Recent Decisions of the Bankruptcy Court of the Southern District of Alabama

Updated March 9, 2016

NOTE: The following case summaries are intended solely to assist the local bankruptcy bar in identifying cases with pertinent issues and facts. They are not official court summaries and are not intended to be used as binding authority in briefs or oral argument. These summaries do not include or reflect any subsequent case history or appeals. It is the user's responsibility to examine the full opinion to determine the court's holding. The user should be aware that changes in the bankruptcy and state law may have occurred to render the cases obsolete.

232. In re Tate, Case No. 15-03814 (HAC) March 4, 2016

The court denied a chapter 13 debtor's motion for turnover under §542 because he did not offer adequate protection to the truck repair shop with a possessory mechanic's lien on his truck. The mechanic's lien would have been lost if the shop had been forced to turn over the truck.

231. In re LaForce, 14-02967 (JCO) February 26, 2016

The court found that cause did not exist to dismiss or convert debtor's chapter 11 case under § 1112(b)(1). The troublesome lavish purchases were business expenses and a change in accountants caused delays in monthly reporting. The Court found that, despite debtor's poor accounting abilities, he did not act with fraud or dishonesty and thus cause did not exist to convert or dismiss the case.

230. In re Carter, Case No. 15-02164 (HAC) February 23, 2016

Setup and delivery charges are not includable in a mobile home's replacement value under Associates Commercial Corp. v. Rash, 520 U.S. 1141 (1997) and §506(a).

229. In re Griffin, Case No. 14-00057 (HAC) February 18, 2016

Absent bad faith, a converted chapter 7 estate consists of property of the estate as of the date of the original chapter 13 petition under §348(f)(1)(A). Therefore, a postpetition personal injury claim is included as property of the estate in a chapter 13 case under §1306(a)(1) but is not property of the estate of a converted chapter 7 case.

228. In re Middleton, Case No. 15-01879, et al. (JCO and HAC) January 15, 2016

Several chapter 7 trustees objected to debtors' exemption claims in light of the recent changes in Alabama exemption law as of June 11, 2015. In an en banc opinion, the court held that under First National Bank v. Norris, 701 F.2d 901 (11th Cir. 1983), the "old" exemption limits apply in chapter 7 cases where all of the debts were incurred prior to the exemption change. For "mixed" cases involving debts incurred both before and after the exemption change, 11 U.S.C. §726(b)'s requirement that claims of the same class be paid "pro rata" prevents apportionment of payments to unsecured creditors based on the date of debt. Therefore, for these cases, the exemption limits as of the date of the petition will apply.

227. In re Miarka, Case No. 15-01228 (JCO) January 7, 2016

The Court found that cause existed and it was in the creditors' best interest to dismiss debtor's chapter 11 case because (1) there was a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;" and (2) debtor failed to comply with the court ordered DSO. § 1112(b)(4)(E). Alternatively, § 305(a) abstention was proper because this was a two-party case with a single creditor, overwhelmingly involving state law, and dismissal was in the best interest of all parties involved.

226. In re Long, Case No. 13-02343 (HAC) October 13, 2015

The court denied a chapter 13 debtor's motion to amend schedule D to include a postpetition creditor, finding that the amendment was an attempt to force a postpetition creditor into the bankruptcy case in violation of 11 U.S.C. §1305, which is permissive in nature and allows the postpetition creditor to decide whether to participate in the debtor's plan.

225. In re Korbe, Case No. 15-01540 (HAC) July 24, 2015

The chapter 13 debtor's plan proposed paying his student loan debt directly and paying all other unsecured, nonpriority debts through the plan at 100%. The trustee objected to the treatment of the student loan. The court held that under the facts of this case, where all other general unsecured nonpriority claims were being paid at 100%, the debtor may separately classify the student loan debt and pay it directly under 11 U.S.C. §1322(b)(1).

224. In re Knight, Case No. 15-00795 (HAC) May 27, 2015

The chapter 7 debtor filed an application to waive the filing fee, and the Bankruptcy Administrator objected on grounds that the debtor had exempt funds from an income tax refund which could have been used to pay the filing fee. The court held the debtor's possession of exempt funds at or shortly before the time of the petition prevented her from meeting the second prong of 28 U.S.C. §1930(f)(1).

223. In re Stewart, 2015 WL 1282971 (Bankr. S.D. Ala. 2015).

Contested involuntary petition. A single creditor can file an involuntary petition if there are less than 12 creditors and debtor is not generally paying debts as they come due. Court ruled that debts paid within the gap period were voidable transfers and therefore creditors paid within the gap period should not be counted for purposes of the numerosity requirement and small recurring debts were discounted for purposes of numerosity requirement. Although debtors were paying all of their recurring debts timely, their debt to the petitioning creditor was so large and accounted for such a high percentage of their debt that in failing to pay it debtors were not generally paying their debts as they came due.

222. In re Breland, 2015 WL 1334947 (Bankr. S.D. Ala. 2015).

Debtor was permitted to deposit money into the Registry of the Court, but the deposit would not terminate accrual of postjudgment interest. Where the debtor had filed a petition in Tax

Court asking that the IRS's claims for taxes from years preceding bankruptcy be considered res judicata based on a Consent Order, plan, and confirmation of the plan, it was for the Tax Court, not the bankruptcy court, to determine the issue of res judicata.

221. In re Wright, 2015 WL 1084549 (N.D. Fla.).

Debtor and defendants in an adversary proceeding seeking relief under §548 moved the court to dismiss the action for failing to file the action within the time limits of 11 U.S.C. §546(a). The trustee maintained that the limitations period should be equitably tolled, but the court granted the motion to dismiss the action, finding no extraordinary circumstances beyond the control of the trustee to toll the running of the time limit.

220. In re McIntosh, Case No.11-03417; In re Parker, Case No. 12-00718, January 27, 2015 MAM;

The chapter 13 debtors with confirmed plans were involved in postpetition automobile accidents, and later filed motions to convert to chapter 7 cases. The chapter 13 trustee asserted that the cases should be reconverted to chapter 13 so that the proceeds could be distributed to creditors. The court denied the chapter 13 trustee's motion to reconvert the cases to chapter 13 cases, holding that 11 U.S.C. §348(f)(1)(A) defines property of the estate under these circumstances, and the debtors' postpetition causes of action were not property of their chapter 7 estates. The court issued its original decision on November 25, 2014, Dkt #93, and denied the chapter 13 trustee's motion to reconsider on January 27, 2015, Dkt # 106, 107.

219. Coye v. Glaude, 2014 WL 7359165 (Bankr. S.D. Ala. 2014).

Where state court default judgment was not a penalty default court refused to apply collateral estoppel to the judgment. Defendant offered to help plaintiff buy a house. Defendant improperly appropriated $11,000 of this money to his own uses. Therefore, the debt was nondischargeable per § 523(a)(4).

218. In re Ballard, 2014 WL 5035766 (Bankr. S.D. Ala. 2014).

Debtor filed for bankruptcy in the Southern District of Alabama. Creditors objected to venue. Under §1408(1) venue was not proper in the Southern District of Alabama; "neither the Debtor's domicile, residence, nor principal place of business, nor principal assets" were located there. Court rejected debtor's argument that §1408(1) provides a non-binding suggestion of where a might file. Further, the fact that the Montgomery Advertiser regularly publishes the names of anyone filing for bankruptcy in the Middle District of Alabama for the gossip value of such information is not grounds for filing in the Southern District of Alabama.

217. In re Mendenhall, 2014 WL 4494811 (Bankr. S.D. Ala. 2014).

Plaintiff objected to dischargeability of debt by filing a motion in the main case. The Court found that a timely complaint to initiate a nondischargeability adversary proceeding that is improperly filed in a debtor's main case gives the debtor sufficient notice of the action such that an untimely, but properly filed complaint relates back.

216. Peed v. Seterus, Inc., 2014 WL 2987637 (Bankr. S.D. Ala. 2014).

Parties settled an adversary proceeding charging mortgage servicer with improperly holding payments and failing to correct errors on plaintiff's mortgage account. Plaintiffs brought this adversary proceeding alleging that mortgage servicer violated the terms of the settlement by failing to reduce plaintiffs' principal balance, and adding improper charges to their account. (1) Court found that plaintiffs stated a claim for violation of the automatic stay, ... (2) Seterus, as a servicer could not be liable under TILA (§ 1639(f) & § 1640) for failing to properly credit payments. However, under TILA, Fannie Mae, as assignee of the mortgage, could be liable for Seterus' failure to properly credit payments. (3) Allegation that servicer reported false information to credit rating agencies and misapplied payments as a result of erroneously charged fees did state claim for violation of § 506 of the Code. (4) Bankruptcy Court has subject matter jurisdiction to hear FDCPA claim. However, FDCPA claim is noncore, but court had authority to hear claim and issue proposed findings of fact and conclusions of law. (5) Allegation that servicer fraudulently induced plaintiffs to enter settlement agreement was pled with specificity where time, place and contents of fraudulent statements were alleged and plaintiffs alleged that servicer knew it would not comply with terms of settlement or recklessly disregarded whether it would implement policies and procedures to comply.

215. In re Breland, 2014 WL 2712158 (Bankr. S.D. Ala. 2014).

After protracted litigation over the debtor's liability for penalty for failure to timely file returns, penalty for failure to pay estimated taxes, and penalty for failure to pay taxes, the Court denied the IRS's summary judgment motion on all three counts. Material issues of fact existed regarding whether the debtor had reasonable causes for his failure to pay taxes and pay estimated taxes. Further, material facts were in dispute about whether the debtor has sufficiently objected to the IRS's penalty for failure to file tax returns.

214. In re Gibson, 2014 WL 2624940 (Bankr. S.D. Ala. 2014).

Debtor and her husband jointly owned a condo. Debtor deeded her interest in the condo to her son. After she filed for bankruptcy, the trustee successfully pursued a fraudulent transfer action against the son. The Court found that her interest in the condo did not become part of her bankruptcy estate until the trustee succeeded on the fraudulent transfer claim. Though Ms. Gibson's interest in the condo eventually became property of the estate, Mr. Gibson maintained the property until his death. After Mr. Gibson's death, his probate estate sought administrative expense priority for funds expended on condo fees and assessment to maintain condo prior to his death. The Court found that the expenses did not warrant administrative expense priority because the claimants did not deal directly with the trustee and the costs were not shown to have directly and substantially benefitted the estate.

213. In re Witherington, 2014 WL 2203880 (Bankr. S.D. Ala. 2014).

Under Alabama law, automotive lifts located on the debtor's property were fixtures, not personal property, and therefore, the trustee could not remove them. The lifts did not fall under the

trade fixtures exception because the trade fixtures exception only applies in the context of a landlord-tenant relationship.

212. Andrews v. RBL et al., 511 B.R. 163 (Bankr. S.D. Ala. 2014).

Trustee sought to set aside alleged fraudulent transfers under Code and exercise strong-arm powers pursuant to Alabama law. After a lengthy trial, Court found that (1) trustee failed to prove actual fraudulent intent, (2) lien release and note cancellation were not supported by reasonably equivalent value, (3) real estate agent's waiver of commission could qualify as "value" given for transfer, (4) fully encumbered assets were not capable of being fraudulently conveyed under Alabama law, (5) foreclosure sale extinguished debtor's equitable interest in limited common elements (LCEs) so a subsequent reallocation of those LCEs was not a transfer of an interest of the debtor in property, (6) trustee failed to show that lien releases were actually or constructively fraudulent, and (7) trustee failed to show a general scheme by the debtor's principal to strip the debtor of assets.

211. In re Willis, 2014 WL 231982 (Bankr. S.D. Ala. 2014).

The debtor and his wife divorced. As part of their divorce settlement, the domestic relations court ordered that proceeds of creditor Conn's home sale be used to repay a domestic support obligation the debtor owed to his first wife and that the debtor reimburse Ms. Conn for this expense. The debtor filed bankruptcy and sought to discharge this debt to his second wife. The Court found that the debtor's debt to his second wife on account of funds she expended to pay off a domestic support obligation to his first wife was not itself a domestic support obligation, but rather a property settlement. Creditor Conn's objection to confirmation was overruled.

210. Schuller v. Owen Loan Servicing, 2014 WL 722048 (S.D. Ala.).

The plaintiffs moved the bankruptcy court to withdraw the reference in an adversary proceeding that included counts for violation of the automatic stay, violation of the discharge injunction, and FDCPA. The bankruptcy court recommended that the district court withdraw the reference as to the FDCPA count, and allow the bankruptcy court to proceed on the remaining bankruptcy counts.

209. First Baldwin Bancshares, Inc., 2013 WL 5429844 (Bankr. S.D. Ala. 2013).

The Court found that if a debt is subordinated to another debt and the junior creditor receives security (a mortgage on real estate in this case) from a third-party, a subsidiary of the debtor, in the form of an accommodation mortgage, the senior creditor has rights in or a lien upon the collateral or the proceeds of the collateral. Basically, a creditor cannot receive more by taking a security interest than it is due to receive under the secured note.

208. In re Bradley, 2013 WL 4663125 (Bankr. S.D. Ala. 2013).

Debtors' means test showed a presumption of abuse, but Court found that extremely high student loan payments were a "special circumstance" overcoming the presumption.

207. Andrews v. RBL et al., 2013 WL 4051031 (Bankr. S.D. Ala. 2013).

Court granted in part and denied in part the defendants' motion for partial summary judgment finding that assignments in loan documents were intended as security for the loan. As such, the assignments did not strip the debtor of all its interest in the assigned property, including its interest in a purchase agreement and its products, a promissory note and vendor's lien. Therefore, the debtor did have an interest in the property that could be the subject of a fraudulent transfer. Also, a fully encumbered property is not an "asset" under the Alabama Uniform Fraudulent Transfers Act (AUFTA). The promissory note was fully encumbered at the time of its cancellation and therefore, not capable of being fraudulently transferred under the AUFTA.

206. In re Breland, 2013 WL 3934011 (Bankr. S.D. Ala. 2013).

The IRS filed a motion for partial summary judgment or partial judgment on the pleadings based on the debtor's failure to timely object to its claim of penalties for failure to timely file tax returns. Debtor produced an affidavit of a local CPA to contest the IRS's claim amount. Court denied the motions because there existed a genuine dispute as to the amount of the penalties for failure to timely file tax returns.

205. In re Bender Shipbuilding and Repair Co., Inc., 2013 WL 3546296 (Bankr. S.D. Ala. 2013).

B&D was a contract labor company that provided laborers to Bender. Creditor B&D was not entitled to priority wage claims because its damages stemmed from its contract with Bender and it could not show valid assignments of outstanding wage claims to B&D. The Court distinguished Shropshire, Woodliff & Co. v. Bush, 204 U.S. 186 (1907). The Court agreed with Shropshire that a wage earner's valid wage priority claim could be assigned pre-petition, but distinguished cases like Bender where the wage earner's priority claim is satisfied prepetition.

204. Andrews v. RBL et al., 2013 WL 3306106 (Bankr. S.D. Ala. 2013).

Debtor did not hold a cognizable property interest in condo when the condo was released from the mortgage, because condo had been sold and statutory right of redemption had not arisen prior to sale. Therefore, the release could not be a fraudulent transfer. Court found that under terms of the promissory note the mortgage holder could release a portion of its collateral without crediting the debtor for the release or informing the debtor of the release, and that doing so was not "bad faith." Court also explained that its finding that the defendants lacked the requisite good faith to utilize the good faith transferee defense in § 548(c) is not a finding of general bad faith on the defendants' part.

203. Andrews v. RBL et al., 2013 WL 2422703 (Bankr. S.D. Ala. 2013).

Sale of a fully encumbered condo could not be a fraudulent transfer under the Alabama Uniform Fraudulent Transfers Act (AUFTA). Likewise, the debtor's release of its vendor's lien could not be a fraudulent conveyance for the same reason. Trustee failed to demonstrate undisputed evidence of debtor's intent to hinder, delay or defraud creditors by releasing its vendor's lien on a condo unit or that debtor did not receive reasonably equivalent value for the release. Thus, summary judgment was not appropriate. Court found that mortgagee's release of penthouse unit could be transfer of the debtor since the debtor did not object to its release. Debtor's statutory right

of redemption is a property interest capable of being fraudulently transferred, and debtor lost its statutory right of redemption on a penthouse unit when its mortgagee released that penthouse from the mortgage. But see Andrews v. RBL et al., 2013 WL 3306106 (Bankr. S.D. Ala. 2013) (finding that debtor did not have a statutory right of redemption at time of conveyance because unit had not been foreclosed). Because the value of the debtor's statutory right of redemption was unclear, summary judgment was not appropriate on the issue of whether the debtor received reasonably equivalent value for its transfer. The debtor's consent to defendant's reallocation of Limited Common Elements (LCEs) qualified as an indirect transfer. Foreclosure sale was not a fraudulent transfer because it was properly conducted and the price received was therefore presumptively reasonably equivalent value. Due to defendants close relationship with the debtor and extensive involvement in the project, they were precluded from asserting a good faith defense against any of the trustee fraudulent transfer claims.

