

SURVEY OF RECENT DECISIONS
OF
THE HONORABLE PAUL J. KILBURG

**U.S. Bankruptcy Court
Northern District of Iowa**

October 25, 1999 - October 31, 2000

Prepared by

**Amy M. Kilpatrick
Law Clerk**

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The case summaries are categorized to correlate with the Key Number Classification of West's Bankruptcy Digest. West's key numbers are included in the topic headings below. Summaries of prior decisions (April 23, 1993 to October 31, 2000) are available on our web site, www.ianb.uscourts.gov.

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I. IN GENERAL, 2001-2120

C. Jurisdiction, 2041-2080

Midwest Agriculture Warehouse v. R.I.C. Enterprises
(In re Paris & Sons, Inc.)
No. 98-02475-C, Adv. 99-9098-C, Ch. 7, 6/5/00

28 U.S.C. § 157(d)

The Court considers the extent of its jurisdiction over adversary proceeding after dismissal of underlying Chapter 11 case. HELD: No cause exists to maintain this proceeding in bankruptcy court. The Court will delay dismissal for 30 days to allow Plaintiff time to effect transfer of the action to District Court.

In re National Cattle Congress
No. 97-03581-W, Ch. 11, 3/22/00
(published at 247 B.R. 259)

11 U.S.C. § 106

Sac and Fox Indian Tribe argues that the Court has no jurisdiction to allow Debtor to alter its security interest through confirmation of a Plan of Reorganization. HELD: Section 106 does not specifically include “Indian tribes” and does not reveal an unequivocal Congressional intent to abrogate tribal immunity from suit. No waiver of sovereign immunity occurred when the Tribe filed its Proof of Claim based on the attached Waiver Disclaimer. Debtor’s effort to extinguish the Tribe’s lien amounts to a “suit” from which the Tribe is immune. In order to preserve immunity, the Tribe must withdraw Proof of Claim.

D. Venue; Personal Jurisdiction, 2081-2100

Schomann Int’l v. Koch (In re Curtis Koch)
No. 99-02793-W, Adv. 00-9015-W, Ch. 7, 5/4/00

28 U.S.C. § 1412
Fed. R. Bankr. P. 7087

New York Plaintiff requests change of venue. HELD: Debtor chose Iowa as venue for his bankruptcy petition. The Court gives this choice deference and will not change venue to merely shift the inconvenience from New York Plaintiff to Iowa Debtor.

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

A. In General, 2121-2150

Nissen v. Meinders (In re Troy Meinders)
No. 99-01226-C, Adv. 99-9140-C, Ch. 7, 10/22/99

Fed. R. Bankr. P. 4007(c)
9006(b)(1)

Debtor seeks dismissal of dischargeability complaint for untimely filing. HELD: The Court has no discretion to enlarge time for filing complaint if the request is made after the filing deadline. The “excusable neglect” standard does not apply to the deadline for filing dischargeability complaints.

III. THE CASE, 2201-2360

B. Debtors, 2221-2250

In re Paul and Sandra Koppes
No. 99-01748-D, Ch. 12, 1/6/00

11 U.S.C. § 101(18)(A)
§ 506(a)

Bank objects to Debtors’ valuation of collateral and to Debtors’ qualification for Ch. 12 relief. HELD: Debtors were not engaged in a farming operation when they filed. They had not cultivated crops for two years. They liquidated their cattle herd the year before. The capital gains from this liquidation do not constitute farm income because the transaction was not aimed at continuing farm operations. Debtors did not receive more than 50% of their income in the past year from farm operations. Therefore, they are not eligible for Ch. 12 relief.

C. Voluntary Cases, 2251-2280

In re Michael and Linda Kressig
No. 00-02247-D, Ch. 7, 10/18/00

11 U.S.C. § 707(b)

U.S. Trustee requests dismissal for “substantial abuse”. Debtors filed an Amended Schedule J. They assert they do not have the ability to pay debts from future income. HELD: Debtors’ amended Schedule J almost doubles their monthly expenses from their original schedule. Most of the additional expenses do not currently exist. The amendment is more an anticipated “wish list”, rather than the required list of current expenditures. The case is dismissed.

In re Hartsel and Ginger Shirley
No. 99-02365-W, Ch. 7, 1/5/00

11 U.S.C. § 707(b)

U.S. Trustee moves to dismiss case for substantial abuse. HELD: A debtor’s substantial ability to pay creditors standing alone warrants dismissal of a Ch. 7 petition for substantial abuse. Ability to pay is measured by asking whether Debtors would be able to fund a hypothetical Ch. 13 plan. Debtors’ disposable income in excess of \$1300/mo. is more than enough to pay all unsecured debt, Trustee’s fees, filing and attorney’s fees, and priority taxes over a three year period. Motion to Dismiss is sustained.

