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

Updated July 9, 2020

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 necessarily 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. Subsequent changes in the bankruptcy code or state law may also render cases obsolete.

364. In re Deakle, 2020 WL 3446362 (Bankr. S.D. Ala. June 24, 2020) (HAC) (currently on appeal)

A title pawn lender's failure to object to a chapter 13 plan constituted waiver of the vehicle's forfeiture under the Alabama Pawnshop Act, even though the redemption period expired prepetition. The lender was thus bound by the terms of the confirmed plan.

363. In re Jones, Case No. 20-10704 (HAC) June 16, 2020

The court denied confirmation of a chapter 13 plan that proposed to retain and pay for a vehicle driven by the debtor's 31 year old son. Although the son promised to contribute to his mother's plan payments, the court found that the plan was not proposed in good faith because it exposed the debtor and creditors to unnecessary risks and expenses unrelated to the debtor's rehabilitation.

362. In re Diamond, Case No. 19-14161 (HAC) June 9, 2020

The trustee objected to a claim based on an Alabama state court judgment that was more than ten years old and had not been revived. The court found that the creditor overcame the presumption of satisfaction under Alabama Code § 6-9-191 because the debtor's sworn schedules did not dispute the claim and showed that the judgment had not been satisfied. The creditor thus still had a "claim" under the broad definition contained in 11 U.S.C. § 105 because the creditor's right to payment is not extinguished under Alabama law until twenty years after entry of the judgment.

361. In re Breland, Case No. 16-2272 (JCO), and In re Osprey Utah, LLC, Case No. 16-2270 (JCO) May 29, 2020

The court denied a motion to alter, amend or reconsider the denial of an amended motion to compromise. A party seeking reconsideration is held to a high standard and must demonstrate that (1) controlling law has changed; (2) newly discovered evidence would merit a different result; or (3) reconsideration is necessary to correct clear error of law or fact. Sufficient grounds did not exist to modify the prior opinion when the arguments presented were previously considered, the factual findings were made in the court's discretion, and the proper legal standard

was applied. Additionally, the filing of an IRS Notice of Claim Reduction subsequent to the hearing did not constitute newly discovered evidence because it was only an estimate, it was anticipated by the parties at the time of the hearing, and it was not sufficient to warrant a different result.

360. In re Watkins, Case No. 20-11157 (HAC) May 28, 2020

The court denied the debtors' motions to avoid judgment liens of multiple corporations or unincorporated associations. When serving a corporation or unincorporated association under Federal Rule of Bankruptcy Procedure 7004, the certificate of service must include both the name and the title or position of the person to whom service is addressed.

359. In re Lane, Case No. 19-13490 (HAC) May 11, 2020

Even though the debtor was not current on postpetition DSO, the court overruled the trustee's objection to confirmation of the debtor's chapter 13 plan based on 11 U.S.C. § 1328(a) because the DSO creditor had expressly consented to the inclusion of the debtor's postpetition preconfirmation DSO in the plan. However, the court's ruling was conditioned on the plan payments being increased to the amount necessary for the unsecured creditors to receive what they would have received had the postpetition preconfirmation DSO not been included in the plan.

358. In re Gaddy, Case No. 17-1568 (HAC) May 7, 2020

The court denied a creditor's motion to stay pending appeal of the court's order approving the chapter 7 trustee's motion to compromise. The creditor did not meet its burden of showing a substantial likelihood that it would prevail on the merits of the appeal. Even if it had, the creditor did not show that the three remaining factors for stay relief – a substantial risk of irreparable injury to it unless the stay is granted, no substantial harm to other interested persons, and no harm to the public interest – tended strongly in its favor.

357. Glenn v. Army & Air Force Exchange Services, AP 18-66 (JCO) May 6, 2020

The court limited an attorney's fee award under 11 U.S.C. § 362(k)(1) because the debtor's attorney failed to make any effort to resolve the automatic stay violation prior to instituting litigation. The court explained that the standards prescribed in 11 U.S.C.§ 330(a)(1)(A) allow reasonable compensation for actual, necessary services. Absent any pre-suit attempt by the attorney to contact the creditor regarding the stay violation, the court was not convinced that the adversary proceeding was necessary. The court thus reduced the attorney's fee to an amount deemed reasonably necessary under the facts of the case to resolve the matter. The court agreed with decisions from courts in the Eleventh Circuit recognizing the importance of striking a balance between the protection of debtors and effective use of the bankruptcy court's time and resources. Further, the court held that notions of good faith, sound judgment, and professionalism should favor resolution when possible and litigation only when actually necessary to remedy a stay violation.

356. In re Powe, Case No. 20-10054 (HAC) May 1, 2020

The trustee objected to the debtor's chapter 13 plan for lack of good faith because the plan was essentially a "fee-only" or "fee-centric" chapter 13. The court found that it was not bad faith for the debtor to file the chapter 13 case based on her attorney's preference to be paid postpetition through a chapter 13 plan rather than directly. After reviewing recent fees charged for chapter 7 cases, the court overruled the trustee's objection to confirmation with the condition that the attorney's fees in the chapter 13 case were limited to $1,500.

355. In re Breland, Case No. 16-2272 (JCO), and In re Osprey Utah, LLC, Case No. 16-2270 (JCO) April 3, 2020

The court denied an amended motion to compromise without prejudice based on the trustee's failure to carry his burden to demonstrate that the proposed settlement was reasonable and in the best interests of the estate. The terms of the amended motion were worse than those of a previously-denied motion to compromise involving substantially the same parties and issues. The court's concerns included lack of an unbiased appraisal, misgivings about the trustee's appraiser's methodology, failure to fully market the property, lack of evidence of sufficient consideration for loss of estate property and contractual rights, and the unilateral nature of proposed releases. Further, in light of the surplus nature of the case, the court found it inequitable for the trustee to disregard the debtor's input or enter into a transfer of substantial estate property and contractual interests without a justifiable, well-reasoned, and fully-articulated basis for doing so.

354. In re Ward, Case No. 19-13537 (HAC) April 2, 2020

Rule 3001(c), while eliminating the requirement to attach the underlying credit card agreement, does not eliminate the requirement of Rule 3001(d) that the creditor provide evidence of perfection if claiming a security interest in property of the debtor. Because the credit card company did not attach documentation that its alleged security interest had been either created or perfected, the court sustained the debtor's objection and reclassified the claim as unsecured.

353. Venn v. Taylor, AP No. 19-3013 (HAC) Bankr. N.D. Fla. March 31, 2020

The court revoked the debtor's chapter 7 discharge under 11 U.S.C. § 727(d)(3). The court had ordered the debtor to turn over funds that were property of the estate twice – in October 2018 and June 2019 – but the debtor completely ignored the orders until after the trustee was forced to file an adversary proceeding over a year after the first turnover order.

352. In re Gaddy, Case No. 17-1568 (HAC) March 26, 2020 (currently on appeal)

The court approved the chapter 7 trustee's settlement of a fraudulent transfer case with the debtor and other defendants over the largest creditor's objection. The court performed an extensive analysis of the *Justice Oaks* factors and found that the settlement was fair and reasonable in light of the circumstances, including defenses that would likely result in the case going to trial and the uncertainty of what a jury would do. The creditor's argument that the

trustee should have conducted more discovery before reaching a settlement did not compel a different result.

351. In re Triplett, Case No. 19-12508 (HAC) March 2, 2020

The court set an objection to claim for an evidentiary hearing and entered a pretrial order which required the parties to file witness and exhibit lists a week before trial. When both parties failed to do so, the court did not allow either side to present witnesses or exhibits and took the matter under submission on the record. Because the debtor's affidavit sufficiently rebutted the proof of claim, the proof of claim lost its presumption of validity and the burden of proof shifted back to the creditor. The creditor did not produce any additional evidence, so it did not meet its burden and the court sustained the debtor's objection.

350. In re Eldridge, 2020 WL 2843027 (Bankr. S.D. Ala. Feb. 20, 2020) (currently on appeal)

The court denied the debtor's motion to reconsider, which raised arguments previously raised and rejected by the court. A pawnbroker's waiver of forfeiture did not take the pawn out of the definition of a pawn transaction under the Alabama Pawnshop Act. The Pawnshop Act specifies only two actions that would void a transaction – charging excessive interest and making a pawn transaction without a license – and neither took place in this case.

349. In re Eldridge, 2020 WL 2844358 (Bankr. S.D. Ala. Feb. 13, 2020) (currently on appeal)

A pawnbroker is not prohibited from waiving the forfeiture provision of Alabama Code § 5-19A-6. Thus, a pawnbroker could elect to enter into a new pawn transaction with a debtor who had pawned title to his vehicle even though the debtor did not redeem the title by the pawn's maturity date or within the 30-day statutory grace period under Alabama law.

348. In re Gildersleeve, Case No. 15-2946 (HAC) February 10, 2020

A chapter 7 debtor's claimed exemption of $1.00 in overencumbered property did not remove that property from the bankruptcy estate. Because the chapter 7 trustee had not yet abandoned the property, the court overruled without prejudice the trustee's objection to the secured claim.

347. In re Burns, Case No. 19-13773 (HAC) February 5, 2020

The debtors paid for purchase and installation of an air conditioning unit using a charge account which provided for a security interest in purchased goods. The purchase-money security interest in consumer goods was perfected without a financing statement under Alabama Code § 7-9A-309 and did not lose that status if the goods became a fixture. Alabama Code § 7-9A-334(d) only governs priority of secured claims in fixtures – for example, in relation to a real estate mortgage. However, the court sustained the debtors' objection to the creditor's secured claim in part because the invoices showed charges for both the purchase of the air conditioner

and for its installation and maintenance. The court ordered the creditor to provide information so it could determine how much money was still owed on the air conditioning unit (which would be secured) as opposed to labor (which would be unsecured).

346. Keeton v. Short, AP No. 19-1041 (HAC) January 10, 2020

The court found that the plaintiff's Alabama state court judgment for trespass against the debtor was nondischargeable under 11 U.S.C. § 523(a)(6). The doctrine of collateral estoppel did not mandate the judgment of nondischargeability because the "willful" standard under § 523(a)(6) was different from the "intentional" act required for trespass under Alabama law. However, the court found that the plaintiff had nevertheless proven by a preponderance of the evidence that the trespass was a willful and malicious injury under § 523(a)(6). The debtor knew that there was a significant dispute about the boundary line of his property but went forward with cutting trees on the plaintiff's property. The evidence showed the kind of intentional act the purpose of which is to cause injury or which is substantially certain to cause injury. The debtor's conduct also implied a sufficient degree of malice for purposes of § 523(a)(6).

345. In re Rivet, Case No. 19-12547 (HAC) December 30, 2019

In valuing a vehicle for redemption purposes, the court calculated the average of the clean retail and trade-in NADA values as of the petition date (taking into account missing or broken optional equipment) and then adjusted downward $1,200 to account for the car's rough condition.

344. In re Thompson, Case No. 19-12356 (HAC) December 30, 2019

The fact that a claim is based on an open-end or revolving consumer credit agreement does not mean it cannot be secured by a purchase-money security interest. The debtor argued that he was unable to determine whether nonpurchase-money charges were made on the account. However, the debtor did not offer any evidence of additional charges to rebut the prima facie validity of the creditor's claim. The court overruled the debtor's objection and allowed the claim as filed.

343. In re Smith, Case No. 19-12463 (HAC) December 30, 2019

A description of collateral in a security agreement is sufficient if it reasonably identifies what is described, even though it is not specific. The court found that the description of "purchased goods" on sales slips, coupled with itemized receipts issued at the same time, was sufficient. The underlying debt was a credit card account, so Rule 3001(c)(3) applied, not Rule 3001(c)(1). Because the creditor attached the required Rule 3001(c)(3) information to its proof of claim, the claim was entitled to prima facie validity without additional documentation.

