

Hon. Lewis M. Killian, Jr.
United States Bankruptcy Judge, Northern District of Florida
Compendium of Reported Cases January 1, 1995 - April 1, 2002

| Section | Case | Cite | Comment |
|---------|----------------------------------|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 101(31) | Freund v. Heath (In re McIver) | 177 B.R. 366 (1995) | Debtor's live-in girlfriend was an insider despite per se Code definition. |
| 101(36) | In re Willets | 262 B.R. 552 (2001) | Judgment in the nature of a personal mandate requiring action by debtor was not a judgment lien subject to lien avoidance provisions of the Code. An avoidable judgment lien is a judgment that gives rise to a charge against or an interest in property, to secure payment of debt or performance of obligation, if breach of performance would give rise to a right to payment. |
| 101(36) | In re Lawrence | 2001 WL 846484 (2001) | Tax liens are statutory, not judicial, and are not subject to the lien avoidance mechanism of 522(f)(1)(A). |
| 105(a) | In re Driggers | 204 B.R. 70 (1996) | Civil contempt sanction imposed due to willful violation of automatic stay |
| 105(a) | In re Covington Properties, Inc. | 255 B.R. 77 (2000) | BR Court has jurisdiction to enter injunction barring contribution and indemnity claims by non-debtors against settling parties but will only do so if such injunction would be fair and equitable. |
| 222.21 | In re Cason | 211 B.R. 72 (1997) | Florida exemption for alternate payee's interest under QDRO limited to plans qualified under ERISA. |
| 329(a) | In re Central Fla. Metal Fabr. | 207 B.R. 742 (1997) | Court may reduce or deny atty fees when DIP counsel fails to disclose fee arrangements, regardless of whether actual harm accrues to estate. |
| 330(a) | In re Central Fla. Metal Fabr. | 207 B.R. 742 (1997) | Reasonable professionals' fees awarded for actual necessary services that benefit the estate. |

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| 330(a) | In re Moon | 258 B.R. 828 (2001) | Chapter 7 Trustee fee award is not guaranteed, and is calculated by measuring services rendered to the estate filtered through the <i>Johnson</i> factors. Emphasis is given to the contingent nature of the fee. In situations where there is a substantial distribution disproportionate to the work performed, Trustee should not expect to receive the maximum fee award. |
| 330(a) | In re Wilson Sea-Fresh | 263 B.R. 624 (2001) | Interim fee awards to professionals are tentative. If estate becomes administratively insolvent, there may be a redistribution of fees paid, so that unpaid creditors of the same class share on a pro rata basis. |
| 345(a),(b) | In re Moon | 258 B.R. 828 (2001) | Trustees have mandatory obligation to strive to maximize return on estate assets while adhering to investment safety guidelines per statute. |
| 349(b) | In re Davison | 186 B.R. 741(1995) | Dismissal of underlying bankruptcy case forces dismissal of adversary proceedings such as preference actions and reverts such transferred property accordingly. |
| 350(b) | In re Winburn | 196 B.R. 894 (1996) | Party moving to reopen BR case has burden to show sufficient cause to reopen. Party who objects to reopening case by asserting defense of laches must demonstrate lack of diligence in party moving to reopen, and must show that prejudice will result from reopening. |
| 350(b) | In re Bearden | 204 B.R. 73 (1996) | Debtor does not have absolute right to reopen closed BR case to avoid lien on homestead property, where Florida state law remedy was still available and should have been exhausted first. |
| 361(1) | In re Cook | 205 B.R. 437 (1997) | BR Court may require debtor to make pre-confirmation periodic payments to undersecured creditor to provide adequate protection against depreciation of collateral retained and used by debtor. Debtor may deduct such payments to secured creditor from total payments to be made to Trustee. |

