

**SURVEY OF RECENT DECISIONS**  
**OF**  
**THE HONORABLE PAUL J. KILBURG**

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

**October 14, 2010 – October 7, 2011**

**Prepared by**  
**Amy M. Kilpatrick**  
**Law Clerk**

## TABLE OF CONTENTS

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 the Court's web site, [www.ianb.uscourts.gov](http://www.ianb.uscourts.gov).

<b>I.</b>	<b>IN GENERAL, 2001-2120</b>	
	A. In General, 2001-2010	
	B. Constitutional and Statutory Provisions, 2011-2040	
	C. Jurisdiction, 2041-2080	
	D. Venue; Personal Jurisdiction, 2081-2100	
	E. Reference, 2101-2120	
<b>II.</b>	<b>COURTS; PROCEEDINGS IN GENERAL, 2121-2200</b>	
	A. In General, 2121-2150	
	B. Actions and Proceedings in General, 2151-2180	
	C. Costs and Fees, 2181-2200 .....	1
<b>III.</b>	<b>THE CASE, 2201-2360</b>	
	A. In General, 2201-2220	
	B. Debtors, 2221-2250.....	1
	C. Voluntary Cases, 2251-2280 .....	2
	D. Involuntary Cases, 2281-2310	
	E. Joint Cases, 2311-2320	
	F. Schedules and Statement of Affairs, 2321-2330	
	G. Conversion, 2331-2340	
	H. Cases Ancillary to Foreign Proceedings, 2341-2360	
<b>IV.</b>	<b>EFFECT OF BANKRUPTCY RELIEF; INJUNCTION &amp; STAY, 2361-2490</b>	
	A. In General, 2361-2390	
	B. Automatic Stay, 2391-2420	
	C. Relief from Stay, 2421-2460	
	D. Enforcement of Injunction or Stay, 2461-2480	
	E. Protection of Utility Service, 2481-2490	
<b>V.</b>	<b>THE ESTATE, 2491-2760</b>	
	A. In General, 2491-2510	
	B. Title and Rights of Trustee or Debtor in Possession, in General, 2511-2530	
	C. Property of Estate in General, 2531-2570	
	D. Liens and Transfers; Avoidability, 2571-2600	
	E. Preferences, 2601-2640	
	F. Fraudulent Transfers, 2641-2670	
	G. Set-off, 2671-2700	
	H. Avoidance Rights, 2701-2740	
	I. Reclamation, 2741-2760	

<b>VI.</b>	<b>EXEMPTIONS, 2761-2820</b> .....	2
<b>VII.</b>	<b>CLAIMS, 2821-3000</b>	
	A. In General, 2821-2850	
	B. Secured Claims, 2851-2870	
	C. Administrative Claims, 2871-2890	
	D. Proof; Filing, 2891-2920	
	E. Determination, 2921-2950	
	F. Priorities, 2951-3000 .....	4
<b>VIII.</b>	<b>TRUSTEES, 3001-3020</b> .....	4
<b>IX.</b>	<b>ADMINISTRATION, 3021-3250</b>	
	A. In General, 3021-3060 .....	5
	B. Possession, Use, Sale, or Lease of Assets, 3061-3100	
	C. Debtor's Contracts and Leases, 3101-3130	
	D. Abandonment, 3131-3150	
	E. Compensation of Officers and Others, 3151-3250 .....	5
<b>X.</b>	<b>DISCHARGE, 3251-3440</b>	
	A. In General, 3251-3270	
	B. Dischargeable Debtors, 3271-3340 .....	6
	C. Debts and Liabilities Discharged, 3341-3410 .....	7
	D. Effect of Discharge, 3411-3440.....	9
<b>XI.</b>	<b>LIQUIDATION, DISTRIBUTION, AND CLOSING, 3441-3460</b>	
<b>XII.</b>	<b>BROKER LIQUIDATION, 3461-3480</b>	
<b>XIII.</b>	<b>ADJUSTMENT OF DEBTS OF A MUNICIPALITY, 3481-3500</b>	
<b>XIV.</b>	<b>REORGANIZATION, 3501-3660</b>	
	A. In General, 3501-3530	
	B. The Plan, 3531-3590	
	C. Conversion or Dismissal, 3591-3620	
	D. Administration, 3621-3650	
	E. Railroad Reorganization, 3651-3660	
<b>XV.</b>	<b>ARRANGEMENTS, 3661.100-3661.999</b>	
	A. In General, 3661.100-3661.110	
	B. Real Property Arrangements, 3661.111-3661.999	
<b>XVI.</b>	<b>COMPOSITIONS, 3662.100-3670</b>	
<b>XVII.</b>	<b>ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700</b>	
	A. In General, 3671-3680	
	B. The Plan, 3681-3700	
<b>XVIII.</b>	<b>INDIVIDUAL DEBT ADJUSTMENT, 3701-3740</b> .....	9
<b>XIX.</b>	<b>REVIEW, 3741-3860</b>	
	A. In General, 3741-3760	
	B. Review of Bankruptcy Court, 3761-3810	
	C. Review of Appellate Panel, 3811-3830	
	D. Review of District Court, 3831-3860	
<b>XX.</b>	<b>OFFENSES, 3861-3863</b>	

