RECENT DEVELOPMENTS IN BANKRUPTCY LAW

Eleventh Annual Western District of Virginia Bankruptcy Conference

May 30, 2025

Presenters: [1]

CALEB CHAPLAIN
United States Bankruptcy Court
Western District of Virginia

BRITTANY FALABELLA
Hirschler

[1] These materials would not have been possible without the generous permission to use earlier case summaries developed by the Hon. Kevin R. Huennekens, Caleb Chaplain, and Rachel Greenleaf for the Annual Mid-Atlantic Institute on Bankruptcy and Reorganization Practice's presentation of *Recent Developments for Advanced Bankruptcy Practitioners* on September 26, 2024, as well as case summaries prepared by the Hon. Elizabeth L. Gunn, Rachel Greenleaf, Brandon Poirier, Evanthea Hammer, and Dayanna Parra-Woodall for the Virginia State Bar Annual Bankruptcy Practice Seminar's presentation on *Recent Developments in Bankruptcy Law* on March 14, 2025.

I. Supreme Court Decisions

***United States v. Miller*, 604 U.S. -- (2025) (Jackson, J.).**

Chapter 7 trustee brought an action under section 544(b) to avoid payments that a corporate debtor made to the IRS for personal tax obligations of two of its shareholders. The trustee invoked Utah's fraudulent-transfer statute as the source of "applicable law" against the IRS. The United States moved for summary judgment, arguing that sovereign immunity barred the trustee from satisfying section 544(b)'s "actual creditor" requirement because outside bankruptcy the suit against the government would be barred by sovereign immunity.

The bankruptcy court rejected this argument, holding that section 106(a)—which waives the government's sovereign immunity "with respect to" certain Code provisions, including section 544—waived immunity not only for the trustee's section 544(b) claim but also for the underlying state law cause of action nested within that claim. Both the district court and the Tenth Circuit affirmed.

On appeal, the Supreme Court reversed, holding that section 106(a)'s sovereign-immunity waiver applies only to the federal cause of action created by section 544(b), not to the underlying state-law claim. Waivers of sovereign immunity are jurisdictional provisions that empower courts to hear claims against the government but do not typically create new substantive rights. The Court found that section 106(a)(5) expressly provides that "[n]othing in this section shall create any substantive claim for relief or cause of action not otherwise existing" under some other source of law, directly refuting the notion that section 106(a)'s waiver extends to both the section 544(b) claim and its "elements."

The Court also noted that its interpretation does not render section 106(a)'s waiver meaningless with respect to section 544, as trustees can still use section 544(a)—which has no actual-creditor requirement—to avoid, for example, transfers of certain federal tax liens under 26 U.S.C. § 6323. Additionally, section 106(a) grants federal courts jurisdiction to hear section 544(b) claims against state governments that have consented to being sued under their own fraudulent-transfer statutes.

Justice Gorsuch filed a dissenting opinion, arguing that the majority conflated sovereign immunity (an affirmative defense) with the substantive elements of a claim.

***Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024) (Gorsuch, J.).**

The Supreme Court held that the Bankruptcy Code does not authorize a court to approve a release that, as part of a plan of reorganization under chapter 11, seeks to discharge claims against a non-debtor without the consent of affected claimants.

Purdue Pharma filed for chapter 11 bankruptcy amid numerous lawsuits related to the opioid crisis. The Sackler family, owners of Purdue, sought a release from all opioid-related claims in exchange for contributing $4.3 billion to the bankruptcy estate. The bankruptcy court approved the reorganization plan, including the non-consensual third-party releases, but the district court

vacated this decision, stating that such releases were not authorized by the Bankruptcy Code. The Second Circuit reversed the district court, but the Supreme Court ultimately reversed the Second Circuit, holding that the Bankruptcy Code does not permit non-consensual third-party releases.

The Supreme Court's decision emphasized that the statutory provisions cited by the Second Circuit, sections 105(a) and 1123(b)(6) of the Bankruptcy Code, do not provide the necessary authorization for such releases. The Court underscored that the catch-all provision in § 1123(b)(6) does not extend to authorizing non-consensual third-party releases.

***Office of U.S. Tr. v. John Q. Hammons Fall 20906, LLC*, 602 U.S. 487 (2024) (Jackson, J.).**

In 2017, Congress amended 28 U.S.C. § 1930 to significantly increase the quarterly fees paid by chapter 11 debtors. The fee increase became effective in U.S. Trustee districts in January 2018, but did not become effective in Bankruptcy Administrator districts (in Alabama and North Carolina) until October 2018. In 2018, the Supreme Court held in *Siegel v. Fitzgerald*, 596 U. S. 464 (2018) that the amended statute violated the Bankruptcy Clause's uniformity requirement because it permitted different fees for chapter 11 debtors depending on the district where their case was filed. In *Siegel*, the Court did not decide the remedy for the violation of the Bankruptcy Clause but explained that there were three potential options: (1) refund fees for the thousands of debtors charged higher fees in districts administered by the U.S. Trustee Program, (2) retroactively extract higher fees from the small number of debtors charged lower fees in districts administered by the Bankruptcy Administrator Program, or (3) require only prospective fee parity.

In *Hammons*, the Supreme Court was asked to determine the appropriate remedy for the constitutional violation. In a 6-3 opinion, the Court held that prospective parity was the appropriate remedy. The majority explained that across remedial contexts, "the nature of the violation determines the scope of the remedy," and that the unconstitutional non-uniformity in this case was short-lived and the fee disparity was small. Specifically, the majority noted that the non-uniform fee structure only existed for three years and three months between January 2018 and April 2021. During that period, only about 50 out of the more than 2,000 cases (or 2%) involving large chapter 11 debtors were filed in Bankruptcy Administrator districts. In other words, 98% of large chapter 11 debtors paid uniform fees during this period. The majority also emphasized that refunding debtors that had been charged higher fees in districts administered by the U.S. Trustee would be highly disruptive to the bankruptcy system and require taxpayers to foot the bill of $326 million despite clear congressional intent for the U.S. Trustee Program to be self-funded by user fees.

The dissent argued that the appropriate relief was a refund, which the dissent stated is the traditional remedy for unlawfully imposed fees. In addition, the dissent disagreed with the majority's characterization of the fee disparity being small. In the case at hand the debtor had paid $2.5 million in unconstitutional fees. The dissent also expressed its concerns that the majority's approach sets a dangerous precedent for other constitutional violations.

***Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 144 S. Ct. 1414 (2024) (Sotomayor, J.).**

The debtors, who previously made and sold asbestos-containing products, sought approval of a chapter 11 plan which provided that holders of insured asbestos claims could continue to

pursue claims in the tort system outside of the bankruptcy case. Those claims not covered by insurance would be subject to a channeling injunction, wherein the claims would be handled by a trust established under § 524(g) of the Bankruptcy Code. The debtors' plan was nearly consensual except for the insurer which would be responsible for the claims handled outside of the bankruptcy.

The insurer objected to the plan on the basis that the plan did not require claimants to make the same disclosures and authorizations outside of the trust as those who would be compensated through the trust. The insurer was concerned that the debtors were not taking reasonable steps to abate fraud. Specifically, the debtors and the insurer were at odds over whether the failure of the debtors to impose such obligations on those pursuing claims outside of the trust constituted a breach of the debtors' assistance and cooperation obligations under the insurance policy. The Bankruptcy Court, in proposed findings of fact and conclusions of law, held the insurer lacked standing because the plan was insurance neutral and therefore, the insurer was not a party in interest under § 1109(b). The bankruptcy court also proposed a finding that the debtors' plan did not violate their assist and cooperate obligations under the policy. The district court adopted the proposed findings of fact and conclusions of law.

On appeal, the Fourth Circuit determined that the insurer was not a party in interest with standing under § 1109(b). In determining whether the insurer was a party in interest, the Fourth Circuit noted that the plan was insurance neutral because it did not increase the insurer's obligations or impair its rights. The Fourth Circuit determined that failure to invoke additional fraud measures did not violate the policy because such rights were not contemplated by the policy. A mandate requiring the debtor include an anti-fraud provision in the plan was contrary to the terms of the policy which only required cooperation with respect to each individual suit, not a global policy. Accordingly, because the plan was insurance neutral and did not impair the insurance policy's contractual obligation, the insurer was not a party in interest under § 1109(b) and lacked standing to oppose the plan.

The Supreme Court reversed the Fourth Circuit and held that the insurer was a party in interest under § 1109(b). The Supreme Court stated that courts must determine on a case-by-case basis whether a prospective party has a sufficient stake in reorganization proceedings to be a "party in interest" under § 1109(b). Examining the plain language, context clues, purpose, and statutory history of § 1109(b), the Supreme Court concluded that an insurer with financial responsibility for bankruptcy claims is a "party in interest" that may object to a chapter 11 plan of reorganization.

The Supreme Court criticized the Fourth Circuit for making its determination that the insurer lacked standing by exclusively relying on the insurance neutrality doctrine. The Court stated that the insurance neutrality doctrine "conflates the merits of an objection with the threshold party in interest inquiry." The Court explained that "[w]hether and how the particular proposed Plan here affects [the insurer's] prepetition and postpetition obligations and exposure is not the question. The fact that [the insurer's] financial exposure may be directly and adversely affected by a plan is sufficient to give [the insurer] (and other insurers with financial responsibility for bankruptcy claims) a right to voice its objections in reorganization proceedings."

II. Recent Fourth Circuit Decisions

***Sugar v. Burnett (In re Sugar)*, No. 24-1374, 2025 WL 699526 (4th Cir. Mar. 5, 2025) (Agee, J.).**

During her chapter 13 case, Sugar sold her residence without obtaining prior court authorization. The Local Rules for the U.S. Bankruptcy Court for the Eastern District of North Carolina prohibit debtors from disposing of non-exempt property valued over $10,000 without court approval. After the sale, Sugar used some proceeds to pay off the remaining balance on her plan. The chapter 13 trustee moved to modify the plan, convert the case to chapter 7, or dismiss the case for violating the local rule and confirmed plan.

Sugar testified she believed the sale did not require court approval because her attorney had advised her that the property was exempt and the local rule did not apply. The bankruptcy court dismissed Sugar's case for "cause" under section 1307(c), finding she had acted in bad faith and imposed a five-year prohibition on refiling. In a separate order, the court sanctioned her attorney with a $15,000 fine for willfully advising Sugar to violate the local rule.

The Fourth Circuit affirmed in part and vacated in part. First, the court rejected Sugar's arguments that the local rule was invalid or inapplicable, holding that: (1) Sugar had agreed to be bound by the local rule in her confirmed plan; (2) paying off the plan balance did not deprive the bankruptcy court of authority to consider violations; and (3) Sugar's residence constituted "non-exempt property" subject to the local rule because North Carolina's homestead exemption is dollar-limited, not property-specific.

