Bankruptcy

**by Hon. James D. Walker, Jr.*
and Amber Nickell****

I. INTRODUCTION

In 2007 the world of bankruptcy law lacked much of the excitement seen in 2005 and 2006. During the previous two years a variety of novel issues and intra-circuit conflicts arose as courts began interpreting the 2005 amendments to the Bankruptcy Code.[1] The pace settled down in 2007 as courts began work that consisted more of refinement than innovation. They tackled the scope of sovereign immunity, the automatic stay, undue hardship for student loan discharge, and the hanging paragraph in § 1325(a).[2] These and other recent developments in Eleventh Circuit bankruptcy law are addressed in this Article.

II. SOVEREIGN IMMUNITY

In 2006 the United States Supreme Court held that when the states ratified the Constitution, they agreed to subject themselves to bankruptcy laws enacted by Congress.[3] Consequently, the Supreme Court in *Central Virginia Community College v. Katz*[4] held that states cannot raise sovereign immunity as a defense to preference suits, and bankrupt-

---

* United States Bankruptcy Judge, Middle District of Georgia. Augusta State University (B.A., 1970); University of South Carolina (J.D., 1974). Member, State Bar of Georgia.

** Law Clerk to James D. Walker, Jr. Chapman University (B.A., 1993); Mercer University, Walter F. George School of Law (J.D., cum laude, 2001). Member, State Bar of Georgia.

1. Unless otherwise noted, all statutory references are to Title 11 of the United States Code or the United States Code Annotated (commonly referred to as the "Bankruptcy Code" or the "Code").

2. 11 U.S.C.A. § 1325(a) (West 2004 & Supp. 2007).

3. Central Va. Cmty. College v. Katz, 546 U.S. 356, 370 (2006).

4. 546 U.S. 356 (2006).

cy judges may issue ancillary orders to enforce in rem jurisdiction.[5] In *Florida Department of Revenue v. Omine* (*In re Omine*),[6] the Eleventh Circuit Court of Appeals considered the scope of *Katz*.[7]

In *In re Omine*, the Florida Department of Revenue ("DOR") raised the questions of whether it could assert sovereign immunity when accused of an automatic stay violation and whether it is subject to damages as a result. After the debtors filed a Chapter 13 petition, the DOR filed a proof of claim. The DOR subsequently began garnishing the debtor-husband's wages and was found to have been in violation of the stay. The bankruptcy court awarded the debtors actual damages, attorney fees, and punitive damages, and the DOR appealed. The district court affirmed and remanded to the bankruptcy court with instructions. On remand, the bankruptcy court awarded the debtors actual damages, attorney fees, and sanctions (based on the debtors' new motions for sanctions), and the district court affirmed.[8] The court of appeals affirmed in part and reversed in part.[9]

The Eleventh Circuit explained that *Katz* dealt with a preference action, which requires the defendant (in this case, the State) to return property belonging to the bankruptcy estate.[10] However, when damages are awarded for an automatic stay violation, the state must turn over funds unconnected to the bankruptcy estate.[11] In other words, the DOR argued, it "allow[s] public funds held by a state treasury to be at risk to benefit an individual," which the DOR claimed is not authorized by *Katz*.[12]

The court of appeals disagreed, noting that the automatic stay is essential to the bankruptcy process, and the court's authority to enforce it flows from its in rem jurisdiction.[13] "While motions for contempt and seeking sanctions that include attorney's fees and costs for violating the automatic stay may resemble money damage lawsuits in *form*, it is their *function* that is critical, and their *function* is to facilitate the [in rem] proceedings that form the foundation of bankruptcy."[14] Consequently,

---

5. *Id.* at 373, 379.
6. 485 F.3d 1305 (11th Cir. 2007).
7. *Id.* at 1313-14.
8. *Id.* at 1309-11.
9. *Id.* at 1320.
10. *Id.* at 1313.
11. *Id.*
12. *Id.*
13. *Id.* (citing Small Bus. Admin. v. Rinehart, 887 F.2d 165, 168 (8th Cir. 1989); *Katz*, 546 U.S. at 356).
14. *Id.*

orders enforcing the automatic stay are not subject to the defense of sovereign immunity.[15]

However, Congress's power to pass bankruptcy laws includes the power to limit the award of damages.[16] The decision in *Katz* did not affect the applicability of 11 U.S.C. § 106(a)(3),[17] which prohibits the court from awarding punitive damages for a stay violation by a governmental unit.[18] Therefore, the court vacated the award of sanctions and remanded the case for further proceedings.[19]

III. PROFESSIONALS

An unsecured creditor's claim may include contractual attorney fees incurred for bankruptcy-specific post-petition services, according to the Supreme Court in *Travelers Casualty & Surety Co. of America v. Pacific Gas & Electric Co*.[20] Travelers Casualty & Surety Co. of America ("Travelers") had issued a bond to guarantee Pacific Gas & Electric Company's ("PG&E") workers' compensation benefits. When PG&E filed a Chapter 11 petition, Travelers filed a proof of claim. The parties engaged in litigation over certain language in PG&E's Chapter 11 plan. After the litigation was resolved, Travelers sought to recover attorney fees as provided for in its surety contract with PG&E. The bankruptcy court denied attorney fees, in accordance with the Ninth Circuit's *Fobian* rule, because the parties had been litigating a bankruptcy issue rather than an issue arising from their contract.[21] The district court and the court of appeals affirmed.[22]

The Supreme Court reversed, determining there is no basis for the *Fobian* rule in the Bankruptcy Code.[23] First, the Court noted that "an otherwise enforceable contract allocating attorney's fees (*i.e.*, one that is enforceable under substantive, nonbankruptcy law) is allowable in bankruptcy except where the Bankruptcy Code provides otherwise."[24] Second, the Court reviewed the circumstances under which a court can disallow a claim and determined that a court can disallow a claim if one of nine exceptions applies.[25] In this case, only one exception was

15. *Id.* at 1314.
16. *Id.* at 1317.
17. 11 U.S.C. § 106(a)(3) (2000).
18. *In re Omine*, 485 F.3d at 1316-17.
19. *Id.* at 1319.
20. 127 S. Ct. 1199 (2007).
21. *Id.* at 1202-03 (citing *In re* Fobian, 951 F.2d 1149 (9th Cir. 1991)).
22. *Id.*
23. *Id.* at 1204-05.
24. *Id.* at 1204.
25. *Id.* (citing 11 U.S.C. § 502(b) (2000 & Supp. V 2005)).