In re Galen and Jennifer Reynolds
No. 99-02132-C, Ch. 7, 11/3/99

11 U.S.C. § 707(b)

U.S. Trustee requests order dismissing the case for substantial abuse. HELD: The Court looks at Debtors' ability to fund a Chapter 13 plan as a primary factor in the totality of the circumstances test. Debt secured by Debtors' residence is primarily consumer debt. Tax refunds and overtime pay are included as disposable income in determining Debtors' ability to pay. Giving Debtors the benefit of the doubt, the Court calculates disposable monthly income of \$403. Debtors are allowed to convert to Chapter 13 if they wish, or the case is dismissed under § 707(b).

IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490

B. Automatic Stay, 2391-2420

<u>J.E. Adams Indus. v. Aurora Nat'l Life</u>	11 U.S.C. § 362
(In re J.E. Adams Indus.)	§ 365
No. 98-00167-C, Adv. 00-9056-C, Ch. 7, 9/20/00	§ 108(b)
<u>appeal filed</u> , N.D. Iowa 9/29/00	§ 542(d)

Debtor and Secured Creditor claim insurance company violated the automatic stay when it declared a life insurance policy lapsed for failure to pay premiums postpetition. HELD: The policy is an executory contract that is property of the estate. Defendant is prohibited by the automatic stay from canceling the policy. Debtor and Secured Creditor are entitled to summary judgment.

C. Relief from Stay, 2421-2460

<u>In re Kearney Partnership</u>	11 U.S.C. § 362(d)(2)
No. 99-03131-D, Ch. 12, 12/16/99	

Bank moves to terminate automatic stay to complete sheriff's sale of Debtor's cattle. HELD: Stay modified to allow Bank to pursue its state law remedies against Debtor. Debtor has not shown reasonable possibility of successful reorganization as partners have no capital and face difficulty in obtaining loans due to a lack of collateral. Debtor cannot offer adequate protection since no equity cushion exists in the cattle. Cause exists to lift stay: Debtor transferred collateral prepetition; it filed its bankruptcy petition one day before sheriff's sale; there is no prospect of reorganization; and Debtor has no ongoing business.

D. Enforcement of Injunction or Stay, 2461-2480

<u>In re Charlene Schrodt</u>	11 U.S.C. § 362(a)
No. 00-00526-D, Ch. 7, 7/26/00	§ 362(h)
	Iowa Code § 537.7103

Debtor seeks sanctions for creditor's violations of the automatic stay and the Iowa Consumer Credit Code. HELD: Creditor committed outrageous conduct toward Debtor in attempting to collect an eight-year old

check of nominal value. Judgment of \$45,688.80 entered as sanctions, including actual damages, attorney fees and \$35,000 punitive damages,

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

Emerson Mattress, Inc. v. Associates Leasing, Inc. Iowa Code § 324.45(3)
(In re Emerson Mattress, Inc.)
No. 95-12358-KC, Adv. 99-9052-C, Ch. 11, 11/19/99

Debtor retained possession of vehicles after lease expired. Defendant tendered an invoice demanding payment of an agreed “residual value”, which Debtor paid. Debtor moves to compel turnover of vehicle titles. HELD: Although Debtor breached by not turning over vehicles at expiration of lease, Defendant waived any action for breach by tendering an invoice and demanding payment of residual value. Upon payment of residual value, a sale occurred. Iowa law requires Defendant to turn over title. Defendant must pay Debtor damages for its wrongful retention of the vehicle titles.

D. Liens & Transfers; Avoidability, 2571-2600

Hanrahan v. Dupler 11 U.S.C. § 544(a)
(In re Myron and Ellen Kloubec) § 549(a)
No. 99-02325-C, Adv. 00-9076-C, Ch. 7, 8/3/00 § 551
§ 548(a)(1)(B)

Trustee seeks to avoid security interest in Debtors’ 2000 Ford F-550 pickup. She also seeks to avoid a mortgage granted shortly before Debtors filed their Chapter 12 petition. HELD: The lien on the vehicle was unperfected at the time of the petition or was perfected postpetition and is avoidable. Although the mortgage was for \$48,000, Debtors received value of \$20,999. The mortgage lien is avoided to the extent Debtors did not receive more than \$20,999.

Hanrahan v. Arcadia Financial Ltd. 11 U.S.C. § 547(c)(3)(A)
(In re Gary Scott) § 547(e)(1)(B)
No. 99-01344-C, Adv. 99-9158-C, Ch. 7, 1/4/00 § 547(b)
(published at 245 B.R. 331) Iowa Code § 321.50(1)-(3)

Creditor obtained a security interest in Debtor’s vehicle on March 2 and Debtor took possession the same day. Creditor applied for notation of its interest on the title on March 19 and the lien was noted on the title on March 24. Debtor filed his bankruptcy petition on May 24. HELD: Trustee has proven a prima facie case under § 547(b). Creditor asserts “enabling loan” defense under § 547(c)(3). The “enabling loan” defense is only available if the security interest was perfected within 20 days of Debtor taking possession. A security interest in a vehicle is not perfected until it is noted on the title. Creditor’s lien was perfected too late and is avoided.

