy Code and sought to recover damages under § 362(k)(1) for violation of the automatic stay. The court ruled that the foreclosure sale was complete, equitable title to the property transferred to the purchaser at the time that the substitute trustee executed the deed, and that the post-petition recording of the deed was not a violation of the automatic stay because the property had not entered the bankruptcy estate.

In re Hawk, 871 F.3d 287 (5th Cir. 2017).
Debtors filed for chapter 7 bankruptcy and claimed an exemption for the funds held in their individual retirement account (IRA). No party objected to the exemption when it was claimed. During the bankruptcy, debtors withdrew funds from the account and used the proceeds for personal and living expenses; the debtors also kept a portion of the liquidated funds in cash. The trustee, upon learning of the withdrawal, argued that the funds were property of the estate because the debtors did not roll the funds over into another retirement account within sixty days. The bankruptcy court held that the funds lost their exempt status and should be turned over to the trustee. The district court affirmed. The Fifth Circuit (on

panel rehearing) disagreed and applied the Snapshot Rule, determining that the exemption for the funds was fixed at the time of filing. Because the funds were exempted at the time of filing and there was no timely objection to the exempt status, the funds could not come in as part of the estate in a chapter 7 bankruptcy.

In re DeBerry, 2015 WL 6528024 (Bankr. W.D. Tex. Oct. 28, 2015), *rev'd*, No. 5:15-CV-01135 (W.D. Tex. Mar. 10, 2017), *rev'd and reinstated*, 884 F.3d 526 (5th Cir. Mar. 7, 2018).
A chapter 7 debtor listed his homestead as exempt property and there were no objections. Debtor eventually sought—and was granted—court approval to sell the homestead. The debtor did not reinvest the proceeds from the sale within six months from the date of the sale. The issue before the court, then, was whether the proceeds from a post-petition sale of a chapter 7 debtor's exempt homestead became property of the estate if not reinvested within six months. The court held that the proceeds did not become property of the estate in a chapter 7 case, distinguishing the Fifth Circuit's precedent in *In re Frost* that dealt with a chapter 13 debtor. The court determined that because the chapter 7 bankruptcy estate does not include funds acquired post-petition, the sale of exempt homestead property did not come into the estate. The district court disagreed but the Fifth Circuit reversed the district court and reinstated the order of the bankruptcy court.

G. Jurisdiction and Venue

In re Reed, 2017 WL 1788295 (E.D. La. May 5, 2017).
Trustee to the debtor initiated adversary proceedings against a number of defendants. Subsequently, the defendants filed a Motion to Withdraw the Reference from the bankruptcy court, but the court disagreed. Governed by 28 U.S.C. § 157(d), which provides for permissive withdrawal, and the Fifth Circuit's factors *In re Gulf States Long Term Acute Care of Covington, L.L.C.* and other case law, the court found that since it was not yet clear that a jury trial would be necessary in this case, a denial of the motion was appropriate for the sake of judicial efficiency. Nevertheless, the court also ruled that if it was later found that a jury would be necessary, then the defendants could bring this motion again.

H. Procedure

In re Campbell, 2017 WL 2870132 (Bankr. W.D. La. July 5, 2017).
Debtor filed for bankruptcy and did not list the plaintiff-creditor, Louisiana Workforce Commission (LWC), in its schedules. Despite this omission, the clerk of court sent notice of the case and the date of the 341 meeting to LWC. The day after the 341, LWC filed its proof of claim for repayment of unemployment benefits it alleged the debtor obtained fraudulently. The deadline to file a complaint to determine dischargeability was November 27, 2016; LWC filed its complaint—alleging that the debt was non-dischargeable—one month after the deadline. The debtor argued that LWC's complaint was untimely and filed a Rule 12(b)(6) motion to dismiss four months later. LWC responded that the motion to dismiss was untimely since it was not within the allotted time to answer and moved for default judgment. The bankruptcy court found LWC's complaint untimely even though LWC was unscheduled because LWC had actual notice of the proceedings and filed its proof of claim. The fact that the debtor's motion to dismiss was filed late did not somehow cure LWC's untimely filing of its complaint. The court also found that it had discretion to properly consider a Rule 12(b)(6) motion that was not filed within the window to answer. Because LWC waited so long to file its complaint, and waited to attempt to obtain a default until after the motion to dismiss was filed, the debtor's motion to dismiss was granted.

In re Novoa, 690 Fed. App'x 223 (5th Cir. 2017).
Physician filed for chapter 7 bankruptcy in a case involving medical malpractice with patients. The chapter 7 trustee and the patients agreed to allow the patients to settle with the insurance providers without the physician's consent, to which the physician failed to file a timely response, and the

bankruptcy court consequently permitted this action. After some years had passed, the physician filed a motion to reopen the chapter 7 so that a motion to vacate the prior order as void under Federal Rule of Civil Procedure 60(b)(4) could be filed. The bankruptcy court denied this motion. On appeal, the circuit court held that the bankruptcy court did not abuse its discretion in refusing to reopen the case since there was no statutory violation committed, akin to a “fundamental infirmity,” to render the judgment void.

Thompson v. Thompson (In re Thompson), 572 B.R. 638 (Bankr. S.D. Tex. 2017).
Creditor in a chapter 7 bankruptcy case filed a motion for leave to refile an adversary complaint that had mistakenly been filed in the main case. Debtor filed a motion to dismiss the complaint based on its lack of timeliness. Although the creditor filed the adversary complaint fifty-two days late, the court noted that the debtors were on actual notice before that time and the filing related back. The court allowed a brief extension for the creditor to properly request summonses for the defendants.

Trevino v. Caliber Home Loans (In re Trevino), 564 B.R. 890 (Bankr. S.D. Tex. 2017).
Chapter 13 debtors brought adversary proceeding to recover, inter alia, for purported debt collectors' alleged violation of provisions of the Fair Debt Collection Practices Act (FDCPA). Debtors subsequently moved to compel production of documents in response to their discovery requests, for leave to file supplemental complaint, and for sanctions, while defendants moved for protective order and to reopen the hearing to allow them to introduce alleged newly discovered evidence. The bankruptcy court held that: (1) bankruptcy court, even as a non-Article-III court, had authority to decide pending motions for protective order, to compel discovery, for leave to file supplemental pleading, to reopen evidence, and for sanctions; (2) defendants established “good cause” for protective order to restrict debtors' use of any confidential information or trade secrets; (3) debtors’ failure to specify in request for production of documents that any documents produced should be in native format left defendants free to respond to debtors' requests by producing documents in any usable form; (4) document production request could not be used to shift burden of researching public information from debtors to debt collectors; (5) debtors were entitled to production of “[a]ll documents or electronically stored information that explain or describe any code or abbreviation in any documents produced in response to plaintiffs' requests for production of documents”; (6) debtors would not be allowed to file supplemental complaint; and (7) the hearing could not be reopened on “newly discovered evidence” theory to allow defendants to submit evidence that did not exist prior to hearing.

In re Newberry, 2017 WL 4564704 (Bankr. W.D. Tex. Oct. 11, 2017).
Chapter 13 debtors were delinquent on post-petition mortgage obligations, however, the mortgage servicer filed response to trustee’s final cure notice that failed to identity any delinquencies. Debtors eventually went into foreclosure and brought a state court suit, of which the factual underpinnings included the mortgage servicer’s response to the final cure notice not identifying any post-petition deficiencies. Mortgage servicing company filed motion to reopen chapter 13 case in order to amend the response to the trustee’s final cure notice. The bankruptcy court denied the motion, finding that Rule 3002.1 exists to avoid the types of mistakes made by the mortgage servicer and that the state court proceeding was the proper forum for the mortgage servicer to attempt to address the factual issues relating to the status of the debtors’ mortgage payments.

RSL Funding, LLC v. Date (In re Date), 2017 WL 5004641 (Bankr. S.D. Tex. Oct. 31, 2017).
In 1996, bankruptcy court entered order permanently enjoining party from filing adversary proceedings without permission of the court based on the party’s bad faith vexatious litigation tactics. Nearly twenty years later, party filed adversary without first obtaining court permission. Party argued that district court’s withdrawal of reference in the 1996 case eliminated the bankruptcy court’s ability to enforce the injunction. The court held that the 1996 injunction remained in effect and awarded sanctions against the party in the form of attorney’s fees incurred by defendant.

I. CLAIMS

In re Bates, 570 B.R. 757 (Bankr. W.D. Tex. 2017).
State of Texas filed a proof of claim for post-petition child support payments owed under a divorce decree. The chapter 7 trustee objected based upon § 502(b)(5), arguing that the State was not entitled to a claim for child support payments that became due after the petition date. The State argued that under the "conduct theory," the debtor's liability for the child support payments related to the date that the child support order was entered. The bankruptcy court held that the conduct theory was inapplicable under Fifth Circuit precedent and that, instead, the pre-petition relationship test governed. Because the State did not show any facts that would give rise to an acceleration of the future obligations owed under the child support order, the bankruptcy court disallowed the claim.