relevant—whether or not the claim for attorney fees was enforceable "'under any agreement or applicable law.'"[26] Because the bankruptcy court did not determine whether the fees were enforceable under state law, the Court reversed and remanded for additional proceedings.[27]

Attorney fees were targeted from a different angle in *Quarles & Brady LLP v. Maxfield* (*In re Jennings*),[28] in which the Eleventh Circuit emphasized the importance of transparency in Rule 2014 disclosures.[29] A law firm representing eleven debtors in a consolidated bankruptcy proceeding failed to disclose certain potential or actual conflicts among the debtors on its Rule 2014 disclosure form. The conflicts related to claims certain debtors had against other debtors. The attorneys argued the conflicts were fully disclosed in various pleadings unrelated to the Rule 2014 disclosure statement. The bankruptcy court found the law firm's disclosure to be insufficient and held that all disclosures must be listed in the 2014 form.[30] "Bankruptcy courts are not obliged to hunt around and ferret through thousands of pages in search of the basic disclosures required by Rule 2014."[31] Consequently, the court of appeals affirmed the bankruptcy court's ruling that the attorneys (1) violated the disclosure rules, (2) should be disqualified, (3) should receive no compensation, and (4) should disgorge any retainer they had already received.[32]

IV. ADMINISTRATION

In *Martin v. Pahiakos* (*In re Martin*),[33] the Eleventh Circuit held that a trustee can bind a debtor with a settlement agreement.[34] In *In re Martin*, a creditor sued a debtor in state court and obtained a default judgment. The debtor alleged deficiency of service of process and filed a motion to set aside the default judgment. Thereafter, the debtor filed a Chapter 11 petition. When the case was later converted to Chapter 7, the trustee replaced the debtor as the real party in interest in the state court action. As part of a settlement of that action, the trustee agreed to waive defenses with regard to service of process defects and to withdraw the debtor's motion to set aside default judgment. The

26. *Id.* (quoting 11 U.S.C. § 502(b)).
27. *Id.* at 1207.
28. 199 Fed. App'x 845 (11th Cir. 2006).
29. *Id.* at 847-48.
30. *Id.* at 848.
31. *Id.*
32. *Id.* at 849.
33. 490 F.3d 1272 (11th Cir. 2007).
34. *Id.* at 1277.

bankruptcy court approved the settlement agreement without objection from the debtor. The trustee later abandoned any remaining interest in the state court proceedings, and the debtor again asserted his improper service defense.[35] His efforts were rebuffed by the bankruptcy and district courts, which both found that he was bound by the settlement agreement and ordered compliance.[36]

The court of appeals affirmed, noting that the debtor never objected to the settlement agreement despite notice and opportunity to do so.[37] The court also held that the settlement met all the criteria for preclusive effect.[38] First, it was entered by a court of competent jurisdiction—the bankruptcy court—in accordance with due process.[39] The trustee's subsequent abandonment of any remaining interest in the state court case did not give the debtor a right to relitigate it, nor did it affect the bankruptcy court's order approving the settlement.[40] Second, the settlement order was final, such that it was entitled to preclusive effect because in a Chapter 7 case, no further orders (such as confirmation) are necessary to determine the rights of all parties.[41] Third, the parties to the settlement agreement were the same parties to the state court litigation, with the trustee standing in the debtor's shoes.[42] Fourth, the causes of action were identical.[43]

V. AUTOMATIC STAY

Two cases considered slightly different aspects of the limited automatic stay as applied to a debtor who has had one case pending and dismissed during the year prior to his or her current filing.[44] In such circumstances, the stay expires after thirty days if not extended by the court.[45]

In *In re Ajaka*,[46] the debtor's case was subject to a limited stay. The debtor sought an extension, which was denied because the extension

---

35. *Id.* at 1274-75.
36. *Id.* at 1275, 1277.
37. *Id.* at 1276.
38. *Id.*
39. *Id.*
40. *Id.* at 1276.
41. *Id.* at 1276-77.
42. *Id.* at 1277.
43. *Id.*
44. *In re* Ajaka, 370 B.R. 426 (Bankr. N.D. Ga. 2007); *In re* James, 358 B.R. 816 (Bankr. S.D. Ga. 2007).
45. 11 U.S.C.A. § 362(c)(3) (West Supp. 2007).
46. 370 B.R. 426 (Bankr. N.D. Ga. 2007).

hearing was not held within thirty days of her bankruptcy filing.[47] The bankruptcy court also refused to impose a stay pursuant to 11 U.S.C.A. § 362(c)(4)[48] because the plain language of the statute provides that it applies only when the debtor had "'2 or more single or joint cases'" pending and dismissed in the year prior to the current filing.[49] Nevertheless, the court determined that an extension was unnecessary because, in accordance with the majority view, the limited stay only terminates with regard to the debtor, not the property of the estate.[50]

The issue in *In re James*[51] was slightly different. The debtor in that case was also subject to the limited stay, which the court refused to extend.[52] The debtor then argued that the need for an extension was moot because the stay only expires with regard to creditors who initiated action against the debtor prior to the current bankruptcy filing.[53] The court disagreed based on the plain language of the statute.[54] The statute provides that the stay will expire "with respect to any 'action taken'" by a creditor.[55] "There is no temporal qualification on 'action taken' that limits its application to past action."[56] On the contrary, the statute allows the court to extend the stay "as to 'any or all creditors.'"[57] Thus, the court concluded that the need for an extension was not moot.[58]

VI. CLAIMS

Paying a joint liability was a bad move for the creditor in *Fibreboard Corp. v. Celotex Corp.* (*In re Celotex Corp.*).[59] Celotex and Fibreboard were found jointly and severally liable on several personal injury claims. Celotex filed for bankruptcy, and Fibreboard paid the claims in full. Consequently, the personal injury plaintiffs released Fibreboard and assigned their claims against Celotex to Fibreboard. Fibreboard then sought subrogation in Celotex's bankruptcy case.[60]

---

47. *Id.* at 428.
48. 11 U.S.C.A. § 362(c)(4) (West 2004 & Supp. 2007).
49. *In re Ajaka*, 370 B.R. at 428 (emphasis omitted) (quoting 11 U.S.C.A. § 362(c)(4)(A)).
50. *Id.* at 429.
51. 358 B.R. 816 (Bankr. S.D. Ga. 2007).
52. *Id.* at 817.
53. *Id.*
54. *Id.* at 818-19.
55. *Id.* at 819 (quoting 11 U.S.C.A. § 362(c)(3)(A)).
56. *Id.* (quoting 11 U.S.C.A. § 362(c)(3)(A)).
57. *Id.* (quoting 11 U.S.C.A. § 362(c)(3)(B)).
58. *Id.* at 821.
59. 472 F.3d 1318 (11th Cir. 2006).
60. *Id.* at 1320.

