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PREFACE

This publication contains the current Bankruptcy Code (11 U.S.C.) and related provisions of United States Code Title 18 and 28, as amended through Pub.L. 111–264, approved October 8, 2010. The Federal Rules of Bankruptcy Procedure are current with amendments to December 1, 2010.

This 2011 edition includes the dollar amount adjustments made pursuant to 11 U.S.C. § 104, which apply with respect to cases commenced on or after April 1, 2010. The most recent Bankruptcy Court Miscellaneous Fee schedule, effective January 1, 2010, is included following 28 U.S.C. § 1930, along with the most recent Electronic Public Access Fee Schedule, effective August 1, 2010, which is included following 28 U.S.C. §§ 1913 and 1930.

Judge William H. Brown, Lawrence R. Ahern, III and Nancy Fraas Maclean prepared the "Bankruptcy Highlights" feature, in which they discuss recent bankruptcy law developments, including the 2010 amendments to the Federal Rules of Bankruptcy Procedure and Forms, amendments to the Federal Rules of Civil Procedure and Forms, recent Supreme Court and Circuit Court decisions relevant to bankruptcy practitioners, and significant legislation from the 111th Congress.

The Federal Rules of Civil Procedure and Federal Rules of Evidence, as amended, have been included to provide the practitioner with a "single source" reference for current bankruptcy laws, rules and forms. The Federal Rules of Civil Procedure govern adversary proceedings under Part VII and contested matters under Part IX of the Federal Rules of Bankruptcy Procedure. Bankruptcy Rule 9017 provides that the Federal Rules of Evidence govern evidentiary matters in bankruptcy proceedings.

The Department of Justice regulations relating to the United States Trustees—including United States Trustee Guidelines for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330—are included, as well.

For comprehensive coverage of all aspects of bankruptcy law, see *Norton Bankruptcy Law and Practice*. The *Bankruptcy Code Manual* by Michael J. Holleran, Donna Larsen Holleran, John D. McMickle, and John B. Corr contains a section-by-section explanation of Title 11. The *Bankruptcy Procedure Manual* by Lawrence R. Ahern, III and Nancy Fraas MacLean provides comprehensive commentary and practical advice relating to the Federal Rules of Bankruptcy proceedings are treated in the *Bankruptcy Evidence Manual* by Judge Barry Russell. The *Bankruptcy Exemption Manual* by Judge William H. Brown, Lawrence R. Ahern, III and Nancy Fraas MacLean discusses the use of state and federal exemptions to shelter assets in bankruptcy, and contains a detailed comparison of each state's exemption. The *Financial Handbook for Bankruptcy Professionals* by Jay Alix, Robert J. Rock, Ted Stenger and Jack F. Williams gives a full treatment of the legal concepts and business and financial issues that impact a company in trouble. Additional bankruptcy forms and commentary are provided in Volumes 6 and 6A of *West's Federal Forms* (by Hon. William Houston Brown, Lawrence R. Ahern, III and Nancy Fraas MacLean) and in volumes 9 and 9A of *West's Legal Forms* (by Judge William H. Brown, Lawrence R. Ahern III and Nancy Fraas MacLean).

For researching bankruptcy cases, see West's Bankruptcy Reporter and West's Bankruptcy Digest. Cross-references to the West Key Number System are provided throughout this 2011 Edition.

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BANKRUPTCY HIGHLIGHTS

By

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I. Amendments to the Federal Rules of Bankruptcy Procedure and Forms

Effective December 1, 2010, Bankruptcy Rules 1007, 1014, 1015, 1018, 1019, 4001, 4004, 5009, 7001, and 9001 were amended, and new Rule 5012 and new Official Form 23 were added.

Rule 1007(a)(2) was amended to shorten from fourteen days to seven the period within which the debtor must file a list containing the name and address of each entity included or to be included on Schedules D, E, F, G, and H in an involuntary case.