In re Bird, 565 B.R. 382 (Bankr. S.D. Tex. 2017).
Chapter 7 trustee moved for authority to make interim distribution on unsecured claims, while reserving amount sufficient to satisfy any administrative expenses that might arise, and debtor objected. The bankruptcy court held that: (1) the language in settlement barred debtor from objecting to trustee's proposed interim distribution on creditor's allowed unsecured claim; (2) the amended proof of claim filed by unsecured creditor, which did not limit the property out of which claim was payable, was the "live" claim governing creditor's right to distribution; (3) regardless of whether amended proof of claim filed by unsecured creditor contained the supporting documentation necessary for it to be prima facie valid, claim was allowed in absence of any objection thereto; and (4) bankruptcy court could and would authorize chapter 7 trustee to make interim distribution on allowed unsecured claim of debtor's largest creditor, where distribution would decrease the funds lost to bank fees and would help to maximize distribution to other claimants.

In re Canada, 2017 WL 1837107 (N.D. Tex. May 8, 2017).
IRS appealed a final order of the bankruptcy court sustaining chapter 11 debtor's objection to the IRS's claim for civil penalties for his "failure to register a tax shelter as required by IRC § 6111 and the associated regulations." In affirming the bankruptcy court, the district court held that the arrangements were not "tax shelters" under 26 U.S.C. § 6111 since they did not fit in the plain meaning of the word "investment," conform to the usual canons of statutory construction, or legislative history. Thus, debtor could not be penalized for failing to register them. Also, in affirming the bankruptcy court, the district court found that even if the arrangements were "tax shelters," debtor fell within a statutory safe harbor provision of 26 U.S.C. § 6707 because he had "reasonable cause" for the failure to register.

In re Healey, 2017 WL 4863014 (Bankr. E.D. Tex. Oct. 26, 2017).
Pre-petition, substantial state court judgment was awarded against debtor. Debtor appealed, but failed to supersede the judgment. While appeal remained pending, debtor objected to the proof of claim filed by the judgment creditor on the grounds that it was not a final judgment because it was under appeal. The court overruled the objection to claim, finding that, under Texas law, the failure to supersede the judgment resulted in the judgment becoming procedurally final even though the appeal remained pending.

In re Martin, 2017 WL 1839163 (Bankr. N.D. Miss. May 5, 2017).
Chapter 13 debtors' mobile home was collateral for a long term debt held by a bank. The debtors completed their plan, including bringing their debt to the bank current, and received their discharge. Post-discharge, debtors defaulted on their debt to the bank, the bank foreclosed, and the sales proceeds left a deficiency balance. The bankruptcy case was subsequently reopened to administer unrelated settlement proceeds received by one of the debtors, and the bank argued that the post-discharge deficiency arising out of its sale at foreclosure of the debtors' mobile home entitled it to share in the distribution of those settlement proceeds. The court rejected the bank's arguments and held that, while the debtors' debt to the bank had not been discharged and the bank was entitled to seek collection of its deficiency claim against

the debtors outside the bankruptcy court, the bank had already received under the debtors' chapter 13 plan everything that it was entitled to receive through the bankruptcy case.

In re McPhilamy, 566 B.R. 382 (Bankr. S.D. Tex. 2017).
The court found that the debtors' multiple obligations on two vehicles were not purchase-money interests because no evidence was presented that the obligations on the first vehicle related only to the purchase of that vehicle and the obligations on the other vehicle represented refinancings that included additional advances. Because the obligations were not purchase-money security interests and because the vehicles were not "any other thing of value," the court held that the hanging paragraph of § 1325(a) did not govern and the debtors were free to cramdown and bifurcate the claims of the secured creditor.

In re Rodriguez, 567 B.R. 275 (Bankr. S.D. Tex. 2017).
Creditor filed motion to extend time for it to file proof of claim, and to allow claim that it had filed after bar date expired, even though no objection had been filed. Bankruptcy court held that the creditor's motion was superfluous and unnecessary under § 502(a) and thus, denied the motion. The court also held that it did not have authority to extend time for creditor to file proof of claim, except on showing that one of the six conditions specified in the Rule 3002(c)(1–6) for such an extension was satisfied.

In re Vega, 2017 WL 2954762 (Bankr. S.D. Tex. July 10, 2017).
Lienholder filed proof of claim related to debt owed on automobile, but did not attach any supporting documentation. Debtors requested supporting documentation, but lienholder never responded. Due to changed circumstances, debtors surrendered the vehicle, and the lienholder filed an amended proof of claim for a deficiency balance, again failing to attach any supporting documentation and again not responding to the debtors' request for the supporting documentation. The debtors objected to the amended proof of claim. The court found that the proof of claim failed to comply with Rule 3001(c)(2)(A), but allowed the lienholder to present evidence supporting its claim and found the claim was valid and enforceable against the debtors. Nevertheless, under Rule 3001(c)(2)(D), the court awarded the debtors' attorney's fees incurred objecting to the amended proof of claim and addressing the lienholder's failure to provide supporting documentation.

Midland Funding, LLC v. Johnson, 137 S. Ct. 1407 (2017).
Chapter 13 debtors brought Fair Debt Collection Practices Act (FDCPA) causes of action against creditor that had filed proofs of claim in their bankruptcy cases for debts that appeared to be time-barred. The Supreme Court held that filing proofs of claim in bankruptcy cases for time-barred debts was not false, deceptive, misleading, unfair, or unconscionable. The court first focused on the fact that § 101(5)(A) defines "claim" as a "right to payment" and that under the relevant Alabama state law, a creditor has a right to payment even after the limitations period has expired. Rejecting the debtors' argument that "claim" should mean "enforceable claim," the court held that the procedural protections provided in chapter 13 cases, such as a knowledgeable trustee, prevent the filing of stale claims from being unfair to debtors.

J. DISCHARGE – OVERALL/EFFECT OF DISCHARGE

Frank v. Ward (In re Ward), 2017 WL 377947 (Bankr. N.D. Tex. Jan. 26, 2017).
The chapter 7 trustee and various creditors commenced an adversary proceeding seeking to deny the debtor's discharge under § 727(a), with the creditors also seeking a determination that the debts owed them were non-dischargeable under § 523(a)(6). The court held that debtor had misstated his gross income on his SOFA by intentionally failing to disclose expenses paid on his behalf by companies that he controlled, had misstated his and his wife's income on the Schedule I, and had given false testimony at the 341 meeting regarding certain assets and the funding of a trust. Also concluding that the debtor had

failed to adequately account for the loss of various assets, the court held that the debtor's discharge would be denied under § 727(a)(4)–(a)(5).

In re Chu, 679 Fed. App'x 316 (5th Cir. 2017).
Orthodontist filed for chapter 7 bankruptcy after the Texas Health and Human Services Commission alleged Medicaid fraud at his practice. Around this same time, the State of Texas commenced a *qui tam* action under seal against the orthodontist and later filed adversary proceedings as well, claiming that the orthodontist had violated § 727(a)(4)–(5) and sought of discharge. The bankruptcy court agreed and found that the orthodontist had either acted with "fraudulent intent" or "reckless indifference for the truth" in his failure to disclose several large monetary transactions in his SOFA. The district court affirmed. On appeal, the circuit court held that the bankruptcy court did not err in its decision because the State of Texas has standing even though its debt might have been nondischargeable under § 523(a)(7).

Montreux Fin., LLC v. Steiner (In re Steiner), 2017 WL 1476118 (Bankr. N.D. Tex. Apr. 24, 2017).
Plaintiff company filed a Complaint for Adjudication of Liability, Objecting to Discharge, to Determine Non–Dischargeability and for Other Relief against the debtor who allegedly breached her fiduciary duties, committed fraud, and other willful and malicious injuries against the plaintiff while she was employed with it. Upon review of the evidence, bankruptcy court held that the debtor owed a fiduciary duty to the plaintiff due to the trust and confidence the plaintiff placed in the debtor and that the debtor breached this duty when she unlawfully withdrew, embezzled, stole, converted, and misappropriated from the plaintiff's account. In addition, the court denied debtor's discharge and found debtor's liability to plaintiff nondischargeable under § 523(a)(2), (a)(4), and (a)(6). Furthermore, due to the severity of the debtor's actions against the plaintiff, exemplary damages were awarded as well.

Wellmon v. Vigil (In re Vigil), 2017 WL 4773108 (Bankr. E.D. Tex. Oct. 18, 2017).
Creditor sought default judgment in §§ 727 and 523 actions against debtors, making allegations arising out of debtors' ownership of a corporate entity in which the creditor was a member. The court took evidence at hearing. Noting that default judgments are committed to the discretion of the court and that under Rule 7055 proof of necessary facts may be required, the court found that the creditor had failed to prove § 727(a)(7) wrongful conduct in a related case, § 727(a)(2)(A) transfer or concealment of property, § 727(a)(4)(A) false oaths, and § 727(a)(5) failure to explain loss of assets. Because the debtors had failed to provide the trustee with requested financial information related to the corporate entity of which they were owners, the court found that the discharge should be denied under § 727(a)(4)(D). Because the court found that the discharge should be denied, it dismissed the § 523 claims as moot.

Satija v. Robert (In re Robert), 2017 WL 5007146 (Bankr. W.D. Tex. Oct. 31, 2017).
Chapter 7 trustee sought to deny debtors' discharge under § 727(a)(4)(A), (a)(3), and (a)(5), alleging that debtors had made false oaths in their bankruptcy case, concealed or failed to preserve financial documents necessary to determine their financial condition, and failed to satisfactorily explain the loss of assets. The court found that the debtors had failed to disclose in their original schedules and original and amended SOFA multiple bank accounts, cash, ownership of time shares, stock, several life insurance policies, rental income, investment income, consulting income, and payments for the benefit of insiders. Based on the type of assets, income, and transactions that the debtors failed to disclose, the court concluded that the debtors had made false statements in their bankruptcy filings with reckless disregard for truth sufficient to establish fraudulent intent and granted the objection to discharge under § 727(a)(4)(A).

