American Bankruptcy Institute
Central States Bankruptcy Workshop

Consumer

Case Law Update for the Sixth and Seventh Circuits, and Hot Topics in Consumer Bankruptcy

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CONCURRENT SESSION

2025

Consumer Caselaw Update
and
Hot Consumer Topics in the 6th and 7th Circuit

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#1 *United States v. Miller*, 145 S. Ct. 839; 604 U.S. ___, (March 26, 2025)

*In **United States v. Miller**, the U.S. Supreme Court addressed the scope of sovereign immunity waivers under the Bankruptcy Code.*

Ruling: Section 106(a) waives the federal government's sovereign immunity for specific provisions, including § 544(b). However, this waiver does not extend to state-law-based claims incorporated via § 544(b) unless an actual unsecured creditor could have pursued such claims outside of bankruptcy proceedings. Sovereign immunity waivers must be explicit and cannot be implied through incorporation of state law into federal bankruptcy provisions.

#2 *In re Donna J. Staker*, Case No. 24-30527-grh, 667 B.R. 556 (Bankr. S.D. Ohio March 10, 2025)

***In re Donna J. Staker** involves the question of whether a Chapter 7 trustee is entitled to compensation under § 326(a) if no funds were distributed before conversion.*

Ruling: Attorney fees incurred by counsel for a trustee may be allowed as administrative expenses under 11 U.S.C. § 503(b), provided they are actual, necessary services that benefit the estate. This is distinguishable from an award of compensation under § 326(a), which can only be ordered if funds recovered by a Chapter 7 trustee are actually disbursed while in Chapter 7.

#3 *In re Parkcliffe Development LLC*, Case No. 24-30814-jpg, 2025 WL 320909 (Bankr. N.D. Ohio Jan. 28, 2025)

*In re **Parkcliffe Development LLC** deals with the court's discretion concerning the acceptance of late bid offers in asset sales.*

Ruling: In bankruptcy asset sales, the court may exercise discretion to consider late or procedurally non-compliant bids if doing so serves the paramount goal of maximizing the value of the debtor's estate for the benefit of creditors. Strict adherence to bidding procedures should not override this fundamental objective, especially when higher bids could provide greater returns to the estate.

#4 *Gold v. Williams (In re Williams)*, Case No. 24-1162, 2025 WL 454925 (6th Cir. February 7, 2025)

*In **In re Williams**, the Sixth Circuit addressed whether the probate exception to federal jurisdiction barred a bankruptcy trustee's action to include certain real property in the debtor's bankruptcy estate.*

Ruling: The probate exception to federal jurisdiction is narrow and does not preclude federal courts from adjudicating matters that do not involve the probate of a will, the administration of a decedent's estate, or the control of property in the custody of a state probate court. Bankruptcy courts retain jurisdiction over actions to determine whether property is part of the bankruptcy estate, even if the property was acquired through intestate succession.

#5 ***In re Jeff L. Dulaney,*** **Case No. 24-50458-mnk, 666 B.R. 178 (Bankr. S.D. Ohio December 18, 2024)**

In re Jeff L. Dulaney *deals with avoidance of judicial liens.*

Ruling: A lien arising from a court judgment, even if consented to by the debtor, is considered a judicial lien and may be avoided under § 522 (f)(1)(A) if it impairs the debtor's exemption.

#6 ***In re Lopez,*** **Case No. 22-40478-tjt, 666 B.R. 555 (Bankr. E.D. Mich. January 21, 2025)**

In re Lopez deals with whether, and on what grounds a debtor may overcome the strong presumption in favor of access to court records in seeking a court order to seal one's records.

Ruling: To seal bankruptcy court records, a party must present compelling reasons supported by specific factual findings that outweigh the public's interest in having access to them.

#7 ***In re Long,*** **Case No. 24-30074-grh, 667 B.R. 546, 2025 WL 721124 (Bankr. S.D. Ohio March 4, 2025)**

In re Long deals with what constitutes "commercial information" under §107(b)(1) for purposes of overcoming the presumption in favor of access to court records in the face of a party's request to seal same.

Ruling: Restricting public access to a settlement motion containing a request to approve compensation for special counsel is overbroad and contrary to the requirements of § 107(b)(1). A request to seal under § 107(b)(1) requires evidence demonstrating a need to restrict public assess as containing confidential information or trade secrets.

 # 8 ***Magaliff v. 430 Central Drive LLC (In re Christenson),*** **Case No. 20-23224-kyp) Adv. Pro. No. 22-07020-kyp, 667 B.R. 770 (Bankr. S.D.N.Y. February 10, 2025)**

In re Christenson *considered whether there was reasonably equivalent value for property transfers in a court-approved divorce judgment, or whether such transfers could be construed as fraudulent.*

Ruling: Transfers of property made pursuant to a court-approved divorce judgment, following contested litigation and equitable distribution, are presumed to be for reasonably equivalent value. Such transfers are not avoidable as fraudulent conveyances under § 548 or applicable state law, provided they result from a fair and equitable division of marital assets.

#9 ***In re Rhodes,*** **Case No. 24-20838-beh, 666 B.R. 487 (Bankr. E.D. Wis. January 22, 2025)**

In re Rhodes *resolves a dispute concerning the commencement date for accruing interest on a secured claim under a Chapter 13 plan.*

Ruling: Interest on secured claims in Chapter 13 plans begins accruing from the plan's effective date, not the petition date. This interpretation aligns with the statutory language and prevailing case law within the jurisdiction.