Rule 1007(c) was amended to lengthen the deadline for filing the statement of completion of a course in financial management from 45 days to 60 days after the first date set for the meeting of creditors. Under the amended Rule 5009, 45 days after the meeting of creditors, the clerk will notify the debtor that the case will be closed without entry of a discharge unless the statement is filed within the 60–day time limit.

Rule 1014(b) was amended to include petitions seeking recognition of a foreign proceeding under Chapter 15 among those governed by the procedure to determine venue.

Rule 1015(a) was amended to authorize the court to consolidate not only cases by or against the debtor, but also cases "regarding" the debtor. Thus, if two or more petitions, including a foreign proceeding under Chapter 15, are pending in the same court, the court may order the consolidation of the cases.

Rule 1018 was amended to clarify that petitions seeking recognition of a foreign proceeding under Chapter 15 are among those governed by the procedure to contest an involuntary petition,

and that the rule applies to a contest of an involuntary petition, but not to matters merely "relating to" an involuntary petition.

Rule 1019(2) was amended to provide that the conversion of a case to chapter 7 gives rise to a new time period for filing an objection to a claim of exemptions unless (1) the conversion occurs more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or (2) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.

Rule 4001(d) was amended to shorten the time for filing objections to an agreement relating to relief from the automatic stay, the use, sale or lease of property, adequate protection, cash collateral, or obtaining credit, from 15 to 14 days, and to lengthen the time for notice of a hearing thereon from 5 to 7 days.

Rule 4004(a) was amended to provide that a motion under section 727(a)(8) or (a)(9) or section 1328(f) objecting to the debtor's discharge must be filed no later than 60 days after the first date set for the meeting of creditors.

Rule 4004(c)(4) was added to provide that the court should not grant a discharge if an individual chapter 11 debtor or a 13 debtor has failed to file a statement of completion of a personal financial management course.

Rule 4004(d) was amended to provide that an objection to discharge is commenced by a complaint and governed by adversary proceeding rules except that an objection to discharge under section 727(a)(8) or (a)(9) or section 1328(f) in successive bankruptcy cases is made by motion and governed by contested matter rules.

Rule 5009(b) was added to require the clerk to notify the debtor that the case will be closed without entry of a discharge unless the statement of completion of a course in financial management required by Rule 1007(b)(7) is filed within the 60–day time limit prescribed by Rule 1007(c). This notice is sent by the clerk if the debtor has failed to file the statement within 45 days after the first date set for the meeting of creditors.

Rule 5009(c) was added to require a foreign representative in a chapter 15 proceeding to file a final report when the purpose of the representative's appearance in the court is completed. Subdivision (c) prescribes the content of the report and designates the parties to receive notice of the filing of the report, giving them 30 days within which to object before the presumption takes effect that the case has been fully administered.

Rule 5012 was added to require a motion for approval of a protocol (an agreement on the management of the case) in a chapter 15 case, and designates the persons entitled to notice of the hearing on the motion. Because the purpose of chapter 15 is to facilitate cooperation in the administration of a cross-border insolvency case, agreements are encouraged.

Rule 7001(4) was amended to provide that an objection to the debtor's discharge in successive bankruptcy cases under section 727(a)(8) or (a)(9) or section 1328(f) is made by motion and governed by contested matter rules.

Rule 9001 was amended simply to add section 1502 to the list of sections containing words and phrases for use in the bankruptcy rules.

Form 23 was amended to indicate the amended filing deadline in Rule 1007(c).

In addition, effective April 1, 2010, Official Forms 1, 6C, 6E, 7, 10, 22A, 22C were amended, along with Procedural Forms B200 and B283, to reflect increases in amounts subject to automatic adjustment every three years. Amendments to Procedural Forms B240A, B240A/B Alt., and B240C Alt., are highlighted below.