342. In re Pettway, Case No. 19-12599 (HAC) December 23, 2019

Federal Rule of Bankruptcy Procedure 3001(c)(1), when read in light of Rule 3001(e), does not require a prepetition transferee of a debt to include with the proof of claim evidence of

the assignment if no prior proof of claim has been filed. The court thus found that the creditor complied with the rules by attaching the writing evidencing the underlying car deficiency balance, even though it did not attach evidence of assignment of the debt.

341. In re Miller, 2019 WL 6332926 (Bankr. S.D. Ala. Nov. 25, 2019) (JCO)

A former landlord under a residential lease with a chapter 13 debtor was not entitled to a priority claim for an unpaid security deposit. The priority afforded by 11 U.S.C. § 507(a)(7) arises in the context of deposits made to bankruptcy debtors, not the opposite. Because priority status should be construed narrowly to promote equality of distribution among creditors, the claimant bears to burden to prove it qualifies for priority treatment and did not do so in this case.

340. In re Mainous, 610 B.R. 916 (Bankr. S.D. Ala. Nov. 21, 2019) (JCO)

The court considered the factors set forth in *In re Cummings*, 221 B.R. 814 (Bankr. N.D. Ala. 2006) and balanced the equities in weighing the hardship to the creditor against the potential prejudice to the debtors, the estate, and other creditors in granting a creditor limited relief from stay to pursue claims against the debtors in state or federal courts in the Southern District of Alabama. Considering the totality of the circumstances, granting relief to allow litigation outside of courts in this district would be unduly burdensome to the debtors and negatively affect the viability of the bankruptcy case. The court also estimated the creditor's proof of claim pursuant to 11 U.S.C. § 502(c) without prejudice pending the outcome of the litigation between the parties.

339. In re Raymond & Associates, LLC, 2019 WL 6208660 (Bankr. S.D. Ala. Nov. 20, 2019) (JCO) (affirmed by district court in 2020)

A domestic support obligation owed by a member of a limited liability company to the member's ex-spouse does not constitute a DSO obligation of the corporate debtor. The plain language of 11 U.S.C. § 101(14A)(A)(i) defining a DSO as a debt owed to a spouse, former spouse, or child of the debtor dictates that a corporate entity cannot have a domestic support obligation. The court thus sustained the chapter 7 trustee's objection to the DSO claim.

338. In re Curry, Case No. 19-20160 (HAC) November 18, 2019

In discharge violation cases where attorney's fees and costs can be awarded as part of contempt sanctions, the court should not just mechanically apply a percentage in determining a fee. To hold that an attorney representing the debtor in a discharge violation case is always limited to a percentage of the recovery would greatly reduce the initiative for attorneys to take on smaller cases, which serve a useful educational and deterrent purpose for creditors who might otherwise be tempted to ignore the discharge. The court thus approved an attorney's fee award of $1,500.00 and a damages award of $1,250.00, which she claimed as exempt. The trustee raised the issue that the debtor was delinquent in her chapter 13 plan payments. However, unless a debtor agrees for an exempt amount to go toward plan payments, her or she is entitled to retain the exempt amount pursuant to *Law v. Siegel*, 571 U.S. 415 (2014).

337. In re Boyd, Case No. 19-20227 (HAC) November 12, 2019

A promissory note provided that a "dwelling" would secure the cross-collateralized loan only if it was described in the security section of the Truth in Lending Disclosure. TILA defines "dwelling" to include a mobile home if it is used as a primary residence. The debtor claimed a homestead exemption on her mobile home in her sworn schedules and also testified that the mobile home was her primary residence. The court thus found the mobile home to be a "dwelling" under TILA. Because the creditor did not list the mobile home in the security section of the Truth in Lending Disclosure, the loan was not cross-collateralized by the mobile home and the court reclassified the claim as unsecured.

336. In re Rankins, Case No. 14-2729 (HAC) October 17, 2019

A chapter 13 plan modification does not become effective until the court grants the motion to modify. The modification is not retroactive to the date of the filing of the motion.

335. In re Porras, Case No. 19-10708 (JCO) October 15, 2019

The court concurred with the reasoning of In re Tesseneer. Case No. 19-11283 (Bankr. S.D. Ala. 2019) (holding that upon expiration of the state law pawn redemption period and any extension thereof by operation of 11 U.S.C. § 108, if applicable, an unredeemed pawned vehicle ceases to be property of the bankruptcy estate).

334. In re Russell, 2019 WL 5106364 (Bankr. S.D. Ala. Oct. 11, 2019) (JCO)

The court held that the "gavel rule" as codified by 11 U.S.C. § 1322(c)(1) remains the appropriate standard to evaluate a chapter 13 debtor's interest in foreclosed property. Accordingly, after the fall of the gavel at a foreclosure auction conducted in accordance with Alabama law, the foreclosed property is not property of the estate in a subsequently-filed chapter 13.

333. In re Bacon, Case No. 19-10676 (HAC) October 11, 2019

The Honoring American Veterans in Extreme Need ("HAVEN") Act does not state that it applies only to cases filed after its effective date. Considering that fact and the Act's purpose, the court found that a debtor whose chapter 13 case was filed before the Act's passage could exclude his veteran's benefits, as defined under the Act, from the definition of Current Monthly Income. The court thus overruled the trustee's objection to the debtor's chapter 13 plan based on feasibility.

332. In re Tesseneer, Case No. 19-11283 (HAC) October 2, 2019

The court sustained a pawnbroker's objection to confirmation of a chapter 13 plan that proposed to redeem the debtor's car title through the plan. The loan was in its first thirty days and the title pawn had not matured before the debtor filed bankruptcy. However, the court found that the clock keeps ticking under Alabama's Pawnshop Act; the redemption period is not frozen

in time by the filing of the bankruptcy and the maturity date is still reached. When the debtor's redemption period lapsed under state law after the extension provided by 11 U.S.C. § 108, the debtor's car ceased to be property of the estate entirely.

331. Gargula v. Zimmern, AP No. 19-3007 (HAC) Bankr. N.D. Fla. September 24, 2019

Under Federal Rule of Civil Procedure 55(c), the standard for setting aside a clerk's entry of default judgment is "good cause," which is lower than the standard for setting aside a default judgment. The court found that the short period of time between the clerk's entry of default and the defendant's motion to vacate, the lack of prejudice to the plaintiff, and the policy of resolving cases on the merits constituted "good cause" to set aside the entry of default.

330. In re Williams, Case No. 18-2916 (HAC) September 19, 2019

The debtor did not receive any ballots either accepting or rejecting her chapter 11 plan. The court adopted the majority view that failing to vote (*i.e.*, not returning a ballot) does not constitute acceptance of a plan. Because no impaired class had accepted the plan, the court denied confirmation under 11 U.S.C. § 1129(a)(10).

329. Turner v. Fidelity Bank, 2019 WL 7667632 (Bankr. S.D. Ala. Sept. 17, 2019) (HAC)

The court awarded the debtor $750.00 for the bank's violations of the automatic stay in mistakenly sending computer-generated past due notices to the debtor after she filed for bankruptcy. Although the bank's employees did not intend to violate the stay, the bank failed to take appropriate steps once it received notice of the debtor's bankruptcy. The debtor was not responsible for notifying the creditor of the continuing stay violations; however, the court limited the attorney's fee award to $250.00 because it found that one communication from debtor's counsel to the bank's counsel would have remedied the problem.

328. In re Tarver Henley, Case No. 19-10631 (HAC) September 13, 2019

The court denied a creditor's motion to reopen a chapter 7 case for lack of jurisdiction. The lien priority dispute between the creditor and another creditor over property as to which the stay had lifted did not "arise under" the Bankruptcy Code or "relate to" the bankruptcy because it did not involve property of the estate. Even if the court had jurisdiction, there was no cause to reopen the case under 11 U.S.C. § 350(b).

327. Venn v. Boyd, AP No. 18-3012 (HAC) Bankr. N.D. Fla. September 11, 2019

The court granted summary judgment in the trustee's favor on his claim under 11 U.S.C. § 727(a)(4)(A), but not on his claims under § 727(a)(2). The debtor's omissions on his schedules did not definitively establish the debtor's intent for purposes of the trustee's § 727(a)(2) claims. However, the court found that the trustee had established the debtor's fraudulent intent for purposes of his § 727(a)(4)(A) claim by showing that the debtor engaged in a pattern of concealment, or, at a minimum, possessed a reckless indifference to the truth.

326. Tabb v. Lambert, 2019 WL 7667626 (Bankr. S.D. Ala. Aug. 27, 2019) (HAC)

A new non-DSO obligation created by a divorce degree is not dischargeable in chapter 7 under 11 U.S.C. § 523(a)(15), although it is in chapter 13. The chapter 7 debtor's obligation under a divorce decree to refinance her ex-husband's student loan was thus not dischargeable.

325. In re Johnson, Case No. 18-122 (HAC) August 1, 2019

Judge Callaway adopted Judge Oldshue's holding in *In re Clark*, 593 B.R. 661 (Bankr. S.D. Ala. 2018) and found that the language of the mortgage at issue was ambiguous. He thus granted the debtor's motion to determine mortgage fees and expenses under Rule 3002.1(e) and disallowed the fees listed on the lender's notice of postpetition mortgage fees, expenses, and charges.

324. In re Turner, Case No. 19-11330 (HAC) August 1, 2019

After analyzing the *Kitchens* factors, the court found that the debtor's chapter 13 plan proposing to pay for two vehicles through the plan was not filed in good faith. The debtor was a home health care RN and proved the necessity of her Jeep Wrangler for work, which required her to travel on dirt roads and sometimes off road. But the debtor also proposed to retain a relatively late-model BMW which she drove for personal use. Although the percentage to unsecured creditors had not yet been determined, the debtor had sizeable tax debt and it did not appear that much, if anything, would be paid on unsecured claims. The debtor's desire to keep the BMW for personal use was not enough under those circumstances to override the interest of unsecured creditors.

323. In re Big Dog II, LLC, 602 B.R. 64 (Bankr. N.D. Fla. 2019) (JCO)

Despite a thin equity cushion of 3.62%, the court conditionally denied relief from stay to allow the debtor to refinance the mortgage debt within 90 days. Whether an equity cushion is sufficient to adequately protect a creditor's interest should be determined on a case-by-case basis after consideration of all relevant facts rather than by mechanical application of a formula.

322. In re Harris, Case No. 19-11203 (HAC) July 11, 2019 and In re Murrill, Case No. 19-11212 (HAC) July 11, 2019

Creditor objected to chapter 13 plan because prepetition arrearage in creditor's proof of claim was greater than the amount listed in the debtor's plan. The court overruled the objection as unnecessary based on the language of the plan that stated that the arrearage amount on the proof of claim governs over any contrary amount in the plan. The court also prohibited the creditor from charging the debtor the attorney's fees and costs incurred in connection with the unnecessary objection.

321. The Bank of New York Mellon v. 251 Gotham LLC, 604 B.R. 71 (Bankr. S.D. Ala. June 18, 2019) (HAC)

The plaintiff bank held a mortgage on real property that a chapter 13 debtor had failed to disclose in his bankruptcy and then transferred to the defendant LLC during the pendency of the bankruptcy without obtaining court approval under 11 U.S.C. § 363(b). The bank sued in district court to declare the transfer void. The district court referred the case to the bankruptcy court for resolution of all issues, including whether bankruptcy jurisdiction existed. The bankruptcy court found that it had both "related to" and "in rem" jurisdiction under 28 U.S.C. § 1334 based on the disposition of property of the bankruptcy estate without court approval. It also found that it had personal jurisdiction over the LLC because the LLC had sufficient minimum contacts with the United States and had made no showing of inconvenience which would rise to a constitutional level.

320. In re Breland, 2019 WL 2417629 (Bankr. S.D. Ala. June 7, 2019) (JCO)

The court denied the defendant's motion to dismiss the plaintiff's § 547 preference action. Although the complaint was skimpy in terms of relevant facts alleged and how those alleged facts met each element of § 547, it still passed muster under *Twombly* and asserted a plausible preference action.

