

SURVEY OF RECENT DECISIONS
OF
THE HONORABLE PAUL J. KILBURG

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

October 23, 2006 – October 15, 2007

Prepared by

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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 present) are available on our web site, www.ianb.uscourts.gov.

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I. IN GENERAL, 2001-2120

C. Jurisdiction, 2041-2080

Quad City Bank v. Union Planters Bank (In re Chapman Lumber Co.), Ch. 7, No. 05-00408, Adv. 06-9115, 2006 WL 3861107 (Bankr. N.D. Iowa Dec. 11, 2006) (plaintiff has standing and the court has jurisdiction)

Plaintiff filed its adversary complaint in four counts, including assertions of fraudulent transfers under §§ 544 and 548 and a claim of unjust enrichment. Defendant asserts this proceeding should be dismissed for lack of standing and lack of jurisdiction. HELD: Plaintiff has standing to avoid transfers pursuant to the Court-approved assignment of avoidance actions by Trustee. The Court has core jurisdiction over Counts I, II and III, which assert Trustee's rights under § 544 and § 548. It has "related to" jurisdiction over the unjust enrichment claim set out in Count IV.

Community State Bank v. Lynch Dallas P.C. et al (In re Allen), Ch. 7, No. 06-00835, Adv. 06-09149, 2006 WL 3490302 (Bankr. N.D. Iowa Nov. 28, 2006) (dismissing claims asserted against Debtor's attorney and former corporation)

The Bank filed a complaint against Debtors, their former business corporation, their attorneys and Trustee. It seeks turnover of \$15,000 which it asserts is collateral pledged by the corporation, Nella, L.C. The complaint also seeks to except debt from discharge under § 523(a)(6). Defendants seek dismissal of the request for turnover, asserting the Court does not have subject matter jurisdiction and the complaint fails to state a claim upon which relief can be granted. HELD: This is neither a "core" proceeding nor "related to" Debtors' bankruptcy case. The complaint does not invoke a substantive right provided by Title 11. If the Bank was successful in its request for turnover from Defendants, there would be no effect on the administration of Debtors' bankruptcy estate. This Court does not have jurisdiction over the Bank's claims asserted against Debtors' former corporation or Debtors' attorney.

II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200

A. In General, 2121-2150

Hanrahan v. Walterman (In re Walterman Implement, Inc.), Ch. 7, No. 05-07284, Adv. 07-09043 (Bankr. N.D. Iowa Oct. 4, 2007) (denying Defendant's motion to strike affidavit and report of expert)

Defendant seeks to have two documents submitted by Trustee stricken from the record – an affidavit and a report prepared by Trustee's expert witness which address the issue of Debtor's solvency. HELD: Although the affidavit and the report were untimely, they were sufficient to

put Defendant on notice of the substance and basis of the expert's testimony. Defendant is not prejudiced by the untimeliness of the documents. The motions to strike are denied.

Hanrahan v. Miller (In re Ovel), Ch. 7, No. 06-01150, Adv. 07-09053, 2007 WL 1852507 (Bankr. N.D. Iowa June 26, 2007) (denial of request to set aside default judgment)

Defendant seeks to set aside the default judgment entered against her. Trustee argues Defendant has failed to raise a meritorious defense and no grounds exist to vacate the default judgment. HELD: Defendant has failed to satisfy her burden to show excusable neglect in support of her Motion to set aside the default judgment. Defendant's sincere desire to defend this adversary is in doubt, based on her reliance on advice of Debtor to ignore this adversary action and her failure to appear for the hearing. These factors, combined with the lack of a meritorious defense, lead the Court to conclude that no grounds exist to set aside this default judgment.

B. Actions and Proceedings in General, 2151-2180

Fokkena v. Smith (In re Smith), Ch. 7, No. 05-05398, Adv. 06-9071, 2007 WL 2570409 (Bankr. N.D. Iowa Aug. 30, 2007) (denying reconsideration of order denying discharge)

Debtor seeks reconsideration of order denying his discharge for concealing real estate contract and falsely testifying to the accuracy of his petition and schedules. HELD: The order denying discharge is not the result of incorrect legal or factual findings. The Court made credibility determinations based on Debtor's testimony and the record as a whole and finds no reason to modify its finding that Debtor's discharge be denied.

U.S. Trustee v. Constant (In re Constant), Ch. 7, No. 05-08226, Adv. 06-30177, 2007 WL 627418 (Bankr. S.D. Iowa Feb. 23, 2007) (proof of service of complaint to revoke discharge is inadequate)

U.S. Trustee's complaint seeks to revoke Debtor's discharge based on her failure to turn over tax returns and wage statements as ordered. As Debtor has not appeared or answered, U.S. Trustee requested default judgment. The Court scheduled this hearing to determine sufficiency of service before default judgment is entered. HELD: U.S. Trustee served the summons and complaint on Debtor at the address shown in her bankruptcy petition. This is procedurally sufficient under Rule 7004(b)(9). However, U.S. Trustee is not entitled to default judgment as of right. All indications in the file show that Debtor has not been at the address the U.S. Trustee used for mailing the summons since before this action was commenced. Considering the amount of time that has passed since discharge entered and the fact that mailings to Debtor have been returned undeliverable, the Court is not willing to impose the harsh consequence of a default judgment revoking Debtor's discharge. U.S. Trustee is directed to serve the summons and complaint on Debtor in accordance with Rule 7004(b)(1), in order to give Debtor adequate notice of this proceeding and opportunity to respond.