K. DISCHARGE - PARTICULAR DEBTS

In re Appling, 848 F.3d 953 (11th Cir. 2017), *cert. granted sub nom.* ***Lamar, Archer & Cofrin, LLP v. Appling***, 16-1215, 2018 WL 386562 (U.S. Jan. 12, 2018).
Lamar, Archer & Cofrin represented R. Scott Appling in a lawsuit against his former business. Appling was unable to pay his legal bills, but orally confirmed with the attorneys that he was expecting a substantial tax refund and that it would be sufficient to pay his legal fees (both delinquent and future fees incurred). In reliance on his statement, Lamar continued the representation and did not immediately try to recover the fees owed. In actuality, Appling received a smaller tax refund than he represented, and he applied the refund toward his business rather than the legal fees. Lamar eventually filed suit to collect the fees; Appling filed for bankruptcy under chapter 7. Lamar initiated an adversary proceeding to have the legal fees determined to be nondischargeable. Even though a debtor normally cannot discharge debt incurred by fraud under § 523(a)(2)(A), the Eleventh Circuit found that Appling's debt was incurred by a false oral statement respecting his financial condition, and was therefore dischargeable under § 523(a)(2)(B). The Supreme Court of the United States granted certiorari to resolve the circuit split regarding whether a representation about a *specific asset* qualifies as a statement respecting financial condition.

Claybar v. Huffman (In re Huffman), 2017 WL 4621703 (Bankr. E.D. Tex. Oct. 13, 2017).
Pre-petition, district court had entered post-answer default when debtor failed, without justification, to appear at pre-trial conference despite having been ordered to do so. The final judgment entered by the district court was based upon evidence submitted by the plaintiff and included extensive findings of fact. When the debtor filed for chapter 7, judgment-plaintiffs sought determination that judgment debt was nondischargeable as a matter of law under § 523(a)(2)(A). Applying federal principles of issue preclusion, the bankruptcy court found that the factual holdings in the district court judgment adequately supported each of the elements of a § 523(a)(2)(A) action for false, misleading, deliberate, and material misrepresentations to the plaintiffs and therefore granted summary judgment against the debtor.

State Bar of Tex. Client Sec. Fund v. James (In re James), 2017 WL 4564694 (Bankr. E.D. Tex. Oct. 11, 2017).
Attorney was disbarred and ordered to pay restitution to former client. State Bar Security Fund made the restitution payment to the former client. Attorney and the woman that he married after the restitution award was made filed for bankruptcy. State Bar Security Fund sought determination that award of restitution against disbarred attorney was non-dischargeable under § 523(a)(7). Debtor argued that at the time that the award was made it was not owed to a governmental unit, but rather to his former client and, therefore, did not qualify for § 523(a)(7) treatment. The bankruptcy court granted the State Bar Security Fund summary judgment against the disbarred attorney, finding that under 1.06(z) of the Texas Rules of Disciplinary Procedure the restitution award was a disciplinary sanction intended to protect the public and qualified for § 523(a)(7) treatment. Summary judgment against the wife was denied because no evidence was presented that the husband's pre-marital liability on the restitution award should be imputed to her.

Prado v. Erickson (In re Erickson), 2017 WL 4404286 (Bankr. W.D. Tex. Sept. 29, 2017).
Adversary plaintiff sought to have debts excepted from discharge on the basis of certain allegedly fraudulent transfers; debtors sought summary judgment on the grounds that the claim was obtained through a guarantee and there was no connection between the guarantee and the allegedly fraudulent transfers. Because there was no allegation or evidence that there was any connection between the complained of transfers and the pre-existing debt owed to the plaintiff, the court held that the debt could not be excepted from discharge under the "actual fraud" provision of § 523(a)(2)(A).

Hiner v. Koukhtiev (In re Koukhtiev), 2017 WL 5514541 (Bankr. S.D. Tex. Nov. 1, 2017).
Pre-petition, creditor had hired debtor to develop source code for software program; although both creditor and debtor were named on patent, by their agreement the software was to belong to the creditor. After their business relationship soured, creditor obtained judgment declaring her to be the owner of software. Post-judgment, debtor had sold some of the software without remitting the sales price to the creditor and refused to give the creditor the source code for the software. When debtor filed chapter 7 petition, creditor brought adversary seeking determination that state court judgment and post-judgment actions taken by debtor gave rise to nondischargeable obligations under § 523(a)(2)(A) and (a)(6). The bankruptcy court found that § 523(a)(2)(A) did not apply, but ruled in favor of the creditor on § 523(a)(6), finding that the debtor's refusal to give her the source code and pocketing of proceeds from sales of the software constituted willful and malicious injury.

Jimenez v. Navient Sols., LLC (In re Jimenez), 2017 WL 5592260 (Bankr. S.D. Tex. Nov. 20, 2017).
After receiving discharge and after case was closed, chapter 13 debtor moved to re-open and filed adversary seeking § 523(a)(8) undue hardship determination as to student loans and relief for alleged violation of discharge injunction by holder of the student loans based on the argument that she was not personally liable for the student loans because her husband had put them under her name fraudulently. The holder of the student loans moved to dismiss for lack of jurisdiction and for failure to state a claim. The bankruptcy court denied the motion to dismiss because the debtor was not merely seeking a dischargeability determination, but rather also seeking affirmative relief based on the allegation that the holder of the student loan was violating the discharge injunction by attempting to collect student loan debts that the debtor claimed she did not actually owe by virtue of her husband's fraud.

Christian v. Pac. W. Bank, 2017 WL 6274488 (E.D. Tex. Dec. 8, 2017).
At time of filing chapter 7 petition, debtor was the subject of a motion to show cause requesting that she be found in contempt for violation of a cash collateral order entered in a separate chapter 11 case for an entity with which the debtor was associated. Bankruptcy court lifted stay to permit contempt hearing to proceed against chapter 7 debtor. Contempt order was entered in the chapter 11 case assessing sanction against debtor for $100,000. Bankruptcy court held that civil contempt order for $100,000 entered by sister court was not discharged in debtor's case because it was a post-petition debt because the contempt order was entered after the debtor filed her petition. On appeal, the district court found that under all of the pre-petition relationship, accrual, and conduct tests the contempt award related to pre-petition conduct and, therefore, was a pre-petition debt that was subject to discharge.

In re Haler, 708 Fed. App'x 836 (5th Cir. 2017).
Debt related to debtor's generic verbal statements regarding "financial shape" and cash-flow is dischargeable. State court judgment was entered finding debtor liable for fraud related to verbal representations he had made regarding a business's financial shape and cash flow. Bankruptcy court held that collateral estoppel precluded debtor from challenging nondischargeability of the debt pursuant to § 523(a)(2)(A). The circuit court reversed, holding that debtor's statements related to financial condition and, therefore, were excluded from application of § 523(a)(2)(A).

Clayton v. Simon (In re Simon), 2017 WL 4118284 (Bankr. W.D. La. Aug. 3, 2017).
Before the court was a nondischargeability proceeding in which the plaintiff received a default judgment in Louisiana state court for serious physical injuries inflicted by the debtor. The debtor filed for chapter 7 bankruptcy, and the plaintiff argued that his damages should be nondischargeable under § 523(a)(6). Plaintiff and debtor had a parking lot altercation in which the debtor became angry with the plaintiff and struck him in the back of the head. Once the police were called, the debtor tried to drive away but the plaintiff took the debtor's keys to prevent him from doing so; the debtor then repeatedly punched the plaintiff in the head until the plaintiff lost consciousness. The court found these actions to satisfy the elements required for § 523(a)(6) in that the debtor inflicted willful and malicious injury upon the

plaintiff. The court found no reasonable justification for the debtor's use of such force and disregarded any potential provocation defense as immaterial to the § 523(a)(6) analysis.

Hill v. Fritz (In re Fritz), 2017 WL 1229706 (Bankr. N.D. Tex. Apr. 3, 2017).
At trial on claims of nondischargeability under § 523(a)(2), (4), and (6), creditors relied upon state court judgment to prove their damages. Finding that the creditors had established the liability elements of each of their § 523 claims, the court entered a take-nothing judgment because the state court judgment relied upon by the creditors as their sole evidence of damages did not contain sufficiently detailed findings to permit the bankruptcy court to allocate the damages awarded in the state court judgment among the dischargeable and nondischargeable claims asserted in the state court lawsuit.

In re Ernst, 570 B.R. 750 (Bankr. W.D. La. 2017).
Creditor sought, under § 523(a)(2) and (a)(4), to have determined nondischargeable debts arising from the conduct of debtor's non-filing wife. In ruling on Rule 12(b)(6) motions to dismiss, the bankruptcy court held that under § 524(a)(3), the creditor could proceed with the portion of its claims relating to community property. The court dismissed the claim with respect to the debtor's personal liability and to the debtor's property, finding that complaint failed to allege that the debtor had acted with fraudulent intent in concert with his wife and that the wife's fraudulent conduct would not simply be imputed to the debtor.