202. In re First Baldwin Bancshares, Inc., 2013 WL 2383660 (Bankr. S.D. Ala.).

Home Bancshares did not have standing to seek § 503(b)(3)(D) substantial contribution reimbursement because it was not an equity holder at the time the expenses were incurred. Further, almost all of the fees and expenses claimed as administrative expenses under § 503(B)(3)(D) were incurred prepetition. The majority view and this Court's view is that prepetition expenses cannot be given administrative priority. Home Bancshares actions in bidding did not benefit the estate. The creditors did not welcome Home Bancshares actions and were not benefitted by it. For all of these reasons, Home Bancshares was not entitled to a substantial contribution reimbursement.

201. Brannan v. Wells Fargo Bank, 2013 WL 1352350 (Bankr. S.D. Ala. 2013).

Creditor's request for certification of its direct appeal to the Eleventh Circuit was denied. Court found that (1) certification of the class was based on controlling precedent and the issue was heavily fact specific, (2) appeal did not raise issues of public importance despite the fact that the outcome of the case would impact the outcome of nine other pending class actions and despite creditor's question regarding the Court's subject matter jurisdiction to hear the claims, and (3) immediate review would not materially advance the case because the Court would still have to try the case even if the circuit court were to reverse the class certification.

200. In re Rattler, 2013 WL 828286 (Bankr. S.D. Ala. 2013).

In chapter 13, landlord filed claim for postpetition rent arrearage and sought to have claim treated as an administrative expense and paid in full through the plan. Court found that postpetition rent arrears could be either a § 1305(a)(2) postpetition claim or a § 503(b) administrative expense, but not both. Court found that postpetition rent was an administrative expense because home provided a benefit to the Debtor's estate, landlord's actions (although messy) were sufficient to get administrative expense priority, and debtor had not objected to treatment of debt as administrative expense in landlord's relief from stay order.

199. Brannon v. Chuck Stevens Automotive, Inc., 2013 WL 237759 (Bankr. S.D. Ala. 2013).

Employee of a car dealership-creditor allegedly harassed debtor in public regarding her bankruptcy filing. While dealership had not received formal notice of the bankruptcy, it had actual notice of the bankruptcy. Court held that actual notice of a bankruptcy filing is sufficient to support a § 362 violation of automatic stay action even where the creditor did not receive formal notice of the bankruptcy.

198. In re Brannan, 485 B.R. 443 (Bankr. S.D. Ala. 2013).

"Synopsis

Background: Debtors commenced putative class action to recover for injuries that they allegedly sustained as result, and to enjoin mortgage lender from continuing to utilize allegedly defective procedure for procuring affidavits in support of its motions for stay and other relief, using affiants who had insufficient opportunity to verify the truth and accuracy of matters set forth in their affidavits.
Holdings: The Bankruptcy Court, Margaret A. Mahoney, Chief Judge, held that:
1 bankruptcy court had power to impose sanctions, both in exercise of its inherent contempt power and pursuant to statute authorizing court to issue any "necessary or appropriate" order;
2 court could exercise its inherent and statutory contempt power to sanction mortgage lender in context of adversary proceeding brought by debtors, and did not have to dismiss for failure to utilize motion practice;
3 proposed class satisfied "numerosity," "commonality," "typicality," and "adequacy of representation" requirements; and
4 class could be certified, both on ground that lender had acted or refused to act on grounds generally applicable to all class members, and that action sought principally injunctive relief, and on ground that questions of law or fact common to class members predominated over any questions affecting only individual members, and that class action was superior to other available forms of relief.
Motion for certification granted.
In re Brannan, 485 B.R. 443 (Bankr. S.D. Ala. 2013) leave to appeal denied, No. MISC.A. 13-0001-WS, 2013 WL 838240 (S.D. Ala. Mar. 5, 2013) and motion to certify appeal denied, No. 02-16647, 2013 WL 1352350 (Bankr. S.D. Ala. Apr. 3, 2013)." Westlaw

197. In re Mansmann, 2013 WL 2322953 (S.D. Ala.)

The bankruptcy court issued a report and recommendation to the district court recommending that the district court allow permissive withdrawal from counts under RESPA, wantonness, negligence, breach of mortgage agreement, unjust enrichment, wrongful foreclosure, slander and defamation and Truth in Lending.

196. In re Shuaney Irrevocable Trust, 2013 WL 6983382 (Bankr. N.D. Fla.).

The chapter 11 debtor filed adversary proceeding against creditor bank for declaratory judgment on several fact specific issues concerning the debtor's debt to the bank and the bank's security interest in certain bonds. The bank filed a motion for summary judgment as to certain counts. The court granted the bank's motion for summary judgment.

195. In re Hossain, 2012 WL 5934883 (Bankr. S.D. Ala. 2012.).

In chapter 13, debtor sought to strip off third lien on real property. Court found that appropriate date for valuing property was the petition date and that the debtor's professional appraisal completed several months after the petition date was the appraisal done closet in time to the petition date. Based on the debtor's appraisal, the third lien was wholly unsecured and therefore could be stripped off.

194. In re Waltman, 2012 WL 5828717 (Bankr. S.D. Ala. 2012).

Debtor entered rental purchase agreement with Southern Lease Management Group (SLMG), a Tennessee corporation for three portable storage units. He began living in them. In his chapter 13 plan, he listed them as personal property and list SLMG as a secured creditor. However, prior to the bankruptcy the debtor had to completed the payments necessary to satisfy the rental purchase agreement and take ownership of the units. The Court found that regardless of the use the debtor was making of the units, they were not property of the estate because the debtor never owned them. Rather, they were the subject of executory contracts and must be treated as such in the debtor's plan.

193. In re Crenshaw. Sr., 2012 WL 5430948 (Bankr. S.D. Ala. 2012).

Debtor owned 10 acres of undeveloped real property that produced no income. Creditors recorded a judgment lien and sought levy and execution. After notice of a Sheriff's sale went out, the debtor filed a chapter 13 bankruptcy. The debtor scheduled the property but did not list any secured claims attaching to the property. The debtor listed his judgment creditors as unsecured creditors. They judgment creditors did not file a claim. The Court found that because the judgment creditors did not file a claim, their claim was disallowed. However, their lien was valid, was not provided for in the plan, and would survive the bankruptcy. Because the undeveloped property to which the lien attached was not necessary for an effective reorganization and because the debtor had no equity in it, the Court granted the judgment creditors relief from the automatic stay to pursue their remedies against the property.

192. Bender Shipbuilding and Repair Co., Inc. v. Malone Consulting Services et al., 2012 WL 5360986 (Bankr. S.D. Ala. 2012).

The debtor initiated a preference action against Malone, an engineering consultant. The parties all but stipulated that a preference had occurred, but Malone argued that the preference was made in the ordinary course of business and that the funds paid to Malone had been earmarked for that purpose from funds received from a third party. The Court found that genuine issues of material fact exists regarding when the debtor received funds from which it paid Malone and that the date the funds were received was pertinent to the ordinary course of business defense. Therefore, summary judgment was denied. Further, the judicially created earmarking defense was not available to Malone because the debtor deposited the funds into its general operating account, and fully controlled the funds prior to disbursing them to Malone.

191. In re Feaster & Sons Oil Distributers, Inc., 2012 WL 4502048 (Bankr. S.D. Ala. 2012).

Trustee objected to Bank's claim as being unsecured. Court determined that based on a plain reading of the consent order, the Bank's claim for interest was secured by proceeds of sale to extent of $4,208 and otherwise unsecured. Court also found that the equitable doctrine of marshalling was only appropriate where funds are available from a common debtor. The Bank could not be forced to pursue satisfaction of its claim from a different debtor under the marshalling doctrine.

190. In re Bender Shipbuilding & Repair Co., Inc., 2012 WL 4086445 (Bankr. S.D. Ala. 2012).

Creditor sought leave to amend its claim after the bar date and add a new party to the claim. Court found that the claim could be amended to add a new party because new party was the real party in interest and amendment did not substantively change claim. Also, the new party had filed an informal proof of claim through the creditor's proof of claim and its action in a state court lawsuit. Both the creditor and new party could proceed in their state court suit against the debtor and have their claims reduced to judgment, but the judgment could only be satisfied by insurance proceeds or through the creditor's unsecured claim in the debtor's case.

189. In re Bender Shipbuilding & Repair Co., Inc., 2012 WL 4052026 (Bankr. S.D. Ala. 2012).

Debtor's plan administrator ("Debtor") brought a preference action against ACT. ACT admitted that Debtor could make a prima facie case for a preference but raised 1.) new value, 2.) ordinary course of business, and 3.) critical vendor defenses. Court found that Act did contribute new value after receiving payment and therefore granted partial summary judgment. Court found that ordinary course was a highly fact specific defense and that there was evidence to support the theory but evidence that weighed against it as well, so summary judgment was denied. Finally, the Court found the evidence is support of Act's critical vendor theory "woefully short" because, amongst other things, the debtor had never filed a critical vendor motion with the Court. Therefore, summary judgment was denied.

188. In re Bender Shipbuilding & Repair Co., 479 B.R. 899 (Bankr. S.D. Ala. 2012).

"Background: Adversary proceeding was brought to set aside, as preferential, a Chapter 11 debtor's eve-of-bankruptcy payments to creditor that had extended services to debtor, and creditor asserted "subsequent new value" and "ordinary course of business" defenses. Both parties cross-moved for summary judgment.
Holdings: The Bankruptcy Court, Margaret A. Mahoney, Chief Judge, held that:
1 genuine issue of material fact as to whether services which creditor provided, as alleged new value to Chapter 11 debtor, postdated the challenged preferential payment, despite being invoiced only one day thereafter, precluded entry of summary judgment on "subsequent new value" defense, but
2 payments that, while in keeping with payment plan recently implemented by creditor to which payments were made, were inconsistent with prior 20-plus year payment history between parties were not made "made in the ordinary course of business of the debtor and the transferee."

Debtor's motion granted in part and denied in part; creditor's motion denied." Westlaw

187. Andrews v. RBL, LLC et al, 2012 WL 3778956 (Bankr. S.D. Ala. 2012).

After a lengthy discuss of post-Stern bankruptcy court jurisdiction, the Court found that it had subject matter jurisdiction to hear the trustee's fraudulent transfer claims. The Court also found that the trustee's constructive trust claims were related to the bankruptcy under the "conceivable effects" test and therefore the Court had jurisdiction to hear that claim. The district court could also exercise supplemental jurisdiction over the constructive trust claim because that claim shared a common nucleus of operative fact with the fraudulent transfer claims. However, it is not clear that the district court could refer the supplemental claim to the bankruptcy court. Because the Court found related to jurisdiction, it did not decide this issue. However, the Court could not enter a final order on the constructive trust claim since it was not core, so the Court would report and recommend.

186. In re Bender Shipbuilding & Repair Co., 2012 WL 3292919 (Bankr. S.D. Ala. 2012).

The post-confirmation debtor disputed its approved financial advisor's compensation application. On cross motions for summary judgment, the Court found that there was room for interpretation in the contract the parties had entered and that genuine issues of material facts existed with regard to the parties' intent in contracting. Therefore, summary judgment was denied.

185. In re Breland, 474 B.R. 766 (Bankr. S.D. Ala. 2012)

"Background: Internal Revenue Service (IRS) moved for leave to file amended proof of claim for additional prepetition taxes, after having previously entered into consent order with Chapter 11 debtor establishing amount of its total claim, and after plan was confirmed and debtor had begun making payments thereunder. The Bankruptcy Court, Margaret A. Mahoney, Chief Judge, 2011 WL 6739514, denied motion on res judicata grounds, and the IRS appealed. The District Court remanded for discussion of two issues.
Holding: The Bankruptcy Court, Margaret A. Mahoney, Chief Judge, held that, having entered into consent order that contained clear statement of its total claim amount and divided that amount into priority and general unsecured tax claims, the Internal Revenue Service (IRS) was bound by terms of this order.
Motion denied." Westlaw

184. In re Tracy, 2012 WL 2499395 (Bankr. S.D. Ala. 2012).

Chapter 7 creditor sought and obtained relief from stay to repossess its car collateral. The debtor then reaffirmed the debt on the car. After reaffirmation the creditor withdrew a higher amount for attorneys fees from the debtor's credit union account than the Court had approved in the reaffirmation agreement; it also added $125 to the debtor's account as a repossession fee. The debtor file a motion for contempt and sanctions for violation of the reaffirmation agreement. The Court found that while the creditor had overcharged on the attorneys fee, it acted promptly (within two days) of notification from the debtor to refund the excess money. Thus, the

inadvertent mistake did not warrant sanctions. Further, the reaffirmation agreement allowed the creditor to add a charge for a fee it incurred in repossessing the vehicle prior to reaffirmation. Therefore, this charge was proper and not sanctionable.

183. In re Small, 2012 WL 2132386 (Bankr. S.D. Ala. 2012).

In January 2007, debtor executed a mortgage with Chase. In November 2008, debtor became unable to make her monthly mortgage payment and she applied for a modification. After some back and forth, debtor alleged that Chase approved and executed her loan modification. Within days, Chase sold the loan to LBPS. LBPS denied that any modification had occurred, held the debtor in default, and commenced foreclosure proceedings. Debtor applied to LBPS for a loan modification and was apparently denied. Debtor filed chapter 13 to prevent foreclosure. Chase's motion to dismiss debtor's wrongful foreclosure and defamation was granted because Chase wasn't involved in the foreclosure. Court also found that Chase's alleged "negligence and wantonness" torts claims arose from duties created by the mortgage agreement and were not proper tort claims. Court also found that Chase as mortgagee did not owe debtor any general fiduciary duties. However, debtor did state claim against Chase for breach of the mortgage agreement.

182. In re Peed, 2012 WL 1999485 (Bankr. S.D. Ala. 2012).

Debtor alleged tort of wantonness and violation of FDCPA against creditor's law firm for their participation in preparing faulty mortgage assignment, imposing fees for filing proof of claim, preparing incorrect motion for relief and fact summary, and preparing faulty affidavit and statement of fact in motion for relief from stay. Court found that appropriate remedy for wantonness would be sanctions not damages, and therefore dismissed damages claim. Court also found that actions authorized by the Bankruptcy Code could not constitute violations of the FDCPA and dismissed the FDCPA claim.

181. In re Vista Bella, 2012 WL 1934404 (Bankr. S.D. Ala. 2012).

Trustee filed motion to employ special counsel pursuant to § 327(e) to pursue fraudulent transfer claims. The debtor, Vista Bella, objected to special counsel's appointment. Court approved the appointment because special counsel satisfied the requirements of § 327(e), he was not likely to be a material witness in the case (though he might be a witness), he has withdrawn from representing several of Vista Bella's creditors in other suits, and his prior representation of the debtor and general familiarity with the case made his appointment most efficient.

180. U.S.A. v. Sears, 2012 WL 1865443 (Bankr. S.D. Ala. 2012).

Debtor made false representations in its application to be a bond surety. Court adopted and applied the "narrow view" of the term "financial condition" under §523(a)(2)(A). Court affirmed that subsequent performance did not negate circumstantial intent to defraud. Contracting officers "in fact" relied on debtor's misrepresentations and were justified in doing so despite the fact that some supporting documentation was not included in the debtor's bond surety application. Court also affirmed that the U.S. suffered actual losses on account of the debtor's

fraud including bond premiums and funds the U.S. had to pay when a contractor defaulted on a project backed by the NPS.

179. In re Williams, 2012 WL 1436724 (Bankr. S.D. Ala. 2012).

Trustee filed a motion to determine the estate interest in a retirement account and a house. The debtor's wife had inherited the house and retirement account from her parents a few years before the bankruptcy. As representative of their estates she struggled with the probate process. After gaining title to the account and house, she added her husband to the deed and the account for survivorship purposes only. She and the debtor testified that he held bare legal title and no gift was intended in adding his name to the account and deed. The Court found that the debtor had only a resulting trust in the properties under Alabama law. Therefore, the estate had no interest in the properties.