319. USA v. Reid, AP No. 18-38 (JCO) April 18, 2019

Relying on *In re Monson*, 661 F. App'x 675 (11th Cir. 2016), the court found that the improper sale of the secured creditor's collateral without the creditor's knowledge or permission and misappropriation of the proceeds constituted willful and malicious injury under § 523(a)(6).

318. In re Whitlock, Case No. 17-1558 (JCO) April 15, 2019

The court denied special counsel a contingency fee on an auto property damage settlement because special counsel had not served his application to employ on the secured creditor.

317. In re Edwards, 2019 WL 7667625 (Bankr. S.D. Ala. Apr. 4, 2019) (HAC)

The court granted the debtor's motion to determine mortgage fees and expenses and disallowed the lender's attorney's fees for preparing and filing a proof of claim. The mortgage at issue only allowed the recovery of attorney's fees incurred "to protect the value of the Property and Lender's rights in the Property." Unlike filing a motion for relief from stay to institute a foreclosure proceeding or force-placing insurance, for example, preparing and filing a proof of claim does not protect the value of the property and the lender's rights in the property.

316. In re Burrell, Case No. 18-4602 (HAC) April 2, 2019

The court sustained a title pawnbroker's objection to confirmation. The debtor sought to redeem her car through her chapter 13 plan. However, the court was bound by *In re Northington*, 876 F.3d 1302 (11th Cir. 2017), and Alabama statutory and case law. Because the debtor did not timely redeem her pawned title under Alabama law, her rights in the car were

immediately extinguished and vested in the pawnbroker. The car ceased to be property of the estate, and the debtor thus could not redeem the car through her plan.

315. Keebler v. Stewart, AP No. 19-1002 (HAC) March 28, 2019

Under Code §§ 523(a)(15) and 1141(d)(2), an individual chapter 11 debtor is not discharged from a non-DSO debt to a former spouse that is incurred in connection with a divorce decree. No adversary proceeding is required; subsection (15) of § 523(a) is not included in § 523(c), which requires a creditor to seek a determination from the court that certain types of debts are excepted from discharge. The court thus dismissed the adversary proceeding as moot.

314. In re Fisher, 2019 WL 1875366 (Bankr. S.D. Ala. Mar. 27, 2019) (HAC)

The court denied an attorney's applications to employ and for compensation because the attorney did not seek approval before settling a debtor's personal injury claim and failed to respond to the court's turnover order regarding the attorney's fees he received from the settlement. To rely on a client's representation that he or she is not in bankruptcy is not enough. If a lawyer fails to check PACER to confirm that a client is not in bankruptcy immediately before distributing settlement proceeds, the lawyer runs the risk of being held liable for the settlement funds that would have otherwise gone into the bankruptcy estate.

313. In re Burden, Case No. 13-1779 (JCO) March 15, 2019

Although the debtor made all of his plan payments, § 1328(g) and Rule 1007(b)(7) state that the court shall not grant a discharge if the debtor has not filed his personal financial management certificate described in § 111. Use of the word "shall" creates an obligation impervious to judicial discretion and prevents the court from waiving the filing requirement. The debtor's failure to file the certificate or request additional time to do so prevented him from receiving his discharge. The debtor did not request a disability or military service exemption under § 1328(g)(2).

312. Pullum v. SE Property Holdings, LLC, 598 B.R. 489 (Bankr. N.D. Fla. Mar. 14, 2019 (JCO)

After canvassing the issues raised by objecting creditors, the court denied approval of a proposed settlement because three of the four *Justice Oaks* factors weighed against approval. The underlying state law was unsettled, but not so inordinately complex that the issues could not be easily determined in the underlying action which could produce a more favorable result for unsecured creditors.

311. Andrews v. Blakeley Boatworks, Inc., 2019 WL 7667624 (Bankr. S.D. Ala. Mar. 14, 2019) (HAC)

The bankruptcy court granted summary judgment in favor of the defendant in a preference action. Expert testimony is unnecessary to establish an ordinary course of business defense, and the defendant presented sufficient evidence on the subjective and objective prongs

of the defense to shift the summary judgment burden to the trustee. The trustee did not come forward with evidence to show that a genuine issue of fact remained for trial.

310. Evans v. Timber Ridge Apartments, AP No. 16-00032 (JCO) March 12, 2019

The court awarded sanctions to the debtor where the defendant violated the discharge injunction by contacting the debtor to collect a discharged debt twelve times after she received her discharge. However, the court found that the volume and frequency of the contacts did not rise to the level of FDCPA violations.

309. In re Scott, Case No. 17-1436 (HAC) March 1, 2019

When a chapter 13 case is dismissed for failure to make plan payments, the automatic stay terminates. Reinstatement of the stay once the case is reinstated is not retroactive to the date of dismissal. A creditor's actions in the interim between dismissal and reinstatement thus did not violate the stay. The court declined to set aside the creditor's action taken during the gap period.

308. In re Dortch, Case No. 18-2920 (HAC) February 20, 2019

The debtor objected to the commercial reasonableness of a postpetition disposition of a vehicle. The burden was on the creditor to prove the commercial reasonableness of the disposition, but its affidavit did not contain information about the circumstances of the disposition except that the sale price was not much less than the Black Book wholesale value. The court found that the creditor had not met its burden, sustained the debtor's objection to the creditor's claim, and reduced the amount of the deficiency claim.

307. In re Cass, 2019 WL 7667445 (Bankr. S.D. Ala. Feb. 4, 2019) (HAC)

The court enforced the state court's judgment for possession by the tax sale purchasers of the debtor's home pursuant to the *Rooker-Feldman* doctrine. However, the court also found that because the tax sale purchasers had not been in continuous adverse possession of the property for three years, the debtor was still entitled to redeem the property by paying the redemption amount (including interest) as established by the state court in its order. The court did not reach the issue of whether the debtor could redeem through the plan.

306. In re Greene, 2019 WL 461052 (Bankr. S.D. Ala. Feb. 4, 2019) (JCO)

The debtors filed a joint petition for chapter 7 relief, but Schedule A reflected that the homestead was owned by only one debtor. Alabama law permits debtors to stack their homestead exemptions only if both debtors are fee owners.

305. In re Langley, 2019 WL 404205 (Bankr. S.D. Ala. Jan. 30, 2019) (JCO)

The debtor claimed as exempt a portion of settlement proceeds from a prepetition auto accident, but the hospital that treated her claimed that its lien attached to the entire amount of the settlement under Alabama Code § 35-11-370. The court found that the hospital lien did not fall within any of the categories of statutory liens which the trustee could avoid under §§ 547(c)(6)

and § 545. Since otherwise exemptable property is subject to non-avoidable statutory liens, the hospital was entitled to the full amount of the settlement proceeds.

304. The Charter Oak Fire Ins. Co. v. City of Fairhope, AP No. 18-57 (JCO) January 23, 2019

The court found that sufficient cause existed under 11 U.S.C. § 157(d) to recommend to the district court that the reference be permissively withdrawn. The case was a non-core proceeding seeking judicial determination of issues that did not arise under the Bankruptcy Code but under Alabama law regarding insurance policy coverage.

303. In re Palmore, Case No. 17-2067 (HAC) January 22, 2019

The court denied the debtors' motion to reopen their chapter 13 case pursuant to 11 U.S.C. § 350. The decision to reopen a bankruptcy case is left to the discretion of the bankruptcy court on a case by case basis looking at the particular circumstances and equities of that specific case. The court should generally consider the benefit to creditors, the benefit to the debtor, the prejudice to the affected party, and other equitable factors. It may also consider the availability of an alternative forum for relief and the length of time between the closing of a case and the motion to reopen. The debtors sought to reopen their dismissed chapter 13 in order to contest the bank's allegedly fraudulent proof of claim. However, the debtors had not opposed relief from stay, the property had already been foreclosed upon, and the debtors had a pending state court action for wrongful foreclosure. The mortgage arrearage was also too great for the debtors to cure in a chapter 13 plan even if they were successful in setting aside the foreclosure. The court found that the circumstances and equities presented did not warrant reopening the case.

302. In re Chinnis, Case No. 18-3667 (HAC) January 18, 2019

Pursuant to Alabama Code § 10A-5A-5.03, obtaining a charging order is the exclusive method for a judgment creditor to obtain a lien on a debtor's interest in a limited liability company. The charging order must be obtained from a court, *i.e.*, through the judicial process. A charging order encumbers the LLC membership interest and is granted to a judgment creditor which was previously free to attach any property of the debtor's but did not have an interest in the LLC membership interest prior to the judicial action. Thus, the court found that a charging order obtained under Alabama law is a judicial lien that may be avoided under § 522(f)(1).

301. Recanti v. Roberts, 2018 WL 6728412 (Bankr. N.D. Fla. Dec. 20, 2018) (JCO)

The debtor contracted to purchase a restaurant from the plaintiffs and to assume and pay off the restaurant's debts. After the debtor was unable to timely obtain funding to comply with the purchase agreement, the plaintiffs obtained a state court judgment against the debtor for breach of contract. The court found that the judgment debt was dischargeable because the debtor's breach of contract did not constitute § 523(a)(2) fraud or § 523(a)(6) willful and malicious injury toward the plaintiffs. No fiduciary relationship under § 523(a)(4) existed between the debtor and the plaintiffs, but to the extent it did, the debtor did not breach it.

300. In re Perry, Case No. 18-773 (HAC) Dec. 18, 2018

Only a creditor, not a debtor, may withdraw a proof of claim under Rule 3006, even if the debtor filed the claim under Rule 3004.

299. Zimlich v. LaForce, 2018 WL 5733716 (Bankr. S.D. Ala. Oct. 31, 2018) (JCO)

The court denied the debtor a discharge for his knowing and fraudulent failure to report estate assets in his schedules and statement of financial affairs, failure to deliver or surrender estate property to the chapter 7 trustee, and failure to comply with express orders of the court and the Bankruptcy Code. The Fifth Amendment cannot be invoked to avoid turning over tangible property of the estate.

298. In re Todd, 2018 WL 4786734 (Bankr. S.D. Ala. Oct. 1, 2018) (JCO)

Section 522(f) cannot be used to avoid non-judicial liens on real property. Under § 506(d) and Supreme Court precedent, there is no distinction between liens that are partially or wholly underwater. A debtor in a chapter 7 bankruptcy proceeding cannot avoid a junior mortgage lien under § 506(d) when the debt owed on a senior mortgage lien exceeds the current value of the collateral. Therefore, a consensual second mortgage cannot be stripped off and classified as a general unsecured claim in chapter 7.

297. In re Strickland, 2018 WL 4620643 (Bankr. S.D. Ala. Sept. 24, 2018) (JCO)

Pursuant to Alabama Code § 32-8-64, a lien release by mistake is not an effective lien release. Instead, three steps, plus a prerequisite, must be completed to effectively release a lien on a motor vehicle. The prerequisite of satisfaction of the security interest in the vehicle must occur prior to the next three steps of (1) release of certificate of title by lienholder; (2) delivery of certificate of title to the next lienholder or owner; and (3) delivery of certificate by the next lienholder/owner to the Department of Revenue.

296. In re Clark, Case No. 17-1183 (JCO) Aug. 6, 2018

Relying on *In re England*, 586 B.R. 795 (Bankr. M.D. Ala. 2018), the court disallowed the fees and expenses claimed by a creditor in its Rule 3002.1 notice because the mortgage document at issue did not unambiguously provide for the collection of attorney's fees in connection with a bankruptcy.

295. In re Breland, 2018 WL 3323881 (Bankr. S.D. Ala. July 5, 2018) (JCO)

A chapter 11 trustee, standing in the shoes of the debtor, has an affirmative duty to amend the schedules, list, and statement of affairs as necessary. A chapter 11 trustee also has an affirmative duty to investigate all information provided to him regarding preservation of the estate, regardless of its source. The court granted in part a creditor's motion to compel and ordered the trustee to investigate the undisclosed assets and/or claims the creditor had identified in a letter to the trustee and to submit status reports periodically thereafter to the court.