In re Rick and Mary Mease
No. 97-10048-C, Ch. 7, 12/1/99

11 U.S.C. § 522(f)
Iowa Code § 561.16, 561.21

Debtors reopened their case seeking to avoid judicial liens that have allegedly attached to their homestead. HELD: If the lien in this case arises from preacquisition debt, it does not impair an exemption that Debtors would be entitled to “but for” the lien because the homestead is liable for preacquisition debts. If the debt is not preacquisition, a judgment lien arising from the debt does not attach to the homestead. The Court cannot provide relief under § 522(f). Motion to Avoid Lien denied.

Youngblut v. Union Bank & Trust Co.
(In re Paul and Monica Jerdee)
No. 99-00176, Adv. 99-9117-C, Ch. 7, 12/1/99

Iowa Code § 554.9306(2)
§ 554.9203
11 U.S.C. § 506(a)

Trustee claims Bank’s security interest in Debtors’ truck never attached because no written security agreement was executed. HELD: Combined, the application for notation of lien on title and the title itself constitute a written security agreement. Alternatively, Bank has a lien in the truck because it was purchased with proceeds from the sale of other collateral. Bank’s authorization of the sale did not waive its security interest in the proceeds, only in the collateral sold. The interest is enforceable against Trustee because of the constructive notice provided by Bank’s perfection of its security interest.

G. Set-off, 2671-2700

In re Stickle Salvage Feed, Inc.
No. 99-02452-C, Ch. 7, 9/19/00
appeal filed, N.D. Iowa 10/2/00

11 U.S.C. § 553
§ 549
Recoupment

Trustee seeks approval of correction of bank error. The Bank’s teller erroneously debited Debtor’s cashier’s check from an unrelated account. Secured creditor objects it is entitled to all proceeds of Debtor’s bank account. It argues correcting the Bank error is an improper setoff or postpetition transfer. HELD: Neither § 553 nor § 549 apply in these circumstances. Equitable principles including recoupment, unjust enrichment, constructive trust and mistake require the funds, which are nominally property of the estate, be returned to the Bank.

VI. EXEMPTIONS, 2761-2820

Wagner v. Chelsea Savings Bank
(In re John and Debra Wagner)
No. 99-02428-C, Adv. 00-9050-C, Ch. 13, 9/22/00
appeal filed, B.A.P. 8th 9/28/00

Iowa Code § 561.22

The Bank asks the Court to amend its 7/27/00 Order re exempt status of homestead and enforceability of mortgages. It requests specific findings that 1) Debtors were not farming when they entered into the

mortgages and 2) Debtors were aware they were encumbering their homestead when they signed the mortgages. HELD: Debtors were conducting farming operations on their acreage on the dates they entered into the mortgages. If the express written waiver of homestead rights is absent from the mortgages on Debtors' agricultural land, the mortgages do not encumber Debtors' homestead regardless of whether Debtors were aware the mortgages were secured by the homestead property.

Wagner v. Chelsea Savings Bank Iowa Code § 561.22
(In re John and Debra Wagner) § 561.21
No. 99-02428-C, Adv. 00-9050-C, Ch. 13, 7/27/00 § 561.3
appeal filed, B.A.P. 8th 9/28/00

Debtors assert Bank's mortgages are invalid. The mortgages do not contain the statutorily mandated language to waive homestead rights in agricultural land. HELD: The acreage is agricultural land. The statute applies to the mortgages as contracts affecting agricultural land. The mortgages are unenforceable against Debtors' exempt homestead because they do not include the required homestead waiver language. The outbuildings on the acreage are included in Debtors' exempt homestead.

In re John and Debra Wagner 11 U.S.C. § 522(f)(2)(B)
No. 99-02428-C, Ch. 13, 7/27/00

Debtors seek to avoid the Bank's liens on exempt farm machinery. The Bank asserts the liens are purchase money security interests as Debtors repurchased the machinery at their auction. HELD: The auction did not affect Debtors' rights in the machinery they repurchased. The Bank does not have purchase money security interests in the machinery. Its liens on Debtor's exempt tools of the trade are avoided.

In re John and Debra Wagner 11 U.S.C. § 522(b)(1)
No. 99-02428-C, Ch. 13, 2/16/00 Iowa Code § 627.6(10), (11)

Mr. Wagner is a mechanic and farmer. He claims exemptions in both mechanic's tools and farm equipment. Creditor objects to dual exemptions, claiming they are mutually exclusive. HELD: A debtor with more than one occupation is not precluded from claiming exemptions designed to benefit each occupation. Debtor's mechanic's tools could have been claimed exempt under the farm equipment exemption. Allowing both exemptions would not extend benefits not intended to be conferred by the Iowa legislature since the aggregate value of the exemptions does not exceed the statutory cap for either exemption alone.