III. THE CASE, 2201-2360

B. Debtors, 2221-2250

In re Vantiger-Witte, Ch. 12, No. 06-02931, 2006 WL 3861108 (Bankr. N.D. Iowa Dec. 20, 2006) (Debtor is eligible as a Ch. 12 family farmer based on her gross income from tax year 2004)

FSA challenges Debtor's eligibility as a family farmer under Chapter 12. HELD: Applying the appropriate criteria to this case, Debtor has established that she has received at least 50% of her gross income from her farming operation during taxable year 2004, which was the taxable year immediately preceding the taxable year in which the petition was filed.

C. Voluntary Cases, 2251-2280

In re Campbell, Ch. 7, No. 06-01656, 2007 WL 1376226 (Bankr. N.D. Iowa May 7, 2007) (dismissal of case for abuse)

U.S. Trustee asserts the case should be dismissed because the presumption of abuse arises under § 707(b)(2) or, in the alternative, dismissal is appropriate under § 707(b)(3)(B). With changes to Form 22A relating to vehicle payments and 401(k) loan payments, U.S. Trustee argues Debtors have monthly disposable income of \$847.20. The presumption of abuse arises under § 707(b)(2) and Debtors have the ability to pay requiring dismissal under § 707(b)(3)(B). Debtors resist dismissal. HELD: Debtors have gross annual income of over \$100,000, job stability and many years before retirement. Considering the balance in their 401(k) plans of more than \$550,000, Debtors have more assets than liabilities and are solvent on a balance sheet basis. They drive newer vehicles and live in a \$185,000 house. On Schedule J, Debtors claim total monthly expenses of \$6,048.50. These are not the types of "needy" debtors for which a Chapter 7 discharge is meant. When Debtors' 401(k) loans are paid off during the 60-month commitment period for a Chapter 13 plan, Debtors could make substantial payments toward their unsecured debts. The totality of the circumstances of Debtors' financial situation demonstrates granting Debtors a Chapter 7 discharge would be an abuse of the Bankruptcy Code. U.S. Trustee's Motion to Dismiss is granted.

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

V. THE ESTATE, 2491-2760

C. Property of Estate in General, 2531-2570

Huisinga v. Greater Quad City Auto Auction (In re Hocken), Ch. 7, No. 05-07010, Adv. 06-09093, 360 B.R. 282 (Bankr. N.D. Iowa Feb. 22, 2007) (under Illinois law, debtor was owner of vehicles purchased through auto auction)

Trustee alleges Debtor, a used car dealer, sold three vehicles belonging to the estate postpetition and seeks turnover of the proceeds of those sales from the operator of the automobile auction. HELD: Pursuant to Iowa choice-of-law rules, the conduct of the parties is evaluated applying Illinois law. Under Illinois law, Debtor, who acquired the vehicles prepetition through the auto auction's "float" program, was the owner of the vehicles, even though the auction retained possession of the certificates of title and had not yet received payment from Debtor on the petition filing date. Alternatively, under the Illinois certificate of title statute, Debtor, not the auction, became owner of the vehicles.

D. Liens and Transfers; Avoidability, 2571-2600

In re Winchester, Ch. 7, No. 06-01185, 2007 WL 420391 (Bankr. N.D. Iowa Feb. 5, 2007) (liens on piano dolly and exempt tools of the trade are avoidable)

Debtor seeks to avoid a lien held by Wells Fargo Bank, which attached to personal property he claims exempt. The Bank asserts its lien is consensual or a purchase-money security interest and not avoidable. HELD: The Bank's lien on the piano dolly is an avoidable nonpossessory, nonpurchase-money security interest. The Bank failed to meet its burden of proof that Debtor purchased the piano dolly with funds from the SBA loan. The Bank's lien on the remainder of Debtor's exempt tools of the trade is likewise avoidable. Because the parties agree that the Bank's lien on the GPS unit is a purchase-money security interest, it is not avoidable.

E. Preferences, 2601-2640

Schnittjer v. Pickens (In re Pickens), Ch. 7, No. 06-01120, Adv. 06-09166, 2007 WL 2316577 (Bankr. N.D. Iowa Aug. 8, 2007) (denying summary judgment on affirmative defense to preference claim)

Trustee seeks summary judgment striking Defendants' affirmative defense under § 547(c)(2). She argues this ordinary course of business exception to avoidance of preferences is not available to Defendants who loaned Debtors money on only one occasion. Defendants argue issues of fact exist. HELD: The Court, in its discretion, believes that another ruling on partial summary judgment would not speed up this proceeding. The Court has granted Trustee partial summary judgment, with consent of Defendants, ordering that Trustee has satisfied her burden of proof on all § 547(b) elements. The Court next denied Trustee's motion for partial summary judgment on Defendants' affirmative defense under § 547(c)(9). This matter is now ready for trial on all Defendants' defenses. It is unlikely further piecemeal rulings on these defenses will save time or resources.