#10 *In re Jude-Weathersby,* Case No. 24-03393-jpc, 666 B.R. 601, Bankr. N.D. Ill. January 14, 2025)

In re Jude-Weathersby *deals with the fairness of bifurcated fee agreements in chapter 7 cases.*

Ruling: Attorneys representing Chapter 7 debtors must ensure that fee agreements comply with the disclosure and fairness requirements set forth in §§ 526 and 528. Bifurcated fee arrangements, where services are divided between pre-petition and post-petition agreements must be clearly disclosed, fair, and entered into with the debtor's fully informed consent. Failure to meet these standards can result in the agreements being voided and the attorney being required to disgorge fees received.

#11 *In re Rohwedder,* Case No. 24-30227-lkg, 666 B.R. 479, 2025 WL 1089154, (Bankr. S.D. Ill. Mar 13, 2025)

In re Rohwedder *deals with whether above-median income debtors may deduct tobacco expenses as a "special circumstance" under § 707(b)(2)(B), to reduce their disposable income for purposes of calculating their required dividend to unsecured creditors.*

Ruling: Under § 707(b)(2)(B), debtors may rebut the presumption of abuse by demonstrating "special circumstances" that justify additional expenses or adjustments to current monthly income. Such circumstances must be extraordinary and compelling, such as a serious medical condition or a call to active military duty. Routine or discretionary expenses, like tobacco use, do not meet this standard and are not deductible under the "special circumstances" provision.

#12 *In re Himes,* Case No. 19-21083-gmh, 668 B.R. 214 (Bankr. E.D. Wis. March 3, 2025)

In re Himes *deals with the issue of whether a mortgage creditor's failure to provide a detailed itemization of post-petition arrears in its response to the trustee's Notice of Final Cure Payment, as required by Rule 3002.1(g), warrants the imposition of sanctions and the award of attorney's fees and costs to the debtors.*

Ruling: Under Federal Rule of Bankruptcy Procedure 3002.1(g), a creditor must include an itemized statement of the amounts owed post-petition, if any. Failure to comply with this requirement can result in the court awarding reasonable expenses and attorney's fees to the debtor under Rule 3002.1(i) and may preclude the creditor from presenting the omitted information in any form as evidence in any contested matter or adversary proceeding.

#13 *Allen v Coleman (In re Coleman),* Case No. 23-01548-swd, Adv. Pro. No. 23-80069-swd, 2024 WL 2478193 (Bankr. W.D. Mich. May 23, 2024)

In re Coleman *deals with whether a debtor can be found liable for the fraud committed by his ex-spouse by virtue of criminal and civil judgments which preceded the bankruptcy.*

Ruling: For a debt to be excepted from discharge under §§ 523(a)(2)(A), (a)(4), or (a)(6), the creditor must establish that the debtor's conduct satisfies the specific criteria outlined in these provisions. Prior judgments may have preclusive effect only if they necessarily decided the same issues required under § 523. If the prior judgments did not address or conclusively determine these specific elements, summary judgment on the basis of issue preclusion is inappropriate, and the court must conduct further proceedings to assess the dischargeability of the debts. This case has the effect of limiting *Bartenwerfer's* potentially far-reaching consequences for a so-called innocent spouse who may have imputed liability.

#14 *In re Bizeau,* Case No. 24-11074-rmb, 668 B.R. 493 (Bankr. W.D. Wis. March 21, 2025)

In re Bizeau *addressed whether a debtor's inclusion of significant non-consumer debt in his schedules was appropriate for determining the applicability of 11 U.S.C. § 707(b).*

Ruling: For a debt to be considered in determining whether a debtor's obligations are primarily consumer debts under § 707(b), there must be a valid claim against the debtor or the debtor's property. A debt solely guaranteed by a non-filing spouse, without the debtor's agreement or liability under applicable state law, cannot be attributed to the debtor for this purpose.

#15 *Colebrook v. Thompson* (*In re Thompson*), 668 B.R. 156 (B.A.P. 6th Cir. 2025)

In ***In re Thompson****, 2025 U.S. App. LEXIS 9114, the United States Bankruptcy Appellate Panel for the Sixth Circuit reviewed the dismissal of an adversary complaint filed by creditor Teena Colebrook against debtor John Preston Thompson.*

Ruling: Under 28 U.S.C. § 1915(e)(2)(B)(ii), courts are required to dismiss in forma pauperis complaints that fail to state a claim upon which relief can be granted. Additionally, for a debt to be declared nondischargeable under 11 U.S.C. § 523(a), there must be an enforceable underlying obligation; time-barred debts do not meet this criterion.

#16 *In re Kadiric,* Case No. 24-03325-swd, 2025 WL 1024138, (Bankr. W.D. Mich. April 4, 2025)

In ***In re Kadiric****, the United States Bankruptcy Court for the Western District of Michigan addressed the United States Trustee's motion to convert the debtors' Subchapter V Chapter 11 case to Chapter 7.*

Ruling: Under 11 U.S.C. § 1112(b), a bankruptcy court may convert a Chapter 11 case to Chapter 7 for "cause," which includes both statutory grounds, such as failure to file a plan timely, and non-statutory grounds, such as lack of good faith or debtor misconduct. The court has discretion to determine whether cause exists based on the totality of circumstances.