In re Jon and Elaine Kemmerer Iowa Code § 627.6(8)(f)
No. 99-01453-C, Ch. 7, 2/8/00
(published at 245 B.R. 335)
reversed, 251 B.R. 50 (B.A.P. 8th Cir. 2000)

Debtors claim an IRA annuity exempt under § 627.6(8)(f). The annuity was established by a rollover from an ERISA pension plan. Trustee objects. HELD: Section 627.6(8)(f) is ambiguous in its description of “individual retirement accounts.” Case law and legislative history suggest the phrase includes both IRA accounts and Debtor’s IRA annuity. Legislative history also reveals that IRA annuities established by ERISA rollovers are not subject to the annual \$2000 exemption cap contained in § 627.6(8)(f)(3). Debtors may claim their entire IRA annuity exempt.

In re Kenneth and Joyce Moore
No. L-90-20041-D, Ch. 7, 1/10/00

11 U.S.C. § 727(b)

Debtors move to reopen their Chapter 7 case to avoid a judgment lien encumbering homestead property. Creditor’s lien was based on a 1982 judgment. After discharge was entered, Creditor transferred it as a foreign judgment to Illinois where Debtors had their homestead. HELD: Even though Creditor’s debt was never listed in Debtors’ bankruptcy schedules, it was discharged. While prepetition liens remain in effect after discharge, a judgment that has not attached as a lien prepetition does not survive discharge. Creditor’s judgment had not attached as a lien prepetition and its debt was discharged. Postdischarge, there is no basis for its lien on Debtors’ homestead exists. No purpose would be served by reopening the estate.

In re Gary Scott
No. 99-01344-C, Ch. 7, 1/4/00

11 U.S.C. § 522(h)
§ 551
§ 547

Debtor granted creditor a security interest in a vehicle. Trustee avoided this security interest as a preferential transfer under § 547. Debtor claims an exemption in the recovered vehicle. HELD: Under § 551, the avoided lien is preserved for the benefit of the estate. Trustee’s interest is superior to Debtor’s claim of exemption. Under § 522(h), a debtor may only exempt property recovered by the avoidance of a preferential transfer if the transfer was involuntary and the trustee has not acted to recover the property.

In re Daniel and Judy Holmes
No. 99-01961-W, Ch. 7, 11/22/99

Iowa Code § 627.6(8)(e)
11 U.S.C. § 522(b)(1)

Trustee objects to Debtor’s claim of exemption in a retirement annuity. Trustee claims the annuity is not “on account of age” as required by Iowa Code § 627.6(8)(e). HELD: The annuity is not exempt. Annuity payments are not made “on account of age” if the beneficiary retains unfettered discretion over the annuity. Here, Debtor could withdraw the entire corpus at any time and choose the date upon which payments begin.

VII. CLAIMS, 2821-3000

B. Secured Claims, 2851-2870

In re J.E. Adams Indus.
No. 98-00167-C, Ch. 11, 6/26/00

11 U.S.C. § 506(b)

Creditor asserts interest, late charges and attorney fees should be included in its oversecured claim arising from equipment leases and security agreements. HELD: The Court considers whether fees incurred were reasonably expended to protect the liens. Creditor is entitled to both late charges and reasonable attorneys fees under its leases and security agreements. Its pursuit of various issues in the case was overzealous; its claim was not in serious jeopardy pending confirmation. The Court allows \$20,000 in attorney fees and \$18,984 in postpetition late charges.

In re Mork Brothers General Partnership
No. 99-03289-W, Ch. 12, 3/23/00

11 U.S.C. § 506(a)
§ 1225(a)(5)(B)

Bank argues Debtor's Chapter 12 Plan undervalues real estate encumbered by its security interest. HELD: Debtor's current and prospective use of the property is the correct basis for an appraisal in determining the amount of a creditor's secured claim. The value that a willing purchaser in Debtor's business would pay for a like property governs in cram down cases. Debtor's appraisal, based upon the land's corn suitability rating alone, ignored the contributory value of the house and farm buildings and was too low.

In re Myron and Ellen Kloubec
No. 99-02325-C, Ch. 12, 11/15/99

11 U.S.C. § 363(c)
Iowa Code § 554.9203

Creditor claims a security interest in Debtors' commercially raised fish and seeks to prevent Debtor from using cash proceeds from the sale of this collateral. HELD: Res judicata prevents Debtors from litigating whether the fish are Creditor's collateral. An Iowa District Court consent order finds that the security agreements cover Debtors' fish and the proceeds therefrom. Further, the Court finds "fish" are within the collateral descriptions in the parties' security documents. Fish can qualify as livestock, crops or personal property, all of which secure Creditor's claim.

C. Administrative Claims, 2871-2890

In re Rubber Development, Inc.
No. 98-03432-W, Ch. 11, 1/4/00

11 U.S.C. § 503(b)(1)(A)

Creditor seeks an administrative expense priority for Debtor's use of a leased liquid nitrogen tank for 12 months postpetition. Debtor did not pay the \$476.19/mo. rent for this period. Debtor obtained a replacement tank for \$350/mo. HELD: In order for Creditor's claim to qualify as an administrative expense, it must have benefitted the estate. The value of the tank to the estate is disputed. Absent contrary evidence, the prior lease rate is presumed to be the proper measure for the administrative claim. The lease rate was fair. Creditor is entitled to administrative claim of \$476.19/mo. for 12 months.