The subrogation provision of the Bankruptcy Code, § 509(a),[61] allows a party to seek reimbursement when it pays a claim on which it was liable with the debtor.[62] However, reimbursement is not available if the party asserting subrogation received consideration for paying a claim.[63] In this case, the court held that the release of liability constituted consideration to Fibreboard.[64] "[T]hose who are primarily liable for the entire debt and therefore receive the consideration for payment of the whole amount of the claim[] may not bring subrogation claims to recover the payment."[65]

VII. ESTATE PROPERTY

Tax liability, a tax refund, and exemptions intersected in *Jones v. IRS* (*In re Jones*).[66] The debtor in *In re Jones* filed a Chapter 13 petition and claimed an anticipated federal income tax refund as exempt. The IRS set off the overpayment against an unpaid tax liability from 2002. The debtor alleged that the set-off was improper because it interfered with her exemption. The bankruptcy court disagreed.[67]

Courts are split three ways on the issue of whether the IRS may set off an anticipated tax refund which the debtor has claimed as exempt.[68] Under § 553(a),[69] the Bankruptcy Code does not affect any right of setoff, with some limitations not applicable in this case.[70] However, the majority view holds that setoff of exempt tax refunds is impermissible because it conflicts with § 522(c),[71] which bars a creditor from collecting prepetition debt (with some exceptions) from exempt assets.[72] According to the majority view, allowing a set-off would nullify § 522(c) and interfere with the debtor's fresh start.[73] The minority view allows setoff because § 553(a) expressly states that nothing in the Bankruptcy

61. 11 U.S.C. § 509(a) (2000).
62. *Id.*
63. *In re Celotex Corp.*, 472 F.3d at 1321.
64. *Id.* at 1323.
65. *Id.* at 1322.
66. 359 B.R. 837 (Bankr. M.D. Ga. 2006).
67. *Id.* at 838.
68. *Id.* at 839.
69. 11 U.S.C. § 553(a) (2000 & Supp. V 2005).
70. *In re Jones*, 359 B.R. at 839.
71. 11 U.S.C. § 552(c) (2000).
72. *In re Jones*, 359 B.R. at 840.
73. *Id.*

Code (Title 11) affects setoff.[74] Therefore, § 522, which is in Title 11, cannot affect the right of setoff.[75]

The court in this case adopted a third emerging view, which allows setoff because the anticipated tax refund is not property of the estate subject to exemption.[76] The emerging view relies on the Internal Revenue Code to determine a debtor is not entitled to any tax refund until overpayments are credited to unpaid taxes.[77] Because the debtor has no interest in the refund until after setoff, the debtor cannot exempt the portion of the refund subject to setoff.[78]

Exemptions played a different role in *In re Mazon*.[79] In that case, the debtors concealed nonexempt assets worth more than $600,000 and fully dissipated the assets post-petition for the debtors' personal use. The trustee sought to recover the value of the hidden assets by surcharging the debtors' exempt property.[80]

The court noted that the Bankruptcy Code is silent on the issue of surcharge, except with regard to the costs of preserving or disposing of collateral to the extent it benefits the creditor secured by that collateral.[81] However, bankruptcy courts have broad power to deal with abusive conduct under § 105(a)[82] as well as inherent authority to protect the integrity of the bankruptcy system.[83] "Clearly, failure to disclose assets and the misappropriation of those assets falls squarely within the types of problems with which a bankruptcy court must be able to effectively deal."[84] Therefore, the court concluded surcharge was an appropriate remedy within both its statutory and implicit authority because it would prevent the debtors from effectively exempting more property than allowed by law.[85]

Finally, the court determined that under Florida law, the trustee could not surcharge the debtors' homestead exemption because the debtors did not use the hidden assets to acquire an interest in their homestead.[86]

---

74. *Id.* (citing 11 U.S.C. § 553(a)).
75. *Id.*
76. *Id.* at 841.
77. *Id.* at 840.
78. *Id.*
79. 368 B.R. 906 (Bankr. M.D. Fla. 2007).
80. *Id.* at 908.
81. *Id.* at 909-10 (citing 11 U.S.C. § 506(c) (2000 & Supp. V 2005)).
82. 11 U.S.C. § 105(a) (2000).
83. *In re Mazon*, 368 B.R. at 909-10.
84. *Id.* at 910.
85. *Id.* at 911.
86. *Id.* at 912.

However, the trustee could surcharge any other exemptions claimed by the debtors.[87]

VIII. AVOIDANCE

A trustee who recovers property through his or her avoidance power is subject to § 550(d),[88] which provides that "[t]he trustee is entitled to only a single satisfaction" in an avoidance action.[89] In *Dzikowski v. Northern Trust Bank of Florida (In re Prudential of Florida Leasing, Inc.)*,[90] the Chapter 7 trustee settled for $3.9 million in avoidance actions relating to 377 transfers totaling $10 million. Among the defendants to the settlement were the principals of the debtor, Mr. and Mrs. New. The debtor had made eleven transfers to Northern Trust Bank on behalf of the News. After settling with the News, the trustee sought an additional recovery from the bank for the eleven transfers at issue. The bank argued that because the trustee had already received a partial recovery of the transfers via the settlement, any additional recovery would violate the single-satisfaction rule.[91]

The court stated that the single-satisfaction rule precludes the trustee from "obtain[ing] twice the full value of a fraudulent transfer by recovering that value from both the initial transferee and a subsequent transferee."[92] And, after determining that application of the single-satisfaction rule is made pursuant to federal rather than state law, the court considered whether a settlement that only partially satisfied the amount of the transfers prevented any further recovery.[93] The court stated, "We refuse to read section 550(d) as abrogating the right of a trustee to collect the full value of a preferential or fraudulent transfer."[94] The fact that one defendant makes a good settlement bargain does not release a second defendant from liability.[95] When multiple claims are part of a settlement, the bankruptcy court must determine the amount to be allocated to the transfer at issue.[96] Such an allocation "will be necessary only when collateral litigation implicates the rule

87. *Id.*
88. 11 U.S.C. § 550(d) (2000).
89. *Id.*
90. 478 F.3d 1291 (11th Cir. 2007).
91. *Id.* at 1295-96.
92. *Id.* at 1297.
93. *Id.* at 1298-1301.
94. *Id.* at 1301.
95. *Id.* at 1302.
96. *Id.*

of single satisfaction and, in most cases, only after liability has been ascertained."[97]

