

Abundant Circuit Splits

Bill Rochelle, ABI Editor-at-Large

THIS TERM IN THE SUPREME COURT

Supreme Court Narrowly Interprets the Safe Harbor, Overrules the Majority of Circuits

Merit Management Group LP v. FTI Consulting Inc., 138 S. Ct. 883, 200 L. Ed. 2d 183, 86 U.S.L.W. 4088 (Sup. Ct. Feb. 27, 2018)

Materials page 19.

Supreme Court Says Insider Status Is Reviewed for Clear Error Under Existing Test

U.S. Bank NA v. The Village at Lakeridge LLC, 200 L. Ed.
2d 218, 86 U.S.L.W. 4121 (Sup. Ct. March 5, 2018)

Materials page 23.u87

Supreme Court Grants *Certiorari* in a Third Bankruptcy Case This Term

Lamar, Archer & Cofrin LLP v. Appling, 16-1215 (Sup.
Ct.).

Materials page 27.

VICTORY FOR FARMERS

***En Banc*, Ninth Circuit Holds: Only ‘True Sales’ of
Receivables Comply with PACA**

S&H Packing & Sales Co. v. Tanimura Distributing Inc.,
883 F.3d 797 (9th Cir. Feb. 22, 2018).

Materials page 142.

NEW CONSUMER OPINIONS FROM THE CIRCUITS

Circuit Says Bankruptcy Lawyers Can't Advise Clients to Pay by Credit Card

Caldwell v. Kaufman, Englett & Lynd PLLC, 17-10810,
2018 BL 112743 (11th Cir. March 30, 2018).

New case. Rochelle's Daily Wire April 3, 2018.

Chapter 13 Strip-Off Ok Even if Lienholder Does Not File a Claim, Fourth Circuit Holds

Burkhart v. Community Bank of Tri-County (In re Burkhart), 16-1971, 2018 BL 109864 (4th Cir. March 29, 2018).

New case. Rochelle's Daily Wire April 2, 2018.

Seventh Circuit Allows Anticipated Tax Refunds to Be Offset by Expenses in Chapter 13

Marshall v. Blake, 17-2809, 2018 BL 99412 (7th Cir.
March 22, 2018).

New case. Rochelle's Daily Wire March 26, 2018.

CHAPTER 13 PLANS AND CONFIRMATION

Eleventh Circuit Requires No Objection to Overturn a Final Confirmation Order

Title Max v. Wilber (In re Wilber), 876 F.3d 1302 (11th Cir. Dec. 11, 2017), rehearing *en banc* denied Feb. 14, 2018.

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Interest on Unsecured Claims Not Required in 100% Chapter 13 Plan

In re Gillen, 568 B.R. 74 (Bankr. C.D. Ill. May 19, 2017).

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Last Chapter 13 Plan Payment Beyond 60 Months, Yes and No

Shovlin v. Klass (In re Klass), 858 F.3d 820 (3d Cir. June 1, 2017); and *In re Humes*, 11-39684, 2018 BL 35274 (Bankr. D. Colo. Jan. 23, 2018).

Materials page 191 & 193.

COMPENSATION

Fifth Circuit Holds that Chapter 7 Trustees Presumptively Get Statutory Commissions

LeJeune v. JFK Capital Holdings LLC (In re JFK Capital Holdings LLC), 880 F.3d 747 (5th Cir. Jan. 26, 2018).

Materials page 202.

DISMISSAL IN CHAPTER 11

The Validity of a ‘Golden Share’ to Bar a Filing Goes to the Fifth Circuit

In re Franchise Services of North America Inc., 17-2361,
2018 BL 16789 (Bankr. S.D. Miss. Dec. 18, 2017 and Jan.
17, 2018).

Materials page 32.

CHAPTER 11 PLANS & CONFIRMATION

Ninth Circuit Holds that One Accepting Class in Joint Plan Is Sufficient

JPMCC 2007-C1 Grasslawn Lodging LLC v. Transwest Resort Properties Inc. (In re Transwest Resort Properties Inc.), 881 F.3d 724 (9th Cir. Jan. 25, 2018).

Materials page 77.

WAGES & DISMISSAL IN CHAPTER 13

Chicago Judge Erases Chapter 13 Debt Limits on Student Loans

In re Pratola, 578 B.R. 414 (Bankr. N.D. Ill. Dec. 27, 2017); *see also In re Fishel*, 17-14180 (Bankr. W.D. Wis. March 30, 2018).

Materials page 175 and Rochelle's Daily Wire April 4, 2018.