#17 *In re Davis-Peters,* Case No. 24-09311-dlt, 2025 Bankr. LEXIS 949 (Bankr. N.D. Ill. Apr. 15, 2025)

In ***In re Davis-Peters****, the United States Bankruptcy Court for the Northern District of Illinois addressed whether projected escrow shortages claimed by mortgage servicers in Chapter 13 cases constitute prepetition or post-petition claims.*

Ruling: Projected escrow shortages, as defined by RESPA and applicable bankruptcy procedures, are treated as prepetition claims in Chapter 13 cases. The effective date for calculating such shortages is the petition date, regardless of when the escrow analysis is performed. Consequently, these shortages are subject to treatment under the debtor's Chapter 13 plan.

Consumer Caselaw Update and Hot Consumer Topics in the 6th and 7th Circuit

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1. *United States v. Miller*, 145 S. Ct. 839; 604 U.S. ___, (March 26, 2025)

In *United States v. Miller*, the U.S. Supreme Court addressed the scope of sovereign immunity waivers under the Bankruptcy Code.

Facts: All Resort Group, a Utah-based company, used approximately $145,000 of its funds to pay off its shareholders' personal federal tax liabilities. After the company filed for bankruptcy, trustee Miller sought to recover those payments under § 544(b), relying on Utah's Uniform Fraudulent Transfer Act. Miller argued that the transfers were avoidable because an unsecured creditor could have challenged them under state law. The lower courts agreed, ruling that §106(a) waived sovereign immunity for such claims—even when based on state law.

The Supreme Court reversed the lower courts' decisions. Justice Ketanji Brown Jackson, writing for the majority, emphasized that § 544(b) allows trustees to assert only the rights of an actual creditor under applicable law. If no such creditor could sue the government outside of bankruptcy due to sovereign immunity, neither can the trustee. The Court stressed that sovereign immunity waivers must be "unequivocally expressed" in the statutory text—and found no such clarity in state-law-based claims embedded in § 544(b).

This decision narrows the tools available for trustees when attempting to recover assets transferred to the federal government. Trustees must consider creditor rights under the applicable non-bankruptcy law before pursuing claims against the government, ensuring that an actual creditor could have brought the claim outside of bankruptcy without being barred by sovereign immunity.

Ruling: Section 106(a) waives the federal government's sovereign immunity for specific provisions, including § 544(b). However, this waiver does not extend to state-law-based claims incorporated via § 544(b) unless an actual unsecured creditor could have pursued such claims outside of bankruptcy proceedings. Sovereign immunity waivers must be explicit and cannot be implied through incorporation of state law into federal bankruptcy provisions.

2. *In re Donna J. Staker*, Case No. 24-30527-grh, 667 B.R. 556 (Bankr. S.D. Ohio March 10, 2025)

In re Donna J. Staker involves the question of whether a Chapter 7 trustee is entitled to compensation under § 326(a) if no funds were distributed before conversion.

Facts: In this case the Chapter 7 trustee identified potential assets in a trust where the debtor held a beneficial interest and initiated actions to administer these assets. Subsequently, the debtor moved to convert the case to Chapter 13, citing increased income that would allow for a 100% repayment plan to unsecured creditors. The Trustee opposed the conversion, arguing that the trust assets were part of the bankruptcy estate, raising concerns about the debtor's good faith. An agreed order allowed the conversion to Chapter 13, preserving the Trustee's right to pursue the trust assets if the case reconverted to Chapter 7.

Post-conversion, the former Chapter 7 Trustee sought compensation under § 326(a) and an award of attorney fees for her firm. The court denied the Trustee's request for a statutory commission, reasoning that no funds were disbursed or turned over during the Chapter 7 phase, a prerequisite for such compensation under § 326(a). The court did grant the law firm's application for attorney fees as an allowed administrative claim, acknowledging the legal services provided during the Chapter 7 proceedings.

Ruling: Attorney fees incurred by counsel for a trustee may be allowed as administrative expenses under 11 U.S.C. § 503(b), provided they are actual, necessary services that benefit the estate. This is distinguishable from an award of compensation under § 326(a), which can only be ordered if funds recovered by a Chapter 7 trustee are actually disbursed while in Chapter 7.

3. *In re Parkcliffe Development LLC*, Case No. 24-30814-jpg, 2025 WL 320909 (Bankr. N.D. Ohio Jan. 28, 2025)

In re Parkcliffe Development LLC deals with the court’s discretion concerning the acceptance of late bid offers in asset sales.

Facts: The debtor, a provider of long-term residential care, filed for Chapter 11 due to declining demand and financial instability. The debtor attempted to sell its assets through a court-approved auction process, designating STVJ LLC as the stalking horse bidder with a $2.2 million offer. The bidding procedures required any competing bids to exceed the stalking horse bid by at least $200,000 and to comply with specific terms, including submission deadlines and form requirements.

Two competing bids were received before the initial deadline but failed to meet all procedural requirements. The debtor extended the bidding deadline by 30 days, during which additional bids were submitted, including a $2.65 million bid from Spectranet Holdings, LLC. STVJ LLC filed motions to disregard these late and non-compliant bids

and to halt the auction, arguing that the bidding procedures had not been properly followed.

The Bankruptcy Court for the Northern District of Ohio denied STVJ LLC's motions, emphasizing the primary objective of maximizing the value of the debtor's estate for the benefit of creditors.