Kokas v. Osborne (In re Osborne), 2017 WL 1232407 (Bankr. E.D. Tex. Apr. 3, 2017).
Plaintiff filed a motion for summary judgment upon the cause of action brought pursuant to § 523(a)(19) that excepts from discharge any debt arising from any judgment, decree, or settlement based upon a debtor's violation of securities law. Prior to this suit, the state district court granted a post-answer default judgment against the debtor, including judgment on claims for violation of § 33(A)(1), (A)(2), and (F)(2) of the Texas Securities Act. Due to this fact, the bankruptcy court granted the motion and held that because the indebtedness owed by the debtor was based upon the violation of state securities laws and common law fraud in connection with the purchase of a security, and because the indebtedness was previously memorialized through the entry of a judgment in a state judicial proceeding, the final judgment and the damages issued in the state district court was rendered nondischargeable pursuant to § 523(a)(19).

In re Selenberg, 856 F.3d 393 (5th Cir. 2017).
Former client brought adversary proceeding to except debt from discharge in chapter 7 case of her ex-attorney. Bankruptcy court entered judgment in former client's favor, and the district court affirmed. On appeal, the circuit court held that when debtor-attorney gave former client a $275,000 promissory note in order to induce former client not to immediately file a legal malpractice action against him, he thereby obtained "extension of credit," as that term was used in fraud-based dischargeability exception pursuant to § 523(a)(2)(A), making his debts nondischargeable. The court also held that the debtor-attorney violated Rule 1.8(h)(2) of the Louisiana Rules of Professional Conduct by failing to advise the client on desirability of securing independent legal representation before effectively settling her malpractice claims. Thus, the failure to disclose may constitute a false representation under § 523(a)(2)(A). Moreover, based upon the debtor-attorney's actions while representing the client, the court found that the bankruptcy court did not clearly err in finding that debtor-attorney had acted with requisite fraudulent intent.

McCord v. Monfort (In re Monfort), 2017 WL 819503 (Bankr. S.D. Tex. Mar. 1, 2017).
In a divorce decree, debtor, the father/ex-husband, was obliged to pay child support, including stipulated medical expenses, and stipulated attorney's fees. However, when the debtor overpaid the child support through wage withholding, but failed to pay for medical expenses, the plaintiff, the mother/ex-wife, initiated adversary proceeding and sought denial of debtor's discharge pursuant to § 727(a)(4)(A), or alternatively, denial of debtor's discharge to plaintiff pursuant to § 523(a)(5) and (a)(15). The court found that since the debtor's overpayment was neither voluntary nor intended to be gratuitous, the overpayment

in the amount of $11,700 was entitled to be credited towards plaintiff's unreimbursed medical expenses in the amount of $5,978. Plaintiff was also awarded reasonable and necessary attorney's fees in the amount of $9,287 pursuant to the contractual provision contained in the divorce decree.

Network of Neighbors, Inc. v. Pendergraft (In re Pendergraft), 2017 WL 1969661 (Bankr. S.D. Tex. May 11, 2017).
Plaintiff company filed a complaint to determine the dischargeability of debts against the debtors, who were the former treasurer and board member of the plaintiff, who allegedly diverted money from the plaintiff to an entity controlled by the debtors in three transactions. The bankruptcy court held that the first alleged transaction had no defalcation since the debtors presented evidence of the underlying payments to vendors, but that the second transaction contained defalcation and the third did as well (and was a falsified agreement created by the debtors). Thus, the court concluded that the debtors' debt to plaintiff in the second and third transaction were nondischargeable due to their defalcation in a fiduciary capacity under § 523(a)(4).

Teague v. Tex. Guaranteed Student Loan Corp. (In re Teague), 2017 WL 187557 (Bankr. N.D. Tex. Jan. 17, 2017).
Debtor filed a complaint to determine dischargeability of debt pursuant to § 523(a)(8) and sought to discharge student loans owed to Texas Guaranteed Student Loan Corporation. Debtor claimed that her recent scoliosis diagnosis qualified as an "undue hardship" sufficient enough to discharge her student loans as required by the *Brunner* test. However, though the bankruptcy court was sympathetic to the debtor's situation and agreed that she met the other two *Brunner* elements, the court held that the element of "undue hardship" was not met since the scoliosis was, as admitted by the debtor, not a disability that prevented employment and was manageable. Thus, the debtor's student loan debts were not dischargeable.

Thomas v. Pickens (In re Pickens), 2017 WL 474318 (Bankr. E.D. Tex. Feb. 3, 2017).
After the state court granted the plaintiff's motion for summary judgment in a dispute with the defendant who allegedly defrauded the plaintiff, the defendant filed for chapter 7 bankruptcy. In bankruptcy court, the plaintiff again filed for summary judgment, claiming that the debt owed to the plaintiff by the defendant should be declared nondischargeable as a debt procured by fraud under § 523(a)(2)(A). The bankruptcy court denied the motion in part since the plaintiff failed to demonstrate entitlement to judgment as a matter of law regarding the nondischargeability of the judgment debt (or any portion thereof) owed to it by the defendant, and because significant genuine issues of material fact regarding the role of the defendant in the controversy remained. Nonetheless, the court also granted the motion in part since the plaintiff successfully established certain facts pursuant to Federal Rules of Civil Procedure 56(g) that will not be subject to relitigation.

Wilson v. Phillips (In re Phillips), 2017 WL 113599 (Bankr. E.D. Tex. Jan. 9, 2017).
As a tenant in the plaintiff's apartment, debtor–defendant placed video recording devices to spy on the plaintiff when she resided in the apartment after he moved out. Debtor–defendant was convicted of improper visual recording, Texas Penal Code § 21.15(b), in criminal court after pleading guilty. Plaintiff then sued in civil court where she was given a default judgment in her favor and was awarded damages. However, debtor–defendant filed for chapter 7 bankruptcy. Plaintiff brought a motion for summary judgment in the adversary proceeding in bankruptcy court, seeking judgment as a matter of law through the application of collateral estoppel, and claimed that the debt allegedly owed to the plaintiff by the debtor–defendant should be declared nondischargeable pursuant to § 523(a)(6). Debtor–defendant failed to respond to the plaintiff's motion. Bankruptcy court found that the common facts in the criminal and civil cases were fully and fairly litigated and that that the injuries suffered by the plaintiff, for which liability was assessed against the debtor-defendant in the default judgment, were substantially certain to result from the debtor–defendant's intentionally wrongful conduct that inflicted damages upon the

plaintiff and that eventually resulted in his guilty plea to a felony charge. Consequently, the court held that the debts should be declared nondischargeable.

L. CHAPTER 13 - GENERAL

In re Banks, 2017 WL 3251408 (Bankr. W.D. La. July 28, 2017).
Debtor filed chapter 13 bankruptcy in order to cure the arrearages on her home mortgage. The plan was confirmed and the trustee was designated the conduit for the mortgage payments. The creditor, JPMorgan Chase Bank, brought a motion for relief from stay two years into the plan, alleging a sizable account delinquency equivalent to almost a full year's worth of payments. The debtor objected to the motion, showing at the hearing that she was current on plan payments. Both the debtor and creditor ultimately pointed to the trustee's failure to properly disburse funds as the reason for the delinquency. The bankruptcy court agreed that the trustee was at fault, and therefore found: (1) Chase established a prima facie case for relief from stay and met its § 362(d) burden since the debtor lacked equity in the property; and (2) the debtor met her § 362(d) burden by showing that the account delinquency was not the result of her falling behind on plan payments. The trustee's delay was not enough to lift the stay, and Chase's motion was denied.

In re Gamble, 570 B.R. 272 (Bankr. S.D. Tex. 2017).
Chapter 13 debtors filed their fourth bankruptcy case in six years. Chapter 13 trustee moved to dismiss or convert because debtors failed to make payments under their proposed chapter 13 plan, failed to appear at their 341 meeting, and were ineligible for relief pursuant to § 109(e) because they had too much unsecured debt. At the time of their bankruptcy filing, the debtors owed a judgment for breach of a real property lease relating to their vacating the premises with multiple years remaining on the lease. The court rejected the argument that the debtors could use § 502(b)(6) to reduce, for eligibility determination purposes, the amount of the debt owed by them on a breached real estate lease to the one-year/15% cap, holding that the eligibility determination was to be based off all obligations as of the time of the bankruptcy filing and not off of such obligations as would at some point become allowed claims.

In re Garcia, 2017 WL 2859756 (Bankr. N.D. Tex. June 30, 2017).
Chapter 13 debtors proposed a plan that bifurcated a mortgage claim on their mobile home and real property into a secured and an unsecured portion. The mortgage lender objected, arguing that bifurcation was an improper modification of its loan under § 1322(c)(2) and in the alternative that bifurcation would only be an allowable modification under § 1322(b)(2) if it were done exclusively to the claim secured by the mobile home (personalty) as opposed to the claim secured by the real property. The court held that neither the anti-modification exception of subsection (b)(2) nor the subsection (c)(2) exception were applicable because they apply to security interests in real property that is a debtor's principal residence and the mobile home was personalty. Accordingly, the debtors were entitled to bifurcate the lender's claim against the mobile home.