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

A. In General, 3021-3060

Slipped Disc, Inc. v. CD Warehouse, Inc.
(In re Slipped Disc, Inc.)

28 U.S.C. § 157(b)
9 U.S.C. § 1 et seq.

No. 98-02914-C, Adv. 99-9212-C, Ch. 11, 2/14/00
(published at 245 B.R. 342)

In a breach of contract action brought by Debtor, Defendant moves to compel arbitration under a contractual clause. Debtor argues that because this is a core proceeding under § 157(b)(2)(C), the Court should not compel arbitration. HELD: The fact that this is a core proceeding under § 157(b)(2)(C) does not preclude arbitration. Debtor's breach of contract action does not implicate any substantive rights created by the Bankruptcy Code. While a bifurcation of proceedings might be less efficient, this cannot overcome the strong federal policy favoring arbitration. Motion to Compel Arbitration granted.

B. Possession, Use, Sale, or Lease of Assets, 3061-3100

In re Myron and Ellen Kloubec
No. 99-02325-C, Ch. 12, 1/11/00

11 U.S.C. § 363(e)(1),
§ 363(b)(1)

Debtors filed a Motion for Use of Cash Collateral and Adequate Protection Offer. Debtors operate a fish farm and offer Bank a replacement lien in fish grown and sold postpetition. HELD: Debtors' offer does not satisfy the adequate protection requirement. The fish offered might fail to materialize, there is no accurate estimate of the number of fish now existing, no budget against which to measure Debtors' use of collateral, and Debtors have real estate which can be used to provide adequate protection to Bank. Motion denied.

In re 4810 Building Corp.

11 U.S.C. § 363(b)

In re Mary Carroll

No. 99-02444-C, No. 99-02445-C, Ch. 11, 11/3/99

Two Chapter 11 Debtors propose to sell three neighboring parcels of real estate as a single block. HELD: Good business reasons must exist to justify the sale of property. The motion seeks to sell all or a substantial portion of assets of each of the Debtors. Tax consequences have not adequately been addressed. The motion to approve sale is denied to allow the Chapter 11 cases to proceed with the disclosure statement and plan process.

D. Abandonment, 3131-3150

Wedemeier v. Fokkena (In re Kevin and Kenda Wedemeier)
No. 98-01705-W, Adv. 99-9108-W, Ch. 7, 7/28/00

11 U.S.C. § 554(a)
Fed. R. Bankr. P. 6007(b)

Debtors seek a determination that the Chapter 7 Trustee is responsible for any tax liability from the postpetition sale of 1998 crops. Trustee asserts he abandoned the crops before the sale and before the taxes arose. HELD: Trustee retained \$34,000 of the 1998 crops by Stipulation with Debtors and the Bank holding a security interest in the crops. Based on the Stipulation and principles of abandonment, this is the entire amount of crop proceeds which remained property of the estate. Abandonment of the remainder of the crops occurred prior to the sale of the crops.

E. Compensation of Officers and Others, 3151-3250

In re Myron and Ellen Kloubec
No. 99-02325-C, Ch. 7, 7/18/00
(published at 251 B.R. 861)

11 U.S.C. § 330(a)

Counsel for Debtors in their Chapter 12 case seeks fees and expenses as an administrative expense. Creditors, Debtors, Chapter 7 Trustee and U.S. Trustee object that Counsel's services did not benefit the estate and the fees are not reasonable. HELD: Services having no benefit to the estate are not compensable, including protecting Debtors' exemptions, pre-bankruptcy transfers to family members and disclaimer of inheritance, filing for delays, recruiting special counsel, and resisting motions for relief from stay. Further, preparing and defending Debtors' Chapter 12 plan had no benefit as it was patently unconfirmable.

In re Blessing Indus., Inc.
No. 00-00140-W, Ch. 11, 5/31/00

11 U.S.C. § 330(a)

Counsel for Ch. 11 Debtor seeks compensation for services rendered prior to appointment of Chapter 11 Trustee. HELD: Court approves hourly rate of \$165, not \$175 counsel requests. Fee applications must set out counsel's actual rate, rather than "effective rate". It must describe paralegals' training and qualifications. Compensation will not be approved for clerical work performed by paralegals. Round trip travel from one's office to the court in the same locale is not compensable. Expenses must be itemized.

In re Rubber Development, Inc.
No. 98-03432-W, Ch. 11, 4/24/00

11 U.S.C. § 330(a)

Upon independent review of the fee application by counsel for Debtor, the Court finds the application fails to comport with some of the Court's standards. HELD: Counsel's fee applications improperly include charges for preparation of fee applications, clerical services rendered by paralegals, intra office conferences and duplication of work, and travel to and from the law office for court hearings. Of \$33,019.50, the Court disallows \$2,820.