Ruling: In bankruptcy asset sales, the court may exercise discretion to consider late or procedurally non-compliant bids if doing so serves the paramount goal of maximizing the value of the debtor's estate for the benefit of creditors. Strict adherence to bidding procedures should not override this fundamental objective, especially when higher bids could provide greater returns to the estate.

4. ***Gold v. Williams (In re Williams)*, Case No. 24-1162, 2025 WL 454925 (6th Cir. February 7, 2025)**

In *In re Williams*, the Sixth Circuit addressed whether the probate exception to federal jurisdiction barred a bankruptcy trustee's action to include certain real property in the debtor's bankruptcy estate.

Facts: Edward Stephone Williams filed for Chapter 7 bankruptcy, and the trustee sought to recover a home that Williams had inherited from his late wife under Michigan's intestacy laws. The debtor's adult children contested the trustee's claim, arguing that the probate exception deprived the bankruptcy court of jurisdiction over the property.

The bankruptcy court initially ruled in favor of the trustee, determining that the property was part of the bankruptcy estate. However, the district court reversed this decision, holding that the probate exception applied and thus barred federal jurisdiction. On appeal, the Sixth Circuit vacated the district court's ruling, concluding that the probate exception did not apply because the trustee's action did not involve probating a will or administering an estate, nor did it interfere with property under the custody of a state probate court. The case was remanded for further proceedings consistent with this interpretation.

Ruling: The probate exception to federal jurisdiction is narrow and does not preclude federal courts from adjudicating matters that do not involve the probate of a will, the administration of a decedent's estate, or the control of property in the custody of a state probate court. Bankruptcy courts retain jurisdiction over actions to determine whether property is part of the bankruptcy estate, even if the property was acquired through intestate succession.

5. *In re Jeff L. Dulaney*, Case No. 24-50458-mnk, 666 B.R. 178 (Bankr. S.D. Ohio December 18, 2024)

In re Jeff L. Dulaney deals with avoidance of judicial liens.

Facts: In this case, the Bankruptcy Court for the Southern District of Ohio addressed the debtor's motion to avoid a judicial lien held by S&T Bank on his real property under § 522(f)(1)(A). The debtor had previously guaranteed obligations of LSP Technologies, Inc. to S&T Bank but had not granted any security interest in his personal property. S&T Bank obtained a monetary judgment against the debtor and subsequently filed a certificate of judgment, creating a lien on his real property.

The debtor claimed a homestead exemption of $161,375 in the property. Applying the statutory formula under § 522(f)(2)(A), the court determined that the lien impaired the debtor's exemption because the total of all liens and the exemption amount exceeded the value of the debtor's interest in the property. The court rejected S&T Bank's argument that the lien was consensual, finding instead that it was a judicial lien arising from a court judgment. Consequently, the court granted the debtor's motion to avoid the lien.

Ruling: A lien arising from a court judgment, even if consented to by the debtor, is considered a judicial lien and may be avoided under § 522(f)(1)(A) if it impairs the debtor's exemption.

6. *In re Lopez*, Case No. 22-40478-tjt, 666 B.R. 555 (Bankr. E.D. Mich. January 21, 2025)

In re Lopez deals with whether, and on what grounds a debtor may overcome the strong presumption in favor of access to court records in seeking a court order to seal one’s records.

Facts: Two and a half years after obtaining a chapter 7 discharge, the debtor filed a pro-se motion for sealing bankruptcy records, issuance of damages and redress of unjust enrichment, which the Bankruptcy Court for the Eastern District of Michigan treated as a motion to reopen the case. The debtor sought to have a forensic audit performed, release of bonds, and an order sealing the bankruptcy case records related to the case. In bringing this motion, the debtor generally alleged that the public access to his bankruptcy record caused him to be subject to identify theft and financial exploitation, posed a threat to his livelihood and safety, represented a systemic flaw in the handling of sensitive personal information, as well as the “monetization of financial instruments” linked to debtor’s case.

In considering the relief sought, the court construed the debtor’s motion within the context of § 350(b) and local bankruptcy rule 5010-1, which provide that a case may be

reopened to administer assets, accord relief to the debtor, or for other cause, a burden which the debtor was required to establish as a threshold matter. In considering whether cause existed for the court to reopen the debtor's case, the court relied upon § 107 which for public access to bankruptcy papers, as well as exceptions to the rule and the procedure for restricting access to same.

The court denied the debtor's motion, finding that the debtor failed to provide any justification or compelling reason supported by specific facts such that the presumption in favor of public access to court records could be overcome pursuant to § 107.

Ruling: To seal bankruptcy court records, a party must present compelling reasons supported by specific factual findings that outweigh the public's interest in having access to them.

7. *In re Long*, Case No. 24-30074-grh, 667 B.R. 546, 2025 WL 721124 (Bankr. S.D. Ohio March 4, 2025)

In re Long deals with what constitutes "commercial information" under §107(b)(1) for purposes of overcoming the presumption in favor of access to court records in the face of a party's request to seal same.

Facts: The debtors filed for relief under chapter 13, disclosing as one of their assets a pending lawsuit for claims against two debt resolution companies under the Fair Credit Reporting Act, for alleged improper use of the debtor's private consumer data from his credit report. The debtors properly sought and obtained court approval to employ non-bankruptcy counsel for continued representation in that action.

Upon reaching a settlement agreement, the debtors filed their motion to approve settlement agreement, and motion to seal same, which the court required the debtors to amend to provide sufficient notice to all parties in interest, as well as to state an appropriate basis under § 107 which would justify the sealing of the settlement agreement. In filing their amended motion to seal under § 107(b)(1), the debtors argued that the contents of the settlement agreement, if made public, would expose confidential commercial information or trade secrets, detrimental to the debt resolution companies.