## **I. IN GENERAL, 2001-2120**

## **II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200**

### **C. Costs and Fees, 2181-2200**

Scharnhorst v. Advanced Custom Builders, LLC et al (In re Advanced Custom Builders, LLC; In re Noack), Ch. 7, No. 09-02864, 10-00124, Adv. No. 10-09081, 10-09082, 2011 WL 4498922 (Bankr. N.D. Iowa 2011) (awarding interest from the date of filing the complaint and clarifying that post-judgment interest and attorney fees were included in the judgment)

By Motion for order nunc pro tunc, Plaintiffs assert the judgment fails to contain provisions for interest and attorney fees. HELD: Post-judgment interest is allowed at the rate set out in 28 U.S.C. § 1961. Attorney fees were included in the award against the LLC for breach of contract. The Court also awards interest from the date the Complaint was filed until judgment at the same rate as the post-judgment interest.

## **III. THE CASE, 2201-2360**

### **B. Debtors, 2221-2250**

In re Lewis, Ch. 7, No. 11-01721, 2011 WL 3962817 (Bankr. N.D. Iowa Sep. 7, 2011) (Debtor is ineligible for Chapter 7 case because she received credit counseling postpetition rather than prepetition)

Debtor received credit counseling postpetition, rather than prepetition. The U.S. Trustee moves to dismiss based on Debtor's lack of eligibility under § 109(h)(1). HELD: In light of the mandatory nature of § 109(h), the Court dismisses the case because Debtor is ineligible to be a debtor in bankruptcy based on her failure to receive credit counseling prepetition.

In re Robinson, Ch. 13, No. 10-01610, 2010 WL 466890 (Bankr. N.D. Iowa Nov. 9, 2010) (debtors are not eligible for Ch. 13 relief in case filed 23 days after previous case was dismissed for willful failure to abide by a Court order)

Trustee argues that Debtors are not eligible for Chapter 13 relief pursuant to § 109(g)(1). Debtors claim that, as of the date of the hearing, they are outside the bar for refiling. HELD: Debtors' prior proceeding was dismissed for failure to abide by a Court order giving Debtors 10 days to become current on plan payments and turn over copies of tax returns. Debtors' four other dismissed Chapter 13 cases also evidence a pattern of dismissals based on failure to make plan payments and turn over requested documents. Debtors were not eligible to file their current case only 23 days after their previous case was dismissed.

### **C. Voluntary Cases, 2251-2280**

In re Gerholdt, Ch. 7, No. 11-01321, 2011 WL 4352018 (Bankr. N.D. Iowa Sep. 16, 2011) (Debtor's father's power of attorney is broad enough to authorize him to file bankruptcy petition for incarcerated Debtor)

Creditor seeks dismissal, asserting Debtor cannot commence a bankruptcy case through a filing under a power of attorney he gave to his father. The Chapter 7 Trustee and the U.S. Trustee object that dismissal of the case would prejudice creditors. HELD: The General Power of Attorney is broad enough in scope to authorize Debtor's father to file Debtor's Chapter 7 bankruptcy petition while Debtor is incarcerated.