Wages Garnished Before Bankruptcy Are Voidable Preferences, Circuit Rules

Tower Credit Inc. v. Schott (In re Jackson), 850 F.3d 816 (5th Cir. March 13, 2017); rehearing *en banc* denied June 22, 2017; *cert* denied Dec. 4, 2017.

Materials pages 166.

DISCHARGE & DISCHARGEABILITY

Co-Conspirator's Intent Is Enough for Nondischargeability, Fifth Circuit Holds

Circuits Now Split on Dischargeability for Third Party's Violation of Securities Laws

Cowin v. Countrywide Home Loans Inc. (In re Cowin), 864 F.3d 344 (5th Cir. July 18, 2017); *Lunsford v. Process Technologies Services LLC (In re Lunsford)*, 848 F.3d 963 (11th Cir. Feb. 15, 2017).

Materials pages 153 & 155.

EXECUTORY CONTRACTS, LEASES & SALES

Circuit Split Deepens on Rejection of Trademark Licenses

Mission Product Holdings Inc. v. Old Cold LLC (In re Old Cold LLC), 879 F.3d 376 (1st Cir. Jan. 12, 2018).

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Ninth Circuit Joins Minority in Allowing Sales Free & Clear of Leases

*Pinnacle Restaurant at Big Sky LLC v. CH SP Acquisitions
LLC (In re Spanish Peaks Holdings II LLC)*, 862 F.3d 1148
(9th Cir. July 13, 2017).

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'MAKEWHOLE' PREMIUMS

Third Circuit Splits with New York by Allowing Make-Whole Premiums in Chapter 11

Second Circuit Splits with Third on Makewholes Occasioned by Bankruptcy

Delaware Trust Co. v. Energy Future Intermediate Holding Co. LLC (In re Energy Future Holdings Corp.), 842 F.3d 247 (3d Cir. Nov. 17, 2016); *BOKF NA v. Momentive Performance Materials Inc. (In re MPM Silicones LLC)*, 874 F.3d 787 (2d Cir. Oct. 20, 2017).

Materials pages 67 & 70.

ESTATE PROPERTY

Circuit Says a Perfected Assignment of Rents Takes Property Out of the Estate

*Town Center Flats LLC v. ECP Commercial II LLC (In re
Town Center Flats LLC)*, 855 F.3d 721 (6th Cir. May 2,
2017).

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STAYS & INJUNCTIONS

Tenth Circuit Direct Appeal to Decide Whether the Automatic Stay Is Really Automatic

Circuit Split Widens on Stay Violation for Failure to Turn Over Repossessed Collateral

Davis v. Tyson Prepared Foods Inc. (In re Garcia), 17-611 (10th Cir.); *WD Equipment v. Cowen (In re Cowen)*, 849 F.3d 943 (10th Cir. Feb. 27, 2017).

Materials pages 101 & 103.

PREFERENCES

Receipt under Section 503(b)(9) Occurs on Physical Possession, Third Circuit Holds

In re World Imports Ltd., 862 F.3d 338 (3d Cir. July 10, 2017).

Materials page 139.

FRAUDULENT TRANSFERS

Ninth Circuit Splits with Seventh on Sovereign Immunity and Derivative Suits by a Trustee

Zazzali v. U.S. (In re DBSI Inc.), 869 F.3d 1004 (9th Cir. Aug. 31, 2017).

Materials page 116.



EXEMPTIONS

Homestead Exemption Must Be Paid in Full Before a Sale Is Permitted, BAP Says

Jubber v. Bird (In re Bird), 577 B.R. 365 (B.A.P. 10th Cir.
Nov. 30, 2017).

Materials page 217.

Trustee Can't Evict Debtors in Advance of Selling Their Home, Sixth Circuit Rules

Jahn v. Burke (In re Burke), 863 F.3d 521 (6th Cir. July 14, 2017); rehearing *en banc* denied Aug. 17, 2017.

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Bankruptcy Headlines

Plan to Rescue Puerto Rico Advances, Led by House Republicans

Politicians in Washington, D.C., are coalescing around a financial plan to rescue Puerto Rico, just weeks before an expected major default on bond payments that

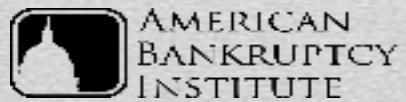
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Consumer Bankruptcy Forms Follow Up - Proof of Claim & Secured Claim Supplement
March 29, 2016

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Ninth Circuit criticizes the Seventh for making the sovereign immunity waiver meaningless for Section 544(b)(1) suits.

[9th Circuit](#)

September 1, 2017

[Fourth Circuit Conflicts with the Fifth on Loss of Chapter 7 Exemptions after Filing](#)

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