Second, the Fourth Circuit held that the *Taggart v. Lorenzen* standard for civil contempt sanctions in chapter 7 proceedings applies to chapter 13 proceedings. The court found the bankruptcy court erred by failing to consider evidence that Sugar acted according to her attorney's incorrect advice when assessing whether dismissal and a filing bar were appropriate sanctions. The court vacated and remanded that portion of the judgment for further consideration of the totality of circumstances.

Finally, the Fourth Circuit affirmed the monetary sanctions against the attorney, finding the bankruptcy court did not abuse its discretion given his experience, his familiarity with the local rule, and the fact that he had advanced similar unsuccessful arguments in a prior case before the same judge.

***Fluharty v. Philadelphia Indemnity Co. (In re Levine)*, 130 F.4th 86 (4th Cir. 2025) (Benjamin, J.).**

Geostellar Inc. filed bankruptcy and brought an action against its former CEO, David Levine, accusing him of defrauding and bankrupting the company. Geostellar had purchased a directors and officers liability policy from Philadelphia Indemnity Company. Levine sought and received a defense under the policy, a "wasting" policy with a $3 million coverage limit that decreased as defense costs were paid.

Later, Levine filed his own bankruptcy, which automatically stayed the Geostellar action. The Geostellar trustee moved to lift the automatic stay in Levine's bankruptcy proceeding to

continue the action, acknowledging that Levine's debt to Geostellar had been discharged and that Levine had no personal interest in the litigation against him beyond any available insurance coverage. The court granted the motion to lift the stay to the extent of insurance only.

During mediation, the insurer stated that under the policy Levine's consent was needed to settle. The Geostellar trustee disagreed, contending that only the Levine trustee's consent was needed. Both trustees filed an adversary proceeding for declaratory judgment against the insurer.

The bankruptcy court granted the insurer's motion to dismiss, which the district court affirmed. On appeal, the Fourth Circuit affirmed, holding that: (1) West Virginia law applied in determining whether a trustee in the company's bankruptcy case could bring a direct action against the insurer; (2) under West Virginia law, the Geostellar trustee could not bring the adversary proceeding against the insurer; and (3) the Levine trustee failed to establish an injury in fact and therefore lacked Article III standing.

***LeClair v. Tavenner*, 128 F.4th 257 (4th Cir. 2025) (Diaz, J.).**

LeClair, a founding member of LeClairRyan PLLC, announced his withdrawal from the firm on July 26, 2019, with his employment set to terminate on July 31, 2019. On July 29, 2019—after LeClair's announcement but before his employment termination date—the firm's other members voted to dissolve the firm and established a Dissolution Committee. The Committee never set a Dissolution Effective Date, and instead decided to file for bankruptcy. When LeClairRyan filed a chapter 11 petition on September 3, 2019, its equity security holders list included LeClair as a member. The case was later converted to chapter 7, and the trustee prepared K-1 tax forms for those on the equity holders list, including LeClair.

LeClair objected to being included on the list and moved to amend it, arguing that he had withdrawn from the firm before bankruptcy and therefore held no equity as of the filing date. The bankruptcy court denied LeClair's motion, finding that the firm's operating agreement (specifically, Section 5.03) prevented members from withdrawing once dissolution began. The district court largely affirmed.

On appeal, the Fourth Circuit vacated and remanded, concluding that both lower courts misinterpreted Section 5.03 of the operating agreement. The Court emphasized that this provision did not prohibit members from withdrawing after a dissolution event. The Court noted that Section 5.03's prohibition on "the ability to withdraw or resign as a Member prior to the dissolution and winding up" applies only "[s]o long as [the] Member continues to hold any Shares." The agreement also provided that once a Member "ceases to hold any Shares," that person "shall no longer be a Member." Reading the provision as a whole, the Fourth Circuit determined that Section 5.03 merely links Membership and share ownership during the firm's existence but did not prevent member withdrawal after dissolution.

Because LeClair's employment ended on July 31, 2019, his shares were automatically returned to the firm at that time, ending his membership before the bankruptcy filing. The Court vacated and remanded, leaving it to the bankruptcy court to determine whether any considerations

might warrant denial of the motion to amend despite LeClair's correct interpretation of the operating agreement.

***Smith v. Devine*, 126 F.4th 331 (4th Cir. 2025) (Alston, J.).[2]**

BK Racing, LLC, a NASCAR Cup Series team, filed a chapter 11 petition in 2018. The appointed chapter 11 trustee initiated an adversary proceeding against Ronald and Brenda Devine (owners of the debtor) and their associated entities for alleged fraudulent transfers and financial misconduct. The Devines repeatedly failed to comply with discovery orders, including: (i) not filing required bankruptcy schedules; (ii) refusing to produce financial records; (iii) providing evasive and incomplete discovery responses; and (iv) concealing an irrevocable trust. The bankruptcy court ultimately entered a $31,094,099.89 default judgment against the Devines and their entities as a discovery sanction. The district court affirmed, and the Devines appealed.

The Fourth Circuit affirmed, finding that the default judgment was appropriate based on the factors set forth in *Wilson v. Volkswagen of America, Inc.*, 561 F.2d 494 (4th Cir. 1977). More specifically, the Fourth Circuit found that the Devines acted in bad faith, their noncompliance caused significant prejudice, strong deterrence was needed, and lesser sanctions would be ineffective. The court also upheld piercing the corporate veil, finding the Devines treated their corporate entities as mere instrumentalities, with no proper corporate formalities, shared bank accounts, and intermingled finances. The Fourth Circuit emphasized the bankruptcy court's extraordinary patience and affirmed the default judgment, rejecting the Devines' arguments about the judgment's size and severity.

***Trantham v. Tate*, 112 F.4th 223 (4th Cir. 2024) (Diaz, J.) (Wilkinson, J., concurring).**

Sheila Ann Trantham filed a chapter 13 plan proposing that property of the estate vest in her at plan confirmation. The trustee objected because the local form plan required vesting at final decree. The bankruptcy court sustained the objection, finding that while Trantham's proposed vesting provision was not contrary to the Bankruptcy Code, it contradicted the court's "long-standing policy" in the local form plan. The district court affirmed.

On appeal, the Fourth Circuit reversed. The Fourth Circuit held that the bankruptcy court erred in requiring Trantham to justify her proposed vesting provision and in rejecting it solely because it deviated from the local form plan. The court emphasized that it is the debtor's exclusive right to propose a plan and that the bankruptcy court's authority to reject plan provisions is limited by the Bankruptcy Code. The Fourth Circuit ruled that while bankruptcy courts may use default vesting provisions in local form plans, they cannot make such provisions mandatory or reject a debtor's proposed vesting provision simply because it differs from the local form. The case was remanded for the bankruptcy court to assess whether Trantham's proposed vesting provision should be confirmed or rejected for a reason permitted by the Bankruptcy Code.

***David v. King*, 109 F.4th 653 (4th Cir. 2024) (Quattlebaum, J.) (Wilkinson, J., dissenting).**

---

[2] Judge Alston was sitting by designation.

The debtor's case progressed through three chapters. Initially, the debtor filed a chapter 7 petition. Donald King was appointed as the chapter 7 trustee. The bankruptcy court approved his application to retain a law firm to represent him as the chapter 7 trustee. Subsequently, the chapter 7 case was converted to one under chapter 11. Post-conversion, King was appointed as the chapter 11 trustee. King, however, did not file an application to retain the law firm to represent him in his new capacity as the chapter 11 trustee. Even though the law firm had not been approved by the bankruptcy court, the law firm continued to perform legal work for King as the chapter 11 trustee.

Following yet another conversion, this time to chapter 13, King filed an application for payment of administrative expenses for $43,598.00 in law firm fees and $70.00 in expenses for the work done while the case was pending under chapter 11. The debtor objected, because the chapter 11 trustee never sought approval to retain the law firm during the pendency of the case under chapter 11. Following a string of orders related to an earlier appeal and remand, the bankruptcy court approved retroactively the chapter 11 trustee's request under § 327(a) to retain the law firm for the period he had acted as chapter 11 trustee. The debtor appealed, and the district court affirmed. The debtor appealed to the Fourth Circuit.

The Fourth Circuit held that § 327(a) does not permit former trustees to file post-hoc applications to employ professionals for work done while they were trustees if the case has already been converted from the chapter in which the former trustees served as trustees. Because conversion terminated the trustee's services pursuant to under § 348(e), the former trustee was no longer "the [the currently serving, active] trustee" who could file an application to employ. The Fourth Circuit reversed and remanded with instructions.

***Feyijinmi v. Md. Cent. Collection Unit*, 105 F.4th 662 (4th Cir. 2024) (Diaz, J.).**

Feyijinmi was found guilty of welfare fraud in Maryland state court and sentenced to three years' imprisonment. The state court deferred entry of conviction, placed her on three years' supervised probation, and ordered $14,487 in restitution. After Feyijinmi's discharge from probation, the outstanding balance was transferred to Maryland's Central Collection Unit. Feyijinmi's criminal records were later expunged, but the restitution obligation survived as a civil judgment.

Feyijinmi filed a petition under chapter 13. Feyijinmi completed her plan payments and received a discharge. When the state later sought to collect the remaining restitution, Feyijinmi reopened her bankruptcy case and filed an adversary proceeding seeking a determination that the debt was discharged. The bankruptcy court held that the restitution was nondischargeable under § 1328(a)(3), which excepts from discharge any debt "for restitution . . . included in a sentence on the debtor's conviction of a crime." The district court affirmed, and Feyijinmi appealed.

On appeal, Feyijinmi argued that the restitution was dischargeable because it was neither a consequence of a "conviction" nor "included in a sentence" as required for the debt to be excepted from discharge in § 1328(a)(3). The Fourth Circuit disagreed and affirmed. The Fourth Circuit clarified that the term "conviction" in § 1328(a)(3) includes a determination of guilt followed by a sentence of probation, even without formal entry of conviction. Feyijinmi's probation before judgment qualified as a "conviction" under this definition. The Fourth Circuit

further held that restitution ordered as part of a probation-before-judgment disposition is "included in a sentence" for purposes of the exception to discharge in § 1328(a)(3). Accordingly, the Fourth Circuit concluded that Feyijinmi's entire restitution debt was nondischargeable under § 1328(a)(3).

III. Recent District Court Decisions

***Darnell v. Wasinger*, No. 1:24-CV-96 (PTG/LRV), 2025 WL 938108 (E.D. Va. Mar. 27, 2025) (Giles, J.).**

The debtor previously worked as a real estate agent for Meghan Wasinger, the mother of Carolina and Maddalena Wasinger. After a dispute with Meghan, the debtor believed he was cut out of two transactions resulting in lost compensation, so he posted defamatory statements online about Carolina and Maddalena. The Wasingers sued the debtor for defamation in state court and were awarded substantial compensatory and punitive damages. The debtor subsequently filed a chapter 7 case. The Wasingers filed an adversary proceeding to determine that the judgments were nondischargeable under section 523(a)(6). The bankruptcy court determined the judgments were nondischargeable, finding that the debtor's actions were both willful and malicious.