Procedural Form B240A, Reaffirmation Documents, was amended in its wording, but not in substance, except to include the caution that the court may extend the time for filing a reaffirmation agreement, even after the 60–day period has ended. Also, the form provides that if the debtor was represented by an attorney during the negotiation of the reaffirmation agreement and if the creditor is not a credit union, the agreement becomes effective when it is filed with the court unless the reaffirmation is presumed to be an undue hardship. If the reaffirmation agreement is presumed to be an undue hardship, the court must review it and may set a hearing to determine whether the debtor has rebutted the presumption of undue hardship.

Procedural Form B240A/B Alt., Reaffirmation Agreement, was expanded to insure that the debtor is not put under an undue hardship by the agreement, and is informed of his or her rights, the annual percentage rate, and the right to rescind.

Procedural Form B240C Alt., Order on Reaffirmation Agreement, was amended only in its designation as an alternative form.

II. Amendments to the Federal Rules of Civil Procedure and Forms

Effective December 1, 2010, Civil Rules 8(c), 26, 56 and Form 52 were amended. The highlights of these amendments are set forth below.

Rule 8(c) was amended to delete "discharge in bankruptcy" from the list of affirmative defenses that must be asserted since, under section 524 of the Bankruptcy Code, a discharge voids a judgment on a claim that was discharged in bankruptcy.

Rule 26 was amended to limit the required disclosure of an expert's draft reports and work product. Where the expert is not required to provide a written report, the rule requires only that the disclosure state: "(i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and (ii) a summary of the facts and opinions to which the witness is expected to testify." Rule 26(a)(2)(C). Where a witness is required to provide a written report, draft reports are afforded work-product protection and protection is extended to communications between that witness and the party's attorney. Such communications are discoverable only to the extent that they:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

Rule 26(b)(4)(C).

Rule 56 was extensively amended to make summary judgment procedure more uniform among the district courts. The rule:

(1) clarifies that partial summary judgment is permissible—Rule 56(a);

(2) requires the court to state on the record the reasons for granting or denying the motion—Rule 56(a);

(3) deletes the deadlines for a response and reply so that scheduling orders or other pretrial orders can regulate the timing to fit the needs of the case—Rule 56(b);

(4) requires citation to the relevant material accompanying the motion in support of the assertion that a fact can or cannot be genuinely disputed—Rule 56(c)(1);

(5) allows a party to object to the admissibility of material cited in support or dispute of a material fact—Rule 56(c)(2);

(6) allows the court to consider other material in the record not cited in the motion—Rule 56(c)(3);

(7) deletes the requirement of a formal affidavit—Rule 56(c)(4);

(8) allows the court to consider a fact as undisputed—Rule 56(e)(2); and

(9) makes sanctions discretionary for the bad faith submission of an affidavit—Rule 56(h).

Form 52, the report of the parties' planning meeting, was amended to provide a plan for (1) disclosure or discovery of electronically stored information, (2) claims of privilege, and (3) protection of trial-preparation materials.

III. Amendments to the Federal Rules of Appellate Procedure and Forms

Effective December 1, 2010, Appellate Rules 1, 4, 29, and Form 4 were amended. The highlights of these amendments are set forth below.

Rule 1 was amended to add a new subdivision (b), which defines the term "state" to include the District of Columbia and any commonwealth (the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands) or territory (Guam, American Samoa and the U.S. Virgin Islands) of the United States.

Rule 4 was amended to reflect the renumbering of Civil Rule 58 as part of the 2007 restyling of the Civil Rules: References to Civil Rule "58(a)(1)" were revised to refer to Civil Rule "58(a)." No substantive change was intended. and, because the amendments were technical and conforming, they were not published for public comment, in accordance with Judicial Conference procedures.