Schnittjer v. Pickens (In re Pickens), Ch. 7, No. 06-01120, Adv. 06-09166, 2007 WL 1650140 (Bankr. N.D. Iowa June 4, 2007) (denying summary judgment on small preference defense)

Trustee seeks summary judgment striking Defendants' affirmative defense under § 547(c)(9). She asserts each Defendant received transfers valued at more than \$5,000. Defendants assert the

transfers were for less than \$5,000 and issues of fact preclude summary judgment. HELD: The value of a transfer under § 547(c)(9) is determined as of the time of the transfer, without deductions for other possible defenses under § 547(c). Trustee cannot aggregate the total transfers of both Defendants in this action to reach the \$5,000 limit. The utilization of a transactional approach is the most appropriate method to determine whether transfers should be aggregated under § 547(c)(9). If the purported transfer of a security interest to Defendants is transactionally related to the payments they received during the preference period, the value of these two types of transfers could be aggregated to determine whether the \$5,000 limit is exceeded. This conclusion raises issues of fact, making summary judgment inappropriate at this time.

Schnittjer v. Ashby et al (In re Ashby), Ch. 7, No. 05-05779, Adv. 06-09123, 2006 WL 3075946 (Bankr. N.D. Iowa Oct. 26, 2006) (interest payments are payments on antecedent debt)

Trustee filed complaint against Debtor and Debtor's parents seeking avoidance and turnover of preferences, consisting of property and cash payments transferred by Debtor within one year prior to the filing of the Chapter 7 petition. HELD: The sole issue for resolution is whether Debtor's interest-only payments constitute payments made on account of antecedent debt. At the time these payments were made, they were made on a debt which Debtor was legally bound to pay. Thus, they were made on account of antecedent debt.

F. Fraudulent Transfers, 2641-2670

Hanrahan v. Walterman (In re Walterman Implement, Inc.), Ch. 7, No. 05-07284, Adv. 07-09043 (Bankr. N.D. Iowa Oct. 5, 2007) (issues of fact preclude summary judgment on insolvency)

Trustee seeks to recover constructively fraudulent transfers from Defendant under § 548(a)(1)(B). She moves for partial summary judgment on the third element of her fraudulent transfer claim, insolvency. HELD: The parties dispute the fair valuation of Debtor's assets at the time of the transfers. Fair valuation requires a determination of whether Debtor was a going concern. Genuine issues of material fact preclude summary judgment.

Hanrahan v. Walterman (In re Walterman Implement, Inc.), Ch. 7, No. 05-07284, Adv. 07-09043, 2007 WL 2901151 (Bankr. N.D. Iowa Sep. 28, 2007) (issues of fact preclude summary judgment on the first two elements of fraudulent transfer claim)

Trustee seeks to recover fraudulent transfers from Defendant under § 548(a)(1)(B). She moves for partial summary judgment on the first two elements of her fraudulent transfer claim. Defendant argues issues of fact exist regarding whether Debtor made the transfers or received reasonably equivalent value. HELD: Issues of fact exist regarding whether transfers were made by Debtor rather than Leon Walterman, given the structure of subchapter S corporations. Both that issue and whether there was reasonably equivalent value may turn on whether Debtor's creditors were being paid and if there was any net profit available to pay for Leon Walterman's services.

Quad City Bank v. Berstler (In re Chapman), Ch. 7, No. 05-00408, Adv. 06-09112, 2007 WL 2316428 (Bankr. N.D. Iowa Aug. 8, 2007) (finding good faith transferee protected from avoidance of fraudulent transfer)

The Bank asserts Debtor committed actual fraud by using corporate funds to pay for hair removal services provided by Defendant to Debtor's president, Keith Chapman. It seeks return of the payments as fraudulent transfers under the Iowa Uniform Fraudulent Transfers Act. Defendant argues the Bank has failed to prove actual fraud. Furthermore, she asserts she took the funds in good faith and for reasonably equivalent value. HELD: In this case, only two badges of fraud are implicated and the alleged occurrences of these events are remote in time. Assuming without deciding that Mr. Chapman's use of corporate funds for personal services was improper, the record presented by the Bank fails to support an inference of actual fraud, but, at best, merely raises ground for suspicion. Even if the Court were to find the Bank met its burden to prove actual fraud under sec. 684.4(2), Ms. Berstler is protected by the "good faith" defense under sec. 684.8(1). Ms. Berstler acted in good faith when she took payment by Debtor's company checks. The Court does not accept the Bank's implication that it is unreasonable for a business to accept company checks for personal services without inquiring into whether the company authorized such payment.