On appeal, the debtor challenged only the bankruptcy court's findings that his actions were willful and malicious. The district court affirmed, finding that the debtor's actions were willful because he intentionally posted false statements online while knowing they were untrue, and he admitted feeling "ill will" toward the Wasingers' mother and taking his frustration out on her daughters. The court also found his actions were malicious because he caused injury without just cause or excuse. The court noted that the state court jury's award of punitive damages necessarily included a finding of malice under Virginia law.

***Towd Point Master Funding Tr. 2019-PM7 v. Professional Foreclosure Corp. of Virginia*, No. 1:24-CV-779 (RDA/WEF), 2025 WL 918158 (E.D. Va. Mar. 25, 2025) (Alston, J.).**

In 2020, the Pridgens filed a chapter 13 case, listing an unsecured liability for which Towd Point subsequently filed a proof of claim for $132,952.23. Towd Point later transferred this claim to FirstKey, which subsequently filed a notice of satisfaction of the claim. In 2023, Professional Foreclosure Corporation of Virginia filed an interpleader action in state court regarding surplus funds from a foreclosure sale, naming Mrs. Pridgen, Towd Point, and the chapter 13 trustee as defendants. Towd Point removed the case to federal court based on its relation to the bankruptcy proceeding, and the matter was subsequently referred to the Bankruptcy Court as an adversary proceeding.

The chapter 13 trustee moved for summary judgment, arguing that Towd Point's interest in the surplus funds had been satisfied when its assignee filed the notice of satisfaction. The bankruptcy court granted the motion, finding that Towd Point lacked standing to assert a right to the funds at issue because it assigned its claim and the assignee of the claim filed a notice of satisfaction of that claim. The bankruptcy court subsequently issued a separate "Order Paying Funds to the Chapter 13 Trustee."

Towd Point appealed *only* the Order Paying Funds to the Chapter 13 Trustee, not the earlier order granting the motion for summary judgment. The district court dismissed the appeal, holding that Towd Point's failure to appeal the summary judgment order deprived the court of jurisdiction to review the bankruptcy court's determination that Towd Point lacked standing and that the trustee was entitled to the surplus funds.

***Goldman Sachs Bank USA v. Brown*, No. 7:24-CV-00490, 2025 WL 837338 (W.D. Va. Mar. 17, 2025) (Ballou, J.).**

Debtors filed a consolidated adversary proceeding against Goldman Sachs Bank USA, alleging violations of the automatic stay under section 362(a)(3) and (6). The plaintiffs alleged that despite having notice of their bankruptcy filings, Goldman Sachs continued to send communications regarding outstanding balances on their Apple Card accounts. Goldman Sachs moved to compel arbitration based on the arbitration provision in the Apple Card Agreement. The bankruptcy court denied the motion, concluding that it had discretion to retain jurisdiction over the plaintiffs' core claims.

On appeal, the district court affirmed. The court explained that while federal law generally favors enforcement of arbitration agreements, this preference can be superseded by contrary congressional directives. The court observed that Congress intended to grant comprehensive jurisdiction to bankruptcy courts to efficiently handle matters connected with bankruptcy estates. The court found that arbitrating violations of the automatic stay would inherently conflict with the Bankruptcy Code's objectives, as it would undermine the bankruptcy court's authority to enforce the automatic stay to protect debtors and creditors' rights and to provide a single centralized forum for resolving disputes.

The district court concluded that the bankruptcy court had discretion to deny the motion to compel arbitration and did not abuse that discretion in doing so. The court affirmed the bankruptcy court's order.

***Fifer v. Chapter 13 Tr.*, No. 7:24-CV-00417, 2025 WL 819095 (W.D. Va. Mar. 13, 2025) (Dillon, J.).**

Debtor appealed the dismissal of his chapter 13 case, which was dismissed for his failure to file all required schedules, statements, and a plan. The bankruptcy court had also denied the debtor's subsequent motion for reconsideration. Although the debtor filed a notice of appeal, he failed to file the required brief within 30 days after the record was transmitted, as required under Federal Rule of Bankruptcy Procedure 8018. The district court issued a show-cause order directing the debtor to explain why his appeal should not be dismissed. The show-cause order was returned as undeliverable, and the debtor did not respond. The district court then had to determine whether to dismiss the appeal under Rule 8018(a)(4).

Applying the Fourth Circuit's test from *In re Serra Builders, Inc.*, the court examined four factors: (1) whether there was bad faith or negligence; (2) whether the appellant had notice and opportunity to explain the delay; (3) whether the delay had any prejudicial effect on other parties; and (4) whether the court considered the impact of the sanction and available alternatives. The

court found that all factors weighed in favor of dismissal. The debtor demonstrated negligence by failing to file the required brief and by not responding to the show-cause order. The delay prejudiced the chapter 13 trustee. The court also determined that dismissal was the only appropriate option, as the debtor had missed deadlines, failed to submit any filings since July 2024, and had not updated his address as required by local rules. The court dismissed the appeal with prejudice.

***Raja v. Specialized Loan Servicing*, LLC, No. 1:23-CV-736 (RDA/WBP), 2025 WL 791550 (E.D. Va. Mar. 12, 2025) (Alston, J.).**

Pro se plaintiffs, Mohammad and Neelum Raja, alleged that defendants improperly sought to foreclose on a second mortgage secured by their property. Plaintiffs claimed their personal liability on the loan was discharged in a 2008 chapter 7 bankruptcy proceeding and that they had rescinded the loan. They further alleged defendants fabricated evidence, notices, and documents when initiating foreclosure, while failing to follow proper notice requirements under the deed of trust. Plaintiffs asserted eight claims: (1-4) violations of the Fair Debt Collection Practices Act (FDCPA) and its implementing regulations; (5) fraud; (6) malicious prosecution and abuse of process; (7) breach of contract; and (8) rescission. Defendants filed motions to dismiss the amended complaint, which followed a previous dismissal with leave to amend.

The district court dismissed all claims with prejudice. First, the district court found that the FDCPA claims failed because, a business that only enforces security interests through nonjudicial foreclosure proceedings is not a "debt collector" under the FDCPA. Second, the fraud claim failed to meet Rule 9(b)'s heightened pleading requirements, as plaintiffs did not identify specific employees who perpetrated the fraud or explain how they relied on alleged misrepresentations they claimed never to have received. Third, the malicious prosecution claim failed because plaintiffs did not allege the foreclosure sale had been held with an outcome "not unfavorable" to them. The abuse of process claim was dismissed because plaintiffs made only conclusory allegations about improper purposes or use of process. Fourth, the breach of contract claim failed because plaintiffs did not identify any specific provision of the deed of trust that defendants allegedly violated. Finally, the rescission claim was dismissed because plaintiffs' purported notices of rescission in 2022 and 2023 came well beyond TILA's three-year statute of limitations for the loan that had originated in 2006. Given plaintiffs' failure to remedy the deficiencies identified in the Court's prior opinion despite the opportunity to amend, the Court dismissed the action with prejudice.

***Malloy v. Kane*, No. 3:24CV200 (RCY), 2025 WL 777664 (E.D. Va. Mar. 11, 2025) (Young, J.).**

Pro se appellant, Karl Malloy, appealed the bankruptcy court's award of attorney's fees to his former bankruptcy counsel, James Kane and Jason Kane of Kane & Papa, P.C. The appellees represented Malloy briefly in bankruptcy proceedings before withdrawing and subsequently filing a fee application. Malloy raised 24 issues on appeal, including allegations that the bankruptcy court: (1) erred in not identifying statements in the fee application as material misstatements; (2) improperly handled attorney-client privilege concerns; (3) failed to seal the hearing and record as requested; (4) incorrectly allowed appellees to introduce evidence and testimony despite late-filed exhibit and witness lists; and (5) erred in its fee calculation methodology.

The district court affirmed the bankruptcy court's fee award in its entirety. The district court found that the bankruptcy court properly addressed discrepancies in the fee application by making appropriate adjustments to the final award. Regarding privilege claims, the district court determined Malloy failed to demonstrate any prejudice from the admission of allegedly privileged information. As to the sealing request, the district court found no error in the bankruptcy court's determination that Malloy failed to comply with procedural requirements in the scheduling order. Concerning the late-filed exhibit and witness lists, the district court held that the bankruptcy court did not abuse its discretion by admitting the evidence while imposing more limited sanctions of requiring the attorneys to reimburse Malloy for costs incurred in preparing objections. The district court noted the bankruptcy court had properly explained its reasoning that while the late filing merited some sanction, there was no evidence of bad faith and the prejudice to Malloy was negligible.

After reviewing all components of the bankruptcy court's fee award decision, the district court found no basis for reversal and affirmed the award in full.

***Saadein-Morales v. Westridge Swim & Racquet Club, Inc.*, No. 1:24-CV-1442 (LMB/IDD), 2025 WL 799511 (E.D. Va. Feb. 26, 2025) (Brinkema, J.), appeal docketed, No. 25-1229 (4th Cir. Mar. 12, 2025).**

The debtor, *pro se*, appealed the bankruptcy court's order confirming that no automatic stay was in effect with respect to his debt to Westridge Swim & Racquet Club, Inc., the homeowner's association governing his property. The dispute stemmed from a long-running feud between the parties that led to Westridge obtaining judgment liens against the debtor's property and a state court order for judicial sale of the property.

On May 10, 2024, just one minute before a scheduled contempt hearing for failure to vacate the premises, the debtor filed his first chapter 13 petition, triggering the automatic stay. However, after failing to file required schedules and a plan, that petition was dismissed on June 17, 2024. The next day, the debtor filed a second chapter 13 petition, once again triggering an automatic stay. On July 18, 2024, thirty days after the second petition was filed, Westridge and the Special Commissioner of Sale filed an Emergency Motion to Confirm No Stay in Effect. The bankruptcy court rejected Westridge's arguments that the debtor was ineligible to file or acted in bad faith, but instead applied section 362(c)(3), which provides that when a debtor files a second bankruptcy petition within one year of dismissal of a previous petition, the automatic stay expires *as to the debtor* 30 days from the filing date unless the bankruptcy court extends it. Because the debtor never moved for an extension within that 30-day period, the court determined that the stay had automatically expired by operation of law on July 18, 2024, as to the debtor's "right of possession" in the property.

The district court affirmed, finding that the bankruptcy court's factual findings were not clearly erroneous and its application of the law was correct. The district court also noted that the issues were largely moot because the second bankruptcy case had subsequently been dismissed on August 26, 2024, which terminated any stay that might have been in effect.