In re Cockhren, Ch. 7, No. 11-00560, 2011 WL 1838331 (Bankr. N.D. Iowa May 13, 2011) (denying Debtors' motion to dismiss where assets exist for creditors)

Debtors request dismissal of their Chapter 7 case. The U.S. Trustee objects, claiming there may be assets available to administer for creditors and Debtors have failed to identify cause for dismissal. HELD: Dismissal is not appropriate. Debtors failed to show sufficient cause to dismiss the case, especially in light of the probability that assets exist to distribute to creditors.

In re Espey, Ch. 7, No. 10-03050, 2011 WL 671995 (Bankr. N.D. Iowa Feb. 18, 2011) (case filed by individual under guardianship allowed to go forward; stay is lifted to allow state court to determine attorney fees and consider jurisdictional questions)

Debtor who is subject to a state court guardianship proceeding, filed for Chapter 7 protection. An attorney seeking fees from the guardianship sought relief from the automatic stay and dismissal of the case for want of jurisdiction. HELD: Dismissal is not appropriate at this time. The Court will reconsider if it later appears that approval or consent of the state court and/or conservator to file this bankruptcy case was required and not granted. The attorney is granted relief from the stay to allow the Iowa District Court to consider attorney fees in the conservatorship. Questions remain which can be resolved by the state court.

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

### **V. THE ESTATE, 2491-2760**

### **VI. EXEMPTIONS, 2761-2820**

In re A'Hearn, No. 11-00615, 2011 WL 4704235 (Bankr. N.D. Iowa Oct. 4, 2011)  
(payments under Debtor's Separation Agreement are property of the estate and not exempt),  
appealed to District Court

After Trustee objected to Debtors' exemption of wages and income tax refunds, and a Separation Agreement, Debtors filed amended Schedules B and C to claim garnished wages exempt and to change the statutes under which they claim the Separation Agreement exempt. In the alternative, Debtors assert the payments under the Agreement are from a postpetition personal service contract and are not property of the estate. Trustee filed further objections to Debtors' amended exemptions. HELD: The Court concludes 75% of the garnished wages, or \$2,872.70, is exempt under § 1673. Trustee has met her burden to prove payments under the Separation Agreement are property of the estate and are not exempt. The Separation Agreement is not an executory contract. Payments due under the Agreement are property of the bankruptcy estate. Debtors may not claim the payments exempt under § 1673 because they are not earnings. The payments do not result from a personal injury and are not reasonably necessary for the support of Debtors under Iowa Code sec. 627.6(16).

In re Gerholdt, Ch. 7, No. 11-01321, 2011 WL 4352343 (Bankr. N.D. Iowa Sep. 16, 2011)  
(denying objection to incarcerated Debtor's homestead exemption)

Creditor objects to Debtor's homestead exemption. It argues Debtor is not entitled to the exemption because he is incarcerated and will not reside at the homestead for the foreseeable future. HELD: Construing the homestead exemption liberally, the Court concludes Debtor is entitled to claim his real estate exempt as his homestead even though he is currently incarcerated.

In re King, Ch. 7, No. 10-03268, 451 B.R. 884 (Bankr. N.D. Iowa May 05, 2011) (a vehicle is not a tool of the trade for lien avoidance purposes)

Debtor seeks to avoid a lien on her automobile under § 522(f)(1)(B). Creditor objects, arguing that Debtor's use of the car to travel to and from her job does not justify lien avoidance as the vehicle is not a "tool of the trade." HELD: Applying the Eighth Circuit Lafond test, a car only used for commuting purposes cannot be considered a tool of debtor's trade.

In re Nunnaly, Ch. 7, No. 11-00364, 2011 WL 1215837 (Bankr. N.D. Iowa Mar. 31, 2011)  
(avoiding small claims judgment as impairing homestead exemption)

Debtor seeks to avoid lien from small claims judgment based on theft, on the grounds that the lien impairs his homestead exemption. Creditor objects, asserting the judgment is based on a pre-existing debt. HELD: The alleged theft occurred after Debtor's acquisition of his homestead. Therefore, the lien is avoidable under § 522(f)(1)(A). Debtor's homestead may not be sold to satisfy the small claims judgment.