The U.S. Trustee filed an objection to the amended motion to seal the settlement agreement, arguing that the debtors failed to demonstrate that one of the limited exceptions to the strong presumption in favor of public access to records applies. The U.S. Trustee also argued that even if an exception under the statute exists, that because the settlement agreement contains a request for compensation, that the request made to seal the entire settlement agreement was not narrowly tailored. The court ruled in favor of the U.S. Trustee, finding that the contents of the settlement agreement did not constitute commercial information subject to protection under § 107(b), such that the presumption of allowing public access was not outweighed.

Ruling: Restricting public access to a settlement motion containing a request to approve compensation for special counsel is overbroad and contrary to the requirements of § 107(b)(1). A request to seal under § 107(b)(1) requires evidence demonstrating a need to restrict public assess as containing confidential information or trade secrets.

8. ***Magaliff v. 430 Central Drive LLC (In re Christenson)*, Case No. 20-23224-kyp) Adv. Pro. No. 22-07020-kyp, 667 B.R. 770 (Bankr. S.D.N.Y. February 10, 2025)**

In re Christenson considered whether there was reasonably equivalent value for property transfers in a court-approved divorce judgment, or whether such transfers could be construed as fraudulent.

Facts: A Chapter 7 trustee attempted to recover three properties transferred to the debtor's ex-husband and related entities as part of a divorce settlement. The trustee argued that these transfers were fraudulent conveyances under § 548 and applicable state law, asserting that the debtor did not receive reasonably equivalent value in exchange for the properties.

The Bankruptcy Court for the Southern District of New York found that the transfers were made pursuant to a court-approved divorce judgment consisting of an equitable distribution of marital assets. The court concluded that the debtor received reasonably equivalent value considering the overall divorce settlement, which included custody arrangements, spousal support, and division of other assets. As a result, the court granted summary judgment in favor of the defendants, determining that the trustee could not avoid the transfers as fraudulent conveyances.

Ruling: Transfers of property made pursuant to a court-approved divorce judgment, following contested litigation and equitable distribution, are presumed to be for reasonably equivalent value. Such transfers are not avoidable as fraudulent conveyances under § 548 or applicable state law, provided they result from a fair and equitable division of marital assets.

9. ***In re Rhodes*, Case No. 24-20838-beh, 666 B.R. 487 (Bankr. E.D. Wis. January 22, 2025)**

In re Rhodes resolves a dispute concerning the commencement date for accruing interest on a secured claim under a Chapter 13 plan.

Facts: The debtor proposed a modified plan that did not include interest payments on a secured vehicle claim from the petition date to the plan's confirmation date. The Chapter

13 trustee objected, arguing that interest should accrue from the petition date, aligning with the precedent set in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004).

The Bankruptcy Court for the Eastern District of Wisconsin overruled the trustee's objection, determining that under § 1325(a)(5)(B)(ii), the requirement is for the value of payments to equal the allowed secured claim "as of the effective date of the plan," which is the confirmation date.

Ruling: Interest on secured claims in Chapter 13 plans begins accruing from the plan's effective date, not the petition date. This interpretation aligns with the statutory language and prevailing case law within the jurisdiction.

10. *In re Jude-Weathersby*, Case No. 24-03393-jpc, 666 B.R. 601 (Bankr. N.D. Ill. January 14, 2025)

In re Jude-Weathersby deals with the fairness of bifurcated fee agreements in chapter 7 cases.

Facts: A chapter 7 debtor entered into a pre-petition agreement indicating that the attorney would handle all aspects of the bankruptcy case for no fee. However, a subsequent post-petition agreement required the debtor to pay $3,200 for the same services. The court found material inconsistencies between the two agreements and determined that the debtor was not adequately informed about the fee structure. As a result, the court concluded that the attorney violated § 526 and § 528. The Bankruptcy Court for the Northern District of Illinois voided the fee agreements § 526(c) and ordered the attorney to refund any payments made toward the $3,200 fee.

Ruling: Attorneys representing Chapter 7 debtors must ensure that fee agreements comply with the disclosure and fairness requirements set forth in §§ 526 and 528. Bifurcated fee arrangements, where services are divided between pre-petition and post-petition agreements must be clearly disclosed, fair, and entered into with the debtor's fully informed consent. Failure to meet these standards can result in the agreements being voided and the attorney being required to disgorge fees received.

11. *In re Rohwedder,* Case No. 24-30227-lkg, 666 B.R. 479, 2025 WL 1089154 (Bankr. S.D. Ill. Mar 13, 2025)

In re Rohwedder deals with whether above-median income debtors may deduct tobacco expenses as a "special circumstance" under § 707(b)(2)(B), to reduce their disposable income for purposes of calculating their required dividend to unsecured creditors.

Facts: Above-median income debtors claimed a monthly expense of $400 for tobacco products in their means test. They did so under the "special circumstances" provision of § 707(b)(2)(B), arguing that this expense was necessary due to Mr. Rohwedder's long-standing addiction to tobacco, which they contended was akin to a medical condition. The Chapter 13 Trustee objected to the confirmation of the debtors' amended plan, arguing that the tobacco expense was not a permissible deduction under the means test. The Trustee contended that tobacco use is a discretionary expense and does not qualify as a "special circumstance" warranting an adjustment to the debtors' disposable income calculation.