Before a trustee can obtain any satisfaction, the trustee must prove the elements of his or her claim.[98] In *Flatau v. Walman Optical Co.* (*In re Werner*),[99] the trustee asserted a preference claim. The debtor's principal used a credit card during the preference period to satisfy one of the debtor's obligations. The trustee sought to recover the payment from the creditor.[100] The primary issue in the case was whether the credit card charge met the threshold standard for a preference action by "constitut[ing] a transfer of an interest of Debtor in property."[101]

Although the available balance on a credit card is not generally considered estate property, the court likened the payment by credit card to the situation in which a debtor obtains a cash advance and uses the money to pay a creditor.[102] The debtor "initiated and directed the transfer of funds from his credit card account to [the creditor]," something he could only do if he had an interest in the money.[103] Thus, the court concluded the transaction met the threshold test for a preference.[104]

IX. DISCHARGEABILITY

A. *Taxes*

The debtor and his wife in *United States v. Jacobs* (*In re Jacobs*)[105] enjoyed a lavish lifestyle at Amelia Island Plantation that included an expensive home, luxury cars, country club membership, cosmetic surgery, large charitable donations, and extravagant gifts to relatives. Although the debtor filed tax returns every year, he had eight years of unpaid federal income tax liabilities, for which he sought a determination of dischargeability.[106] At issue was whether the debtor had "willfully attempted to evade and defeat the tax[es]," such that they would be excepted from discharge pursuant to § 523(a)(1)(C).[107] The

97. *Id.*
98. *See* Flatau v. Walman Optical Co. (*In re* Werner), 365 B.R. 283 (Bankr. M.D. Ga. 2007).
99. 365 B.R. 283 (Bankr. M.D. Ga. 2007).
100. *Id.* at 284-85.
101. *Id.* at 285-86.
102. *Id.* at 287.
103. *Id.*
104. *Id.*
105. 490 F.3d 913 (11th Cir. 2007).
106. *Id.* at 916-19.
107. *Id.* at 919; 11 U.S.C. § 523(a)(1)(C) (2000).

bankruptcy court found in favor of the debtor, and the district court reversed.[108]

The Eleventh Circuit, in affirming the district court, first considered whether the debtor acted "willfully."[109] Willfulness requires "'affirmative acts to avoid payment or collection of taxes.'"[110] In this case, the affirmative acts were transfers the debtor made to various organizations and family members for little or no consideration, as well as the deeding of his house to his wife to avoid attachment of tax liens.[111]

The debtor could not defeat willfulness simply by timely filing his tax returns.[112] The mental state necessary for willfulness can be alternatively described as "'knowing and deliberate'"[113] or "'voluntar[y] and intentional[].'"[114] Such a mental state can be present whether or not the debtor files tax returns.[115] Furthermore, willfulness does not require fraudulent intent.[116]

In this case, the debtor was aware of his tax liability, yet he transferred large sums of money to charities and family. In addition, he structured his salary and the mortgage on his home in ways that prevented the IRS from looking to either for recompense. Such circumstances satisfy the test for exception of taxes from discharge under § 523(a)(1)(C).[117]

In another tax case, *Elkins v. IRS* (*In re Elkins*),[118] the debtor timely filed his 2001 federal income tax return, which was due by October 15, 2002, pursuant to an extension granted by the IRS. The return showed a tax liability owed by the debtor. On October 14, 2005, the debtor filed a Chapter 7 petition and sought to discharge his 2001 tax debt.[119]

A claim for income taxes for which a return was due "'after three years before the date of the filing of the [bankruptcy] petition'" may be discharged.[120] The debtor argued the three-year lookback period should be determined by the number of days that had passed (3 years

---

108. *In re Jacobs*, 490 F.3d at 920.
109. *Id.* at 922.
110. *Id.* at 923 (emphasis omitted) (quoting *In re* Fretz, 244 F.3d 1323, 1329 (11th Cir. 2001)).
111. *Id.*
112. *Id.* at 923-24.
113. *Id.* at 924 (emphasis omitted) (quoting *In re Fretz*, 244 F.3d at 1330).
114. *Id.* (quoting *In re* Griffith, 206 F.3d 1389, 1396 (11th Cir. 2000)).
115. *Id.*
116. *Id.* at 925.
117. *Id.* at 925-27.
118. 369 B.R. 741 (Bankr. S.D. Ga. 2007).
119. *Id.* at 742.
120. *Id.* (quoting 11 U.S.C. § 507(a)(8)(A)(i) (2000 & Supp. V 2005)).

x 365 days = 1095 days) as opposed to calendar years.[121] In his case, because of a leap year, 1096 days had passed between the due date of his 2001 return and his bankruptcy filing.[122]

The court disagreed with the debtor.[123] It is presumed that Congress "'says . . . what it means and means . . . what it says.'"[124] In this case, the statute's language refers to years, not days.[125] Whether or not the period includes a leap year is irrelevant.[126] Because the debtor filed his bankruptcy petition before three full calendar years had expired since the due date of his tax return, the 2001 tax debt could not be discharged.[127]

B. Student Loans

The Eleventh Circuit has adopted the three-prong *Brunner* test[128] for determining the dischargeability of student loan debt.[129] Under that test, the debtor must show (1) an inability to maintain a minimal standard of living if required to repay the loan; (2) additional circumstances indicating the debtor's financial situation is likely to persist for a substantial portion of the repayment period; and (3) a good faith effort by the debtor to repay the loans.[130] In *Educational Credit Management Corp. v. Mosley* (*In re Mosley*),[131] the court of appeals offered some new guidance for applying the *Brunner* test.