***In re Rankin*, No. 1:24-CV-1902 (LMB/IDD), 2025 WL 799492 (E.D. Va. Feb. 11, 2025) (Brinkema, J.), appeal docketed, No. 25-1231 (4th Cir. Mar. 12, 2025).**

In November 2021, Rankin contracted with Caldwell to perform construction work on Caldwell's home. Under the agreement, Caldwell would pay Rankin $173,000 for the project. Rankin began some demolition work but abandoned the project before completion. As a result, Caldwell had to pay another contractor $150,000 to complete the unfinished work.

Rankin filed a chapter 7 bankruptcy petition in November 2023. Caldwell then filed a complaint in the bankruptcy proceeding, asserting that Rankin had fraudulently represented that he was a licensed contractor and breached his fiduciary duty to Caldwell. The bankruptcy court conducted a bench trial, during which it was revealed that the complaint contained a typographical error regarding the contract date (listing 2023 instead of the correct date of 2021).

The bankruptcy court found that Rankin fraudulently held himself out as a licensed contractor, entered a nondischargeable judgment against Rankin for $150,000 plus interest and costs on the fraud claim, and dismissed the breach of fiduciary duty claim.

On appeal to the district court, Rankin only challenged the bankruptcy court's decision to allow Caldwell to correct the typographical error in the complaint regarding the contract date. The district court affirmed the bankruptcy court's decision, finding that the error was harmless and did not prejudice Rankin's case. The district court noted that Rankin did not challenge the substantive determination that he made fraudulent representations about his licensure, instead basing his appeal "on a harmless technicality." The court further found that the bankruptcy court's factual findings were supported by substantial evidence and were not clearly erroneous.

***Malloy v. Schelin*, No. 3:24CV477 (RCY), 2025 WL 422600 (E.D. Va. Feb. 6, 2025) (Young, J.).**

Malloy removed an ongoing state court case to the bankruptcy court. The state court litigation involved appellees' claims for specific performance, damages, and other relief relating to the termination of a sale agreement for Malloy's primary residence. The bankruptcy court entered a remand order sending the case back to the Powhatan County Circuit Court. The remand order modified the automatic stay to permit the plaintiffs to continue the state court litigation to final judgment, but the remand order required them to seek further relief from the bankruptcy court prior to executing any judgment rendered by the state court.

After a trial in the state court, the appellees filed a "final judgment draft order" that included language directing the clerk to docket, record, and index the judgment as a lien upon Malloy's property. In response, Malloy filed an emergency motion for protective order in the bankruptcy court, arguing that recording a final judgment as a lien against his property would violate the automatic stay and be contrary to the bankruptcy court's remand order. The bankruptcy court denied Malloy's motion, explaining that the remand order's authorization to "continue the State Court Litigation to a final judgment" necessarily included the entry and docketing of that judgment.

On appeal, the district court dismissed Malloy's appeal on two grounds. First, it held that the Bankruptcy Court's order denying the emergency motion for protective order was not a final order or an appealable interlocutory order, thus the district court lacked jurisdiction to hear the appeal. The court explained that the order did not terminate a procedural unit separate from the remaining bankruptcy case, nor did it upset the status quo established by the remand order. Second, the district court held that even if the order were appealable, the issues presented were constitutionally moot because the state court had already docketed its final judgment. Furthermore, the appellees had since appealed that final judgment, with the matter progressing into the Virginia state appellate system. Thus, reversing the bankruptcy court's order would have no practical effect on the parties' rights.

***Amiri v. Vaziri*, No. 1:24-CV-00236-MSN-WEF, 2025 WL 27825, 2025 U.S. Dist. LEXIS 1204 (E.D. Va. Jan. 3, 2025) (Nachmanoff, J.).**

Vaziri filed a voluntary petition under chapter 13 of the Bankruptcy Code. Over the course of his bankruptcy case, Vaziri filed three chapter 13 plans. Two of the plans were objected to by creditor Amiri on the basis that Vaziri could afford higher payments. Vaziri's third and final plan provided for 100% repayment of his debts under a stepped-up 60-month plan. Amiri again objected to confirmation of the plan and filed a motion to dismiss Vaziri's bankruptcy case.

The bankruptcy court heard the motion to dismiss first. In support of his motion, Amiri argued that (1) the third plan was filed in bad faith because a confirmable plan should have been filed earlier than the third try and (2) Vaziri could not afford repayment as proposed under the plan. The bankruptcy court rejected Amiri's arguments and noted that, unlike in a chapter 7 case, filings in a chapter 13 case are forward-looking and do not need to be exact replicas of past performance.

The bankruptcy court then heard Amiri's objection to confirmation of the third plan. Amiri argued that under § 1325(a)(7), the bankruptcy court should deny confirmation of the third plan because it was not filed in good faith. As evidence of this lack of good faith, Amiri cited Vaziri's failure to initially propose a 100% plan. The bankruptcy court found that Amiri was recycling the same arguments made under the motion to dismiss and overruled the confirmation objection.

Amiri appealed on three grounds: (1) the bankruptcy court clearly erred by not permitting Vaziri to testify as to good faith during the hearing on the motion to dismiss; (2) the bankruptcy court clearly erred by not dismissing Vaziri's bankruptcy case; and (3) the bankruptcy court clearly erred when approving Vaziri's third plan. On appeal, the district court held that the bankruptcy court did not commit clear error on any of the above grounds and followed Fourth Circuit precedent in noting that the good faith standard articulated in *In re Solomon*, 67 F.3d 1128 (4th Cir. 1995) applies to § 1325(a)(7), as well as § 1325(a)(3).

***GDI Adventura Dev., LLC v. Pier 1 Imports, Inc.*, No. 3:24-CV-225, 2024 WL 5191974, 2024 U.S. Dist. LEXIS 231109 (E.D. Va. Dec. 20, 2024) (Lauck, J.).**

Pier 1 and its affiliates filed voluntary petitions under chapter 11 of the Bankruptcy Code. The debtors' plan was confirmed and went effective. Post-confirmation, the debtors rejected a

commercial lease with GDI. GDI did not object to the rejection. GDI timely filed a general unsecured claim for lease rejection damages. GDI and the debtors communicated about the claim and the debtors informed GDI that distribution was unlikely. The debtors and GDI then ceased communicating.

Over two years later, the debtors filed their twentieth omnibus claim objection which sought to reduce GDI's claim to $0. GDI received notice of the objection and did not file a response. The bankruptcy court entered the order reducing GDI's claim to $0 and GDI received notice of the order. Months later, it was determined that there might be an 8–9% distribution on claims, contrary to the previous representation that a distribution was unlikely. As a result, GDI sought reconsideration of the reduction of its claim to $0 through a Rule 60 motion. The bankruptcy court denied GDI's motion. GDI appealed the denial and argued, in the alternative, that (1) GDI's actions did not constitute neglect (2) GDI's actions constituted excusable neglect; and (3) the bankruptcy court erred in finding that the debtors had a valid objection to GDI's claim.

The district court applied the factors outlined in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993). The district court found that under *Pioneer*, GDI's business decision to no longer participate in Pier 1's bankruptcy case was a deliberate choice which did not constitute excusable neglect or provide adequate grounds for reconsideration and affirmed the bankruptcy court. As the court summarized, "'[m]ere dissatisfaction in hindsight with choices deliberately made by counsel is not grounds for finding the mistake, inadvertence, surprise or excusable neglect necessary to justify Rule 60(b)(1) relief.'" *Am. Lifeguard Ass'n, Inc. v. Am. Red Cross*, Nos. 92-2460, 92-2527, 93-1190, 93-1224, 1994 WL 144321, at *2 (4th Cir. Apr. 22, 1994) (quoting *Nemaizer v. Baker*, 793 F.2d 58, 62 (2d Cir. 1986)).

***Cook v. Chapter 13 Tr.*, No. 1:24-CV-00288-MSN-WBP, 2024 WL 5081954, 2024 U.S. Dist. LEXIS 224536 (E.D. Va. Dec. 11, 2024) (Nachmanoff, J.).**

Cook filed a chapter 13 bankruptcy petition. Confirmation of his first plan was denied due to underfunding after an evidentiary hearing on liquidation and good faith tests. Cook proposed a second plan with higher funding to which both the chapter 13 trustee and Cook objected. Ultimately the confirmation of the second plan was denied. Again, Cook filed an amended plan with further increased funding which again drew objections from the chapter 13 trustee and Cook. Similar to the first two plans, confirmation was denied. On his fourth try, and with again further proposed funding, only Cook objected to the plan. The court confirmed the fourth plan over Cook's objection. Cook appealed the order confirming the fourth plan, he did not appeal (or seek interlocutory appeal) of any of the three previous orders denying confirmation. On appeal, Cook argued that the bankruptcy court committed reversible error by confirming the fourth plan and by denying confirmation of his first plan. At no point prior to the appeal did Cook seek a stay pending appeal of any of the orders denying confirmation of his plans.

Without addressing the merits of Cook's appeal as to the denial of confirmation of plans with lower funding, the district court instead denied the appeal based solely on finding that Cook's arguments were moot due to the doctrine of equitable mootness. In its analysis, the District Court held that Cooks's appeal was equitably moot because (1) Cook did not seek or obtain a stay; (2) the fourth plan had been substantially consummated; (3) the requested relief would affect the success

of the fourth plan and, in effect, nullify the fourth plan; and (4) the interests of third parties would be substantially affected because claimants had already been paid under the fourth plan.

***Raja v. Deutsche Bank Nat'l Tr. Co*., No. 1:24-CV-740 (RDA/WBP), 2024 WL 4845977, 2024 U.S. Dist. LEXIS 211583 (E.D. Va. Nov. 20, 2024) (Alston, J.).**

Over the course of 15 years, Raja, Deutsche Bank, and several other parties related to Raja's mortgage and the homeowner's association engaged in extensive litigation (inside and outside of the bankruptcy court) over Raja's mortgage. The instant appeal relates to Raja's third bankruptcy case, filed under chapter 13 of the bankruptcy code.

In response to Raja's second chapter 13 plan in the case, the trustee and Raja's creditors objected to confirmation of the plan and the trustee moved to dismiss the bankruptcy case. While those items were pending, Raja brought an adversary proceeding against Deutsche Bank and other creditors regarding the validity of the creditors' rights to the property (including seeking to relitigate claims arising out of attempted foreclosures). The creditors filed motions to dismiss the adversary proceeding. The bankruptcy court granted the motions to dismiss and dismissed all of Raja's adversary proceeding claims with prejudice. Raja filed, pro se, a notice of appeal in the adversary proceeding.

Meanwhile, back in the main case, the bankruptcy court found that mortgage was valid and allowed the proofs of claim for purposes of a motion to dismiss hearing. The bankruptcy court further noted that Raja was attempting to avoid paying his mortgage while living at the property and could not afford to bring the mortgage current, even providing for a full 60-month plan. Thus, the bankruptcy court held that the chapter 13 case was futile and denied confirmation of the second plan and dismissed Raja's chapter 13 case. Raja did not file a notice of appeal in the main case.