In re Kearney Partnership
No. 99-03131-D, Ch. 12, 12/20/99

Conversion of collateral
Commingling of proceeds

Debtor sold 60 cattle in which Bank held a security interest, depositing the proceeds in a partnership account that also contained non-partnership funds. Debtor's attorney was paid out of this account. HELD: Bank is entitled to \$5900 of fee paid to attorney under the "lowest intermediate balance rule." The secured creditor is entitled to all the proceeds from conversion held in a commingled account until the balance drops below the amount converted. Then the creditor cannot recover more than the lowest balance in the account. The Court orders Debtor to place \$5900 in debtor-in-possession account.

X. DISCHARGE, 3251-3440

B. Dischargeable Debtors, 3271-3340

Stuart v. Bohnenkamp (In re Kevin and Laura Bohnenkamp)
No. 00-00101-C, Adv. 00-9068-C, Ch. 7, 9/13/00

11 U.S.C. § 727(a)(2)
§ 727(a)(4)

U.S. Trustee asserts discharge should be denied for concealing assets and false oaths. Mrs. Bohnenkamp consented to judgment against her. Trial was held regarding denial of Mr. Bohnenkamp's discharge. HELD: Debtor testified his wife took care of their finances and he did not know their petition and schedules contained inaccurate information. The Court concludes Debtor knew the petition and schedules were inaccurate. His discharge is denied.

Nunemaker v. Flickinger (In re Douglas Flickinger)
No. 98-02247-C, Adv. 98-9274-C, Ch. 7, 10/20/99

11 U.S.C. § 523(a)(2)(A)
§ 727(a)

Plaintiffs loaned Debtor money to operate a bar for which Debtor formed a corporation. They assert the debt should be excepted from discharge for fraud. Plaintiffs also request denial of discharge for Debtor's unexplained transfer of the bar's assets. HELD: Plaintiffs failed to carry their burden of proof that Debtor fraudulently transferred his own property, presented deficient financial records or failed to explain loss of assets. Further, they failed to identify any fraudulent statement which they relied on in granting Debtor the loan.

C. Debts and Liabilities Discharged, 3341-3410

Neubauer v. Iowa College Student Aid
(In re William and Pamela Neubauer)
No. 99-01897-C, Adv. 99-9180-C, Ch. 7, 10/18/00

11 U.S.C. § 523(8)

Debtors seek discharge of student loans for undue hardship. HELD: Repaying all of Debtors' student loans imposes undue hardship. It would require Debtors to pay an amount that would not leave sufficient income

to provide for reasonably necessary expenses. Paying the smaller of their two student loans would not impose undue hardship on Debtors. The larger loan is discharged, the smaller loan is excepted from discharge.

Dick Witham Ford v. Holmes (In re Daniel and Judy Holmes) 11 U.S.C. § 523(d)
No. 99-01961-W, Adv. 99-9184-W, Ch. 7, 10/3/00

Debtors request attorney fees and costs upon receiving a directed verdict in Creditor's action to except debt from discharge under § 523(a)(2). HELD: The debt arising from the purchase of a family automobile is a consumer debt. Creditor's § 523(a)(2) action was substantially justified. It had a reasonable basis in law and fact in light of the relevant factors under § 523(a)(2). Debtors are not entitled to an award of attorney fees and costs.

Walther v. Walther (In re Robert Walther) 11 U.S.C. § 523(a)(5)
No. 99-01768-W, Adv. 99-9172-W, Ch. 7, 9/7/00

Debtor's former spouse and her dissolution attorneys assert attorney fees awarded in dissolution proceedings are excepted from discharge as support. HELD: The record does not support a finding the attorney fee award was more likely support than property settlement. The debt is discharged.

Modern Marketing v. Vandaver (In re Robert and Anne Vandaver) 11 U.S.C. § 523(a)(4)
No. 99-02175-C, Adv. 99-9188-C, Ch. 7, 4/11/00

Plaintiff asserts Debtor committed embezzlement or larceny in failing to complete repairs on a wrecked vehicle the parties had agreed to repair for resale. Debtor counterclaims for breach of contract damages and attorney fees. HELD: Plaintiff materially breached the parties' contract, justifying Debtor's rescission. Thus, no embezzlement or larceny occurred. Both parties made restitution and no damages occurred. Debtor's request for attorney fees is denied.

Union Bank v. Jerdee (In re Paul and Monica Jerdee) 11 U.S.C. § 523(a)(6)
No. 99-00176-C, Adv. 99-9053-C, Ch. 7, 4/10/00 § 727(a)

Bank asserts Debtors' conversion of collateral constitutes wilful and malicious injury. HELD: Debtors returned inventory, which was the Bank's collateral, to manufacturer in order to have money to live on and for health expenses. The Bank failed to prove malice. Damages from postpetition conversion of accounts receivable are not subject to Debtors' discharge.