Hanrahan v. Walterman (In re Walterman Implement Inc.), No. 05-07284, Adv. 06-09072, 2007 WL 328728 (Bankr. N.D. Iowa Jan. 26, 2007) (summary judgment denied on fraudulent transfer claim)

Trustee asks the Court to determine that three snowmobiles were fraudulently transferred to Defendant within the meaning of §§ 548 and 544, as well as Iowa Code Chapter 684. HELD: Three snowmobiles were purchased by Walterman Implement, Inc. within one year of the petition date while Debtor was insolvent. Debtor paid \$9,975 for these snowmobiles which were titled in the name of Defendant Leon Walterman. There was no payment of reasonably equivalent value to the extent of the \$9,975 payment. Trustee seeks turnover of three snowmobiles with a purchase price of \$26,547. This amount is disproportionate absent a satisfactory explanation regarding trade-in allowances which requires proof of additional facts. As the record stands, summary judgment is inappropriate.

G. Set-off, 2671-2700

Kleinsmith v. Alcoa Employees & Comm. Credit Union (In re Kleinsmith), Ch. 7, No. 05-04233, Adv. 06-30105, 361 B.R. 504 (Bankr. S.D. Iowa Dec. 29, 2006) (credit union could not set off debt against exempt funds or third party's account)

Debtor seeks judgment against credit union for amounts it set off against Debtor's accounts. HELD: Credit union could not set off debt against Debtor's accounts that contained exempt child support funds. It could not set off debt against his daughter's account in which he was

joint owner. Credit union willfully violated automatic stay by maintaining administrative hold on debtor's accounts.

VI. EXEMPTIONS, 2761-2820

In re Russow, Ch. 7, No. 06-00885, 357 B.R. 133 (Bankr N.D. Iowa Jan 17, 2007) (homestead exemption limited to amount of net proceeds from sale of prior home)

Chapter 7 trustee objected to, and moved to partially disallow, Iowa homestead exemption claimed by Debtor in residential property acquired after her debt to creditors arose. HELD: Debtor acquired her current residence, in part, with proceeds from sale of prior homestead that she owned before she made allegedly fraudulent statements underlying her alleged debt to creditors. Under Iowa law, Debtor is entitled to homestead exemption in this new residence to the extent of the net, but not the gross, proceeds from the sale of the prior homestead.

VII. CLAIMS, 2821-3000

B. Secured Claims, 2851-2870

Regions Bank v. Pfab (In re Pfab), Ch. 7, No. 05-05713, Adv. 05-9188, 2007 WL 1021970 (Bankr. N.D. Iowa March 30, 2007) (enforcement of stipulation regarding rights of competing creditors)

Regions Bank asks that the Court enforce the Stipulation which was previously read into the record, executed, and approved by the Court. Defendant objects that Simmons Perrine, PLC, counsel for the Bank, is not admitted to practice law in the Northern District of Iowa and that its attorneys committed fraudulent concealment by hiding this fact. Defendant seeks an order requiring Regions Bank to "clean up any negative credit information" which may be reflected in various credit reports. HELD: This demand by Defendant is not part of the executed Stipulation, nor was it ever ordered by this Court. Counsel for the Bank appropriately practice in this Court through a professional corporation.

Wade v. Solon State Bank (In re Wade), Ch. 7, No. 03-01568, Adv. 05-09164, 354 B.R. 876 (Bankr. N.D. Iowa Nov. 13, 2006) (bank's lien on real estate is limited to debtors' equity in the property)

Debtors assert that lien claimed by the bank on their homestead is not valid. HELD: Under Iowa law, amended real estate contract between debtors and executor of estate of original contract seller did not affect the bank's rights as they related to earlier contract executed by debtors. The bank's lien on the homestead was limited to debtors' equity in the property, or \$65,000.00. It properly exhausted nonhomestead property before pursuing homestead property. By first foreclosing on nonhomestead property, the bank did not forfeit its right to foreclose on homestead.

C. Administrative Claims, 2871-2890

In re Wayne Engineering Corp., Ch. 7, No. 05-03394, 2007 WL 704521 (Bankr. N.D. Iowa March 5, 2007), appealed to U.S. District Court, No. 07-CV2020 (allowance and priority of claim against prepetition receiver)

Trustee objects to the claim filed by Innisbrook Equity Group/Jacques Hopkins (“IEG”). IEG filed a proof of claim for \$282,500 which it asserts is entitled to priority. Trustee argues this claim, which arises out of a consulting agreement with Debtor’s prepetition receiver, should be denied. HELD: On the record presented, Trustee has rebutted the prima facie validity of IEG’s proof of claim. IEG has failed in its ultimate burden of persuasion as to the allowability of the claim. The agreement requires that there be a sum benefitting the receivership in order for IEG to be entitled to a success fee. Bankruptcy law requires that there be some benefit to the estate in bankruptcy in order that expenses of the receiver be given administrative expense priority. IEG’s claim is not allowable as an administrative expense claim.