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| 362 | Venn v Bazzel (In re Lambert) | 273 B.R. 663 (2002) | Violations of the automatic stay are void <i>ab initio</i> . Post petition issuance of tax deed was not merely a ministerial action but was a violation of the automatic stay. |
| 362(a) | In re Driggers | 204 B.R. 70 (1996) | Civil contempt sanction imposed due to willful violation of automatic stay |
| 362(a) | In re Rogers | 251 B.R. 626 (2000) | Automatic stay not applicable to offensive actions by debtor or trustee; defendant in such action does not violate stay merely by defending offensive action by debtor. |
| 362(b)(9) | In re Innovation Instruments | 228 B.R. 313 (1998) | IRS did not violate stay by postpetition assessment of interest and penalties; objection to claim overruled. |
| 362(h) | In re Brooks | 207 B.R. 738 (1997) | Creditor willfully violated the automatic stay by not returning repossessed vehicle to debtor's possession. |
| 362(h) | Cooper v. Litton Loan Servicing (in re Cooper) | 253 B.R. 286 (2000) | No violation of automatic stay for mere motion to lift stay. No cause of action for violation of automatic stay where debtor's only allegation was that creditor's listed claim exceeded actual debt. Attorney defending law firm accused of stay violation in its collection activities was not a collector itself under the FDCPA 15 U.S.C. 1692 et seq. |
| 362(h) | Davis v Gatorwheel (In re Davis) | 265 B.R. 453 (2001) | Failure to return car to debtor for 29 days after notice of stay was a willful violation of the automatic stay subjecting creditor to damages for lost wages, transportation costs, attorney fees and punitive damages. |
| 363(e) | In re Cook | 205 B.R. 437 (1997) | Adequate protection for depreciating assets such as automobiles is calculated based on the average rate of decline of the N.A.D.A. value of the average of the retail and wholesale values of comparable vehicles over the three month period immediately preceding the date of the creditor's request for adequate protection. |

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| 365(a) | In re Central Metal Fabricating | 190 B.R. 119 (1995) | Post-petition breach of unassumed executory contract does not create administrative expense priority under 503(b) but is governed by 502(g). Debtor could not impliedly or expressly assume executory contract without court approval. |
| 365(g) | In re Printronics | 189 B.R. 995 | Debtor-franchisee's rejection of franchise agreement did not terminate its obligations under the agreement; non-compete covenant was not a claim subject to discharge. |
| 502(b) | In re Phillip Watts Enterprises | 186 B.R. 735 (1995) | Party objecting to b/r claim bears burden of proof to rebut presumption of validity and amount of properly filed claim. |
| 502(g) 503(b) | In re Central Metal Fabricating | 190 B.R. 119 (1995) | When an executory contract is breached, rejection is presumed and the claim is not an administrative expense, but merely an unsecured prepetition claim. |
| 503(b)(1)(A) | In re Moltech Power Systems | 273 B.R. 268 (2002) | To pay debt as an administrative expense requires that the debt both (1) arise from a transaction with the debtor-in-possession, and (2) be beneficial to the DIP in the operation of its business. Where prepetition contract yielded prepetition benefits that were accounted for postpetition, no administrative expense priority arose, as agreement was with prepetition entity and did not create postpetition benefit to DIP. |
| 505 | In re Liuzzo | 204 B.R. 235 (1996) | Movant bears burden to rebut state tax assessor's presumptive correctness as to valuation. |
| 506(a) | In re Mobley | 201 B.R. 851 (1996) | Creditor cannot bifurcate claim into secured and unsecured portions. |
| 506(a) | In re Franklin | 213 B.R. 781 (1997) | Ch 13 cramdown value of SUV set at average of retail and wholesale N.A.D.A. with adjustments for mileage and necessary repairs. |

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| 506(b) | In re Liuzzo | 204 B.R. 235 (1996) | Nonconsensual oversecured tax creditors should receive post-petition interest at rate derived from the statute that gives rise to the lien, unless statutory interest rate is a penalty, or unless application of the statutory rate would lead in an inequitable or unconscionable result. |
| 506(b) | In re Smith | 230 B.R. 437 (1999) | \$800.00 flat fee claimed by oversecured creditor's attorney unreasonable. \$150.00/hr attorney fee and \$50.00/hr paralegal fee is reasonable. |
| 507(b) | In re Wilson Sea-Fresh | 263 B.R. 624 (2001) | Superpriority creditor (due to failure of adequate protection) partially satisfied through disgorgement of professional fees. |
| 522 | In re Beebe | 224 B.R. 817 (1998) | Debtors' intention to sell homestead and invest proceeds in new homestead as soon as they could sell former homestead protected homestead exemption, even after debtors left original homestead without intention to return. |
| 522(b)(2)(b) | In re Koesling | 210 B.R. 487 (1997) | Married couple, husband as sole debtor: TBE property is exempt to the extent that there are no joint creditors. |
| 522(d)(10)(e) | In re Ladd | 258 B.R. 824 (2001) | Traceable 401(k) proceeds from qualified plan retained exempt status. Taxable status of 401(k) proceeds irrelevant as to bankruptcy exemption. |
| 522(f)(1)(A) | In re Willets | 262 B.R. 552 (2001) | Debtor cannot effectuate an increase in property rights through the lien avoidance mechanism. Debtor cannot lift a restrictive covenant through lien avoidance under 522(f). |
| 522(f)(1)(A) | In re Lawrence | 2001 WL 933431 (2001) | Sanctions imposed by Court of Appeals not subject to lien avoidance mechanism of 522(f)(1)(A) as sanction had not been converted into a lien for collection. |