178. In re Cello Energy, LLC, 2012 WL 1192784 (Bankr. S.D. Ala. 2012).

After making findings on numerous objections to confirmation, the Court confirmed the debtor's fourth amended chapter 11 plan of reorganization. A lengthy discussion of claim classification, unfair discrimination in claim treatment, and third-party releases is included.

177. In re TTM MB Park, LLC, 2012 WL 844499 (Bankr. S.D. Ala. 2012).

Court found that two properties were not a SARE (single asset real estate) venture (11 U.S.C. § 101(51B). Though properties had single financing scheme, single legal identity, single ownership structure, and collective management agreement, they were geographically separated, had separate promissory notes, maintained separate books and records, had separate staffs, and tenants at each complex did not share rights and privileges at the other complex. The evidence in equipoise, the Court found that bank did not carry its burden to prove SARE status, and therefore property was not a SARE.

176. In re Huff, 2012 WL 710146 (Bankr. S.D. Ala. 2012).

In chapter 7, Court granted debtor's motion to avoid judicial lien. Under Alabama law, debtor was entitled to claim two contiguous parcels of real estate—one on which his house sat and the other on which he had built a swimming pool and used recreationally—as a single homestead for purposes of claiming an exemption.

175. In re Brady, 2012 WL 3235722 (Bankr. S.D. Ala. 2012).

Summary judgment was not appropriate on creditor's § 523(a)(4) nondischargeability action. Debtor as officer in corporation and minority shareholder did not owe fiduciary duties to creditor. No express trust was created by debtor's indemnity agreement with creditor. No evidence indicated that debtor was reckless with his monitoring of corporation's finances.

174. In re Sears, 2012 WL 3235685 (Bankr. S.D. Ala. 2012).

Debt was nondischargeable pursuant to § 523(a)(2)(A). Debtor's false statement in affidavits were "false representations" intended to deceive. U.S. relied on the false statement in issuing at least 11 bonds. Despite the fact that U.S. could have investigated and discovered that statements were false, its reliance was justified. U.S.'s losses were caused by debtor's false representations because U.S. would have found a different surety, one that would have been able to pay, had it not relied on debtor's misrepresentations and accepted his application. Losses included the bond premiums paid because they were paid for useless, fraudulently obtained bonds. Debt was not excepted from discharge as a debt for larceny because debtor intended to perform under the bonds. Debt was not excepted from discharge for "willful and malicious injury," because though malicious, the injury was not certain to occur and therefore was not willful.

173. In re Cello Energy, LLC, 2012 WL 245972 (Bankr. S.D. Ala. 2012).

Confirmation of debtor's chapter 11 plan was denied because (1) it did not include viable fraudulent transfer actions, and (2) it was not feasible. Payments from licensing fees of unproven technology were too speculative, necessity of payments to insiders was not proven, and unlimited timeframe in which to complete deal with potential buyer was inappropriate.

172. In re Boykin, 465 B.R. 665 (Bankr. S.D. Ala. 2012).

Creditor objected to chapter 11 debtor-wife's claim of exemption as to life insurance proceeds of a policy on the life of her late husband. The court held that the debtor, as both owner and beneficiary of the policy that she purchased on the life of her husband, was the "person effecting the insurance", and was entitled to exempt the proceeds under Alabama's exemption statute, Alabama Code §27-14-29(b). The court also held that the doctrine of unclean hands did not apply to deny the claimed exemption.

171. In re McDowell, 2012 WL 1569630 (Bankr. N.D. Fla.).

Bank made two loans to the chapter 7 debtor which were secured by two certificates of deposit. The debtor agreed in the loan documents not to sell or transfer the funds in the CDs during the life of the loan without the bank's consent. At the request of the debtor, the bank allowed the debtor to take some funds from the CDs, but denied later requests. The debtor went to another branch of the bank and withdrew the remaining funds from the CDs. The bank filed a nondischargeability complaint under 11 U.S.C. §523(a)(2)(A), (a)(4), and (a)(6). The court held that the debtor obtained the funds under "false pretenses" under §523(a)(2).

170. In re Dunn, 473 B.R. 458 (Bankr. N.D. Fla. 2012).

The plaintiffs, in their capacity as beneficiaries or former beneficiaries of a trust established by their father, brought an adversary proceeding under 11 U.S.C. §523(a)(2) and (a)(4) for larceny to have state court judgment against the debtor for exploitation of their elderly father declared nondischargeable, and moved for summary judgment under the doctrine of collateral estoppel. The court granted the plaintiffs' motion for summary judgment under §523(a)(2) based on the collateral estoppel effect of the state court judgment, but denied summary judgment under §523(a)(4) for larceny.

169. In re Johnson 2012 WL 3905176 (Bankr. S.D. Ala.).

The debtor filed an action for violation of the discharge injunction after a creditor pursued an NSF check prosecution against him after he received his discharge. The court found that the creditor had violated the discharge injunction under 11 U.S.C. §524, and awarded the debtor three thousand dollars in compensatory damages.

168. In re Collins, 2012 WL 5906869 (Bankr. S.D. Ala.).

Creditor that issued several performance and payment bonds on federal projects obtained by the debtor's construction company filed an adversary proceeding under §523(a)(4) asserting that the debtor was in a fiduciary relationship with the company, and filed motion for summary judgment. The court held that the terms of the indemnity agreement under which the creditor sought to hold the debtor as a fiduciary applied only to the principal, which was the construction company, and not to the debtor as an indemnitor, and therefore denied the motion for summary judgment.

167. Phillips v. Aurora Loan Services et al, 2011 WL 6779553 (Bankr. S.D. Ala. 2011).

Loan servicer misstated in motion for relief from stay that it was the holder of the note. Plaintiff claimed that the misstatement amounted to a fraud on the Court and moved for sanctions. Court found that isolated incident of inaccurate information on an affidavit did not amount to fraud on the Court and that sanctions were inappropriate especially in light of the fact that the loan servicer's role as servicer, not holder, was blatantly obvious from the underlying documents filed with the motion for relief from stay. The Court allowed the plaintiff to challenge any fee paid to defendant on account of the faulty motion if payment of any fee could be established.

166. In re McCombs, 2011 WL 6762930 (Bankr. S.D. Ala. 2011).

In chapter 11, mortgage holder filed motion for relief from stay. Under § 362(d)(2), a motion for relief from stay requires a finding the debtor has no equity in the property and that the property is not necessary for an effective reorganization. Parties agreed that there was no equity, but the property was necessary for an effective reorganization at least at early stage in the case. Court discussed whether debtor could use rental income that had been absolutely assigned to mortgagee to pay adequate protection, but did not reach the issue.

165. In re Breland, 2011 WL 6739514 (Bankr. S.D. Ala. 2011).

After confirmation of the debtor's chapter 11 plan and after entering a consent order with the debtor and receiving full payment on its priority tax claim, the IRS moved to amend its priority tax claim to assess up to $45 million more in income taxes for the relevant tax years. Court denied the IRS's motion as being way too late. Debtor's plan had already been substantially consummated; properties had been sold and many debts paid. After conducting discovery, IRS had compromised its priority tax claim and waived any further claim for taxes for the relevant years.

164. In re Sullivan, 2011 WL 6148709 (Bankr. S.D. Ala. 2011).

In chapter 7, creditor's judgment was declared nondischargeable. After case closed, debtor filed a chapter 13 case to spread out payments on the nondischarged debt while keeping his business afloat. Creditor objected that debtor was not eligible to be a chapter 13 debtor. Court agreed that he had too much unsecured debt for chapter 13 and dismissed, but found that the filing was not in bad faith. Creditor sought a 1 year injunction on refiling. Court found that no injunction was appropriate under the facts where debtor had legitimate use for chapter 13 protection.

163. Edwards v. White, 2011 WL 6010238 (Bankr. S.D. Ala. 2011).

Court found debt nondischargeable under § 523(a)(2)(A). Debtor settled state court suit and immediately filed bankruptcy. Settlement was not nondischargeable under § 523(a)(2)(A) because plaintiff did not prove that debtor never intended to pay settlement. However, defendant-debtor had induced plaintiff to borrow $12,000 more for a home purchase than he had intended to borrow by convincing him that he would receive the $12,000 back after closing from the seller in order to make home repairs. Damages stemming from this misrepresentation were nondischargeable.

162. In re Huff, 2011 WL 5911926 (Bankr. S.D. Ala. 2011).

Following the 11th Circuit and departing from a literal reading of § 522(f)(2)(A), Court found that in calculating value for purposes of lien stripping, the entire value of the property must be included, not just the debtor-husband's ½ interest in the property.

161. Small v. Seterus, 2011 WL 7645816 (Bankr. S.D. Ala. 2011).

In adversary proceeding alleging wrongful foreclosure, breach of mortgage agreement, and associated claims, Court found that permissive withdrawal of the reference was warranted and that in light of Stern v. Marshall the Court may not have constitutional authority to enter a final order on the claims. The Court reported and recommended permissive withdrawal of the reference.

160. Brannan v. Wells Fargo Home Mortgage, 2011 WL 5331601 (Bankr. S.D. Ala. 2011).

Court denied plaintiff's motion to certify a class to pursue fraud on the court theory stemming from mortgage company's improper affidavit preparation procedures. Court reasoned that sanctions could also redress the injury to the court, no other court had certified such a class, and the plaintiff would have to establish an injury in fact for each class member in order to possibly be certified.

159. In re McBride, 2011 WL 4544631 (Bankr. S.D. Ala. 2011).

Debtor defaulted on car lease payments prepetition and lease terminated. However, Court had to decide whether the lease was a true lease or a disguised security agreement. The matter was not clear, so the creditor's repossession of the vehicle was a violation of the stay since the debtor had a colorable claim to the vehicle. Therefore, the debtor's turnover and sanctions motions were denied, but debtor's request for attorney's fees was warranted since creditor should have petitioned the Court for possession of the vehicle.

158. In re McCombs, 2011 WL 4458893 (Bankr. S.D. Ala. 2011).

Court denied bank's motion to prohibit use of cash collateral because it found that there was no cash collateral. Under Alabama law, an "absolute assignment of rents" is treated as such even though it is only triggered by a default and would terminate upon satisfaction of the underlying debt, i.e. despite the fact that it actually operates as security for an underlying obligation.

157. Brockman v. Brockman, 2011 WL 4344163 (Bankr. S.D. Ala. 2011).

Ex-wife brought adversary to have ½ of debtor's tax refund declared a nondischargeable debt owed to her. Debtor filed paperwork to reduce a prior's year's taxable income based on recent losses. The IRS reduced his taxable income from a prior year and he received a check of >$16,000. Ex-wife learned of the refund and claimed ½ of it. Court found that she did not carry of burden of proving willful and malicious injury & that the debt was dischargeable.

156. In re McBride, 2011 WL 3902991 (Bankr. S. D. Ala. 2011).

Debtor defaulted on car leased prepetition and it terminated, but debtor still had possession of car on petition date. Because debtor had colorable claim that lease was not true lease, but was in fact a security interest, and because debtor had a colorable claim that her default was curable in accordance with the parties' course of dealing, creditor's repossession of the vehicle was a violation of the stay. Oral notice of bankruptcy was sufficient to make repossession a "willful" violation of the stay. Court awarded attorneys fees, actual damages, and punitive damages. But see In re McBride, 473 B.R. 813 (S.D. Ala. 2012) (overturning award of punitive damages).

155. In re Vista Bella, Inc., 2011 WL 3889240 (Bankr. S.D. Ala. 2011).

Court granted involuntary petition and entered order for relief. Parties did not dispute that debtor was not generally paying debts as they came due. Court denied motion to abstain because the potential for a large recovery on fraudulent transfers claims would benefit all of the unsecured creditors and the debtor did not show that this was really a dispute between the debtor and only one or two fully secured creditors.

154. Loving v. USA, 2011 WL 3800042 (Bankr. S.D. Ala. 2011).

Debtor's tax obligation for 2007 was a nondischargeable priority tax under § 507(a)(8)(A)(i) because the return was due within three years prior to the petition date. It was not nondischargeable under § 507(a)(8)(A)(ii) because no evidence was presented that the 2007 taxes were ever assessed.

153. In re Calhoun, 2011 WL 3664418 (Bankr. S.D. Ala. 2011).

Section 1129(a)(11) objections to confirmation were overruled. Debtor demonstrated that there were other parties interested in renting his properties if his current lease were terminated, and that he had the ability to fund his plan for 3 months even if he had no renters. Therefore, the plan was feasible. Also, the plan provided adequate means of implementation. The claims of rejecting secured creditors were to be paid in full under the plan, so they were not discriminated against unfairly and the plan was fair and equitable with respect to them. Creditor's unsecured

claim was not being paid in full but creditor did not file an unsecured claim ballot so it was deemed to accept the plan and therefore the absolute priority rule did not apply to it.

152. In re Kattie M. White, 2011 WL 3512034 (Bankr. S.D. Ala. 2011).

Defendant's § 523(a)(2)(A) claim required determination of defendant's subjective intent at time of settlement which would require testimony to evaluate. Summary judgment was not appropriate. Court granted summary judgment on defendant's § 523(a)(4) claim because as a mortgage broker defendant did not stand in fiduciary relationship with plaintiff. Court stuck from the record statements made during the course of settlement negotiations.

151. Meeker v. Sirote & Permutt, et al., 2011 WL 2650686 (Bankr. S.D. Ala. 2011).

On motion to strike, Court (1) stuck affidavit plaintiff's lawyer that contained hearsay and opinion and attested to facts that other witnesses could have attested to; (2) struck deposition of witness that was taken in a prior case to which neither of the plaintiff nor defendant were party; (3) struck patent application because it fell outside 28 U.S.C. § 1744 and was hearsay; (4) struck a number of documents because they were not self-authenticating and were not properly authenticated.

150. Meeker v. Sirote & Permutt, et al., 2011 WL 7178926 (Bankr. S.D. Ala. 2011).

Plaintiff filed class action complaint alleging several claims related to the handling of her mortgage and her bankruptcy. A major issue in the case was whether or not defendant LPS was involved in plaintiff's bankruptcy or mortgage loan. Without the benefit of discovery, plaintiff had not had the opportunity to determine this and, therefore, the defendant's motion for summary judgment was premature.

149. In re Glass, 2011 WL 1827438 (Bankr. S.D. Ala. 2011).

Court granted the debtor's motion to enforce stay, but did not rule on issue whether funds in his retirement account were exempt from garnishment by domestic support obligation creditor. Because the 30 day period for objecting to a debtor's claim of exemptions had not yet run, it was premature for the Court to consider the validity of the debtor's claim of exemptions.

148. Phillips v. Aurora Loan Services, LLC et al., 2011 WL 1770305 (Bankr. S.D. Ala. 2011).

Plaintiff brought several claims challenging the foreclosure of his home during bankruptcy. The Court granted the defendant's motion to dismiss finding that the issues raised in the adversary proceeding were res judicata and that the appropriate time to challenge the mortgage and mortgage company's behavior was when the motion for relief from stay was filed. However, rather than raise his concerns at that time, the plaintiff entered a consent order resolving the motion for relief. The consent order was a final order as to all of the plaintiff's issues with his mortgage. The Court found that the plaintiff's fraud upon the court claim was not res judicata and that claim was not dismissed.

147. Cello Energy, LLC v. Parsons & Whittemore Enterprises Corp., 2011 WL 1332292 (Bankr. S.D. Ala. 2011).

Debtor sought a preliminary injunction to stop P&W from collecting on a judgment against the debtor's principal's mother. Because the debtor did not demonstrate reasonable likelihood of success on the merits or irreparable harm to the estate, an injunction was not warranted. The debtor also argued that P&W should be enjoined from collecting on its judgment because the fraudulent transfer claims were property of the estate. The Court found that Alabama law did not allow a corporation to pierce the corporate veil of its principal to recover assets for the corporation. Therefore, P&W's fraudulent transfer claim could not be property of the estate.

146. In re Bender Shipbuilding & Repair Co., Inc., 2011 WL 671904 (Bankr. S.D. Ala. 2011).

Creditor provided prescriptions to worker's compensation claimants and sought an administrative expense for the costs. Court found that the fact that the post confirmation debtor had paid some of the claim was not an admission by the debtor that the claim was an administrative expense. In fact, the expenses all arose from executory contracts that were not assumed in the confirmed plan and from prepetition injuries. Therefore, an administrative expense claim was not appropriate.