Rule 29 was amended primarily to conform to recently-revised Supreme Court Rule 37.6 on amicus briefs: Subdivisions (c)(1) through (c)(5) were renumbered and track the order in which the items should appear in the brief. New subdivision (c)(5) sets certain disclosure requirements concerning authorship and funding, exempting from those requirements entities entitled to file an amicus brief without the consent of the parties or leave of court. This disclosure requirement was designed to deter counsel from using an amicus brief to circumvent page limits on the parties' briefs. The Advisory Committee also anticipated that the amendment might assist judges in determining "whether the amicus itself considers the issue important enough to sustain the cost and effort of filing an amicus brief." Mere coordination, however, in the sense of sharing drafts of briefs, is not required to be disclosed.

Form 4, the "Affidavit Accompanying Motion for Permission to Appeal In Forma Pauperis," was amended to conform to the privacy rules: If the movant is under 18, only initials need be disclosed. The address of legal residence is limited to the city and state and only the last four digits of the social security number are to be disclosed.

IV. Recent Supreme Court Decisions of Interest to Bankruptcy Practitioners

A. Although a chapter 13 plan proposing the discharge of a student loan debt without a determination of undue hardship in an adversary proceeding should not be confirmed, the creditor with notice of plan is bound by confirmation. United Student Aid Funds, Inc. v. Espinosa, ___ U.S. ___, 130 S.Ct. 1367, 176 L.Ed.2d 158 (2010).

A chapter 13 debtor obtained confirmation of his plan to repay only the principal of his student loan debt and to discharge the accrued interest without first initiating an adversary proceeding or obtaining an undue hardship determination. Three years later the creditor intercepted the debtor's income tax refund to repay the student's loans. The debtor petitioned for an order to hold the student loan creditor in contempt for violating the discharge injunction. The United States Supreme Court held that a chapter 13 plan proposing the discharge of a

student loan debt without a determination of undue hardship in an adversary proceeding should not be confirmed even if the creditor fails to object; however, the bankruptcy court's legal error in confirming the plan was not jurisdictional and did not render its judgment void. Notwithstanding the legal error, the creditor with actual notice of the plan's terms was bound by the effect of confirmation, when the creditor did not object to confirmation or appeal the confirmation order.

B. When calculating a chapter 13 debtor's projected disposable income, the court may consider changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation. Hamilton v. Lanning, ___ U.S. ___, 130 S.Ct. 2464, 177 L.Ed.2d 23 (2010).

Generally, a chapter 13 debtor's disposable income is calculated by averaging his or her monthly income during the six months preceding the filing of the bankruptcy petition. In this case, a one-time buyout from the debtor's former employer resulted in an increase in her average income during the six months prior to her bankruptcy filing. Since the increase was virtually certain not to be repeated, the bankruptcy court did not include that amount when determining the debtor's projected disposable income. The chapter 13 trustee objected. The bankruptcy court, the Tenth Circuit Bankruptcy Appellate Panel, and the Tenth Circuit all concluded that the court's calculation of projected disposable income should begin with the mechanical approach prescribed by the Bankruptcy Code, but that it is permissible for the court to factor in a substantial change in the debtor's circumstances. The Supreme Court affirmed.

C. Chapter 7 trustee's lack of objection to debtor's claimed exemptions did not prevent trustee's sale of asset. Schwab v. Reilly, ___ U.S. ___, 130 S.Ct. 2652, 177 L.Ed.2d 234 (2010).

The Supreme Court refined *Taylor v. Freeland & Kronz,* 503 U.S. 638, 112 S.Ct. 1644, 118 L.Ed.2d 280 (1992), holding that the Chapter 7 trustee's lack of objection to the debtor's claimed exemption in kitchen equipment did not prevent the trustee from selling the asset for more than the exemption claim, paying the debtor the exempt amount, and distributing the balance to unsecured creditors. The debtor had claimed §§ 522(d)(5) and (6) exemptions in specific amounts, which were within the statutes' monetary limits, and the trustee did not object, despite having an appraisal showing the equipment worth more than the exempt amounts. Distinguishing those Code sections that have monetary limits from those exemptions that are not limited in amount, the Court's 6–3 majority held that when the debtor claimed exemptions in amounts within the statutory limits, the trustee was not put on notice of need to object. The statutory exemptions were for "the debtor's aggregate interest in" the property described in §§ 522(d)(5) and (6). In *Taylor,* the debtor had claimed exemption in a cause of action, stating the value as "unknown," and this made the exemption "objectionable on its face," requiring an objection within Rule 4003's deadline. In the present case, the debtor's exemptions for specific monetary amounts did not raise "warning flags," triggering need for objection.