In *In re Mosley*, a pro se debtor sought to discharge his student loans. His primary evidence for the second (additional circumstances) and third (good faith) prongs of the undue hardship test was his testimony about a catalog of persistent mental and physical health problems that prevented him from holding a job. The creditor sought to exclude the debtor's testimony that his health problems prevented him from working because such a conclusion was not corroborated by independent medical evidence. The bankruptcy court allowed the testimony and found the

---

121. *Id.* at 743.
122. *Id.*
123. *Id.*
124. *Id.* (quoting BedRoc Ltd. v. United States, 541 U.S. 176, 183 (2004)).
125. *Id.*
126. *Id.*
127. *Id.* at 744.
128. *See* Brunner v. N.Y. State Higher Educ. Servs. Corp., 831 F.2d 395 (2d Cir. 1987) (per curiam).
129. Hemar Ins. Corp. of Am. v. Cox (*In re* Cox), 338 F.3d 1238, 1241 (11th Cir. 2003).
130. *Id.*
131. 494 F.3d 1320 (11th Cir. 2007).

student loans dischargeable.[132] The district court and the court of appeals affirmed.[133]

The court of appeals held that a debtor's testimony alone can be (but is not necessarily always) sufficient proof.[134] "[T]he crucial requirement is that the debtor show how his medical conditions prevent him from working, and this can be accomplished by an array of evidence, including the debtor's credible testimony."[135] In this case, the debtor's testimony supported the bankruptcy court's finding of undue hardship.[136]

The creditor also argued that the debtor showed a lack of good faith by failing to enroll in the Income Contingent Repayment Program ("ICRP"), in which monthly payment is based on the debtor's ability to pay, and any remaining balance after twenty-five years is discharged.[137] The court stated that failure to participate in the ICRP is not per se bad faith.[138] Even when a debtor's monthly payment under the ICRP is $0, "the Program is not always a viable option . . ., as it may require [debtors] effectively to 'trad[e] one nondischargeable debt for another' because any debt that is discharged under the program is treated as taxable income."[139] The Eleventh Circuit held there was no error in the bankruptcy court's finding that the debtor made good faith efforts to repay his loan despite his failure to enroll in the ICRP.[140]

X. CHAPTER 13

A. *Right to Convert*

In *Marrama v. Citizens Bank of Massachusetts*,[141] the Supreme Court resolved a circuit split over whether an individual debtor has an absolute right to convert a case to Chapter 13.[142] In *Marrama* a Chapter 7 debtor made false and misleading statements about his interests in real property. When the Chapter 7 trustee announced his intention to procure the real property for the estate, the debtor filed a motion to convert to Chapter 13. The trustee opposed the motion on the

---

132. *Id.* at 1324.
133. *Id.*
134. *Id.* at 1325.
135. *Id.* (citation omitted).
136. *Id.* at 1325-26.
137. *Id.* at 1327.
138. *Id.*
139. *Id.* (second brackets in original) (quoting *In re* Barrett, 487 F.3d 353, 364 (6th Cir. 2007)).
140. *Id.* at 1328.
141. 127 S. Ct. 1105 (2007).
142. *Id.* at 1107-08.

ground that it was filed in bad faith. The bankruptcy court agreed with the trustee and denied the motion. The bankruptcy appellate panel and the court of appeals affirmed.[143]

In agreeing with the lower courts, the Supreme Court analyzed the language of § 706(a) and (d).[144] Section 706(a) provides that a Chapter 7 debtor "may convert a case under [Chapter 7] to a case under chapter 11, 12, or 13 of this title at any time."[145] Section 706(d) provides, "[A] case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter."[146]

The debtor argued that the right to convert set forth in § 706(a) is absolute.[147] The Court disagreed, reasoning that the language granting a right to convert in § 706(a) is limited by the language in § 706(d), so that the debtor can only convert to Chapter 13 if he or she has a right to be a Chapter 13 debtor.[148] The Court in *Marrama* noted that a debtor does not qualify if his or her debts exceed the amount allowable in Chapter 13 pursuant to § 109(e).[149] But, instead of focusing on § 109, the Court focused on whether or not a Chapter 13 case initiated by the debtor would be subject to dismissal or conversion to Chapter 7 "for cause" pursuant to § 1307(c).[150] Bad faith or lack of good faith in filing a Chapter 13 petition has been widely recognized by bankruptcy courts as cause for dismissal or conversion.[151] Although the Court expressly declined to define bad faith, it noted that bad faith may include fraud.[152]

Thus, the Court concluded that a bankruptcy court may deny a Chapter 7 debtor's motion to convert to Chapter 13 if that debtor has engaged in fraud.[153]

> [T]he broad authority granted to bankruptcy judges to take any action that is necessary or appropriate "to prevent an abuse of process" described in § 105(a) of the Code, is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent

143. *Id.* at 1108-09.
144. *Id.* at 1109-10; 11 U.S.C. § 706(a), (d) (2000).
145. 11 U.S.C. § 706(a).
146. *Id.* § 706(d).
147. *Marrama*, 127 S. Ct. at 1110.
148. *Id.*
149. *Id.*; 11 U.S.C.A. § 109(e) (West Supp. 2007).
150. *Marrama*, 127 S. Ct. at 1110; 11 U.S.C. § 1307(c) (Supp. V 2005).
151. *Marrama*, 127 S. Ct. at 1111.
152. *Id.* at 1111 & n.11.
153. *Id.* at 1111.

> relief and may provide a debtor with an opportunity to take action prejudicial to creditors.[154]

The dissenting Justices argued that no language in the Bankruptcy Code bars conversion due to bad faith.[155] Instead, they argued that the language of § 706(d), barring a debtor from converting to Chapter 13 unless the debtor qualifies under that chapter, refers to the eligibility requirements for Chapter 13 set forth in § 109(e).[156] While fraud or other bad faith may subject a Chapter 13 debtor to a post-petition dismissal, it does not affect the debtor's prepetition eligibility for Chapter 13 pursuant to § 109(e).[157] Consequently, according to the dissent, a court that denies conversion based on the debtor's bad faith is in contravention of the language of the Bankruptcy Code.[158]

B. Projected Disposable Income

Last year, we noted a trend among bankruptcy courts on the issue of "projected disposable income" as applied to above-median-income debtors.[159] In the Eleventh Circuit, the bankruptcy courts were united in finding the term to be forward-looking. However, some division on the issue has emerged.[160] Section 1325(b)(1)(B)[161] requires a Chapter 13 debtor to pay unsecured creditors all of the debtor's "projected disposable income to be received in the applicable commitment period."[162] Prior to the 2005 amendments to the Bankruptcy Code, judges typically looked to the debtor's I and J schedules, which set forth income and expenses, to determine disposable income.[163]

Under the amendments, "disposable income" is defined as "current monthly income received by the debtor . . . less amounts reasonably necessary to be expended" for the support of the debtor and his or her family.[164] In the case of an above-median-income debtor, "[a]mounts reasonably necessary to be expended . . . shall be determined in