145. In re Young, 2011 WL 1332201 (Bankr. S.D. Ala. 2011).

Subrogee of an indemnity claim reopened the debtor's chapter 7 case to file an adversary proceeding to have its claim declared nondischargeable under 11 U.S.C. §523(a)(2) for fraud and misrepresentation and under §523(a)(3)(B) as a creditor who had no notice or actual knowledge of the debtor's bankruptcy case. The court granted summary judgment in favor of the subrogee-creditor under §523(a)(2) and §523(a)(3)(B).

144. In re Sullivan, 2011 WL 1980545 (Bankr. S.D. Ala.).

Successful litigant of an arbitration action involving claims of breach of contract, breach of fiduciary duty, misappropriation of trade secrets, unjust enrichment, interference of with a contract, and interference with prospective economic advantage filed an adversary proceeding in the debtor's chapter 7 case to have the debt declared nondischargeable under 11 U.S.C. §523(a)(4), (a)(6). Both parties relied on the doctrine of collateral estoppel in their cross motions for summary judgment. The court granted the successful plaintiff's motion for summary judgment under §523(a)(4) and the collateral estoppel effect of the arbitration award.

143. In re 331 Partners, LLC, 2010 WL 4676621 (Bankr. S.D. Ala. 2010).

After lengthy and complicated facts, Court found no theory on which claimant's debt could be properly attributed to the debtor. The debtor did not expressly or impliedly assume the obligations from which the claimant's claim arose; debtor was not a successor of, joint venture with, or alter ego of the entity against whom claimant's claim arose. Debtor's objection to claim was sustained.

142. Abrahams, et al., v. Phill-Con Services, LLC, 2010 WL 3842026 (Bankr. S.D. Ala. 2010).

Plaintiffs sued the operator and contractor that worked on a landfill (presumably near their property). The debtors owned the landfill and the waste permit used by the landfill. Plaintiff filed a state court suit & defendants removed the case to bankruptcy court. Plaintiffs also filed suit in district court and defendants sought a reference to the bankruptcy court. Plaintiffs sought remand and abstention. Bankruptcy court granted defendant's motion to defer ruling on the remand and abstention motions pending the outcome of the district court decision on similar motions.

141. In re Nguyen, No. 09-16004-MAM-13, 2010 WL 2653275 (Bankr. S.D. Ala. June 30, 2010).

"Chapter 13 debtor's plan was not filed in good faith since he moved his assets around in ways that put virtually all of his cash out of the reach of the judgment creditor. Although the Chapter 13 plan proposed to pay 100% of the debts over five years with no interest, it appeared that the debt to the judgment creditor could have been paid in part or full with no bankruptcy. Furthermore, the debtor failed to explain why he took a $40,000 line of credit draw against his house or why he had loans from five people that he needed to repay all at once while paying nothing to the judgment creditor. Further, the debtor did not explain satisfactorily why he had to put a $40,000 CD in his son's name at the exact time when he was in trouble with the government. 11 U.S.C.A. § 1325(a)(3), (a)(7)." West Key Summary

140. In re Glenn, No. 03-15220-MAM-13, 2010 WL 2203042 (Bankr. S.D. Ala. May 28, 2010).

"Lender did not attempt to collect or recover or offset the Chapter 13 debtors' debt when it included the disallowed amounts in billings, and thus, the lender did not violate the discharge injunction. The debtors alleged that the lender failed to remove the disallowed charges from their account for four years. However, the lender merely listed the debt, but made no attempt to collect it. 11 U.S.C.A. § 524(a)(2)." West Key Summary

139. In re Vickers, Case No. 10-01427 (MAM) (WSS) August 17, 2010

In response to the chapter 13 trustee's objections to confirmations, the court adopted the "forward looking approach" outlined in Hamilton v. Lanning, 560 U.S. 505 (2010), holding that the court will initially determine projected disposable income under §1325(b)(2) by multiplying the disposable income figure on Form B22 by the number of months in the commitment period, and, in most cases, no further calculation will be needed. When there is a significant change in the debtor's financial circumstances, the court may look further and take into account other known or virtually certain information about debtor's future income and expenses.

138. In re Sears, No. 09-11053-MAM, 2010 WL 1664024 (Bankr. S.D. Ala. Apr. 22, 2010)

"Attorney failed to show that the debtor made any specific representations as to his Chapter 11 status, let alone a knowingly false statement as to his status, and thus, the attorney's fees for prior work were discharged. The debtor/client obtained credit counseling followed by a Chapter 11 filing, but the debtor did not inform the attorney about the filing and let the attorney keep working on other legal work for the debtor. Although the record indicated that the debtor

failed to inform the attorney of his Chapter 11 status, there was no evidence of a knowingly false (actual) representation made by the debtor. 11 U.S.C.A. § 523(a)(2)(A).” West Key Summary

137. In re Lee, 2010 WL 147919 (Bankr. S.D. Ala. 2010).

Creditor filed relief from stay to proceed on state court action. Court denied motion and debtor’s attorney sought attorney’s fees for costs incurred in successfully defending relief from stay motion. Citing American rule, Court denied debtor’s motion for attorneys fees.

136. In re Bender Shipbuilding & Repair Co., 2009 WL 5386128 (Bankr. S.D. Ala. 2009).

Creditor moved for judgment on the pleadings arguing that because debtor failed to maintain insurance as contractually required it was entitled to all insurance proceeds received by the debtor. Judgment on the pleadings was denied because facts were insufficient for a finding that debtor had breached the contract by failing to maintain insurance, in particular debtor plead facts to support waiver and lack of damages arguments.

135. In re Bender Shipbuilding & Repair Co., No. 09-12616-MAM, 2009 WL 5386129 (Bankr. S.D. Ala. Dec. 28, 2009).

“Builder of anchor towing supply vessels sufficiently pled that vessel was not a constructive total loss as defined under insurance policy. Builder agreed to build and sell six anchor towing supply vessels but was unable to complete contract as the sixth vessel was damaged in a fire. Buyer stated that buyer, as owner of vessel, agreed with insurers that vessel was a total loss. However, builder stated it prepared an estimate to repair vessel that was less than value of vessel at stage of completion that vessel was in at time of fire.” West Key Summary. Court also found that vessel was underinsured; that debtor had pled sufficient facts to support claims for unpaid obligations under contract, for tortious interference with contractual relationship, and for failure to act in good faith; and that loss and damage proceeds could be the source of labor cost coverage and therefore creditor’s claim for setoff was not due to be dismissed.

134. In re Cochran, No. 08-14245, 2009 WL 605298 (Bankr. S.D. Ala. Mar. 9, 2009).

“A Chapter 7 debtor who was not personally using or occupying residential property in any way was disallowed a homestead exemption. Although the debtor stated that he planned to go back to the home within six months, there were no “acts of preparation of visible character” detailed to support his claim. There was also no specified criteria that needed to occur before the debtor intended to occupy the property. The debtor was merely hopeful that he could soon return to and reside at the property. Ala.Code 1975 §§ 6–10–2, 6–10–4.” West Key Summary.

133. Littleton v. Hinton, et. Al., 2009 WL 348858 (Bankr. S.D. Ala. 2009).

Trustee did not show that three checks issued postpetition by debtor’s principal in his personal capacity to his aunt were property of the debtor. Therefore, the trustee could not avoid

the postpetition transfers. However, checks issued by the debtor to the principal's aunt prepetition were potential preference payments if the trustee could prove that the debtor was insolvent at the time that they were issued and that the aunt received more than she would have in a chapter 7.

132. In re Broadus, 2009 WL 248859 (Bankr. S.D. Ala. 2009).

"A Chapter 13 debtor's unpaid interest on her United States tax debt survived a debt discharge order. Even though the Internal Revenue Service's (IRS) proof of claim did not contain the interest amount or rate, the interest was still due because the debtor and the IRS entered into a stipulation that the debtor was to fully pay the allowed secured tax claim, with interest at the Title 26 rate, in equal monthly payments over the life of the plan. 26 U.S.C.A. § 6221." West Key Summary. Further, the Court stated that in the future it fully expected the IRS to indicate an interest rate percentage where allowed on its proof of claim in order to have the claim fully paid through the plan; otherwise, the Court would deemed any interest intentionally waived.

131. In re McGraw, Case No. 04-11693 (MAM); In re Morris, Case No. 04-12209 (WSS) July 31, 2009.

The chapter 13 debtors sought a discharge after making sixty plan payments in their sixty month plans. The chapter 13 trustee maintained that only plan payments made after confirmation counted toward the sixty payments required for a discharge. The court followed the majority rule that the duration of the plan should be calculated from the commencement of payments to the trustee, not from confirmation of the plan. In a September 18, 2009 order, the court clarified that its ruling would be applied to all cases filed after July 31, 2009. However, the court would apply the ruling to cases filed before that date if a party in interest applied to the court with legal or equitable reasons.

130. In re Parker, Case No. 08-12842 (MAM); In re Foots, Case No. 08-13361 (MAM) February 6, 2009

The chapter 13 trustee objected to the debtor's exemptions, seeking to limit any claim of exemption to the amount stated in the debtor's schedules, and stating that the amount should not exceed the amount allowed by state or federal law. Also, any amount over the amount was deemed property of the estate. The debtor responded to the objection on grounds that it wrongly stated that the debtor exempts value rather than property, that the burden of proving the exemptions is not correct, that the burden is on the trustee, and once the property is declared exempt, it is no longer property of the estate. The court held the debtor was correct that property is exempt not value, and if the debtor claims the full value of an asset as exempt, even if he does not have a right to claim the full amount, the trustee must object to the exemption or lose the right to challenge the validity of the exemption. "A debtor must list on Schedule C the assets he/she wishes to exempt and place a value on those assets. If the Trustee does not object and the debtor claims the full value of assets as shown by comparison of Schedules B and C, then the assets are exempt from the estate in their entirety, regardless of the actual value of the assets."

129. In re Performance Insulation, Inc., 2008 WL 4368673 (Bankr. S.D. Ala. 2008).

Trustee sought to compensate listing agent under a quantum meruit theory where agent did not actually produce buyer or close sale but her services were used during the process of negotiating a settlement regarding the property. BA and a creditor objected arguing that the agent's services did not benefit the debtor. Court found that agent had no reasonable expectation of being compensated absent a sale because that is what the broker's contract called for, but the agent could submit evidence of consulting services provided that exceeded the services normally performed by a real estate agent.

128. In re Tait, 2008 WL 4183341 (Bankr. S.D. Ala. 2008).

Debtor who used personal funds to make significant improvements to real estate held by a family trust was found to be a settlor of the family trust to the extent of his contributions. As a settlor, the Debtor's interest was not protected by the spendthrift provision of the trust. However, the spendthrift provision did apply to determine when and how a creditor could reach the debtor's interest in the trust. Debtor only had a remainderman's interest which could not be distributed to him until his mother's death. This interest was property of the estate pursuant to 11 U.S.C. §541(c)(1). Debtor attempted to mortgage trust property as partial satisfaction of his own debt. The mortgage was void or invalid under Alabama trust law. Creditor had no constructive trust on the property. Creditor could claim an equitable interest in the Debtor's remainderman interest in the family trust.

127. In re Triple H Auto & Truck Sales, Inc., 2008 WL 2323921 (Bankr. S.D. Ala. 2008).

Allegedly secured creditors filed a motion to establish priority of liens on two automobiles. A bank financed the automobiles for the owners of the chapter 11 debtor and obtained a signed guarantee that the debtor-car dealership would file an application for certificate of title with the State of Alabama with the bank named as first lien holder. The certificates of title were not filed with the state. The competing lienholder of the automobiles had a floor planning contract with the debtor which was secured by both automobiles and the certificates of title reflected that interest. The Court found that the floor planning contract lienholder had priority over the bank that financed the vehicles by virtue of its properly perfected security interest as evidenced by the certificates of title.

126. In re Trinsic, Inc., 2008 WL 2115336 (Bankr. S.D. Ala. 2008).

Debtor filed an adversary proceeding against a party to a receivables sales agreement, and the defendant filed counterclaims and third party claims for intentional interference with a business relationship and fraudulent concealment. The receivables sales agreement contained a choice of law provision that provided that Louisiana law would govern disputes between the parties. The debtor filed a motion to dismiss the counterclaims and third party claim under F.R. Civ. P. 9(b) and 12(b)(6) for failure to state a claim because: (1) under Alabama law, rather than Louisiana law as the defendant maintained, the defendant failed to state a claim of intentional interference and (2) the defendant failed to plead its fraudulent concealment claim with particularity. The Court found that Alabama's conflict of law principles applied because the

defendant's claims sounded in tort, not contract law, and further, the third parties involved were not parties to the receivables sales agreement and therefore not bound by the contract's choice of law provision. Alabama applies the traditional *lex loci delicti* rule for tort claims which holds that the law of the place of injury applies to any resulting claims. The economic harm was suffered by the defendant in its home state of Louisiana, therefore Louisiana law would apply to the tort claims. The Court also found that the defendant pled the facts surrounding the alleged fraudulent concealment with sufficient particularity.

125. In re Borders, 2008 WL 1925190 (Bankr. S.D. Ala. 2008).

Trustee objected to the debtor's applicable commitment period under §1325(b)(4)(A) because the debtor deducted her non-filing spouse's individual health insurance premiums and credit card bills from her household expenses, resulting in a 36 month commitment period. Trustee argued that the debtor's non-filing spouse's expenses benefit the household, and therefore cannot be deducted as a marital adjustment for determining the applicable commitment period. The Court overruled the objection and found that the debtor complied with §1325(b)(4)(A) by listing all of her and her non-filing spouse's income and subtracting her non-filing spouse's individual expenses.

124. In re Robinson, 2008 WL 1756357 (Bankr. S.D. Ala. 2008).

Debtor conveyed five acres of property to his son within one year of filing a chapter 7 bankruptcy petition. The property was valued at about $10,000.00 and the debtor received no payment or monetary consideration from his son. The debtor was not indebted to his son, although he was indebted to several secured and unsecured creditors at the time of the transfer. The trustee sought to avoid the transfer under Alabama's fraudulent transfer statute, Ala. Code §8-9A-4, and 11 U.S.C. §548 and §544(b). The debtor asserted that the consideration for the transfer was his desire to assist his adult son with debts incurred from college and medical school, and, due to his disability, the transfer was the only assistance he could provide. The Court found that "love and affection" or emotional benefits do not constitute valuable consideration under either statute, and granted summary judgment in favor of the trustee.

123. In re Trinsic, 2008 WL 541297 (Bankr. S.D. Ala. 2008).

Defendant moves to withdraw the reference in an adversary proceeding with an eleven-count complaint. The defendant demanded a trial by jury in its answer/counterclaim. The court recommended that the reference be withdrawn as to all but two of the eleven counts because the defendant was entitled to a jury trial for the following reasons: (1) the defendant made a timely demand for a jury trial; (2) nine of the eleven counts seek monetary relief or legal, not equitable, remedies against the defendant; (3) the defendant did not file a proof of claim in the debtor's bankruptcy case; (4) the defendant filed a compulsory counterclaim, and therefore did not submit to the jurisdiction of the bankruptcy court; and (5) the defendant did not consent to the bankruptcy court conducting a jury trial.

122. In re Caffey, 384 B.R. 297 (Bankr. S.D. Ala. 2008).

Chapter 11 debtor was incarcerated for failure to pay delinquent child support after he filed his chapter 11 petition. He filed an adversary proceeding against the creditor who initiated and sought enforcement of the domestic relations court order after the debtor's filing. The court found that the creditor willfully violated the automatic stay when she attempted to collect the child support arrearage. She had knowledge of the bankruptcy filing through her domestic relation attorneys, and intentionally proceeded against the debtor. The court awarded the debtor damages for emotional distress, loss of income, reasonable attorney fees, and punitive damages.

121. In re Davis, 2007 WL 3231782 (Bankr. S.D. Ala. 2007).

The Court reconsidered its prior order, and concluded that "post-petition rents are not personal property that can be exempted under Ala. Code §6-10-6. The post-petition rents belong to the trustee since the underlying real property is not exempt and became property of the bankruptcy estate at the filing of the bankruptcy case. The rents follow the real property."