D. An attorney who provides bankruptcy assistance to a debtor is a debt relief agency under the Bankruptcy Code, and the Bankruptcy Code provision prohibiting an attorney from advising a debtor to incur more debt in anticipation of bankruptcy is not unconstitutional. Milavetz, Gallop & Milavetz, P.A. v. U.S., ___ U.S. ___, 130 S.Ct. 1324 (2010).

Section 101(12A) of the Bankruptcy Code defines a "debt relief agency" as "any person who provides any bankruptcy assistance to an assisted person . . . for . . . payment . . ., or who is a bankruptcy petition preparer." The United States Supreme Court held that this section clearly indicates that it includes an attorney who provides bankruptcy assistance to a debtor.

Section 526(a)(4) of the Bankruptcy Code prohibits a debt relief agency from advising an assisted person to incur more debt in contemplation of filing a bankruptcy petition. The Eighth Circuit had held this provision to be unconstitutional as overbroad. The Supreme Court

construed the provision more narrowly to prohibit only advice to incur debt that would lead to an abuse of the bankruptcy system, such as loading up on credit card debt with the expectation that the debt would be discharged. In a footnote, the Court gave examples of permissible advice that might result in increased debt:

> [A]dvice to refinance a mortgage or purchase a reliable car prior to filing because doing so will reduce the debtor's interest rates or improve his ability to repay is not prohibited, as the promise of enhanced financial prospects, rather than the anticipated filing, is the impelling cause. Advice to incur additional debt to buy groceries, pay medical bills, or make other purchases "reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor," 523(a)(2)(C)(ii)(II), is similarly permissible.

Section 528 of the Bankruptcy Code requires a debt relief agency to identify itself as a debt relief agency and to disclose in its advertisements for certain services that the services may involve bankruptcy relief. The Supreme Court upheld these provisions as "reasonably related to the [Government's] interest in preventing deception of consumers." Thus, sections 526 and 528 do not violate the First Amendment of the Constitution.

E. The "bona fide error" defense in FDCPA does not apply to violation of FDCPA resulting from a debt collector's incorrect interpretation of legal requirements of the Act. Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, ___ U.S. ___, 130 S.Ct. 1605, 176 L.Ed.2d 519 (2010).

The Fair Debt Collection Practices Act (FDCPA), 15 U.S.C.A. § 1692 et seq., imposes civil liability on "debt collector[s]" (including law firms) for certain prohibited debt collection practices. A debt collector who "fails to comply with any [FDCPA] provision . . . with respect to any person is liable to such person" for "actual damage[s]," costs, "a reasonable attorney's fee as determined by the court," and statutory "additional damages." 15 U.S.C.A. § 1692k(a). In addition, violations of the FDCPA are deemed unfair or deceptive acts or practices under the Federal Trade Commission Act (FTC Act), § 41 et seq., which is enforced by the Federal Trade Commission (FTC). See 15 U.S.C.A. § 1692l. A debt collector who acts with "actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is [prohibited under the FDCPA]" is subject to civil penalties enforced by the FTC. FTC Act §§ 45(m)(1)(A), (C). A debt collector is not liable in any action brought under the FDCPA, however, if it "shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C.A. § 1692k(c).