The Bankruptcy Court for the Southern District of Illinois held that the debtors failed to demonstrate that their tobacco expenses constituted a "special circumstance" under § 707(b)(2)(B). As a result, the $400 monthly tobacco expense was disallowed in the means test calculation. Consequently, the debtors were required to increase their plan payments to reflect the higher disposable income.

Ruling: Under § 707(b)(2)(B), debtors may rebut the presumption of abuse by demonstrating "special circumstances" that justify additional expenses or adjustments to current monthly income. Such circumstances must be extraordinary and compelling, such as a serious medical condition or a call to active military duty. Routine or discretionary expenses, like tobacco use, do not meet this standard and are not deductible under the "special circumstances" provision.

12. *In re Himes*, Case No. 19-21083-gmh, 668 B.R. 214 (Bankr. E.D. Wis. March 3, 2025)

In re Himes deals with the issue of whether a mortgage creditor's failure to provide a detailed itemization of post-petition arrears in its response to the trustee's Notice of Final Cure Payment, as required by Rule 3002.1(g), warrants the imposition of sanctions and the award of attorney's fees and costs to the debtors.

Facts: Debtors confirmed their chapter 13 bankruptcy plan, which required them to maintain ongoing mortgage payments, as well as to cure and maintain pre-petition arrears through their plan payments. At the conclusion of payments under their plan, the chapter 13 trustee filed its Notice of Final Cure Payment under Fed. R. Bankr. P. 3002.1(f), stating that pre-petition arrears had been paid in full, and that the debtors were current on post-petition payments. The mortgage company responded under Rule 3002.1(g), agreeing with the cure of pre-petition payments. It asserted, however, that the debtors had accrued post-petition arrears in a specific amount without providing a detailed itemization of the alleged post-petition arrearage claim. The debtors objected to the mortgage company’s response by filing a motion under 3002.1(h) to determine the amount of the final cure. The debtors argued that they were current on all post-petition mortgage payments and requested an award of fees and costs for the mortgage

company's failure to attach a detailed itemization to its response to the Trustee's Notice of Final Cure.

The court found that the mortgage company's response was deficient under Rule 3002.1(g) because it failed to provide an itemized statement of the post-petition amounts allegedly due. This deficiency impeded the debtors' ability to challenge the asserted arrears. Consequently, the court awarded the debtors $1,650.00 in attorney's fees and prohibited the mortgage company from collecting any related fees or costs from the debtors.

Ruling: Under Federal Rule of Bankruptcy Procedure 3002.1(g), a creditor must include an itemized statement of the amounts owed post-petition, if any. Failure to comply with this requirement can result in the court awarding reasonable expenses and attorney's fees to the debtor under Rule 3002.1(i), and may preclude the creditor from presenting the omitted information in any form as evidence in any contested matter or adversary proceeding.

13. *Allen v Coleman (In re Coleman),* Case No. 23-01548-swd, Adv. Pro. No. 23-80069-swd, 2024 WL 2478193 (Bankr. W.D. Mich. May 23, 2024)

In re Coleman deals with whether a debtor can be found liable for the fraud committed by his ex-spouse by virtue of criminal and civil judgments which preceded the bankruptcy.

Facts: Prior to filing for chapter 13, the debtor had been involved in legal proceedings related to his now-ex-spouse's embezzlement from a dental practice, the ex-spouses' employer. The dental practice obtained both criminal and civil judgments against the debtor, asserting that he was complicit in the embezzlement scheme. The dental practice initiated an adversary proceeding within the chapter 13 case, seeking a determination that the debts owed by debtor were nondischargeable under §§ 523(a)(2)(A), (a)(4), and (a)(6). The dental practice filed a motion for summary judgment, arguing that the prior judgments should have preclusive effect, thereby establishing nondischargeability of the debts.

The debtor contested the motion, arguing that the prior judgments did not conclusively establish the elements required under the cited provisions of § 523.The Bankruptcy Court for the Western District of Michigan denied the dental practice's motion for summary judgment, finding that the prior judgments did not necessarily establish all the elements required under the cited provisions of § 523. Specifically, the court determined that the judgments did not resolve whether the debtor's actions met the standards for false pretenses, false representation, actual fraud, fiduciary fraud, embezzlement, larceny, or willful and malicious injury as defined under bankruptcy law. Therefore, further proceedings, including potentially a trial, were necessary to determine the dischargeability of the debts.

Ruling: For a debt to be excepted from discharge under §§ 523(a)(2)(A), (a)(4), or (a)(6), the creditor must establish that the debtor's conduct satisfies the specific criteria outlined in these provisions. Prior judgments may have preclusive effect only if they necessarily decided the same issues required under § 523. If the prior judgments did not address or conclusively determine these specific elements, summary judgment on the basis of issue preclusion is inappropriate, and the court must conduct further proceedings to assess the dischargeability of the debts. This case has the effect of limiting *Bartenwerfer's* potentially far-reaching consequences for a so-called innocent spouse who may have imputed liability.

14. *In re Bizeau*, Case No. 24-11074-rmb, 668 B.R. 493 (Bankr. W.D. Wis. March 21, 2025)

In re Bizeau addressed whether a debtor's inclusion of significant non-consumer debt in his schedules was appropriate for determining the applicability of 11 U.S.C. § 707(b).

