

CONSUMER CASE LAW UPDATE  
2025 Mississippi Bankruptcy Conference  
By: Rachel Coxwell & Cecily Ethridge

LOCAL CASE LAW:

**1. *In re Romero*, Case No. 23-01862 KMS (Bankr. S.D. Miss. Sept. 27, 2024)**

[Objection to Proof of Claim; DSO/Property Settlement; Dischargeability]

Debtor objected to two of five proof of claims filed by his ex-spouse as it was unsure if they were for child support, alimony or property settlement. The Court went through an analysis of the Chancery Court's judgments and orders that are relevant to the debts in question.

The first claim at issue seemed to be for the balance owed on an award for past due child support and funds that were dissipated by the debtor. The claim was unclear on whether this was a balance remaining on the child support or dissipated funds. The Court found that it was still a mixture and calculated that 35.5% of the claim was remaining as child support and the other portion of the claim is dischargeable property settlement.

The second claim at issue was straightforward in that it was for a tax obligation that the Chancery Court divided equally amongst the debtor and ex-wife, making it a property settlement and not DSO.

**2. *In re Smith*, Case No. 20-02999 JAW (Bankr. S.D. Miss. Oct. 8, 2024)**

[Special Counsel Fee Application]

The Court previously approved employment of special counsel in debtor's CH 13 case, which led to a \$10,000 gross settlement. While the Court approved the settlement, it denied special counsel's fee application.

First, the attorney fees (\$4,000) and expenses (\$4,400) requested by special counsel were more than 50% of the proposed settlement. Second, no documents had been provided to show that the expenses were necessary. Special counsel was given thirty (30) days to file a corrected fee application and failure to do so would result in a denial of all compensation.

**3. *In re Hunter*, Case No. 19-00476 JAW (Bankr. S.D. Miss. Oct. 8, 2024)**

[Motion to Reopen; Laches]

Four years after his CH 7, debtor files a Motion to Reopen his case for the purpose of filing a motion to avoid a lien against creditor MHC. MHC was awarded a judgment against the debtor the month before he filed his CH 7 petition, then filed a proof of claim asserting his debt was secured by a judicial lien on all assets fourteen days after the debtor filed his CH 7 petition. In his CH 7 the debtor did file a motion to avoid lien on his personal property by another creditor.

The purpose of the debtor coming back to avoid this judicial lien by MHC was so that he and his non-filing spouse could refinance their home. First, the debtor could not actually show that he had any interest in the real property. The schedules were unclear if he had an interest in the home and then at the hearing debtor stated he did not own the home then or now.

The Court denied the motion to reopen for two reasons: the first being there was no substantive relief to grant even if the CH 7 was reopened because if the debtor has no interest in the property, a lien cannot be avoided. The second reason comes from an analysis of the doctrine of laches showing the debtor's lack of diligence and MHC proving they have been prejudiced by the long delay.

**4. *Estate of Freeman v. Leslee L Freeman, (In re Freeman)* Adv. Pro. 24-01002 JDW (Bankr. N.D. Miss. Oct. 22, 2024)**

[Turnover; Community Property Asset & Debt]

A denial of summary judgment as the material fact of when the debtor and his estranged spouse were separated remains unknown/unshown. The CH 7 Trustee filed an AP for turnover of real property located in California that the debtor's estranged spouse resided in. The California home does have significant equity that would seem to pay 100% of the debtor's filed claims (only 3 filed). However, much to the extensive analysis of California's community property laws and the bankruptcy code, the fourth element of turnover remains unproven.

The fourth element of turnover is showing that the property is not of inconsequential value or benefit to the estate. The fact that this house is community property, limits the reasons it can be held according to §726, and what the proceeds can be used to pay. Essentially it boils down to only one of the three claims against the debtor might be a community property debt, of which is it is only around \$7,100.00. The Court denied summary judgment at this stage as though the house is non-exempt property of the estate, it is an issue of material fact as to whether the house is a benefit to the estate as the administrative cost outstrips the actual value to the estate a 10 to 1.