E. Determination, 2921-2950

In re White, Ch. 13, No. 06-01373, 2007 WL 2413013 (Bankr. N.D. Iowa Aug. 21, 2007) (requiring motion to reconsider claims rather than amendment of plan)

Post-confirmation, Debtor filed an Amendment to Plan asking that 28 creditors be removed so that their claims will not be paid through the plan. Trustee and a creditor filed objections. HELD: Debtor’s “Amendment to Plan” is in actuality a request to reconsider the claims of seven creditors. Rule 3008 requires notice and a hearing for a motion to reconsider claims under § 502(j). Debtor is directed to recast her Amendment to Plan as a Motion to Reconsider Claims and give creditors proper notice and opportunity to object.

VIII. TRUSTEES, 3001-3020

IX. ADMINISTRATION, 3021-3250

A. In General, 3021-3060

In re Luxa, Ch. 7, No. 06-01543, 2007 WL 187982 (Bankr. N.D. Iowa Jan. 22, 2007) (granting U.S. Trustee’s motion to compel production of financial information)

U.S. Trustee seeks an order compelling Debtor to produce documentation he requested to facilitate a review of the case under §§ 704(b) and 707(b). Debtor argues U.S. Trustee is not entitled to the information requested. She asserts that U.S. Trustee should pursue formal discovery or undertake a Rule 2004 exam in order to comply with the Rules of Bankruptcy Procedure. HELD: Counsel for Debtor is asking for a blanket prohibition against the office of the U.S. Trustee carrying out its duties, which the Court is not inclined to give. If debtors have

specific objections to specific requests for information by U.S. Trustee, these can be brought before the Court by motion with all the due process accorded contested matters. In this case, Debtor wishes to be relieved from making any response to U.S. Trustee's requests for documentation. The Court finds U.S. Trustee's requests by letter are not improper under the Bankruptcy Code and Rules. U.S. Trustee's Motion to Compel is granted.

Hanrahan v. Martinson Construction Co. (In re Waltermann Implement, Inc.), Ch. 7, No. 05-07284, Adv. 06-09158, 360 B.R. 275 (Bankr. N.D. Iowa Jan 19, 2007) (mechanic's lien on wrong real estate not valid)

Chapter 7 trustee claims that a building contractor does not have a lien against debtor's property, and requests an order requiring it to execute a lien release. The contractor's mechanic's lien statement contained an erroneous description of real estate. HELD: Contractor did not have mechanic's lien on property against which it filed its mechanic's lien. Its mechanic's lien statement erroneously described another parcel owned by Debtor that was adjacent to the parcel on which it performed work. No work was performed by contractor on the parcel described in the lien statement. Summary judgment granted to trustee.

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

Eide v. Haas (In re H & W Motor Exp. Co.), Ch. 7, No. 02-02017, Adv. 04-9106, 358 B.R. 380 (Bankr. N.D. Iowa Dec. 27, 2006) (trustee not entitled to turnover of stock)

Chapter 7 trustee filed adversary complaint to recover, as property of the estate, stock or proceeds from sale of stock, based on defendants' alleged prepetition agreement to surrender such stock to Debtor. Defendants move for summary judgment. HELD: Assuming the validity of the relevant contracts, because neither Debtor, nor the individual who purchased Debtor, ever paid for the stock in question, defendants were not required to surrender it to Debtor. Trustee is not entitled to turnover of the stock or its sale proceeds.

E. Compensation of Officers and Others, 3151-3250

Shodeen v. Petit (In re Burghoff), Ch. 7, No. 05-10947, Adv. 06-30153, ___ B.R. ___, 2007 WL 2405280 (Bankr. S.D. Iowa Aug. 21, 2007) (imposing sanctions for plagiarism by attorney)

The Court set a sanctions hearing concerning Attorney for Defendant upon concluding that he may have filed two briefs which incorporated unattributed material from a scholarly article. HELD: Attorney violated the Iowa Rules of Professional Conduct by plagiarizing material for briefs and by unreasonably billing his client for preparation of the briefs. These violations are sanctionable misconduct under Local Rule 83.2(g). Given the egregiousness of the attorney's conduct, the Court has determined that the appropriate sanctions include 1) completion of a law school course in professional responsibility and 2) disgorgement of fees charged for preparing the plagiarized briefs. The Court also recognizes that the U.S. District Court has authority to

commence a formal procedure and the Iowa Attorney Disciplinary Board will also review this conduct.

In re Jones, Ch. 13, No. 07-00060, 2007 WL 1976024 (Bankr N.D. Iowa July 5, 2007) (reimbursement of filing fee paid by Ch. 13 debtor's attorney)

Counsel for Debtors requests payment of out of pocket costs which include the Chapter 13 filing fee and costs of postage and copies. These requests are in addition to the presumptive fee of \$1,750 requested. Trustee contends the \$1,750 base fee includes costs, except for reimbursement of the Chapter 13 filing fee of \$274. HELD: The question presented is whether bankruptcy filing fees and costs for postage and copies are included in the base amount under Local Rule 2016-1(b), currently \$1,750. The rule states the base amount "applies to all attorney compensation through the first confirmation of a plan." This includes both fees and costs but does not include the attorney's advance of funds to pay the debtor's Chapter 13 filing fee. The filing fee should be reimbursed to the attorney in addition to the presumptive base amount, which is currently \$1,750.