Facts: Debtor filed for Chapter 7 bankruptcy, listing a $425,088.66 debt owed to the U.S. Small Business Administration (SBA) as a non-consumer obligation. This debt originated from a loan guaranteed solely by his non-filing spouse in connection with her former business. The debtor argued that, under Wisconsin law, he and/or his property were liable for this debt, thereby classifying it as a non-consumer debt and exempting his case from dismissal under § 707(b).

The court found that the Debtor neither signed nor agreed to be bound by the SBA loan documents. Additionally, it found that Wisconsin's marital property laws did not render him or his property liable for the debt, especially since his wife had received a Chapter 7 discharge in 2023, which protected their marital property from collection efforts. Consequently, the court determined that the SBA did not have a claim against the debtor or his property. Without the SBA debt, Bizeau's obligations were primarily consumer debts, making his case subject to review for abuse under § 707(b).

Rule of Law: For a debt to be considered in determining whether a debtor's obligations are primarily consumer debts under § 707(b), there must be a valid claim against the debtor or the debtor's property. A debt solely guaranteed by a non-filing spouse, without the debtor's agreement or liability under applicable state law, cannot be attributed to the debtor for this purpose.

15. *Colebrook v. Thompson (In re Thompson)*, 2025 U.S. App. LEXIS 9114, 2025 WL 1132295 (April 17, 2025)

In *In re Thompson,* 2025 U.S. App. LEXIS 9114, the United States Bankruptcy Appellate Panel for the Sixth Circuit reviewed the dismissal of an adversary complaint filed by creditor Teena Colebrook against debtor John Preston Thompson.

Facts: Colebrook alleged that Thompson and unnamed co-conspirators committed fraud by failing to repay a debt dating back to 2012 and sought to have this debt declared nondischargeable under 11 U.S.C. § 523(a).

The Bankruptcy Court for the Middle District of Tennessee dismissed the complaint under 28 U.S.C. § 1915(e)(2)(B)(ii), determining that Colebrook's claims were time-barred and failed to state a claim upon which relief could be granted. The court noted that since the underlying debt was unenforceable due to the statute of limitations, there was no basis to declare it nondischargeable.

On appeal, the Bankruptcy Appellate Panel affirmed the dismissal, agreeing that the complaint was properly dismissed for failure to state a claim and that the bankruptcy court did not err in its application of the law.

Ruling: Under 28 U.S.C. § 1915(e)(2)(B)(ii), courts are required to dismiss in forma pauperis complaints that fail to state a claim upon which relief can be granted. Additionally, for a debt to be declared nondischargeable under 11 U.S.C. § 523(a), there must be an enforceable underlying obligation; time-barred debts do not meet this criterion.

16. *In re Kadiric*, Case No. 24-03325-wsd, 2025 WL 1024138, (Bankr. W.D. Mich. April 4, 2025)

In *In re Kadiric*, the United States Bankruptcy Court for the Western District of Michigan addressed the United States Trustee's motion to convert the debtors' Subchapter V Chapter 11 case to Chapter 7.

Facts: The debtors, Muhamed and Mersiha Kadiric, faced allegations of prepetition misconduct, including unauthorized transfers of funds, their residence, and a vehicle, in violation of a state court restraining order. The court found both statutory and non-statutory cause for conversion under 11 U.S.C. § 1112(b), citing the debtors' failure to file a timely plan and their questionable conduct, which undermined their fitness to serve as fiduciaries and debtors in possession. Consequently, the court granted the motion to convert the case to Chapter 7.

Ruling: Under 11 U.S.C. § 1112(b), a bankruptcy court may convert a Chapter 11 case to Chapter 7 for "cause," which includes both statutory grounds, such as failure to file a

plan timely, and non-statutory grounds, such as lack of good faith or debtor misconduct. The court has discretion to determine whether cause exists based on the totality of circumstances.

17. *In re Davis-Peters*, Case No. 24-09311-dlt, 2025 Bankr. LEXIS 949 (Bankr. N.D. Ill. April 15, 2025)

In *In re Davis-Peters*, the United States Bankruptcy Court for the Northern District of Illinois addressed whether projected escrow shortages claimed by mortgage servicers in Chapter 13 cases constitute prepetition or post-petition claims.

Facts: Debtors Michelle Davis-Peters and Gordon J. Woods objected to their servicers' proofs of claim in their respective cases, arguing that these projected shortages were not prepetition defaults and thus should be disallowed.

The court held that under the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and the Real Estate Settlement Procedures Act (RESPA), projected escrow shortages are prepetition claims. The court emphasized that even if the escrow analysis is conducted post-petition, the effective date for determining the escrow shortage is the petition date. Therefore, such shortages are considered prepetition obligations that can be addressed through the Chapter 13 plan. The court overruled the debtors' objections, except in the instance where a servicer calculated the shortage based on the conversion date rather than the original petition date; in that case, the servicer was permitted to amend its claim to align with the court's ruling.

Ruling: Projected escrow shortages, as defined by RESPA and applicable bankruptcy procedures, are treated as prepetition claims in Chapter 13 cases. The effective date for calculating such shortages is the petition date, regardless of when the escrow analysis is performed. Consequently, these shortages are subject to treatment under the debtor's Chapter 13 plan.