The appellees filed motions to dismiss the appeal on the basis that the district court lacked jurisdiction to hear the appeal because (1) Raja's notice of appeal did not conform to the Official Form or the Federal Rules of Bankruptcy Procedure and failed to sufficiently name the appellees and (2) Raja did not file a notice of appeal in the main case.

First, the district court looked to the Fourth Circuit's description of potential confusion caused by inadequate notices of appeal in *In re United Refuse LLC*, 171 F. App'x 426 (4th Cir. 2006). The district court held that Raja's notice caused confusion because (1) it purported to apply to both the adversary proceeding and the main case despite only one notice of appeal and filing fee being paid; (2) there were parties involved in the main case who were not parties to the adversary proceeding (such as the trustee) and vice versa; and (3) the order dismissing the main case had not been issued when the notice of appeal was filed and thus was not attached to the notice of appeal.

Second, even assuming the notice of appeal properly preserved Raja's appeal of the adversary proceeding, the district court held that the failure to file a notice of appeal in the main case was fatal to Raja's appeal in the adversary proceeding because it confused the issues on appeal and precluded parties from participating in the appeal. Thus, the district court held that it lacked subject matter jurisdiction and dismissed the appeal.

***Gibas v. Micale*, No. 7:24-CV-00136, 2024 WL 4584602, 2024 U.S. Dist. LEXIS 194465 (W.D. Va. Oct. 25, 2024) (Ballou, J.).**

Susan Marie Gibas, by counsel, filed a chapter 13 bankruptcy petition. After terminating her attorney and filing questionable affidavits, the bankruptcy court ordered her to provide crypto account statements. During a show cause hearing, the bankruptcy court dismissed her petition and imposed a 180-day bar on refiling.

On appeal, the district court affirmed the dismissal and upheld the bankruptcy court's discretionary power to dismiss the case and impose filing restrictions due to Gibas's non-compliance with court procedures. The court found that Gibas failed to comply with court orders, she had no right to court-appointed counsel, and the 180-day filing bar was authorized under § 109(g). Notably, the 180-day prohibition was effectively moot, as Gibas had already been permitted to file a second bankruptcy petition.

***Bayramov v. 25350 Pleasant Valley LLC (In re 25350 Pleasant Valley LLC)*, No. 1:23-BK-11983 (KHK), 2024 WL 4528910, 2024 U.S. Dist. LEXIS 190160 (E.D. Va. Oct. 18, 2024) (Brinkema, J.), appeal docketed, No. 24-2090 (4th Cir. Oct. 30, 2024).**

Real estate holding company 25350 Pleasant Valley LLC filed a chapter 11 bankruptcy petition. After the petition date, the bankruptcy court designated Bayramov (the manager and 50% owner of the debtor) as the debtor's representative. Without court authorization, Bayramov leased the debtor's real estate assets. The debtor then filed a cash collateral motion to maintain business operations and pay secured creditor obligations. The secured creditor objected to the motion and argued that the debtor's attempts to make adequate protection payments to it would fail because the monthly rental income was inadequate. Ultimately, at the hearing on the cash collateral motion, the bankruptcy court found that the debtor had used cash collateral without authorization, such use had harmed at least one creditor, there was diminution in the value of estate, and there was no reasonable likelihood of rehabilitation. The bankruptcy court converted the case to chapter 7.

The debtor appealed the conversion order and Bayramov filed, pro se, a motion to intervene as the debtor designee. While that appeal was pending, Bayramov filed a motion for reconversion and a preliminary injunction to halt the liquidation of the debtor's assets and distributions to creditors. The bankruptcy court denied both motions on the basis that Bayramov was no longer the debtor's designee following conversion and did not meet the standard for preliminary injunctions as set forth in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008). Bayramov appealed both orders.

The district court considered three issues raised by Bayramov on appeal: whether the bankruptcy court erred in (1) converting the chapter 11 case to chapter 7 with insufficient cause and inadequate due process; (2) not reconverting the case to chapter 11; and (3) not granting the preliminary injunction.

First, the district court found that Bayramov had not timely filed his appeal of the conversion order pursuant to Federal Rule of Bankruptcy Procedure 8002. Second, the district

court found that the bankruptcy court properly denied Bayramov's reconversion motion because the bankruptcy court (1) provided sufficient due process and acted within its discretion in converting the chapter 11 case; (2) found that Bayramov had not provided any evidence that he could reorganize the debtor; and (3) properly denied reconversion because conversion benefitted the debtor by allowing a trustee to challenge the unauthorized leases that Bayramov had entered the debtor into while he was the debtor designee. Third, the District Court found that because Bayramov had not shown that his challenge to conversion or creditor claims would succeed, he had not met the preliminary injunction standard.

***Lowe v. Arbouw (In re Lowe)*, No. CA 3:23CV766 (RCY), 2024 WL 4278276, 2024 U.S. Dist. LEXIS 172894 (E.D. Va. Sept. 24, 2024) (Young, J.).**

Arbouw filed a motion to show cause in an expunged bankruptcy case, alleging that Lowe had filed a fraudulent bankruptcy petition under Arbouw's name. The bankruptcy court opened a miscellaneous proceeding in the matter and set a hearing. Despite filing various pleadings in response, Lowe did not appear at the hearing. Accordingly, the bankruptcy court awarded damages against Lowe. Lowe appealed pro se.

Even after extending all permissible leniency to a pro se litigant and providing Lowe the benefit of three extra days to act under Federal Rule of Civil Procedure 6(d), the district court held that Lowe had failed to timely file her appeal under Federal Rule of Bankruptcy Procedure 8002. Thus, the district court lacked jurisdiction to hear her appeal.

***Adams v. Hall*, No. 3:23CV410 (RCY), 2024 WL 4267975, 2024 U.S. Dist. LEXIS 171930 (E.D. Va. Sept. 23, 2024) (Young, J.).**

This appeal stemmed from contempt proceedings relating to an alleged violation of the discharge injunction. Post-discharge, the chapter 7 debtor ("Debtor") filed a lawsuit in state court against her former attorney, and the attorney filed a counterclaim against the Debtor ("Defendant"). The Debtor, asserting that the counterclaim sought to recover on a discharged debt, moved to reopen her bankruptcy case and initiated contempt proceedings against the Defendant via adversary proceeding. In the contempt proceedings, the Debtor sought to recover travel expenses incurred in meeting with her lawyer, attorneys' fees, emotional distress damages, the cost of certain of her prescription medications and punitive damages.

Prior to trial, the Defendant moved in the bankruptcy court to exclude evidence related to emotional distress damages. The bankruptcy court, observing that discharge violation proceedings were civil contempt proceedings, which under Fourth Circuit precedent precluded the recovery of emotional distress damages, granted the Defendant's motion and excluded evidence of emotional distress damages from trial. Subsequently the bankruptcy court put the parties on notice that it was considering entering partial summary judgment under Federal Rule of Civil Procedure 56(f)(3) with respect to whether the Debtor suffered any actual damages from the alleged discharge injunction violation. The Debtor responded that she incurred $100 traveling to meet with her attorney but failed to identify any other damages. The bankruptcy court ultimately entered partial summary judgment limiting damages to $100 in compensatory damages. At trial, the bankruptcy court held the Defendant in contempt and awarded the Debtor $100 in compensatory damages, but

ruled that attorneys' fees were not warranted because the Debtor (1) failed to meet the standard for recovering attorneys' fees under the Code, (2) failed to raise attorneys' fees during the summary judgment proceeding and (3) failed to produce sufficient evidence of such fees at trial. Thereafter the Debtor appealed the bankruptcy court's rulings.

On appeal the Debtor conceded that Fourth Circuit precedent precluded recovery of emotional distress damages and that she was merely hoping to make a record to later convince the Fourth Circuit overrule that precedent. With respect to punitive damages, the District Court ruled that the Debtor, having merely made unsupported barebones allegations of malice, (1) failed to make the requisite showing to overcome the general rule that punitive damages are unavailable in civil contempt proceedings and (2) failed to satisfy the "egregious or vindictive conduct" or "necessary to coerce compliance with court orders" exceptions to that rule. On the issue of attorneys' fees, the District Court found no abuse of discretion where the bankruptcy court denied the request for attorneys' fees based on applicable statutory restrictions in the Code and the evidentiary record in the case.

***Hayes v. U.S. Bank Tr., N.A.*, No. 6:24-CV-00004, 2024 WL 4026585, 2024 U.S. Dist. LEXIS 157872 (W.D. Va. Sept. 3, 2024) (Ballou, J.).**

Ralph Leon Hayes filed an appeal from two bankruptcy court orders entered in his chapter 13 bankruptcy case. The first appeal challenged the bankruptcy court's order granting relief from the automatic stay to U.S. Bank Trust. The district court dismissed this appeal as moot because the underlying bankruptcy case was subsequently dismissed.

The second appeal challenged the bankruptcy court's order dismissing Haye's bankruptcy petition, barring Hayes from filing a new bankruptcy petition for 365 days, and denying several of Hayes's pending motions. The district court affirmed the bankruptcy court's dismissal, finding that Hayes failed to file required bankruptcy documents within prescribed deadlines, did not pay the required filing fees according to the court-approved installment plan, and has a history of serial bankruptcy filings with consistent failures to comply with bankruptcy rules and orders. The district court thus concluded that the 365-day prefiling injunction was appropriate given Hayes's repeated abuse of the bankruptcy system. The remaining appeals were dismissed as moot.

***Defot-Sido v. Carr*, No. 1:23-cv-01476-MSN-LRV, 2024 WL 3823789, 2024 U.S. Dist. LEXIS 145203 (E.D. Va. Aug. 14, 2024) (Nachmanoff, J.).**

Anne Defot-Sido contracted with James Carr for home renovations in 2019, but later learned he was not a licensed contractor. After Mr. Carr terminated the contract, Defot-Sido filed suit in state court. Mr. Carr and his wife then filed a petition under chapter 7.

Defot-Sido filed a nine-count complaint against the Carrs in the bankruptcy court alleging the debt owed to Defot-Sido were nondischargeable under § 523(a)(2) based on allegations of common law fraud as well as violations of the Virginia Consumer Protection Act ("VCPA"), which Defot-Sido argued sounded in fraud. The complaint also sought to avoid alleged fraudulent conveyances of the debtors' home. Ultimately, the bankruptcy court granted the Carrs' motion to dismiss, dismissing all but the common law fraud claim. At trial on the remaining count, the

bankruptcy court ruled in favor of the Carrs because the bankruptcy court found that Mr. Carr never knowingly misrepresented to Defot-Sido that he was a *licensed* contractor.