In re Lopez, 570 B.R. 51 (W.D. Tex. 2017).
Chapter 13 debtors sold their homestead without court approval and retained the proceeds for three years before the court and parties in interest learned of the sale, leading to dispute between debtors and chapter 13 trustee as to what would be done with the proceeds. In order to prevent the proceeds being distributed to creditors, the debtors moved to voluntarily dismiss their case, and the bankruptcy court granted that motion and ordered the chapter 13 trustee to return to the debtors all funds in her possession. Applying *Marrama* and *Law*, the district court concluded that the debtors had an absolute right to dismiss their case because the bankruptcy court had not found that they had acted in bad faith and had not sought to dismiss their case in response to a motion to convert. However, the district court also held that the proceeds from the sale of the homestead could not revest in the debtors under § 349 because they did not exist immediately before the commencement of the bankruptcy case and that the debtors failure to follow the

Bankruptcy Rules relating to seeking permission prior to selling their homestead created cause to not return the proceeds to the debtors.

In re Schilling, 2017 WL 4676244 (Bankr. N.D. Miss. Oct. 16, 2017).
Debtor failed to disclose in Schedules and SOFA full amount and nature of divorce-related debt of nearly $1 million. After ex-spouse's proof of claim was disallowed on the basis of untimely filing, ex-spouse moved to dismiss chapter 13 case on grounds that debtor's unsecured debt as of petition date rendered him ineligible for chapter 13 under § 109(e). Debtor argued that creditor lacked standing because she did not have an allowed claim. The bankruptcy court held that it was immaterial whether the ex-spouse had standing because bankruptcy courts can consider eligibility under § 109(e) sua sponte, but also held that the ex-spouse had standing even without an allowed claim because she had a pecuniary interest in the case. Measuring eligibility as of the petition date, the court held that the debtor was ineligible for chapter 13 because the $1 million debt was the subject of a pre-petition judgment entered against the debtor and the debtor, therefore, had unsecured debt in excess of the limits for eligibility for chapter 13.

M. CHAPTER 13 - PLAN

***In re Amaya*, No. 17-70280 (Bankr. S.D. Tex. April 11, 2018) (Isgur, J.)**.
Propel Financial Services, LLC, filed a proof of claim secured by a tax lien on the debtor's homestead. The debtor proposed a plan that provided for two monthly payments of $1,100 and the remaining 58 payments at $1,200. The plan provided that both debtor's counsel and Propel would be paid pro rata from months 1—58. The plan also provided that Propel would retain its lien (subject to avoidance actions). The chapter 13 trustee's internal procedures indicated that she would pay debtor's counsel prior to other creditors. Propel objected to confirmation because 1) the plan violates § 1325(a)(5)(B)(iii)(l) because the plan paid Propel's claim over 58 months instead of in fixed, equal monthly payments and the chapter 13 trustee's procedures indicated that administrative claims would be paid prior to distributing funds, pro rata, to creditors; and 2) because the plan did not adequately address its lien in the event of dismissal or conversion. The court found that under section 1326(b), priority administrative claims, like debtor's counsel's fees, were appropriately paid before or in conjunction with other creditors. The court noted that the requirements for plan confirmation under § 1325 are distinct from the trustee's obligations under § 1326 and that administration of chapter 13 plans is necessarily flexibl. Therefore, under § 1326(b), priority administrative claims are appropriately paid before or in conjunction with other creditors. The court also cited *In re DeSardi*, 340 B.R. 790, 808 (Bankr. S.D. Tex. 2006) in finding that monthly payments to creditors must be equal, but that these fixed payments do not need to extend over the entire course of the plan (i.e. the debtor could pay off debtor's counsel prior to paying off Propel).

In re Garza, 2017 WL 3575875 (Bankr. S.D. Tex. Aug. 15, 2017).
Debtors filed for chapter 13 bankruptcy and then began contributing to a monthly voluntary 401(k), including the contribution as a "Change in Income or Expenses" in their schedules. The debtors—who were above-median—did not contribute to the 401(k) prior to filing, but alleged that now one of the debtors' employers would match most of the contribution in the future. The trustee objected to confirmation on the grounds that, among other things, the plan would not pay all of the debtors' projected disposable income and would reduce the dividend to the unsecured creditors, and the plan contained errors in the means test calculation. The court determined that §§ 541(b)(7) and 1325(b)(1)(B) in conjunction allowed the debtors to exclude voluntary post-petition 401(k) contributions from their projected disposable income as long as the contributions were in good faith. The court did, however, agree that other errors existed in the means test calculation (including improper treatment of an executory contract as a secured claim), and did not confirm the plan.

In re Shank, 569 B.R. 238 (Bankr. S.D. Tex. 2017).
Chapter 13 debtors confirmed a plan and made subsequent modifications, also filed a proof of claim for their mortgage holder; under the confirmed plan, mortgage holder's claim was to be paid off in full by the time of completion of plan payments. Upon completion of plan payments, mortgage holder alleged that debtors still owed $30,000. The court determined that the language of the confirmed plan nor the confirmation order voided the mortgage holder's lien, but that the mortgage holder received actual notice of the plan and the confirmation order and, therefore, under § 1327(a) res judicata applied to preclude the mortgage holder from subsequently disputing the plan's treatment of his claim.

In re Turcotte, 570 B.R. 773 (Bankr. S.D. Tex. 2017).
Debtors' contractual interest rate with their car lender was 1.99%. Upon filing for chapter 13, debtors proposed a plan that used that same 1.99% interest rate; the car lender objected, arguing that under *Till* it was entitled to at least the prime rate. Addressing an apparent split among the bankruptcy judges in the Southern District of Texas, the court held that under *Till* the "Prime Plus" approach was mandated in chapter 13 cases (as opposed to the treasury rate approach). After analyzing the facts of the case, the court applied a 1% upward adjustment and held that the debtors could not confirm their chapter 13 plan unless they proposed to pay an interest rate to the car lender of the prime rate as of the date of plan confirmation plus the 1% adjustment.

In re Villarreal, 566 B.R. 859 (Bankr. S.D. Tex. 2017).
Debtors sought confirmation of chapter 13 plan that, inter alia, proposed to treat as wholly unsecured five claims of credit union that were secured by debtors' automobile. In response, trustee filed a motion to dismiss or convert. However, bankruptcy court dismissed the motion and confirmed the plan. The court held that the debtors' cross-collateralized loans and the loan used by the debtors to pay off existing non-purchase money security interest with a different financial institution were not "purchase-money security interests" as described in the Texas Business and Commerce Code § 9.103(a). Thus, those loans were not subject to § 1325(a) (the "hanging paragraph"), which limits a debtor's right to bifurcate and cram down certain claims within a chapter 13 plan.

In re White, 564 B.R. 883 (Bankr. W.D. La. 2017).
Below-median income chapter 13 debtor proposed fifty-nine month plan that included four additional annual payments of $1,500 each and which did not call for installment payments on the debtor's vehicle until after debtor's counsel had been paid off in month ten. Noting the difficulties that § 1325(a)(5) can cause, especially for lower income debtors who are attempting to retain a vehicle, the bankruptcy court held that § 1325(a)(5)(B)(iii) only required "equal monthly payments" once debtor's attorney fees had been paid in full. Nevertheless, because the equal monthly installment payments contained in months eleven through fifty-nine of the proposed plan were insufficient to pay off the secured claim against the vehicle, the court held that the plan could not be confirmed.

N. CONVERSION

In re Hurtado, 2017 WL 5153567 (Bankr. S.D. Tex. Nov. 6, 2017).
Four and a half years prior to filing chapter 7 petition, debtors transferred a rental property to their daughter. When the chapter 7 trustee filed an adversary seeking to avoid the transfer of the rental property to their daughter, the debtors moved to convert their case to one under chapter 13 in order to pay their creditors in full or pay the value of the rental property in question. Despite the fact that the debtors' SOFA had some inaccuracies, the court found any such deficiencies to be inadvertent and that the debtors had not acted in bad faith. While permitting the debtors to convert to chapter 13 under §§ 706 and 1307(c), the court nevertheless noted that under § 503(b) the chapter 7 trustee would be entitled to an administrative expense that would be collected through their chapter 13 plan.

In re Pustejovsky, 577 B.R. 671 (Bankr. W.D. Tex. 2017).
Widow of man killed in the 2013 fertilizer storage explosion in West, Texas, filed for chapter 13 while estate of husband was in probate, allegedly in effort to escape scrutiny from executor of the estate with respect to what had been done with donations from the community and life insurance proceeds that widow/debtor had received for the benefit of decedent's child. After (among other things) failing to schedule multiple pre-petition assets and refusing to make necessary disclosures regarding her finances, the debtor dismissed her case. The bankruptcy court sua sponte entered an order vacating the dismissal order, holding that § 1307(b) gave the debtor a permissive ability to dismiss her case and not an absolute right and that § 1307(c) provided the grounds for converting the case to chapter 7.