294. In re Domnick, Case No. 18-349 (HAC) July 2, 2018

The court adopted the holdings of *In re Evans*, 548 B.R. 449 (Bankr. N.D. Miss. 2016) and *In re Goodman*, 566 B.R. 80 (Bankr. N.D. Ala. 2017) and found that a riding lawn mower which could not tow any significant weight or handle a power takeoff or other attachments that would enable it to do anything other than cut grass should not be characterized as a "lawn tractor." A creditor's security interest in the riding mower could thus be avoided under Bankruptcy Code § 522(f). The court also found that a garden tiller, generator, and push mower qualified as "appliances" in which a security interest could be avoided under § 522(f).

293. In re Grayson, 2018 WL 10345323 (Bankr. S.D. Ala. June 18, 2018) (HAC), and In re Burroughs, Case No. 18-1387 (HAC) June 26, 2018

In each of these two cases, the debtor did not have liability insurance for a prepetition automobile accident and could not afford an attorney to defend the resulting suit. The court modified the automatic stay to allow a plaintiff's state court claim to proceed against the debtor only on the condition that the plaintiff's uninsured motorist carrier hire an attorney to represent and defend the debtor. Otherwise, the automatic stay would remain in place as to the debtor (but not the UM carrier) during the pendency of the bankruptcy case.

292. Kirkland v. Check N Go, 2018 WL 10345332 (Bankr. S.D. Ala. June 15, 2018) (HAC)

Rule 7004(b)(3) allows service within the U.S. by first class mail on a corporation, partnership, or unincorporated association, but the summons and complaint cannot simply be mailed to the business address; they must be sent to the attention of an officer, a manager or general agent, or to any other agent authorized to receive service of process. The same thing applies if the business entity is served by certified mail under Alabama law as incorporated by Rule 7004(a). The court denied the plaintiff's motion for default judgment and set aside the entry of default because the complaint and summons had been mailed to the business address, not to an officer or agent.

291. In re Bush, Case No. 17-31 (HAC) June 7, 2018

A Rule 3002.1 notice of mortgage fees, expenses, and charges is not subject to Rule 3001(f) and thus, unlike a proof of claim, is not entitled to presumption of validity. When a debtor files a motion to determine fees pursuant to Rule 3002.1(e), the creditor has the burden of substantiating the fees, expenses, and charges stated in the Rule 3002.1 notice.

290. Owens v. LaForce, 2018 WL 2143304, AP No. 17-00117 (JCO) May 9, 2018

Liberal allowance of amendment to pleading applies where third party, such as the chapter 7 trustee, is forced to plead her case based on secondhand information available only through discovery.

289. In re DeLucia, Case No. 17-02871 (HAC) May 8, 2018

Rule 3001 does not require the assignee of open-end or revolving consumer debt to file evidence of the transfer unless a proof of claim on the same debt has already been filed or unless the transfer is for security. If a creditor fails to comply with a Rule 3001(c)(3)(B) request, the remedy is sanctions, not disallowance of the claim.

288. In re Nolan, 2018 WL 10345331 (Bankr. S.D. Ala. Apr. 2, 2018) (HAC)

Relying on *In re Curtis*, 500 B.R. 122 (Bankr. N.D. Ala. 2013), the court applied the "functional approach" to determine whether a contract is executory and found that a contract for deed was a non-executory mortgage (a secured transaction), not a true lease (an executory contract). Therefore, the debtor could cure the arrearage through his chapter 13 plan over the life of the plan while maintaining regular payments while the case was pending, rather than having to promptly cure all arrearage amounts or lose the property.

287. In re Breland, Case No. 16-2272 (JCO), and In re Osprey Utah, LLC, Case No. 16-2270 (JCO) March 27, 2018

The court will allow retroactive approval of a professional's employment if the movant demonstrates that the professional would have been qualified for employment at the onset and throughout the period of time for which the services are to be compensated and that the movant's failure to obtain prior approval is excusable. This inquiry requires a movant to demonstrate both the professional person's suitability for appointment and the existence of excusable neglect sufficient to justify the failure to file a timely application.

286. In re Breland, 583 B.R. 787 (Bankr. S.D. Ala. 2018) (JCO)

Once the bankruptcy administrator has performed his initial § 1102 statutory duty in soliciting participation on the unsecured creditors' committee and the court has entered an order directing that no committee be formed, the bankruptcy administrator must seek court permission before he may re-solicit participation on the committee. The court has discretion under § 105 to deny permission to form an unsecured creditors' committee where a chapter 11 trustee has been appointed and there is insufficient evidence before the court to indicate that the trustee is inadequately representing creditors' rights.

285. In re Kudzu Marine, Inc., 2018 WL 1320182, Case No. 13-02935 (JCO) March 8, 2018

To prevent clear error, the court granted the chapter 7 trustee's Rule 9023 motion to alter or amend and vacated the court's previous order granting administrative expense on the basis that the services the claimant provided did not provide an actual, concrete, benefit to the estate.

284. In re Thompson, 2018 WL 1320171, Case No. 17-02877 (JCO) February 28, 2018

Discussing §§ 541(b)(7) and 1325(b)(2), the court held that a chapter 13 debtor can make post-petition voluntary contributions to a retirement plan to the extent the debtor can demonstrate that (1) the post-petition contributions are consistent with the debtor's prepetition behavior and (2) the debtor's chapter 13 plan was proposed in good faith.

283. In re Breland, Case No. 16-02272 (JCO) February 14, 2018

Although the *Justice Oaks* factors weighed in favor of approval, the court disapproved without prejudice the trustee's Rule 9019 application to approve compromise as falling below the lowest point of reasonableness due to lack of an independent unbiased appraisal of the subject property and the trustee's failure to market the property.

282. Andrews v. Graham Holding Co., et al, 2018 WL 10345330 (Bankr. S.D. Ala. Feb. 14, 2018) (HAC)

The bankruptcy court dismissed multiple claims, including those brought pursuant to Bankruptcy Code § 544, but allowed the plaintiff-trustee an opportunity to amend. While in the past a trustee may not have had to identify a "triggering creditor" for a § 544 claim, *Twombly/Iqbal* jurisprudence now makes it necessary to include specific allegations to support that element of the claim.

281. In re Beesley, 2018 WL 10345325 (Bankr. S.D. Ala. Jan. 8, 2018) (HAC)

The bankruptcy court abstained from deciding the issue of whether a divorce judgment entered into between the debtor and his ex-wife was a property settlement or DSO and granted limited relief from stay for the ex-wife to pursue that issue in state court. The court also found that the debtor's plan was not filed in good faith based on, among other factors, substantial prepetition transfers to his mother and the fact that his ex-wife was in essence his only creditor and he chose to file a chapter 13, seeking a discharge of non-DSO marital obligations under § 1328(a)(2), rather than chapter 7, which would not allow such a discharge under § 523(a)(15).

280. SE Property Holdings, LLC v. Gaddy, 2018 WL 10345329 (Bankr. S.D. Ala. Jan. 5, 2018) (HAC) (affirmed by district court in 2019, currently on appeal to the Eleventh Circuit)

Relying on its order in BancorpSouth Bank v. Shahid, AP No. 16-03009 (Bankr. N.D. Fla. Nov. 3, 2016), which was affirmed by the district court in 2017, the court granted the defendant-debtor's motion for judgment on the pleadings. A fraudulent transfer in itself does not create a new injury to an individual creditor by the debtor/transferor and thus cannot support a § 523(a)(2) or (6) claim.

279. In re Green, Case No. 17-01993 (HAC) December 28, 2017

Under § 707(b)(2)(A)(iii), an above-median chapter 13 debtor may deduct his full monthly mortgage payment in calculating his projected disposable income under § 1325(b). He

is not limited to the IRS Standard. However, debtor's retention of expensive collateral may impact the issue of whether the plan is proposed in good faith.

278. Beach Community Bank v. Fruitticher, AP No. 15-03015 (HAC), Bankr. N.D. Fla. Dec. 27, 2017

The court granted summary judgment in favor of the creditor bank denying the debtor a discharge pursuant to 11 U.S.C. § 727(a)(2)(A). Regardless of whether the funds the debtor transferred prepetition would have been exempt, they were property of the debtor, which is all that § 727 requires. The debtor admitted transferring funds to avoid garnishment of his bank account, which constituted "intent to hinder or delay" creditors under § 727(a)(2)(A). The debtor appealed the order to the district court, which reversed. In re Fruitticher, 2019 WL 1082355 (N.D. Fla. Mar. 7, 2019). The district court affirmed the bankruptcy court's interpretation of § 727 but found that there was a genuine issue of material fact regarding the debtor's intent within the relevant one-year period.

277. In re Echols, Case No. 17-00996 (HAC) December 12, 2017

Bankruptcy Rule 3001 does not require that exhibits to a proof of claim be admissible as evidence. When a proof of claim contains all the information required under Rule 3001, the proof of claim constitutes prima facie evidence of the validity and amount of the claim. The burden then shifts to the objecting party to come forward with evidence to overcome the claimant's prima facie case.

276. In re Moeini Corp., Case No. 17-04073 (HAC) December 6, 2017

When a contract has been terminated for cause pre-petition and the termination process is complete with no right to cure when the petition is filed, there is no executory contract to assume, even if the effective date of the termination is post-petition. If all that remains for the contract to terminate is the passage of time, the contract cannot be assumed.

275. In re Curry, Case No. 17-02792 (HAC) November 15, 2017

While the court does not interfere with the negotiation of a reaffirmation agreement, it can review any attorney's fees provision in the agreement for reasonableness. The court found that attorney's fee of $100 or 10% of the amount owed, which is smaller, is reasonable for the preparation of a reaffirmation agreement.

274. Dotson v. Watson, 2017 WL 5125661, AP No. 16-00023 (JCO) November 3, 2017

Loans obtained by debtor from family members were not obtained through false pretenses, a false representation, or actual fraud under § 523(a)(2)(A), and thus dischargeable. The court did not deny or revoke discharge under § 727 because debtor did not conceal property, namely a grocery store in the Philippines, with intent to hinder, delay or defraud, nor did he make a false oath as to such property.

273. In re Breland, 2017 WL 4857420, Case No. 16-02272 (JCO) October 25, 2017

The granting of a stay pending appeal is an exceptional response granted only upon the showing of four factors: (1) that the movant is likely to prevail on the merits on appeal; (2) that absent a stay the movant will suffer irreparable damage; (3) that the adverse party will suffer no substantial harm from the issuance of the stay; and (4) that the public interest will be served by issuing the stay. The movant had the burden of proof and failed to satisfactorily show evidence on all four factors, and, thus, the court denied the stay request.

272. Caterpillar Financial Services Corp. v. JRD Contracting & Land Clearing, Inc. et al., AP No. 17-86 (HAC) October 19, 2017

The court found that the factors in the case weighed heavily in favor of both remand and abstention. All claims in the case were purely state law claims which the state court was better equipped to handle. The suit also had numerous non-debtor parties, some or all of whom had no relationship with the bankruptcy proceedings.

271. In re Dailey, Case No. 16-01491 (HAC) October 18, 2017

Furniture company's contract with debtor was in essence a promissory note that met the criteria for a negotiable instrument under Alabama law. The furniture company's claim was thus subject to Alabama's six-year statute of limitations for negotiable instruments even though the contract purported to be under seal.

270. In re Arnold, Case No. 17-01667 (HAC) October 17, 2017

Bankruptcy Code § 506(a)(2) does not provide for adjustment of value of a manufactured home based upon desirability (or lack thereof) of the mobile home park in which the home is located. A certificate of title perfects a creditor's security interest in a manufactured home and any "accessions" to the manufactured home. However, a creditor must perfect its interest in any non-accession item by filing a UCC-1, which was not done in this case. The court thus did not include separate or removable items such as some appliances and a detachable carport in valuing the creditor's secured claim.

269. In re Burtanog, 2017 WL 4570701, Case No. 16-4163 (JCO) October 12, 2017

Excusable neglect is not grounds for leave to file an untimely proof of claim in a chapter 13 case. However, a late-filed claim is deemed allowed under Bankruptcy Code § 502(a) unless a party in interest objects.