Holder v. Green (In re Merle Green) 11 U.S.C. § 523(a)(5)
No. 99-01124-C, Adv. 99-9118-C, Ch. 7, 3/14/00

Parties entered a stipulation, approved by Marshall County District Court, requiring Debtor to pay \$17,000 in unpaid support obligations and interest arising from divorce decree. Debtor argues support obligations

do not draw interest. He has paid off the principal support obligation and argues interest on the support obligation is dischargeable. Debtor also argues interest accumulated should be discharged under a theory of hardship. HELD: Under Iowa law, interest accrues on all judgments, including support judgments. Interest takes on the character of the underlying judgment. Pre-petition interest on nondischargeable support obligations is likewise nondischargeable. There is no hardship exception to § 523(a)(5).

Intra America Seed Services, Inc. v. Engelby
(In re Ricki and Mary Engelby)

No. 99-01581-C, Adv. 99-9144-C, Ch. 7, 3/14/00

11 U.S.C. § 523(a)(4)

7 U.S.C. § 499a-499t

Fed. R. Bankr. P. 7056

Plaintiff claims Debtor owed it a fiduciary duty by operation of the Perishable Agricultural Commodities Act (PACA). Plaintiff moves for summary judgment under § 523(a)(4). HELD: Genuine issues of material fact exist regarding whether seed corn is a “perishable agricultural commodity” and whether Plaintiff perfected its rights in the PACA trust. Therefore, the existence of a fiduciary duty as a matter of law has not been established. Motion for summary judgment denied.

Ellis v. Ellis (In re Daniel Ellis)

No. 99-00191-D, Adv. 99-9085-D, Ch. 7, 3/14/00

11 U.S.C. § 523(a)(5)

Plaintiff argues Debtor’s obligation to pay attorney’s fees arising out of their divorce proceeding is a nondischargeable support obligation. HELD: The Court must determine the function the award of was intended to serve at the time it was ordered. Where Plaintiff was awarded primary physical care of children, custody was the primary dispute in the divorce, Debtor had a substantially higher income, and Debtor received a much greater share of marital property, the fee award was intended as support, not as a property settlement, and excepted from discharge.

United States v. Mausser (In re Ted and Deb Mausser)

No. 98-01548-D, Adv. 98-9184-D, Ch. 7, 2/23/00

11 U.S.C. § 523(a)(6)

Debtors converted corn in which Plaintiff had a lien, using proceeds to pay bills and expenses incident to their farm operation. HELD: Plaintiff must prove that conversion was both “wilful” and “malicious” in order to except debt from discharge. Conversion was wilful. Debtors acted intentionally, knowing that Plaintiff had a lien on the corn. Plaintiff failed to prove circumstances warranting an inference of malice (actual intent to cause injury). Debtors converted collateral with an intent to keep their farm operation running, not to harm Plaintiff. The debt is discharged.

Farmers State Savings Bank v. Randall

(In re Larry and Janice Randall)

No. 98-01474-W, Adv. 98-9149-W, Ch. 7, 2/22/00

11 U.S.C. § 523(a)(2)(B)

Bank discovered debts not listed on Debtors’ loan application listed in their bankruptcy schedules. Bank argues that Debtors misrepresented information on the loan application with intent to deceive. HELD:

Wife's failure to disclose \$5100 tax obligation to IRS on loan application was an intentional misrepresentation. Wife, embarrassed about the circumstances giving rise to the debt, wanted to keep it secret. Had the debt been disclosed, Bank would not have made the loan. Bank reasonably relied on the representation. Husband is not liable because he did not know of the IRS debt.

Luedtke v. Hodges (In re Willie B. Hodges)
No. 99-02049-C, Adv. 99-9159-C, Ch. 7, 2/16/00

11 U.S.C. § 523(a)(6)
Collateral Estoppel

Plaintiff claims that collateral estoppel requires a finding of "wilful and malicious injury" based on his state court default judgment against Debtor for assault. HELD: Ordinarily, a default judgment has no collateral estoppel effect because the underlying issues have not been litigated. Here, the default judgment was granted as a sanction for discovery abuses by Debtor. Debtor is deemed to have litigated the underlying action: he had a full and fair opportunity to litigate, he deliberately did not, and the State court issued findings that Debtor had assaulted Plaintiff. Collateral estoppel applies and debt is excepted from discharge.

McDole v. Arensdorf (In re Deborah Arensdorf)
No. 99-00003-D, Adv. 99-9038-D, Ch. 7, 12/16/99

11 U.S.C. § 523(a)(2)(A)

Plaintiff claims Debtor made fraudulent misrepresentations leading Plaintiff to believe she would be a "silent partner" in Debtor's business. HELD: Any statement made is within the parties' exclusive knowledge. Their versions of the story are diametrically opposed. Plaintiff failed to prove by a preponderance of the evidence that Debtor made false representations. If they were made, Plaintiff was not justified in relying on them where she failed to reduce the agreement to writing, seek counsel, or clearly define the terms of the relationship. Plaintiff's claim is discharged.