In re Roberts, 570 B.R. 532 (Bankr. S.D. Miss. 2017).
After the debtor's death, bankruptcy court ordered the parties to appear and to show cause why the bankruptcy case should not be converted to a chapter 7. Upon review of the parties' responses, the court held that when the debtors filed their bankruptcy case, they qualified as debtors under the Bankruptcy Code since neither the Bankruptcy Code nor the Rules say that a debtor needs to re-qualify as a debtor when a case is converted. Furthermore, the court ruled that, under the controlling case of *Brown* and Rule 1016, it is permitted to further the administration of a case if it is in the best interest of the parties once the death of a debtor occurs. The court also found that, at a minimum, the debtor abused the bankruptcy process when the debtor concealed assets and then, upon completion of the bankruptcy case, utilized the assets for his own benefit. Consequently, because of these facts and upon reviewing the *Reider* factors for determining whether consolidation is in the best interest of parties in interest, the court found that the debtors' case should be converted to a chapter 7. But, since no party in interest filed a motion to consolidate the debtors' bankruptcy estates and due to the uncertainty as to whether the court could sua sponte order consolidation, the court reserved ruling on the issue of consolidation of the debtors' bankruptcy estates until conversion to a chapter 7 and appointment of a trustee.

O. POST CONFIRMATION

In re Crain, 2017 WL 279486 (Bankr. S.D. Tex. Jan. 20, 2017).
Creditor of chapter 13 debtor failed to object to debtor's use of an incorrect value of its collateral and debtor's motions to strip the creditor's lien from their homestead, the result being a confirmed chapter 13 plan that stripped creditor's lien. The creditor subsequently moved to vacate the confirmation order, moved to reconsider the confirmation order, and moved to modify the confirmed chapter 13 plan. The court denied each of those motions, finding that the creditor had notice of the debtor's proposed stripping of the lien. The creditor then filed a motion to dismiss the case on the grounds that the debtor had improperly stripped its lien. The court noted that because the deadline for a creditor to seek revocation of a confirmed plan (§ 1330) had passed, the confirmation could only be revoked by the court's sua sponte action; the court declined to take that action based on its finding that the debtor had not acted in bad faith.

In re Gonzales, 570 B.R. 788 (Bankr. S.D. Tex. 2017).
Below-median income debtors proposed and confirmed a sixty month plan. After trustee filed her notice of plan completion in month fifty-five because debtors had paid all allowed general unsecured claims in full, debtors cured a default on their direct-pay mortgage obligation. The court held that the trustee's notice of plan completion did not constitute the end of the debtors' plan, but rather that because the sixty months had not expired the debtors' payment to the mortgage creditor constituted the end of the plan.

In re Hazlewood, 570 B.R. 557 (Bankr. N.D. Tex. 2017).
Debtor disclosed interest in a lawsuit, and through the course of multiple amendments to his schedules and proposed chapter 13 plan represented that interest as having an unknown value. Confirmed chapter 13 plan did not contain a provision excepting the debtor's interest in a lawsuit or its proceeds from vesting in the debtor upon confirmation. When debtor's interest in the lawsuit was liquidated to money judgment in

the debtor's favor, the chapter 13 trustee moved the bankruptcy court to modify the chapter 13 plan to include the proceeds from the lawsuit. The bankruptcy court rejected the trustee's argument that § 1322(b)(8) permitted the trustee to file a plan modification to require the debtor to contribute property that had previously vested in the debtor upon confirmation of the plan, instead holding that § 1321 only permits a debtor to file a plan and that § 1327's provisions causing the interest in the lawsuit to vest in the debtor upon confirmation of the plan remained controlling.

In re Oliver, 2017 WL 1323467 (Bankr. S.D. Miss. Apr. 10, 2017).
Attorney-in-fact for debtor filed a motion to reopen chapter 13 case after the bankruptcy court had already dealt with this issue in the past. The bankruptcy court instead construed the motion as a motion for reconsideration and denied the motion without hearing. The court based its decision on the fact that since the attorney-in-fact did not, in either the second motion to reopen or in the memorandum of support and reply brief, submit anything to the court that it has not already examined and reviewed in ruling on the first motion to reopen.

In re Young, 2017 WL 4174363 (Bankr. M.D. La. Sept. 19, 2017).
Debtor filed for chapter 13 bankruptcy and a plan was confirmed. The plan included a provision that obligated the debtor to make mortgage payments directly to the lender's servicer. The debtor completed her payments to the trustee four years after confirmation and, shortly after, finished paying the final unsecured creditor. It then came to light that the mortgage servicer had not received its last thirty-nine payments; the trustee moved to dismiss because of the debtor's plan default. After this, the debtor reached an agreement with the mortgage lender wherein the lender agreed to modify the loan, and the debtor was able to cure her default under the new modification. The trustee continued to pursue the motion to dismiss, and the debtor maintained that since all the other creditors have been paid and she is no longer in default on her mortgage, the case should not be dismissed and she should receive a discharge. The court found that under § 1329(a), the debtor's plan could be modified before the completion of payments under the plan. Even though the debtor paid every creditor except the mortgage lender, she had not yet fulfilled her obligation to the lender, and, therefore, the court did not consider her payments complete. The court found that, because the debtor paid all other creditors in full before obtaining a modification of the loan and the plan, because that modification occurred pre-completion of the plan, and because she fulfilled all other requirements for discharge, the motion to dismiss should be denied.

P. ATTORNEYS - FEES AND CONDUCT

Demery v. Johns, 570 B.R. 44 (W.D. La. 2017).
After a voluntary dismissal of a chapter 13 case, debtor's attorney filed a fee application with the debtor's consent seeking approval for $350 in attorney's fees to be paid out of funds retained in the chapter 13 trustee's possession. The bankruptcy court denied the fee application without holding a hearing or giving an explanation. On appeal, the district court held that the failure to hold a hearing was not an abuse of discretion but that the failure to provide an explanation was. Accordingly, the court reversed and remanded with instructions for the bankruptcy court to determine whether the $350 was a reasonable fee.

In re Harris-Nutall, 572 B.R. 184 (Bankr. N.D. Tex. 2017).
Court noticed apparent fee-sharing agreement in special counsel's application to employ. Special counsel argued that because the fees were recovered from a third-party (the litigation opponent) and not the estate § 504 did not control. At the hearing, the court determined that it was an impermissible fee-sharing agreement under § 504, and was reminded that it had allowed an identical arrangement in a prior case. Court entered show cause order with respect to the special counsel's employment in the prior case and invalidated the fee-sharing portion of the engagement. The court's ruling focused on § 504's role as an institutional protection of the integrity of bankruptcy proceedings and court oversight of the fees to be paid to bankruptcy counsels.

In re Perez, 2017 WL 1839175 (Bankr. W.D. Tex. May 5, 2017).
Counsel issued thirteen applications for compensation after rendering services in response to thirteen motions to dismiss filed by the chapter 13 trustee. The trustee objected and argued that the counsel sought compensation beyond the benchmark fees for attorneys and paralegals in their area. After reviewing comparable fees in the area, the bankruptcy court agreed and held that the counsel's fees in their entirety shall be reduced to an appropriate amount based on services typically done in the area and reduced based on the counsel's overall quality of service.

In re Whitcomb, 2017 WL 4174372 (Bankr. S.D. Tex. Sept. 18, 2017).
Before the court was a motion to disqualify counsel that yielded two issues for consideration: (1) whether confidential information alone may impact a lawyer's ability to adversely represent an individual; and (2) whether an arbitrator's previous one-sentence ruling has a preclusive effect on the decision of a bankruptcy court in closely related proceedings. Two family members—Kolber and the debtor—were engaged in lengthy proceedings regarding a decedent's estate and trust; the family members ultimately sought arbitration. The adverse individuals each sought counsel: Kolber retained a lawyer named Ostrom, and the debtor began talks with a lawyer named Morris. In the course of seeking representation, the debtor sent Morris confidential information. Morris ultimately declined to represent the debtor, and it eventually came to light that Morris and Ostrom were discussing becoming law partners during the period Morris received the debtor's information. The debtor asked the arbiter to disqualify the new firm of Ostrom Morris, PLLC from representing Kolber; the arbiter declined. Arbitration proceeded and Kolber won. The debtor filed for bankruptcy before the arbitration award could be confirmed; Kolber then filed a lift stay motion, and the debtor filed a motion to disqualify Ostrom Morris from representing Kolber in the bankruptcy proceedings. The court found that the debtor had disclosed confidential information to Morris and, therefore, Morris should be prevented from representing the adverse party in a closely related proceeding. The court also found that the arbitrator's one-sentence ruling denying the debtor's prior motion to disqualify did not have a preclusive effect in the bankruptcy, as there were no findings of fact or conclusions of law and because the arbitration decision was not a judicial proceeding.

Lopez v. Portfolio Recovery Assocs., LLC (In re Lopez), 2017 WL 4326372 (Bankr. S.D. Tex. Sept. 28, 2017).
In a prior ruling, bankruptcy court awarded sanctions against defendant. Counsel for plaintiff (debtor) filed an application requesting attorney's fees against the defendant. Defendant argued that the out-of-town rates charged by the attorneys were excessive, that the number of hours billed was unreasonable, and that the portion of the request related to defending the fee application was impermissible. The bankruptcy court agreed that attorney's fees related to defending the fee application could not be awarded in light of *Baker Botts, L.L.P. v. ASARCO LLC*, 135 S. Ct. 2158 (2017), but concluded that the out-of-town rates were reasonable in light of the specialty practice involved and the absence of local attorneys with the capacity to handle adversary proceedings such as this one. The court reduced portions of the attorney's fees for time spent on issues on which the plaintiff had not prevailed, certain vague time entries, and several interoffice conferences.