268. Acceptance Loan Co. v. Christopher, 2017 WL 4119033, AP No. 16-71 (JCO) September 15, 2017

Debtor who accepted funds provided through an unsolicited extension of credit did not obtain the loan by fraud since he intended to repay the debt at the time and believed he had the ability to do so. The debt is thus dischargeable.

267. Wells Fargo Bank v. Riley, AP No. 16-00066 (HAC) September 7, 2017

A chapter 7 debtor is not entitled to a discharge from a debt as to which he waived discharge in a prior chapter 7. The waiver can be either of a particular debt or all debts. Thus, a court-approved partial waiver of dischargeability as to a debt in a prior case bars that debt's dischargeability as a matter of law in a subsequent case.

266. In re LaForce, 577 B.R. 908 (Bankr. S.D. Ala. Sept. 6, 2017) (JCO) September 6, 2017

Where non-debtor wife filed for divorce prior to debtor-husband filing for bankruptcy, the marital property was held by debtor-husband in constructive trust for non-debtor wife and does not enter the debtor's bankruptcy estate upon filing for relief. The post-BAPCPA priority scheme treats divorce judgment as DSO and it is therefore entitled to the most favorable treatment in determining what constitutes debtor's estate.

265. In re Sage, Case No. 17-02699 (HAC) August 29, 2017

Termination of a commercial lessee's right of possession does not in itself terminate the lease. Debtor lessee could thus cure default and assume lease.

264. In re Gunn, 2017 WL 3172750, Case No. 13-2271 (JCO) July 25, 2017

Cause did not exist to reopen case. Pursuant to Downing v. City of Russellville, 3 So. 2d 34 (Ala. 1941), superior title vested in the State of Alabama when property was sold for taxes. Debtors did not exercise right of redemption which prevented the property from entering the bankrupt's estate. Because the property was not property of the estate, LLC did not violate automatic stay in pursuing ejectment action in state court. Abstention from determining title defect was warranted where the issue could be resolved by interpretation and application of state law by state court in ejectment action.

263. In re Stallworth, Case No. 16-04277 (en banc) July 12, 2017

Chapter 13 trustee objected to plan of above-median income debtor paying less than disposable income into a 100% plan without a provision that the plan must remain at 100%. The requirements of Bankruptcy Code § 1325(b)(1) apply to plan modifications under Bankruptcy Code § 1329 as well as initial plan confirmation, and the debtor must either completely satisfy § 1325(b)(1)(A) or § 1325(b)(1)(B). The Bankruptcy Code does not allow a debtor to partially satisfy one of the prongs and then switch to the other without fully satisfying either prong. However, a debtor may be able to switch prongs by "buying back" all his disposable income from the outset of the case.

262. In re Soles, Case No. 17-02104 (HAC) July 11, 2017

Debtor's failure to have the automatic stay extended under Bankruptcy Code § 362(c)(3)(B) before the 30-day period expired resulted in the termination of the automatic stay with respect to the debtor, but not with respect to property of the bankruptcy estate. The court adopted Judge Sawyer's opinion in In re Roach, 555 B.R. 840 (Bankr. M.D. Ala. 2016).

261. CV Settlement Holdings v. Portside Realty, LLC, Case No. 15-00029 (JCO) July 7, 2017

Under Alabama law, the contract was insufficient to bind the debtor or to transfer title to real property. Without a binding contract involving the debtor, the defendant's claim was disallowed.

260. In re Hollins, Case No. 16-04201 (HAC) June 21, 2017

Fact that debtor did not receive anticipated tax refund was sufficient under Fed. R. Civ. P. 60(b) to reconsider prior order and waive filing fee.

259. In re Breland, 2017 WL 2683980, Case No. 16-02272 (JCO) June 21, 2017

Under Rule 9023, neither clear error nor manifest injustice existed to grant a new trial or to alter, amend, or vacate this court's order. Under Rule 9024, neither clerical error nor extraordinary circumstances were present to provide relief from the court's order.

258. In re Bush, Case No. 16-03122 (HAC) June 1, 2017

The court denied creditor's motion for relief from stay to pursue a Mississippi state court action against debtor when debtor had no insurance or practical ability to defend himself and creditor already had a large non-dischargeable criminal restitution order against the debtor.

257. In re Breland, 570 B.R. 643 (Bankr. S.D. Ala. 2017) (JCO)

Debtor's gross mismanagement of his affairs established cause sufficient upon which to appoint a chapter 11 trustee, and doing so was also in the interest of creditors under § 1104(a)(1)-(2).

256. In re Harper & Associates, Case No. 15-03160 (HAC) April 28, 2017

The court's interpretation of its own order is entitled to deference even if it was prepared by counsel.

255. In re Brown, Case No. 16-4023 (HAC) April 11, 2017

Nonpossessory, nonpurchase-money security interest in jewelry can be exempted under Bankruptcy Code § 522(f)(1)(B)(i) without regard to the $675 cap found under the "household goods" category.

254. Jackson v. Flagstar, 2017 WL 1102849, AP No. 15-143 (JCO) March 23, 2017

Despite containing a disclaimer, defendant's post-petition letter sent to plaintiff regarding his loan modification application violated the automatic stay due to its demand for payment and coercive effect upon plaintiff. Defendant failed to comply with RESPA noticing requirements as set out in § 1024.41 and engaged in dual tracking while plaintiff's loan modification application remained pending.

253. In re Holmes, Case No. 11-2959 (HAC) March 17, 2017

Worker's compensation lump sum settlements are exempt under Alabama Code § 25-5-86(2), but periodic worker's compensation payments are included in "current monthly income" under Bankruptcy Code § 101(10A).

252. Littleton v. Lanac Investments, LLC, 569 B.R. 192 (Bankr. S.D. Ala. 2017) (JCO)

Constructive fraud existed due to asset being sold for less than reasonably equivalent value, but defendant was nonetheless entitled to § 548(c) good faith defense despite relying on a faulty appraisal of value. The good faith defense thus entitled defendant to §§ 548(c) and 550(e) lien when the asset was sold at auction.

251. In re Miller, Case No. 16-02777 (en banc) February 14, 2017

Above-median chapter 13 debtor in 100% plan is not required to pay post-petition interest to unsecured creditors even though the debtor is paying less than all of his disposable income into the plan.

250. In re Long, 564 B.R. 750 (Bankr. S.D. Ala. 2017) (JCO)

Federal courts have concurrent jurisdiction with state courts over whether litigation is stayed pursuant to the automatic stay. Voluntary dismissal of a state court action against a debtor does not violate the automatic stay, and as such, retroactive annulment of the stay to provide full and final relief to the debtor was the appropriate kind of limited circumstance upon which the stay should be annulled. Accordingly, cause did not exist to vacate the court's order annulling the stay.

249. In re Yorkovitch, Case No. 16-02949 (HAC) November 16, 2016

The court denied the debtor's motion to avoid judicial lien under Bankruptcy Code § 522(f) because the judgment was never recorded and thus no lien was created under Alabama Code § 6-9-211.

248. BancorpSouth Bank v. Shahid, 2016 WL 11003505 (Bankr. N.D. Fla. Nov. 3, 2016) (HAC) (affirmed by district court in 2017)

Fraudulent transfer allegedly made by debtor after judgment on guaranty entered against him did not support claims for non-dischargeability under Bankruptcy Code §§ 523 (a)(2) or (6) when creditor did not have an interest in the transferred properties, and debt was "obtained" by promissory notes, not later alleged fraudulent transfers.

247. In re Ferrouillat, 558 B.R. 938 (Bankr. S.D. Ala. 2016) (JCO)

11 U.S.C. § 362 - Pursuant to Alabama Code § 40-10-82, the redemption period for chapter 13 debtor's real property, which had been sold at pre-petition tax sale, had not expired when debtor filed for bankruptcy due to debtor's continuous retained possession of the property. In its motion for relief from stay, creditor failed to meet its burden in establishing cause based on a lack of equity, and debtor sufficiently proved that creditor was adequately protected and the property was necessary for successful reorganization.

246. In re Harris, Case No. 16-03115 (HAC) October 24, 2016

State tax liens and hospital liens are not "judicial liens" which can be avoided under Bankruptcy Code § 522(f)(1).

245. Seaside Engineering v. Vison Park, AP No. 12-03007 (HAC), Bankr. N.D. Fla. October 6, 2016

The court granted summary judgment on shareholder oppression and derivative claims brought by shareholder of chapter 11 debtor based upon issue and judgment preclusion effects of confirmation order, lack of standing, and plaintiff's failure to make a director demand.

244. In re Pullam, Case No. 16-02377 (HAC) September 6, 2016

In establishing a chapter 13 debtor's eligibility for discharge when the debtor has previously received a discharge in a converted case, the chapter in which the first discharge was received – not the chapter under which the first case was filed – determines the applicable ineligibility period under § 1328(f).

243. In re Breland, 2016 WL 3193819, Case No. 09-11139 (JCO) May 27, 2016

Debtor was not entitled to attorneys' fees under § 7430 because the IRS was substantially justified in pursuing its position to preserve future tax court claim. Applying recent Eleventh Circuit precedent, estoppel principles do not apply to statutorily non-dischargeable tax debt under § 523, and the IRS may collect the entire non-dischargeable tax debt regardless of how any portion of it was treated in a bankruptcy plan.

242. In re Turner, Case No. 15-02941 (HAC) May 3, 2016

Under § 1326(b), DSO priority claims are not required to be paid before debtor's attorney's fees in chapter 13 cases.

241. Bailey v. Bailey, AP No. 15-00174 (HAC) May 2, 2016

Domestic relations court's award of fees directly to the ex-spouse's attorney rather than to the ex-spouse does not affect the applicability of §§ 523(a)(5) and (15); therefore, the attorney's fee award was non-dischargeable.

240. In re Canal Road Homes, LLC, Case No. 15-00712 (HAC) April 22, 2016

A secured creditor is entitled to credit bid the entire amount of its debt, including post-petition interest and fees, in a § 363 sale regardless of the collateral's value.

239. In re Dunnam, Case No. 15-03870 (HAC) April 8, 2016

The court sustained the chapter 13 trustee's objection to debtor's amended plan that paid a potentially non-dischargeable unsecured claim (or part of it) at 100% while other unsecured claims received less. The court found that while § 1322(b)(1) allows a debtor to designate a class or classes of unsecured creditors as long as the designation does not discriminate unfairly, the present debtor did not offer any reason why failing to pay the designated creditor 100%

would impair his performance under the chapter 13 plan. For the plan to be approved as proposed, the debtor would have to pay general unsecured creditors at least what they would have gotten if there were no special treatment for the designated creditor.

238. In re Deras, Case No. 14-00648 (JCO) March 31, 2016

Insurance company with state court judgment against debtor sought to enforce the judgment after debtor received his chapter 7 discharge. Applying § 727, the court declined to reopen the case under § 350(b) to add creditor to schedules because, in a "no-asset chapter 7," no deadline is ever set to file a claim, so no claim can be untimely under Rule 2002(e). Section 523(a)(3)(A) does not apply because a dischargeable debt is discharged even when a creditor has been left off the schedules.

237. 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.

236. In re Busby, Case No. 13-01762 (JCO) March 2, 2016

Applying § 727, the court found that discharged chapter 7 case did not need to be reopened under § 350(b) to add creditor to schedules that was trying to collect its debt. In a no-asset chapter 7, since no deadline is ever set to file a claim, no claim can be untimely under Rule 2002(e). Section 523(a)(3)(A) does not apply because a dischargeable debt is discharged even when a creditor has been left off the schedules.

235. In re LaForce, Case No. 14-02967 (JCO) February 26, 2016

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

234. 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).