---

154. *Id.* at 1112 (footnote omitted) (quoting 11 U.S.C. § 105(a) (2000)).
155. *Id.* at 1114 (Alito, J., dissenting).
156. *Id.* at 1114-15.
157. *Id.*
158. *Id.* at 1117.
159. Hon. James D. Walker, Jr. & Amber Nickell, *Bankruptcy*, 58 MERCER L. REV. 1145, 1162-63 (2007).
160. *See, e.g.*, *In re* Purdy, 373 B.R. 142 (Bankr. N.D. Fla. 2007); *In re* Arsenault, 370 B.R. 845 (Bankr. M.D. Fla. 2007); *In re* Berger, 376 B.R. 42 (Bankr. M.D. Ga. 2007); *In re* Miller, 361 B.R. 224 (Bankr. N.D. Ala. 2007).
161. 11 U.S.C.A. § 1325(b)(1)(B) (West 2004 & Supp. 2007).
162. *Id.*
163. *Id.* § 1325(b)(2).
164. *Id.*

accordance with subparagraphs (A) and (B) of section 707(b)(2)."[165] Both the current monthly income (average of the debtor's actual income for the six months prior to filing) and the section 707(b)(2)[166] expenses—jointly known as the means test—are calculated by debtors on form B22C.[167]

In each of the cases on point, the debtors' disposable income as calculated on form B22C was substantially less than their net income reflected on schedules I and J.[168] The courts in *In re Berger*[169] and *In re Miller*[170] held the means test calculation is dispositive regarding the amount of a debtor's projected disposable income (the formula approach).[171] The courts in *In re Arsenault*[172] and *In re Purdy*[173] held the means test figure could be modified to take into account changed circumstances (the forward-looking approach).[174]

Under the forward-looking approach, courts reason that relying on the means test calculation ignores the word "projected," thus rendering it superfluous.[175] Because "projected" by definition requires looking into the future, courts must be authorized to look at the reality of a debtor's income and expenses to determine projected disposable income.[176] Courts taking the formula approach counter that the forward-looking approach has the effect of rendering the entire express definition of "disposable income" extraneous.[177] Furthermore, these courts allege that the term "projected" is not ignored; rather, it simply instructs the court to multiply the historical data by the applicable commitment period.[178]

As a second aspect of their rationale, forward-looking courts point to the phrase "'to be received'" to support their position.[179] "As past income is not 'to be received,' the language places emphasis on what the debtor receives in the future. It also directly contradicts the use of any

---

165. *Id.* § 1325(b)(3).
166. 11 U.S.C. § 707(b)(2) (Supp. V 2005).
167. Walker, *supra* note 160, at 1162-63.
168. *In re Purdy*, 373 B.R. at 144; *In re Arsenault*, 370 B.R. at 847; *In re Berger*, 376 B.R. at 44; *In re Miller*, 361 B.R. at 225.
169. 376 B.R. 42 (Bankr. M.D. Ga. 2007).
170. 361 B.R. 224 (Bankr. N.D. Ala. 2007).
171. *In re Berger*, 376 B.R. at 48; *In re Miller*, 361 B.R. at 234.
172. 370 B.R. 845 (Bankr. M.D. Fla. 2007).
173. 373 B.R. 142 (Bankr. N.D. Fla. 2007).
174. *In re Purdy*, 373 B.R. at 152; *In re Arsenault*, 370 B.R. at 852.
175. *In re Purdy*, 373 B.R. at 149; *In re Arsenault*, 370 B.R. at 849-50.
176. *In re Purdy*, 373 B.R. at 146; *In re Arsenault*, 370 B.R. at 850.
177. *In re Berger*, 376 B.R. at 47; *In re Miller*, 361 B.R. at 235.
178. *In re Berger*, 376 B.R. at 47.
179. *In re Purdy*, 373 B.R. at 147 (quoting 11 U.S.C.A. § 1325(b)(1)(B)).

calculation that would allow inclusion of income that a debtor is no longer receiving."[180] The formula courts suggest that "to be received" may, instead, refer "'to the payments that will be received throughout the life of the plan.'"[181]

Finally, the formula courts note the means test allows alteration of income and expenses in special circumstances.[182] Thus, the formula is not fixed in stone.

Regardless of which position the court takes, the debtor must still grapple with the means test form as a starting point. In *In re Morgan*,[183] an above-median-income Chapter 13 debtor paid no rent or mortgage for his residence. Nevertheless, in computing his disposable income, he claimed a mortgage/rent deduction of $911 pursuant to local IRS standards. The trustee objected, arguing that only debtors who pay rent or a mortgage can claim such a deduction.[184]

Pursuant to § 1325(b)(3), the disposable income of an above-median-income debtor is determined in accordance with the means test in § 707(b)(2).[185] Under the means test, "'The debtor's monthly expenses *shall be* the debtor's *applicable monthly expense amounts specified* under the National Standards and Local Standards [which includes housing], and the debtor's *actual monthly expenses* for the categories specified as Other Necessary Expenses.'"[186] At issue was the interpretation of the phrase "'applicable monthly expense.'"[187] The court noted a split of authority on the issue.[188]

Some courts interpret "applicable" to mean the debtor's "actual" monthly expense.[189] The court in *In re Morgan* rejected that line of cases for two reasons.[190] "First, these decisions look for guidance in the IRS manuals," which is not authorized anywhere in the Bankruptcy Code.[191] Second, these cases "fail to reconcile or explain the presence of the word 'actual' later in the same sentence," which is used to refer to

---

180. *Id.* (quoting 11 U.S.C.A. § 1325(b)(1)(B)).

181. *In re Berger*, 376 B.R. at 47 (quoting *In re* Kolb, 366 B.R. 802, 817 n.19 (Bankr. S.D. Ohio 2007)).

182. *In re Berger*, 376 B.R. at 45; *In re Miller*, 361 B.R. at 235.

183. 374 B.R. 353 (Bankr. S.D. Fla. 2007).

184. *Id.* at 354-55.

185. *Id.* at 355 (citing 11 U.S.C.A. § 1325(b)(3)).

186. *Id.* (quoting 11 U.S.C. § 707(b)(2)(A)(ii)(I)).

187. *Id.* at 357 (quoting 11 U.S.C. § 707(b)(2)(A)(ii)(I)).

188. *Id.*

189. *Id.* at 358.