The Debtor (Jerman) brought an action against a law firm, alleging violations of the FDCPA and the Ohio Consumer Sales Practices Act. The law firm filed a lawsuit in Ohio state court on behalf of a mortgage company to foreclose a mortgage on real property owned by Jerman. The complaint included a notice that the mortgage debt would be assumed valid unless Jerman disputed it in writing. Jerman's lawyer sent a letter disputing the debt, and, when the mortgage company acknowledged that the debt had in fact been paid, the law firm withdrew the suit. Jerman then filed the action leading to this appeal, contending that by sending the notice requiring her to dispute the debt in writing, the law firm had violated the provisions of the FDCPA that govern the contents of notices to debtors.

The Supreme Court concluded that the law firm had violated the notice requirements and reversed the Sixth Circuit, holding that the bona fide error defense in section 1692k(c) does not extend to mistakes of law and resolving a division of authority on the question.

V. Recent Circuit Court Bankruptcy Decisions

The monthly **Norton Bankruptcy Law Adviser**, available from Thomson Reuters in print or on WestlawNext and Westlaw, publishes summaries of circuit court decisions affecting bankruptcy and interpreting the Bankruptcy Code. Selected from the **Adviser**, as prepared by Austin L. McMullen and Max Smith, of Bradley Arant Boult Cummings, LLP, Nashville, Tennessee, the following circuit court decisions were issued since publication of the 2010 edition of Bankruptcy Highlights. The March issue of the **Adviser** each year contains a more extensive summary of appellate bankruptcy decisions from each circuit.

FIRST CIRCUIT

Ameriquest Mortgage Co. v. Nosek (In re Nosek), 609 F.3d 6 (1st Cir. 2010). Sanction of $250,000 imposed on mortgage servicer for violation of Rule 9011 was excessive. Servicer filed documents incorrectly asserting it was the holder of the note. This misrepresentation was unintentional and resulted in no advantage to the servicer. Although the servicer had a history of questionable practices, the sanction was based only on the servicer's conduct in this case rather than the overall pattern. The court reduced the sanction to $5,000.

Sherman v. Potapov (In re Sherman), 603 F.3d 11 (1st Cir. 2010). Embezzlement under § 523(a)(4) is traditional, common-law embezzlement, which is fraudulent conversion of another's property by someone already in lawful possession of the property.

Rederford v. U.S. Airways, Inc., 589 F.3d 30 (1st Cir. 2009). Former employee's reinstatement action under Americans With Disabilities Act was a "claim" under § 101(5). Though reinstatement is an equitable remedy, the claim can be reduced to money in the form of front pay. Since the cause of action is a claim, it was discharged.

Smith v. Pritchett (In re Smith), 586 F.3d 69 (1st Cir. 2009). Late payment penalty was not a domestic support obligation under § 101(14A) and, thus, was dischargeable under § 523(a)(5). Per diem penalty, contained in state court alimony order, was not intended to support former spouse but was intended as a punitive measure to deter late payments.

Riley v. National Lumber Co.(In re Reale), 584 F.3d 27 (1st Cir. 2009). Ability of debtor to exercise control determines whether funds in bank account are an interest of the debtor in property for § 547(b) purposes. Debtor paid debt out of bank account titled to other family members, but gifted to debtor by his grandmother. In preference litigation, recipient argued funds were not an interest of the debtor in property. Court determined debtor had sufficient control over account and upheld avoidance of preferential payment.

Braunstein v. McCabe, 571 F.3d 108 (1st Cir. 2009). (1) The Seventh Amendment does not grant a jury trial right in actions to compel turnover of estate property under § 542. There was no common-law turnover action in England at the time the Seventh Amendment was enacted, nor was there an analogous action at law at that time. (2) Debtor's expenditure of insurance proceeds for a major dismantling and reconstruction of a houseboat was not in the ordinary course of business under § 363. Applying horizontal test, transaction was not the sort commonly undertaken by companies in the industry. The expenditure was designed not only to repair but to improve the houseboat. Applying vertical test, the transaction was not ordinary within the context of the debtor/creditor relationship. The expenditure was not within the debtor's day-to-day operations.