**5. *In re Cannon*, Case No. 20-13025 SDM (Bankr. N.D. Miss. Nov. 22, 2024)**

[Post-Confirmation Modification; Unfair Discrimination]

Married couple filed CH 13 with nonpriority general unsecured creditors receiving roughly 11% through the confirmed plan, which included their student loans. The joint debtor later received a personal injury settlement and prior to the Trustee's distribution, the debtors filed two Modifications. The first asked that the student loans be deferred, which was denied. The second, which was filed before the conclusion of the first, was to modify and separately classify the student loan to prohibit a payout from the received settlement proceeds.

The Court goes into an analysis of pre vs post confirmation modifications, mentioning that the debtors may have been permitted to a separate classification at confirmation, but not after. The debtors were unable to establish cause needed to reclassify their student loan. It is noted by the Court that though cause was not found in this case, it doesn't intend the ruling to convey that cause does not exist to reclassify unsecured claims.

**6. *Pearson v. CFG Merchant's Solutions*, (*In re Pearson*) Adv. Pro. 23-06037 KMS (Bankr. S.D. Miss. Jan. 15, 2025)**

[Automatic Stay; Damages; Attorney fees]

A Final Judgment awarding damages from a previously granted summary judgment in favor of the Plaintiff/Debtor. The AP was filed due to a creditor's continued contact with the debtor after notice of the CH 13 bankruptcy, even after the actual AP was filed. The Debtor asked for actual and punitive damages, along with attorney fees and expenses.

Punitive damages were awarded in the amount of \$8,000, as the Debtor requested. The Court used the damage award as an offset against the debt owed, essentially making the award a cancellation of the debt.

Debtor's counsel submitted a fee statement itemizing their 31.27 hours at a rate of \$200 per hour for a total of \$6,253.33 with expenses of \$572.91. The Court analyzing different factor models such as Loadstar and the Johnson factors found that the fees were reasonable in time and amount.

**7. *In re Cole*, Case No. 23-12890 JDW (Bankr. N.D. Miss. Jan. 23, 2025)**

[Objection to Exemption]

CH 13 debtor had a post-petition lawsuit against her former employer for wrongful termination and lost wages. Settlement was approved September 2024 and the debtor amended her Schedule C in October 2024 using Miss Code Ann. 85-3-4 (garnishment cap) to exempt her settlement proceeds to which the Trustee objected. The Court analyzed the plain language of the Mississippi Code section and found that the intended garnishment cap was inapplicable as an exemption and the settlement proceeds were property of the estate.

**8. *In re Clincy*, Case No. 24-01532 JAW (Bankr. S.D. Miss. Feb. 14, 2025)**

[Objection to Valuation; PMSI / Cross-collateralization]

Debtor file CH 13 proposing to cram down an auto loan that was purchased within 910 of the petition date. Along with the auto loan, the debtor had a signature loan and a credit card with the creditor, a credit union. The creditor objected to such treatment to its 910 claim arguing that the debtor cannot cram down the auto loan, and due to cross-collateralization, has to paid the loan and credit card as well. The debtor argues that it can cramdown the auto loan as the cross-collateralization clause destroy the purchase money security interest status of the auto loan.

The debtor treated all three claims in the cram down section, while the creditor filed one secured claim for the vehicle and two unsecured claims for the loan and credit card. The creditor asserts that the vehicle cannot be crammed down at the full amount owed on the auto loan must be paid as it does not seek to cross-collateralize the two loans. No one argued whether the second or third loan refinanced or extinguished the first loan.

After analyzing other recently similar cases, the Court found that merely having the cross-collateralization language in the loan documents doesn't transform the purchase money security interest status. The creditor was adamant that it was not relying on the cross-collateralization clause and the Court saw the consistency of that with their three separate proof of claim filing and held that the auto loan was not transformed and could not be crammed down.

**9. *Wilkerson v. Williams (In re Williams)*, Adv. Pro. 24-06022 KMS (Bankr. S.D. Miss. Mar. 5, 2025)**

**[Dischargeability; Collateral Estoppel]**

A creditor filed an AP against the CH 7 debtor, claiming their debt was non-dischargeable under 11 U.S.C. §523(a)(4). The creditor was granted summary judgment in state court against the debtor for fraud or defalcation while acting in a fiduciary capacity. Court applied the elements of collateral estoppel and found the Plaintiff/creditor met its burden, therefore the debt was non-dischargeable along with related attorneys' fees.