In re Hefel, Ch. 7, No. 10-02787 (Bankr. N.D. Iowa Feb. 16, 2011), aff'd, No. 11-01010, 2011 WL 3292929 (N.D. Iowa Jul. 29, 2011) (Reade, J.) (affirming Bankruptcy Court's order sustaining objection to wildcard exemption of property which Debtors valued at "FMV"), appeal pending, No. 11-2841 (8th Cir.)

The Bankruptcy Court concluded that Debtors' wildcard exemption of property listed on Schedule C with a value of "FMV" was limited to a total aggregate value of \$945.84. The order notes the parties agreed to this conclusion at the hearing. Debtors appealed, arguing the Court impermissibly shifted the burden of proof regarding the proper claim of exemption from the objectors, Trustee and a creditor, to Debtors. HELD (by N.D. Iowa): Trustee raised a timely objection to Debtors' exemption claims based on the \$1,000 statutory limit of the wildcard exemption. Considering Schwab v. Reilly, 130 S. Ct. 2651 (2010), and subsequent cases, the objection is facially valid and any value in the assets beyond the statutory allowance belongs to the estate. The order sustaining the objection to exemption is affirmed.

In re Loney, Ch. 7, No. 10-00323, 2011 WL 133006 (Bankr. N.D. Iowa Jan. 14, 2011) (finding further evidence is needed to determine vehicle exemptions)

Creditor objects that Debtors' claims of exemptions are untimely without good cause. She also states Debtors' schedules understate the values of vehicles claimed exempt. She argues Debtors may each exempt only their one-half interest in one vehicle. HELD: All three issues raised by Creditor are fact intensive. Further proceedings are necessary considering the complexity of the issues and the state of the record.

## **VII. CLAIMS, 2821-3000**

### **F. Priorities, 2951-3000**

In re Miell, Ch. 7, No. 09-01500, 2011 WL 3799770 (Bankr. N.D. Iowa Aug. 26, 2011) (former employees allowed to assert claims for vacation pay; portion attributable to 180 days prepetition is entitled to priority treatment)

Trustee objects to claims of two former employees. One claimant asserts she is entitled to additional vacation pay. The other, whose claim was completely disallowed, asserts he is entitled to wages, vacation pay, health care premiums and severance pay. HELD: One claimant failed to prove he was entitled to severance pay and health care premiums. Both claimants proved they are entitled to vacation pay, with the hours attributable to the 180 days prior to termination of employment entitled to priority status. The remaining amounts are general unsecured claims.

## **VIII. TRUSTEES, 3001-3020**

In re Miell, Ch. 7, No. 09-01500, 2011 WL 482831 (Bankr. N.D. Iowa Feb. 7, 2011) (denying debtor's motion to remove trustee)

Debtor seeks to remove Chapter 7 Trustee, alleging she is not disinterested and has breached her fiduciary duties. Trustee, U.S. Trustee and several creditors resist. HELD: Debtor offered no admissible evidence to prove cause exists to remove Trustee. Trustee has complied with all the mandates of the Bankruptcy Code and Rules.

In re Miell, Ch. 7, No. 09-01500, 2011 WL 90236 (Bankr. N.D. Iowa Feb. 7, 2011) (denying dismissal of motion to remove trustee)

Debtor's Motion asserts there is cause to remove Trustee, claiming Trustee is not a disinterested person, mismanaged the estate, and acted without authority. U.S. Trustee seeks to dismiss Debtor's Motion to remove trustee for lack of prosecution. He claims Debtor, who has the burden of proof, has not taken any steps to develop a factual basis for the motion. HELD: Debtor has not exhibited a pattern of intentional delay or willful disobedience of court orders. The Court will allow Debtor to present evidence at trial to determine whether he has met his burden of proof under § 324(a).

## **IX. ADMINISTRATION, 3021-3250**

### **A. In General, 3021-3060**

In re Hefel, Ch. 7, No. 10-02787, 2011 WL 4356215 (Bankr. N.D. Iowa Sep. 19, 2011) (Trustee's compromise is approved in light of the potential expense, and lack of certainty of success on the merits, of a creditor's alternative), appeal pending, (N.D. Iowa)

Trustee seeks approval of a compromise with Debtors paying cash and Westgate Communities, LLC withdrawing its proof of claim, all in exchange for Trustee abandoning any interest in various closely-held corporations. Credit Union objects, asserting creditors would receive more benefit if Trustee dissolved Westgate Communities, LLC and sold its assets. HELD: The complexity, expense and delay of litigation regarding Trustee's membership rights in and judicial dissolution of Westgate appear to be substantial. The Compromise is within the range of reasonableness and is in the best interests of creditors and the estate. Credit Union's proposal is less reasonable in light of the lack of certainty regarding success on the merits of potential litigation. Overall, Trustee's Compromise gives creditors immediate and tangible benefits compared to the alternative.