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| 523(a) | Spires v. Gregg (In re Gregg) | 268 B.R. 295 (2001) | Dischargeability determination is within the exclusive jurisdiction of the bankruptcy court. Prior consent judgment entered in breach of contract and fraud suit could not be given collateral estoppel effect upon question of nondischargeability of judgment debt where prior judgment did not indicate any basis for decision or whether judgment was based on fraud or contract claims. |
| 523(a)(2)(A) | First Deposit Nat'l Bank v. Mack (In re Mack) | 216 B.R. 981 (1997) | Standard for excepting credit card debt from discharge for implied false representation is "actual fraud" upon which credit card issuer justifiably relied. Showing of actual fraud requires proof of debtor's intent. Justifiable reliance is shown by creditor's diligence in determining credit worthiness of debtor. |
| 523(a)(5) | Drewell v Smith (In re Smith) | 273 B.R. 669 (2002) | Chapter 7 debtor's obligation to ex-wife's attorney for a portion of legal fees that wife incurred in obtaining judgment of dissolution was nondischargeable as being in the nature of "support." |
| 523(d) | Mack v. First Deposit Nat'l Bank (In re Mack) | 219 B.R. 311 (1998) | Creditor's failure to attend 341 meeting, request a 2004 exam of debtor, or provide other proof of reasonable basis for filing dischargeability complaint meant creditor was not "substantially justified" in its losing 523 action, and was thus exposed to award of attorney's fees to debtor. No special circumstances militating against fee award where creditor did not produce evidence of dishonest intent by debtor incurring credit card charges. |
| 523(a)(8) | Denehy v. Sallie Mae (In re Denehy) | 201 B.R. 1008 (1996) | This Court adopts the test of "undue hardship" developed in <i>Brunner v. NY State Higher Educ. Serv. Corp. (In re Brunner)</i> 831 F.2d 395 (2nd Cir. 1987). Test consists of a current financial prong, a future financial prong, and a good faith prong. If a debtor cannot maintain a "minimal" standard of living if forced to repay the student loans, and if additional circumstances exist indicating that the inability to repay the loans will persist for a significant portion of the repayment period of the student loans, and if the debtor has made good faith efforts to repay the student loans, then "undue hardship exists and the student loans are dischargeable. |