In re Krenz, Ch. 13, No. 05-07287, 2007 WL 1891848 (Bankr. N.D. Iowa June 29, 2007) (fees allowed for Ch. 13 debtor's attorney)

Attorney requests additional compensation for services rendered as counsel for Debtors. The Chapter 13 Trustee, the U.S. Trustee and a creditor filed objections. HELD: The Court accepts the reductions proposed by the attorney and allows total additional compensation of \$1,747.86.

In re Davis, Ch. 13, No. 06-01623, 2007 WL 1891869 (Bankr. N.D. Iowa June 29, 2007) (reduced fees allowed for Ch. 13 debtor's attorney)

Attorney requests compensation through Debtor's Chapter 13 Plan for services rendered as Debtor's attorney. He seeks total fees and expenses in the amount of \$4,742.57. Trustee has paid counsel \$1,500 through the Plan. Counsel asks the Court to order payment of the remaining amount of \$3,242.57. HELD: Additional fees and expenses in the amount of \$928.57 shall be paid by the Trustee through Debtor's Chapter 13 Plan. The remainder of the compensation requested is not approved.

In re Cookinham, Ch. 13, No. 06-01033, 2007 WL 983144 (Bankr. N.D. Iowa March 29, 2007) (denying additional fees for debtors' attorney)

Attorney requests compensation through Debtors' Chapter 13 Plan for services rendered as Debtors' attorney in this case. She requests \$3,450 in fees and \$303.14 for expenses. HELD: Attorney has failed to prove that the fees requested are reasonable in this Chapter 13 case. Neither the statement of services attached to the fee application nor statements at the hearing support a characterization that this case is unique. Attorney spent time on basic services for Debtors. This Court has determined that the base amount of \$1,750 is presumptively reasonable

compensation for Chapter 13 debtors' attorneys. Attorney has not met her burden to prove fees requested of \$3,540 are warranted based on the lodestar factors.

In re Roling, Ch. 7, No. 04-03823, 2007 WL 495309 (Bankr. N.D. Iowa Feb. 12, 2007) (professional corporations may properly practice law through its licensed shareholders)

Debtor and a third party object to Trustee's final report. Both the Trustee and Attorney for the Trustee are members of professional corporations. The objectors assert that corporations cannot practice law. They seek to set aside the activities of both the Trustee and Trustee's attorney and ask the Court to impose various remedies. HELD: A professional corporation may practice a profession through shareholders, directors, officers, employees, and agents who are licensed to practice the same profession in this state under Iowa Code § 496C.7. Included in the definition of "profession" is the profession of law. The objectors' arguments that professional corporations are in bad faith illegally practicing law are meritless.

Shodeen v. Petit (In re Burghoff), Ch. 7, No. 05-10947, Adv. 06-30153, 2006 WL 4013729 (Bankr. S.D. Iowa Dec. 11, 2006) (denying motion to remove counsel for Trustee)

Defendant requests the removal of counsel for Trustee. He alleges that they are disqualified from representing Trustee because they are still actively representing creditors of the estate and failed to disclose numerous conflicts. Trustee asserts that the undisclosed information to which Defendant refers is irrelevant and not required to be disclosed under the Bankruptcy Code. Trustee claims Defendant's objections are an attempt to prevent the most knowledgeable attorneys from pursuing claims against him and requests sanctions if the Court denies Defendant's motion to remove counsel. HELD: Having found that the only reason for Special Counsel's lack of disinterest is concurrent representation of a creditor and Trustee, the Court must next determine whether Special Counsel represents "an adverse interest relating to the services which are to be performed" on behalf of the estate. The Court finds that there is no inherent conflict in Special Counsel's concurrent representation. The facts do not evidence any actual conflict of interest or relationship that would color the independent and impartial attitude required by the Code.

In re Krenz, Ch. 13, No. 05-07287, 2006 WL 3354996 (Bankr. N.D. Iowa Nov. 2, 2006) (approving payment of portion of attorney fees through Chapter 13 plan)

Attorney seeks additional compensation as attorney for Debtors. He has received \$1,344 from Debtors, including the \$194 filing fee. He requests an additional \$12,877.17 to be paid through the plan. U.S. Trustee objects, questioning whether this is reasonable in light of total plan payments of \$19,898. Trustee and a Creditor also object. HELD: Attorney has failed to show all the compensation he seeks is reasonable. The itemized bill shows a significant level of handholding for which the Court is not willing to compensate a Chapter 13 debtors' attorney. It is also improper to bill for time spent recording receipt of payment. The Court also notes an inordinate amount of time spent on intraoffice communications. After reviewing the entire

record, the Court concludes that Attorney is entitled to some increase in fees beyond the base amount in this case. The remainder of the compensation he requests is disallowed.