### **E. Compensation of Officers and Others, 3151-3250**

In re Duffy, Ch. 13, No. 07-01665, 2011 WL 2909396 (Bankr. N.D. Iowa July 18, 2011) (additional compensation for counsel for Chapter 13 debtors denied)

Attorney requests additional compensation for services rendered as counsel for Debtors. Trustee objects. HELD: The attorney provided Debtors with the basic services required in a Chapter 13 case. The presumptively reasonable amount for such services in this district, at the time of filing, was \$1,750.00. The Court previously awarded attorney fees of \$3,183.42 in this case. The issues in this case were not novel or complex and did not require special skills or experience of Debtors' attorney. The Court is concerned with the lack of detailed descriptions of both fees and out-of-pocket expenses. Applying the lodestar analysis, including consideration of the fees typically charged in Chapter 13 cases, the Court concludes that allowing additional attorney fees to be paid through Debtors' Chapter 13 plan is not appropriate.

In re Jacobs, Ch. 13, No. 09-00457, 2011 WL 2909424 (Bankr. N.D. Iowa July 18, 2011) (additional compensation for counsel for Chapter 13 debtors granted in part)

Attorney requests additional compensation for services rendered as counsel for Debtors, totaling \$2,144.52. Trustee objects. HELD: Counsel agreed to reduce his fee request in light of Trustee's objection. The attorney provided Debtors with the basic services required in a Chapter 13 case. The presumptively reasonable amount for such services in this district, at the time of filing, was \$1,75.00, which was previously awarded to counsel in this case. The court approves an additional \$224.52 of fees and expenses to be paid through the Chapter 13 plan.

## **X. DISCHARGE, 3251-3440**

### **B. Dischargeable Debtors, 3271-3340**

In re Leduc, Ch. 7, No. 10-01641, 2011 WL 3204599 (Bankr. N.D. Iowa July 27, 2011) (8-year bar for discharge in § 727(a)(8) is measured from filing of Ch. 13 petition, regardless of subsequent conversion to Ch. 7)

U.S. Trustee asserts Debtors are not eligible to receive a discharge under § 727(a)(8). Debtors received a discharge in a Chapter 7 case commenced within 8 years prior to filing the Chapter 13 petition in this case, although they subsequently converted the case to Chapter 7 after the 8-year period expired. HELD: An unwavering line of cases applies the plain language of the statutes to hold that the date of filing the Chapter 13 petition controls over the date of conversion to Chapter 7 for the purposes of measuring § 727(a)(8). Debtors are not eligible for a Chapter 7 discharge in this case.

Lincoln Savings Bank v. Freese (In re Freese), Ch.7, No. 09-02627, Adv. No. 09-09140, 2011 WL 2604750 (Bankr. N.D. Iowa June 30, 2011) (denying discharge for debtor's failure to disclose interests in property), appeal pending, No. 11-6055 (B.A.P. 8th Cir.)

Plaintiff seeks denial of discharge under § 727 on three grounds: Debtor failed to disclose all income and assets in the Statement of Financial Affairs and Schedules; Debtor failed to keep records of his financial information and business transactions; and Debtor failed to satisfactorily explain the loss of assets. HELD: Plaintiff proved by preponderance of the evidence that Debtor made false statements under oath. Debtor did not disclose the existence and gross income of his livestock business in his schedules and statements. He also failed to list more than \$25,000 in income which is revealed in Debtor's Form 1040. Finally, Debtor did not disclose transfers of two ATVs, a bobcat and a tractor, or his co-ownership of his wife's Ford Explorer. Debtor's explanations for his omissions are not compelling in establishing innocent intent.