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| 523(a)(8) | Downey v. Sallie Mae (In re Downey) | 255 B.R. 72 (2000) | Dischargeability of student loans should be based on certainty of future hopelessness, not simply on debtor's present inability to fulfill the present financial commitment. |
| 523(a)(8) | Stanley v. Student Loan Services, Inc. (In re Stanley) | 273 B.R. 907 (2002) | State agency manual that directed servicing agent to file proof of claim in cases of hardship discharge served to waive State's Eleventh Amendment sovereign immunity. Once waived, State could not reassert its sovereign immunity by withdrawing the proof of claim. |
| 524 | In re Driggers | 204 B.R. 70 (1996) | Discharge injunction violated and civil contempt sanction imposed due to willful violation of automatic stay. |
| 541 | In re Brandon | 184 B.R. 157 (1995) | Real estate commissions received by Chapter 7 debtors postpetition were traceable to prepetition sales agreements and were property of the estate. The actual payment of the commissions after the petition was filed did not affect the status of the commissions as property of the estate, as the debtor's right to payment arose prepetition. |
| 541 | In re Herrell | 210 B.R. 386 (1997) | Life insurance policy that permitted debtor to change beneficiary was property of the estate only to the extent of its cash surrender value at the petition date. Life insurance policy is a contract, and is not property of the estate beyond its cash surrender value. Post petition payment upon debtors death was to debtor's probate estate, not the bankruptcy estate. Even if IRS could levy against policy, Chapter 7 Trustee could not ignore debtor's exemption rights therein. |
| 541(a)(1) | In re Iferd | 225 B.R. 501 (1998) | Debtor retains legal title to repossessed car, which is property of estate until/unless creditor resells car to good faith purchaser for value per UCC. |
| 541(a)(6) | In re Braddy | 226 B.R. 479 (1998) | Insurance renewal commissions earned by retired independent contractor debtor were property of the estate and not exempt as wages. |
| 542 | Brooks v World Omni (In re Brooks) | 207 B.R. 738 (1997) | Creditor has duty to return repossessed auto to place of repossession, independent of receipt of adequate protection or proof of insurance. |

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| 547(b) | Freund v. Heath (In re Mclver) | 177 B.R. 366 (1995) | Transfer to debtor's live-in girlfriend (who was an insider despite per se Code definition) 95 days pre-petition was a voidable preference. |
| 547(b) | Miller v Florida Mining and Materials (In re A.W. & Assoc.) | 196 B.R. 900 (1996) | Ordinary course: B/R Court ruling was overturned by the 11th Circuit: Court's inquiry should focus on debtor's internal operations and circumstances of transaction in question. 5 factors: prior course of dealing between parties, amount of payment, timing of payment, circumstances surrounding payment, industry standards. |
| 547(c)(2) | Miller v Florida Mining and Materials (In re A.W. & Assoc.) | 196 B.R. 900 (1996) | Ordinary Course Exception: payment date is date of honor, not date of delivery, when debtor's check is initially dishonored. |
| 548 | In re Herrell | 210 B.R. 386 (1997) | Death benefit paid due to debtor's death during case not subject to recovery by Trustee. |
| 704 | In re Moon | 258 B.R. 828 (2001) | BR trustee, as fiduciary of estate's creditors, has main duties of expeditiously collecting and reducing to money the property of the estate. Trustee may be held personally liable for breach of fiduciary duty, and such liability may attach as a result of negligent violations of such duty. |
| 707 | In re Sammons | 210 B.R. 197 (1997) | Chapter 7 case filed for the sole purpose of rejecting an executory contract at a time when petitioner was not in financial distress was bad faith; case dismissed for bad faith filing. |
| 707(b) | In re White | 227 B.R. 901 (1998) | Granting Chapter 7 relief to debtor whose disposable income allowed for 50% pay back of scheduled unsecured claims would constitute substantial abuse; Chapter 7 case dismissed. |
| 707(b) | In re Cox | 249 B.R. 29 | Feeding girlfriend's family, payments to non-dependent mother, 401(k), recreational boating not necessary expenses; Chapter 7 case dismissed for substantial abuse. |
| 727(a)(4) | Chancellor v Martin (In re Martin) | 239 B.R. 610 (1999) | "False oath" requisite intent may be inferred from circumstances of case. Intentional misstatement of property value lead to denial of discharge. |