McComb Fin., Inc. v. Webster (In re Webster), 2017 WL 2915366 (Bankr. S.D. Miss. July 7, 2017). Lender brought action under § 523(a)(2) against husband and wife debtors; husband obtained Rule 12(b)(6) dismissal on the grounds that he was not liable on the debt. Lender subsequently dismissed as against the wife on the grounds that based on its asset search it considered recovery of any money to be doubtful. Debtors filed a motion seeking attorneys' fees pursuant to § 523(d) and argued that the adversary had been brought for the purpose of trying to coerce a settlement out of the debtors and that the lender had not been substantially justified in bringing the adversary. At the hearing, the lender was unable to put on evidence supporting its § 523(a)(2) claim. The court found that no special circumstances existed that would make an award of attorney's fees unjust and that both the failure to state a claim against the husband and the failure to provide evidence to support the claim against the wife justified an award of attorney's fees.

Wright v. Csabi (In re Wright), 2017 WL 6001685 (Bankr. S.D. Tex. Dec. 1, 2017).
In his application to employ, special litigation counsel to chapter 13 debtor failed to disclose fee-sharing agreement he had with other attorneys. After achieving settlement of debtor's tort claim, attorney wired money to his fee-sharing counterparts. Upon discovery of the fee sharing, the bankruptcy court held that the special litigation counsel and the attorneys with whom he was sharing fees had violated §§ 327 and 329 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rule 2014-1 by not obtaining court approval for their arrangement, and that the arrangement was fee-sharing prohibited under § 504. Holding that the attorneys had violated the automatic stay by accepting their payments, the court held that they would be liable for the same and set a separate trial to address the damages question.

Stewart v. Sikes, 2017 WL 6567989 (W.D. La. Dec. 22, 2017).
After confirmation of a chapter 13 plan, the debtor was involved in a motor vehicle accident and initiated a state court lawsuit with contingency fee counsel without filing an application to employ with the bankruptcy court. Approximately two years after the accident and one month before the end of the plan, the contingency fee counsel filed an application to employ. The bankruptcy court entered an order approving the employment of the counsel but rejected the contingency fee basis and instead ordered counsel to file a fee application under § 330. Counsel appealed and the district court affirmed, finding that, because counsel did not seek prior approval of the contingency fee agreement, the bankruptcy court had not clearly erred in rejecting the employment on a contingency fee basis.

Q. ESTOPPEL THEORIES

Featherston v. DRRF II SPE, LLC, 2017 WL 3908169 (W.D. Tex. Sept. 5, 2017).
Couple filed chapter 7 case in order to prevent foreclosure on their home. In their schedules, they listed no contingent or unliquidated claims against the mortgage holder. Mortgage holder was granted relief from the automatic stay, but on the eve of foreclosure debtors filed a lawsuit seeking damages related to tort claims but not seeking any equitable relief related to the underlying lien. The district court held that the debtors lacked standing to bring the damages claim because it belonged to the bankruptcy estate.

Feuerbacher v. Wells Fargo Bank, N.A., 701 Fed App'x 297 (5th Cir. 2017).
Debtors initially sued creditors seeking to vacate a bankruptcy court order permitting the creditors to foreclose on their home. After the case was removed to federal court on the basis of federal question and diversity jurisdiction, the debtors amended their complaint to eliminate their federal claims and add three additional defendants, including two non-diverse parties. The debtors also alleged breach of contract, unjust enrichment, a claim to quiet title, and claims under the Texas Debt Collection Practices Act and Texas Deceptive Trade Practices Act. Thereafter the district court dismissed the non-diverse defendants, denied creditors motion to remand the case to state court, and ultimately granted summary judgment in favor of the creditors. On appeal, the circuit court found both the debtors' quiet title and breach of contract claims had accrued at the time of the bankruptcy proceeding. Thus, because the creditors failed to disclose these potential claims to the bankruptcy court, the circuit court held that the district court did not abuse its discretion in applying judicial estoppel and appropriately granted summary judgment.

Montalvo v. Vela (In re Montalvo), 2017 WL 4621704 (Bankr. S.D. Tex. Oct. 13, 2017).
Debtor removed to bankruptcy court a lawsuit against several defendants. Debtor and defendants filed cross motions for summary judgment and the bankruptcy court granted in part and denied in part. Debtor amended his complaint but did not amend the portions against which defendants had sought and been denied summary judgment. Defendants again brought motions for summary judgment. Finding that the new motions for summary judgment raised issues which the court had previously denied summary

judgment, the court held that res judicata precluded considering the merits of the new motions for summary judgment.

Williams v. Smiddy, 2017 WL 4845859 (W.D. La. Oct. 26, 2017).
After an automobile accident, debtor filed chapter 7. Debtor's schedules did not disclose a personal injury claim. Debtor subsequently initiated a lawsuit based on her personal injury claims. The bankruptcy court entered an order authorizing the retention of special counsel to represent the estate's interest in the district court lawsuit. The defendant moved for summary judgment, arguing that the debtor was equitably estopped from prosecuting her claim based on the failure to disclose the claim in her bankruptcy schedules. The court found that all of the equitable estoppel elements were met, but that it would be inequitable to grant judgment for the defendant because doing so would punish the innocent chapter 7 trustee for the debtor's failure to disclose the asset. Accordingly, the court entered an order giving the chapter 7 trustee a deadline to substitute in as the real party in interest.

Bourg v. Citibank, N.A., 2017 WL 5157559 (E.D. La. Nov. 7, 2017).
After a state court entered a judgment foreclosing on debtors' property, debtors brought claims in federal court against the mortgage company. The court dismissed the claims, finding that under *Rooker-Feldma*n it lacked subject matter jurisdiction to hear what was, in essence, an attack on the state court foreclosure judgment, and that because the debtors had filed for chapter 7 relief after the claims arose they lacked standing to bring them because the claims belonged to the chapter 7 trustee.

King v. Select Portfolio Servicing, Inc., 2017 WL 5998222 (E.D. Tex. Dec. 4, 2017).
Debtor did not disclose mortgage lawsuit in his schedules but did include it in his SOFA and had an e-mail exchange with the chapter 7 trustee regarding the mortgage lawsuit. Defendant moved for summary judgment, arguing among other things that debtor lacked standing and was judicially estopped from prosecuting the claim. Although it granted judgment on other grounds, the court held that it was not clear that collateral estoppel applied as a matter of law because debtor had made at least some disclosure of the mortgage lawsuit in the bankruptcy case.

Uvina v. NY Enters., Inc., 2017 WL 2118967 (S.D. Tex. May 16, 2017).
Debtor was a former employee of defendant who alleged that she was owed overtime payments. The defendant filed a motion to dismiss and, alternatively, motion for summary judgment against the debtor. The district court agreed with defendant that the debtor's alleged injury occurred while she was employed, which was in part, prior to her filing of bankruptcy. Thus, the court held that the prepetition portion of the cause of action was part of the bankruptcy estate. The debtor was ordered to file a motion to reopen her bankruptcy case to allow the trustee to intervene as plaintiff and to amend her schedules.

R. CREDITOR ABUSE

In re Lara, 569 B.R. 231 (Bankr. N.D. Tex. 2017).
Debtors sought actual and punitive damages and attorney's fees for creditor Vivint, Inc.'s alleged violations of the automatic stay and discharge injunction. The debtors filed for chapter 7 bankruptcy and rejected their contract with Vivint. Vivint was notified of the bankruptcy case, the automatic stay, the discharge objection deadline, and that filing a proof of claim was unnecessary as there were no assets. Vivint drafted a fee from the debtors' accounts after the bankruptcy filing, but refunded the amount after the debtors explained the situation. Nevertheless, Vivint resumed its efforts and began to persistently call (at debtors' home and workplaces) and e-mail to request payment, threatening acceleration, and making clear that the efforts were an attempt to collect a debt. Debtors eventually received a discharge in their case and Vivint received notice; Vivint's collection center continued to contact debtors to demand payment. Vivint did not respond to the debtors' motion or appear at the hearing. The court found that

Vivint willfully and egregiously violated the stay and the discharge injunction. The court awarded the debtors $500 in actual damages, $7,480 in attorney's fees, and $24,000 in punitive damages.

S. APPELLATE PROCEDURE

Petricca v. Jensen (In re Petricca), No. 17-10325 (11th Cir. Feb. 22, 2018).
District court dismissed debtor's appeal of an order overruling the debtor's objections to the Trustee's final report indicating that the Debtor would not be receiving any proceeds from the disposition of the estate for lack of standing under the "person aggrieved" doctrine. The Eleventh Circuit noted that the "person aggrieved" doctrine is more restrictive than traditional Article III standing because it allows a person to appeal only when that person is "directly and adversely affected pecuniarily" by the bankruptcy court's order. The Eleventh Circuit then concluded that the debtor was not a person aggrieved because it was the bankruptcy estate's property interests that were sold (not the debtor's), thus any future litigation involving those interests would involve the estate, not the debtor.

Krishnan v. J.P. Morgan Chase Bank, N.A., 2017 WL 515519 (E.D. Tex. Feb. 8, 2017).
Bankruptcy court dismissed debtor's adversary proceeding, denied confirmation of his amended chapter 13 bankruptcy plan, dismissed his bankruptcy petition, and awarded appellee county attorney's fees. Debtor appealed to the district court. However, debtor failed to state the reasons why the bankruptcy court denied the confirmation of his amended plan and instead reiterated the same arguments as before in previous litigation with the appellee, and failed to counter the bankruptcy court's findings to the dismissal of his bankruptcy petition. Thus, because of this lack of rebuttal by the debtor, the district court had no choice but to affirm all of the holdings of the bankruptcy court.