**10. *In re Ivery*, Case No. 20-10128 JDW (Bankr. N.D. Miss Mar. 5, 2025)**

**[Modification; Plan Completion]**

The debtor completed her CH 13 plan payments, and the Trustee filed notice of completion of said payments July 2024. Debtor's home was destroyed by fire in August 2024. Trustee filed a response to the debtor's entry of discharge and objected to the claim of exemption in attempt to claim the insurance proceeds and pay unsecured creditors. The Court overruled the Trustee's objections and granted the debtors discharge finding that a plan cannot be modified after the last plan payment has been made.

**11. *In re Okorie*, Case No. 19-50379 KMS (Bankr. S.D. Miss. Mar. 25, 2025).**

**[Automatic Stay; Recoupment]**

Debtor filed a CH 11 in February 2019 that was later converted to CH 7 in February 2021. During the time of the CH 11, debtor became employed at hospital and signed a physicians services agreement. In the beginning of employment, the hospital ended up overpaying the debtor on certain occasions. The mistake of overpayment was not discovered until August 2021 (\$151,576.31 overpayment by then), to which the hospital immediately notified the debtor and began recouping \$8,240.41/monthly from debtor's paycheck. October 2021 the debtor received his discharge and in November 2021, the debtor worked out an agreement to have less taken out of his check monthly. Two years later and after the total amount had been paid back, the debtor demanded the funds back and filed this motion for violation of the automatic stay.

Funds that are to be recouped are not part of the estate as the debtor has no interest in them, thereby the stay does not apply. The Court found that the funds met the elements of recoupment in that 1. An overpayment was made as evidenced by the hospital and 2. The claim and amount owed to the debtor must arise from a single contract, which the hospital proved the overpayment and recoupment were both from the employment contract.

**12. *Harris v. Bates (In re Bates)*, Adv. Pro. 24-00003 KMS (Bankr. S.D. Miss. Mar. 28, 2025)**

[Motion to Reopen AP; Rule 60(b)]

Creditors filed an AP for non-dischargeability against the CH 7 debtor February 2024. After a few alias summons and notices from the clerk's office the Court dismissed the AP June 2024 and closed it July 1, 2024. The creditors filed a motion to reopen July 14, 2024, but it was under the wrong event. September 9, another motion to reopen was filed and hearing set for October 2024, but with no response the matter was removed from the docket.

The Court analyzes whether the AP should be reopened per Rule 60(b), specifically Rule 60(b)(1), excusable neglect and found that the creditors had not established justification for relief under Rule 60(b)(1) or any other subsection; the motion was denied.

**13. *Karam Family LLC v. Lane (In re Lane)* Adv. Pro. 23-06003 KMS (Bankr. S.D. Miss. Apr. 28, 2025)**

[Discharge Violation; Unlisted Creditor]

Debtor filed CH 7 April 2019, and the Plaintiff/creditor was not listed on schedules. The CH 7 was a no-asset case and discharged September 2019. Plaintiff/creditor filed a state court action in Florida against the debtor October 2019 for civil theft, fraudulent inducement and breach of contract. The Plaintiff/creditor received a default judgment July 2020 for \$821,771.44. It was not until January 2023 that the debtor filed a motion to reopen to amend scheduled and the case was reopened in February 2023, which is also the day the Plaintiff/creditor filed its AP for non-dischargeability.

The Court first looked to the debtor's counterclaim asserting that the judgment was a violation of the discharge injunction. It states that debts that are not listed or scheduled in time to permit timely filing of claims or requests to determine dischargeability under §523(a)(2), (4), or (6) are not discharged unless creditor had notice. No evidence was given that Plaintiff/creditor had notice and counterclaim was dismissed.

The Court next looked through the elements of collateral estoppel under Florida law for the default judgment. Under Florida law, a default judgment satisfies the actually litigated element and also established the truth of the allegations in the complaint. After the Court looked at the Florida complaint, they found the elements required for civil theft under Florida law were sufficiently matched to the elements of larceny under §523(a)(4). Since all elements of collateral estoppel were met, the Court found the debt non-dischargeable.