United States Trustee v. Miell (In re Miell), Ch. 7, No. 09-01500, Adv. 10-09003, 2010 WL 4683933 (Bankr. N.D. Iowa Nov. 10, 2010) (denying discharge for debtor's false oaths and failure to disclose personal property)

U.S. Trustee seeks denial of discharge for Debtor's false oath and concealment, and for transfer or undervaluation of assets with the intent to defraud creditors. HELD: Having reviewed the record and the surrounding circumstances, the Court concludes that Debtor made false oaths, with the intent of defrauding his creditors, by failing to fully disclose all his personal property on his bankruptcy schedules and at the meeting of creditors. Debtor signed his bankruptcy schedules under oath and testified at the meeting of creditors under oath. His schedules did not disclose the full extent of his assets. Debtor knew he was not disclosing all his assets and the failure to disclose more than \$200,000 worth of personal property is material to the bankruptcy case.

### **C. Debts and Liabilities Discharged, 3341-3410**

Dudley v. Cornwell (In re Cornwell), Ch. 7, No. 11-01184, Adv. 10-09057 (Bankr. N.D. Iowa Aug. 19, 2011) (summary judgment is appropriate on § 523(a)(6) claim where small claims court granted punitive damages)

Plaintiff's complaint asserts her small claims judgment against Debtor is excepted from discharge for willful and malicious injury. Debtor argues the judgment fails to satisfy the "malicious" element of § 523(a)(6) as it does not make a specific finding regarding Debtor's intent, precluding summary judgment. HELD: It is evident from the Small Claims ruling that the issue was actually litigated in the Small Claims court. That court, in granting punitive damages, found that Debtor's conduct was willful and wanton and directed specifically at Plaintiff. Plaintiff's request for punitive damages in the Small Claims court led that court to consider issues identical to those raised to prove a willful and malicious

injury in this Court. Issue preclusion prevents the parties from relitigating the issue in this Court and Plaintiff is entitled to Summary Judgment as a matter of law.

Scharnhorst v. Advanced Custom Builders, LLC et al (In re Advanced Custom Builders, LLC; In re Noack, Ch. 7, No. 09-02864, 10-00124, Adv. No. 10-09081, 10-09082, 2011 WL 3608004 (Bankr. N.D. Iowa 2011) (damages for breach of construction contract granted against LLC; portion of debt is excepted from individual debtor's discharge for fraud)

Plaintiffs seek to except debt from discharge for fraud under § 523(a)(2)(A) and for willful and malicious injury under § 523(a)(6), based on Debtor Jeffrey Noack's conduct during the construction of their residence. They assert they can pierce the corporate veil between Advanced Custom Builders and Mr. Noack such that both parties are liable for damages. Debtors concede the construction contract was breached, but deny having any intent to defraud or injure Plaintiffs. HELD: Plaintiffs have met their burden to pierce the corporate veil to impose liability on Jeffrey Noack for damages arising from the contract between Plaintiffs and Advanced Custom Builders, L.L.C. They failed to prove the existence of a "willful and malicious injury by the debtor" under § 523(a)(6), but met their burden to prove fraud under § 523(a)(2)(A). The Court awards damages against the LLC for breach of contract, including attorney fees for Plaintiffs. It also finds that a smaller amount of damages are excepted from Debtor Noack's discharge.

Van Daele Bros., Inc. v. Thoms (In re Thoms), Ch. 7, No. 09-03683, Adv. No. 10-09033, 2011 WL 2413221 (Bankr. N.D. Iowa June 08 2011) (debt from loss of cattle under sale and lease-back agreement not excepted from discharge for willful and malicious injury), appeal pending, No. 11-6043 (B.A.P. 8th Cir.)

Plaintiff seeks to except debt from discharge under § 523(a)(6) for willful and malicious injury. Plaintiff purchased and leased back to Debtor 24 cows and 5 yearling heifers. Debtor defaulted on the first annual lease payment. Plaintiff reclaimed the cattle, but asserts that not all the newborn calves were accounted for. Plaintiff argues that Debtor willfully and maliciously concocted a scheme to trick Plaintiff out of his money. HELD: No evidence of any possible motive appears which would give Debtor reason to specifically hurt Plaintiff. The sale and lease documents, drafted without counsel, were sparse in defining each party's rights and duties. Plaintiff failed to prove, by a preponderance of the evidence, that Debtor committed deliberate or intentional acts which were substantially certain to cause Plaintiff harm or targeted at Plaintiff.