120. In re Herrin, 2007 WL 1975573 (Bankr. S.D. Ala. 2007).

The opinion was issued en banc. The debtors owned mobile homes, but did not own the real property on which the homes sat. Green Tree had a perfected security interest in the mobile homes. In their chapter 13 plans, the debtors proposed to modify the mortgages on the mobile homes, but Green Tree objected that the modification was impermissible under §1322(b)(2), which provides that a plan may modify a secured creditor's claim except for a claim secured by real property that is the debtor's principal residence. Section 101(13A) of the Bankruptcy Code, added in 2005 under BAPCPA, defines "debtor's principal residence" as a residential structure without regard to whether the structure is attached to real property, and including a mobile or manufactured home. Under Alabama law, a mobile home is personal property unless three criteria are fulfilled. These criteria did not apply in this case. Other states permit a mobile home to be considered real property to be considered real property if the home is permanently affixed to real estate that the mobile home owner is renting under certain conditions. The Court found that the plain language of §1322(b)(2) and §101(13A) was unambiguous and could be read together in order to give both provisions meaning. Section 1322(b)(2), read with §101(13A), now includes mortgages on some mobile homes on rented property. However, §1322(b)(2) does not include all mobile home mortgages; therefore the non-modification of claims secured by real property that is the debtor's principal residence does not apply in this case. Green Tree's objection to the debtors' plans to modify the secured claims was overruled.

119. In re Crews, 2007 WL 1958868 (Bankr. S.D. 2007).

The debtors filed a joint chapter 13 case that was conditionally confirmed. The conditional confirmation was vacated, and the debtors were asked file amended schedules. Before the plan was confirmed, the debtor filed a motion to convert the husband-debtor to a chapter 7 case and to dismiss wife-debtor as a party. The court granted the motion to convert

and dismiss. The debtors filed a motion for turnover for post-petition wages paid into chapter 13 plan on grounds that post-petition wages were not property of the estate in a chapter 7 case. The court found that the legislative intent of §348(f)(1)(A) indicated an intent that "property acquired after commencement of a chapter 13 case but prior to conversion to a chapter 7 does not constitute property of the estate." The court distinguished this case from its holding in In re Johnson, Case No. 99-11034-MAM-7 (Bank. S.D. Ala. Feb. 1, 2000) that funds paid into a case post-confirmation did constitute property of the debtor's chapter 7 estate upon conversion.

118. In re Moss, 2007 WL 1076688 (Bankr. S.D. 2007).

Judge Shulman's en banc opinion on the same issue as In re Herrin, 2007 WL 1975573 (Bankr. S.D. Ala. 2007) above.

117. In re Daniels, 2007 WL 725774 (Bankr. S.D. 2007).

The debtors listed their debt to the IRS in their chapter 13 case as an unsecured priority claim. The IRS filed a proof of claim and later filed a motion to extend the time to amend their claim. The court granted the motion and extended the time until the IRS completed its inquiries into the debtors' tax returns. The IRS filed a proof of claim with both secured and unsecured debt. The debtors had an overpayment of taxes for two tax years. The IRS filed a motion for relief to offset the overpayments from the unsecured portion of its claim. The debtor objected on grounds that since the IRS never amended its claim, it is bound by the confirmed plan, and, alternatively, the right of offset should be limited to the secured portion of the IRS's claim. The court found that §553 maintains the right of setoff for mutual, prepetition obligations where the right to setoff exists under non-bankruptcy law. The section does not create a federal right to setoff. The IRS sought to offset under 26 U.S.C. §6402, a non-bankruptcy statute, and therefore has the right to offset the debtors' overpayment against its unsecured claim. The court noted that its order extending the IRS's ability to amend its claim protected it from being bound by the debtors' plan.

116. In re Lett, 2007 WL 625914 (Bankr. S.D. Ala. 2007).

The debtor transferred real property to his wife prior to filing bankruptcy. The examiner hired an attorney to evaluate whether an adversary proceeding should be filed to recover the property as a fraudulent transfer. In her answers to interrogatories and when asked in a deposition, the debtor's wife answered in the negative when asked if she and her husband had executed a will or undergone any type of estate planning. Approximately two days before trial, the examiner filed a motion in limine to exclude from evidence a will evidencing estate planning between the debtor and his wife which was provided to the examiner six days before the trial. The examiner requested attorney fees and costs, stating much of the time spent on fraudulent transfer research could have been avoided if the wife had produced the will when first questioned about estate planning. The court ordered that the motion in limine would be denied if the wife agreed to pay reasonable attorney fees and cost. The wife objected to some fees and costs

claimed. The court omitted approximately 3 hours of the time claimed and granted the attorney fees and costs.

115. In re Gibson, 2007 WL 505746 (Bankr. S.D. Ala. 2007).

The chapter 13 trustee filed a motion to compel the debtor to execute a settlement on a Jones Act claim. The debtor was represented by experienced Jones Act counsel at the hearing on the settlement, and the motion asked the court approve a settlement of $29,000 for all claims against the defendant. The court orally approved the settlement. After the settlement was approved, the debtor raised issues with the release proffered by the defendant's counsel and ultimately refused to sign the release even though her counsel recommended signing it and believed that an agreement had been reached between the parties. The court granted the motion to compel, and ordered the debtor to execute the release within 10 days or be deemed to have signed for the reasons stated in the order.

114. In re Milligan, 2007 WL 484853 (Bankr. S.D. Ala. 2007).

The chapter 7 trustee wound up with insurance proceeds from a debtor's automobile that was totaled. GMAC had a security interest in the automobile, and filed a proof of claim in the debtors' chapter 13 case prior to its conversion to a chapter 7 case. GMAC contacted the trustee several times requesting the insurance proceeds, and the trustee explained that the funds could not be paid over without an order from the court, and GMAC should file a motion with the court to have the funds paid over. GMAC delayed filing a motion, but continued to contact the trustee. The trustee hired counsel to represent her in the matter. GMAC's counsel contacted the trustee's counsel and informed him that a consent order would be filed within a few days. When the consent order was not filed, the trustee's counsel filed a motion for determination of secured status and to surcharge the secured creditor with costs of administration pursuant 11 U.S.C. §506(c). The court found that GMAC was a secured creditor based on its properly filed proof of claim, and gave GMAC 14 days to present the insurance policy to allow the trustee to verify its claim to the proceeds. The court also allowed the trustee to surcharge under §506(c), but significantly reduced the amount requested for the trustee's commission and her attorney's fee.

113. In re Reed, 2007 WL 274322 (Bankr. S.D. Ala. 2007).

Husband and wife debtors filed a series of bankruptcy petitions from 2003 to 2004. Green Tree held a security interest in their mobile home. The husband debtor reopened his last case to bring an adversary proceeding for willful violation of the automatic stay against Green Tree. Green Tree moved to dismiss the complaint based upon: (1) res judicata; (2) judicial estoppel; (3) laches; and (4) bad faith. The court found no grounds to support any of these theories and denied the motion to dismiss.

112. In re Eicher, Case No. 04-16214 (MAM) June 6, 2007

The chapter 13 trustee filed a motion for instructions for the distribution of substantial settlement proceeds. The chapter 13 trustee's order of distribution policy was: administrative

claims; secured preference creditors in the amount necessary to catch up their preference arrearage and current preference payments; unsecured priority claimants; and unsecured creditors. The court granted the motion for instructions, and ordered the trustee to pay all claims according to the debtor's confirmed plan and its normal distribution policy.

111. In re Bentley, 2006 WL 2285621 (Bankr. S.D. Ala. 2006).

A chapter 13 debtor filed an adversary proceeding against secured creditor based on a post-petition repossession which caused damage to his automobile. The complaint contained several counts ranging from violation of the automatic stay to libel, slander, obstruction of justice and RICO violations. The secured creditor filed a motion for leave to file a third party complaint against the entities with whom it contracted to handle the repossession. The court granted to leave to file the third party complaint over the debtor's objection. When the third party moved for leave to file another third party complaint, the court vacated its prior order and allowed the debtor proceed only against the secured creditor. The court found the action between the other parties did not involve bankruptcy law and were not likely to affect the estate. The debtor then moved to dismiss the adversary proceeding against the secured creditor without prejudice to allow him to proceed against the secured creditor and the other entities in state court. The secured creditor objected on grounds that the debtor is judicially estopped from changing his position regarding actions against the third parties. The court found it did not have even "related to" jurisdiction over the criminal and tort claims against the defendants because the debtor was paying 100% under chapter 13 plan, and, if it was mistaken as to jurisdiction, the court would abstain as to all of the criminal and tort claims and retain the bankruptcy claims.

110. In re Star Broadcasting, Inc., 336 B.R. 825 (Bankr. N.D. Fla. 2006).

Communications company moved to dismiss the debtor's chapter 11 case, or alternatively, for relief from the automatic stay to allow the company to pursue a prepetition action against the debtor for specific performance of a contract for the sale of a radio station. The court held that cause existed under 11 U.S.C. §362(d)(1) to grant the motion for relief from stay because the movant's interest in estate property would not be adequately protected if it was not allowed to proceed with the prepetition action. However, dismissal of the case under 11 U.S.C. §1112(b)(1) was not warranted. (Westlaw)

109. Vernueille v. Aultman, Case No. 05-01085 (WSS) March 31, 2006

Chapter 7 trustee filed a complaint to recover property under the Alabama Fraudulent Transfer Act §§8-9A-1 et seq. The court held that the trustee failed to prove that the debtor was insolvent at the time of the transfer.

108. In re Aldridge, 335 B.R. 889 (Bankr. S.D. Ala. 2005).

The holder of a claim for back child support filed a motion for instructions requesting an instructional ruling on the order of priority of distribution by the chapter 13 trustee. The holder of the child support claim had the seventh priority under §507, and there was also a tax claim

which had eighth priority. The chapter 13 trustee's practice was to pay the priority claim concurrently. In a chapter 7 case, priority claims are required to be paid in the order specified in §507 according to §726(a)(1). Therefore, seventh priority claim must be paid in full before eighth priority claims are paid. The court found that §1326 for chapter 13 cases does not have the same requirement, and therefore the Code permits priority claims may be paid concurrently with other claim holders. "Conversely, the Code does not require concurrent payment of priority claims." The court found that a debtor's plan could direct the order of payment for priority claim, and, if the plan were confirmed, the trustee must pay the priority claim accordingly. The language of the plan in this case had such language and the court ordered the chapter 13 trustee prospectively, to pay the seventh priority claim in full before making any payments on the eighth priority claim. In footnote 1, the court stated that the motion for instructions was filed before the enactment of BAPCPA, and, therefore, the ruling would only apply to cases filed before October 17, 2005.

107. In re Pigott, 330 B.R. 797 (Bankr. S.D. Ala. 2005).

The IRS objected to the debtors' claim of exemption in a "potential" tax refund. The debtors had both dischargeable and nondischargeable tax debt. The issue was "whether the IRS [was] entitled to offset the unpaid dischargeable tax debt of the debtors against any tax overpayment prior to remitting a refund to the debtors." The court found that 26 U.S.C. §6402(a) allowing the IRS to offset precludes the potential overpayment from being property of the estate until the IRS releases the refund. To the extent that the IRS could exercise its right to setoff under §553, the debtors had no legal right to a refund and therefore no property of the estate to which they could claim an exemption.

106. In re Harris, 328 B.R. 837 (Bankr. S.D. Ala. 2005).

The debtor filed a complaint to determine the dischargeability of tax debt under 11 U.S.C. §523(a)(1)(C), and the IRS filed a motion for summary judgment. The court held that the debtor knew of his duty to file income tax returns and to pay taxes, and he voluntarily and intentionally violated his duty as to some of the years' taxes, but not as to other years' taxes. The court also found that the debtor engaged in acts of omission and affirmative acts to evade his taxes. The IRS's motion was denied in part and granted in part.

105. In re Steele, Case No. 04-14520 (WSS) June 15, 2005.

The chapter 13 debtor filed a motion to modify his plan which decreased his plan payment, deleted his automobile creditor's secured claim and surrendered the automobile to the creditor. The creditor had previously received relief from the automatic stay based on the debtor's failure to make payments and maintain insurance. The automobile creditor objected to the reduction and reclassification of its claim. The court sustained the creditor's objection, and held that the debtor's poor health and reduction of income to the point that he was unable to make his car payments was not the type of involuntary loss of the automobile, as when a vehicle

is totaled in an accident, which would allow the debtor to reduce and reclassify a previously allowed secured claim.

104. In re Gary, Case No. 03-01083 (WSS) March 1, 2005.

In an adversary proceeding to determine the dischargeability of tax debt under 11 U.S.C. §523(a)(1)(B)(i), the debtor argued that substitute tax returns that he participated in preparing at a tax amnesty program should be counted as filed tax returns for the years in question. The court held that under the circumstances existing in this situation, the documents filed at the tax amnesty meeting would qualify as returns, and the debtor's tax debt for those year was dischargeable.

103. In re Tillery Mechanical Contractors, Inc., 319 B.R. 695 (Bankr. S.D. Ala. 2004).

Tillery Mechanical filed a chapter 11 petition which was converted to a chapter 7 case, and the company's principals filed their own chapter 7 case due in part to unpaid payroll tax obligations to the IRS. The principals filed a motion to direct the trustee in Tillery Mechanical's case to specify that all disbursements to the IRS be applied to the trustee's portion of withholding taxes first, which would minimize their personal liability for these taxes. The court noted case law holding that bankruptcy courts have authority to order the IRS to treat tax payments made by a chapter 11 as trust fund payments if it is determined that the designation is necessary for a successful reorganization; the bankruptcy court does not have the same authority in a liquidation case. The principals argued that they would be denied their "fresh start" unless the court ordered the designation, and maintained that the court had this authority under §105. The court rejected the §105 argument and held that the bankruptcy court did not have the authority to direct the trustee to designate which tax debt is paid first.

102. In re Thigpen, 2004 WL 6070299 (Bankr. S.D. Ala. 2004).

In an adversary proceeding seeking relief under §105 for abuse of process and improper notarization of affidavits, the plaintiff filed a motion to strike the defendant's jury demand, and the defendant filed a motion to dismiss the complaint over the issue of whether the plaintiff was seeking civil relief under §105 only, as opposed to the court's inherent civil contempt, or criminal contempt. The plaintiff clarified that she was seeking relief only "civil contempt" under §105 for sanctions for the defendant's abuse of the bankruptcy process, and therefore the defendant has no right to a jury trial. The defendant argued that if the plaintiff's complaint was one for civil contempt not associated with §105, it should be dismissed because civil contempt required violation of a court order, and there had been no violation of a court order. After discussing the difference between civil contempt and relief under §105 and its impact of the right to a jury trial, the court found that since the plaintiff limited her relief to civil remedies under §105, the defendant was not entitled to a jury trial. There is also good discussion of waiver of the right to trial by jury.

101. In re Tran, 297 B.R. 817 (Bankr. N.D. Fla. 2003).

U.S. Trustee brought an adversary proceeding under 11 U.S.C. §727(a)(3), (a)(5) to deny the deb tors' discharge. The court granted the trustee's motion for summary judgment, finding that the debtors, who had substantial prepetition expenditures, only disclosed $13,000 in annual earnings and did not remember receiving any other compensation and who had no records of their financial or business dealings in the years leading up to their bankruptcy, should be denied a discharge for failing to keep adequate financial records and for failing to explain the loss of assets. (Westlaw)

100. In re Sutton, 303 B.R. 510 (Bankr. S.D. Ala. 2003).

Chapter 13 debtor objected to the proof of the IRS's secured claim, and the IRS moved the court to modify the debtor's confirmed plan to increase payments to unsecured creditors. The court held that the debtor's confirmed plan could be modified under 11 U.S.C. §1329 to increase payments to the unsecured creditors, due to evidence that the debtor had substantially underreported his income in his original bankruptcy schedules, and the debtor's medical practice would be valued under 11 U.S.C. §506(a), for the purpose of the IRS's secured claim, not as of the date of the debtor's objection, but as of the date of the petition. (Westlaw)

99. In re Turberville, Case No. 02-13054 (WSS) April 22, 2003

The chapter 7 trustee filed an application to employ special counsel under 11 U.S.C. §327(e) to represent the debtor on ongoing state court litigation. Another litigant in the action objected to the application on grounds that the attorney had an adverse interest to the estate. The court approved the application to employ special counsel finding no evidence of an adverse interest.

98. In re Stroud, Case No. 02-01111 (WSS) January 29, 2003

A chapter 7 debtor filed a complaint to determine the dischargeability of a martial debt for a percentage of the debtor's future military retirement pay. The court held that the obligation was not a "debt" under the Bankruptcy Code, but property of the former spouse, and as such could not be discharged in the debtor's bankruptcy proceeding.