Nevarez v. Monge (In re Monge), 2017 WL 5041084 (5th Cir. Nov. 2, 2017).
Bankruptcy court entered interlocutory orders denying motion to stay pending arbitration and movant appealed. While that appeal was pending, bankruptcy court entered final judgment on the underlying claims and movant appealed. The district court consolidated the appeals and dismissed the interlocutory appeal indicating that it would consider the merits of that dispute as part of the appeal of the final judgment. Movant appealed that dismissal and appellee moved to dismiss. The court of appeals granted the motion to dismiss, finding that the district court would consider the merits as part of the appeal of the bankruptcy court's final judgment.

In re Riley, 2017 WL 4990441 (Bankr. W.D. La. Oct. 27, 2017).
Chapter 13 debtor proposed plan which would pay her attorney the no-look fee permitted under the district's standing order regarding no-look fees with additional reimbursements to be made to pay the filing fee, credit counseling fee, and credit report fee. The bankruptcy court disallowed the reimbursements and limited the attorney to the no-look fee. The attorney appealed and moved the bankruptcy court to stay the confirmation order pending appeal. The bankruptcy court denied the motion to stay, finding that movant failed to establish a likelihood of success on the merits, irreparable injury if the stay was not granted, absence of substantial harm to other parties from granting the stay, and service to the public interest from granting the stay.

In re Kite, 2018 WL 400743 (5th Cir. Jan. 12, 2018).
Unsecured creditor (appellant) objected to proof of claim filed by judgment creditor (appellee) of debtor with removal argument that had been previously rejected by both the state court and a federal district court. The bankruptcy court denied the objection based on the *Rooker-Feldman* doctrine. Appellant filed a notice of appeal one day after the appeal deadline had passed. Appellee moved to dismiss on grounds that appeal was untimely and frivolous, and district court granted the motion and awarded sanctions against appellant. The only argument properly preserved by the appellant on appeal to the circuit court was the argument that Rule 8002's deadline is not jurisdictional. The court of appeals found that the jurisdictional

argument by itself was frivolous because all ten circuit courts that had ruled on Rule 8002 had found it to be jurisdictional.

Alpha Omega CHL, Inc. v. Min (In re Min), 2018 WL 276162 (N.D. Tex. Jan. 3, 2018).
Appellant's attorney failed to notice that bankruptcy clerk had transmitted the record on appeal and therefore failed to timely file appellant's brief. District court ordered parties to show cause why appeal should not be dismissed. Appellant moved to extend time to file brief. Finding that prejudice to debtor resulted from delaying his fresh start, the court held that appellant's failure to timely file its brief did not arise out of excusable neglect and dismissed the appeal.

Mott v. Kellar, 2017 WL 326013 (W.D. Tex. Jan. 23, 2017).
Debtor appealed orders dismissing his adversary proceeding and denying his application to reopen his bankruptcy case. The district court held that it lacked jurisdiction over the appeal on the dismissal of the adversary proceeding because the debtor had failed to file his notice of appeal within the timeframe contained in Rules 8001(a) and 8002(a). In affirming the bankruptcy court's refusal to reopen the debtor's bankruptcy case, the court noted that the length of time that the case had been closed (three years) and the fact that it was unclear that the bankruptcy court would even have jurisdiction over the lawsuit that the debtor wished to bring in the bankruptcy case supported the bankruptcy court's discretionary decision to deny the requested relief.

Phillips v. Tow, 2017 WL 3480680 (S.D. Tex. Aug. 14, 2017).
Debtors filed a pleading styled as an objection which the bankruptcy court struck as an untimely notice of appeal of several orders entered by the bankruptcy court. On appeal of the order striking the objection/notice of appeal, the district court held that the objection was an untimely notice of appeal and that the bankruptcy court properly struck it as such.

T. TRANSFERS AND CLAIMS

In re Galaz, 850 F.3d 800 (5th Cir. 2017).
Chapter 13 debtor brought adversary proceeding on theory that her ex-husband's fraudulent transfer of assets of a LLC in which she had 25% interest had adversely affected property included in bankruptcy estate. The bankruptcy court and the district court agreed with the debtor and awarded damages, under the Texas Uniform Fraudulent Transfer Act (TUFTA) § 24.001, of 25% of royalties generated between time of transfer and trial of the debtor's fraudulent transfer claim. On appeal, the court affirmed and found that the ex-husband's transfer was fraudulent since the company to which the assets of the LLC were transferred had not yet been created, the ex-husband did not inform the debtor of the transfer, and no consideration was given to the LLC for the transfer. Additionally, the circuit court affirmed the district court's refusal to reduce the debtor's damages award due to the finding of actual intent to defraud and the broad remedial authority conferred by §§ 24.008(a)(3)(c) and 24.009(c)(1) of TUFTA.

Martin v. JP Morgan Chase Bank, N.A. (In re Martin), 2017 WL 6803550 (Bankr. S.D. Miss. Dec. 28, 2017).
Shortly after their house was sold at a foreclosure sale, debtors filed chapter 13 case. Debtors sued mortgage lender to set aside foreclosure sale under §§ 547 and 548, and sought damages under the Real Estate Settlement Procedures Act (RESPA), the Fair Debt Collection Practices Act (FDCPA), and for negligent infliction of emotional distress. The bankruptcy court dismissed the adversary proceeding finding that the complaint failed to allege all of the elements of §§ 547 and 548; failed to allege facts that would have made the mortgage lender meet the statutory definition of "debt collector" under the FDCPA; failed to allege that the debtors had a federally related mortgage loan such as would be governed by the RESPA; and failed to allege any facts describing any physical effects of distress such as might support the

intentional infliction of emotional distress claim. The court also held that the RESPA does not create a private right of action.

Tower Credit v. Schott (In re Jackson), 850 F.3d 816 (5th Cir. 2017).
Chapter 7 trustee brought preference action under § 547 against creditor that had garnished the debtor's wages pre-petition. Creditor argued that as soon as it served the garnishment order on the debtor's employer, it perfected rights in the garnished wages superior to those of a judicial lien creditor and, therefore, the wages received through garnishment were not subject to clawback as preferences. The court of appeals ruled that for purposes of the § 547 analysis, the debtor's interest in the wages did not arise until they were actually earned and held that a creditor's collection of garnished wages during the preference period is an avoidable transfer even if the garnishment was served prior to that period.

Whitlock v. Lowe, 569 B.R. 94 (W.D. Tex. 2017).
Pre-petition, debtor's wife withdrew $275,000 from their bank account and deposited it in a joint bank account owned by herself and her sister. Debtor's wife subsequently relinquished her interest in the account, leaving only her sister on the account. The sister then made, at the debtor's direction, pre-petition transfers of money out of that account to various persons including $232,000 to the debtor. After the debtor filed for bankruptcy, the chapter 7 trustee brought fraudulent transfer claims against the sister. The bankruptcy court entered summary judgment against the sister for the $275,000. On appeal, the district court held that the sister qualified as an initial transferee under § 550(a) because she had dominion over the bank account. The court went on to conclude that the single satisfaction rule was not implicated by the fact that the sister had transferred $232,000 of the $275,000 back to the debtor because those monies were spent before the petition date and did not enter the bankruptcy estate.

In re Zamora-Quezada, 2017 Bankr. LEXIS 2208 (Bankr. S.D. Tex. 2017).
Prior to filing bankruptcy, debtor transferred over $3 million of property to insiders and affiliated entities. Debtor filed an amended SOFA after filing a motion to convert from chapter 7 to chapter 11 that freely admitted to pre-petition transfers exceeding $3 million. Furthermore, debtor admitted to giving away assets prior to bankruptcy even though the business was insolvent. The court denied debtor's motion to convert after concluding that the debtor had acted in bad faith before and after filing for bankruptcy and because the debtor's case would be dismissed under § 1112 even if it was converted.

U. MOOTNESS

Dick v. Colo. Hous. Enters., 872 F.3d 709 (5th Cir. 2017).
Plaintiff and her husband borrowed from Colorado Housing Enterprises and granted a lien on certain real property owned by the plaintiff. After defaulting on the loan and filing for bankruptcy three separate times to prevent foreclosure, the plaintiff received notice of an impending foreclosure and attempted to halt the foreclosure in several ways. Plaintiff sued in state court, seeking a TRO, filed a motion in federal court (after removal) seeking a TRO and a preliminary injunction, and finally filing a notice of interlocutory appeal from the most recent order denying the motion for a preliminary injunction. Plaintiff filed an emergency motion for stay of foreclosure proceedings pending appeal; the next day, the trustee accepted a bid at the foreclosure sale. Two hours later, the court granted plaintiff's motion to stay foreclosure. Defendants, the successful bidders at the sale, argued the appeal from the denial of the injunction was moot because the subject property was sold at the foreclosure sale. Plaintiffs responded that because defendants were the bidders and were before the court on appeal, the court could order them to cancel or rescind the foreclosure. The court agreed with the defendants, reasoning that the appeal was moot because the court could not enjoin a foreclosure sale that had already taken place.