233. In re Shearls, 2016 WL 697778, Case No. 12-01197 (JCO) February 19, 2016

Holder of promissory note that prosecuted the note to judgment in Mississippi enrolled the judgment in Alabama circuit court to be enforced against debtor after receiving a chapter 7 discharge. Applying § 727, debtor's case did not need to be reopened under § 350(b) to add creditor to schedules because, in a "no-asset chapter 7," no deadline is ever set to file a claim, so no claim can be untimely under Rule 2002(e). Section 523(a)(3)(A) does not apply because a dischargeable debt is discharged even when a creditor has been left off the schedules. Case was not reopened.

232. 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 post-petition 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.

231. In re Middleton, 544 B.R. 449 (Bankr. S.D. Ala. 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, § 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.

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

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.

229. In re Fordham, Case No. 13-04357 (HAC) October 22, 2015

Under Alabama law, a mortgage which secures a specific debt and does not contain a future advance provision cannot secure a later promissory note even if the note so provides.

228. 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 post-petition creditor, finding that the amendment was an attempt to force a post-petition creditor into the bankruptcy case in violation of § 1305(a), which is permissive in nature and allows the post-petition creditor to decide whether to participate in the debtor's plan.

227. 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 § 1322(b)(1).

226. In re Carter, Case No. 10-5030 (HAC) May 28, 2015

The court denied the debtor's motion to borrow related to a "cash advance" against the debtor's pending personal injury lawsuit because (1) personal tort claims are not assignable under Alabama law; (2) the loan sought to transfer property of the estate and the debtor and lender did not seek prior court permission; and (3) the loan terms were unreasonable and not in the debtor's best interest.

225. 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).

224. 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. The 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.

223. 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 post-judgment 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.

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

Debtor and defendants in an adversary proceeding seeking to avoid a fraudulent transfer under § 548 moved the court to dismiss the action for failing to file the action within the time limits of § 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.

221. In re McIntosh, Case No. 11-03417 (MAM) and In re Parker, Case No. 12-00718 (MAM), January 27, 2015

The chapter 13 debtors with confirmed plans were involved in post-petition 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 § 348(f)(1)(A) defines property of the estate under these circumstances, and the debtors' post-petition causes of action were not property of their chapter 7 estates. The court issued its original decision on November 25, 2014, doc. 93, and denied the chapter 13 trustee's motion to reconsider on January 27, 2015, docs. 106, 107.

220. 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 non-dischargeable under § 523(a)(4).

219. Oliver v. Quantum3 Group, AP No. 14-00075 (MAM) December 22, 2014

Debt on a credit card is a debt on an open account, which has a three year statute of limitations. Such debt may also be a debt for an account stated, which has a six year statute of limitation, but there were factual issues to be resolved before the court could determine this issue, and, thus, the court denied the defendant's motion to dismiss or in the alternative motion for summary judgment.

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. The 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 non-dischargeability 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. The court found that (1) plaintiffs stated a claim for violation of the automatic stay; and (2) defendant Seterus, as a servicer, could not be liable under TILA (§§ 1639(f) and 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 payment; (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; (4) the court had subject matter jurisdiction to hear FDCPA claim; FDCPA claim is noncore, but court had authority to hear claim and issue proposed findings of fact and conclusions of law; and (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. There were material issues of fact 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 the debtor's 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 that 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 the Bankruptcy Code and exercise strong-arm powers pursuant to Alabama law. After a lengthy trial, the 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 did not 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. Schuller v. Ocwen Loan Servicing, 2014 WL 722048 (S.D. Ala. 2014)

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.

210. 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.

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

A junior creditor which has subordinated its debt to that of a senior creditor cannot be paid from additional collateral it obtained from a third party until the senior creditor has been paid in full.

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

Debtors' means test showed a presumption of abuse, but the 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)

The 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. The court denied the motions because there was 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., 2013 WL 3546296 (Bankr. S.D. Ala. 2013)

Creditor B&D was a contract labor company that provided laborers to Bender. 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 pre-petition.

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. The 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." The 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). The debtor's release of its vendor's lien could not be a fraudulent conveyance for the same reason. The 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. The court found that mortgagee's release of penthouse unit could be transfer of the debtor since the debtor did not object to its release. The 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's fraudulent transfer claims.

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

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 pre-petition. The majority view and this court's view is that pre-petition expenses cannot be given administrative priority. Home Bancshares' actions in bidding did not benefit the estate. The creditors did not welcome the actions and were not benefitted by them.

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

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.

200. 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. The 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.

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

In chapter 13, landlord filed claim for post-petition rent arrearage and sought to have claim treated as an administrative expense and paid in full through the plan. The court found that post-petition rent arrears could be either a § 1305(a)(2) post-petition claim or a § 503(b) administrative expense, but not both. The court found that post-petition 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.

198. 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. The 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.

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

Debtors commenced putative class action to recover for injuries that they allegedly sustained as result of mortgage lender's using allegedly defective procedure for procuring affidavits in support of its motions for stay and other relief, including using affiants who had insufficient opportunity to verify the truth and accuracy of matters set forth in their affidavits. The court held that (1) it 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) the 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.

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

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. The 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 closest 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 Collins, 2012 WL 5906869 (Bankr. S.D. Ala. 2012)

Creditor that issued 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. The court held that the terms of the indemnity agreement under which the creditor sought to hold the debtor liable 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 creditor's summary judgment motion.

193. 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 listed SLMG as a secured creditor. However, prior to the bankruptcy the debtor had not 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.

192. 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. The 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.

191. Bender Shipbuilding and Repair Co. 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 existed 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.

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

Trustee objected to bank's claim as being unsecured. The 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. The 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.

189. In re Bender Shipbuilding & Repair Co., 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. The 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.

188. In re Bender Shipbuilding & Repair Co., 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 new value, ordinary course of business, and critical vendor defenses. The court found that ACT did contribute new value after receiving payment and therefore granted partial summary judgment. The court found that ordinary course was a highly fact specific defense and that there was evidence both for and against the defense, and, thus, denied summary judgment on the ground. The court also found the evidence in support of ACT's critical vendor theory "woefully short" because, among other things, the debtor had never filed a critical vendor motion with the court, and denied summary judgment on that ground as well.

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

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. The court held that there was a 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. However, the court also held that payments, 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 and were not made "made in the ordinary course of business of the debtor and the transferee." Accordingly, the court granted in part and denied in part the debtor's motion and denied the creditor's motion.

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

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 § 524 and awarded the debtor $3,000 in compensatory damages.

185. 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 claim was 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. Because the court found related to jurisdiction, it did not decide whether the district court could refer the

supplemental claim to the bankruptcy court. However, the court could not enter a final order on the constructive trust claim since it was not core.

184. 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. The court denied cross-motions for summary judgment, finding that there was room for interpretation in the contract the parties had entered into and that there were genuine issues of material fact with respect to the parties' intent in contracting.

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

IRS moved for leave to file amended proof of claim for additional pre-petition 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 court 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 IRS was bound by terms of this order.

182. 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 attorney's 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 filed a motion for contempt and sanctions for violation of the reaffirmation agreement. The court found that while the creditor had overcharged on the attorney's 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.

181. 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. The debtor applied to LBPS for a loan modification and was apparently denied. The debtor filed chapter 13 to prevent foreclosure and instituted an adversary proceeding against Chase. The court granted Chase's motion to dismiss the debtor's claims for wrongful disclosure and defamation because Chase was not involved in the foreclosure. The court also found that the debtor's "negligence and wantonness" torts claims arose from duties created by the mortgage agreement and were not proper tort claims, and, further, that Chase as mortgagee did not owe debtor any general

fiduciary duties. However, the court held that the debtor did state claim against Chase for breach of the mortgage agreement.

180. 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 its 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. The court found that appropriate remedy for wantonness would be sanctions not damages, and therefore dismissed damages claim. The court also found that actions authorized by the Bankruptcy Code could not constitute violations of the FDCPA and dismissed the FDCPA claim.

179. 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 objected to the appointment. The 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 had withdrawn from representing several of the debtor's creditors in other suits, and his prior representation of the debtor and general familiarity with the case made his appointment most efficient.

178. USA v. Sears, 2012 WL 1865443 (Bankr. S.D. Ala. 2012)

Debtor made false representations in its application to be a bond surety. The court adopted and applied the "narrow view" of the term "financial condition" under § 523(a)(2)(A) and 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. The 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.

*** But see In re Sears, 533 F. App'x 941 (11th Cir. 2013) (affirming in part and reversing in part bankruptcy court order).

177. 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.

176. 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.

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

The court found that two properties were not a SARE (single asset real estate) venture (§ 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.

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

The court granted chapter 7 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.

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

Summary judgment was not appropriate on creditor's § 523(a)(4) non-dischargeability action. The 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.

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

Debt was non-dischargeable 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 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.

*** But see In re Sears, 533 F. App'x 941 (11th Cir. 2013) (affirming in part and reversing in part bankruptcy court order).

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

The court denied confirmation of chapter 11 plan 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.

170. 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.

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

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 non-dischargeability complaint under § 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).

168. 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 § 523(a)(2) and (a)(4) for larceny to have state court judgment against the debtor for exploitation of their elderly father declared non-dischargeable. 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.

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. The plaintiff claimed that the misstatement amounted to a fraud on the court and moved for sanctions. The 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. The 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. The court denied the IRS's motion as being way too late. The 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.

*** But see USA v. Breland, 2012 WL 3542239 (S.D. Ala. 2012) (remanding to the bankruptcy court for further proceeding).

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

In chapter 7, creditor's judgment was declared non-dischargeable. After case closed, debtor filed a chapter 13 case to spread out payments on the non-discharged debt while keeping his business afloat. Creditor objected that debtor was not eligible to be a chapter 13 debtor. The court agreed that the debtor had too much unsecured debt for chapter 13 and dismissed, but found that the filing was not in bad faith. The court denied the creditor's request for a 1-year injunction on refiling, finding 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)

Debtor settled state court suit and immediately filed bankruptcy. The court found that the settlement was not non-dischargeable 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 non-dischargeable.

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

Following the Eleventh Circuit and departing from a literal reading of § 522(f)(2)(A), the 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, the 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)

The 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. The 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 pre-petition and lease terminated. However, the 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 court denied the debtor's turnover and sanctions motions, but found that the debtor's request for attorney's fees was warranted since creditor should have petitioned the court for possession of the vehicle.

*** But see In re McBride, 473 B.R. 813 (S.D. Ala. 2012) (overturning award of punitive damages).

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

The 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.

*** But see In re Vista Bella, 2013 WL 4051031 (Bankr. S.D. Ala. 2012)

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 non-dischargeable 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 refund check. Ex-wife learned of the refund and claimed ½ of it. The court found that ex-wife did not carry of burden of proving willful and malicious injury and that the debt was dischargeable.

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

Debtor defaulted on car leased pre-petition 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. The court awarded attorney's 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)

The court granted involuntary petition and entered order for relief. Parties did not dispute that debtor was not generally paying debts as they came due. The court denied motion to abstain because the potential for a large recovery on fraudulent transfer 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 non-dischargeable priority tax under § 507(a)(8)(A)(i) because the return was due within three years prior to the petition date. It was not non-dischargeable 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)

A chapter 11 plan was feasible because the debtor demonstrated that there were other parties interested in renting his properties if his current leases were terminated and that he had the ability to fund his plan for 3 months even if he had no renters. 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. Creditor was thus deemed to accept the plan and therefore the absolute priority rule did not apply to it.

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

The court denied summary judgment on the plaintiff's § 523(a)(2)(A) claim because that claim required testimony to evaluate defendant's subjective intent at time of settlement. The court granted summary judgment in favor of defendant on § 523(a)(4) claim because, as a mortgage broker, defendant did not stand in fiduciary relationship with plaintiff. The court struck 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, the court (1) struck affidavit of 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 a party; (3) struck patent application because it fell outside 28 U.S.C. § 1744 and was hearsay; and (4) struck documents that were not self-authenticating and were not properly authenticated.

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

The defendant's motion for summary judgment was premature without the benefit of discovery.

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

Successful litigant of an arbitration action involving claims of breach of contract, breach of fiduciary duty, misappropriation of trade secrets, unjust enrichment, interference 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 non-dischargeable under § 523(a)(4) and (a)(6). The court granted summary judgment in favor of the plaintiff based on the collateral estoppel effect of the arbitration award.