97. In re Krause, Case No. 02-15031 (MAM) February 27, 2003

The chapter 7 trustee objected to the debtor's claim of exemption for the funds in her checking and savings account on grounds that the funds were Social Security benefits. The court held that federal law, 42 U.S.C. §407, allowed the debtor to exempt the Social Security benefits, and so the exemption was available to the debtor under 11 U.S.C. §522(b)(2).

96. Commonwealth Land Title Ins. Co. v. Poe, Case No. 01-01199 July 10, 2003

Agent of a third party to whom mortgagors had assigned their statutory right of redemption filed an adversary proceeding in a chapter 7 case of the foreclosure sale purchasers asking the court to determine that the agent was entitled to redeem from the foreclosure sale the

entire one acre lot of land owned by the debtor-purchasers. The court found that the agent could redeem the entire lot. (Westlaw) The debtors appealed, and the district court reversed the bankruptcy court decision. The agent then appealed, and the Eleventh Circuit Court of Appeals reversed the district court opinion. In re Poe, 477 F.3d 1317 (11th Cir. 2007).

95. In re Roberts, 2002 WL 1770767 (Bankr. S.D. Ala. 2002).

After a chapter 13 debtor's case was dismissed, the trustee was holding approximately $13,000. The trustee was served with a notice levy under 26 U.S.C. §6331 after the dismissal, and the trustee filed a motion for instructions to determine whether the funds should be paid pursuant to the levy or the debtor under §1326(a). The court found that the trustee should paid under the levy based on precedent in United States v. Ruff, 99 F.3d 1559 (11th Cir. 1996).

94. In re Earle, 307 B.R. 276 (Bankr. S.D. Ala. 2002).

Judgment creditor objected the chapter 13 debtors' plan and filed an adversary proceeding against debtor-wife and debtors' children seeking to avoid an allegedly fraudulent transfer of real property to a trust to which the children were the sole trustees. The court found that the wife's transfer of the property to qualified personal residence trust, on the advice of her accountant, was not a transfer with the intent to hinder, delay or defraud creditors under Alabama fraudulent transfer statute. The court also found that the judgment creditor had no standing to object to the treatment of secured claims under the plan since it was not a secured creditor. The debtors' zero percent plan could not be confirmed because the wife's interest in the trust property was considerably more than she listed in her schedules, and creditors would receive more under a chapter 7 liquidation than they would under the debtors' plan.

93. In Powe, 278 B.R. 539 (Bankr. S.D. Ala. 2002).

Class action involving chapter 13 debtors against an automobile finance company's failure to disclose and reasonableness of a flat fee added to proofs of claim in cases where the company was oversecured. The court found that the claims were "in personam" over which the court could exercise core jurisdiction even for class members whose bankruptcy cases were pending in other districts. However, the reasonableness of the flat fee had to be determined on a district by district basis, which meant that the class had to be decertified except for the class in the Southern District of Alabama. Finally, the court found that the fee was adequately disclosed and was not unreasonable.

92. In re Rayborn, 307 B.R. 710 (Bankr. S.D. Ala. 2002).

Chapter 13 debtors received a "paid in full" letter and the certificate of title for their automobile by mistake. The trustee filed a motion to reduce the creditor's claim to the amount paid and request for a refund for funds paid after the date of the paid in full letter. The debtors sold the automobile and used the funds to purchase another vehicle. The court granted the trustee's motion to reduce, and the creditor filed a motion to consider the motion on grounds that it did not receive notice of the trustee's motion. The evidence showed that the creditor did

receive notice at a lock box that received payment and other correspondence. The court found that lack of notice constitutes "cause" to reconsider an order allowing or disallowing under §502(j). However, the court found that the creditor had sufficient notice in this case, and the clerk had no obligation to serve the creditor's attorney who had not filed a notice of appearance. In addition, the creditor was not entitled to an equitable lien on the debtors' replacement automobile.

91. In re Poffenbarger, 281 B.R. 379 (Bankr. S.D. Ala. 2002).

A chapter 7 debtor received a lump sum from Alabama's Department of Human Resources representing unpaid back child support and alimony. The chapter 7 trustee maintained that the funds were property of the estate under §541(a). The court held: (1) funds representing back child support were not property of the estate under Alabama law; (2) funds were held by the debtor in a constructive trust for the benefit of her minor children; (3) the children's rights, as beneficiaries of the constructive trust were superior to those of a hypothetical lien creditor under §544(a); and (4) any part of the funds representing past due, prepetition alimony owed to the debtor should be included as property of the estate, and was not exempt.

90. In re Ard, 280 B.R. 910 (Bankr. S.D. Ala. 2002).

Chapter 7 debtor moved to redeem an automobile securing a creditor's claim under §722. The secured creditor asserted that the Rash "replacement value" standard, which is used in a chapter 13 cram down situation, was the appropriate way to value the automobile. The court disagreed and found that the appropriate starting point for valuing collateral in a chapter 7 redemption is liquidation/foreclosure value, and allowing the court to consider other evidence pertinent to value, such as the vehicle's condition, high mileage, etc.

89. In re Parker, 279 B.R. 596 (Bankr. S.D. Ala. 2002).

Chapter 13 debtors moved to recover damages from the IRS for willful violation of the automatic stay under §362(h) [now §362(k)] for sending notices of levy and letters threatening seizure unless prepetition debt was paid. The court found that the notices and letters were "willful" violations of the stay even though the IRS employee responsible did not know of the debtors' bankruptcy petition. The debtors were entitled to compensable damages, but such damages did not include general stress, sleeplessness or marital discord. Attorney fees awarded to a governmental unit must be payable pursuant to 26 U.S.C. §7430.

88. In re Abrams, 305 B.R. 920 (Bankr. S.D. Ala. 2002).

Two secured creditors received similar treatment in the debtors' chapter 13 plan. At confirmation, the plan was amended to give a preference to one of the secured creditors, which affected the second secured creditor's payment under the plan. Secured creditor moved to reconsider confirmation plan, to allow its amended proof of claim and relief from the automatic stay. The court allowed the second secured creditor to seek relief from the confirmation order under Bankruptcy Rule 9024, which incorporates F.R.Civ.P. 60(b). The court found the

language of the confirmation to be ambiguous, and held that the plan amendment giving the first secured creditor a preference should have been noticed to all creditors on due process grounds. The court denied the second creditor's motion to amend its claim seven months after confirmation.

87. In re Food Etc. L.L.C., 280 B.R. 909 (Bankr. S.D. Ala. 2002).

City of Andalusia moved for an award of an administrative expense priority claim for unpaid postpetition utilities and postpetition, prerejection rent under §363(d)(3). The court granted the administrative claims. However the city "expressly agreed" to subordinate those claims to an allowed administration claim for the debtor's counsel's attorney fees.

86. In re James, 308 B.R. 569 (Bankr. S.D. Ala. 2002).

Chapter 13 debtor-taxpayer objected to the State of Alabama's claim for certain tax years on grounds that the income earned for the tax years at issue was solely that of her husband because she did not work during those years. The court found that the debtor-taxpayer was jointly and severally liable for the tax due under the joint return, and did not qualify for the "innocent spouse" exception under Ala. Code §40-18-27(e) (1975) and 26 U.S.C. §6015.

85. In re Alford, 308 B.R. 563 (Bankr. S.D. Ala. 2002).

Chapter 7 debtors moved for summary judgment in an adversary proceeding brought by judgment creditors seeking a ruling that a debt stemming from a judgment obtained in Louisiana federal district court was nondischargeable. The judgment was entered more than five years before the bankruptcy filing. The debtors argued that under Florida Stat. ch. 95-11 (1995) limits the creditor's right to register its judgment and enforce it in Florida to a five-year statute of limitations. Since the creditor failed to meet the deadline, the limitations ran and the judgment is no longer enforceable. The court found that Florida adopted the Uniform Enforcement of Foreign Judgments act at Fla. Stat. ch. 55.503 (1195), but it included a non-uniform provision stating that nothing in the act would extend the applicable the limitation period applicable to foreign judgments. Based on this non-uniform provision, the court found that five-year limitation period applied to the foreign judgment, making it unenforceable.

84. In re Bryant, 294 B.R. 791 (Bankr. S.D. Ala. 2002).

The IRS filed a motion for relief from the discharge judgment in the debtor's first chapter 13 case, and the debtor filed a cross-motion for willful violation of the automatic stay pursuant to §362(h) (now §362(k)). In the first chapter 13 case, the debtor's plan proposed a monthly preference payment to the IRS with the balance owed to be nondischargeable. The IRS did not file a proof of claim or object to the plan. The court found that even though the debtor's method of service to the IRS was not sufficient, §523(a)(3) provides when the issue is "whether a debt should be discharged where the creditor failed to file a proof of claim", notice or actual knowledge of the case in time to file a timely proof of claim is key. The evidence showed that the IRS had actual knowledge of the case through communications between debtor's counsel and

IRS employees. The court found the IRS's contact with the debtor to be de minimus and denied the motion for willful violation of the automatic stay.

83. In re Lott, 306 B.R. 366 (Bankr. S.D. Ala. 2002).

Chapter 7 trustee objection to debtor-wife's homestead exemption claim because debtor-husband was the fee owner of property and debtor was not. The court found that the inchoate interest of a spouse who is not a fee owner is not protected by Alabama's exemption law and cannot claim a homestead exemption.

82. In re O'Connor, 280 B.R. 907 (Bankr. S.D. Ala. 2002).

Creditor filed a motion to require a chapter 13 debtor to state his intention as to whether he would retain or surrender an engagement ring pursuant to §521(2) (now §521(a)(2)) which debtor gave to his fiancée who later became his wife. The court held that a secured creditor must pursue its remedies against the party currently in possession of the collateral. The creditor's claim was secured only to the extent of the estate's interest in the property. The ring was not in the debtor's possession of the debtor at the time of filing, therefore, the estate's interest in the ring is zero. The creditor has an unsecured claim.

81. In re Wilcoxson, 2002 WL 127047 (Bankr. S.D. Ala.).

The IRS moved for summary judgment as to the dischargeability of certain tax debt under 11 U.S.C. §523(a)(1)(C) based on the collateral estoppel effect of the criminal convictions for conspiracy, mail fraud, wire fraud, and tax evasion. The court found that the collateral estoppel doctrine applied in this case, and granted the IRS's motion for summary judgment.

80. In re Sprinkle, Case No. 00-12094 (WSS) July 16, 2002

The chapter 13debtor objected to a late filed claim by a creditor. The court held that the creditor's objection to the debtor's original chapter 13 plan along with the chapter 13 trustee's "bench sheet" provided the information for an informal proof of claim, and overruled the debtor's objection. The court also ruled that the creditor was bound by the res judicata effect of the confirmation of the debtor's amended plan which omitted the preference payment to the same creditor.

79. In re Adams, Case No. 00-11591 (WSS) November 7, 2002

The court sustained an objection to the debtor's claim of a homestead exemption in real property that was the subject matter of a fraudulent conveyance action.

78. In re Noletto, 2001 WL 1744423 (Bankr. S.D. Ala).

The court denied a defendant's motion for a stay, or in the alternative, a postponement of trial date to await the outcome of issues pending before the Eleventh Circuit.

77. In re Shula, 280 B.R. 903 (Bankr. S.D. Ala. 2001).

Secured creditor objected to the debtor's second chapter 13 plan after debtor voluntarily dismissed her first chapter 13 plan after she was unable to make her payments, and filed a second plan to take advantage her automobile's depreciation in value. The automobile debt was the only secured debt in her case, which paid 0% to unsecured creditors. The automobile creditor objected to the plan on grounds that it was filed in bad faith. The court held that the debtor filed her plan in good faith under §1325(a)(3), but the plan was not feasible based on her income and expenses.

76. In re Sheffield, 280 B.R. 900 (Bankr. S.D. Ala. 2001).

In a class action proceeding, the court overruled creditor's objection to trial of a certain subclass of claim, and found that the class representative's assertion that the attorney fee was for work performed by a non-lawyer did not raise a new issue beyond the scope of certification.

75. In re Powe, 282 B.R. 31 (Bankr. S.D. Ala. 2001).

The issue was whether a defendant in a class action for violation of federal bankruptcy law can maintain a right to arbitration over two years after the adversary proceeding was filed and within four months of trial. The court found that the defendant waived its right to arbitrate by actively participating in the proceedings and failing to indicate an intent to arbitrate.

74. In re Harris, 280 B.R. 899 (Bankr. S.D. Ala. 2001).

The court granted a request for definition of the class to be certified in an adversary proceeding alleging creditor's failure to disclose postpetition, pre-confirmation attorney fees included in their proofs of claim.

73. In re Overton, 280 B.R. 733 (Bankr. S.D. Ala. 2001).

The court revoked the debtor's discharge after the debtor failed to respond or appear.

72. In re Flennory, 280 B.R. 896 (Bankr. S.D. Ala. 2001).

The court clarified its previous order finding that a slight pay increase and a tax refund did not constitute major, unexpected changes to warrant modifying the debtor's chapter 13 plan to increase plan payments under §1329.

71. In Partial Hosp. Institute of America, 281 B.R. 728 (Bankr. S.D. Ala. 2001).

Over one year after the court entered orders granting creditor's motions for distribution of funds paid to the estate from the chapter 7 debtor's accounts receivable, the IRS filed a motion to set aside the orders pursuant to Bankruptcy Rule 9024 and F.R.Civ.P. 60(b). The court held that the orders were not void for lack of personal jurisdiction because the IRS submitted to the personal jurisdiction of the court by filing a proof of claim. The court noted that the IRS was not

properly served under Bankruptcy Rule 7004, but chose to set aside the judgment under the final category of Rule 60(b), "any other reason justifying relief from the operation of the judgment," and found that the interim distributions were not final, and the creditor seeking them ran the risk that the distributions would have to be refunded if necessary for final distribution. The creditor seeking the distribution bore the responsibility for properly noticing the affected parties to avoid potential problems.

70. In re Noletto, 281 B.R. 373 (Bankr. S.D. Ala. 2001).

Chapter 13 debtor with case pending in another judicial district moved to intervene as a named plaintiff under Bankruptcy Rule 7024(b)in a class action adversary proceeding involving the addition of attorney fees to proofs of claim. The defendants objected to the timeliness of the motion, substantial change to the nature of the case, lack of prejudice to the debtor, and improper venue. The court granted the motion to intervene despite the two year delay in filing the motion to intervene, and the debtor's case pending in another judicial district.

69. In re Gunthorpe, 280 B.R. 893 (Bankr. S.D. Ala. 2001).

Chapter 13 debtor moved to avoid garnishment and to compel turnover of fund garnished within 90 days of the bankruptcy filing pursuant §542. The court denied the motion to avoid garnishment and compel turnover except that the garnishment was released from and after the filing of the bankruptcy case. A standing order of the Mobile County District Court automatically condemning funds upon receipt by the court under the authority of Ala. Code §6-10-7 and an Alabama Attorney General opinion. Therefore, the funds were not property of the estate at the time of filing. The court noted that the debtor may have a right to seek a recovery of some of the funds under the voidable transfer sections of the Bankruptcy Code, §§544-548.

68. In re Peterson, 280 B.R. 886 (Bankr. S.D. Ala. 2001).

Chapter 7 trustee objected to the debtor's claim of exemption for expensive jewelry, a mink coat, and alimony payments. Bankruptcy Rule 4003(c) requires the objecting party to produce evidence to rebut a presumptively valid exemption. Ala. Code §6-10-6 (1975) allows an exemption for "necessary and proper" wearing apparel. The court found that one of the debtor's watches was necessary and proper, but the remaining items of jewelry were solely designed to enhance prestige or status of the debtor, and therefore were not exempt. The court found that the debtor's alimony judgment was not exempt as wages, salary or other compensation under Ala. Code §6-10-7 (1975), but the debtor could exempt the alimony due at the time of her bankruptcy filing within the limits of her personal property exemption.

67. In re Burke, 281 B.R. 367 (Bankr. S.D. Ala. 2001).

A creditor moved for sanctions against the debtor and his counsel under §105(a) and Bankruptcy Rule 9011 because debtor's counsel initially failed to disclose a $3,400.00 retainer, but then corrected of his own volition. The debtor's chapter 11 case was later dismissed. The court found that the debtor's counsel actions did not warrant sanctions, and, once the case was

dismissed, debtor's counsel was not required to file a fee application to be paid from retained funds. The court also found that the debtor's counsel did not commit any impropriety related to the disclosure of fees.