SECOND CIRCUIT

Baker v. Simpson, ___ F.3d ___, 2010 WL 2977329 (2d Cir. July 30, 2010). Claims of professional malpractice based on services rendered during a Title 11 case "arise in" a bankruptcy case and are core because they implicate the integrity of the bankruptcy process and are inseparable from that case.

SEC v. Byers, 609 F.3d 87 (2d Cir. 2010). District courts may issue anti-litigation injunctions barring bankruptcy filings as part of broad equitable powers in the context of a Securities and Exchange Commission receivership. The SEC complaint alleged a massive Ponzi scheme against 240 related corporate entities. A temporary restraining order appointed a temporary receiver and prohibited any related litigation or involuntary bankruptcy cases against any of the entities. Creditors' committees appealed the anti-litigation provision. The right to file an involuntary bankruptcy petition can be waived. Like bankruptcy, a receivership also protects the assets of the estate.

Adams v. Zelotes, 606 F.3d 34 (2d Cir. 2010). Section 526(a)(4), as amended by BAPCPA, is not overbroad and unconstitutional. Attorney brought complaint that provision prohibiting debt relief agencies, including attorneys, from advising consumer debtors to incur more debt in contemplation of bankruptcy was unconstitutional. While appeal was pending, the U.S. Supreme Court in *Milavetz, Gallop & Milavetz, P.A. v. United States*, ___ U.S. ___, 130 S.Ct. 1324, 176 L.Ed.2d 79 (2010), rejected a broad reading and clarified that § 526(a)(4) narrowly constrains bankruptcy professionals from advising someone to incur more debt when the impelling reason for the advice is the anticipation of filing bankruptcy.

AmeriCredit Fin. Servs., Inc. v. Tompkins, 604 F.3d 753 (2d Cir. 2010). Hanging paragraph of § 1325(a) renders § 506(a) inapplicable to a vehicle surrendered in bankruptcy that was purchased within the applicable 910–day time period. Because both New York state law and the contract gave creditor the right to an unsecured deficiency judgment after repossession, creditor was entitled to unsecured deficiency claim.

Johns-Manville Corp. v. Chubb Indem. Ins. Co. (In re Johns–Manville Corp.), 600 F.3d 135 (2d Cir. 2010). After remand from Supreme Court, injunction prohibiting claims against nondebtor third-parties violated constitutional due process rights of insurance company that was not a party to and was without notice of the confirmation process. Publication notice employed by bankruptcy court was insufficient to bind Chubb to the injunction.

Jackson v. Novak (In re Jackson), 593 F.3d 171 (2d Cir. 2010). Federal exemption in § 522(d)(11)(E) includes compensation for lost postpetition earnings to the extent reasonably necessary to support the debtor and dependents. "Future earnings" refers to postpetition earnings but does not include anticipated prepetition earnings after termination of the debtor's employment.

Ogle v. Fidelity & Deposit Co., 586 F.3d 143 (2d Cir. 2009). An unsecured claim for postpetition attorney's fees authorized by a prepetition contract is allowable under § 502(b) and is deemed to have arisen prepetition. The protections afforded over-secured creditors under § 506(b) do not implicate unsecured claims for postpetition attorney's fees and therefore present no bar to recovery.

Reiber v. GMAC, LLC (In re Peaslee), 585 F.3d 53 (2d Cir. 2009) (per curiam). Under New York law, portion of automobile retail installment sale obligation attributable to "negative equity" in trade-in is part of purchase-money security interest in new vehicle and is protected from cramdown by hanging paragraph of § 1325(a). The New York Court of Appeals decided certified question that negative equity becomes part of PMSI in new vehicle under New York's Uniform Commercial Code.

ASM Capital, LP v. Ames Dep't Stores, Inc. (In re Ames Dep't Stores, Inc.), 582 F.3d 422 (2d Cir. 2009). Section 502(d), which bars allowance of certain claims by recipients of preferential transfers, does not bar allowance of an administrative expense under § 503. In the context of § 502(d), Congress intended to differentiate between claims and administrative expenses.