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

The 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.

147. 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 on res judicata grounds with respect to plaintiff's issues with his mortgage, stating that the appropriate time to challenge the mortgage and mortgage company's behavior was when the motion for relief from stay was filed. Instead, the plaintiff entered into a consent order resolving the motion for relief. However, the court denied the motion with respect to plaintiff's claim for fraud upon the court because res judicata did not bar that claim.

146. 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 non-dischargeable under § 523(a)(2) and (a)(3) for fraud and misrepresentation and as a creditor with no notice of actual knowledge of the debtor's bankruptcy case. The court granted summary judgment in favor of the subrogee.

145. 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. The court denied injunctive relief because the debtor did not demonstrate reasonable likelihood of success on the merits or irreparable harm to the estate. The court also stated that P&W's fraudulent transfer claim could not be property of the estate because Alabama law did not allow a corporation to pierce the corporate veil of its principal to recover assets for the corporation.

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

The court denied creditor's administrative expense claim for costs of prescriptions provided to worker's compensation claimants. The court found that the fact that the post-

confirmation debtor had paid some of the claims was not an admission by the debtor that the claim was an administrative expense. Rather, the expenses all arose from executory contracts that were not assumed in the confirmed plan and were from pre-petition injuries.

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

The court sustained the debtor's objection to claim, finding 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. The debtor was not a successor of, joint venturer with, or alter ego of the entity against whom claimant's claim arose.

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 and 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. The 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 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.

140. In re Nguyen, 2010 WL 2653275 (Bankr. S.D. Ala. 2010)

Chapter 13 plan was not filed in good faith since debtor moved his assets around in ways that put virtually all of his cash out of the reach of the judgment creditor. Although the 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. And, 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.

139. In re Glenn, 2010 WL 2203042 (Bankr. S.D. Ala. 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.

138. In re Sears, 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. 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.

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

The court denied creditor's motion for relief form stay to proceed with state court action and debtor's attorney sought attorney's fees for costs incurred in successfully defending relief from stay motion. Citing American rule, the court denied a fee award.

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. The court denied the motion because the facts were insufficient for a finding that debtor had breached the contract by failing to maintain insurance.

135. In re Bender Shipbuilding & Repair Co., 2009 WL 5386129 (Bankr. S.D. Ala. 2009)

On cross-motions to dismiss, the court found that 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, as owner of vessel, agreed with insurers that vessel was a total loss, but 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. The 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 McGraw, Case No. 04-11693 (MAM); In re Morris, Case No. 04-12209 (WSS) July 31, 2009

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. In a September 18, 2009 order, the court clarified that its ruling would be applied to all cases filed after July 31, 2009, but 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.

133. In re Cochran, 2009 WL 605298 (Bankr. S.D. Ala. 2009)

The court disallowed a homestead exemption for debtor who was not personally using or occupying residential property in any way. 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.

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

Property, not value, is exempt, 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.

131. Littleton v. Hinton, et al., 2009 WL 348858 (Bankr. S.D. Ala. 2009)

Trustee could not avoid checks issued post-petition by debtor's principal in his personal capacity to his aunt because checks were not property of the debtor. However, checks issued pre-petition by the debtor to the principal's aunt 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.

130. In re Broadus, 2009 WL 348859 (Bankr. S.D. Ala. 2009)

Chapter 13 debtor's unpaid interest on her federal tax debt survived a discharge order. Even though the 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. The court stated that in the future it 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 deem any interest intentionally waived.

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. The 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. The debtor only had a remainderman's interest which could not be distributed to him until his mother's death, and which interest was property of the estate. The debtor's attempt to mortgage the trust property as partial satisfaction of his own debt was void or invalid under Alabama trust law. Creditor-mortgagee had no constructive trust on the property but could claim an equitable lien 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)

Creditor whose security interest was reflected on certificates of title had priority over bank who was never listed as a lienholder on the certificates.

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

Applying Alabama's conflict of law principles, the court found that Louisiana law applied in adversary proceeding. The claims sounded in tort, not contract, law. Because the economic harm at issue was suffered in Louisiana, Louisiana law would apply based on the doctrine of *lex loci*.

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)

The court granted summary judgment in favor of trustee based on father's transfer of property with no monetary consideration because "love and affection" or emotional benefits do not constitute valuable consideration under Alabama's fraudulent transfer statute or applicable bankruptcy law.

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

The court recommended withdrawal of the reference to nine of eleven counts pled in adversary proceeding because (1) the defendant made a timely demand for a jury trial; (2) nine of the eleven counts sought 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's 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) (en banc)

Section 1322(b)(2), read in conjunction with § 101(13A), includes mortgages on some mobile homes on rented property, but does not include all mobile home mortgages.

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

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. Ala. 2007)

See In re Herrin above.

117. In re Daniels, 2007 WL 725774 (Bankr. S.D. Ala. 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, pre-petition 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 had 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. During discovery, the 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's 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 omitted approximately 3 hours of the time claimed and granted an award of fees and costs.

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

The court granted the trustee's motion to compel the debtor to execute a settlement agreement. The debtor had asked the court to approve a settlement of $29,000 for all claims against the defendant, which the court ultimately approved. The debtor, who was represented by experienced counsel at the hearing on the settlement, could not thereafter refuse to sign settlement documents.

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

The court held that GMAC was a secured creditor as to insurance proceeds from a totaled automobile and that GMAC should provide the trustee a copy of the subject insurance policy to allow the trustee to verify its actual secured status. The court allowed the trustee to surcharge under § 506(a) based on GMAC's demands on the trustee, but significantly reduced the amount requested.

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

The court dismissed criminal and tort claims, except claims brought under § 362(h) and 329, and stated, in the alternative, that it would abstain from hearing those claims.

111. 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 pre-petition action against the debtor for specific performance of a contract for the sale of a radio station. The court held that dismissal of the chapter 11 case was not warranted, but that cause existed under § 362(d)(1) to grant 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 pre-petition action.

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

Chapter 7 trustee failed to prove that the debtor was insolvent at the time of transfer and, thus, could not recover property under the Alabama Fraudulent Transfer Act.

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

County moved for instructions on payment of claims under debtor's confirmed chapter 13 plan. The court held that (1) debtor's chapter 13 plan did not have to provide for payment in full of county's seventh-level priority claim for past due child support before any disbursement could be made on taxing authority's eight-level priority claim; but (2) language in plan mandated payment in full of the county's claim before any disbursement could be made on taxing authority's claim. The language of the plan would thus control.

* The court noted that the motion for instructions was filed before the BAPCPA was enacted and, thus, the ruling in this case would only apply to cases filed before October 17, 2005.

108. In re Tipler, 360 B.R. 333 (Bankr. N.D. Fla. 2005)

The court denied discharge to chapter 7 debtor under § 727 for transferring or concealing property with the intent to hinder, delay, or defraud creditors; for failing to maintain and preserve adequate records; and for knowingly and fraudulently making a false oath or account.

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

Debtors' tax overpayment was not part of the bankruptcy estate until the Secretary of the Treasury released it to them as a refund and, thus, the IRS was entitled to offset debtors' unpaid dischargeable tax debt against their tax overpayment prior to remitting a refund.

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

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.

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

The court granted in part and denied in part summary judgment in favor of the IRS with respect to the debtor's complaint to determine the dischargeability of tax debt under § 523. 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.

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

In an adversary proceeding to determine the dischargeability of tax debt under § 523, 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)

Principals of corporate chapter 7 debtor moved for order directing the IRS to treat debtor's tax payments as payments on trust fund tax. The court held that in the absence of showing that such an allocation was necessary for successful reorganization or for some similar purpose, the court did not have authority, in exercise of its power to enter "necessary and appropriate" orders under § 105, to direct allocation of corporate chapter 7 debtor's tax payments.

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

Defendant is not entitled to jury trial where plaintiff is only seeking relief under § 105. The court also concluded that decisions that limit the waiver of a jury trial right to issues tied to the claims allowance process are correct.

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

The court held that (1) debtors who, despite substantial pre-petition expenditures, had disclosed annual income of only $13,000, and who also indicated that they "did not remember" receiving any income except as compensation through employment and that no records existed from which to ascertain their financial condition or business transactions in years leading up to their bankruptcy filing, would be denied discharge based on their failure to keep or preserve adequate financial records; and (2) debtors would also be denied discharge based on their failure to "satisfactorily" explain loss of assets.

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 § 1329 to increase payments to the unsecured creditors, due to evidence that the debtor had substantially underreported his income in his original bankruptcy schedules. The court also valued the debtor's medical practice under § 506(a), for purposes of the IRS' secured claim, not as of the date of the debtor's objection, but as of the date of the petition.

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

The chapter 7 trustee filed an application to employ special counsel under § 327(e) to represent the debtor in 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 found no evidence of such adverse interest and overruled the objection.

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 marital 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 § 522(b)(2).

96. Commonwealth Land Title Ins. Co. v. Poe, Case No. 01-01199 (WSS) 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. 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)

The trustee held approximately $13,000 after the dismissal of a chapter 13 debtor's case. The trustee was served with a notice levy under 26 U.S.C. § 6331 after the dismissal, and filed a motion for instructions to determine whether the funds should be paid pursuant to the levy or to 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 to 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's 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. However, 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 plan.

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

Chapter 13 debtors filed a class action against an automobile finance company based on the 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" claims over which the court could exercise core jurisdiction even for class members whose bankruptcy cases were pending in other districts. However, the court decertified the claims except for the class in the Southern District of Alabama, finding that the reasonableness of the flat fee had to be determined on a district by district basis. Ultimately, 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 reconsider on grounds that it did not

receive notice of the trustee's motion. The court found that the creditor had received notice, that the court clerk had no obligation to serve creditor's attorney with the trustee's motion where the attorney had not filed a notice of appearance, and, finally, that under Alabama law the creditor was not entitled to an equitable second lien on debtors' replacement vehicle.

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, pre-petition 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)

Appropriate starting point for valuing collateral in a chapter 7 redemption is liquidation/foreclosure value, not Rash "replacement value" standard for a chapter 13 cramdown situation.

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 for sending notices of levy and letters threatening seizure unless pre-petition 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 court also found that the debtors (1) could recover as damages any reasonable out of pocket expenses clearly resulting from IRS actions, but could not recover damages for general stress, sleeplessness, or marital discord; and (2) could not recover punitive damages or attorney's fees.

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. The court allowed the second secured creditor to seek relief from the confirmation order under Bankruptcy Rule 9024, which incorporates Rule 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. However, the court also held that the creditor could not, seven months after confirmation, belatedly seek to amend its claim to include projected post-petition interest.

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

The court granted an administrative expense priority claim to city for unpaid post-petition utilities and post-petition, pre-rejection rent under § 363(d)(3).

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 Alabama Code § 40-18-27(e) and 26 U.S.C. § 6015.

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

Florida's five-year limitations period applicable to foreign judgments applied to make pre-petition judgment 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. The court denied the IRS' motion on the ground that the IRS had adequate notice of debtor's first chapter 13 filing, and, thus, the IRS was bound by the terms of the debtor's plan. The court also denied the debtor's motion, finding that there was no stay violation or only a de minimus violation.

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

The inchoate interest of a spouse who is not a fee owner is not protected by Alabama's exemption law and no homestead exemption can be claimed.

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 at the time of filing, therefore, the estate's interest in the ring was $0 and the creditor's claim was unsecured.

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

The court granted the IRS's motion for summary judgment as to the non-dischargeability of certain tax debt under § 523(a)(1)(C) based on the collateral estoppel effect of the criminal convictions for conspiracy, mail fraud, wire fraud, and tax evasion.

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

The chapter 13 debtor 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. 2001)

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)

Second chapter 13 petition by debtor who had voluntarily dismissed her first case when unable to keep up with her plan payment in attempt to take advantage of depreciation in value of automobile that secured her only secured creditor's claim and of reduction in plan payments that this would allow was not filed in "bad faith". However, plan was not feasible and could not be confirmed.