66. In re Cassity, 281 B.R. 365 (Bankr. S.D. Ala. 2001).

Chapter 7 trustee objected to the debtor-husband's claim to $5,000 homestead exemption under Ala. Code §6-10-2 (1975) because debtor-wife owned the homestead in fee simple, having inherited the property from her grandmother before her marriage. The court found that debtor-husband interest in the home at the time of filing was an inchoate interest, which could not be levied or executed upon by any creditor. Therefore, the debtor-husband was not entitled to claim a homestead exemption.

65. In re Harris, 280 B.R. 876 (Bankr. S.D. Ala. 2001).

The court applied Bankruptcy Rule 7023(a) to certify a nationwide class for adversary proceeding related to the addition of undisclosed attorney fees that were not approved by the court in proofs of claim.

64. In re Sheffield, 280 B.R. 730 (Bankr. S.D. Ala. 2001).

Defendant-creditor moved to dismiss in a class action complaint filed by chapter debtor under Bankruptcy Rule 7008 for failure to make a short and plain statement to give sufficient notice of the relief sought, and Bankruptcy Rule 7010(b) for failing to state each separate transaction or occurrence in a separate count. The court found that the complaint gave sufficient notice, and that the complaint correctly set out the count at issue.

63. In re Powe, 280 B.R. 728 (Bankr. S.D. Ala. 2001).

The court's order defines a certified nationwide class action under F.R.Civ.P 23, as adopted by Fed.R.Bankr.P. 7023(b)(2), involving creditor asserting lump sum claim for attorney fees without filing a fee application and without disclosing that the fees were incurred post-petition.

62. In re Harris, 280 B.R. 724 (Bankr. S.D. Ala. 2001).

Chapter 13 debtor filed an adversary proceeding seeking to remove from her mortgage account a post-petition, pre-confirmation attorney fee which was included in the proof of claim. In denying the defendant's motion for summary judgment, the court held that the bankruptcy court's conditional order on a motion for relief from stay did not prevent the collection of the attorney fee included in the proof of claim, and did not have a res judicata effect on the debtor's present claim. There was also a genuine issue of material fact existed as to whether posting the proof of claim attorney fee to the debtor's account was a violation of the automatic stay. Finally, the court held that the creditor's sale of its servicing portfolio did not extinguish liability in the present case.

61. In re Noletto, 280 B.R. 868 (Bankr. S.D. Ala. 2001).

Chapter 13 debtor filed adversary proceeding regarding creditor's undisclosed attorney fee included in a proof of claim. Creditor filed motion for summary judgment and an objection to representative for class action. The court held that creditor's assignment of its servicing right to another creditor did not release creditor from liability for the alleged misconduct, and issues of material fact existed as to the debtor's claim for punitive damages. Finally, the court overruled the objection to the proposed representative, finding that he met the requirements of Fed.R.Bankr.P. 7023(a)(4).

60. In re Hayward, 281 B.R. 362 (Bankr. S.D. Ala. 2001).

Chapter 13 debtor filed a motion to reimpose the automatic stay and prevent a foreclosure after the court granted the mortgage creditor's second motion for relief from the stay. The debtor failed to comply with the requirements of the court's first conditional denial order. The court found that the debtor failed to comply with the conditional denial order to cure the arrearage and to keep her payments current. In a motion to reimpose the stay, "[i]njunction standards apply", and the debtor failed to meet the heavier burden of proof.

59. In re Powe, 280 B.R. 867 (Bankr. S.D. Ala. 2001).

The court misspoke in its original ruling and amended the order to correct the misstatement.

58. In re Slick, 280 B.R. 722 (Bankr. S.D. Ala. 2001).

The court found that a broad definition of the class to be certified was appropriate. The trial would determine who actually be entitled to injunctive relief or damages.

57. In re Sheffield, 281 B.R. 35 (Bankr. S.D. Ala. 2001).

The court found that a broad definition of the class to be certified was appropriate, and divided the class into two sub classes. The trial would determine who actually be entitled to injunctive relief or damages.

56. In re Sheffield, 280 B.R. 719 (Bankr. S.D. Ala. 2001).

Creditor-defendants in class action involving non-disclosure of attorney fees moved to compel the production of agreements between the class representative's counsel fee agreements. The court granted the motion to compel, finding that the fee agreements were not privileged or work product, and were relevant to the proceeding under F.R.Civ.P. 26(b)(1).

55. In re Powe, 280 B.R. 336 (Bankr. S.D. Ala. 2001).

Creditor-defendant in class action involving lack of adequate disclosure of attorney fees in proofs of claim filed a motion for summary judgment on grounds that its disclosure of attorney

fees was adequate under §506(b), and that inclusion of the attorney fee in the proof of claim did not violate the automatic stay. The court held that genuine issues of material fact existed as to whether the debtor and other interested parties had adequate notice of the attorney fees, and that the creditor-defendant was entitled to summary judgment on the issue of violation of the automatic stay. The court also granted the debtor's motion to certify the class.

54. In re Richardson, 280 B.R. 717 (Bankr. S.D. Ala. 2001).

Judgment creditor objected to chapter 13 debtor's plan, claiming that the debtor had sufficient equity in her home over and above her exemption for its lien to attach. The issue was whether the hypothetical costs of sale should be taken into account in determining the debtor's equity in her homestead under §522(f). The court held that the cost of sale should not be included and the debtor's plan did not appropriately treat the creditor's claim, which was secured in part.

53. In re Mitchell, 281 B.R. 90 (Bankr. S.D. Ala. 2001).

At hearing on a motion for relief filed in chapter 13 debtors' case, testimony revealed that mortgagee had reduced its debt to a judgment. Debtors scheduled the debt to mortgagee as unsecured in the amount of the judgment. The debtors' confirmed plan proposed to pay all unsecured debt at 1% pro rata. Mortgagee never foreclosed on the property or collected on the judgment. The court identified the issue: "whether the mortgage lien survived after the note was reduced to judgment, or if by electing to sue on the note, [mortgagee] gave up its security status and waived all rights under the mortgage. Did [mortgagee's] claims merge into the judgment?" The court followed the general rule that a mortgagee may foreclose after obtaining a judgment on the note. However, under the doctrine of res judicata, the judgment on the note governs the amount of the debt, not the mortgage agreement. The res judicata effect of the confirmation order also determined how the mortgagee was treated under the plan.

52. In re Taylor, 280 B.R. 711 (Bankr. S.D. Ala. 2001).

Chapter 13 debtors objected to creditor's amended proof of claim filed more than four years after the plan was confirmed and within months of the debtors' completion of payments into the plan. Creditor originally filed an unsecured claim and attempted to amend the claim to assert a secured claim. The court found that the debtors' plan did not violate §1322(c)(2) because it paid the claim exactly as the creditor filed it, and, if the plan did violate §1322(c)(2), the creditor had the duty to object prior to confirmation, which it did not do. Creditor's amended claim was not valid because it raised a new claim for a secured debt. Creditor waived its right to a secured claim when it filed an unsecured claim, and since the creditor waived its secured claim, the lien based on the secured claim would cease to exist once the debtors completed their plan payments.

51. In re Fritts, 280 B.R. 710 (Bankr. S.D. Ala. 2001).

Debtors mistakenly filed a second chapter 13 petition just prior to the expiration of a 90-day injunction period from a previous case. They asked the court to reduce the injunction nunc pro tunc; however, the court held that it did not have the authority to take such action.

50. In re Young, 280 B.R. 864 (Bankr. S.D. Ala. 2001).

Chapter 7 debtor brought an adversary proceeding against creditor and debt collector's violation of the Fair Debt Collection Practices Act, §809(a). Creditor attempted to collect on a student loan debt that had been discharged. When the debtor gave notice that the debt was disputed, the creditor failed to stop its collection activity. The court found that the creditor's action violated Section 809(a) of the FDCPA, and awarded damages of $1,000.

49. In re Jackson, 280 B.R. 703 (Bankr. S.D. Ala. 2001).

Chapter 13 debtors moved to modify their plan to surrender an automobile in full satisfaction of debt. The plan provided for 0% to unsecured creditors. Creditor holding secured claim on the automobile objected to the amended plan. Noting a split in authority on the issue of whether a debtor may modify a confirmed plan to surrender collateral and reclassify the deficiency, the court denied the motion to modify under §1329(a).

48. In re Wells, 280 B.R. 701 (Bankr. S.D. Ala. 2001).

The court allowed the debtor and utility creditor to enter an agreement allowing the debtor to continue to receive services from the utility without paying a postpetition deposit, but requiring the lifting of the automatic stay as to any enforcement or termination proceedings in the future.

47. In re Food Etc., L.L.C., 281 B.R. 82 (Bankr. S.D. Ala. 2001).

Equipment lessor moved for a priority administrative expense claim under 11 U.S.C §365(d)(10). The court allowed an administrative expense claim for reasonable attorney fees and expenses required by the lease terms but denied superpriority status for the claim. The court denied without prejudice the lessor's claim for rent accruing in the first 60 days after the petition date until the debtor assumed or rejected the lease.

46. In re Sheffield, 281 B.R. 330 (Bankr. S.D. Ala. 2001).

The court denied creditor's motion for reconsideration of class certification order for chapter 13 debtors under Rule 23 upon finding that: facts stated in prior order were pertinent to the creditor despite typographical errors; additional affidavits submitted by the creditor could not be allowed unless they were newly discovered evidence or unavailable despite due diligence; the debtor had standing to represent the class; and the creditor's actions were generally applicable to the class.

45. In re Sheffield, 281 B.R. 67 (Bankr. S.D. Ala. 2001).

In a class action regarding creditor's alleged failure to adequately disclose postpetition, preconfirmation attorney fees that were included in proofs of claim, creditor moved to reconsider the court's denied of its motion for summary judgment. The court denied the motion to reconsider finding that: the debtor's payment of the creditor's claim did not render his adversary proceeding moot; the debtor's claim has not been waived because §502(j) allows the court to reconsider a claim that has been allowed or disallowed for cause; and genuine issues of material fact exist as to the adequacy of the creditor's disclosure. (Westlaw)

44. In re Noletto, 281 B.R. 60 (Bankr. S.D. Ala. 2001).

In response to the creditor's motion to reconsider the court's order certifying a nationwide class, the court granted the reconsideration to the extent of vacating the class certification until the standing and adequacy of a proposed intervenor could be determined and denied the creditor's motion to dismiss the case, finding a "live controversy" still existed even though the named representative's individual claim was moot.

43. In re Harris, 281 B.R. 327 (Bankr. S.D. Ala. 2001).

After the court granted motions for summary judgment dismissing two separate adversary proceedings, Chapter 13 debtors filed a motion to alter, amend or vacate judgment and to amend findings of fact. The court held that the proceedings should not have been dismissed without a hearing on the propriety of the fees charged in cases; debtors' claims regarding the reasonableness and propriety of the fees were not the type of claims for which class action relief was available; and the class action cases might still be live cases if a proper class representative were available to intervene. (Westlaw)

42. In re Harris, 281 B.R. 323 (Bankr. S.D. Ala. 2001).

See summary above to In re Harris, 281 B.R. 327 (Bankr. S.D. Ala. 2001).

41. In re Rivera, 280 B.R. 699 (Bankr. S.D. Ala. 2001).

The debtor's automobile was repossessed in the interim between dismissal and reinstatement. The creditor knew that a motion to reinstate had been filed, but refused to return the automobile. The dismissal was due to a payment problem caused by the debtor's employer, not by the debtor's willful failure to pay. The court held the creditor was not in contempt for repossessing the car. An order dismissing a case is not stayed pursuant to Fed. R. Bankr. P. 7062, and the case was not reinstated until after the automobile was repossessed.

40. In re Reetz, 281 B.R. 54 (Bankr. S.D. Ala. 2001).

Chapter 7 debtor's former spouse brought an adversary proceeding to except a VISA card debt as a marital debt not in the nature of support from discharge under 11 U.S.C. §523(a)(15) (A,B). After considering each party's budget, the court determined that the debtor was unable to

pay the debt, and the benefit to the debtor outweighed the detriment to the spouse; therefore, the debt was due to be discharged.

39. In re Allied Sign Company, Inc., 280 B.R. 694 (Bankr. S.D. Ala. 2001).

The trustee in a chapter 7 case brought an action to determine if the debtor's purported equipment lease was actually a security agreement. The court considered Alabama Code §7-1-201(37) defining a security agreement, and ultimately determined that the agreement at issue was a lease.

38. In re Allied Sign, 280 B.R. 688 (Bankr. S.D. Ala. 2001).

Creditor with an interest in the debtor's cash collateral filed a state court action against the accounting firm charged with verifying the debtor's reports concerning the use of cash collateral. The firm objected to the action, and the creditor filed a motion for leave to pursue the action, nunc pro tunc. The court held that the state court action was a "related to" proceeding under 11 U.S.C. §157(b), and should be allowed to proceed in state court. In addition, the court found that the Barbour Rule requiring leave of court before bringing action against a receiver also applied, and the exception to the rule as stated in 28 U.S.C. §959 did not. The court granted leave nunc pro tunc for the creditor to pursue the state court action.

37. In re Boone, 281 B.R. 51 (Bankr. S.D. Ala. 2001).

Creditor foreclosed on the debtor's property pre-petition. The debtor filed a chapter 13 plan which included continuing regular monthly payments and curing the mortgage arrearage. After the debtor's plan was confirmed, the creditor accepted payment under the plan, and later moved for relief from the automatic stay to assert its rights under the foreclosure. The court held that although the foreclosed property was not property of the estate under 11 U.S.C. §541(a)(1), the creditor was equitably estopped from exercising its rights under the foreclosure as long as the debtor fulfilled her obligation under the chapter 13 plan.

36. In re Scott, 281 B.R. 48 (Bankr. S.D. Ala. 2001).

Debtor filed an adversary proceeding against the mortgage creditor for her home, alleging that the foreclosure sale was not valid because it was originally scheduled on Columbus Day, a legal holiday. The court held that the foreclosure would have been valid if it had been held on a legal holiday, but an issue remained as to whether the creditors published a notice of sale together with a statement indicating the postponement as required by Alabama law. Therefore, the creditor's motion to dismiss for failure to state a claim was denied.

35. In re Witherspoon, 281 B.R. 321 (Bankr. S.D. Ala. 2001).

Chapter 13 debtor's car was totaled, and insurer paid the insurance proceeds to the trustee. After the court ordered the trustee to pay the creditor/loss-payee the amount due for the secured portion of the creditor's claim, the debtor filed a motion for turnover for the remaining proceeds. The court held that the remaining proceeds were property of the estate, and the

creditor's interest in the proceeds was limited to the amount to be paid under the debtor's confirmed plan. The debtor would receive any remaining proceeds.

34. In re Kelly, 281 B.R. 62 (Bankr. S.D. Ala. 2001).

The IRS moved for relief from the chapter 13 debtors' confirmation order and to dismiss the debtors' case based their alleged bad faith in proposing the plan. The court held the IRS failed to prove bad faith by the debtors, and the IRS was entitled to relief from the confirmation order under the excusable neglect theory.

33. In re Young, 281 B.R. 74 (Bankr. S.D. Ala. 2001).

Chapter 13 debtor moved to enforce the automatic stay against creditor in a pawn transaction. The debtors listed the debt as secured in their schedules and provided 100% payment in their plan. The court held that the creditor, which received notice of the proposed plan and failed to file an objection, was bound by the terms of the plan, which had the effect of modifying the creditor's claim.

32. In re Rowell, 281 B.R. 726 (Bankr. S.D. Ala. 2001).

Chapter 7 debtor moved to avoid a garnishment and liens impairing his exemption rights. Creditor maintained that garnished wages were no longer property of the debtor on the petition date, and thus were not property of the estate and could not be claimed as exempt. The court held that wages garnished within 90 days of the petition date, but on which no valid judgment of condemnation had been entered prior to commencement of the chapter 7 case, were included as property of the estate and could be claimed as exempt. (Westlaw)

31. Lulue v. Oster &Wegener, 281 B.R. 333 (Bankr. S.D. Ala. 2001).

Bankruptcy court entered an order on the nonexempt status of military proceeds awarded to a chapter 7 debtor-wife by the divorce court and the debtor appealed. On remand from the district court for determination of the effect of the creditor's failure to file a timely objection to the debtor's exemption claim, the bankruptcy court held that under Alabama, the law firm with a lien for unpaid attorney fees in military retirement proceeds was not under any obligation to file an objection to the exemption claimed by the chapter 7 debtor in order to preserve its rights, and the firm's lien could not be avoided on exemption impairment grounds. (Westlaw)

30. In re The Taylor Agency, 281 B.R. 94 (Bankr. S.D. Ala. 2001).

A state court action was filed to recover against the debtor and other entities for alleged breach of contract, fraud, negligence, conversion, conspiracy and fraudulent suppression, and was removed to the bankruptcy court. The plaintiff moved for remand, or in the alternative, permissive abstention. The court held that remand was called for in light of state law nature of the claims, and alternatively, the court permissively abstained from hearing the claims.