On appeal, the district court affirmed the bankruptcy court's rulings. The district court determined that the bankruptcy court did not clearly err in finding Mr. Carr did not misrepresent that he was a licensed contractor. Further, the district court found that any error in dismissing the VCPA claims was harmless, as Defot-Sido failed to prove Mr. Carr made a knowing misrepresentation necessary to establish nondischargeability. And, finally, the district court affirmed that the bankruptcy court properly dismissed the claims challenging transfers of the Carrs' home, as Defot-Sido failed to plausibly allege the 2017 transfer creating a tenancy by the entirety was invalid. Thus, the district court concluded there was no reversible error and affirmed the bankruptcy court's decision.

***MarkWest Liberty Midstream & Resources, LLC v. Meridien Energy, LLC*, Civ. No. 3:23cv593 (DJN), 2024 WL 3345342, 2024 U.S. Dist. LEXIS 120599 (E.D. Va. July 9, 2024) (Novak, J.).**

Meridien Energy, LLC (Meridien) filed under chapter 11, listing about $19.5 million in total debt. Liberty Midstream and Resources, LLC (MarkWest) was Meridien's largest unsecured creditor with a disputed $13.3 million claim from a prior lawsuit. Meridien proposed a settlement agreement with various parties related to its CEO William Schettine (called the "Intervenors"). The settlement would release claims against the Intervenors in exchange for $200,000 and reductions in Schettine's claims against Meridien. MarkWest objected to this settlement agreement, but the bankruptcy court approved it. MarkWest appealed the settlement order. Meridien then filed an amended chapter 11 plan incorporating the settlement terms. The bankruptcy court confirmed the plan. MarkWest appealed plan confirmation. The two appeals were consolidated in this district court case. Meridien filed a motion to dismiss the appeals as equitably moot, arguing the plan had been substantially consummated.

First, the district court denied the motion to dismiss. The district court noted that, while MarkWest did not seek a stay, it had some justification for not doing so. Substantial consummation of the plan in this case, according to the district court, did not necessarily make it inequitable to rule on the appeal. The district court further found that disgorgement of payments to third parties, while not ideal, was not impracticable. Accordingly, the case did not present the "extremely rare circumstances" needed to decline appellate jurisdiction. The district court emphasized it has an "unflagging obligation" to exercise appellate jurisdiction when a party claims their rights were injured by a bankruptcy confirmation order.

Turning to the merits of the appeal, the court reversed and remanded the bankruptcy court's approval of the settlement agreement, finding that the bankruptcy court did not properly analyze the factors for approving settlements (i.e., the *Austin* factors). Specifically, the district court found the bankruptcy court lacked sufficient evidence about the nature and probability of success of potential claims being released in the settlement. The district court found the bankruptcy court's analysis lacking and remanded for a more thorough examination of the settlement and the plan. The district court emphasized it was not ruling on the underlying merits of the settlement releases, but rather sending the case back for the bankruptcy court to more thoroughly examine the claims being released and build a stronger record to support its findings. The district court also reversed

and remanded the confirmation of the reorganization plan, due to uncertainty about how reversal of the settlement approval would impact the plan terms.

IV. Recent Bankruptcy Court Cases

***In re Braddy*, No. 19-36030-KLP, 2025 WL 951457 (Bankr. E.D. Va. Mar. 28, 2025) (Phillips, J.).** !

During the pendency of her chapter 13 case, Braddy acquired an ownership interest in real property: first, when her father added her as a joint tenant with right of survivorship, and second, when she became the sole owner upon her father's death. Braddy did not immediately disclose these interests to the court or the chapter 13 trustee. After the mortgage holder moved for relief from stay due to missed payments, Braddy filed amended schedules disclosing her ownership interest and filed an amended plan to address the mortgage arrears.

The chapter 13 trustee objected to the amended plan and moved to convert the case to chapter 7 or dismiss it with prejudice, alleging bad faith based on Braddy's failure to timely disclose her property interests. The trustee argued that Braddy should pay $11,000 (representing her equity in the property) to unsecured creditors.

The court analyzed whether Braddy's acquisition of the property constituted a substantial and unanticipated change in financial circumstances under the Fourth Circuit's standards. While finding the acquisition was unanticipated, the court determined it was not substantial because Braddy received no additional income from the property, did not monetize the equity, and in fact experienced decreased financial capacity by taking on mortgage payments. Additionally, the court found that Braddy's failure to disclose was not in bad faith, as she had not been fully advised by her former counsel about her reporting obligations.

The court denied the trustee's motion to convert or dismiss, finding no cause under § 1307(c). However, because the amended plan recognized changes that were not substantial under the Fourth Circuit test under § 1329, the court sustained the trustee's objection and denied confirmation of the amended plan.

***In re Rosen*, A.P. No. 24-06016, 2025 WL 1076942 (Bankr. W.D. Va. Mar. 25, 2025) (Connelly, J.).**

James Rosen, a 79-year-old debtor, sought to discharge his student loan debt under section 523(a)(8). The debt originated from parent PLUS loans that Rosen obtained for his daughters' education, which he later consolidated in 2005. Despite making payments totaling $37,768.77 over nearly 20 years (representing approximately 64% of the original principal), the loan balance had grown to $63,800.58 due to interest accrual. Rosen faced numerous health challenges. His income was limited to Social Security and a modest pension of $511 monthly, with no realistic possibility of increase beyond cost-of-living adjustments.

Applying the three-part *Brunner* test, the Court found that: (1) Rosen could not maintain a minimal standard of living while repaying the loan, as his current budget showed insufficient

income to make the payments without neglecting basic needs; (2) his circumstances were likely to persist for a significant portion of the repayment period, given his age, health issues, and unsuccessful attempts to find employment; and (3) he had made good faith efforts to repay the loan by making payments when possible, staying in communication with loan servicers, pursuing employment opportunities, making expense adjustments, depleting savings, and liquidating personal property.

The Court concluded that requiring Rosen to continue paying the student loan debt would impose an undue hardship on him and his wife. The Court specifically noted that even the reduced IDR payment would mostly cover only interest without significantly reducing principal, even if he were to make payments into his 100s. Accordingly, the Court discharged the student loan debt pursuant to section 523(a)(8).

***In re Enviva Pellets Epes Holdings, LLC*, No. 24-10454-BFK, 2025 WL 857252 (Bankr. E.D. Va. Mar. 6, 2025) (Kenney, J.).**

Vinson & Elkins LLP ("V&E") initially applied to serve as general bankruptcy counsel for the debtors under section 327(a), but the bankruptcy court denied the application. Following a failed motion to reconsider, V&E applied and was approved as special counsel under section 327(e). V&E subsequently filed a final application for compensation seeking $9,292,522.16 in fees and $221,982.65 in expenses.

The bankruptcy court questioned one category of fees in particular: "Employment and Fee Applications," for which V&E sought $957,137.39 (approximately 10% of their total fee request). This category reflected work performed by twenty-one attorneys and paraprofessionals, who spent 890.10 hours on V&E's employment application and fee applications.

The bankruptcy court found these fees unreasonable for several reasons. First, V&E had already conducted extensive conflicts checks for its earlier 327(a) application just months before filing its 327(e) application, with substantially the same list of conflicts parties. Second, V&E acknowledged spending substantial time reviewing and segregating time entries for which it was never entitled to be compensated, which the bankruptcy court characterized as "fees for no fees." Third, V&E's percentage for employment and fee application work substantially exceeded comparable percentages from other firms in the same case.

After careful review, the bankruptcy court allowed V&E fees in the Employment and Fee Applications category totaling 2.5% of their total fees ($232,313.05) and disallowed the balance of the fees in that category (approximately $724,824.34).

***In re Hammond*, No. 19-12942-BFK, 2025 WL 572828 (Bankr. E.D. Va. Feb. 20, 2025) (Kenney, J.).**

The debtor filed a chapter 13 petition in September 2019. The court confirmed her modified plan in January 2020, which required her to make payments to the trustee and to continue making direct monthly mortgage payments on her residence. In October 2024, Nationstar Mortgage filed a motion for relief from the automatic stay for default in payments, and the court granted the

motion. Around the same time, the chapter 13 trustee filed two motions to dismiss. The first motion alleged that the debtor owed $41 to complete her plan payments, but the trustee subsequently withdrew this motion. The second motion alleged that the debtor was in default under her confirmed plan due to missed post-petition mortgage payments. When the second motion was heard, debtor's counsel mistakenly left the courtroom before the case was called, believing that the motion had been withdrawn. The court granted the trustee's motion and dismissed the case.

The debtor promptly moved to vacate the dismissal order. The court found that counsel's confusion about the multiple motions to dismiss constituted excusable neglect. The court then addressed the interplay between Local Rule 3002.1 and whether the debtor qualified for a discharge. In the Eastern District, under the standard of in *In re Evans*, debtors who fail to make post-petition mortgage payments as provided for in the plan are generally not entitled to a discharge, but yet Eastern District Local Rule 3002.1 contains an exception for cases where the automatic stay has been terminated.

The trustee argued that this exception incentivizes debtors to agree to relief from stay near the end of their cases to qualify for discharge despite mortgage defaults. While acknowledging the trustee's concern, the court found that the debtor fell within the plain language of the Local Rule's exception. The court granted the debtor's motion to vacate the dismissal order, finding that but for counsel's excusable mistake, the debtor was entitled to a discharge under the plain terms of Local Rule 3002.1.

***In re Hopeman Brothers*, No. 24-32428-KLP, 2025 WL 297652, 2025 Bankr. LEXIS 132 (Bankr. E.D. Va. Jan. 24, 2025) (Phillips, J.).**

The debtor in this case was a ship-joiner that had gone out of business in the 1980s but still existed to address asbestos claim liability. Although the bulk of the asbestos litigation had been resolved (exhausting many of the debtor's insurance policies), there still remained approximately 2,700 outstanding claims.

To resolve outstanding coverage disputes, a group of insurers and the debtor entered into a settlement agreement. The insurers agreed to buy back certain insurance policies under § 363(f). The sales proceeds would be used to fund a trust for the benefit of all claimants. As part of the free and clear sale, claimants would be enjoined from suing the insurers.

By this opinion, Judge Phillips denied a motion for stay of the order approving the settlement order pending appeal. Judge Phillips rejected the appellants' arguments that Purdue's limitation on non-debtor injunctions also applies to § 363 sales. Under § 363(f), estate property may be sold "free and clear" by enjoining creditors from suing the purchaser. Particularly in light of the Supreme Court's explicit limitation on the applicability of Purdue to third party non-debtor releases contained in confirmation orders, Judge Phillips held that nothing in Purdue indicated "that the protections afforded a buyer pursuant to § 363, including the ability of the purchaser to obtain the asset free of the claims of the debtor's creditors, were intended to be abrogated."

***In re Yellow Poplar Lumber Co., Inc.*, No. 17-70882, 2025 WL 271344, 2025 Bankr. LEXIS 93 (Bankr. W.D. Va. Jan. 22, 2025) (Black, J.).**

An involuntary bankruptcy was filed against Yellow Poplar Lumber Company in 1928; the case was closed in 1931. Decades later, the bankruptcy estate received proceeds from gas well rights. After distributing funds to creditors and stockholders, $422,857.12 in unclaimed funds remained.