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

Claims raised by class representative were not beyond the scope of class certification. Accordingly, the court denied a creditor's objection to trial on those claims.

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

A class action defendant waived its right to arbitrate by actively participating in an adversary proceeding and failing to indicate an intent to arbitrate until over two years after the adversary proceeding was filed and within four months of trial.

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

Debtors brought adversary proceeding to recover for creditor's alleged failure to satisfactorily disclose post-petition, pre-confirmation attorney's fees which were included in its proof of claim. The court defined debtor class broadly to consist of all debtors who had filed chapter 13 petitions after particular date, and in whose cases creditor, without filing specific fee application, had collected or posted such fees to debtors' accounts while filing proofs of claim which did not disclose these fees at all, did not disclose them with sufficient specificity, or did not include fees in arrearage claims.

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 Hospital 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 Rule 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. However, the court set aside the orders for "any other reason justifying relief"; the orders were interim, not final, orders, creditor knew the only were only interim orders and not final distributions, and creditor did not give proper notice to the government, which also had filed a proof of claim against the estate.

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's fees to proofs of claim. The defendants objected, but the court held that (1) the motion to intervene was timely filed and would be granted, even though case had been pending for over two years at time of motion; and (2) fact that movant was not debtor in any bankruptcy case pending in judicial district where class action had been commenced, though unusual, did not preclude grant of motion to intervene.

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 funds garnished within 90 days of the bankruptcy filing pursuant § 542. The court denied the motion, except that the garnishment was released from and after the filing of the bankruptcy case. The court held that standing order of local Alabama court that all garnishment funds received by clerk of court were automatically condemned upon receipt was not void. Because the garnished funds were immediately condemned, debtor no longer had interest therein as of commencement of case and, thus, funds were not estate property subject to turnover request. However, the court noted that the debtor may have a right to seek a recovery of some of the funds as voidable transfers.

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

Alabama Code § 6-10-6 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 (other jewelry and a mink coat) were solely designed to enhance prestige or status of the debtor and were not exempt. The court also found that the debtor's alimony judgment was not exempt as wages, salary, or other compensation under Alabama Code § 6-10-7, 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 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 Alabama law because debtor-wife owned the homestead in fee simple, having inherited the property from her grandmother before her marriage. The court found that the debtor-husband's 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's 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)

The court denied defendant-creditor's motion to dismiss class action complaint. The court held that the debtor's complaint provided creditor with sufficient notice of the debtor's claims and did not improperly lump numerous counts or numerous defendants together.

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

The court certified a broad nationwide class consisting of all debtors who had filed chapter 13 petitions after specific date, and in whose cases creditor, without filing fee application, had asserted lump sum claim for attorney's fees, without satisfactorily disclosing that portion of these 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's fee which was included in the proof of claim. In denying the defendant's motion for summary judgment, the court held that (1) controversy was not rendered moot by bankruptcy court order conditionally denying motion for relief from stay, so as to prevent collection of such fees; (2) genuine issue of material fact existed as to whether creditor violated stay when it posted fees to debtor's account; and (3) creditor's sale of its servicing portfolio to another entity did not moot debtor's claim against it.

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

Chapter 13 debtor filed adversary proceeding regarding creditor's undisclosed attorney's 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. The court also overruled the objection to the proposed representative, finding that he met the requirements of Rule 7023(a)(4).

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

The court refused to re-impose stay after creditor failed to comply with court's conditional denial order. In a motion to re-impose, "[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 would certify broad plaintiff class consisting of all debtors who had filed chapter 13 petitions after specific date, and in whose cases creditor, without filing specific fee application which was approved by bankruptcy court, had sought to recover post-petition, pre-confirmation fees by including such fees, with no or insufficient disclosure, in proofs of claim filed against debtors' estates; any narrowing of class would have to await a trial on the merits.

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

The court certified a broad class and divided the class into two sub classes. The trial would determine who would 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's fees moved to compel the production of the class representative's counsel fee agreements. The court granted the motion, finding that the fee agreements were not privileged or work product and were relevant to the proceeding under Fed. R. Civ. P. 26(b)(1).

55. In re Powe, 281 B.R. 336 (Bankr. S.D. Ala. 2001)

Creditor-defendant in class action involving lack of adequate disclosure of attorney's fees in proofs of claim filed a motion for summary judgment on grounds that its disclosure of fees was adequate under § 506(b), and that inclusion of the fees in the proofs of claim did not violate the automatic stay. The court held that genuine issues of material fact existed as to whether the debtors and other interested parties had adequate notice of the fees, but that the creditor-defendant was entitled to summary judgment on the issue of violation of the automatic stay. The court then certified a nationwide class of debtors.

*** But see In re Powe, 280 B.R. 867 (Bankr. S.D. Ala. 2001) (amending order).

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

Hypothetical costs of sale should not be taken into account in determining the debtor's equity in her homestead under § 522(f).

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

Under Alabama law, judgment which mortgagee obtained in suit on mortgage note did not extinguish its lien; however, while judgment did not extinguish mortgagee's lien, the judgment judicially determined the amount thereof. A debtor's confirmed chapter 13 plan, which proposed to treat mortgagee as unsecured creditor was res judicata on treatment of mortgagee's claim, but did not affect mortgagee's lien, which could be enforced by mortgagee post-discharge.

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)

The court did not have authority to reduce the 90-day injunction period from refiling nunc pro tunc.

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 pursuant to the FDCPA based on the creditor's attempt to collect on a discharged student loan debt. The court found in favor of the debtor 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 post-petition 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 § 365(d)(10). The court allowed an administrative expense claim for reasonable attorney's fees and expenses required by the lease terms but denied super-priority 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 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)

The court denied a motion to reconsider its denial of creditor's motion for summary judgment in class action regarding creditor's alleged failure to adequately disclose post-petition, pre-confirmation attorney's fees. The court held that (1) debtor's claims were not moot; (2)

debtor's failure to object, prior to confirmation of plan that provided for payment in full of creditor's arrearage claim, to creditor's inclusion in this claim of post-petition, pre-confirmation attorney's fees that were allegedly unreasonable and/or inadequately disclosed did not bar debtor from later seeking reconsideration of creditor's claim; and (3) genuine issues of material fact existed regarding adequacy of creditor's disclosure.

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

The court vacated class certification order until the standing and adequacy of a proposed intervenor could be determined. The court denied the creditor-defendant's motion to dismiss the case, however, 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)

Following the court's grant of summary judgment dismissing each of two separate adversary proceedings, chapter 13 debtors filed motion to alter, amend, or vacate judgment and to amend findings of fact, asserting that their cases should not be dismissed due to the claim objections incorporated in their lawsuits or, alternatively, that other plaintiffs should be allowed to intervene to preserve the class action suits. The court granted the debtors' motion in part and held that: (1) the proceedings should not be dismissed without a final determination as to the propriety of the fee in each case; (2) debtors' claims concerning the reasonableness and propriety of the fees charged were not the type of claims for which class action relief was available; and (3) although debtors had no class claims, the class action cases might still be live cases if a proper class representative plaintiff was available to intervene.

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)

Creditor was not in contempt for repossessing automobile in the interim between dismissal and reinstatement of debtor's bankruptcy case. An order dismissing a case is not stayed pursuant to Fed. R. Bankr. P. 7062, and the repossession occurred prior to the reinstatement.

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 from discharge a credit card debt as a marital debt not in the nature of support. 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 Company, Inc., 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 § 157(b) and should be allowed to proceed in state court. In addition, the court found that the Barton 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, but 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 § 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 court denied the creditor's motion to dismiss the adversary proceeding.

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 on their alleged bad faith in proposing the plan. The court held the IRS failed to prove bad faith, but that 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 debtors moved to enforce the automatic stay against creditor for which provision was made in their confirmed plan. The court held that creditor, which had received notice of plan and had not objected thereto, was bound by terms of plan, which had effect of modifying whatever claim it otherwise would have had, regardless of whether plan complied with cramdown requirements or whether creditor may have had a valid objection to the plan.

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

Wages garnished within 90 days of the petition date, but on which no valid judgment of condemnation had been entered prior to petition date, were property of the estate and could be claimed as exempt.

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

Under Alabama law, the law firm with a lien for unpaid attorney's fees in military retirement proceeds was not obligated 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.

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

The court remanded state court action based on state law nature of the claims, and, alternatively, permissively abstained from hearing the claims.

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

On motions to dismiss involuntary petition filed against individual officer in debtor-corporation and to dismiss of abstain from hearing debtor-corporation's case, the court held that (1) creditors that joined in filing involuntary petition against individual failed to establish that they held claims which were not contingent as to liability and were not subject to any bona fide dispute; and (2) proceeds of errors and omissions policy that insured corporate debtor were included in property of its estate, so that corporation's bankruptcy case did not have to be dismissed for lack of assets to administer.

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

The court certified a nationwide class on issue of whether creditor failed to disclose post-petition, pre-confirmation attorney's fees included in proof of claim, but declined to certify such a class on the issue of the reasonableness of the fees.

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 post-petition, pre-confirmation attorney's fees included in a proof of claim. The debtor sought to certify a nationwide debtor class under Bankruptcy Rule 7023 and Fed. R. Civ. P. 23. The court found that the mootness of the named representatives' claim did not prevent the class from being certified. It then certified a nationwide class on issue of whether creditor failed to disclose post-petition, pre-confirmation attorney's fees included in proof of claim, but declined to certify such a class on the issue of the reasonableness of the fees.

But see In re Noletto, 280 B.R. 868 (Bankr. S.D. Ala. 2001) (granting reconsideration in part).

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 and of the discharge injunction, as well as civil violations of RICO. 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 based on arbitration clause in applicable contract. 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)

Creditor moved for adequate protection and to compel proper posting of its claim, and the debtor objected to the claim based on res judicata effect of debtor's confirmed chapter 13 plan. 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.

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. 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 a bankruptcy case, i.e., the district court where 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.

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

In a follow up ruling to Spivey (below at No. 22), the court held that the chapter 13 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)

22. 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 by § 1322(a)(2) unless the creditor consents to different treatment. (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 reopened the case, and set aside the discharge order under Bankruptcy Rule 9024, incorporating Fed. 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 non-dischargeable. (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 post-petition 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 over 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 trustee, 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 the automobile, post-conversion, for $0.00.

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

Automobile creditor obtained a judgment on the note pre-petition, 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.

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 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. 1997)

Chapter 11 debtors asked the court to determine the amount of their tax liabilities pursuant to § 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 debtor 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.

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 by levying on their bank account post-petition. 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 for the stay violation.

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 under 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, 194 B.R. 663 (Bankr. S.D. Ala. 1996)

Creditor filed separate involuntary petitions against an alleged individual debtor and an alleged debtor-corporation for whom the individual debtor had served as an officer, director, and employee. Both debtors opposed the petitions on grounds that they had more than twelve creditors at the time that the petition was filed, that they 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 § 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 debt to the petitioning creditor was not subject to a bona fide dispute; that the post-petition payment of the petitioning creditor's debt did not disqualify the creditor; and that 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.

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 that there was no reasonable possibility of plan confirmation.

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

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 Fed. R. Civ. P. 59, and Bankruptcy Rule 9024, which incorporates Fed. 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. 1995)

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 granted the motion, holding 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 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 violations of the automatic stay and discharge injunction. They also requested attorney's 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's fees under § 7430 because the IRS's position during the litigation was not substantially unjustified, even though the IRS's pre-litigation conduct was "outrageous" and substantially unjustified.

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

Absent any evidence of fraud, the inference drawn from a debtor's invocation of the Fifth Amendment does 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 of 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's fees or interest could be added because the value was less than the debt, and that 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.

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 granted the motion as to 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 through a cash payment of the full amount of the mortgaged debt under the statutory right of redemption. The court further held that once properly foreclosed under Alabama law, the mortgage was not subject to reinstatement and cure under a chapter 13 plan.

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

Chapter 7 trustee objected to the debtor's claimed 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 or New York law, was not excludable.