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| 1123 | In re Oyster Bar of P'Cola | 201 B.R. 567 (1996) | Chapter 11 plan could not designate tax payments to IRS to be applied first to trust fund taxes for which debtor's owner was liable as a "responsible person" absent evidence that such designation was necessary to debtor's reorganization. |
| 1129(a)(9)(C) | In Re Collins | 184 B.R. 151 (1995) | There is no distinction between liquidating and rehabilitative payments with respect to postconfirmation interest on priority tax claims under Chapter 11 plans. 8% interest compounded yearly from the final confirmation date was commercially reasonable. |
| 1307(c) | In re Hovind | 197 B.R. 157 (1996) | Pre-confirmation Chapter 13 case may be dismissed for bad faith filing. |
| 1322 | In re Cox | 186 B.R. 744 (1995) | Debtor may pay non-dischargeable unsecured student loans outside of the plan. |
| 1322 | In re Hill | 261 B.R. 495 (2001) | Plan that pays co-signed consumer debt in full and nothing to other unsecured creditors must satisfy "good faith" requirement to be confirmed. |
| 1325(a)(3) | In re Presley | 201 B.R. 570 (1996) | Good faith requirement for plan confirmation is analyzed by the totality of the circumstances. |
| 1325(a)(3) | In re Hill | 261 B.R. 495 (2001) | Detailed analysis of the factors to be used in assessing whether proposed Chapter 13 Plan that favored co-debtor to detriment of unsecured creditors meets confirmation requirements. |
| 1325(a)(5)(B)(i) | In re Cook | 205 B.R. 437 (1997) | Grounds for denial of confirmation of Chapter 13 plan where plan fails to address payment to unsecured creditor. |
| 1325(a)(5)(B) | In re Franklin | 213 B.R. 781 (1997) | Starting point in determining value of automobile to be retained by debtor for "cramdown" option is the average between retail and wholesale prices. |

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| 1325(a)(5)(B) | In re Hollinger | 245 B.R. 691 | Chapter 13 cram down interest rate calculated via the "formula" approach. Start with T-Bill rate for equivalent time period and add risk premium to reflect quality of creditor's security and risk of debtor's subsequent default. Present value of stream of payments must be at least equal to the allowed amount of the claim. |
| 1325(b) | In re Presley | 201 B.R. 570 (1996) | Under disposable income test for confirmation of Chapter 13 plan, Court must determine, on an case-by-case basis, whether expenditures individually and as a whole are reasonably necessary for maintenance or support of that debtor. At least 15 factors are part of the analysis. |
| 1326(a)(2) | In re Cook | 205 B.R. 437 (1997) | Adequate protection payments made by Chapter 13 debtor to protect creditor from depreciation while collateral is retained and used by debtor are not "payments under a plan;" no retention of a/p payments by Trustee pre-confirmation. |
| 1328(a)(2) | In re Cox | 186 B.R. 744 (1995) | Public policy behind full payment of nondischargeable child support obligations dictates that lesser payout to other unsecured creditors should be tolerated during life of Chapter 13 plan. However, nondischargeability of student loans, absent other factors, should not be the basis of discrimination against other unsecured creditors. |
| 1328(b) | In re Edwards | 207 B.R. 728 (1997) | Hardship Discharge does not require catastrophic events. 1328(b) is for circumstances where the debtor cannot be held justly accountable for failure to complete the plan when good faith efforts are unable to overcome unforeseeable circumstances beyond the debtor's control. |
| 1930(a)(6) | In re Cash Cow Svc. of Fla. | 249 B.R. 33 (2000) | Pre-confirmation title loans to customers treated as disbursements for purpose of calculating quarterly fees owed to the United States Trustee. Note: B/R/ Court ruling was reversed by District Court, appeal pending at the 11th Circuit. |

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| 2016 | In re Moon | 258 B.R. 828 (2001) | Where value of Chapter 7 case exceeds \$50,000.00, trustee should provide a detailed accounting of services rendered, time expended, and expenses incurred, mindful of the relative weight that will be placed on the various <i>Johnson</i> factors; Court may reduce or deny fees to trustee who fails to keep adequate records. |
| 4007 | In re Woods | 260 B.R. 41 (2001) | Lack of diligent effort by creditor can be fatal to creditor's last minute attempt to achieve extension of bar date for filing nondischargeability complaint. |
| 6672 | In re Golden | 1996WL512386 (1996) | Explains the "responsible person" and "willful failure to pay over" elements of IRS claim for unpaid withholding taxes. |
| 9011 | In re Smith | 230 B.R. 437 (1999) | Application of the "safe harbor" provision precluded award of sanctions. |
| 9011 | Cooper v. Litton Loan Servicing (in re Cooper) | 253 B.R. 286 (2000) | Rule 9011 sanctions are warranted when (1) papers are frivolous, legally unreasonable, or without factual foundation, or (2) when pleading is filed in bad faith or for improper purpose. |
| 99999 | In re Ocean Transport | 213 B.R. 383 (1997) | Refusal of creditor to allow debtor to retrieve personal property was conversion; value of property at time of conversion can be set off against creditor's claim against debtor. |