The bankruptcy court had to address what was the appropriate disposition of these unclaimed funds. The United States argued the funds should pass to the U.S. Treasury after five years, while the State of South Carolina contended the funds should be escheated to individual states.

The bankruptcy court determined that the 1956 amendment to Section 66 of the Bankruptcy Act applied. This amendment prevented unclaimed bankruptcy funds from being escheated to states and instead directed them to the U.S. Treasury. Critically, the court found that since the gas royalty funds did not exist prior to the 1956 amendment, they could not have been subject to earlier escheat laws.

The court thus denied the State of South Carolina's motion. The unclaimed funds were automatically transferred to the U.S. Treasury, with the court noting that potential claimants can still petition for the funds if they can prove entitlement.

***In re ClubX, LLC*, No. 20-12470-KHK, 2024 WL 5182335, 2024 Bankr. LEXIS 3038 (Bankr. E.D. Va. Dec. 19, 2024) (Kindred, J.).**

ClubX, LLC filed a chapter 7 bankruptcy petition and sometime thereafter, the chapter 7 trustee ("Trustee") engaged in mediation with certain of the debtor's creditors in relation to claims the creditors had against the estate, and claims the estate held against the creditors. The mediation resulted in a settlement between certain of the creditors and the estate, but one holdout creditor refused to settle (the "Holdout"). The estate's causes of action included fraudulent conveyance actions, conversion claims, and causes of action related to breach of fiduciary duties. At core, the settlement between the estate and the settling parties called for a cash payment from the settling parties to the estate and mutual releases between the settling parties and the estate. Absent the settlement, the estate would have been left administratively insolvent, but with it, administrative expenses and a portion of Holdout's claim would be paid.

When the Trustee sought court approval of the settlement, Holdout objected, arguing that the settlement failed to meet the standard for approval of settlements and that the estate should instead abandon its claims so that Holdout could eventually pursue them. Holdout also argued that the releases were not supported by consideration and that the settlement violated the Supreme Court's holding in *Purdue*. Because the settlement contained a bar order that would bar any parties receiving notice of the settlement from asserting released claims, Holdout believed that the settlement released Holdout's claims without its consent and that it therefore constituted a nonconsensual third-party release.

The bankruptcy court overruled Holdout's objections, finding that the releases were supported by consideration in the form of mutual releases and the settlement payment. The bankruptcy court further found that the settlement was fair and equitable based on the (1) administrative insolvency in the case, (2) the difficulties in prosecuting the estate's claims without funds to do so and (3) the fact that the settlement was the only way any creditors would get paid. Finally, the bankruptcy court held that the settlement only released estate causes of action and claims held by other settling parties, and therefore did not implicate *Purdue*.

***Beavers v. City of Radford (In re Beavers)*, No. 22-70598, 2024 WL 4701970, 2024 Bankr. LEXIS 2707 (Bankr. W.D. Va. Nov. 6, 2024) (Black, J.).**

The Beavers filed a chapter 7 bankruptcy petition and received a discharge. Despite the discharge, the City of Radford continued collection efforts for ambulance fees, including sending a bill in and filing a warrant in debt.

The bankruptcy court found the City of Radford willfully violated the discharge injunction. The bankruptcy court noted that after the Beavers received their discharge, the City of Radford sent a bill for pre-petition amounts and initiated litigation, despite being notified of the bankruptcy by the Beavers and their counsel.

The Beavers requested damages for the time they spent on addressing the discharge injunction violations as well as emotional damages. The bankruptcy court only awarded $1,612.50 in attorney's fees. The bankruptcy court declined to award damages for time spent resolving the matter or for emotional distress, finding the time claims speculative and noting that emotional damages are an inappropriate remedy in civil contempt proceedings. The bankruptcy court did not find the City of Radford's conduct egregious enough to warrant punitive damages, noting there was some confusion about the debt's nature. The bankruptcy court noted the potential for further relief if the City of Radford continues litigation against the Beavers or fails to pay the attorney's fees timely.

***In re Malloy*, No. 23-33442-KRH, 2024 WL 4668430, 2024 Bankr. LEXIS 2686 (Bankr. E.D. Va. Nov. 4, 2024) (Huennekens, J.).**

The pro se debtor had entered into a contract to sell his house to the "Creditors." When the sale was not consummated, the Creditors sued the debtor in state court for breach of contract. The debtor filed bankruptcy on the eve of the state court trial. The bankruptcy court granted the Creditors relief from stay to liquidate the breach of contract claim in the state court case. The state court determined that the debtor had breach the contract and that the Creditors were entitled to specific performance.

In this opinion, the Court addressed whether the real estate contract was an executory contract that the debtor could reject through a proposed plan. Regardless of whether the contract was executory on the petition date, the time to determine the executoriness of a contract is the date of confirmation. The state court had ordered specific performance prior to the confirmation hearing. Once the state court had ordered specific performance, the contract was no longer executory and could not be rejected. The bankruptcy court also adopted the state court's findings

regarding the Creditors' additional monetary damages. Given that the debtor's current plan improperly provided for the rejection of the contract and was underfunded in light of the state court damage award, the court denied confirmation of the proposed plan with leave to amend.

***Caldwell v. Rankin (In re Rankin)*, No. 23-11822-BFK, 2024 WL 4500241, 2024 Bankr. LEXIS 2530 (Bankr. E.D. Va. Oct. 15, 2024) (Kenney, J.).**

Caldwell v Rankin is an unlicensed contractor nondischargeability case. In this case, the debtor-defendant ("Debtor") entered into an agreement to renovate the plaintiff's ("Plaintiff") home. The Plaintiff understood that the Debtor was a licensed contractor because: (a) the Debtor had performed other renovation work in the neighborhood, (b) the Debtor's business had "Design/Build" in its name, (c) the agreement contemplated that the Debtor would install various items during the project, (d) the Debtor agreed to walk the design and plans through the local permitting office which only a licensed contractor could do, and (e) the Debtor never told the Plaintiff he was not a licensed contractor. In reality, either no permit was ever obtained during the job, or it was fraudulently obtained as neither the Debtor nor his business were licensed contractors.

When the deal went south, the Plaintiff was forced to hire a new company to complete the work. Thereafter, the Debtor filed a petition under chapter 7 of the Bankruptcy Code, which prompted the Plaintiff to file an adversary complaint seeking a judgment and finding of nondischargeability for actual fraud under § 523(a)(2)(A) and for fraud or defalcation while acting in a fiduciary capacity under § 523(a)(4) based on the Debtor misrepresenting that he was a licensed contractor.

On the actual fraud count, the bulk of the bankruptcy court's analysis centered around whether a misrepresentation had been made. The court, focusing on the Debtor's lack of credibility, found that the Debtor's conduct constituted an intentional misrepresentation of his licensure status, holding, in essence, that the Debtor intentionally held himself out as a licensed contractor. The bankruptcy court distinguished from the *Defot-Sido* case, noting that the decision in that case turned on the plaintiff's testimony that while her impression was that the defendant was licensed, she was not 100% sure he ever made such a representation. Here, the Debtor's testimony denying his conduct lacked credibility and, based on the impression Debtor knowingly created in the Plaintiff and failed to correct, the court ultimately found that the Debtor had committed fraud, awarding damages in the amount of $150,000, the difference between the amount the Plaintiff paid the Debtor, and the value of the work actually received.

On the 523(a)(4) claim, the court thoroughly reviewed the caselaw and determined that the Debtor did not act in a fiduciary capacity because the contract at issue and the application of § 43-13 of the Virginia Code did not require segregation of construction funds, and thus did not create a legal trust relationship for purposes of §523(a)(4). As a result, the court dismissed the § 523(a)(4) claim.

***In re Atiyat*, No. 21-32555, 2024 WL 4481072, 2024 Bankr. LEXIS 2522 (Bankr. E.D. Va. Oct. 11, 2024) (Phillips, J.).**

The chapter 7 trustee sought authority to sell real property that may be fully encumbered. The trustee had negotiated a carveout with the holder of the first deed of trust on the property and purported to use the funds created by the carveout to pay administrative expenses and a distribution to unsecured creditors. The chapter 7 debtor objected to the sale.

A chapter 7 debtor has standing to object to a sale motion only where the debtor has a pecuniary interest in the proceeding, e.g., that there would or could be surplus funds to return to the debtor. In this case, given the amount of secured consensual and judgment liens on the real property, it did not appear that there existed any equity in the property.

The debtor had claimed a homestead exemption in the property. Although there may not be equity in the property to which the homestead exemption would otherwise attached, the debtor's exemption could attach to the carveout. *See Jubber v. Bird* (*In re Bird*), 577 B.R. 365, 386 (B.A.P. 10th Cir. 2017) ("Trustee's scheme to sell the Homesteads by negotiating Carve-Outs . . . is nothing more than an attempt to do indirectly what the Bankruptcy Code and Utah exemption statutes prevent him from doing directly."). Because the debtor could potentially exempt the carveout, the debtor had a pecuniary interest in the sale and had standing to object. The court deferred whether to approve the sale to a subsequent evidentiary hearing.

***In re Vaughn*, No. 21-11260-KHK, 2024 WL 4309242, 2024 Bankr. LEXIS 2342 (Bankr. E.D. Va. Sept. 26, 2024) (Kindred, J.).**

The Vaughn case presented the question of whether an individual debtor could be held liable for a default judgment entered against a debtor's wholly owned corporation on a veil-piercing theory. The default judgment arose from a home renovation contract entered into by the corporation and two homeowners. Despite receiving multiple advances from the homeowners for purchases of materials, the debtor instead used those funds and the corporation's accounts to finance his own life, spending the money on numerous personal expenses, including his mortgage, home maintenance, trips to the barber, trips to the liquor store, student loan payments, trips to restaurants, personal and family medical expenses, trips to a gentleman's club, and payments for a divorce attorney. The debtor even used the corporation's accounts to hide personal funds beyond the reach of his personal creditors. In addition to the debtor's own financial woes, the corporation likewise was unable to meet its financial obligations, having accumulated thousands in overdrafts, and overall, operating at a net loss. Indeed, both the debtor and the corporation showed negative income on their tax returns. The debtor's behavior toward the homeowners was not an isolated incident— the debtor previously behaved similarly with another of his corporation's renovation clients, misrepresenting project status to draw advances from the client, when in reality, no work (or minimal work) had actually been performed.

When the corporation failed to perform under the homeowners' contract, the homeowners filed an arbitration action, resulting in an award against the corporation. The homeowners thereafter obtained a default judgment confirming the arbitration award in state court. When the debtor ended up in chapter 7, the homeowners filed a claim against the debtor for the judgment. Because the judgment was entered against the corporation and not the debtor individually, the debtor objected to the claim, and in response, the homeowners asserted, among other things, that the court should pierce the corporate veil and hold the debtor personally liable for the judgment.