X. DISCHARGE, 3251-3440

B. Dischargeable Debtors, 3271-3340

Fokkena v. Alber (In re Alber), Ch. 7, No. 05-05644, Adv. 06-09077, 361 B.R. 499 (Bankr. N.D. Iowa Feb. 6, 2007) (denial of discharge not warranted)

U.S. Trustee filed complaint seeking to deny debtor's discharge. HELD: Denial of discharge is not warranted on ground that debtor concealed his right to collect payments from his former girlfriend. Debtor did not act with fraudulent intent or reckless indifference in failing to include in his schedules and statements that his farm equipment had been repossessed and that he had substantial debt with bank.

Fokkena v. Peterson (In re Peterson), Ch. 7, No. 04-01178, Adv. 05-09091, 356 B.R. 468 (Bankr. N.D. Iowa Nov. 14, 2006) (revocation of discharge for false oath)

U.S. Trustee seeks to revoke Chapter 7 debtor's discharge for fraud. HELD: U.S. Trustee failed to establish that debtor fraudulently concealed the assets of his business through a transfer to his son and daughter. However, debtor's falsehoods and omission of assets from his schedules and statement of affairs constitute a "false oath." Discharge is revoked.

Fokkena v. Schwickerath (In re Schwickerath), Ch. 7, No. 05-04512, Adv. 06-09066, 2006 WL 3386736 (Bankr. N.D. Iowa Nov. 1, 2006) (denial of discharge for fraud and false oath)

U.S. Trustee requests denial of Debtor's discharge pursuant to §§ 727(a)(2) and 727(a)(4)(A). The complaint alleges that Debtor failed to disclose substantial property on her bankruptcy schedules, undervalued certain property, misrepresented whether or not liens existed on certain assets, and misrepresented the nature of certain assets. Debtor denies any fraudulent intent. HELD: Debtor intentionally manipulated this estate to avoid leaving even a morsel on the table for the only creditor. She concealed transactions with the intent to hinder or defraud creditors and the bankruptcy trustee. Further, Debtor, with fraudulent intent, knowingly made false oaths by failing to disclose certain activities on her bankruptcy schedules or during her testimony at the § 341 creditor's meeting. U.S. Trustee proved the elements of §§ 727(a)(2) and 727(a)(4)(A) by a preponderance of the evidence. Debtor's discharge is denied.

C. Debts and Liabilities Discharged, 3341-3410

Tinder v. U.S. Dep't of Education (In re Tinder), Ch. 7, No. 05-01190, Adv. 06-09106, 2007 WL 2532869 (Bankr. N.D. Iowa Aug. 31, 2007) (student loan creditor not entitled to summary judgment on complaint to except debt from discharge for undue hardship)

Creditor holding the smaller of two student loans moves for summary judgment that repayment of its claim would not impose an undue hardship on Debtor. HELD: An examination of undue hardship is fact intensive. Even if the Court granted this creditor summary judgment, it would not serve the purpose of speeding up litigation. The Court would still need to examine the totality of circumstances regarding the dischargeability of the student loan held by the remaining defendant. Summary judgment is denied.

Valley Bank v. Quagliano (In re Quagliano), Ch. 7, No. 05-10523, Adv. 06-30103, 2007 WL 2772997 (Bankr. S.D. Iowa Sep. 20, 2007) (denying exception from discharge for fraud)

Debtor's business account with the Bank was overdrawn by \$7,007.40. The Bank asserts that the overdraft resulted from actual fraud and should be excepted from discharge under § 523(a)(2)(A). Debtor denies he committed any fraudulent acts. HELD: Debtor did not know he was making a false representation when he deposited a check to which he was not entitled. The Bank has failed to establish Debtor intended to deceive or defraud the Bank.

Fokkena v. Smith (In re Smith), Ch. 7, No. 05-05398, Adv. 06-09071, ___ B.R. ___ (Bankr. N.D. Iowa June 12, 2007) (denial of discharge for concealment of property and false oath)

U.S. Trustee seeks denial of Debtor's discharge pursuant to § 727(a)(2) and (a)(4)(A). He alleges that Debtor (1) concealed property from the estate by omitting assets from his petition and (2) knowingly made a false oath or account when he testified to the accuracy of his petition. HELD: U.S. Trustee has established by a preponderance of evidence that Debtor concealed his interest in the real estate contract and joint bank account, as well as contract payments, by omitting these items from his bankruptcy petition and schedules. Debtor knowingly made a false oath by testifying to the accuracy of his petition. The bankruptcy process requires complete disclosure. A debtor who violates this precept forfeits his opportunity to discharge his debt. Discharge is denied.