**14. *In re Robinson*, Case No. 25-02241 JAW (Bankr. S.D. Miss. Jul. 21, 2025)**

[Objection to Confirmation; Valuation]

Debtor filed CH 13 and listed creditor as having both a claim secured by a vehicle and an unsecured claim. The plan proposed a cram down of the vehicle at \$2,200.00 and the creditor objected asserting the value is \$11,232 based on J.D. Power valuation which it attached to its proof of claim. At hearing the debtor testified its failed attempts at trading the vehicle in and showed evidence of repairs needed estimated at \$22,874.72 and the present value by CarMax of \$1,500. The Court ruled in favor of the debtor due to evidence presented and found the value to be \$1,500.00.

**15. *In re Weathers*, Case No. 25-01248 JAW (Bankr. S.D. Miss. Sept. 5, 2025)**

[Objection to Exemption; Homestead]

Before filing CH 7 petition May 15, 2025, the debtor entered into a contract to sell his homestead property April 30, 2025. He listed the property in his schedules and claimed a homestead exemption. The proceeds of selling the home would not exceed the exemption claimed. Creditor with judgment lien on the property objected to the claim of homestead exemption arguing that the property is not the debtor's homestead; disputing the "occupancy" element of the homestead exemption. The Court found that the debtor's temporary absences / renting of the property for short periods of time did not alter his homestead status, and that the homestead exemption applies to sale proceeds.

5<sup>TH</sup> CIRCUIT CASE LAW:

***Bassel v. Durand-Day, (In re Durand-Day), No. 23-10956 (5<sup>th</sup> Cir. Apr. 21, 2025)***

[Appeal from the US District Court for the Northern District of Texas]

Two CH 13 Plans attempted to treat student loan debt separate from other nonpriority general unsecured debt. Specifically, the plans stated the student loans would be paid outside the CH 13 plan, rather than through the CH 13 Trustee like the other nonpriority unsecured claims.

The Trustee appealed the bankruptcy court's decision confirming the plans stating they satisfied 11 U.S.C. §1325(b)(1)(A) as they would be paid in full according to their contract terms under §1322(b)(5). The 5<sup>th</sup> Cir. held that when a trustee objects, a CH 13 plan cannot rely on §1322(b)(5) to defer payments on student loans beyond the plan term unless the plan satisfies §1325(b)(1)(A) or (B). Because the debtors' plans did not repay student loans in full during the plan or apply all disposable income to unsecured creditors, confirmation was improper.

***Adair v Stutsman Construction LLC ( In re Adair) No. 24-30273 (5<sup>th</sup> Cir. May 20, 2025)***

[Appeal from the US District Court for Louisiana]

Prior to filing his CH 13, debtor hired contractor to fix flood damage, debtor refused to pay the final installment to the contractor, contractor received a default judgment in LA state court against the debtor. Contractor sought to have his default judgment declared non-dischargeable in the CH 13.

At issue in this opinion is whether the state court judgment precluded debtor from his unclean hands argument, arguing that the contractor's unclean hands barred his relief of non-dischargeability. The bankruptcy court held that the state court judgment precluded any unclean hands defense, and the debt was deemed non-dischargeable due to willful and malicious injury by not paying. The district court affirmed the preclusion of debtor's unclean hands defense and that the debt was non-dischargeable. Debtor appealed.

The 5<sup>th</sup> Circuit did not agree with the other courts' decision regarding issue preclusion by viewing issue preclusion under Louisiana law. Louisiana law regarding issue preclusion matches that of the 5<sup>th</sup> Circuit and the element in question is what was "actually litigated." The Court found that the bankruptcy court erred in finding the debtor's argument of unclean hands defense precluded as the default judgment does not support the issue was "actually litigated." Further the Court noted that the unclean hands defense was not available to the debtor in Louisiana litigation under state code. 5<sup>th</sup> Circuit remanded to bankruptcy court for consideration of the unclean hands defense.

***Wyly v. Eichor*, No. 24-20238 (5<sup>th</sup> Cir. Feb. 26, 2025)**

[Appeal from the US District Court for the Southern District of Texas]

Debtor filed CH 7 and listed a friend of whom he received many loans, as an unsecured creditor. The creditor was notified of the bankruptcy and discharge, however still elected to pursue a motion for default judgment in state tax case. Debtor again notified creditor's counsel that the motion violated his discharge, but the creditor continued and received a default judgment. Debtor filed an adversary proceeding in bankruptcy due to the discharge violation. The bankruptcy court found that the agreements were in fact unsecured loans and not asset purchases even though they were intended to be secured. The bankruptcy court also found that the creditor had willfully violated the discharge injunction and held creditor in civil contempt.