Based on the corporation's undercapitalization, failure to follow corporate formalities and because the corporation was used as the Debtor's alter ego in order to disguise wrongs, the court held that the corporate veil would be pierced, and the debtor would be held liable for the judgment.

***In re Arnold*, No. 22-70561, 2024 WL 3948458, 2024 Bankr. LEXIS 1983 (Bankr. W.D. Va. Aug. 26, 2024) (Black, J.).**

Joshua Arnold filed a chapter 7 petition. On his Statement of Intention, Arnold listed a debt owed to Pace Financial secured by a 2010 Acura MDX and he indicated he would "retain collateral and maintain payments." After receiving a discharge, Arnold later claimed Pace Financial violated the automatic stay and the discharge injunction by making numerous collection calls.

The bankruptcy court denied Arnold's motion for sanctions, finding that the automatic stay terminated as to the Acura under § 362(h)(1) because Arnold did not redeem the vehicle or enter a reaffirmation agreement within 30 days of the creditors' meeting. Further, The bankruptcy court ultimately denied Arnold's motion for sanctions, finding no clear violation of the discharge injunction. Arnold did not meet his burden of evidence to prove Pace Financial's communications violated the discharge injunction. In support of this conclusion, the bankruptcy court noted that secured claims not avoided during bankruptcy survive discharge, Pace Financial's calls appeared to be legitimate inquiries about payment and potential repossession, and there was no clear evidence the calls were attempts to collect the debt as personal liability. However, in a footnote, the bankruptcy court cautioned Pace Financial that repeated calls could potentially be construed as coercive pressure to collect a discharged debt.

***Kamin v. Gunkova* (*In re Gunkova*), Adv. P. No. 23-01062-BFK, 2024 WL 3548305, 2024 Bankr. LEXIS 1720 (Bankr. E.D. Va. July 24, 2024) (Kenney, J.).**

Harry Kamin, a 50% member of BNG Group, LLC, filed a lawsuit against Valeria Gunkova, the other 50% member, in state court. During discovery, the state court ordered Gunkova to produce electronic devices for forensic examination. Before and after this order, Gunkova and her agents repeatedly used CCleaner, a file deletion program, on BNG's computers. They also failed to produce three external hard drives. Gunkova then filed for bankruptcy, staying the state court litigation.

Kamin filed an adversary proceeding to determine the dischargeability of debts owed to him by Gunkova under § 523(a)(2)(A) and (a)(6). Kamin moved for sanctions for spoliation of evidence related to Gunkova's agents' deletion of files on BNG's computers. Over 210,000 files were irretrievably lost, and 1,857 pages were rendered permanently unreviewable. The bankruptcy court found that the destruction of electronically stored information was egregious and unjustified.

The bankruptcy court held that Gunkova and her agents acted with intent to deprive Kamin of relevant information. As a sanction, the bankruptcy court entered a default judgment on nondischargeability, finding that any debts Gunkova owed to Kamin were nondischargeable under § 523(a)(2)(A) and (a)(6). The bankruptcy court also granted relief from the automatic stay to allow Kamin to return to state court to obtain a judgment.

***Brown v. Goldman Sachs Bank USA* (*In re Brown*), 663 B.R. 449 (Bankr. W.D. Va. 2024) (Black, C.J.).**

Consumer debtors filed a class action adversary proceeding against Goldman Sachs Bank USA, alleging violations of the automatic stay under § 362(a)(3) and (6). The plaintiffs claimed that Goldman Sachs sent notices and communications regarding balances due on their Apple Card accounts, even after being notified of the bankruptcy cases. Goldman Sachs moved to compel arbitration of the dispute based on an arbitration provision in the Apple Card Agreement.

Weighing competing interests of the Federal Arbitration Act with the Bankruptcy Code, the bankruptcy court denied the motion to compel arbitration. The bankruptcy court found that the plaintiffs' claims for automatic stay violations were constitutionally core, which the court had discretion to retain rather than sending them to arbitration, following Fourth Circuit precedent in *Moses v. CashCall, Inc.*, 781 F.3d 63 (4th Cir. 2015) and *Phillips v. Congelton, L.L.C.* (*In re White Mt. Mining Co., L.L.C.*), 403 F.3d 164 (4th Cir. 2005). The bankruptcy court recognized that there is an inherent conflict between arbitrating these types of claims and the purposes of the Bankruptcy Code, particularly in centralizing disputes to preserve debtors' limited resources, protecting the fundamental "fresh start" purpose of bankruptcy, and maintaining the bankruptcy court's ability to enforce its own orders and the automatic stay.

***In re Vasquez*, Nos. 23-12045-BFK, 24-10575-BFK, 24-10355-BFK, 2024 WL 3347227, 2024 Bankr. LEXIS 1583 (Bankr. E.D. Va. July 9, 2024) (Kenney, J.).**

The chapter 13 trustee filed motions to dismiss in three bankruptcy cases, alleging that the debtors were not proceeding in good faith in their current chapter 13 cases. In each of the three cases, the debtors had received a chapter 7 discharge more than four but less than eight years ago, thereby making them eligible for a chapter 13 discharge but ineligible for a chapter 7 discharge. Similarly, in each of the three cases, the debtors had no mortgage arrears or significant priority tax debt, but instead had filed chapter 13 to protect their wages from garnishment.

The court determined that good faith hinged on "whether [the debtors] are 'parking' themselves in Chapter 13 with the benefit of the automatic stay and minimal financial obligations in their Plans, until the eight years have passed." The court determined that Debtor 1 was proceeding in good faith because the majority of her debt was nondischargeable student loan debt and her attorney was willing to subordinate his fees to ensure a distribution to creditors. The court found that Debtor 2 was not proceeding in good faith where his counsel declined to subordinate his fees and, as such, creditors would not receive a distribution prior to Debtor 2 becoming eligible for a chapter 7 discharge. Debtor 2, by counsel, also admitted that he may owe child support in contradiction to his Schedule E/F, which the court determined also weighed against him. The court found that Debtor 3 was proceeding in good faith where her plan projected to pay unsecured creditors a 32% dividend and her counsel was willing to subordinate her fees for the first six months of the case (until such time that the debtor would be eligible for a chapter 7 discharge).

***In re Baek*, 661 B.R. 126 (Bankr. E.D. Va. 2024) (Kindred, J.).**

Sue Baek and her then-husband acquired real property as tenants by the entireties in 2003. In 2009, a default judgment was entered against Ms. Baek (and not against her husband), and the judgment was properly docketed in the land records. Wells Fargo eventually became the holder of that judgment. In 2010, Ms. Baek filed a chapter 7 petition and received a discharge in 2011. In 2015, Ms. Baek and her husband divorced, thereby severing the tenancy by the entirety. Ms. Baek received the real property as part of the property settlement agreement. In 2022, Ms. Baek attempted to refinance the mortgage on the real property, but the refinancing was denied when the settlement company found Wells Fargo's judicial lien in the land records. In response to this, the debtor moved to reopen her bankruptcy case and filed a motion against Wells Fargo for violation of the discharge injunction.

After conducting a hearing, the Court directed the parties to brief whether under Virginia law a lien attaches to a future contingent interest in property that was held as tenants by the entireties at the time the lien was docketed. Based on a thorough review of the relevant case law, Judge Kindred found that Wells Fargo had an objectively reasonable basis to believe that the lien could attach to a future contingent interest and thus did not violate the discharge injunction. Notably, Judge Kindred carefully tailored the holding to dismiss the show cause on whether Wells Fargo should be held in contempt for violating the discharge injunction "[w]ithout deciding the underlying question of whether a lien in fact attached."

***In re Enviva, Inc.*, Case No. 24-10453-BFK, 2024 WL 3285781, 2024 Bankr. LEXIS 1548 (Bankr. E.D. Va. July 2, 2024) (Kenney, J.).**

The debtors filed a motion to reconsider the bankruptcy court's previous memorandum opinion and order denying the debtors' application to employ Vinson & Elkins LLP ("V&E") as counsel. The court denied the motion to reconsider under both Bankruptcy Rules 9023 and 9024.

Evaluating the motion to reconsider first under Bankruptcy Rule 9023/Civil Rule 59, the bankruptcy court found there was no intervening change in the law on the disinterestedness standard under § 327(a). Then, the bankruptcy court held that the newly proposed ethical wall, limits on compensation, and board resolution establishing a Plan Evaluation Committee ("PEC") did not qualify as newly discovered evidence, as they were newly created in response to the bankruptcy court's previous decision. The bankruptcy went on to further address clear error or manifest injustice. Specifically, the bankruptcy court found that even with the newly proposed measures, V&E was still not disinterested under § 327(a). The proposed ethical wall was insufficient, using arbitrary post-petition time thresholds and not addressing pre-petition ties. The compensation proposal did not eliminate the perception of conflict due to V&E's extensive ties to Riverstone, a major shareholder. The PEC did not solve the disinterestedness problem because it was revocable, lacked its own financial advisers, and was not tasked with primary responsibility for plan negotiations. For similar reasons, the Court also denied the motion to reconsider under Bankruptcy Rule 9024/Civil Rule 60(b).

***Arrowsmith v. Christian Life Assembly of Columbia, S.C., Inc. (In re Health Diagnostic Lab., Inc.)*, Adv. P. Nos. 22-03020-KRH, 22-03036-KRH, 2024 WL 2930904, 2024 Bankr. LEXIS 1345 (Bankr. E.D. Va. June 10, 2024) (Huennekens, J.).**

The liquidating trustee filed adversary proceedings against two churches seeking to recover certain avoidable transfers pursuant to § 550(a) of the Bankruptcy Code. The parties stipulated that the debtor had made certain avoided and avoidable transfers to insiders that were eventually transferred to the churches.

The bankruptcy court first rejected the churches' argument that they were insulated from liability under the Religious Liberty and Charitable Donation Protection Act. Although charitable contributions are protected from avoidance as fraudulent transfers under § 548(a)(2) and using the trustee's strong-arm powers under § 544(b)(2), the court found that no such limitation applied to recovery of otherwise avoided transfers from subsequent transferees pursuant to § 550 of the Bankruptcy Code. Rather, the sole defense available to transferee is the statutory protection afforded to one who takes in good faith and for value, which was not available to the churches.

The court disposed of various discovery disputes between the parties, concerning the timeliness and completeness of disclosures, before turning to the trial. At trial, the parties had competing expert witnesses. The churches' expert witness opined that commingled funds could not be traced and, in such instances, the intent of the transferor controlled as to how funds were used. The court rejected this opinion and instead adopted the lowest intermediate balance rule ("LIBR"), as suggested by the liquidating trustee's expert witness. Through the use of LIBR, the court determined that the liquidating trustee was sufficiently able to trace funds received by the churches back to the avoided and avoidable transfers.