Cain v. Burghoff (In re Burghoff), Ch. 7, No. 05-10947, Adv. 05-30210, ___ B.R. ___, 2007 WL 2331831 (Bankr. S.D. Iowa May 21, 2007) (exception from discharge for fraud and willful injury)

Partners in investment partnership brought adversary proceeding against Chapter 7 Debtor, as managing partner, to recover for his alleged conversion of Plaintiff's funds and to except resulting debt from discharge based on Debtor's false representations, fiduciary fraud or defalcation, or willful and malicious injury. HELD: Debtor did not stand in "fiduciary capacity" to creditors, of kind required by dischargeability exception, simply by virtue of their relationship as partners. Plaintiffs, in justifiable reliance on Debtor's false representations as to profitability of partnership investments, kept their money in partnership and invested even more funds. Debtor's resulting obligation to his partners in investment partnership for financial loss that they sustained is excepted from discharge for "false pretenses, false representation or actual fraud" and "willful and malicious injury." Plaintiffs are entitled to compensatory and punitive damages, as well as interest.

Benson v. Dunbar (In re Dunbar), Ch. 7, No. 06-00074, Adv. 06-9079, 2007 WL 1087451 (Bankr. N.D. Iowa April 5, 2007) (willful injury exception from discharge)

Plaintiff asserts that a \$218,663.30 default judgment awarded to her by an Illinois state court is nondischargeable because (1) the state court found that the predicate injury was “willful and malicious” and (2) Debtor pled guilty to criminal battery for causing Plaintiff’s injury. Debtor asks this Court to make independent findings on whether Plaintiff’s claim meets the “willful and malicious” requirements of § 523(a)(6). HELD: The criminal judgment against Debtor precludes this Court from revisiting the factual question of whether Debtor acted willfully and maliciously. The state court’s findings, made in the misdemeanor battery case, must be honored. Because Debtor acted willfully and maliciously, this Court must conclude that her debt to Plaintiff is excepted from discharge pursuant to § 523(a)(6).

Deemer v. Deemer (In re Deemer), Ch. 7, No. 06-00942, Adv. 06-09169, 360 B.R. 278 (Bankr. N.D. Iowa Jan. 24, 2007) (dismissal of complaint to determine dischargeability of dissolution debt)

Chapter 7 debtor’s estranged wife brought adversary proceeding to except debt from discharge as “domestic support obligation.” Debtor moves to dismiss wife’s complaint for failure to state a claim. HELD: Plaintiff’s and Chapter 7 debtor’s joint indebtedness on credit card debts had not yet been divided by dissolution court as part of pending divorce proceedings. Thus, allegations in complaint did not sufficiently allege any debt was owed to or recoverable by estranged wife, or established by reason of separation agreement, divorce decree, or the like, as required to state cause of action. Motion to dismiss is granted.

Ahlf v. Ahlf (In re Ahlf), Ch. 7, No. 05-08966, Adv. 05-30239, 354 B.R. 884 (Bankr. S.D. Iowa Nov. 16, 2006) (dischargeability of dissolution debt)

Debtor’s former wife filed adversary complaint, seeking determination that dissolution-related debts were excepted from discharge. HELD: The debt for attorney fees of \$2,500.00 awarded to plaintiff in the dissolution decree constituted support. Debtor failed to prove that he did not have the ability to pay a \$22,500.00 property award. The property award is also excepted from discharge under § 523(a)(15), weighing the benefit of discharge to debtor versus the detriment of discharge to former spouse.

D. Effect of Discharge, 3411-3440

In re Vaupel, Ch. 7, No. 06-00124, 2007 WL 2609786 (Bankr. N.D. Iowa Aug. 28, 2007) (denying approval of stipulation regarding reaffirmation and dischargeability)

Debtor and Creditor seek approval of stipulation whereby Debtor agrees to make payments under Reaffirmation Agreement and waives his right to rescind the agreement. Creditor agrees not to pursue its dischargeability objection. HELD: The stipulation attempts to substantially change

rights provided under the Bankruptcy Code. The Court does not wish to be a party to the Creditor using leverage regarding dischargeability to force payment under the Reaffirmation Agreement. It further notes that Counsel fails to satisfy their obligations under the Code by signing reaffirmation agreements simply because their clients ask them.

In re Miller, Ch. 7, No. 07-00581, 2007 WL 2413012 (Bankr. N.D. Iowa Aug. 20, 2007)
(denying approval of reaffirmation agreement re 2007 Harley motorcycle)

Debtor filed a Reaffirmation Agreement with Harley-Davidson Credit to reaffirm \$24,302.71 at 15.01% interest with monthly payments of \$488.29, secured by a 2007 Harley Davidson motorcycle. The reasonableness of this Reaffirmation is the subject of this hearing. HELD: Debtor has options for transportation other than this motorcycle. He owns a 1988 Ford Ranger which he has declared as exempt. Additionally, he has a 1993 GMC pickup which has a fairly modest loan against it. Also, Debtor could go into the marketplace and purchase a reliable automobile for substantially less than the amount that he is paying for this motorcycle. It is not in Debtor's best interest to allow reaffirmation of this obligation.

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

XII. BROKER LIQUIDATION, 3461-3480

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

XIV. REORGANIZATION, 3501-3660

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

XIX. REVIEW, 3741-3860

XX. OFFENSES, 3861-3863