Creditors appealed and district court affirmed; for which they appealed again and the 5<sup>th</sup> Circuit which again affirmed. Creditor argued to the 5<sup>th</sup> Circuit that the discharge order's language was not clear in prohibiting their actions and they had an objectively reasonable basis believing they owned the property. As the 5<sup>th</sup> Circuit reviews, they find that the language of the order is clear and that the bankruptcy court found the loans were intended as personal loans not secured loans, thereby barring the creditors from seeking collections. The 5<sup>th</sup> Circuit also found no error in the bankruptcy courts analysis of the loans finding them unsecured and rejected the creditors argument of having an objectively reasonable basis of belief.

SCOTUS:

***United States v Miller*, 604 U.S. \_\_\_, No. 23-824, (Mar. 26, 2025)**

[Certiorari to the US Cour of Appeals for the 10<sup>th</sup> Circuit]

A Trustee representing a Utah business in bankruptcy filed an avoidance suit against the United States seeking to claw back misappropriated funds of shareholders that used company funds to pay personal federal tax liabilities. The Trustee invoked Utah law as the basis for a 11 U.S.C. §544(b) lawsuit, to avoid the fraudulent transfer of the company’s funds. The Government argued that the claim failed being that the Trustee could not identify a creditor because sovereign immunity would bar the cause of action.

The bankruptcy court disagreed with the Government stating that §106(a), also waives sovereign immunity for the Utah cause of action nested within §544(b) claim. The 10<sup>th</sup> Circuit affirmed the bankruptcy court’s decision.

The Supreme Court reviews this case and looks to determine “[...] whether §106(a) abrogates sovereign immunity only with respect to federal cause of action created by §544(b) or whether it also abrogates sovereign immunity with respect to the underlying state-law claim that supply the “applicable law” for that federal cause of action.” The Court held that §106(a) waiver only applies to the §544(b) claim itself and not state law claims within the federal claim.

## OTHER INTERESTING CASES:

### ***In re Martin, Case No. 24-13368 (Bankr. N.D. Ill. Jul 18, 2025)***

[AI for legal research; Show Cause; Sanctions]

The Court issued a Show Cause order on debtor's counsel as they filed a brief containing fake quotations and nonexistent authority by using AI. The attorneys withdrew the brief and their application for compensation in the CH 13 case. The US Trustee and CH 13 Trustee both argued that the Court should impose sanctions.

Debtor's counsel filed a response to a creditors objection arguing that they lacked standing to make any arguments other than disputes over the treatment of their own claim, including feasibility. The Court, curious about the standing for feasibility, further investigated the caselaw used by debtor's counsel and found cases that did not actual exist, as well as incorrectly quoted cases or quotes that do not exist within the case that does.

Counsel responded to the Court's Show Cause admitting having used AI but did not review what was found through the AI program, assuming it would not fabricate things. The law firm which the attorney belonged also responded stating they prohibit the use of AI without manual verification. The law firm withdrew its application for compensation in the CH 13 case, created a formal AI policy within its firm, required all attorneys to complete online CLE training on the ethical use of AI, and lastly offered to reimburse opposing counsel for time reviewing the brief at issue.

Counsel and his firm were sanction \$5,500.00 to be paid to the Bankruptcy Court Clerk and required to attend an in-person course on the dangers of using AI that was being held at the National Conference of Bankruptcy Judges Sept. 19<sup>th</sup>.

### ***In re Taylor, Case No. 24-10298 CGB (Bankr. W.D. TX Mar. 31, 2025) –***

[Property of the Estate]

CH 7 debtor had stock options that were granted before the petition date, but did not vest until after the petition, and only if he continued employment for a certain amount of time. The options at question were properly disclosed in the debtor's schedules and vested 7 months after the petition date in November 2024. The CH 7 Trustee filed a Motion to Compel the debtors to liquidate the stocks and turn them over to the Trustee. The debtor responded arguing that the Trustee had a right to the full value of the stocks that vested pre-petition, but only a portion of the stocks that vested post-petition.