29. In re The Taylor Agency, Inc. 281 B.R. 354 (Bankr. S.D. Ala. 2001).

The individual debtor-officer in an involuntary proceeding moved to dismiss the case under §303(b)(1) while the debtor corporation moved the court to dismiss or abstain its

involuntary case under 11 U.S.C. §305(a)(1). The court held creditors failed to prove that they held claims which were not contingent as to liability and not subject to bona fide dispute. The court also held that the proceeds of the errors and omission policy which insured the debtor-corporation were included as property of the estate, to the corporation did not lack assets as a cause for dismissal under §305(a)(1).

28. In re Sheffield, 281 B.R. 24 (Bankr. S.D. Ala. 2000).

The debtor filed an adversary proceeding to recover for a creditor's failure to disclose postpetition, preconfirmation attorney fees included in a proof of claim. The debtor sought to certify a nationwide debtor class under Bankruptcy Rule 7023 and F.R.Civ.P. 23(a)(1-4). The court found that the class satisfied the requirements, and certified a nationwide class on the disclosure issue, but would not certify nationwide debtor class on the reasonableness of fees. (Westlaw)

27. In Noletto, 281 B.R. 36 (Bankr. S.D. Ala. 2000).

The debtor filed an adversary proceeding to recover for a creditor's failure to disclose postpetition, preconfirmation attorney fees included in a proof of claim. The debtor sought to certify a nationwide debtor class under Bankruptcy Rule 7023 and F.R.Civ.P. 23(a)(1-4). The court found that the mootness of the debtors' claim did not prevent the class from being certified, the class satisfied the requirements, and certified a nationwide class on the disclosure issue, but would not certify nationwide debtor class on the reasonableness of fees. (Westlaw)

26. In re Grant, 281 B.R. 721 (Bankr. S.D. Ala. 2000).

A chapter 7 debtor brought an adversary proceeding against the assignee of a contract for the purchase of a manufactured home which included counts for violation of the automatic stay 11 U.S.C. §362(a), violation of the discharge injunction 11 U.S.C. §524, and civil violations of RICO. The contract contained an arbitration clause, and the creditor moved to stay the proceeding and compel arbitration. The debtor moved for a determination that the action was a "core" proceeding under 28 U.S.C. §157. The court held that the violation of stay and violation of discharge injunction were "core" proceedings and denied the creditor's motion to stay and compel arbitration. The court stayed any ruling on the RICO count pending the Supreme Court's ruling on an appeal from the Eleventh Circuit in a case with similar issues.

25. In re Jones, 271 B.R. 397 (Bankr. S.D. Ala. 2000).

The debtor's chapter 13 plan modified a secured creditor's contract and provided an adequate protection payment. Creditor did not object to the plan, which paid 100% of all claims, and it was confirmed. Creditor then filed a claim for more than was allowed under the plan and providing for an increased adequate protection payment. The trustee split the claim into secured and unsecured portions based on the confirmation order. The creditor then moved for adequate protection and to compel a proper posting of its claim, and the debtor objected to the creditor's claim. The court held that the confirmation order, in a district where plan confirmation preceded the claims bar date, was res judicata as to the amount of the claim, as long as the creditor had

sufficient notice that its claim would be considered at the plan confirmation. Therefore, the creditor's motion was denied and the debtor's objection sustained.

24. In re Noletto, 244 B.R. 845 (Bankr. S.D. Ala. 2000).

Chapter 13 debtors, as representatives of class, filed adversary proceedings alleging creditors' violations of specific sections of the Bankruptcy Code. The creditors moved to dismiss the complaints for lack of subject matter jurisdiction under 28 U.S.C. §1334. The court held that the class action claims came under the "core" jurisdiction of the bankruptcy court; the federal statute providing that "home court" for bankruptcy case, i.e., the district court in the bankruptcy case is commenced or pending, shall have exclusive jurisdiction over property of the debtor and of the estate grants the "home court" exclusive jurisdiction only over in rem matters, and the class actions were in personam matters. (Westlaw)

23. In re Spivey, Case No. 99-12990 MAM May 18, 2000

The court ruled that a chapter 13 plan must provide for payment of all priority claims in full during the life of the plan as required in 11 U.S.C. §1322(a)(2) unless the creditor consents to different treatment. (Not available on CM/ECF)

22. In re Hall, Case No. 98-12573; In re Chambers, 00-10454 August 2, 2000

In a follow up ruling to Spivey, the court held that the chapter plan must also pay 100% of priority claims during the life of the plan before any other unsecured debts could be paid. However, if a debtor is unable to pay even the full amount of the priority debts, a chapter 13 plan could still be confirmed if all excess funds over preference payments were dedicated to payment of the maximum amount of priority debt possible. These types of plans would still meet the requirements of §1322 and §1325 at least as long as the priority creditor does not object to its treatment under the plan. The court also held that no cases with final non-appealable confirmation orders will be reviewed by the chapter 13 trustee for compliance with Spivey. (Not available on CM/ECF)

21. In re Surovich, Case No. 97-14040, MAM August 29, 2000

The IRS moved to reopen the chapter 13 debtor's case and set aside the discharge order after the debtor's plan was paid and the debtor received a discharge even though the IRS's priority claim was not paid in full. The court held reopened the case, and set aside the discharge order under Bankruptcy Rule 9024, incorporating F.R.Civ.P. 60 because the language of the plan was ambiguous, and the IRS's reading of the plan that its priority claim would be paid in full was not inappropriate. The surprise was sufficient to require the court to set aside the discharge. The court gave the debtor the option of setting aside the discharge to allow him to make payments under the plan to pay off the priority claim or leaving the discharge in place while declaring the remainder of the priority claim to be nondischargeable. (Not available on CM/ECF)

20. In re Ochab, 271 B.R. 673 (Bankr. S.D. Ala. 1999).

After the debtors' chapter 13 case was reopened, the IRS filed a motion for relief from a prior order granting the debtors' motion to amend their schedules and plan to include postpetition federal taxes. The court held that the motion to amend schedules was a contested matter under Bankruptcy Rule 9014, and the debtors did not serve the IRS properly under Rule 9014. Since the IRS was not properly served, the court had no jurisdiction the IRS and the order granting the motion to amend was void, even though the IRS waited over 3 years to seek relief from the order.

19. In re Griner, 240 B.R. 432 (Bankr. S.D. Ala. 1999).

Insurance carrier sought to permanently enjoin the debtor from pursuing a state court claim for a work-related injury on grounds that the chapter 13 trustee, rather than the debtor, had standing to bring the claim, and that the doctrine of judicial estoppel prevented the debtor from bringing the claim because he failed to schedule the state court action in his bankruptcy petition. The court held that the debtor, the chapter 13 or both had standing to bring the action, and that the debtor was not judicially estopped from bringing the claim against the insurance company.

18. In re Archie, 240 B.R. 425 (Bankr. S.D. Ala. 1999).

Chapter 13 debtors paid the secured portion of the automobile creditor's secured claim and 60% of its unsecured claim prior to the case being converted to a chapter 7 case. Debtors reopened their bankruptcy case to compel the creditor to turn over the title to the automobile. The court held that the debtors should be allowed to redeem under 11 U.S.C. §722 the automobile that secured creditor's claim for $0.00. (Westlaw)

17. In re Dunning, 281 B.R. 22 (Bankr. S.D. Ala. 1999).

Automobile creditor obtained a judgment on the note prepetition, and debtor treated creditor as an unsecured creditor in his chapter 13 plan, maintaining that the creditor had elected to obtain a judgment, its lien was extinguished, and it could not foreclose on the automobile. The court held that under Alabama law, a secured creditor's remedies are cumulative, and the creditor did not lose its security interest when it obtained a judgment on the underlying obligation. In addition, the debtor's plan did not comply with 11 U.S.C. §1325(a)(5).

16. In re Fletcher, 249 B.R. 808 (Bankr. S.D. Ala. 1999).

The United States filed a complaint to determine the extent and priority of its tax liens over a security interest held by the debtor's attorney for payment of legal fees. The court held that the attorney's security interest had priority over the government's subsequently filed tax lien, regardless of the attorney's alleged knowledge of the tax lien even before it was recorded.

15. In re Rhea, 224 B.R. 816 (Bankr. S.D. Ala. 1997).

The IRS objected to the debtor's chapter 11 plan, which called for the IRS to release its lien after the debtor paid its allowed secured claim. The court overruled the IRS's objection and held Dewsnup did not apply to liens in chapter 11 plans of reorganization.

14. In re Rhea, 1997 WL 416334 (Bank. S.D. Ala.).

Chapter 11 debtors asked the court to determine the amount of their tax liabilities pursuant 11 U.S.C. §505 and objected to the IRS's claim. The court held that the debtors were not entitled to a business bad debt deduction pursuant to 26 U.S.C. §166, and Dr. Rhea was liable for 26 U.S.C. §6672 trust fund taxes.

13. In re BNW, Inc., 201 B.R. 838 (Bankr. S.D. Ala. 1996).

Creditor claiming a second lien on a chapter 11 debtor's property under the debtor's confirmed plan filed a motion for relief from stay seeking permission to redeem the property upon which the senior lienholder had foreclosed after the debtor became delinquent on the plan payments. The creditor also filed an adversary proceeding seeking to set aside the foreclosure. The court held that the debtor's confirmed plan was substantially consummated and could not be modified, and that the creditor was not entitled to relief from the confirmation order under the catch-all provision given the absence of extreme circumstances. The debtor's confirmed plan also could not be modified under the bankruptcy court's equitable powers, and to the extent any jurisdiction remained in the court concerning the foreclosed property, permissive abstention was appropriate. (Westlaw)

12. In re Davis, 201 B.R. 835 (Bankr. S.D. Ala. 1996).

Chapter 7 debtors brought an action against the IRS for willful violation of the automatic stay 11 U.S.C. §362(h) by levying on their bank account postpetition. The court found that the IRS's levy on the debtors' account after receiving notice of debtors' petition was a violation of the automatic stay and awarded compensatory damages for charges and embarrassment, but no punitive damages. The court noted that discharge of the debtors' $4,000 tax debt was not an appropriate way to compensate the debtors.

11. In re Coleman, 200 B.R. 403 (Bankr. S.D. Ala. 1996).

Creditors removed two purported class actions brought by chapter 13 debtors in state court to the bankruptcy court. Debtors filed a joint motion for remand under 28 U.S.C. §1452 and a motion for abstention 28 U.S.C. §1334(c)(1). The court remanded the actions to the state court and found that permissive abstention was applicable on an alternative basis.

10. In re Crain, 196 B.R. 663 (Bankr. S.D. Ala. 1996).

Creditor filed separate involuntary petitions under for an alleged individual debtor and an alleged debtor-corporation for whom the individual debtor had served as an officer, director and employee. The petitions were consolidated for hearing. Both debtors opposed the petitions on grounds that they had more than twelve creditors at the time that the petition was filed, were paying their debts as they became due and that a bona fide dispute existed as to the obligation to a creditor. The court held that the involuntary petitions could be brought by one creditor under 11 U.S.C. §303(b)(2) because all other creditors were paid in full or on account shortly after the petition was filed; that the alleged debtor corporation's deb to a petitioning creditor was not subject to a bona fide dispute; that the post-petition payment of a petitioning creditor's debt did

not disqualify the creditor; and dismissal was not justified given special circumstances of the individual debtor's fraudulent conduct regarding a transfer of funds from the creditor to the alleged debtor corporation. (Westlaw)

9. In re Equitable Development Corp., 196 B.R. 889 (Bankr. S.D. Ala. 1996).

Creditor in a single asset real estate case objected to its treatment under the debtor's proposed plan and moved for relief from the automatic stay. The court granted the motion for relief, finding that the plan's separate classification of the creditor's unsecured trade debt and the same creditor's unsecured deficiency claim was impermissible; that the debtor would not be allowed to use a class of priority tax creditors to provide needed acceptance of the plan; and there was no reasonable possibility of plan confirmation. (Westlaw)

8. In re Moton, 1996 WL 33423757 (Bankr. S.D. Ala.).

The debtor filed a motion for relief from a judgment, and alleged that her counsel did not receive a copy of the judgment until after the time to file a motion to alter or amend a judgment. The court considered the motion for relief under Bankruptcy Rule 9023, which incorporates F.R.Civ. P. 59, and Bankruptcy Rule 9024, as it incorporates F.R.Civ.P. 60, and found that the debtor was not entitled to relief from the judgment under either rule.

7. In re Moton, 1995 WL 17017771 (Bankr. S.D. Ala.).

Mortgage creditor moved to alter or amend the court's order denying its motion for relief from the automatic stay and from the debtor's chapter 13 plan to the extent that it attempted to "cure" the debtor's default on property which was a subject of a foreclosure sale approximately 12 minutes before the debtor filed the chapter 13 case. The court held that under Alabama law, the foreclosure sale was complete when the sale was finished, and did not require a foreclosure deed or payment of consideration to be complete. Therefore, the debtor's time to cure the mortgage default through the chapter plan under §1322(c)(1) ended at the foreclosure sale, and the provision in the debtor's plan curing the default should not have been confirmed.

6. In re Matthews, 184 B.R. 594 (Bankr. S.D. Ala. 1995).

Chapter 7 debtors filed an adversary proceeding against the IRS for civil contempt, and for violating the automatic stay under 11 U.S.C. §362(h) and the discharge injunction under 11 U.S.C. §542(a)(2). They also requested attorney fees under 5 U.S.C. §504 and 26 U.S.C. §7430. The court held that the IRS violated the automatic stay and the discharge injunction, and awarded $3,000 for compensatory damages. The debtors were not entitled to attorney fees under §7430 because the IRS's position during the litigation was not substantially unjustified, even though the IRS's prelitigation conduct was offensive and substantially unjustified. (Westlaw)

5. In re Curtis, 177 B.R. 717 (Bankr. S.D. Ala. 1995).

In a creditor's adversary proceeding to determine the dischargeability of a debt under 11 U.S.C. §523(a)(2) for false representations, the debtor invoked the self-incrimination clause of the Fifth Amendment and refused to testify about the circumstance surrounding loan at issue. The creditor asked the court to infer fraud from the debtor's invocation of his Fifth Amendment

privilege. The court held that absent any evidence of fraud, the inference drawn the debtor's invocation of the Fifth Amendment did not itself establish fraud for purposes of §523(a)(2).

4. In re Kennedy, 177 B.R. 967 (Bankr. S.D. Ala. 1995).

Secured creditor objected to the debtor's chapter 13 plan based on the value an automobile that secured the creditor's claim. The court held that the collateral securing a claim is valued as of the date of confirmation, that no attorney fees or interest could be added because the value was less than the debt, and the plan could be confirmed over the creditor's objection if the contract rate of interest was used in the payment of the secured debt. (Westlaw)

3. In re Brooks, 175 B.R. 409 (Bankr. S.D. Ala. 1994).

Pro se creditor sought leave to appeal a dischargeability order *in forma pauperis*. The court held that the bankruptcy court had authority to enter a final order on the motion, and the creditor's motion was granted as the filing fee and trial transcript.

2. In re McKinney, 174 B.R. 330 (Bankr. S.D. Ala. 1994).

Mortgagee filed a motion for relief from the automatic stay to obtain possession of chapter 13 debtors' real estate, which had been foreclosed upon prior to filing. The debtors sought to revive the mortgage and cure the arrearage in their chapter 13 plan. The court held that once the foreclosure sale took place, the only way to redeem the property under Alabama law was though a case payment of the full amount of the mortgaged debt under the statutory right of redemption, and once properly foreclosed under Alabama law, the mortgage was not subject to reinstatement and cure under a chapter 13 plan. (Westlaw)

1. In re Slepian, 170 B.R. 712 (Bankr. S.D. Ala. 1994).

Chapter 7 trustee objected to the debtor's claim exemptions for an ERISA-qualified retirement plan and IRA. The court held that the ERISA-qualified trust was excludable from the debtor's estate, but the IRA, under either Alabama (§19-3-1) or New York law, was not excludable. (Westlaw)