Russell v. Russell (In re Russell), Ch. 7, No. 10-02091, Adv. 10-09112, 2011 WL 1356709 (Bankr. N.D. Iowa April 08, 2011) (excepting debt from Michigan divorce from discharge)

Plaintiff seeks summary judgment on his claim to except debt from discharge under § 523(a)(15). The parties were divorced in Michigan and Plaintiff received a money judgment against Debtor. Debtor challenges the jurisdiction of the Michigan court to enter

the money judgment. HELD: Under the Rooker-Feldman doctrine, this Court may not review the validity of the underlying divorce judgment. The issues Debtor raises are inextricably intertwined with the Michigan divorce decree and cannot be considered by this Court. Debtor does not dispute that the money judgment in the Decree is owed to Plaintiff. The Court must, therefore, conclude that Plaintiff has met his burden to prove the money judgment in the Default Judgment of Divorce is excepted from discharge as being to a spouse and incurred in connection with a divorce decree.

#### **D. Effect of Discharge, 3411-3440**

In re Nichols, Ch. 7, No. 10-01323, 2010 WL 4922438 (Bankr. N.D. Iowa Nov. 29, 2010) (finding it is improper to vacate a discharge to allow the filing of an untimely reaffirmation agreement)

After discharge was entered and the case was closed, creditor moved to reopen the case and set aside the discharge in order to file a reaffirmation agreement. HELD: To be enforceable and effective, a reaffirmation agreement must be made before the discharge is entered. Once the discharge is entered, the deadline for making a reaffirmation agreement has passed. It is improper to vacate Debtor's discharge to allow the filing of an untimely reaffirmation agreement.

#### **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**

In re Costello, Ch. 13, No. 10-03385, 2011 WL 2712970 (Bankr. N.D. Iowa July 12, 2011) (confirmation denied based on Debtors' inability to sell business real estate to fund the plan; creditor is granted relief from the stay)

In their Chapter 13 plan, Debtors propose to sell real estate they use in their wrecking and towing business to pay related debt to Farmers Savings Bank. The Bank objects that the plan is not feasible and seeks relief from the stay to enforce its lien against the real estate. HELD: Debtors failed to prove the plan is feasible. No objective facts have been presented which convince the Court that Debtors will be able to fund their plan as proposed through a timely sale of the business real estate and assets. The delay in this case and lack of confirmable plan are grounds for dismissal under § 1307(c). The Bank has shown sufficient cause for relief from the automatic stay based on the extended length of time the loan has been in default and Debtors' inability to propose a confirmable plan or timely sell the property.

In re Lynch, Ch. 13, No. 09-1894, 2011 WL 1060978 (Bankr. N.D. Iowa Mar. 22, 2011)  
(denying application to use disposable income to pay postpetition medical bills)

Debtors incurred medical expenses from a motorcycle accident and seek approval to use part of a bonus from an employer to pay these expenses. Trustee objects, claiming Debtors' disposable income payments have fallen short of projections and the funds should be applied to make plan payments. HELD: Debtors' plan promises to pay disposable income to Trustee for distribution to creditors. As postpetition debt, the medical bills are not treated under the plan. They will not be included in the discharge and can be collected from Debtors after the Chapter 13 plan is complete. The Application to use disposable income is denied.

In re Krapfl, Ch. 13, No. 10-01461, 2010 WL 4338475 (Bankr. N.D. Iowa Oct. 27, 2010)  
(allowing Debtor to strip off unsecured junior lien)

Debtor objects to a secured claim of junior mortgagor, asserting the value of the real estate is less than the amount of the first mortgage. Debtor wishes to treat the junior mortgagor's claim as unsecured. HELD: Although the Eighth Circuit Court of Appeals has not expressed an opinion, six other Circuit Courts agree that a wholly unsecured junior lien on a Chapter 13 debtor's personal residence may be stripped off under § 1322(b) and § 506(a). This Court concurs, and grants Debtor's request to strip off the wholly unsecured junior lien.

## **XIX. REVIEW, 3741-3860**

## **XX. OFFENSES, 3861-3863**