Faculty

Hon. James W. Boyd is a U.S. Bankruptcy Judge for the Western District of Michigan in Grand Rapids, appointed in May 2014, and presides over bankruptcy matters in Grand Rapids and Traverse City. Prior to his appointment, he was a partner in the law firm of Kuhn, Darling, Boyd and Quandt PLC in Traverse City, Mich., where he practiced in the areas of bankruptcy law and commercial litigation. From 1988-2014, he served as a chapter 7 panel trustee and as a chapter 11 operating and liquidation trustee in many cases. While a trustee, he served on the board of directors of the National Association of Bankruptcy Trustees from 1999-2013 and was its president in 2010. He has also served as an operating and liquidating receiver under Michigan law for numerous entities. Judge Boyd is a contributing author to ICLE's *Handling Consumer and Small Business Bankruptcies* and is a member of the Federal Bar Association and ABI, as well as a frequent speaker. He received his J.D. from the Thomas M. Cooley Law School**.**

Michelle H. Bass is a partner at Wolfson Bolton Kochis PLLC in Troy, Mich., where she manages its consumer bankruptcy practice group. She represents both debtors and creditors in consumer bankruptcy proceedings and has represented individuals reorganizing under chapter 11, including under subchapter V. She helps with stopping foreclosures, stripping secured liens and cramming down loans on collateral for individuals seeking to reorganize under chapters 13 and 11. Ms. Bass has successfully defended appeals in the Federal Eastern District for the State of Michigan and the Sixth Circuit Court of Appeals. She is a member of ABI, the Detroit Consumer Bankruptcy Association and the Oakland County Bar Association, and she is Board Certified in Consumer Bankruptcy Law. Ms. Bass has been named by *Michigan Lawyer's Weekly* as one of 2019's 30 Women in the Law, by *Crain's Detroit* as one of 2021's Notable Women in the Law, and by *The Best Lawyers in America* from 2023-25 for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law. She also has been consistently recognized by *Super Lawyers* as a Rising Star in Consumer Bankruptcy from 2014-22, as a *Super Lawyer* in Consumer Bankruptcy from 2023-25, and by *Leading Lawyers* from 2023-25 for Individual Bankruptcy Law. Ms. Bass served on ABI's "40 Under 40" Program Steering Committee in 2023 and 2024, and she chaired the Michigan IWIRC Network from 2017-21. She received her B.A. from the University of Michigan and her J.D. from the University of Detroit Mercy School of Law.

E. Philip Groben is a partner with Gensburg Calandriello & Kanter, P.C. in Chicago, where he focuses his practice on bankruptcy and commercial litigation. He represents a variety of clients in bankruptcy proceedings, including debtors, creditors, trustees and equity-holders. Mr. Groben has worked on complex chapter 11 restructurings, chapter 13 reorganizations and chapter 7 liquidations. He also has successfully defended favorable rulings on appeal to the Seventh Circuit Court of Appeals. Mr. Groben represents clients in nonbankruptcy dissolution proceedings and assignments for the benefits of creditors. He has substantial commercial litigation experience in both state and federal courts. Mr. Groben has prosecuted and defended breach of contract and other commercial matters, brought foreclosure proceedings on behalf of secured lenders, negotiated favorable workouts with secured lenders, and enforced the rights of judgment creditors and debtors. He also has sued to set aside illegally obtained trust and will amendments, and has defended civil forfeiture matters. Mr. Groben served as a co-chair of the Chicago Bar Association's Young Lawyers Section Bankruptcy Committee, and he

organizes the group's annual CLE seminar as well as monthly committee meetings and presentations on a variety of topics including nondischargeability and domestic-support issues. He also served as the vice chair for the Chicago Bar Association's Asset Protection Committee and is a regular speaker to industry groups, including ABI. Previously, Mr. Groben served as a judicial extern to Hon. Bruce W. Black of the U.S. Bankruptcy Court for the Northern District of Illinois and as an extern with the Office of the U.S. Trustee, Region 11. Prior to starting his legal career, he worked with durable goods manufacturers to streamline global supply chains and reduce inventory costs. Mr. Groben received his B.S. from Iowa State University in 2002 and his J.D. from the John Marshall Law School in Chicago in 2009.

Hon. Bruce A. Harwood is a retired U.S. Bankruptcy Judge for the District of New Hampshire in Concord, appointed to the bench in March 2013, and currently resides in San Francisco. He also served as Chief Bankruptcy Judge prior to his retirement from the bench, and he served on the First Circuit's Bankruptcy Appellate Panel. Prior to his appointment to the bench, Judge Harwood chaired the Bankruptcy, Insolvency and Creditors' Rights Group at Sheehan Phinney Bass + Green in Manchester, N.H., representing business debtors, asset-purchasers, secured and unsecured creditors, creditors' committees, trustees in bankruptcy, and insurance and banking regulators in connection with the rehabilitation and liquidation of insolvent insurers and trust companies. He was a chapter 7 panel trustee in the District of New Hampshire and mediated insolvency-related disputes. Judge Harwood is ABI's President. He previously served as ABI's Secretary and Vice President-Communication, Information & Technology, as co-chair of ABI's Commercial Fraud Committee, as program co-chair and judicial chair of ABI's Northeast Bankruptcy Conference, and as Northeast Regional Chair of the ABI Endowment Fund's Development Committee. He also served on ABI's Civility Task Force. Judge Harwood is a Fellow in the American College of Bankruptcy and was consistently recognized in the bankruptcy law section of *The Best Lawyers in America*, in *New England SuperLawyers* and by *Chambers USA*. He received his B.A. from Northwestern University and his J.D. from Washington University School of Law.