190. *Id.*

191. *Id.*

deductions for certain other expenses.[192] The court reasoned, instead, that the word "applicable" refers to "'the National and Local Standards that apply to a particular debtor as determined by the debtor's family size and place of residence.'"[193] Therefore, the court concluded, the debtor was entitled to deduct the full housing allowance provided in the local standards.[194] "Had Congress wished the Standards to act as a cap rather than an allowance, it knew what language to use."[195]

C. Surrender of 910 Collateral

Several courts addressed the consequences of a debtor surrendering his or her car that falls within the scope of § 1325(a)'s hanging paragraph (vehicle purchased for the debtor's personal use within 910 days prior to the bankruptcy filing, secured by a purchase money security interest).[196] In each case, the debtor proposed a plan that provided for surrender of his or her vehicle in full satisfaction of the creditor's claim, with no deficiency claim allowed.[197] The courts reached the same conclusion, adopting the majority view that the car can be surrendered in full satisfaction of the claim.[198]

Section 506[199]—which provides for bifurcation of claims into secured and unsecured portions based on the value of the collateral—does not apply to claims subject to the hanging paragraph.[200] Under § 1325(a)-(5)(C),[201] the court may confirm a plan over the objection of a secured creditor if the debtor surrenders the collateral to that creditor.[202]

Courts in the minority—holding the creditor is entitled to a deficiency claim—reason that § 506 is used to value the secured claim and is

---

192. *Id.*

193. *Id.* at 360 (quoting *In re* Naslund, 359 B.R. 781, 791-92 (Bankr. D. Mont. 2006)).

194. *Id.* at 362.

195. *Id.*

196. *In re* Vanduyn, 374 B.R. 896 (Bankr. M.D. Fla. 2007); *In re* Williams, 369 B.R. 680 (Bankr. M.D. Fla. 2007); *In re* Moon, 359 B.R. 329 (Bankr. N.D. Ala. 2007); 11 U.S.C.A. § 1325(a) (hanging paragraph, sometimes cited as § 1325(a)(*)).

197. *In re Vanduyn,* 374 B.R. at 897; *In re Williams*, 369 B.R. at 681; *In re Moon*, 359 B.R. at 330.

198. *In re Vanduyn*, 374 B.R. at 902; *In re Williams*, 369 B.R. at 682; *In re Moon*, 359 B.R. at 333. The majority view has been rejected by all the circuit courts to consider the issue. *In re* Ballard, Nos. 07-5109, 07-5112, 2008 WL 2080852, at *5 (10th Cir. May 19, 2008); *In re* Long, 519 F.3d 288, 291 (6th Cir. 2008); Capital One Auto Fin. v. Osborn, 515 F.3d 817, 821-22 (8th Cir. 2008); *In re* Wright, 492 F.3d 829, 833 (7th Cir. 2007).

199. 11 U.S.C. § 506 (2000 & Supp. V 2005).

200. 11 U.S.C.A. § 1325(a) (hanging paragraph).

201. 11 U.S.C.A. § 1325(a)(5)(C) (West 2004 & Supp. 2007).

202. *Id.*

inapplicable when the collateral is surrendered.[203] These courts hold that once a creditor receives its collateral, the creditor is entering the bankruptcy case as an unsecured creditor entitled to press its deficiency claim rather than as an undersecured creditor.[204]

According to the court in *In re Moon*,[205] the minority's reasoning is flawed because "[w]ithout § 506, a 910 creditor has no statutory basis to assert an unsecured claim after surrender of its collateral."[206] In fact, the court noted, the hanging paragraph covers surrender because the "'value [of a secured creditor's collateral and thus the amount of its allowed secured claim] [is] to be determined in light of the purpose of the valuation and the proposed disposition or use of such property.'"[207]

Similarly, any argument that the creditor is entitled to a deficiency claim because the "validity and enforceability of a claim is determined by non-bankruptcy law" is unpersuasive.[208] Not only does Congress have the power to modify contracts, it can also preempt state laws that conflict with bankruptcy laws.[209] It has done so with regard to 910 claims.[210] Thus, the hanging paragraph "permits debtors to surrender a motor vehicle in full satisfaction of a debt owed to the secured creditor and requires the creditor to forego the opportunity to take advantage of the provisions of Section 506 should the property be liquidated for less than the amount of the debt."[211]

D. Long-term Unsecured Debt

In 2005 Congress added a new subsection governing the contents of a Chapter 13 plan to § 1322(b).[212] The new language, codified at § 1322(b)(10), allows a debtor to pay post-petition interest on nondischargeable debt if the plan also provides for full payment of all allowed claims.[213] In *In re Webb*,[214] the court resolved a conflict between the new subsection and an existing subsection, § 1322(b)(5),[215] which allows a debtor to maintain payments on long-term debt. The debtors

---

203. *In re Moon*, 359 B.R. at 332.
204. *Id.* (citing *In re* Particka, 355 B.R. 616, 623-24 (Bankr. E.D. Mich. 2006)).
205. 359 B.R. 329 (Bankr. N.D. Ala. 2007).
206. *Id.* at 333.
207. *Id.* (quoting 11 U.S.C. § 506(a) (Supp. V 2005)).
208. *In re Vanduyn*, 374 B.R. at 901.
209. *Id.*
210. *Id.* at 901-02.
211. *Id.* at 902.
212. 11 U.S.C. § 1322(b)(10) (2005 & Supp. V 2005).
213. *Id.*
214. 370 B.R. 418 (Bankr. N.D. Ga. 2007).
215. 11 U.S.C. § 1322(b)(5) (2000 & Supp. V 2005).

in *In re Webb* proposed to maintain regular payments on their nondischargeable student loan debt, while paying only a one percent dividend to their other unsecured creditors.[216]

The trustee objected to the plan because maintaining student loan payments under § 1322(b)(5) necessarily requires the payment of post-petition interest in violation of § 1322(b)(10).[217] Thus, the two provisions seem in conflict. In such a situation, principles of statutory interpretation dictate that the more specific provision—§ 1322(b)(5)—controls.[218] Applying that principle, the court reasoned, "'[P]rohibiting the payment of interest on nondischargeable debts would make the cure and maintenance of any long-term debt impermissible. Such a result would be absurd and could not have been intended by Congress.'"[219] Therefore, the court held that § 1322(b)(10) does not apply to prevent a debtor from paying a debt in accordance with § 1322(b)(5).[220]

E. Property Acquired Post-confirmation

In two cases debtors profited from causes of action that accrued after their Chapter 13 plans were confirmed. In *Waldron v. Meredith*,[221] the court found the proceeds of the lawsuit to be property of the estate.[222] In *In re Baxter*,[223] the court found the proceeds were vested in the debtor, but they were considered disposable income such that the debtor must modify his plan.[224] The courts differ on application of the court of appeals decision in *Telfair v. First Union Mortgage Corp*.[225] The court in *Telfair* harmonized § 1306(a)(1),[226] which includes post-petition property as property of the estate and § 1327(b),[227] which vests property of the estate in the debtor upon confirmation of the Chapter 13 plan.[228] The court adopted the estate transformation approach,