The Court analyzes the debtors argument regarding the post-petition vested stocks. The debtor argues that only a portion of these stocks are property of the estate because part of the stocks are attributable to his post-petition labor. The Court agrees with the debtor finding that 21.09% of the post-petition stocks are not part of the estate, but part of the debtor's post-petition earnings per §541(a)(6).

***Koontz v. SN Servicing Corporation, No. 24-1261 (4<sup>th</sup> Cir. April 4, 2025)***

[Appeal from US District Court for the N.D. of West Virginia]

Debtor filed a CH 7 and received a discharge; 5 years later he received letters from SNSC stating they were attempting to collect a debt and noting late fees to the account. Debtor filed a lawsuit for violations of the Fair Debt Collections Practices Act and similar WV law, in state court, but SNSC removed to federal court. The West Virginia District Court dismissed his complaint in both state and federal courts finding he was no longer a ‘consumer’ with a ‘debt’ due to the CH 7 discharge. The District Court also found that the letters were not attempts to collect a consumer debt so he also failed to plead a ‘false, deceptive or misleading representation’ under FDCPA.

The debtor appealed the dismissal of both his state and federal claim. The 4<sup>th</sup> Circuit found no error in dismissing the federal claim arising out of 15 U.S.C. 1692(e); however, the complaint is adequate for a claim under §1692(f) as he is a consumer and it is a debt. The Court also found that SNSC was engaged in collection activity by looking at the language of the letters stating the loan was a ‘debt’, announcing the purpose of ‘attempting to collect a debt’, and notifying of fees charged onto the loan account. The 4<sup>th</sup> Circuit reversed the dismissal of the state law claim and in part the federal claim.

***Watson v. Bradsher, No. 24-11389, (11<sup>th</sup> Cir. Aug 4, 2025)***

[Appeal from US District Court for the N.D. of Georgia]

Before filing for CH 7, debtor was sued in state court and found civilly liable for slander, false imprisonment, and battery, with a judgment against him for a total of \$150,500.00. The debtor did receive a discharge in his CH 7, however, the Plaintiff’s from the state court lawsuit filed an AP for their debt to be non-dischargeable under §523(a)(6). The Bankruptcy Court found that the judgment debts for slander and false imprisonment were nondischargeable, but the battery charge was not willful and therefore discharged.

Watson appealed, but the district court affirmed that the debt for false imprisonment was nondischargeable, though they reversed and remanded seeking further factual clarification on whether slander was willful. On remand the bankruptcy court found that the slander was not willful as debtor genuinely believed the plaintiff/creditors had stolen his wallet. The bankruptcy then did their own allocation of the judgment to determine what actual amounts were discharged or not. The debtor appealed that allocation decision. The 11<sup>th</sup> Circuit found that the false imprisonment debt was nondischargeable per §523(a)(6) and that there was no error by the bankruptcy court in their allocation of damages.

**Christopher Conte v. Peggy Proffitt No. 24-10265 (11 Cir. Aug 1 2025) - unpublished**

[Consolidated cases – both Appeals from US District Court for the S.D. of AL]

CH 13 Trustee filed modifications to take post-petition personal injury settlements and increase distribution it to unsecured creditors. The bankruptcy court denied the Trustee's motions, even though finding the net proceeds were property of the estate, with their discretionary authority found that the settlement proceeds did not increase the debtor's ability to pay their unsecured. Trustee appealed to the district court, affirmed, and then the Trustee appealed to the 11<sup>th</sup> Circuit.

The 11<sup>th</sup> Circuit reviews to see if the bankruptcy court abused its discretionary power in denying the modifications, to which they found the court did not and affirmed the decision. The 11<sup>th</sup> Circuit found the bankruptcy court had satisfactory reasons for denying a modification. The bankruptcy court heard from debtors at hearing and noted that the one debtor was still experiencing pain from their injuries, one living paycheck-to-paycheck and needing car repairs, while the other still needed surgery.