Universal Bank, N.A., v. Walker (In re Joni Walker)
No. 98-00905-W, Adv. 98-9117-W, Ch. 7, 12/15/99

11 U.S.C. § 523(a)(2)(A)

Bank claims Debtor used credit card with intent to defraud. HELD: Bank failed to prove intent to defraud. Debtor made no irregular or excessive charges on the eve of bankruptcy, Debtor had not consulted an attorney about bankruptcy before making the charges. Debtor intended to repay but could not do so after losing her job due to deteriorating health. Bank failed to establish justifiable reliance on representations made by Debtor. Bank offered an unsolicited, pre-approved credit line of \$3000 without inquiring into Debtor's assets or income. Bank did not rely on a representation of creditworthiness by Debtor. Bank's claim is discharged.

XI. LIQUIDATION, DISTRIBUTION, AND CLOSING, 3441-3460

In re Robbins Fischer
No. 96-61088-KW, Ch. 7, 8/4/00

11 U.S.C. § 726
Equitable Estoppel

Creditor objects to distribution from the estate to Debtor's daughter. She paid a settlement to the estate arising from Debtor's preferential transfer to her and other family members. HELD: Debtor's daughter did not waive claims against the estate in her settlement agreement. She is not seeking to recover the preferential transfer settlement proceeds from the estate. She is entitled to a pro rata share of the remainder of the estate. This does not constitute unjust enrichment. None of the elements of equitable estoppel are present.

XII. BROKER LIQUIDATION, 3461-3480

XIII. ADJUSTMENT OF DEBTS OF A MUNICIPALITY, 3481-3500

XIV. REORGANIZATION, 3501-3660

A. In General, 3501-3530

In re Myron and Ellen Kloubec

11 U.S.C. § 1208(d)

No. 99-02325-C, Ch. 12, 3/14/00

(published at 247 B.R. 246)

appeal filed, N.D. Iowa 3/20/00

U.S. Trustee moved to convert case to Chapter 7, alleging fraud. HELD: Debtor's disclaimer of inheritance on the eve of bankruptcy constituted a fraudulent transfer. Debtors' failure to list assets or promptly amend schedules coupled with lack of cooperation in discovery supported inference of fraud. Debtors improperly channeled non-exempt assets to family members at the expense of creditors. Debtors' plan offered only \$30,000 to unsecured creditors when assets totaled at least \$63,000. In these circumstances, appointment of a trustee is necessary to protect creditors' interest. Motion to convert to Chapter 7 granted.

C. Conversion or Dismissal, 3591-3620

In re RMM, Inc.

11 U.S.C. § 1112(b)

In re Slipped Disc, Inc.

No. 98-02923-C, 98-02914-C, Ch. 11, 8/23/00

U.S. Trustee moves to convert or dismiss based on Debtors' inability to fund plans and failure to file reports and pay fees. Also, Debtors did not keep current on postpetition taxes and royalty fees. Debtors state they have delayed filing a plan pending the results of a lawsuit against their franchisor. HELD: Cause exists for dismissal. Bankruptcy is a safe harbor, not a dry dock. No end is in sight in Debtors' action against their franchisor. Debtors lack sufficient income to fund a plan.

In re Paris & Sons, Inc.
No. 98-02475-C, Ch. 11, 5/16/00

11 U.S.C. § 1112(b)

U.S. Trustee moves to dismiss. Debtor is no longer in business. Plaintiff in related adversary proceeding prefers the case remain open so it can determine lien priority and environmental liability in the adversary case. HELD: Cause exists to dismiss the case. Debtor is unable to reorganize and no property would be available for distribution to unsecured creditors if Debtor liquidated. Jurisdiction over the related adversary proceeding will be considered separately.

XV. ARRANGEMENTS, 3661.100-3661.999

XVI. COMPOSITIONS, 3662.100-3670

XVII. ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700

XVIII. INDIVIDUAL DEBT ADJUSTMENT, 3701-3740

In re Jonathan Zahner
No. 99-01666-W, Ch. 13, 12/9/99

11 U.S.C. § 1325(a)(3)
§ 1325(b)

Creditor claims Debtor's plan is filed in bad faith because it seeks to discharge a debt for willful and malicious injury that would not be dischargeable in Ch. 7. HELD: Debtor's use of the Ch. 13 superdischarge is relevant but not dispositive in determining whether a plan is filed in good faith. Debtor did not file as a result of or in anticipation of Creditor's judgment and Debtor has paid on the judgment for four years. Creditor has not met his burden of proving bad faith. Confirmation denied, however, because of Debtor's failure to disclose all creditors, tax returns and income, and because of inaccuracies in the Plan.

In re Frederick and Gladys Wilker
No. 98-01117-W, Ch. 13, 10/27/99

11 U.S.C. § 1325(a)
§ 1325(b)

The Court considers the confirmability of Debtors' Plan. HELD: Debtors filed inaccurate schedules. They failed to pay for a cattle purchase during the same time they loaned their son \$15,000. Debtors filed the plan in bad faith. The Plan does not comport with the disposable income requirement or the good faith liquidation test.

XIX. REVIEW, 3741-3860

XX. OFFENSES, 3861-3863