---

216. 370 B.R. at 420.
217. *Id.* at 422.
218. *Id.* (citing *In re* Freeman, No. 06-10651-WHD, 2006 Bankr. LEXIS 3906 (Bankr. N.D. Ga. Dec. 22, 2006)).
219. *Id.* (quoting *In re Freeman*, 2006 Bankr. LEXIS 3906, at *6).
220. *Id.*
221. No. CV406-270 (S.D. Ga. Sept. 28, 2007).
222. *Id.*, slip op. at 2.
223. 374 B.R. 292 (Bankr. M.D. Ala. 2007).
224. *Id.* at 296.
225. 216 F.3d 1333 (11th Cir. 2000).
226. 11 U.S.C. § 1306(a)(1) (2000).
227. 11 U.S.C. § 1327(b) (2000).
228. *Id.*

holding that only property necessary to complete the plan remains in the estate after confirmation.[229]

The court in *Meredith* distinguished *Telfair*, noting that *Telfair* dealt with prepetition assets rather than assets acquired post-petition.[230] The court explained that under *Burnes v. Pemco Aeroplex, Inc.*,[231] the debtor has a duty to amend his or her schedules to add post-petition assets.[232] Additionally, the Bankruptcy Code provides for modification of a Chapter 13 plan.[233] In light of the duty to amend and the ability to modify, the court concluded that under *Telfair*, confirmation returns all prepetition property not necessary for plan execution to the debtor.[234] However, "*Telfair* did not hold that post-confirmation property is retroactively vested in the debtor."[235] It will only vest if it is unnecessary to fulfillment of the plan.[236]

The court in *In re Harvey*[237] acknowledged the debtor's duty to disclose post-petition assets but stated that so long as the post-petition assets are not necessary for completing the current plan, they are not estate property.[238] However, even though the assets are not estate property, they may be considered in the disposable income test for purposes of plan modification.[239]

XI. CHAPTER 11

In *Florida Department of Revenue v. Piccadilly Cafeterias, Inc. (In re Piccadilly Cafeterias, Inc.)*,[240] the court of appeals considered whether a pre-confirmation transfer was subject to a stamp tax.[241] After filing a Chapter 11 petition, the debtor auctioned its assets in a sale process approved by the bankruptcy court. In February 2004 the court approved the sale and, pursuant to § 1146(c),[242] determined it was exempt from stamp taxes. The debtor did not propose a plan until more than a month

---

229. *Telfair*, 216 F.3d at 1340.
230. *Meredith*, No. CV406-270, slip op. at 5.
231. 291 F.3d 1282 (11th Cir. 2002).
232. *Meredith*, No. CV406-270, slip op. at 6-7 (citing *Burnes*, 291 F.3d at 1268).
233. *Id.*, slip op. at 7 (citing 11 U.S.C. § 1329(a) (2000 & Supp. V 2005)).
234. *Id.*, slip op. at 8.
235. *Id.*
236. *Id.*
237. 356 B.R. 557 (Bankr. S.D. Ga. 2006).
238. *Id.* at 563.
239. *Id.* at 564.
240. 484 F.3d 1299 (11th Cir. 2007), *cert. granted*, 128 S. Ct. 741 (2007).
241. *Id.* at 1301-02.
242. *Id.* at 1301. Section 1146(c) has been redesignated as § 1146(a). 11 U.S.C. § 1146(a) (Supp. V 2005).

later. The court confirmed the plan in October 2004. The Florida Department of Revenue argued that the stamp tax should apply to the sale. The bankruptcy and district court disagreed.[243] The court of appeals affirmed the lower courts.[244]

Under § 1146(c), a transfer of assets "under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax."[245] At issue in *In re Piccadilly Cafeterias, Inc.* was whether the stamp tax would apply to a pre-confirmation asset transfer.[246] The court noted that the Third and Fourth Circuits both determined that by its plain meaning, the phrase "'under a plan confirmed'"[247] means "authorized by the plan."[248] Because pre-confirmation transfers are not authorized by the plan, these courts held the transfers are not exempt from stamp tax.[249]

The Eleventh Circuit disagreed, pointing to its previous interpretation of § 1146(c) under a fact scenario concerning a transfer between two nondebtors.[250] The court explained that in *In re T.H. Orlando Ltd.*,[251] it had held that the transfer must be authorized by a confirmed plan.[252] However, the court also held that "'a plan authorizes any transfer that is necessary to the consummation of the plan.'"[253]

The court noted that § 1146(c) does not expressly require the transfer to take place after confirmation of the plan.[254] Imposing a temporal requirement on transfers exempt from the stamp tax "ignores the practical realities of Chapter 11 reorganization cases . . . . [A] debtor may need to close a sale as a condition precedent to the parties' willingness to proceed with confirmation of a plan."[255] Therefore, the court held, "§ 1146(c)'s tax exemption may apply to *those* pre-confirmation transfers that are necessary to the consummation of a confirmed plan of reorganization, which, at the very least, requires that there be some nexus between the pre-confirmation transfer and the confirmed

---

243. *In re Piccadilly Cafeterias, Inc.*, 484 F.3d at 1301.
244. *Id.*
245. 11 U.S.C. § 1146(c) (2000).
246. 484 F.3d at 1302.
247. *Id.* (quoting 11 U.S.C. § 1146(b) (2000)).
248. *Id.* (citing *In re* NVR, LP, 189 F.3d 442, 456-68 (4th Cir. 1999); *In re* Hechinger Inv. Co. of Del., Inc., 335 F.3d 243, 252-54 (3d Cir. 2003)).
249. *Id.*
250. *Id.* at 1303.
251. 391 F.3d 1287 (11th Cir. 2004).
252. *In re Piccadilly Cafeterias, Inc.*, 484 F.3d at 1303 (citing *In re T.H. Orlando Ltd.*, 391 F.3d at 1291).
253. *Id.* (quoting *In re T.H. Orlando Ltd.*, 391 F.3d at 1291).
254. *Id.* at 1304.
255. *Id.*

plan."[256] The court of appeals will not have the last word on this issue, however, because the Supreme Court has granted certiorari in the case.[257]

XII. CONCLUSION

Although 2007 was not a year for ground-breaking decisions in bankruptcy law, 2008 may offer more interesting, if not always happy, developments. Most notable is the prospect of new legislation spurred by a faltering economy—specifically the decline in the housing market. There has been much discussion of an amendment to the Bankruptcy Code allowing individuals to modify residential mortgages. Whether such a significant change will come to pass remains to be seen.

256. *Id.*
257. Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc., 128 S. Ct. 741 (2007).