***State Bar of Nevada v. Wike, (In re Wike), No. 24-4402, (9<sup>th</sup> Circuit Jul 31, 2025)***

[Appeal from the 9<sup>th</sup> Cir. Bankruptcy Appellate Panel]

Debtor, an attorney, filed CH 7 and received a discharge. Of those debts listed, included were costs and fees assessed when he was twice suspended from the practice of law in Nevada. After his discharge, the debtor petitioned the State Bar of Nevada to reinstate his license provisionally, claiming the costs and fees from his suspension were not discharged. The Bar conditioned full reinstatement on the payment of the costs and fees. The Bar asserts its debt is nondischargeable pursuant to §523(a)(7). Debtor filed motion for sanctions for violation of §525(a) in bankruptcy court, to which the bankruptcy court denied the motion agreeing with the Bar's position. However, the Bankruptcy Appellate Panel reversed stating the debt was dischargeable and the 9<sup>th</sup> Circuit affirmed BAP's decision.

The 9<sup>th</sup> Circuit discusses the elements of §523(a)(7) and finds the elements at issue are (1) if it is a fine, penalty or forfeiture and (2) it's not compensation for actual pecuniary loss. It mainly came down to the structure of Nevada Supreme Court Rule 120 and its purpose which led the 9<sup>th</sup> Circuit to find it is for compensation for an actual pecuniary loss, and that costs under Rule 102 are not fines or penalties.

***Cooper v. Social Security Administration, No. 24-1084 (9<sup>th</sup> Cir. Mar. 20, 2025)***

[Appeal from the 9<sup>th</sup> Circuit Bankruptcy Appellate Panel]

Debtor filed a no-asset CH 7 and received a discharge in 2020. Prior to the bankruptcy, the Social Security Administration (SSA), from its own error, overpaid the debtor. Two years after the debtor's discharge SSA sought to recoup the overpayment by reducing the debtor's monthly SSDI benefits.

Both the Bankruptcy Court and BAP found that the recoupment was permissible since the overpayment and ongoing entitlement to benefits were related; arising from the same disability period, trust fund and statutory scheme. BAP didn't inquire further into reviewing the bankruptcy court's decision stating the logical relationship test precluded consideration of debtor's lack of fault in the overpayment.

The 9<sup>th</sup> Circuit in review stated there was no preclusion to consider the lack of fault and instead required courts to evaluate such considerations of the equities. The 9<sup>th</sup> Circuit Reversed and remanded finding such a recoupment from the debtor that engaged in no malfeasance was impermissible.

***IRS v, Lowe, (In re Lowe) No. 23-00004 XR (W.D. TX Mar. 18, 2025)***

[Appeal to US District Court for the W. D. of TX from Bankruptcy Court for W.D. TX]

CH 7 Trustee filed an AP to recover from the United States (IRS) pre-petition estimated tax payments by the debtor, arguing they were fraudulent conveyances. The Trustee argued that the transfers were to deplete the debtor's assets since the debtor paid \$26,000 only for a \$8,552.00 liability, the difference of \$17,448 was a transfer for no consideration.

The Bankruptcy Court granted the Trustee's motion for summary judgment, finding that the estimated payments were voidable because the debtor did not receive equivalent value, stemming from the 2021 tax liability not being assessed before the CH 7 petition. The Government appealed. District Court reversed and instructed the Bankruptcy Court to enter judgment for the Government as they found the payments were made in good faith and the debtor received equivalent value of payments because they represented an estimate of future tax liability; also noting these types of payments do not bear the hallmarks of fraud in which §548 is concerned.

***In re Carlsson, Case No. 24-51952, (Bankr. WD TX Nov. 1 2024)***

[Simultaneous CH 7 and CH 13]

Debtor filed a CH 7 first and then before it closed, filed a CH 13. The opinion stems from an Order to Show Cause in the CH 13 case determining if one of the pending cases should be dismissed. An Order waiving discharge was filed in the CH 7 case, which the debtor believed terminated the automatic stay so she filed a CH 13 to protect non-exempt assets from judgment creditors. The Court notes that the 5<sup>th</sup> Circuit has not addressed simultaneous filings, but a majority prohibits them while a minority permits so long as a discharge was received in the earlier case. The Court following a US Supreme Court decision, dismisses her CH 13 case as it seeks to address the same debts and assets as those in the pending CH 7.

“Despite losing that battle, the Debtor still wins the war because the Court also finds that the Debtor’s waiver of discharge in chapter 7 case did not terminate the stay.”